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ADMINISTRATIVE LAW JUDGE DECISION

ADMINISTRATIVE LAW JUDGE: Kay Abramsohn

3. On or about July 24, 2020, Foothills filed a single-issue petition (“Petition”) with the Department. The Petition alleged that Respondents constructed an unauthorized and unapproved 2nd story addition (“Addition”) to their property in violation of the Foothills governing documents, specifying “CC&Rs Article 7, Section 7.3, and Article 9, Sections 9.3, 9.4, and 9.5.”¹ The Petition noted that Respondents completed the Addition despite receiving a denial [of approval] from Foothills Architectural.² Finally, the Petition further noted that Respondents have not complied with the parties’ agreement to remove the

² The Petition contains information regarding the parties' communication and efforts to settle the matter informally prior to Foothills filing the Petition.

1 Addition in exchange for waiver of the imposed fines and some additional stipulations.
2 Petitioner requested that the Tribunal issue an order finding a violation of the governing
3 documents and requiring Respondents to complete demolition of the Addition within sixty
4 (60) days.

5 4. Through counsel, on or about August 21, 2020, Respondents denied the
6 allegations, making no specific responses.

7 5. The parties failed to resolve the matter informally.

8 6. On September 25, 2020, the Tribunal issued an ORDER regarding the hearing
9 and indicating the parties must make disclosure no later than September 29, 2020.

10 7. On September 28, 2020, Respondents moved to consolidate another case, the
11 petition for which (*i.e.*, Respondents' cross-petition), Respondents indicated had been
12 uploaded to the Department on September 15, 2020.

13 8. On September 28, 2020, Foothills responded that it had not been notified of any
14 such cross-petition and understood that no filing fee had been paid by Respondents to the
15 Department.

16 9. On September 29, 2020, Foothills filed its disclosure.

17 10. On September 30, 2020, the Tribunal advised the parties that a case not yet
18 referred to the Tribunal could not be consolidated with the existing matter.

19 11. On September 30, 2020, Foothills filed an amended disclosure.³

20 12. On September 30, 2020, Respondents filed disclosure.

21 13. On October 1, 2020, four days before the hearing, Respondents filed with the
22 Tribunal an amended response to the Petition. Respondents did not file the amended
23 response with the Department. The amended response contains a 6-page narrative
24 statement and includes exhibits duplicative of Respondents' September 30, 2020
25 disclosure.

26 14. The instant matter proceeded to administrative hearing for a determination on
27 the issue raised in the single-issue Petition.

28 ³ While Respondents' amended response does include additional factual details regarding the chronology of
29 events, the amended response also sets forth allegations of CC&R violations by Foothills regarding this
30 matter and further argued that Foothills has refused to cooperate with Respondents and has not acted in
good faith.

15. At hearing, the parties did not dispute the basic facts regarding Respondents' construction of the Addition, the City of Phoenix stop-work order, Respondents' request for approval to Foothills Architectural, and the denial.

16. The hearing record demonstrated the following facts:

- a. Respondents have lived in Foothills for 22 years.
- b. The CC&Rs were in effect since June 1, 1989.⁴
- c. On October 17, 2013, Foothills adopted amended guidelines ("Guidelines") for architectural improvements applying to all of the lots within Foothills.⁵
- d. In October of 2018, Respondents began construction of the Addition.
- e. On November 7, 2018, the City of Phoenix ("City") issued a stop-work order, noting that the work required a permit.⁶
- f. By letter dated November 7, 2018, Foothills issued a violation notice to Respondents.⁷
- g. On December 17, 2018, Respondents obtained a permit.⁸
- h. On or about January 18, 2019, Respondent requested approval from Foothills Architectural.⁹
- i. By letter dated January 18, 2019, Foothills issued a penalty notice to Respondents.¹⁰
- j. By letter dated February 22, 2019, Foothills issued a notice to Respondents denying the application, for the following reason:

Copies of City permit approval needed, incomplete plans, and no documentation on roof line or roofing materials. Fails

⁴ See Foothills' Exhibit 1.

⁵ *Id.*, Amended and Restated Architectural Guidelines, 35 pages (following the CC&R pages and the By-Law pages). The Guidelines contain updated terminology of "Declaration" instead of "CC&Rs" and refer to Foothills' homeowners as "Lot owners." The Guidelines specify that a Lot owner's plans for changes must be submitted for approval, on a case-by case basis, through the Architectural Committee.

⁶ See Respondents' Exhibit 1.

⁷ See Respondents' Exhibit 2.

⁸ See Respondents' Exhibit 3.

⁹ See Foothills' Exhibit 3, page 3.

¹⁰ See Respondents' Exhibit 4. Foothills issued multiple penalty notices thereafter on a monthly basis. See Foothills' Exhibit 2.

aesthetics of surrounding community, additional construction to cease.¹¹

- k. After communication between the parties, the parties came to an agreement, wherein Foothills would waive the imposed penalties and Respondents would complete demolition of the Addition.¹²

17. Multiple photographs in the hearing record demonstrate the progression of construction of a second-story addition in the rear of the Respondents' home.¹³

18. At hearing, Foothills argued that the Respondents began construction of the Addition in violation of the CC&R Article 9, Section 9.3 requirements to first obtain approval through the Architectural Committee and that the Addition was subsequently completed despite Respondents receiving a denial of approval from Foothills Architectural. Foothills argued that the Foothills approval was required for the construction and that any City approval was a different matter.¹⁴ Finally, Foothills noted that the parties had come to an agreement, and requested that the Tribunal enforce the parties' agreement due to the Respondents' violations of the CC&Rs.

19. Respondents argued that they had not known in the beginning what was required and that, once notified of the violation, they not only followed the association's guidance but also met with the association Board in the process of seeking approval for the Addition. Respondents noted that they had continued to cooperate with the Board, even providing the City Certificate of Occupancy. Respondents indicated that the Addition cannot be seen from the front of the property. Respondent indicated that they did not know what "Fails aesthetics ..." meant or exactly how the Addition violated community rules. Respondents argued that they did not receive a letter indicating they could appeal the disapproval and feel as though they have not yet received a "denial."

20. Respondents do not dispute that they have an agreement with Foothills regarding demolishing the Addition and the waiver of the imposed penalties. Regarding

¹¹ See Respondents' Exhibit 5. CC&R Article 9, Section 9.3 provides that the Architectural Committee has forty-five (45) days to approve or disapprove the application. See Foothills' Exhibit 1.

¹² See Foothills' Exhibit 7.

¹³ See Respondents' Exhibit 6.

¹⁴ On March 15, 2019, City gave final approval to the construction and provided Respondents with a Certificate of Occupancy. See Respondents' Exhibit 8.

1 the parties' agreement and its terms, Respondents indicated that they had asked Foothills
2 for more time, essentially due to COVID issues and the need to keep themselves (being
3 at-risk) and their family members safe from the uncertainty of having workers come into
4 the home. Additionally, at hearing, Respondents requested to be able to keep the
5 Addition.

6 21. At the time of the hearing, the Addition had not been demolished.

7 **CONCLUSIONS OF LAW**

8 22. This matter lies within the Department's jurisdiction. Pursuant to A.R.S. §§ 32-
9 2102 and 32-2199 et al., regarding a dispute between an owner and a planned community
10 association, an owner or an association may petition the department for a hearing
11 concerning violations of community governing documents or violations of the statutes that
12 regulate planned communities as long as an owner or an association has filed a petition
13 with the department and paid a filing fee as outlined in A.R.S. § 32-2199.05.

14 23. Pursuant to A.R.S. §§ 32-2199(2), 32-2199.01(D), 32-2199.02, and 41-1092,
15 this Tribunal has the authority to hear and decide the contested case at bar. This Tribunal
16 has the authority to interpret the contract between the parties.¹⁵ See *Tierra Ranchos*
17 *Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

18 24. Because a petition is required specify an issue, or issues, to be determined, the
19 petition sets forth the only dispute, or the multiple disputes, a petitioner has with the other
20 party. The Tribunal has authority to make a determination on the stated issue(s) raised in
21 a petition.

22 25. In these proceedings, Foothills bears the burden of proving by a
23 preponderance of the evidence that Respondents have violated the community
24 document(s) provisions or statutes alleged to have been violated.¹⁶

25 26. Foothills has filed and paid the fee for a single-issue petition. Therefore, in the
26 instant matter, the Tribunal shall determine the single-issue of the alleged violations by
27 Respondents of the Foothills' governing documents.

28
29 ¹⁵ The "contract" between the parties is/are the community governing documents.

30 ¹⁶ See ARIZ. ADMIN. CODE R2-19-119.

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

8 28. CC&R Article 9, Section 9.3 provides as follows in pertinent part:

9 No original construction, modification, alteration or addition
10 subject to the Architectural Committee's jurisdiction ... shall
11 be commenced until it has been approved or is deemed
12 approved by the Architectural Committee as provided herein.
13 Any Owner ... seeking to construct or install any new
14 improvements ... or make any modification, alteration or
15 addition to any existing improvement ... shall first submit to
16 the Architectural Committee detailed plans, specifications ...

17 The Architectural Committee shall have forty-five (45) days
18 after its receipt of such ... to approve or disapprove ... or to
19 request additional information, and, if the Architectural
20 Committee disapproves, to give such Owner ... reasonably
21 detailed written reasons for such disapproval.

22 29. CC&R Article 9, Section 9.4 sets forth a homeowner's obligation to obtain
23 approval from the Architectural Committee.¹⁹

24 30. CC&R Article 9, Section 9.5 indicates that Foothills may not limit the right of a
25 homeowner to change the interior of their home, "except to the extent such remodeling or
26 painting is visible from outside such [home] ... or affects the exterior appearance of such
27 [home] ..."

28 31. The Administrative Law Judge concludes that Foothills has demonstrated
29 Respondents' violation of the community governing documents, as stated in CC&R Article
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¹⁷ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

¹⁸ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

¹⁹ The Architectural Committee exists by virtue of CC&R Article 9, Section 9.1 and Section 9.2. See Foothills' Exhibit 1. Pursuant to CC&R Article 9, Section 9.2, the Architectural Committee has authority to adopt [architectural] Guidelines (with the same force and effect as Association rules) setting forth procedures for its review and standards for development within Foothills.

1 9, Sections 9.3, 9.4, and 9.5, because Respondents began to construct a modification, the
2 Addition, to their existing home prior to obtaining approval from Foothills Architectural
3 Committee and, further, Respondents continued to construct the Addition despite
4 receiving a denial of approval from Foothills Architectural Committee.

5 32. The Administrative Law Judge concludes that Foothills is the prevailing party
6 on this Petition and Respondents' appeal should be dismissed.

7 **ORDER**

8 IT IS ORDERED that Respondents' appeal is dismissed and Foothills is deemed
9 the prevailing party with regard to Foothills' Petition.

10 **NOTICE**

11 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
12 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S.**
13 **§ 41-1092.09, a request for rehearing in this matter must be filed with the**
14 **Commissioner of the Department of Real Estate within 30 days of the service of**
15 **this Order upon the parties.**

16 Done this day, November 27, 2020.

17 /s/ Kay Abramsohn
18 Administrative Law Judge
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25 Transmitted electronically to:
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27 Judy Lowe, Commissioner
28 Arizona Department of Real Estate
29 100 N. 15th Avenue, Suite 201
30 Phoenix, Arizona 85007

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