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No. 21F-H2121044-REL-RHG

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEARANCES: Petitioner Joshua M. Waldvogel appeared on his own behalf. Defendant Sycamore Estate Parcel 13 Community Association was represented by [REDACTED] Payne.

FINDINGS OF FACT

2. Petitioner Joshua M. Waldvogel is the record owner of Lot 228 of Sycamore Estates, located at 11208 North 164th Lane, Surprise, Arizona 85388 (Property) and is a member of Respondent.

4. On or about September 15, 2020, Sycamore Estates received an architectural application from Petitioner seeking approval of a plan to build a second house, or casita, on the Property (Application).

5. On or about October 5, 2020, after receipt of the Application, Sycamore Estates, by and through its management company, requested additional information from Petitioner to complete the Application. Specifically, Sycamore Estates requested the appropriate permits for the proposed construction of the casita.

1 6. On or about October 6, 2020, in response to the request, Petitioner emailed
2 Sycamore Estates confirming that his architect had verified that the building plans
3 complied with the City of Surprise “laws.” Petitioner did not provide any permits as
4 requested.

5 7. On or about November 13, 2020, the ARC reviewed the Application and
6 decided that it should be denied based on Article V, Section 5.2 of the CC&Rs, which
7 prohibits the building of more than one detached single family residence on a lot.

8 8. On or about November 19, 2020, Sycamore Estates sent Petitioner the
9 notice of denial (Denial Notice).

10 9. Petitioner filed the instant petition asserting that the Application was
11 submitted on September 15, 2020, and therefore, the deadline to approve or deny the
12 Application was November 14, 2020. Petitioner argued that because Sycamore Estates
13 did not issue the Denial Notice until November 19, 2020, the Application was deemed
14 approved.

15 10. Sycamore Estates filed a response to the petition denying the allegations.

16 11. At the initial hearing, the parties presented their arguments as to when the
17 timeline began for the ARC’s decision on the Application—whether it started on
18 September 15, 2020, or on October 6, 2020.

19 12. Petitioner argued that Sycamore Estates’ request for additional information
20 did not reset the timeline for a decision on the Application. Therefore, Petitioner
21 maintained that the Application was received on September 15, 2020, and a decision was
22 due by November 14, 2020.

23 13. Sycamore Estates argued that the Application was not complete until
24 Petitioner submitted the additional information that was requested. As that information
25 was received on October 6, 2020, a decision was not due until December 5, 2020.

26 14. Following a decision from the Administrative Law Judge in favor of
27 Sycamore Estates, Petitioner filed a request for rehearing alleging that the findings of fact
28 or decision were arbitrary, capricious, or an abuse of discretion. Petitioner’s statement
29 provided to substantiate his claimed basis for rehearing was as follows:
30

1 Sycamore estates claims timeline restarted due to email sent on Oct. 6th.
2 No where in CC&R or submittal process does it state time will restart. .
3 Therefore abuse of discretion based on an email that added no additional
4 information to the file.

5 All errors in original.

6 15. The Commissioner of the Arizona Department of Real Estate (Department)
7 granted Petitioner's request without any comment on or analysis of the reason provided
8 by Petitioner.

9 16. During the rehearing in this matter, Petitioner acknowledged that the
10 Findings of Fact set forth in the underlying decision in this matter did not include any
11 errors. Petitioner argued only the legal effect of those facts.

12 17. Petitioner presented the same arguments during the rehearing that he
13 provided during the initial hearing. Petitioner asserted that Sycamore Estates could only
14 require the information listed on the submission form used by the ARC for every
15 requested proposal, from landscaping, to paint color changes, to remodels or construction
16 of new buildings. Petitioner acknowledged that Sycamore Estates may want to know
17 more information about a proposed project including the construction of a structure or
18 addition on a home than it would require for a landscaping change.

19 18. Sycamore Estates also presented the same arguments during the
20 prehearing.

21 **CONCLUSIONS OF LAW**

22 1. The Department has authority over this matter. See A.R.S. Title 32, Ch. 20,
23 Art. 11.

24 2. At an administrative hearing, the party asserting a claim, right, entitlement,
25 or affirmative defense has the burden of proof, and the standard of proof on all issues in
26 this matter is that of a preponderance of the evidence. Arizona Administrative Code R2-19-
27 119.

28 3. A preponderance of the evidence is:

29 The greater weight of the evidence, not necessarily established by the
30 greater number of witnesses testifying to a fact but by evidence that has the
most convincing force; superior evidentiary weight that, though not sufficient

1 to free the mind wholly from all reasonable doubt, is still sufficient to incline a
2 fair and impartial mind to one side of the issue rather than the other.

3 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

4 4. The CC&Rs are a contract between the parties and the parties are required
5 to comply with its terms. See *Johnson v. The Pointe Community Association*, 205 Ariz.
6 485, 73 P.3d 616 (App. 2003).

7 5. In Arizona, when a restrictive covenant is unambiguous, it is enforced to give
8 effect to the intent of the parties. See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125
9 P.3d 373, 376 (2006); see also *Grubb & Ellis Management Services, Inc. v. 407417 B.C.,*
10 *L.L.C.*, 213 Ariz. 83, 138 P.3d 1210 (App. 2006) (the tribunal must give effect to a
11 contract's clear and unambiguous terms).

12 6. An association shall not unreasonably withhold approval of a construction
13 project's architectural plans. See A.R.S. § 33-1817(B)(3).

14 7. Article VI, Section 6.5 of the CC&Rs provides, in pertinent part, as follows:

15 Application for Approval. Any Owner desiring approval of the Architectural
16 Committee for the construction, installation, addition, alteration, repair,
17 change or replacement of an Improvement which would alter the exterior
18 appearance of the Improvement, shall submit to the Architectural
19 Committee a comprehensive, complete and detailed written request for
20 approval specifying in detail the nature and extent of the construction,
21 installation, addition, alteration, repair, change or other work which the
22 Owner desires to perform ("Application"). Any Owner requesting the
23 approval of the Architectural Committee shall also submit the Architectural
24 Committee any additional information, plans and specifications required by
25 the Design Guidelines. In the event that the Architectural Committee fails to
26 approve or disapprove an Application for approval within sixty (60) days
27 after the Application, *together with all supporting information, plans and*
28 *specifications required by the Design Guidelines have been submitted to it,*
29 approval will not be required and this Section will be deemed to have been
30 complied with by the Owner who had requested approval of such plans.

26 Emphasis added.

27 8. Article V, Section 5.2 of the CC&Rs provides, in pertinent part, as follows:

Building Type and Size. No building shall be constructed or permitted to remain on any lot other than one detached Single Family Residence not to exceed two stories in height and a private one to five car garage.

9. The facts of this matter were not in dispute. The Application was submitted on September 15, 2020, additional information was provided on October 6, 2020, and the Denial Notice was issued on November 19, 2020.

10. Based on the evidence presented, the Application was not complete until Petitioner provided a response to the October 5, 2020 request from Sycamore Estates. Accordingly, Sycamore Estates was not required to approve or deny the Application until December 5, 2020. As the Denial Notice was issued on November 19, 2020, it was issued prior to the deadline and was, therefore, valid.

11. Upon consideration of all of the evidence presented at the rehearing, the Administrative Law Judge concludes that Petitioner failed to establish that Respondent failed to comply with its CC&Rs in a matter that constituted a violation of the governing documents.

ORDER

IT IS ORDERED that Petitioner's petition is denied.

NOTICE

This administrative law judge order, having been issued as a result of a rehearing, is binding on the parties. A.R.S. § 32-2199.02(B). A party wishing to appeal this order must seek judicial review as prescribed by A.R.S. § 41-1092.08(H) and title 12, chapter 7, article 6. Any such appeal must be filed with the superior court within thirty-five days from the date when a copy of this order was served upon the parties. A.R.S. § 12-904(A).

Done this day, December 15, 2021.

/s/ Tammy L. Eigenheer
Administrative Law Judge

1 Transmitted by either mail, e-mail, or facsimile December 15, 2021 to:

2
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4 Arizona Department of Real Estate
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