

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30

No. 21F-H2120012-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEARANCES: Anthony Negrete & Karen Negrete represented themselves.
 Ben Cupps, Esq., represented Sundance Ranch Homeowners Association.

FINDINGS OF FACT

1. Sundance Ranch Homeowners Association (Sundance or Respondent) is an association of home owners located in Phoenix, Arizona.

2. On or about August 25, 2020, Anthony Negrete & Karen Negrete (Petitioners) filed a one-issue petition (Petition) with the Arizona Department of Real Estate (Department), alleging that Respondent had violated the provisions of A.R.S. §§ 33-1803 and 33-1817(B)(2)(b).¹

3. On or about September 21, 2020, Respondent filed an answer to the Petition denying all allegations and, amid other concerns raised, noted that Sundance had not violated A.R.S. § 33-1817(B)(2)(b), which dealt with “main residential structure[s]” and arguing that A.R.S. § 33-1803 contained various subsections regarding assessments and Sundance’s jurisdiction to enforce violation of the Sundance governing documents.²

¹ Based on the Petitioners' filing, the Sundance administrative office appears to be located at a Peoria, Arizona address.

² Sundance's other concerns included that Petitioners had raised more than one issue and had only paid for a one-issue petition.

4. On or about October 5, 2020, the Department issued a Notice of Hearing to the parties notifying them that a hearing on the petition would be conducted by the Office of Administrative Hearings.

5. On October 21, 2020, Respondent filed a Motion to Dismiss the Petitioner, again noting the arguments in its Response to the Petition.

6. The Tribunal's authority is to rule on the Petition and its alleged violations. In this case, at hearing, Petitioners indicated that their one issue was that while they were attempting to gain approval for building a replacement shed on their property, they were not given the opportunity to participate in a design approval meeting pursuant to A.R.S. § 33-1817(B)(2)(b).

Hearing Evidence

7. Petitioners have lived at Sundance since October of 2000. Petitioners built a shed on their property in 2005, having received Sundance approval at that time, admittedly under the then-applicable governing documents.³

8. By 2020, Petitioners' existing shed had deteriorated due to infestation of rodents and a bee hive underneath the shed floor. Seeing no other option but to remove the deteriorating shed, Petitioners also considered a more attractive and useful back yard by putting the replacement shed in a new location in order to accommodate the future building of a swimming pool. Petitioners did not believe that they needed any approval to replace their shed, having already had an approved shed on their property since 2005.

9. After being notified by another homeowner of Petitioners' construction of a new shed,⁴ Sundance inspected the new construction, determined that the shed was built without approval of the Architectural Committee, and, on March 25, 2020 issued a violation notice, followed by a second violation notice on April 8, 2020 which contained the assessment of a \$30.00 fine.⁵

10. On April 3, 2020, Petitioners filed an appeal of the March 25, 2020

³ See Sundance Exhibit 4.

⁴ See Sundance Exhibit 11.

⁵ The violation notices are at Sundance Exhibit 3. By email dated April 28, 2020, Sundance waived the fine. See Sundance Exhibit 5.

violation notice.⁶

11. Sundance acknowledged receipt of the appeal, indicating that the appeal would be presented to the Board at the next Board meeting (of unknown date).⁷

12. Correspondence indicated communication between the parties in May and June of 2020 regarding the shed, the shed's location, the zoning adjustment with the City of Phoenix (City), and the need for design approval.⁸

13. On June 17, 2020, Petitioners filed the Architectural Design Review Form and attachments with Sundance seeking approval of the new shed in its new location.⁹ In the application, Petitioners specified the following:

As a homeowner we had [no] intentions of deceiving or disobeying the CCR's for our community. As original homeowners we are very proud and happy that we live in this community and are diligent in maintaining our property. It was an error on our part not realizing when we needed to move the current shed that was approved in October 2005 that we needed to once again get approval.

The dimensions on the current shed that was approved is the exact same dimensions that are for the new shed. The reason we needed to move our shed is that the shed deteriorated due to numerous rodents (rats and mice) somehow overtaking the wood floor and upper wood area. This deterioration caused not only extensive structural damage, it also caused a loss of quite of a few items that were stored in the old shed. Also somehow a swarm of bees formed a beehive underneath the ground floor. Another reason that we decided to move the shed is that we will be putting a swimming pool in our back yard where the old shed was in the future.

Again it was not our intent to disregard the CC&R's.

14. By letter dated July 13, 2020, Sundance denied approval, indicating that the new shed did not comply with Sundance Design Guidelines and restrictions

⁶ See Sundance Exhibit 4.

⁷ See Sundance Exhibit 4.

⁸ See Sundance Exhibit 6.

⁹ See Sundance Exhibit 7. Sundance requested additional information from Petitioners. *Id.*

1 relating to sheds.¹⁰

2 15. By letter dated July 20, 2020, Sundance notified Petitioners that the
3 location of the new shed did not comply with Sundance Design Guidelines.¹¹ Sundance
4 specified, in pertinent part:

5 SHED DOES NOT ADHERE TO DESIGN GUIDELINES-
6 HEIGHT, MATERIALS, ETC, AND CAN NOT BE PLACED
7 UP AGAINST A SHARED WALL.

8 If the work has been started or completed, you will have 30
9 days from the date of this letter to have the submitted items
10 returned to the original state. Or fines will be imposed.

11 16. Petitioners next questioned Sundance regarding why a shed like
12 the original shed would not be allowed, and on July 20, 2020, Sundance noted as follows:

13 Yes, the shed needs to adhere to the community guidelines. A
14 shed like this would not be allowed in the community. Any
15 changes need to adhere to the guidelines. It is not [allowed] to
16 be moved from [its] original spot.

17 17. Petitioners further questioned whether, by not allowing the location
18 of the shed to be moved, Sundance was now denying them the right to builds a pool.¹²

19 18. On July 21, 2020, Sundance responded as follows:

20 No that isn't what the association is saying. You can install a
21 new shed with approval that adheres to the Guidelines. Again,
22 the shed that was approved in 2005 cannot move or change- it
23 is not denied, it simply cannot be moved or change. Any
24 changes must adhere to the guidelines and be approved.¹³

25 19. The matter was not informally resolved and, on November 3, 2020,
26 an administrative hearing was convened regarding the Petition. The parties presented
27 evidence and argument regarding the violations alleged in the Petition.

28 20. At hearing, Petitioners noted that they would not have been able to
29 "move" the old shed due to the deterioration and bee hive. Petitioners argued that they
30

¹⁰ See Sundance Exhibit 8; see *also* Sundance Exhibit 2 (Design Guidelines excerpts). On July 15, 2020, Sundance noted that "a shed that tall" was not allowed "to be placed up against the shared block walls." See Sundance Exhibit 10.

¹¹ *Id.*

¹² See Sundance Exhibit 10.

¹³ *Id.*

1 duplicated the dimensions of the old shed. Petitioners requested to be able to “move” the
2 location of their shed and argued that they never had the opportunity to sit down with
3 Sundance and explain the situation.

4 21. At hearing, Sundance moved to dismiss the Petition arguing that, in
5 these circumstances, there was no violation by Sundance of A.R.S. § 33-1803 or A.R.S. §
6 33-1817(B)(2)(b).

7 **CONCLUSIONS OF LAW**

8 1. The Department has jurisdiction to receive petitions, hear disputes between
9 a property owner and a homeowners association, and take other actions pursuant to
10 Arizona Revised Statutes (A.R.S.), Title 33, Chapter 16.

11 2. In this proceeding, pursuant to Arizona Administrative Code (A.A.C.) R2-19-
12 119, Petitioners bear the burden of proving by a preponderance of the evidence that
13 Respondent violated A.R.S. §§ 33-1803 and 33-1817(B)(2)(b).

14 3. A preponderance of the evidence is “[e]vidence which is of greater weight or
15 more convincing than the evidence which is offered in opposition to it; that is, evidence which
16 as a whole shows that the fact sought to be proved is more probable than not.” BLACK’S LAW
17 DICTIONARY 1182 (6th ed. 1990).

18 4. Article 4, Section 4.1(a) of the CC&Rs provides as follows:¹⁴

19 Architectural Control. The Property is subject to architectural
20 control as established by the Design Review Committee.
21 Except as otherwise expressly provided in this Declaration no
22 improvements, alterations, repairs, excavation, grading,
23 landscaping or other work which in any way alters Lot, or the
24 exterior appearance of improvements location thereon, shall
25 be made or done without the prior approval of the Design
26 Review Committee. ... The exterior of any building[,] fence,
27 wall, residence or other structure shall not be commenced,
28 erected, improved, altered, or made without the prior written
29 approval of the Design Review Committee.
30

¹⁴ See Sundance Exhibit 1. The CC&Rs were recorded in 1999.

1 5. The “Sundance Rules and Design Guidelines” (Design Guidelines) set forth the
2 Design Review Committee’s jurisdiction regarding “architectural design, placement of
3 buildings, landscaping, plant selection, color schemes, exterior finish and wall design.”¹⁵

4 The process for obtaining prior written approval involves an application form along with
5 the project plans (*i.e.*, specifications), plot plans (*i.e.*, location and dimensions in relation
6 to existing dwelling and the lot lines, photographs as to the existing structure, and any
7 requisite jurisdictional building permits. Sundance has thirty (30) days to, in written form,
8 approve or deny the application. An applicant has 30 days to file a written appeal.

9 6. Sundance Design Guidelines regarding “sheds” mandates: (a) a maximum height,
10 including the roof pitch, of no more than eight (8) feet,¹⁶ (b) no more than 100 square feet,
11 (c) lot placement has to conform to City codes and have approval from the Design
12 Committee “based on neighboring properties and visibility from the street,” (d) concrete
13 roof tiles that match the home, and (e) an exterior stucco finish painted in the same color
14 as the home.

15 7. A.R.S. §§ 33-1803(B) through (E) govern Sundance’s ability to enforce
16 violations of governing documents through requisite notices containing particular
17 information, the imposition of reasonable fines, and allow homeowners to petition for
18 administrative hearings through the Arizona Department of Real Estate.

19 8. A.R.S. § 33-1817(B)(2) provides that certain specific requirements apply
20 to the “new construction of the main residential structure on a lot or for rebuilds of the main
21 residential structure on a lot” (a) when a planned community has enacted design
22 guidelines, architectural guidelines or other similar rules and (b) when the planned
23 community allows a member to be charged a security deposit to ensure completion of the
24 member’s construction project or compliance with approved plans.

25 9. A.R.S. § 33-1817(B)(2)(b) sets forth that, in the above circumstance, *i.e.*,
26 “new construction of the main residential structure on a lot or for rebuilds of the main
27 residential structure on a lot,” one of the mandated criteria is as follows:

28 ¹⁵ See Sundance Exhibit 2. The Design Guidelines excerpts provided by the parties do not contain an
effective date.

29 ¹⁶ It is noted that the maximum height for Playground Equipment approval is ten (10) feet and lot
placement no closer than eight (8) feet to any lot line. See Sundance Exhibit 2.

1 The association or the design review committee must hold a
2 final design approval meeting for the purpose of issuing
3 approval of the plans, and the member or member's agent
4 must have the opportunity to attend the meeting. If the plans
5 are approved, the association's design review representative
6 shall provide written acknowledgement that the approved
7 plans, including any approved amendments, are in
8 compliance with all rules and guidelines in effect at the time
9 of the approval and that the refund of the deposit requires
10 that construction be completed in accordance with those
11 approved plans.

12 10. The Design Guidelines excerpt provided by Sundance does not contain the
13 entire section regarding "appeal" instructions.

14 11. On review of the Petitioners' Petition and any exhibits filed therewith, the
15 Tribunal finds only two pages, excerpts, neither of which contains the section regarding
16 "appeals."

17 12. The Administrative Law Judge concludes that A.R.S. § 33-1817(B)(2)(b)
18 contains a mandate for a "design approval" meeting in the circumstance of construction of
19 a "main residential structure." That was not the circumstance in this case. Accordingly,
20 the Administrative Law Judge concludes that Petitioners have not established a violation
21 by Respondent of either A.R.S. § 33-1803 or A.R.S. § 33-1817(B)(2)(b).

22 13. Therefore, the Administrative Law Judge concludes that the Respondent's
23 Motion to Dismiss must be granted.

24 **RECOMMENDED ORDER**

25 IT IS ORDERED that Respondent's Motion to Dismiss is granted and Petitioners'
26 Petition is dismissed.

27 IT IS FURTHER ORDERED that Petitioners bear their \$500.00 filing fee.

28 **NOTICE**

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

Done this day, December 13, 2020.

/s/ Kay A. Abramsohn
Administrative Law Judge

Transmitted electronically to:

Judy Lowe, Commissioner
Arizona Department of Real Estate

Transmitted through US Mail to:

Anthony & Karen Negrete
2006 S. 81st Dr.
Phoenix, AZ 85043

Quinten Cupps, Esq.
The Village at Grovers Condominium Association
1900 W Broadway Rd.
Tempe, AZ 85282