IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of: PebbleCreek Golf Resort Homeowners Association No. 1, Inc. Petitioner, v. Christopher Bernard & Deborah Wiener Respondents.	**No. 26F-H069-REL** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: September 11, 2026

APPEARANCES: Beth Mulcahy, Esq. appeared on behalf of PebbleCreek Golf Resort Homeowners Association No. 1, Inc. (Petitioner). Respondent Christopher Bernard (Mr. Bernard) appeared on behalf of himself. Respondent Deborah Wiener (Ms. Wiener) appeared on behalf of herself.

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

EXHIBITS ADMITTED INTO EVIDENCE: Petitioner's Exhibits 1 through 25. Respondents' Exhibit B.[1]

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The Arizona Department of Real Estate (Department) is authorized by statute to receive and to decide Petitions for Hearings from members of homeowners' associations and from homeowners' associations in Arizona. Homeowners' associations and their members are governed by Chapter 16 of Title 33, the Planned Communities Act, A.R.S. §§ 33-1801 to 33-1818 (the Act).

[1] Respondents' Exhibit B consists of six photos labeled as 1653, 1655, 1656, 1660, 1661, and 1662. The Administrative Law Judge allowed Respondents to submit the photos after the hearing. The Administrative Law Judge also allowed Petitioner to file a response.

2. Petitioner is a homeowners' association whose members own single-family houses or lots in the PebbleCreek Golf Resort in Goodyear, Arizona.

3. Respondents own Lot 20, located at 168 W. Sheila Lane, Goodyear, AZ 85395 (the home) in the PebbleCreek Golf Resort. Mr. Bernard and Ms. Weiner are members of Petitioner.

4. On or about March 5, 2026, Petitioner filed a petition with the Department alleging that Respondents violated Articles IV, Section 2(a) and 2(b) of Petitioner's Covenants, Conditions, and Restrictions (CC&Rs), by installing and maintaining a dog pen or frame pet cover that was visible from neighboring property, without obtaining the approval of Petitioner's Architectural Committee.[2]

5. On March 5, 2026, Petitioner's Board of Directors (Board) unanimously consented and approved of the filing of the petition.[3]

6. Respondents filed an answer to the petition, denying that it had engaged in the conduct that Petitioner alleged or violated any CC&Rs.

7. The Department referred the petition to the Office of Administrative Hearings, an independent state agency, for an evidentiary hearing.

8. A hearing was held on September 11, 2026.

9. At hearing, Petitioner presented the testimony of William Barnard, Petitioner's General Manager, and Jack Gregory, the President of Petitioner's Board.

RELEVANT CC&RS

10. Article IV, Section 2 of Petitioner's CC&Rs provides, in relevant part as follows:[4]

> Covenants Applicable to Lots, Parcels and Other Areas Within All Land Use Classifications.
> .....
>
> (a) Architectural Control.

[2] The original petition included a dispute regarding a river rock; however, the parties notified the Administrative Law Judge at hearing that the dispute was resolved.
[3] *See* Exhibit 15.
[4] *See* Exhibit 3.

> Except as otherwise expressly provided in this Declaration, the Architectural Guidelines or any applicable Tract Declaration that has been signed by Declarant,
>
> > (i) no improvements (whether temporary or permanent), alterations, repairs, excavation, grading, lighting, landscaping or other work that in any way alters the exterior appearance of any property within Residential Areas of PebbleCreek Golf Resort or improvements thereon from its natural or improved state existing existing on the date this Declaration is recorded shall be made or done, and (ii) no building, fence, exterior wall, residence or other structure shall be commenced, erected, maintained, improved, altered or made within Residential Areas of PebbleCreek Golf Resort, without the prior written approval of the Architectural Committee. No changes or deviations in or from the plans and specifications once approved by the Architectural committee shall be made without the prior written approval of the Architectural Committee.....
>
> (b) Animals
>
> No structure for the care, housing or confinement of any animal or bird shall be maintained so as to **be Visible From Neighboring Property**, unless otherwise approved by the Architectural Committee.
>
> [Emphasis Added.]

HEARING EVIDENCE

11. In or around June of 2024, Respondents purchased the home.[5]

12. In or around October of 2024, Respondents submitted several permit applications to Petitioner's Architectural Landscape Committee (ALC).[6] The applications did not request a dog pen.[7]

[5] *See* Exhibits 1.1 through 1.4.
[6] *See* Exhibits 4 through 6.
[7] *See* id.

13. In November of 2024, the ALC approved many of the permit applications.[8] However, the ALC did not approve the river rock application. [9]

14. Respondents installed a dog pen in December of 2024.

15. In or around January of 2025, the ALC inspected the home. The ALC notified Mr. Bernard and Ms. Weinger of several violations. Mr. Bernard testified at hearing that the ALC did not notify Respondents at that time that the dog pen violated any governing documents. However, Mr. Bernard also stated that the ALC notified Respondents that the cover on the dog pen or frame pet cover could be seen from the street and from the golf course. Mr. Bernard alleged that at that time, the ALC did not notify Respondents that the dog pen needed to be removed.

16. On May 27, 2025, the ALC issued a Courtesy Notice to Respondents informing them that their property was out of compliance with the ALC Guidelines or Petitioner's Rules.[10] The May 27, 2025 included nine alleged violations of the ALC Guidelines and/or Petitioner's CC&Rs. The May 27, 2025 Courtesy Notice provided, in relevant part, as follows:[11]

> ……..
>
> **Frame pet cover on west side of house was installed without submitting a permit request to the ALC office and without obtaining approval.**
>
> ……..
>
> Please, understand that this is a request for you to take action that will support your community by correcting the situation as soon as possible or in no later than 21 days from the date of this notification. Per out policy, if after 21 days from the date of this correspondence, the violation has not been corrected or you have not contacted the ALC office, a fine in the amount of $100/violation will be assessed – for an uncorrected violation within 21 days. It is the hope of the ALC that this action will not be needed.
>
> [Emphasis in original.]

17. On June 27, 2025, the ALC issued a Courtesy Notice to Respondents informing them that the frame pet cover and other items were out of compliance with the

[8] *See* Exhibit 8.
[9] *See* id.
[10] *See* Exhibit 9.1.
[11] *See* id.

ALC Guidelines or Petitioner's Rules.[12] The ALC requested that Respondents correct the situations, no later than 21 days from the date of the notification.[13]

18. On September 26, 2025, the ALC issued a Fine in the amount of $800 to Respondents for several violations, including the dog pen.[14]

19. On September 26, 2025, Mr. Bernard sent an email to Mr. Barnard and Mr. Gregory that provides, as follows:[15]

> ….
> You received a response via email on the bullshit, targeted "violations". It is clear that Watson, aside from an embarrassment to the community, is all about targeting residents to try and generate revenue for his dept. this is the last coms from us. We also received targeted violations on our RV and garage being open. Both completely inaccurate and frivolous. Those responses were also dropped at the HOA office. We will not be paying any fines on our HOA bill and the next coms will come from my attorney. So for $800 in so-called, felonious fines, the HOA will not spend the PC resident funds on attorney gees. Lastly, Watson is about to become more famous in PC on FB and E-group with his drunken stupor video as a send off to his retirement. There is always one asshole… Bill, completely disappointed in your oversight and lack of control here, even after coms and meetings. We have now reconsidered our residency here in PC. Without a doubt a housecleaning is in order as PC transitions away from Robson.

20. Respondents filed an appeal with the Board. As a part of the appeal process, Respondents met with the Board and pleaded their case. Respondents requested a compliance inspection. Respondents cured all the violations, except the dog pen and the river rock.

21. On December 2, 2025, the ALC conducted a compliance inspection of Respondent's property. The ALC took photographs shown in Exhibits 10.1 and 10.2 at the time of the inspection.

22. On December 2, 2025, after the completion of the inspection, Respondents applied to the ALC for a dog pen.

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[12] *See* Exhibit 9.2.
[13] *See* id.
[14] *See* Exhibit 9.3.

[15] *See* Exhibit 9.4.

23. On December 10, 2025, Petitioner issued a notice denying the December 2, 2025 dog pen application.[16] The letter was authored by John Cohn, the Vice President of Petitioner's Board of Directors. Through the December 10, 2025 notice, Petitioner notified Respondents that the dog pen required changes to comply with the ALC's guidelines and Petitioner's CC&Rs. Petitioner notified Respondents that the deficiency must be corrected in 21 days, and that fines would be reduced to $250.00 if Respondents appropriately resolved the issue during that time. Additionally, Mr. Cohn expressed his interest in meeting with Respondents to discuss the ALC's decisions and to explain Respondents' options.[17]

24. On December 18, 2025, Mr. Bernard sent an email to Petitioner's Board acknowledging that all violations had been addressed except for the river rock, puck lights, and the 3in quail.[18]

25. After the December 2025 inspection, Respondents attempted to cure the problem related to the dog pen by installing green faux fencing material. Respondents did not obtain permission from the ALC before installing the material.

26. On December 22, 2025, Mr. Bernard sent an email to the Board that provided "Everything is in compliance except the doghouse, which per the CC&R guidelines, the board can approve; but chose not to. I assume you read the email about the river rock. As Mentioned, making it a legal matter will have nothing to do with the dog house..." [19]

27. On January 26, 2026, Petitioner notified Respondents, though its counsel, that the dog pen violated Article IV, 2(a) and (b) of Petitioner's CC&Rs, because Respondents did not obtain approval before building the dog pen, and because the structure was visible from neighboring property.[20] Through the notice, Petitioner notified Respondents that they must obtain approval from the Architecture and Landscape

[16] *See* Exhibit 10.4.
[17] *See* id.
[18] *See* Exhibit 10.6
[19] *See* Exhibit 10.7.
[20] *See* Exhibit 11.

Office before beginning any work to shield the dog pen from view. The January 26, 2026 notice provided, in relevant part, as follows:[21]

> .....
>
> Please immediately cease from violating the Declaration due by (1) replacing the river rock with ½ - 1 inch granite (river rock is a prohibited borer and was already expressly denied with the Architectural Committee); and (2) either remove the animal structure or properly shield it so that it is not Visible from Neighboring Property on all three sides. If you choose to shield the animal structure from view, you must submit a permit request to the Architecture and Landscape Office and obtain approval begore beginning any work.
>
> Please be advised the Association has the legal right to continue to fine you for the ongoing violations, after notice and an opportunity to be heard (which was preveiusly been provided, and is further provided herein). This letter is placing you on notice that you have **twenty-one (21) day from the date of this Letter** to cure the violations, as set forth above In the vent that you do not take such action prior to **Friday, February 20, 2026 at 5:00 p.m.,** the Association may continue to assess fines against you Lot and/or pursue its one of the available legal remedies.
>
> .....

28. On February 10, 2026, Petitioner issued a letter to Respondents, through its legal counsel, requesting that Respondents remove the dog pen.[22] The January 26, 2026 letter provided, in relevant part, as follows:[23]

> …**Unapproved dog structure**: It remains [Petitioner's]'s position that your Lot is in violation of the [CC&Rs] due to the unapproved dog structure, which is Visible from Neighboring Property. Demanding that a neighbor put up a wall to shield your unapproved structure is not reasonable. Please either remove the animal structure, or properly shield it so that it is not Visible From Neighboring Property on all three sides. If you choose to shield the animal structure from view, you must submit a permit request to the Architecture and Landscape Office and obtain approval before beginning any work. If you continue to violate the Declaration, the Association reserves the right to pursue its legal remedies, as asset forth in my previous letter.

29. On February 2, 2026, Mr. Benard e-mailed Mr. Cohn asserting that the guidelines state the ALC can approve the dog pen.[24] Mr. Bernard also alleged that the

[21] *See* id.
[22] *See* Exhibit 13.
[23] *See* id.
[24] *See* Exhibit 12.

ALC failed to provide communications to Petitioner's attorney. Mr. Cohn also alleged that he was fined $800 without an explanation or "breakdown". Mr. Bernard also stated that he assumed that the fine was based upon "trumped up" violations by Rick Watson. Mr. Bernard alleged that he attached photographs of numerous houses within Petitioner that have a very visible doghouse in the backyard. Mr. Bernard expressed that he believed that Petitioner chose not to approve his request, "because of the witch that lies next door has complained." Mr. Bernard also stated, "If she does not want to see my backyard, she can build her own damn wall. One of the reasons the coyote issue is so bad in our areas is because she is one of a few houses that does not have any fencing around her yard, > So the coyotes hang out in her yard." Mr. Bernard also alleged that his dog pen was not visible from the golf course.[25]

30. Petitioner has sent notices of violations to other homeowners informing them that the installation of faux fencing material violated the ALC guidelines.[26]

31. At hearing, Mr. Gregory explained that he took the photograph in Exhibit 16 with an iPhone 16 from in front of Respondents' home, while standing three feet into the street. Mr. Gregory clarified that although he used a zoom-in feature to take the photograph, the dog pen was still visible to the naked eye from the street. Mr. Gregory took the photograph in Exhibit 16.2 with the same camera while standing fifty feet away from Respondents' fence on the golf course. He used a zoom-in feature but clarified that the dog pen was still visible to the naked eye.[27]

32. Mr. Gergory stated that the photograph displayed in Exhibit 16.4 represented a zoomed in view from the street. He explained that the photograph was taken by the Board's Administrator, Jennifer Sell. Mr. Gregory stated that the dog pen is visible from the street in the photograph. Mr. Gregory stated that Ms. Sell took the photograph in Exhibit 16.5 on June 5, 2026, from the golf course. Mr. Gregory clarified that the photographs of the dog pen show its current condition.

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[25] *See* id.
[26] *See* Exhibits 17.1 through 17.3.
[27] *See* Mr. Gregory's testimony on the hearing audio record at 1:38:05 - 1:39:57 minutes.

33. At hearing, Mr. Bernard testified that the animal structure was not visible from the street. Mr. Bernard argued that the photographs submitted by the Board do not portray how the structure appears from the street, because the photographs were taken with a zoom-in feature.

34. The President and the Vice President of the Board both testified that Mr. Bernard's current animal structure is visible to the naked eye from the street. The President also testified that the green faux fencing material that Mr. .Bernard used to cover the structure still expose his animals and the structure to neighboring properties.

35. After the hearing, Respondents submitted several photographs to support their position. After reviewing the photographs, the Administrative Law Judge (ALJ) finds that the photographs marked as 1653, 1655, and 1656 show that the animal structure is visible to neighboring property. The ALJ finds that remaining photos in Exhibit B do not refute this finding.

CONCLUSIONS OF LAW

1. A.R.S. § 32-2199(B) permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violation of planned community documents under the authority Title 33, Chapter 16.[28] Such petitions will be heard before the Office of Administrative Hearings, an independent state agency.

2. Petitioner bears the burden of proof to establish that Respondents violated the Act or Petitioner's CC&Rs by a preponderance of the evidence.[29] Respondents bear the burden to establish affirmative defenses by the same evidentiary standard.[30]

3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."[31] A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable

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[28] *See* A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce the development's CC&Rs.
[29] *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 Ariz. 369, 372, 249 P.2d 837 (1952).
[30] *See* A.A.C. R2-19-119(B)(2).
[31] MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."[32]

4. "The administrative law judge may order any party to abide by the statute, condominium documents, community documents or contract provision at issue and may levy a civil penalty on the basis of each violation…. If the petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the filing fee required by section 32-2199.01." ARIZ. REV. STAT. § 32-2199.02(A).

5. In Arizona, if a restrictive covenant is unambiguous, it is enforced to give effect to the intent of the parties.[33] "Restrictive covenants must be construed as a whole and interpreted in view of their underlying purposes, giving effect to all provisions contained therein."[34]

6. It is undisputed that Respondents installed the dog pen without obtaining permission from ALC, which is a violation of Article IV, Section 2(a).

7. Upon consideration of the documentary and testimonial evidence presented at hearing, the ALJ concludes that the preponderance of the evidence shows that the Respondents' dog pen is visible to neighboring property, which is a violation of Article IV, Section 2(b).

8. The ALJ concludes that Petitioner has met its burden to establish, by a preponderance of the evidence that Respondents violated Article IV, Section 2(a) and (b).

9. The evidence presented at hearing shows that Respondents received notices to cure up to 9 violations. Respondents cured most of the violations, but did not cure the dog pen violation. After receiving written notices of the dog pen violation from the Board, Mr. Bernard repeatedly asserted that the ALC had the power to approve dog pen. Mr. Bernard alleged that the ALC had approved similar structures on other properties. Mr. asserted that his dog pen was not visible from the golf course. Mr. Bernard believed for a significant period that there may have been a conspiracy against him. Mr. Bernard

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[32] BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).
[33] *See Powell v. Washburn,* 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).
[34] *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).

consistently expressed that his belief that his dog pen was not a violation of the CC&Rs. Although Mr. Bernard was incorrect in his allegations and assertions, the record shows that Mr. Bernard believed his dog pen was not in violation of the CC&Rs. Based on the foregoing, the ALJ concludes that a civil penalty is not appropriate at this time.

ORDER

IT IS ORDERED that Petitioner be deemed the prevailing party.

IT IS FURTHER ORDERED that Respondents must pay Petitioner its filing fee of $500.00 within thirty days of this Order.

IT IS FURTHER ORDERED that Respondents abide by Article IV, Section 2(a) and (b) of Petitioner's CC&Rs.

A Civil Penalty is not appropriate in this matter.

NOTICE

Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties 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, October 5, 2026.

/s/ Velva Moses-Thompson
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile October 5, 2026 to:

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