

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Deatta M. Pleasants,

No. 25F-H021-REL

4 Petitioner,
5 v.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Pinecrest Lake Property Owners
7 Association, Inc.,

8 Respondent.

9
10 **HEARING:** February 4, 2025

11 **APPEARANCES:** Petitioner Deatta M. Pleasants appeared on her own behalf. Larry
12 Rice and Daphna Rice were present with Petitioner Deatta M. Pleasants. David
13 Onuschak, Esq. represented Respondent Pinecrest Lake Property Owners Association,
14 Inc. Sharon Seekins and Zach Barlow appeared as witnesses for Respondent Pinecrest
15 Lake Property Owners Association, Inc.

16 **ADMINISTRATIVE LAW JUDGE:** Sondra J. Vanella

17 **EXHIBITS ADMITTED INTO EVIDENCE:** Petitioner Deatta M. Pleasants' Exhibits 1-9
18 (including subparts); Respondent Pinecrest Lake Property Owners Association, Inc.'s
19 Exhibits 1-7

20 **FINDINGS OF FACT**

21 1. On or about October 30, 2024, Deatta M. Pleasants ("Petitioner")
22 filed a Homeowners Association (HOA) Dispute Process Petition ("Petition") with the
23 Arizona Department of Real Estate ("Department") alleging a violation of the CC&Rs by
24 Pinecrest Lake Property Owners Association, Inc. ("Respondent"). Petitioner indicated
25 a single issue would be presented, paid the appropriate \$500.00 filing fee, and asserted
26 a violation of the CC&Rs "Rev. September 2022, Article 1, D. and Article II, Sec. I.
27 (alpha), 2."

28 2. On or about December 6, 2024, the Department issued a Notice of
29 Hearing in which it set forth the issue for hearing as follows:

1 "The association will not repair the culvert (common area) to allow
2 the ditch to drain." CC&R Rev 2022, Article II., Sec. I (alpha) 2.
3 Maintenance and Repair, By the Association, Pinecrest Lake
4 Property Owners Association have full power and duty to maintain,
5 repair and make improvements in the COMMON AREA.

6 3. At hearing, Petitioner testified on her own behalf. Respondent
7 presented the testimony of Sharon Seekins, Board President, and Zach Barlow, a civil
8 engineer.

9 REFERENCED CC&Rs

10 4. Article II Section I of the 2022 recorded CC&Rs provides in relevant
11 part as follows:

12 2. By the Association. The Pinecrest Lake Property Owners Association
13 shall have full power to control and it shall be its duty to maintain, repair
14 and make necessary improvements to the Common Areas and the
15 improvements thereon, to include water and wastewater disposal systems,
16 underground culverts, roadways, clubhouse, utilities and all recreational
17 amenities. The Association shall further periodically inspect all common
18 elements in order that minimum standards of repair, design, color and
19 landscaping shall be maintained for beauty, harmony, and conservation of
20 values within the entire Subdivision.

21 HEARING EVIDENCE

22 5. The community is located in Navajo County and was established in
23 the late 1980s. The drainage system was approved by Navajo County and was
24 constructed in accordance with the approved plans which requires a drainage system to
25 accommodate a "50-year storm." In July 2021, the area experienced a severe rain
26 storm with approximately three inches of rain falling within a matter of hours. Such a
27 storm is commonly referred to as a 100-year storm.

28 6. Petitioner owns lot 185, has resided in the community for nine
29 years, and had not experienced as significant a storm prior to the one at issue, and has
30 not since. Petitioner's particular lot is located in a special flood area. Following the July
2021 storm, Petitioner's lot flooded and took some time to drain. Petitioner believes that

1 the poor drainage on her property is due to a disconnected culvert, resulting in overflow,
2 and is fearful that she will experience a flooding issue in the future. Consequently,
3 Petitioner filed the instant Petition.

4 7. Respondent hired a civil engineer to inspect the drainage system to
5 ensure that it was constructed according to the approved plans and that it has been
6 properly maintained over the years.

7 8. Sharon Seekins, President of Respondent's Board, testified that
8 Respondent is required to maintain the underground culverts in order that water can run
9 freely. Ms. Seekins testified that Respondent is required to periodically inspect the
10 drainage system in order to ensure its proper operation and has done so. Residents
11 are required to maintain their individual drainage ditches located on their respective
12 properties. Ms. Seekins testified that she has not experienced any flooding in the time
13 she has owned her property since May 2021.

14 9. Ms. Seekins testified that Petitioner's lot is located in a FEMA flood
15 zone.¹ Ms. Seekins asserted that because Petitioner's lot is located in a regulatory
16 flood way, there is a heightened risk associated with her property.

17 10. Ms. Seekins testified (and Petitioner agreed) that the Petition was
18 filed due to an occurrence from a single storm in July 2021, and that there have been no
19 other complaints to the Board regarding the culverts. The July 2021 storm was
20 "exceptional and unusually severe."

21 11. Ms. Seekins testified that Respondent has previously performed
22 repairs to the Oklahoma Draw Wash due to erosion. That improvement project included
23 the replacement and construction of the concrete collar. Respondent has also
24 compelled individual lot owners to maintain their own drainage ditches.

25 12. Ms. Seekins testified that Petitioner has assumed an area on the
26 drainage plans is a culvert, when in fact, it is not.

27 13. The issue for hearing is whether Respondent has violated the cited
28 provision of the CC&Rs. Ms. Seekins asserted that Respondent has maintained the

29 ¹ See Respondent's Exhibit 2.

1 drainage system as required, and that while Respondent does not disagree that there
2 was a severe storm in July 2021, a storm of that magnitude "can overtake the system."

3 14. Zachary Barlow, a Senior Civil Engineer with Ironside Engineering
4 and Development, Inc., testified that he is familiar with the codes and regulations for
5 Navajo County regarding drainage systems, and that he knows how to analyze the
6 hydrology in the area, including storm water flows. Dr. Barlow testified that FEMA
7 regulates flood zones and that he is familiar with FEMA regulations, having designed in
8 areas with flood zones. Dr. Barlow explained that FEMA designates flood zones using
9 hydrologists to calculate potential storm water runoff in a particular area, taking into
10 account soil composition and peak storm water runoff. FEMA then designates flood
11 plains and flood ways based on those calculations. Dr. Barlow explained the categories
12 of flood zones.

13 15. Dr. Barlow testified that Petitioner's lot is located in a FEMA flood
14 zone, specifically, a regulatory floodway, which allows for unimpeded water flow. Dr.
15 Barlow testified that in the area of Petitioner's lot, there are deeper discharge depths
16 than in an area on the edge of a flood plain.

17 16. Dr. Barlow testified that he inspected the drainage system near
18 Petitioner's lot over two dates in June 2024, and December 2024, at the request of
19 Respondent. Dr. Barlow viewed the construction plans for the drainage system from the
20 1980's in order to compare those to what was actually constructed, and walked
21 Petitioner's lot, as well as discussed her concerns with her. Dr. Barlow assessed the
22 infrastructure, measured the culverts, looked at the connections, and prepared an email
23 with a summary of his findings in pertinent part as follows:

24 On June 17, 2024, upon request of the Board, I made a site visit to Lot
25 185 and reviewed original design plans for that portion of the Pinecrest
26 Lake property. I discussed the issue with the owners of Lot 185 and Ms.
27 Sharon Seekins representing the HOA Board.

28 Specifically, I reviewed the field conditions of the stormwater facilities for
29 conformance with the original (circa 1986) design plans. The 12" CMP
30 culvert in the field is generally located in the same location as the design
plan 12" CMP culvert crossing beneath Stagecoach Blvd. Flows from this
culvert outlet, along with other roadside flows, were designed to be

conveyed into a 18" PVC culvert pipe conveying flows to the Oklahoma Flat Draw. The field review indicated that a 24" CMP pipe was installed in the general designed location of the originally designed 18" PVC pipe. A driveway has been constructed over this main culvert inlet area, and the 24" culvert was extended, though the owners of Lot 185 indicated that the extended 24" primary outlet pipe functions effectively. Therefore, it is estimated that the field reviewed infrastructure was constructed in general substantial conformance with the original plan. Culvert inverts were not reviewed and there is a possibility the culverts were not installed with as-designed slopes.

No drainage narratives or reports were reviewed for this project. Current County drainage design standards would typically see storm drain infrastructure be designed to contain the 50-year events flows. Larger storm events, such as the one discussed on-site in 2021 (it is generally believed this was a larger than a 50-year event), would be expected to overtop. Altering the existing 12" culvert that crosses Stagecoach Blvd to be more at a 45 degree angle across the road may increase culvert efficiency and effectiveness. However, given Lot 185's location in a FEMA Floodway (typically a higher risk of flooding than a Floodplain), flooding of the area would be expected in this area in large storm events based on the FEMA designation regardless of the culvert improvements. Still, the culvert realignment may have benefit to the general stormwater management character of this portion of the subdivision.²

17. Dr. Barlow testified that Respondent's plans for the drainage system would have had to be in compliance with Navajo County's requirements in order to have obtained a permit. Dr. Barlow reiterated his findings that the field conditions he observed conform with the design plans with the exception of a betterment to the design, specifically, a larger pipe which is more effective for drainage, resulting in a larger flow rate. Dr. Barlow testified that the culvert extension is working effectively and that Petitioner agreed with that assessment.

18. Dr. Barlow testified that Petitioner's belief that double lines in the red box on the plans are supposed to be a designated culvert, is erroneous, as those lines are part of the roadway designation.³ Those lines do not represent a culvert, as

² See Petitioner's Exhibit 8 and Respondent's Exhibit 2. (All errors in original.)

³ See Petitioner's Exhibit 1.

1 the designation on the plans is devoid of elevations and is consistent with the pattern
2 spacing of a roadway, not a culvert.⁴ Therefore, it is not intended to be a culvert.

3 19. Dr. Barlow testified that the drainage system as constructed can
4 handle a 50-year storm. The July 2021 storm is believed to be greater than a 50-year
5 storm. Dr. Barlow opined that Respondent has adequately maintained its drainage
6 system, it is not in disrepair, and there is nothing to indicate that it is not functioning as it
7 should. Flooding is to be expected due to Petitioner's lot location in a FEMA Floodway
8 and based on the current FEMA Flood Maps and the location of Petitioner's lot, the
9 conditions experienced by Petitioner during the storm of July 2021, would be expected.

10 20. Petitioner testified regarding Dr. Barlow's site visits. Petitioner
11 testified that individual culverts that flow under the residents' driveways were not part of
12 the original infrastructure. However, those are not part of the regional drainage
13 infrastructure and not intended to connect to the regional culverts. Petitioner asserted
14 that the slope of a culvert results in water flowing onto her lot and that the invert
15 measurements of the culverts are at the same level. Dr. Barlow does not believe these
16 are issues due to the positive drainage through both the 12 inch and 24 inch culverts.

17 21. Petitioner testified about several photographs depicting the
18 condition of her lot immediately following the July 2021 storm, as well as the culverts,
19 her main drain, and ditches, as well as the area across from her lot that Petitioner
20 asserts works "beautifully."⁵ Petitioner testified that she does not have a drain sufficient
21 enough to prevent her lot from flooding.

22 22. Petitioner testified that she is "highly disappointed in the
23 engineering report." Petitioner asserted that the fact that her lot lies within "a flood plain
24 has nothing to do with the storm drain channel" and that the water "heads to the lowest
25 level between her house and her neighbor's" house.

26 23. Petitioner asserted that it is Respondent's "fiduciary responsibility"
27 to remedy the issue.

28
29 ⁴ *Id.*

30 ⁵ See Petitioners' Exhibits 2A-2H.

1 24. Petitioner acknowledged that she has never experienced a storm
2 comparable to the storm of July 2021, that she has no background in drainage systems
3 or hydrology, is not familiar with Navajo County codes, and that her lot is at the lowest
4 point of three miles of drainage system.

5 **CONCLUSIONS OF LAW**

6 1. Arizona statute permits an owner or a planned community organization to
7 file a petition with the Department for a hearing concerning violations of planned
8 community documents or violations of statutes that regulate planned communities.⁶
9 That statute provides that such petitions will be heard before the Office of Administrative
10 Hearings.

11 2. Petitioner bears the burden of proof to establish that Respondent committed
12 the alleged violation by a preponderance of the evidence.⁷ Respondent bears the burden
13 to establish affirmative defenses by the same evidentiary standard.⁸

14 3. “A preponderance of the evidence is such proof as convinces the trier of
15 fact that the contention is more probably true than not.”⁹ A preponderance of the
16 evidence is “[t]he greater weight of the evidence, not necessarily established by the
17 greater number of witnesses testifying to a fact but by evidence that has the most
18 convincing force; superior evidentiary weight that, though not sufficient to free the mind
19 wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one
20 side of the issue rather than the other.”¹⁰

21 4. Petitioner alleges a violation of Article II Section I of the 2022 recorded
22 CC&Rs. This provision requires Respondent to “maintain, repair and make necessary
23 improvements to the Common Areas . . . to include underground culverts.”

24 5. The credible evidence of record established that Respondent has
25 maintained the underground culverts that were constructed in accordance with the
26 Navajo County approved plans. The credible evidence of record further established that

27 ⁶ See A.R.S. § 32-2199.

28 ⁷ See A.R.S. section 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*, 74 Ariz.
369, 372, 249 P.2d 837 (1952).

29 ⁸ See A.A.C. R2-19-119(B)(2).

30 ⁹ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

¹⁰ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 the underground culverts are functioning as intended. Unfortunately, Petitioner's lot is
2 located in a FEMA Floodway and flooding of the area would be expected in large storm
3 events which is exactly what occurred in July 2021, and has not occurred since.

4 6. Based on a review of the credible and relevant evidence of record, it is
5 held that Petitioner failed to establish by a preponderance of the evidence that
6 Respondent violated the provision of Article II Section I of the 2022 recorded CC&Rs.

7 **ORDER**

8 **IT IS ORDERED** that no action is required of Respondent in this matter and that
9 Petitioner's Petition is dismissed.

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.**
13 **Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter**
14 **must be filed with the Commissioner of the Department of Real Estate**
15 **within 30 days of the service of this Order upon the parties.**

16
17 Done this day, February 20, 2025.

18 /s/ Sondra J. Vanella
19 Administrative Law Judge
20

21 Transmitted by either mail, e-mail, or facsimile February 20, 2025, to:

22 Susan Nicolson, Commissioner
23 Arizona Department of Real Estate
24 SNicolson@azre.gov
25 vnunez@azre.gov
26 djones@azre.gov
27 labril@azre.gov
28 mneat@azre.gov
29 lrecchia@azre.gov
30 gosborn@azre.gov

Pinecrest Lake Owners Assoc.

1 C/O Community Asset Mgt. LLC
2 pinecrest_lake@yahoo.com

3 Deatta M. Pleasants
4 deapleasants@hotmail.com

5 David Onuschak
6 Jones, Skelton & Hochuli, PLC
7 donuschak@jshfirm.com

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10 By: OAH Staff
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