

- 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

Arroyo Mountain Estate Homeowners Association
Petitioner

Goebel, Rick Jr. & Elizabeth
Respondent

ADMINISTRATIVE LAW JUDGE DECISION

APPEARANCES: Petitioner Arroyo Mountain Estate Homeowners Association (Association”) was represented by Daniel S. Francom, Esq. Respondent Rick Goebel and Elizabeth Goebel appeared on their own behalf.

EXHIBITS ADMITTED INTO EVIDENCE: Petitioner's Exhibits A-K were admitted into evidence. Respondent's Exhibits B-L and O-U were admitted into evidence. The Petitioner's Record from the Department and NOTICE OF HEARING were also admitted into the evidentiary record.

After review of the hearing record in this matter, the undersigned Administrative Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this ORDER to the Commissioner of the Arizona Department of Real Estate ("Department").

BACKGROUND AND PROCEDURE

1. The Department is authorized by statute to receive and to decide petitions for hearings from members of homeowners' associations and from homeowners' associations in Arizona.

1 2. On or about June 3, 2024, Petitioner filed an Amended single-issue petition
2 against the Respondent with the Department. Petitioner tendered \$500.00 to the
3 Department with its Petition.

4 3. On or about May 28, 2024, Respondent filed its ANSWER with the
5 Department whereby it denied all complaint items in the petition.

6 4. Per the NOTICE OF HEARING, the Department referred this matter to the
7 Office of Administrative Hearings ("OAH"), an independent state agency, for an
8 evidentiary hearing on August 28, 2024, regarding the following issues based on
9 Petitioner's petition:

10 Petitioner Arroyo Mountain Estates Homeowners Association, alleges the
11 Respondent Rick Jr. & Elizabeth Goebel, is in violation of the following:

12 'Respondent violated Article V, Section 5.22 of the CC&Rs based on
13 Respondent's construction of unapproved structures on his property.
14 Respondent violated Section 2.24 of the Association's Architectural and
Landscape Design Guidelines by installing the unapproved patio walls on
the property in excess of the permitted 42 inches.'

15 **THE PARTIES AND GOVERNING DOCUMENTS**

16 5. Petitioner is a homeowners' association whose members own properties in
17 a residential real estate development located in Litchfield Park, Arizona.

18 6. Respondent is a property owner and a member of the Association.

19 7. The Association is governed by its Covenants, Conditions, and Restrictions
20 ("CC&Rs"), and overseen by a Board of Directors ("the Board"). The Association is also
21 regulated by Title 33, Chapter 16, Article 1 of the Arizona Revised Statutes ("ARIZ. REV.
22 STAT.")

23 **HEARING EVIDENCE**

24 8. Petitioner presented the testimony of John Consalvo and Judy Oliver.
25 Respondent offered the testimony of Nancy Rozzo and the Goebel's testified on their own
26 behalf as well.

27 Jon Consalvo's testimony

1 9. Mr. Consalvo was the current president of the Association's Board. He
2 testified that pursuant to Section 5.22 of the CC&Rs,¹ all homeowners are to submit
3 applications to the Architectural Committee ("ARC") prior to commencing any projects.

4 10. Further, Mr. Consalvo testified that pursuant to section 2.24 of the
5 Architectural and Landscape Design Guidelines ("Guidelines"), all "pony walls" were not
6 to exceed 42 inches.²

7 11. Mr. Consalvo testified that Respondent submitted plans for approval,
8 however, the plans did not include information as to the height of the wall which was to be
9 built.³ He also testified that Respondent never submitted a copy of the plans which were
10 included in the request for a building permit.⁴

11 12. Mr. Consalvo then testified that after the wall was constructed there were
12 pictures taken which demonstrated that the height was around 8 feet which was against
13 the Guidelines.⁵

14 13. Next, Mr. Consalvo testified that based upon this, the property manager
15 began to fine Respondent for being in violation of the Guidelines. He testified further, that
16 the fines remain unpaid.

17 Judy Oliver

18 14. Ms. Oliver was a member of the ARC, however she was not the member
19 who approved the plans. Ms. Oliver testified that she was aware that the ARC requested
20 that Respondent submit separate proposals to the ARC for review rather than one all-
21 encompassing application.

22 15. While examining the diagram, Ms. Oliver assumed that Respondent was
23 asking for permission to construct the pony wall, as there were no details about an 8 foot
24 high wall. Further, Ms. Oliver testified that the application would not have been approved
25 if the diagram had the dimensions.

26 Rick Goebel Jr's testimony

27 ¹ See Petitioner's Exhibit A.

28 ² See Petitioner's Exhibit B.

29 ³ See Petitioner's Exhibit H.

30 ⁴ See Petitioner's Exhibit C.

⁵ See Petitioner's Exhibit D.

1 16. Mr. Goebel testified generally that he followed all of the Association's
2 procedures for this project.

3 17. Mr. Goebel testified that on December 30, 2022, he submitted his original
4 application,⁶ but on January 3, 2023, he was told to submit separate applications.⁷

5 18. Mr. Goebel testified that later on January 3, 2023, he submitted the separate
6 applications,⁸ and again he received communications to make some further changes.⁹ He
7 then made the changes and resubmitted the applications later on January 3, 2023.¹⁰

8 19. Next, Mr. Goebel testified that as to the application in question, it was
9 accepted on January 5, 2023.¹¹ Based upon this acceptance, Mr. Goebel commenced
10 work on the project.

11 20. Mr. Goebel testified that on April 15, 2023, the first 4 feet of the wall was
12 constructed and by April 19, 2023, the wall was at its full height.

13 21. Further, Mr. Goebel testified that on May 12, 2023, he received a stop
14 construction notice from the Association.¹²

15 22. Mr. Goebel testified that he did not violate section 2.24 of the Guidelines
16 because he did not build a pony wall, rather he built a wall according to section 2.9 of the
17 Guidelines.

18 23. Finally, Mr. Goebel testified that he was unsure of what else he could have
19 done as he followed all of the procedures and complied with all of the feedback he had
20 received on his applications, and without further feedback he assumed the project was
21 approved in full.

22 Elizabeth Goebel's testimony

23 24. Ms. Goebel testified that the ARC approved the project with zero questions
24 asked after they split up the applications as requested.

25 Nancy Rozzo

26 ⁶ See Respondent's Exhibit B.

27 ⁷ See Respondent's Exhibit C.

28 ⁸ See Respondent's Exhibit D.

29 ⁹ See Respondent's Exhibit E.

30 ¹⁰ See Respondent's Exhibit F.

¹¹ See Respondent's Exhibit H.

¹² See Respondent's Exhibit N.

1 25. Ms. Rozzo was the ARC member who approved Respondent's plans. She
2 testified that she "just missed it", when describing the plans for the walls. However Ms.
3 Rozzo testified that she believed that since the application was approved, there was no
4 action the Board could take. Ms. Rozzo also testified that there were other projects
5 approved that had not met the Guidelines, but those projects were allowed to remain
6 without any further litigation.

7 **CONCLUSIONS OF LAW**

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

14 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(D), 32-2199.02,
15 and 41-1092, OAH has the authority to hear and decide the contested case at bar.

16 3. In this proceeding, Petitioner bears the burden of proving by a
17 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1803.¹³

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

25 5. In this case, Petitioner has not met its burden. Respondent followed the
26 process as laid out in section 5.22 of the CC&Rs, by submitting its Application to the ARC.
27 The ARC had many opportunities thereafter to question Respondent about the project,

28 ¹³ See ARIZ. ADMIN. CODE R2-19-119.

29 ¹⁴ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

30 ¹⁵ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

1 and did so at least three times. Ms. Rozzo testified that while she may have “missed it”,
2 the Application was nonetheless approved, and Respondent justifiably relied on the
3 approval and moved ahead with construction. This was tantamount to an exception to the
4 Guidelines as the project was approved. Moreover, for Petitioner to wait almost a month
5 once the project was completed to provide a stop construction notice to Respondent was
6 unreasonable. Further, as the evidence provided, this was not the first time the ARC had
7 approved projects that were not within the Guidelines.

8 6. Based upon the foregoing, Petitioner did not meet its burden of proof in
9 demonstrating that Respondent was in violation of section 4.22 of the Guidelines.

10 **ORDER**

11 **IT IS ORDERED** that Petitioner’s petition in this matter be denied.

12 **IT IS FURTHER ORDERED** pursuant to ARIZ. REV. STAT. § 32-2199.02(A),
13 Respondent shall not reimburse Petitioner’s filing fee as required by ARIZ. REV. STAT. §
14 32-2199.01.

15 **NOTICE**

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

21 Done this day, September 11, 2024.

22 /s/ Adam D. Stone
23 Administrative Law Judge
24
25
26
27
28
29
30

Transmitted by either mail, e-mail, or facsimile September 11, 2024 to:

Susan Nicolson
Commissioner
Arizona Department of Real Estate
100 N. 15th Avenue, Suite 201
Phoenix, Arizona 85007

Attn:

SNicolson@azre.gov
vnunez@azre.gov
djones@azre.gov
labril@azre.gov
mneat@azre.gov
lrecchia@azre.gov
gosborn@azre.gov

Daniel S. Francom, Esq.
Dan@goodlaw.legal

Rick Goebel Jr. & Elizabeth Goebel
thegoebels@icloud.com

By: OAH Staff