

1 Sally Magana

No. 25F-H070-REL

2 Petitioner,

ADMINISTRATIVE LAW JUDGE

3 v.

DECISION

4 Wynstone Park Homeowners Association

5 Respondent.

6
7 **HEARING:** October 9, 2025

8 **APPEARANCES:** Sally Magana (hereinafter “Complainant”) appeared on behalf
9 of herself. Ashley Turner, Esq. appeared on behalf of Wynstone Park Homeowners
10 Association (hereinafter “Respondent”).

11 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

12 **EXHIBITS ADMITTED INTO EVIDENCE:** Petitioner’s Exhibits 1, 3, 4, 5, and 11.
13 Respondent’s Exhibits A, C, D, E, H, G, I , J, and K.

14
15 **FINDINGS OF FACT**

16 **BACKGROUND AND PROCEDURE**

17 1. The Arizona Department of Real Estate (hereinafter “the Department”) is
18 authorized by statute to receive and to decide Petitions for Hearings from members of
19 homeowners’ associations and from homeowners’ associations in Arizona.

20 2. Respondent is a homeowners’ association (hereinafter “HOA”) whose
21 members own homes in Wynstone Park in Mesa, Arizona.

22 3. Petitioner owns a home in Wynstone Park at 9926 E. Diamond Avenue
23 and is a member of Respondent.

24 4. On or about July 17, 2025, Petitioner filed a double-issue petition with the
25 Department alleging that Respondent had (1) violated Title 8, Chapter 6, Article I – 8-6-
26 3(T) of the City of Mesa Code Ordinances by assessing a fine for public nuisances for
27 parking in approve driveway extension; [Respondent] approved the Variance Parking on
28 driveway extension in 1998 and again in 2018.” and (2) violated its Covenants,
29 Conditions, and Restrictions (hereinafter “CC&Rs”) § 7.1 by mis-characterizing
30 maintenance as an unauthorized modification.

1 Thank you,
2 [Dawn Feigert]
3 Community Manager
4 Trestle Manage Group

5 11. On February 26, 2021, Respondent notified Petitioner that she was
6 parking in violation of her driveway extension approval (past the garage). The February
7 26, 2021 notice provided, in relevant part, as follows:

8 During a recent inspection of your community on 02/26/2021 by Dawn Feigert of
9 our management team, it was observed that the condition of certain aspects of
10 your property do not meet the standards set forth in the Wynstone Park
11 Homeowners Association, Inc. CC&Rs and/or Rules and Regulations.
12 Specifically, the following has been found to be out of compliance at your
13 property: **Nuisance: Parking on extended driveway beyond approved area;
14 cannot park past the garage per the driveway extension approval
15 w/stipulations. Per CC&R's Section 8.4: No illegal, noxious or offence
16 activity permitted on any Lot; no act or use may be performed on any Lot
17 that is or may become an annoyance to neighboring properties.**

18 12. On or about January 27, 2025, Petitioner submitted a Design Review
19 Application to modify drainage under her driveway paver extension to Respondent's
20 Architectural Review Committee (hereinafter "ARC").

21 13. On February 11, 2025, Respondent issued a Notice of Architectural
22 Disapproval that provided, in relevant part, as follows:

23 Unfortunately, your recent application for architectural change has been
24 **disapproved** by Wynstone Park Homeowners Association, Inc. Specifically, you
25 **do not** have approval to proceed with the following request: **Other - Termite
26 issues caused and then follow by placing the pavers back.**

27 Please understand that the Wynstone Park Homeowners Association, Inc. is
28 charged with the responsibility of preserving the aesthetic appearance of the
29 community and to ensure that any exterior changes adhere to the standards
30 established in the CC&Rs and/or Architectural Guidelines. Unfortunately, this
occasionally means rejecting an architectural request. In this case,
the request was disapproved for the following reason(s):

Per the community design guidelines, pavers should not take over more than
50% of the front yard.

1 Additionally, the pavers have caused issues as they are regularly parked on near
2 the front door of the neighbor.

3 To resubmit for approval, please change the plan to have the pavers go past the
4 end of the driveway and add landscaping to meet guidelines or you will need to
bring the brick wall/gate up to near the end of the driveway.

5 14. On June 2, 2025, Respondent notified Petitioner that she had violated
6 CC&Rs Section 7.1 by engaging in a modification that was not approved by the ARC.
7 The June 2, 2025 Courtesy Notice provided, in relevant part, as follows:

8 During a recent inspection of your community on by Lea Austin of our
9 management team, it was observed that the condition of certain aspects of
10 your property does not meet the standards set forth in the Wynstone Park
11 Homeowners Association, Inc. CC&Rs and/or Rules and Regulations.
12 Specifically, the following has been found to be out of compliance at your
13 property: **Unapproved Architectural Change: Please submit
14 architectural application for repairs to your front area. Per CCR
15 Section 7.1 Architectural Approval. No exterior alterations or
16 modifications shall be made without prior written approval of the
17 Architectural Review Committee.**

18 15. On June 11, 2025, Respondent issued a Violation Notice/Monetary
19 Penalty to Petitioner that notified that Respondent assessed a \$25.00 fine because
20 Petitioner violated CC&Rs Section 7.1.

21 16. On June 23, 2025, Respondent notified Petitioner that the ARC denied the
22 Application because pavers may not cover more than 50% of the front yard according to
23 the community guidelines, and because Petitioner regularly parked on the pavers and it
24 was creating issues with Petitioner's neighbors. The e-mail included a reference to a
25 meeting between Petitioner and the board in March of 2025 wherein Board members
26 notified Petitioner that her driveway did not comply with the City of Mesa Code
27 compliance requirements.

28 **Testimony of Rita Elizalde**

29 Ms. Elizalde owns a construction design company (hereinafter "JLM")
30 along with her husband. Petitioner contacted Ms. Elizalde because her driveway
extension was pooling water. Petitioner told Ms. Elizalde that Respondent did not allow

1 modifications to the driveway. Ms. Elizalde considered ways to remedy the problem
2 without changing the design of the driveway. Ms. Elizalde examined Petitioner's
3 property and opined that the pavers were sinking because the previous installer
4 installed a play sand base. Ms. Elizalde did not observe water pooling over into a
5 neighbor's yard.

6 17. JLM altered the slope of the driveway to prevent water from going into the
7 neighbor's property. JLM removed the original sand from the bottom layer and installed
8 a new gravel surface, a decomposed granite.

9 18. Ms. Magana hired JLM to cure her pooling problem. Ms. Magana stated
10 that she also wanted to cure a termite problem. Ms. Magana contended that she was
11 maintaining the driveway and the overall design of the driveway was not altered. JLM
12 installed the same pavers that were removed to install a new base.

13 20. Article VII of the CC&Rs is entitled Architectural Control. The CC&Rs that
14 Petitioner referenced in the petition that she filed with the Department provide in
15 relevant part as follows:

16 Section 7.1 provides in relevant part as follows:

17 7.1 Architectural Approval. No Ancillary Unit may be constructed or maintained
18 on a Lot, and no exterior addition, change, or alteration may be made to any
19 Detached Dwelling Unit or approved Ancillary Unit located on a Lot, until all plans
20 and specifications are submitted to and approved in writing by the Architectural
21 Committee. All plans and specifications submitted to the Architectural Committee
22 must show the nature, type, size, style, color, shape, height, location, materials,
23 floor plan, approximate cost, and other material attributes. All plans and
24 specifications will be reviewed by the Architectural Committee for harmony and
25 compatibility of external design and location in relation to surrounding structures,
26 landscaping, topography, and views from neighboring Lots.

27 21. Respondent's Design Guidelines provide, in relevant part as follows:

28
29 Driveway extensions will be reviewed for approval provided the following
30 conditions are met.
.....

3. The total parking area may not exceed the greater of thirty (30) feet of
contiguous frontage or fifty percent (50%) of the lot width (existing plus
extension) as measured as its widest point.

.....

Testimony of Andrew Hancock

22. At hearing, Mr. Hancock explained that the Board received complaints from Petitioner’s neighbor that the sound of her vehicle wakes their child. The Board also received a complaint that when Petitioner’s car is parked on the driveway extension, the neighbor has to go around the car when taking his trash to the burb and must cross over Petitioner’s property.

23. Mr. Hancock also explained that when the water pooled on Petitioner’s driveway extension, it crossed the border onto the neighbor’s yard.² Mr. Hancock provided testimony regarding how the driveway extension was modified stating, “the grading has been manipulated in a way to flatten and level what's the base. And then it looks like there's some PVC piping or something that has been added to the grade as well.”³

24. Mr. Hancock explained that because the driveway extension covers at least 50% of the yard, the driveway extension does not comply with the City of Mesa ordinances.

25. Mr. Hancock explained at hearing that Section 10.1 governs the Board’s authority to enforce the CC&Rs.

26. Article VII of the CC&Rs is entitled Enforcement. Section 10.1 of the CC&Rs that Mr. Hancock referred to in his testimony at hearing provides, in relevant part, as follows:

10.1 Enforcement. The Association, in the first instance, or any Owner, if the Association fails to act within a reasonable time, will have the right to enforce by any proceeding at law or in equity all covenants and restrictions now or in the future imposed by the provisions of this Declaration or the other Project Documents. Failure of the Association or any Owner to enforce any covenant and reservation in this Declaration or in the other Project Documents will not be deemed a waiver of the right of the Association or any Owner to enforce the covenant or restriction in the future for the same or similar violation.

² See Mr. Hancock’s testimony on the hearing audio record at 1:13 to 1:14 minutes and Respondent’s Exhibit E.

³ See Mr. Hancock’s testimony on the hearing audio record at 1:15 to 1:18 minutes and Exhibit G.

1 **CONCLUSIONS OF LAW**

2 1. A.R.S. § 32-2199(B) permits an owner or a planned community
3 organization to file a petition with the Department for a hearing concerning violations of
4 planned community documents under the authority Title 33, Chapter 16.⁴

5 2. The OAH does not have jurisdiction to determine whether a planned
6 community organization has violated a City of Mesa Code Ordinance.

7 3. Petitioner bears the burden of proof to establish that Respondent violated
8 on its CC&Rs by a preponderance of the evidence.⁵ Respondent bears the burden to
9 establish affirmative defenses by the same evidentiary standard.⁶

10 4. A preponderance of the evidence is such proof as convinces the trier
11 of fact that the contention is more probably true than not.”⁷ A preponderance of
12 the evidence is “[t]he greater weight of the evidence, not necessarily established by the
13 greater number of witnesses testifying to a fact but by evidence that has the most
14 convincing force; superior evidentiary weight that, though not sufficient to free the mind
15 wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one
16 side of the issue rather than the other.”⁸

17 5. In Arizona, if a restrictive covenant is unambiguous, it is enforced to
18 give effect to the intent of the parties.⁹ “Restrictive covenants must be construed as a
19 whole and interpreted in view of their underlying purposes, giving effect to all provisions
20 contained therein.”¹⁰

21 6. Section 7.1 of the CC&Rs regulates homeowners and not
22 Respondent.

23 7. Section 7.1 of the CC&Rs requires homeowners to submit an

24 ⁴ See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce
25 the development’s CC&Rs

26 ⁵ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74
27 Ariz. 369, 372, 249 P.2d 837 (1952).

28 ⁶ See A.A.C. R2-19-119(B)(2).

29 ⁷ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

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

⁹ See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

¹⁰ *Lookout Mountain Paradise Hills Homeowners’ Ass’n v. Viewpoint Assocs.*, 867 P.2d 70, 75 (Colo. App.
1993) (quoted in *Powell*, 211 Ariz. at 557 ¶ 16, 125 P.3d at 377).

1 application to the ARC prior to making changes or alterations to their lot. The
2 preponderance of the evidence shows that Petitioner made changes to the surface
3 under her pavers and to the slope of her driveway extension, without prior approval.
4 Petitioner has not established that Respondent mischaracterized Section 7.1 of the
5 CC&Rs.

6 8. Section 10.1 of the CC&Rs authorizes Respondent to enforce the
7 CC&Rs. Petitioner has failed to meet her burden to establish that Respondent violated
8 Respondent's CC&Rs, governing document, or any statutes that regulate planned
9 communities.

10 9. Petitioner's petition should be dismissed.

11 **ORDER**

12 **IT IS ORDERED** that Petitioners' petition is dismissed.

13 **NOTICE**

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

19 Done this day, October 29, 2025.

20 /s/ Velva Moses-Thompson
21 Administrative Law Judge

22 Transmitted by either mail, e-mail, or facsimile October 29, 2025 to:

23
24 Susan Nicolson
25 Commissioner
26 Arizona Department of Real Estate

CHDB Law
ashley.turner@chdblaw.com

27 Wynstone Park Homeowner Association

Sally Magana
sally_7379@live

28 By: OAH Staff
29
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