

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Patricia Davies-Brown,
4 Individually and as Trustee of the Trust;
5 BART A. BROWN, JR. and
6 SCOTT R. DAVIES

No. 18F-H1818039-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

7 Petitioners,
8 vs.
9 Starwood Estates Homeowners Association
10 Respondent.

11
12 **HEARING:** July 10, 2018 and August 13, 2018.

13 **APPEARANCES:** Petitioners appeared on behalf of themselves.

14 Kristopher L. Smith, Esq. appeared on behalf of Respondent.

15 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

16
17 **FINDINGS OF FACT**

18 1. On or about April 25, 2018, the Arizona Department of Real Estate issued
19 a Notice of Hearing setting the above captioned matter for hearing on June 13, 2018
20 at 9:00 a.m., at the Office of Administrative Hearings in Phoenix, AZ.¹

21 2. The Notice of Hearing shows that Petitioners allege that Respondent
22 violated Community CC&Rs, the Community Bylaws and the Community Architectural
23 Guidelines (“Architectural Guidelines”).

24 3. In the summer of 2013, the Board of Directors (“Board”) of Starwood
25 Estates in Pinetop, Arizona approved a request submitted by Jeff and Karen Martin
26 (“the Martins”) to install a copper-colored metal roof (“copper-colored roof”) on their
27 property located at 8500 Skywood Drive, Pinetop, Arizona (Lot 40 of Starwood Estates).
28 The request was approved by the Board 5-1. Petitioner Scott R. Davies was the only
29 board member who voted against the approval.
30

¹ The hearing was continued to July 10, 2018.

1 4. The Board reviewed a brochure which contained the color of the copper-
2 colored roof before approving the Martins' request. See Respondent's Exhibit 26.
3 The Board did not observe a physical sample of the roof before approving the request.
4 However, Board member Pat Knight was familiar with the appearance of the copper-
5 colored roofs because she previously owned a home with a quarter mile of Starwood
6 Estates which had a copper colored roof.

7 5. On or about March 26, 2018, Petitioners filed the petition that gives rise to
8 this matter. The petition provides, in relevant part, as follows:

9 The overall issue raised by this Petition [sic] is whether the
10 ACC and the Board complied with the Exterior Appearance
11 and Colors provisions of the GUIDELINES in permitting the
12 Martins to install the aluminum copper-colored metal roof on
13 their home on Lot 40 of Starwood Estates.

14 Such overall issue raises three separate questions as follows:

15 (1) Does the exterior appearance of the Martins'
16 aluminum copper-colored metal roof blend with the "natural
17 surrounding and landscape" of Starwood Estates?

18 (2) Does such roof constitute a "reflective surface"?

19 (3) If the answer to (1) above is no and/or the answer to (2)
20 above is yes, did the ACC and the Board of Starwood Estates
21 erroneously violate the provisions of the CC&R's and
22 GUIDELINES in permitting the Martins to install such
23 aluminum copper-colored metal roof on their home situated
24 on Lot 40 of Starwood Estates.

25 6. A hearing was held on July 10, 2018 and August 13, 2018.

26 7. At hearing, Petitioner contended that approval of the copper-colored roof
27 was prohibited under the Architectural Guidelines. Petitioner contended that the
28 copper-colored roof was a reflective surface and it did not blend in with the natural
29 surroundings. Petitioner contended that Respondent violated the CC&Rs because the
30 Board approved the roof the copper-colored roof without having first viewed a physical
sample of the copper-colored roof. Petitioner also argued that the copper-colored roof
could not be installed without first having been approved by the Architectural Committee
consisting of two people who were appointed by the Board.

1 8. Petitioner submitted into evidence a photograph of the Martins' copper-
2 colored roof. Although the image showed a reflective the image, the photograph was
3 blurred. See Exhibit 13.

4 9. Respondent's position was that the approval was proper. Respondent
5 argued that the copper-colored roof could have been approved by the Board or the
6 Architectural Committee.

7 10. Respondent also contended that the Board's approval of the copper-
8 colored roof complied with the CC&Rs and the Architectural Guidelines. Respondent
9 asserted that the roof blended in with the natural surroundings and although the roof
10 had a shine, it was not a barred reflective surface under the Architectural Guidelines.
11 Respondent argued that the reflective surfaces prohibited in the Architectural Guidelines
12 applies to windows and doors.

13 11. The evidence presented at hearing showed that there are several metal
14 roofs in Starwood Estates which are reflective and were approved by the Board.
15 Respondent submitted into evidence images of reflective green and red roofs in Pinetop
16 County Club. See Respondent's Exhibit 7.

17 12. Section 5.2 of the CC&Rs provides:

18 The affairs of the Association shall be conducted by the Board
19 and such officers as the Board may elect or appoint in
20 accordance with the Articles and Bylaws...approvals or
actions to be given or taken by the Association shall be valid if
21 given or taken by the Board.

22 13. Article VII Section A(2) of the Starwood Bylaws provides:

23 Exercise for the Association all powers, duties and authority
24 vested in or delegated to this Association and not reserved to
25 the membership by other provisions of these Bylaws, the
Articles of Incorporation, or the Declaration;

26 14. Article VII, Section B of the Starwood Bylaws provides:

27 Review and approve any architectural plan for the building of
28 any improvements on any Lots within the Properties as set
29 forth in the Declaration.
30

15. Section 3.1.4 of the CC&Rs provides:

No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee.

16. The Starwood Estates Architectural Guidelines provide, in relevant part, as follows:

Goals and Objectives:

The basis for the GUIDELINES is as follows -

1. Facilitate sensitive integration of various designs within the overall community;
2. Promote variety in the character of the community through creative land use, architectural design, and landscape design;
3. Utilization of existing natural drainage ways, yet controlling drainage from individual lots;
4. Protection of property values;
5. Site development sensitive to the natural terrain
6. Reinforcement of existing landscape through plantings of appropriate vegetation;
7. Guide the owner/homebuilder/contractor through the design and development process
8. Retain the character of Starwood Estates and the Pinetop Country Club area.

Exterior Appearance and Colors: Exterior appearance shall blend with the natural surroundings and landscape. Small amounts of accent colors will be permitted. Clear aluminum window and doorframes are not permitted, nor are reflective surfaces.

NOTE: ALL EXTERIOR BUILDING MATERIALS AND COLORS SHALL BE APPROVED BY THE ACC. OWNER IS RESPONSIBLE FOR SUBMITTING SAMPLES OF WOOD, STONE, ROOFING, AND PAINT COLOR SAMPLES WITH PLAN REVIEW REQUEST.

1 Roofs, Materials, and Pitches: Simple pitched gable, hip, or
2 shed roof forms will be permitted in Starwood Estates. All
3 pitched roof materials shall promote a continuity of texture and
4 color. Metal roofs are permitted only with ACC approval. No
5 mechanical equipment of any kind is permitted on roofs.

6 **CONCLUSIONS OF LAW**

7 1. A.R.S. § 32-2199(B) permits an owner or a planned community
8 organization to file a petition with the Department for a hearing concerning violations of
9 planned community documents under the authority Title 33, Chapter 16.² This matter
10 lies with the Department's jurisdiction.

11 2. Petitioners bears the burden of proof to establish that Respondent violated
12 its CC&Rs and Bylaws by a preponderance of the evidence.³ Respondent bears the
13 burden to establish affirmative defenses by the same evidentiary standard.⁴

14 3. "A preponderance of the evidence is such proof as convinces the trier of fact
15 that the contention is more probably true than not."⁵ A preponderance of the evidence is
16 "[t]he greater weight of the evidence, not necessarily established by the greater number of
17 witnesses testifying to a fact but by evidence that has the most convincing force; superior
18 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
19 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
20 than the other."⁶

21 4. In Arizona, if a restrictive covenant is unambiguous, it is enforced to give
22 effect to the intent of the parties.⁷ "Restrictive covenants must be construed as a whole
23 and interpreted in view of their underlying purposes, giving effect to all provisions
24 contained therein."⁸

25 5. Petitioners failed to establish by a preponderance of the evidence that
26 Respondent violated its CC&Rs, the Bylaws, and the Architectural Guidelines when it

27 ² See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce
28 the development's CC&Rs

29 ³ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74
30 Ariz. 369, 372, 249 P.2d 837 (1952).

⁴ See A.A.C. R2-19-119(B)(2).

⁵ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁶ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

⁷ See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

⁸ *Lookout Mountain Paradise Hills Homeowners' Ass'n v. Viewpoint Assocs.*, 867 P.2d 70, 75 (Colo. App. 1993) (quoted in *Powell*, 211 Ariz. at 557 ¶ 16, 125 P.3d at 377).

1 approved the copper-colored roof. The Administrative Law Judge finds that the copper-
2 colored roof could have been approved by the Architectural Committee or the Board.

3 6. The evidence presented at hearing established that the bar on reflective
4 surfaces, under the Architectural Guidelines, applies to windows and doors. Roofs are
5 addressed in a separate section under the Architectural Guidelines. The evidence
6 presented at hearing showed that the Board has approved other metal roofs which
7 shine in the daylight. Furthermore, Petitioners failed to establish by a preponderance of
8 the evidence that the copper colored roof did not blend in with the natural surroundings.

9 **ORDER**

10 IT IS ORDERED that Petitioners' petition is denied because Petitioners have not
11 established that Respondent violated the Community Bylaws, Community CC&Rs, and
12 the Community Architectural Guidelines when Respondent approved the Martins'
13 request to install the copper-colored roof.

14 *////*

15 *////*

16 **NOTICE**

17 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
18 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S.**
19 **§ 41-1092.09, a request for rehearing in this matter must be filed with the**
20 **Commissioner of the Department of Real Estate within 30 days of the service of**
21 **this Order upon the parties.**

22 Done this day, September 14, 2018.

23 /s/ Velva Moses-Thompson
24 Administrative Law Judge

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28
29 Transmitted electronically to:

30 Judy Lowe, Commissioner

1 Arizona Department of Real Estate

2 Transmitted US Mail to:

3 Patricia Davies-Brown

4 Bart A. Brown, Jr.

5 Scott R. Davies

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8 Starwood Estates HOA

9 c/o Daniel Campbell &

10 Kristopher L. Smith O'Connor & Campbell, P.C.

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