

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

No. 22F-H2222063-REL

4 Smoot Carl-Mitchell,

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 Petitioner,

6 v.

7 Los Reyes Homeowners Association Inc.,

8 Respondent.
9

10 **HEARING:** January 25, 2023, with further hearing on March 29, 2023

11 **APPEARANCES:** Stewart Gross, Esq. represented Petitioner Smoot Carl-Mitchell.
12 Michael McLeran, Esq. represented Respondent Los Reyes Homeowners Association,
13 Inc. Dawn Feigert, Denise Mueller, Timothy Fischer, and Kirk Nelson appeared as
14 witnesses.

15 **ADMINISTRATIVE LAW JUDGE:** Sondra J. Vanella
16

17 **FINDINGS OF FACT**

18 1. Los Reyes Homeowners Association, Inc. ("Respondent") is a
19 planned community association located in Scottsdale, Arizona, comprised of 55 attached
20 duplexes with zero lot lines. Respondent is a sub-association of McCormick Ranch
21 Property Owners Association ("McCormick Ranch"), and Respondent is governed by its
22 own CC&Rs, as well as the Rules and Regulations of McCormick Ranch.

23 2. On or about June 17, 2022, Smoot Carl-Mitchell ("Petitioner"),
24 through counsel, filed a petition with the Arizona Department of Real Estate
25 ("Department") alleging that Respondent had violated its CC&Rs Article VIII, Section 8.8.
26 Petitioner paid the required \$500.00 filing fee to address the one issue claimed in the
27 petition.

28 3. The Notice of Hearing in this matter set forth the issue to be
29 determined as follows: "[Respondent's] Architecural [sic] disapproval of [Petitioner's]
30

landscaping plans to install artificial turf is in violation of the CC&R's and is unreasonable under Arizona law."

4. Respondent's CC&Rs Article 6.2 sets forth the following:¹

"Maintenance by Association ". The Los Reyes Homeowners Association shall maintain the landscaping in the front yards of the Lots, up to a height of eight (8) feet; and other portions of the Common Area which are not the responsibility of the McCormick Ranch Property Owners Association, any governmental entity, or the Owners. Owners are responsible for the removal of inoperable fixtures, dead or unhealthy shrubs, ground cover and trees, and replacement with species approved by the Board. Maintenance of tree, shrubs and groundcover above eight (8) feet in height are the sole responsibility of the Owner.

5. CC&R Article 8.8, Use Restrictions, sets forth the following:²

"Landscaping". Trees, shrubs, hedges, grass, plantings and landscaping of every kind shall be maintained by the Owner in a healthy state. No tree, shrub or other landscaping shall overhang or otherwise encroach upon any sidewalk below the height of eight (8) feet or any curb or street below the height of sixteen feet. Trees and shrubs above the height of eight feet shall be trimmed and thinned so as to provide adequate sun for the growth of turf. Dead or unhealthy shrubs shall be replaced by the Owner in accordance with the Landscaping Guidelines and with the concurrence of the ALC. No colored rocks shall be permitted in any front yard other than natural beige granite. Desert landscaping, whether characterized by rocks, cactus or succulents, shall not comprise more than one-fifth of the landscaping Visible From Neighboring Property(s). No Owner shall allow any condition which shall induce, breed or harbor plant disease or noxious insects. Weeds shall not be allowed to grow in any front yard. Low level feature lighting must be maintained in original condition and in a tasteful manner.

6. CC&R Article 9.4, Use Restrictions, sets forth the following:³

"McCormick Ranch Restrictions and Architectural Control Criteria": The most recently approved version of the McCormick Ranch Restrictions and Architectural Control Criteria are hereby incorporated into this Declaration by reference. The covenants, conditions and restrictions of this Declaration may complement, or further refine, the McCormick Ranch Restrictions and Architectural Control Criteria, but shall not contradict them.

¹ See Respondents Exhibit at 20.

² See Respondent's Exhibits at 23-24.

³ See Respondent's Exhibits at 25.

7. McCormick Ranch's Rules and Regulations state in pertinent part:⁴

**ARCHITECTURAL CONTROL REGULATIONS
INTRODUCTION**

McCormick Ranch is a master-planned community with a strong commitment to protect and preserve its aesthetic values. It is the intention of the McCormick Ranch Property Owners' Association, Inc. (Association) that all aspects of the properties on McCormick Ranch be aesthetically appealing. When reviewing architectural requests, the Association seeks to achieve the overall goal of harmony of external design and location in relation to surrounding structures and topography, and in relation to the Master Plan for the development of the community. Harmony within the Association will be achieved by prohibiting clashing styles, garish materials, gaudy colors, featureless landscapes, oversized structures and by preserving open and open green space generally and between structures. On a larger scale, the Association continues to make every effort to preserve the integrity of the City of Scottsdale by ensuring McCormick Ranch provides a sympathetic transition between the ranchero estates of the north and the denser developments of the south.

8. McCormick Ranch's Rules and Regulations permit artificial turf and set forth the requirements for such as follows:⁵

Artificial Turf

Owners may submit requests for high quality artificial turf for their front yards. Owners are cautioned that the use of artificial turf requires that they maintain it to the highest standards of care. Artificial turf will be considered for approval on a case-by-case determination as follows:

The submittal shall include:

1. a one-foot square foot boxed sample (including infill) of the exact finished turf product
2. a brochure of the product
3. the contract between the owner and the installer, describing the manufacturer's specifications
4. copy of the manufacturer's warranty showing at least seven (7) years

Minimum specification include:

1. a tufted face weight (pile weight) range between 40 ounces to 78 ounces per square yard
2. a stitch gage maximum width of $\frac{3}{4}$ inch

⁴ See Respondent's Exhibits at 34.

⁵ See Respondents Exhibits at 45-46.

3. a minimum of 3 inches of compacted aggregate material installed under the artificial turf surface (sub-base materials)
4. a minimum blade length of 1½ inches, not to exceed 2¼ inches
5. a border (when required by the ACC)

Artificial turf must be installed in such a way as to appear seamless and uniform. All seams must be glued. Only natural colors are acceptable, to remain unchanged from the natural green lawn appearance, and subject to approval by the ACC.

Only turf requiring infill installation will be allowed. Infill material installation shall be according to turf manufacturer specifications or based upon standard industry guidelines. Minimum infill installation shall be two (2) pounds per square foot.

Artificial turf shall be maintained in like-new condition, color and uniformity with no tears or seams visible. Any fading or deterioration of wear patterns and incidental damage of the product will necessitate replacement.

Artificial turf must be kept free of debris, dirt and odor. Any repairs required to the artificial turf must be completed within ten (10) days of the notice to repair and/or replace, i.e., tears, folded up edges, seams showing, worn areas, burnt areas, *etc.*

All submittals must identify the overall square footage of the front yard landscape space, the square footage of the artificial turf purposed and the percentage of artificial turf of the overall front yard landscape area. Artificial turf should not encompass more than **30%** of the front yard, minus vehicle driveway and parking area. The ACC may consider artificial turf area that exceeds **30%** of the total front yard landscape at their discretion.

By submitting the architectural request for artificial turf, the applicant agrees to bring the balance of the front yard up to the standards of the Rules and Regulations, including minimum plant and tree requirements.

A regular inspection of the turf will be made and if it is deemed not in acceptable condition, in the sole discretion of the Association, the turf will be required to be replaced. The ACC reserves the right to require removal/placement/replacement of any area of artificial turf that does not meet the standards set forth by these guidelines.

Replacement of artificial turf must be pre-approved by the ACC to ensure like type, color and quality of replacement product.

1 9. Respondent has contracted with a landscaping company to
2 perform its portion of the shared landscape maintenance of the front yards of the
3 homes within the community, to include, mowing, fertilization, trimming of shrubs,
4 and over seeding. The homeowners pay for their own irrigation and are
5 responsible for shared maintenance pursuant to Articles 6.2 and 8.8 of the CC&Rs.

6 10. Petitioner hired a landscape designer to re-design the
7 landscaping of his front yard to include artificial turf and to replace most of the
8 existing plants with plants on Respondent's approved list, as well as to replace the
9 existing irrigation with drip irrigation.⁶ Petitioner testified that his goal for the
10 landscape re-design is water conservation and to improve the aesthetic of his front
11 yard.

12 11. On January 29, 2022, Petitioner submitted his landscape re-
13 design to Respondent for approval.⁷ Those plans contain the types and number of
14 plants proposed, and the dimensions and shape of the area of artificial turf, and
15 detailed renderings.⁸

16 12. Respondent denied Petitioner's request due to the plans
17 being "conceptual." Respondent requested additional information, and Petitioner
18 complied with the request. Respondent continued in its denial because
19 Respondent believed artificial turf should not be permitted, the plans were
20 conceptual in nature, and artificial turf would disrupt the continuity of the
21 community.

22 13. Respondent argued at hearing that its CC&Rs reference
23 growth of turf, not artificial turf, there are no homes within Respondent that have
24 artificial turf in their front landscaping, and it would be disruptive to Respondent's
25 landscaping contract.

26 14. Dawn Feigert, Senior Manager for Trestle Management
27 Group, Respondent's Management Company, testified at hearing that on March

28 ⁶ See Petitioner's Exhibits 1-3.

29 ⁷ See Respondent's Exhibits at 67 and Petitioner's Exhibits 1-4.

30 ⁸ *Id.*

10, 2022, Respondent issued a Notice of Architectural Disapproval to Petitioner citing as the reason:⁹

Specifically, the artificial turf is not approved as it is not permitted under the current Los Reyes Homeowners Association CC&R's. Live turf is anticipated in CC&R Section 8.8 (Landscaping) as highlighted below.

. . . .

Los Reyes CC&R's

8.8 "Landscaping". . . provide adequate sun for the growth of turf.

15. Ms. Feigert testified that Petitioner's resubmittal did not differ from his original submittal. However, Petitioner referenced A.R.S. § 33-1819 in his resubmittal and Respondent took the position that it is exempt from the requirement to allow artificial turf at all since it is required to maintain the area where Petitioner proposed to install the artificial turf.¹⁰

16. On April 26, 2022, Respondent reviewed Petitioner's application at its Architectural/Landscape Committee Meeting.¹¹

17. On May 3, 2022, Respondent issued a Notice of Architectural Disapproval to Petitioner, denying Petitioner's request for artificial turf in his front yard renovation as follows:¹²

Front Yard Renovations -

Artificial turf is not permitted under the current Los Reyes CC&RS

The plans presented were concepts rather than specific plans and are missing vital information for proper evaluation, including, but not limited to: the exact number and types of plants to be used, the bedding material to be utilized in the beds, e.g., gravel and whether lighting will be utilized.

18. Denise Mueller, Respondent's current Vice-president, testified that the yards of the homes comprising Respondent, all "run together" and are uniform with natural grass flowing from one yard to another.

19. Ms. Mueller testified that the original plans submitted by Petitioner to Respondent were "artist depictions" that did not contain working links. Consequently, on

⁹ See Respondent's Exhibits at 76-77.

¹⁰ See Respondent's Exhibits at 80.

¹¹ See Respondent's Exhibits at 82.

¹² See Respondent's Exhibits at 83.

1 March 10, 2022, Respondent denied Petitioner's request and requested a resubmittal of
2 the plans with more detail. Ms. Mueller explained that Respondent "felt that [Petitioner's
3 request] was a large departure from the landscaping in the neighborhood" and
4 Respondent "thought it would affect the contract with the landscaper," was not uniform,
5 and was not in conformity with Respondent's CC&Rs or McCormick Ranch's CC&Rs. Ms.
6 Mueller testified that Respondent's CC&Rs Article VIII refers to "natural grass" and the
7 CC&Rs do not mention artificial turf. The Administrative Law Judge notes that "natural
8 grass" is not mentioned in Section 8.8 of Respondent's CC&Rs.

9 20. Ms. Mueller further testified that at the April 2022 meeting, Petitioner's
10 request was discussed, questions were asked of Petitioner regarding his plans, a working
11 link to the plans was submitted, and 45 new plants were proposed that Respondent would
12 be required to maintain and Respondent did not know what plants would be installed. As
13 such, a decision could not be reached at the meeting. Respondent "felt that [Petitioner]
14 needed to address all aspects of the plans" as there was "a lot of detail that wasn't
15 answered, such as the bedding material, no samples of artificial turf, [and] the types of
16 plants."

17 21. Ms. Mueller offered that her decision to vote to disapprove Petitioner's
18 request was based on the "harmony provision" from the McCormick Ranch Rules and
19 Regulations, and there is no artificial turf in the neighborhood and "no other subdivision
20 like theirs [has] artificial turf."

21 22. Tim Fischer, Respondent's Treasurer at the time Petitioner submitted his
22 request, testified that Respondent's Architectural Committee unanimously voted to deny
23 Petitioner's request, and that he personally voted to deny because the "proposal lacked
24 plans and specifications as to what would be done," the CC&Rs do not allow for artificial
25 turf, plumbing and sprinklers would need to be relocated, Petitioner did not provide a
26 sample of the turf to compare to existing lawns, and "no one has artificial turf."

27 23. Mr. Fischer acknowledged that Respondent's CC&Rs do not prohibit
28 artificial turf; they are simply silent as to artificial turf. Mr. Fischer also acknowledged that
29 Section 8.8 of Respondent's CC&Rs provide for shared maintenance as homeowners are
30 responsible for irrigation.

24. Kirk Nelson, President of Respondent's board, testified that he was at the meeting during which Petitioner's proposal was considered and he believed the plans were "conceptual in nature" and the responses Petitioner provided to the questions posed, were vague. Mr. Nelson voted against the proposal because the plans "were not specific, the CC&Rs do not call for artificial turf and reference natural grass, all yards run together, and the neighborhood has 'a look and feel' and [artificial turf] would 'chop up the neighborhood.'"

CONCLUSIONS OF LAW

1. The Department has jurisdiction to hear disputes between a property owner and a planned community association.¹³

2. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated its CC&Rs Article VIII, Section 8.8.¹⁴

3. A preponderance of the evidence is “[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.”¹⁵

4. A.R.S. § 33-1819 provides, in relevant part, as follows:

A. Except as prescribed in subsection B of this section and notwithstanding any provision in the community documents, in any planned community that allows natural grass on a member's property, after the period of declarant control, the association may not prohibit installing or using artificial turf on any member's property. An association may do all of the following:

1. Adopt reasonable rules regarding the installation and appearance of artificial turf if those rules do not prevent installing artificial turf in the same manner that natural grass would be allowed by the community documents. Those rules may regulate the location on the property and percentage of the property that may be covered with artificial turf to the same extent as natural grass and may regulate artificial turf quality.

2. Require the removal of a member's artificial turf if the artificial turf creates a health or safety issue that the member does not correct.

¹³ A.R.S. § 32-2199 *et seq.*

14 A.A.C. R2-19-119.

¹⁵ BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

1 3. Require replacement or removal of the artificial turf if the artificial turf
2 is not maintained in accordance with the association's standards for
3 maintenance.

4 B. The association may prohibit the installation of artificial turf if the
5 artificial turf would be installed in an area that the association is required
6 to maintain or irrigate. If an association prohibits new installation of
7 natural grass on a member's property, the association may also prohibit
8 new installation of artificial turf on a member's property, except that, in
9 that instance, an association may not prohibit a member from converting
10 natural grass to artificial turf on the member's property.

11 5. When construing a statute, the primary goal is to ascertain the legislature's
12 intent.¹⁶ This is accomplished by first looking to the text of the statute.¹⁷ If the language is
13 clear, its plain meaning is ascribed, unless it would lead to absurd results.¹⁸ If ambiguity
14 exists, secondary principles of statutory construction are used to determine the intent.¹⁹

15 6. A.R.S. § 33-33-1819(A) sets forth that associations may not prohibit
16 installing or using artificial turf on any member's property. A.R.S. § 33-33-1819(B) states
17 that an association may prohibit the installation of artificial turf if the artificial turf would be
18 installed in an area that the association is required to maintain or irrigate.

19 7. In this case, it is undisputed that Petitioner pays for and can control the
20 irrigation of his property. It is also undisputed that the maintenance of the front yards of
21 the homes within Respondent is shared between the individual homeowners and
22 Respondent. Further, Section 8.8 of the CC&Rs state: "[t]rees, shrubs, hedges, grass,
23 plantings and landscaping of every kind shall be maintained by the Owner in a healthy
24 state." Therefore, the owners of the lots are responsible for the maintenance of the
25 landscaping. Moreover, McCormick Ranch, of which Respondent is a sub-association,
26 permits the installation of artificial turf and Respondent's CC&Rs Article 9.4, states that:²⁰

27 **"McCormick Ranch Restrictions and Architectural Control Criteria":**

28 The most recently approved version of the McCormick Ranch Restrictions
29 and Architectural Control Criteria are hereby incorporated into this
30

¹⁶ *State ex rel. Thomas v. Contes*, 216 Ariz. 525, 527, 169 P.3d 115, 117 (App. 2007).

¹⁷ *Id.*

¹⁸ *Id.*; *Marsoner v. Pima County*, 166 Ariz. 486, 488, 803 P.2d 897, 899 (1991).

¹⁹ *Contes*, 216 Ariz. at 527.

²⁰ See Respondent's Exhibits at 25. (Emphasis added.)

1 Declaration by reference. The covenants, conditions and restrictions of this
2 Declaration may complement, or further refine, the McCormick Ranch
3 Restrictions and Architectural Control Criteria, **but shall not contradict**
4 **them.**

5 Although Respondent's CC&Rs are silent as to artificial turf, they do not prohibit artificial
6 turf and they shall not contradict McCormick Ranch's Rules and Regulations. McCormick
7 Ranch allows artificial turf, and Respondent cannot contradict McCormick Ranch's Rules
8 and Regulations according to Respondent's CC&Rs Section 9.4. The Administrative Law
9 Judge further concludes based on the evidence presented at hearing, that the installation
10 of artificial turf would not be contrary to the "overall goal of harmony of external design" as
11 asserted by Respondent.

12 8. Therefore, the Administrative Law Judge concludes, based upon the
13 probative and credible evidence presented at hearing, that Respondent's disapproval of
14 Petitioner's landscaping plans to install artificial turf is in violation of the CC&Rs Section
15 8.8.

16 9. Accordingly, Petitioner established by a preponderance of the evidence that
17 Respondent committed the alleged violation.

18 10. Based on the facts presented, the Administrative Law Judge finds no civil
19 penalty is appropriate in this matter.

20 **ORDER**

21 **IT IS ORDERED** that Petitioner's petition is affirmed.

22 **IT IS FURTHER ORDERED** that Respondent reimburse Petitioner the \$500.00
23 filing fee.

24 **IT IS FURTHER ORDERED** Respondent is directed to comply with the
25 requirements of CC&Rs Section 8.8 going forward.

26 **NOTICE**

27 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
28 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.**
29 **Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter**
30 **must be filed with the Commissioner of the Department of Real Estate**
within 30 days of the service of this Order upon the parties.

1
2
3 Done this day, April 13, 2023.
4

5 /s/ Sondra J. Vanella
6 Administrative Law Judge
7

8 Transmitted by either mail, e-mail, or facsimile April 13, 2023, to:

9 Susan Nicolson, Commissioner
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