



1           4.     Petitioner asserted that his Petition, which essentially asserts "voter fraud,"  
2 is a "life and death matter."

3           5.     Petra Paul, Managing Agent for Planned Development Services HOA  
4 Management & Accounting Company ("PDS"), testified that PDS's contract with  
5 Respondent is for accounting services only, and not HOA management services.  
6 Consequently, PDS does not manage Respondent. Ms. Paul testified that the only  
7 involvement that PDS had with the election as issue was mailing the annual meeting  
8 documents to the members for Respondent. Ms. Paul emphasized that PDS did not  
9 conduct Respondent's election and did not tabulate the ballots, but rather only facilitated  
10 in the mailing of the ballots to Respondent's members, collecting the returned ballots and  
11 reviewing the number of ballots returned to ensure that a quorum was established for a  
12 valid election. Ms. Paul testified that the counting of the ballots occurred at the annual  
13 meeting with the members present, including Petitioner, and that all ballots were verified  
14 and announced.

15           6.     Ms. Paul testified regarding her interactions with Petitioner. Ms. Paul  
16 testified that Petitioner requested copies of the ballots prior to the election (which took  
17 place on a Saturday). Petitioner was advised that he was not permitted to see the ballots  
18 prior to the election. Petitioner thereafter demanded copies of the ballots the Monday  
19 after the election. Ms. Paul testified that Petitioner was provided copies of redacted  
20 ballots, as the names, email addresses, and signatures had been removed. However,  
21 Petitioner would not accept the redacted copies. Ms. Paul explained that she offered  
22 Petitioner the opportunity to review the non-redacted ballots, however advised him that  
23 he could not take those with him.

24           7.     Ms. Paul testified that with each interaction with Petitioner, he became  
25 increasingly agitated, that the office staff at PDS was intimidated by Petitioner because  
26 Petitioner refused to leave PDS's premises, Petitioner picketed on the property and sat  
27 in his car in PDS's parking lot. Ms. Paul described Petitioner's behavior as "irrational,  
28 mean, and bullying" and that she and other employees were concerned for their personal  
29 safety. Further, Petitioner's behavior was impacting PDS's business operations.  
30 Consequently, PDS through Ms. Paul, obtained an Injunction Against Workplace



1 Harassment ("Injunction") against Petitioner after Petitioner spent 45 days picketing  
2 outside of PDS's office.<sup>1</sup> The Injunction indicates that Petitioner made threats against  
3 PDS employees, stating, "You'll be sorry," "You'll regret this," and "You haven't seen the  
4 end of me."<sup>2</sup> The Injunction further indicates that Petitioner remained in PDS's parking  
5 lot or the street adjacent to the building holding a large sign that stated, "PDS Embezzlers,  
6 Frauds, Liars."<sup>3</sup>

7 8. Ms. Paul expressed her concern that Petitioner should not be allowed to  
8 know how individual members voted because she was afraid that Petitioner would resort  
9 to intimidating and bullying them based on their votes. Ms. Paul testified that PDS  
10 demanded its legal fees be paid by Respondent and PDS resigned its services from  
11 Respondent due to Petitioner's "abusive and erratic" interactions with her and other PDS  
12 employees.

13 9. William Campbell, a member of Respondent's Board of Directors testified  
14 regarding Respondent's Policy and Procedure regarding Ballot/Proxy Handling  
15 Procedure for the Annual Meeting, which was approved by Respondent's Board on July  
16 10, 2004. Mr. Campbell testified regarding paragraph number 3 that states:

17 3. BALLOTS WILL BE PLACED IN A MANILA ENVELOPE(S)  
18 ACCORDING TO STATUS, I.E. DUES CURRENT / DUES NOT  
19 CURRENT WITH THE BOTTOM PORTION FOLDED UNDER  
20 TO MAINTAIN THE SECRECY OF THE BALLOT.<sup>4</sup>

21 Emphasis in original.

22 10. Mr. Campbell further testified regarding Respondent's May 8, 2021 Meeting  
23 Minutes. Those meeting minutes illustrate that Respondent's Board unanimously  
24 reaffirmed Respondent's policy of secret ballots, as follows:

25 President Mexal recognized member Dan Belt who expressed  
26 dissatisfaction that he was not able to view all the ballots from the  
27 2021 election inclusive of individual members personal information. A  
28 discussion was held regarding the long-standing practice of the BVIA

29 <sup>1</sup> See Petitioner's Exhibit 1.

30 <sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See Respondent's Exhibit 22.



1 providing its members to a secret ballot. Vice President Campbell  
2 made an offer to Mr. Belt that would provide him an opportunity to  
3 review the ballots without disclosing an individual's private information  
4 but with the ability for any member who wants to confirm their vote  
5 was counted to be given the opportunity to view their individual ballot,  
6 preserving the practice of a secret ballot and any members privacy  
7 concerns.

8 Vice President Campbell made a motion to arrange for a meeting for  
9 any interested members to attend a review of the ballots (without  
10 personally identifying information) and allow members to confirm their  
11 personal ballots were included. Director Hallett seconded the motion,  
12 and the motion was approved unanimously.

13 Treasurer Sarah Linkey made a motion to reaffirm that all Board of  
14 Directors elections be conducted with a secret ballot. Director Hallett  
15 seconded the motion, and the motion was approved unanimously.<sup>5</sup>

16 11. Mr. Campbell testified regarding Respondent's Bylaws, specifically, Article  
17 VII Books and Records, which states in pertinent part, "Notwithstanding the foregoing, the  
18 following are not subject to inspection by any party other than the Board of Directors, its  
19 management agent, if any, . . . (d) Personal . . . information about an individual Member  
20 of the Association. . . ."<sup>6</sup>

21 12. Mr. Campbell testified that the way in which individual members voted is  
22 considered private information and the members believed they had the right to a secret  
23 ballot. Mr. Campbell asserted that Respondent's Bylaws would need to be amended in  
24 order to provide personal information. Mr. Campbell testified that there was nothing  
25 irregular about this election, and that Petitioner was told he could have copies of the  
26 ballots with the members' demographic information, just not their voting information.  
27 However, Mr. Campbell devised a way in which he could match a members' demographic  
28 information to the members' vote if upon Petitioner's inspection, something appeared  
29 irregular.<sup>7</sup> Mr. Campbell further testified that there was a meeting at the end of May 2021  
30 during which members were permitted to view the ballots and the ballots were recounted  
and the votes were confirmed. Mr. Campbell also brought the ballots to the June 2021

<sup>5</sup> See Respondent's Exhibit 19.

<sup>6</sup> See Respondent's Exhibit 3.

<sup>7</sup> See Respondent's Exhibit 17.



1 meeting in the event that any member wanted to view the ballots, and again at the July  
2 2021 meeting. Mr. Campbell testified that no one availed themselves of the opportunities  
3 in June or July.

4 13. Mr. Campbell referenced Article VII, Section 1 of the Arizona Constitution  
5 which provides that "all elections by the people shall be by ballot, or by such other method  
6 as may be prescribed by law; Provided, that secrecy in voting shall be preserved."<sup>8</sup> Mr.  
7 Campbell opined that if voting were not conducted by secret ballot, that there would be a  
8 chilling effect in that members would not vote for fear of repercussions.

9 14. Mr. Campbell acknowledged that Respondent was not utilizing the correct  
10 form for secret ballots as they were not in manila envelopes, however, the ballots  
11 remained secret because they were folded.

### 12 CONCLUSIONS OF LAW

13 1. Arizona statute permits an owner or a planned community organization to  
14 file a petition with the Department for a hearing concerning violations of planned  
15 community documents or violations of statutes that regulate planned communities.<sup>9</sup> That  
16 statute provides that such petitions will be heard before the Office of Administrative  
17 Hearings.

18 2. Petitioner bears the burden of proof to establish that Respondent committed  
19 the alleged violation by a preponderance of the evidence.<sup>10</sup> Respondent bears the burden  
20 to establish affirmative defenses by the same evidentiary standard.<sup>11</sup>

21 3. "A preponderance of the evidence is such proof as convinces the trier of fact  
22 that the contention is more probably true than not."<sup>12</sup> A preponderance of the evidence is  
23 "[t]he greater weight of the evidence, not necessarily established by the greater number of  
24 witnesses testifying to a fact but by evidence that has the most convincing force; superior  
25 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable

26 <sup>8</sup> See Respondent's Exhibit 23.

27 <sup>9</sup> See A.R.S. § 32-2199.

28 <sup>10</sup> See ARIZ. REV. STAT. section 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*,  
74 Ariz. 369, 372, 249 P.2d 837 (1952).

29 <sup>11</sup> See A.A.C. R2-19-119(B)(2).

30 <sup>12</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than  
2 the other."<sup>13</sup>

3 4. A.R.S. § 33-1812(A) provides in pertinent part:

4 . . . any action taken at an annual, regular or special meeting of the  
5 members shall comply with all of the following if absentee ballots or ballots  
6 provided by some other form of delivery are used:

7 6. The completed ballot shall contain the name, address and  
8 signature of the person voting, except that if the community  
9 documents permit secret ballots, only the envelope shall contain the  
10 name, address and signature of the voter.

11 7. Ballots, envelopes and related materials, including sign-in sheets  
12 if used, shall be retained in electronic or paper format and made  
13 available for member inspection for at least one year after completion  
14 of the election.

15 5. A.R.S. § 33-1805 provides the following in pertinent part:

16 A. Except as provided in subsection B of this section, all financial and other  
17 records of the association shall be made reasonably available for  
18 examination by any member or any person designated by the member in  
19 writing as the member's representative. The association shall not charge a  
20 member or any person designated by the member in writing for making  
21 material available for review. The association shall have ten business days  
22 to fulfill a request for examination. On request for purchase of copies of  
23 records by any member or any person designated by the member in writing  
24 as the member's representative, the association shall have ten business  
25 days to provide copies of the requested records. An association may  
26 charge a fee for making copies of not more than fifteen cents per page.

27 B. Books and records kept by or on behalf of the association and the board  
28 may be withheld from disclosure to the extent that the portion withheld  
29 relates to any of the following:

30 . . . .  
4. Personal . . . records of an individual member of the association . . .

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<sup>13</sup> BLACK'S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).





1  
2 Done this day, October 5, 2021.  
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4 /s/ Sondra J. Vanella  
5 Administrative Law Judge  
6

7 Transmitted by either mail, e-mail, or facsimile October 5, 2021 to:

8 Judy Lowe, Commissioner  
9 Arizona Department of Real Estate  
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11 Phoenix, Arizona 85007

12 Attn:

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