

- 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

ADMINISTRATIVE LAW JUDGE DECISION

APPEARANCES:

Respondent: B. Austin Baillio, Esq.

ADMINISTRATIVE LAW JUDGE: Nedra-Su Kawasaki

FINDINGS OF FACT

Between July 2025 and November 2025, the Marley Park Community Association violated A.R.S. § 33-1803(A), A.R.S. § 33-1804(A)-(C), and Bylaws Article 4.1(a) by improperly requiring the homeowner to construct a community infrastructure wall not required by any recorded governing

document, thereby exceeding the scope of its corporate powers and unlawfully levying fines for non-compliance with an unrequired structure.¹

4. Respondent, by and through Kevin Zarnick, filed a written response to the Petition, denying all Petition allegations.²

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

6. A hearing was held on February 20, 2026, with further hearing held on May 22, 2026. Administrative Notice was taken of the Department record.

7. At the initial hearing, Counsel for Respondent, Mr. Baillio, noted in his opening statement that the authorities cited in the Petition did not apply to the circumstances as alleged. Therefore, Mr. Baillio believed the Petition should be dismissed. On the undersigned Administrative Law Judge's (ALJ) request for clarification as to whether Mr. Baillio was moving to dismiss for inaccurate legal citations, Mr. Baillio responded that, while he believed the issue created a procedural or jurisdictional problem making it difficult for Petitioner to prevail, he was willing to proceed. After consideration of Mr. Baillio's position the undersigned ALJ ruled that the hearing would proceed on the merits.

REFERENCED STATUTES

8. A.R.S. § 33-1803 provides as follows:

A. Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty percent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association. Unless reserved to the members of the association, the board of directors may impose reasonable charges for the late payment of assessments. A payment by a member is deemed late if it is unpaid fifteen or more days after its due date, unless the community documents provide for a longer period. Charges for the late payment of assessments are limited to the greater of fifteen dollars or ten percent of the amount of the unpaid assessment and may be imposed only after the association has provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain

¹ Not. of Hr'g. File, Homeowners Association (HOA) Dispute Process Petition (all errors included in original).

² *Id.*

1 date. Any monies paid by the member for an unpaid assessment shall be
2 applied first to the principal amount unpaid and then to the interest
3 accrued.

4 B. After notice and an opportunity to be heard, the board of directors
5 may impose reasonable monetary penalties on members for violations of
6 the declaration, bylaws and rules of the association. Notwithstanding any
7 provision in the community documents, the board of directors shall not
8 impose a charge for a late payment of a penalty that exceeds the greater
9 of fifteen dollars or ten percent of the amount of the unpaid penalty. A
10 payment is deemed late if it is unpaid fifteen or more days after its due
11 date, unless the declaration, bylaws or rules of the association provide for
12 a longer period. Any monies paid by a member for an unpaid penalty shall
13 be applied first to the principal amount unpaid and then to the interest
14 accrued. Notice pursuant to this subsection shall include information
15 pertaining to the manner in which the penalty shall be enforced.

16 C. A member who receives a written notice that the condition of the
17 property owned by the member is in violation of the community documents
18 without regard to whether a monetary penalty is imposed by the notice
19 may provide the association with a written response by sending the
20 response by certified mail within twenty-one calendar days after the date
21 of the notice. The response shall be sent to the address identified in the
22 notice.

23 D. Within ten business days after receipt of the certified mail
24 containing the response from the member, the association shall respond
25 to the member with a written explanation regarding the notice that shall
26 provide at least the following information unless previously provided in the
27 notice of violation:

28 1. The provision of the community documents that has
29 allegedly been violated.

30 2. The date of the violation or the date the violation was
observed

3. The first and last name of the person or persons who
observed the violation.

4. The process the member must follow to contest the notice.

E. Unless the information required in subsection D, paragraph 4 of this
section is provided in the notice of violation, the association shall not
proceed with any action to enforce the community documents, including

1 the collection of attorney fees, before or during the time prescribed by
2 subsection D of this section regarding the exchange of information
3 between the association and the member and shall give the member
4 written notice of the member's option to petition for an administrative
5 hearing on the matter in the state real estate department pursuant to
6 section 32-2199.01. At any time before or after completion of the
7 exchange of information pursuant to this section, the member may petition
8 for a hearing pursuant to section 32-2199.01 if the dispute is within the
9 jurisdiction of the state real estate department as prescribed in section 32-
10 2199.01.

11 9. A.R.S. § 33-1804 provides as follows:

12 A. Notwithstanding any provision in the declaration, bylaws or other
13 documents to the contrary, all meetings of the members' association and
14 the board of directors, and any regularly scheduled committee meetings,
15 are open to all members of the association or any person designated by a
16 member in writing as the member's representative and all members or
17 designated representatives so desiring shall be allowed to attend and
18 speak at an appropriate time during the deliberations and proceedings.
19 The board may place reasonable time restrictions on those persons
20 speaking during the meeting but shall allow a member or member's
21 designated representative to speak once after the board has discussed a
22 specific agenda item but before the board takes formal action on that item
23 in addition to any other opportunities to speak. The board shall provide for
24 a reasonable number of persons to speak on each side of an issue.
25 Persons attending may audiotape or videotape those portions of the
26 meetings of the board of directors and meetings of the members that are
27 open. The board of directors of the association shall not require advance
28 notice of the audiotaping or videotaping and may adopt reasonable rules
29 governing the audiotaping and videotaping of open portions of the
30 meetings of the board and the membership, but such rules shall not
preclude such audiotaping or videotaping by those attending, unless the
board audiotapes or videotapes the meeting and makes the unedited
audiotapes or videotapes available to members on request without
restrictions on their use as evidence in any dispute resolution process. If a
board records a meeting that is open to the members, the board shall
keep a copy of the recording for at least six months and make the
unedited recording available to any member on request in compliance with
section 33-1805, subsection A. Any portion of a meeting may be closed
only if that closed portion of the meeting is limited to consideration of one
or more of the following:

1. Legal advice from an attorney for the board or the association.
On final resolution of any matter for which the board received legal advice

1 or that concerned pending or contemplated litigation, the board may
2 disclose information about that matter in an open meeting except for
3 matters that are required to remain confidential by the terms of a
4 settlement agreement or judgment.

5 2. Pending or contemplated litigation.

6 3. Personal, health or financial information about an individual
7 member of the association, an individual employee of the association or
8 an individual employee of a contractor for the association, including
9 records of the association directly related to the personal, health or
10 financial information about an individual member of the association, an
11 individual employee of the association or an individual employee of a
12 contractor for the association.

13 4. Matters relating to the job performance of, compensation of,
14 health records of or specific complaints against an individual employee of
15 the association or an individual employee of a contractor of the
16 association who works under the direction of the association.

17 5. Discussion of a member's appeal of any violation cited or penalty
18 imposed by the association except on request of the affected member that
19 the meeting be held in an open session.

20 B. Notwithstanding any provision in the community documents, all
21 meetings of the members' association and the board shall be held in this
22 state. A meeting of the members' association shall be held at least once
23 each year. Special meetings of the members' association may be called
24 by the president, by a majority of the board of directors or by members
25 having at least twenty-five percent, or any lower percentage specified in
26 the bylaws, of the votes in the association. Not fewer than ten or more
27 than fifty days in advance of any meeting of the members the secretary
28 shall cause notice to be hand delivered or sent prepaid by United States
29 mail to the mailing address for each lot, parcel or unit owner or to any
30 other mailing address designated in writing by a member. The notice shall
state the date, time and place of the meeting. A notice of any annual,
regular or special meeting of the members shall also state the purpose for
which the meeting is called, including the general nature of any proposed
amendment to the declaration or bylaws, changes in assessments that
require approval of the members and any proposal to remove a director or
an officer. The secretary shall also provide an agenda for any meeting of
the members' association by hand delivery, mail, website posting, email or
other electronic means or posting at a community center or other similar
location. The failure of any member to receive actual notice of a meeting

1 of the members or the meeting agenda does not affect the validity of any
2 action taken at that meeting.

3 C. Before entering into any closed portion of a meeting of the board of
4 directors, or on notice of a meeting under subsection D of this section that
5 will be closed, the board shall identify the paragraph under subsection A of
6 this section that authorizes the board to close the meeting.

7 REFERENCED ASSOCIATION CHARTER³

8 10. Chapter 2 (Governing Documents) provided, in pertinent part, as follows:

9 § 2.5 Interpretation of Certain References

10 ***Discretion and Determination.***

11 All references in the Governing Documents to "**discretion**" or to the right
12 to "determine" any matter shall refer to the sole and absolute power or
13 right to decide or act. Unless otherwise expressly limited in the Governing
14 Documents or by law, anyone authorized in the Governing Documents to
15 exercise its discretion or make a determination may do so without regard
16 to the reasonableness of, and without the necessity of justifying, the
17 decision, determination, action, or inaction.

18 11. Chapter 6 (Architecture, Landscaping, and Aesthetic Standards) provided,
19 in relevant part, as follows:

20 § 6.3 Guidelines and Procedures

21 (b) Procedures

22 In reviewing each application, the Reviewer may consider any factors it
23 deems relevant, including, without limitation, harmony of the proposed
24 external design with surrounding structures and environment. Decisions
25 may be based on purely aesthetic considerations. Each Owner
26 acknowledges that such determinations are purely subjective and that
27 opinions may vary as to the desirability and/ or attractiveness of particular
28 improvements.

29 The Reviewer shall have the discretion to make final, conclusive, and
30 binding determinations on matters of aesthetic judgment, and such
determinations shall not be subject to Chapter 20, nor shall they be
subject to judicial review so long as they are made in good faith and in
accordance with required procedures.

. . . .

As part of any approval, the Reviewer may require that construction
commence within a specified time period. If construction does not

³ Respondent Ex. 1.

commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing.

§ 6.5 Variances

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations or if the Reviewer otherwise reasonably deems a variance to be appropriate under the particular circumstances.

REFERENCED DESIGN GUIDELINES⁴

12. Chapter 1 (Introduction and Design Review Process) provided, in pertinent part, as follows:

§ 1.3 Design Review Committee

The DRC is the ultimate arbiter of everything to be constructed on a residential lot or unit at Marley Park. Because the goal is to treat community development as a large-scale work of art, the DRC's decisions will include discretionary judgments. It is possible that an Applicant may feel that they have complied with the "letter of the law" of the Design Guidelines and still fall short of being approved. As explained in the *Community Charter for Marley Park*, the Design Guidelines are not the exclusive basis for the DRC's decisions, and compliance with the Design Guidelines does not guarantee approval. Similarly, where justified by special circumstances, applications may be given considerations beyond the requirements as set forth. In such cases, the DRC in its sole discretion may grant variances from prescribed requirements in these Design Guidelines. The DRC regards the diversity of ideas that fit within the overall Community Vision from each architect, builder, landscape architect and Owner to be a major contribution to the Community's quality of life provided such ideas fit within the overall design and aesthetic philosophy of the entire Community.

§ 1.4 Interpretation of the Design Guidelines

The DRC is the interpreter and administrator of the Design Guidelines. The application of the criteria in the Design Guidelines is based on the DRC's interpretation and sole discretion. For example, if the Design Guidelines make a statement such as "no bold or bright colors"; then the

⁴ Respondent Ex. 2.

1 interpretation of what is “bold and bright” is in the sole discretion of the
2 DRC. Or if the Design Guidelines make a statement such as “match the
3 authentic architectural character”; then the interpretation of what matches
4 the authentic architectural character and what doesn’t is in the sole
5 discretion of the DRC. Because no two situations are exactly alike, the
6 DRC has the right to add additional criteria, stipulations or requirements
7 as part of the evaluation of any application to address the unique issues or
8 circumstances of the specific proposed improvements. . . .

9 § 1.9 Terms and Schedule for Completion of Work

10 Any work that is approved by the DRC must be completed within one
11 hundred eighty (180) calendar days of commencement, unless otherwise
12 approved by the DRC in writing.

13 13. Chapter 2 (The Vision) provided, in pertinent part, as follows:

14 § 2.3 Importance of Architectural Style

15 [T]here are currently seven (7) approved architectural styles for the Marley
16 Park neighborhood: Bungalow, Cottage, Craftsman, Monterey, Spanish,
17 Territorial Ranch and Traditional.

18
19 Authentic architecture is a key design principle throughout Marley Park.
20 The DRC will consider the authenticity of the architectural style in the
21 review of all applications. All proposed Additions, modifications or other
22 Improvements shall be appropriate to the authentic detailing of each
23 architectural style. For example, a Spanish-styled house should not have
24 Western Regional Farmhouse styled shutters. Likewise, a Ranch-styled
25 house would not have decorative, scrolled ironwork that is well suited for a
26 Spanish style house. In general, the DRC will not allow exterior
27 modifications that, in the opinion of the DRC, do not maintain the authentic
28 architectural style and character of a home. For example, stone should not
29 be added to a Spanish style home because stone is not generally
30 authentic to the Spanish architectural styles. Likewise, contemporary
exterior light fixtures should not be added to a traditional styled home
because contemporary lights do not maintain the authentic architectural
style.

For the purpose of these Design Guidelines, when a statement is made
such as “match the authentic architectural character”; then the
interpretation of what matches the authentic architectural character and
what doesn’t is in the sole discretion of the DRC.

14. Chapter 4 (Architectural Standards) provided, in pertinent part, as follows:

§ 4.30 Fences and Yard Walls

In general, a key objective at Marley Park is to minimize the amount and visibility of fences and Yard Walls to the greatest extent practical and reasonable.

(a) Community Walls

- (i) In certain locations, Community Walls were constructed as part of the Original Construction by either the Master Developer or the Original Homebuilder. These walls have a common appearance throughout the neighborhood based on an established theme and enhanced character.

(b) Theme Walls

- (i) Fences and Yard Walls that face any street, open space, Common Area are known as Theme Walls (unless designated as a "Community Wall" as noted above).
- (ii) The appearance of a Theme Wall is required to match the style and architectural character of the Residence. Any modifications to a Theme Wall shall match the colors, materials and details of the Original Construction.
-
- (vii) Theme Walls may tie into a Community Wall at a point that is at least two feet (2'-0") behind the end of the Community Wall.
- (viii) Theme Walls shall be constructed of 6" or 8" wide concrete masonry units (CMU). The side of the Theme Wall that faces the street or Open Space shall be stuccoed and painted to match the color and stucco texture of the house; or shall match the Theme Wall that was built as part of the Original Construction.

(c) View Fence

- (i) View Fence means metal fencing that is at least eighty percent (80%) transparent and is generally composed of vertical metal pickets spaced at four inches (4") on center. View Fencing allows for partial views through the metal pickets.
- (ii) The DRC may allow partial View Fence, partial open rail fencing or partial decorative wrought iron that is installed over a low Theme Wall on a case-by-case basis and at the sole discretion of the DRC. In these cases, where the open rail fencing is more than 25% of the overall fence and wall height, this fence will not be considered a View Fence for the purpose of these Design Guidelines but instead will be considered a Yard Wall. For example, if a 4'-0" tall solid Theme Wall has 16" of decorative wrought iron on top of the Theme Wall for an overall height of 5'-4", this wall is not considered a View Fence because the open rail fencing makes up 25% or less of the overall height.
- (vii) View Fence shall be constructed of steel, wrought iron or aluminum. . . .

(viii) No materials of any type are allowed to be placed between the metal pickets of a View Fence, including, but not limited to: wooden slats, composite slats, plastic slats, aluminum slats, infill panels, fabric, plastic, plexiglass or wire. The purpose of a View Fence is to be open and transparent. If greater privacy is desired, a Homeowner may want to consider planting screen plants in their Rear Yard.

.....

(g) Fences and Yard Walls on a Corner Lot

(iii) Fences and Yard Walls that are taller than forty-two inches (42") on the side of the house that faces the street or Common Area shall generally not cover more than the rear one-third (1/3) of the side elevation of the home.

.....

(k) Pool Safety Barriers

Fences, Yard Walls and gates used for swimming pool enclosures must comply with all applicable codes and ordinances of the City for pool safety barriers.

(l) Fences and Yard Wall General Design Requirements.

(i) As a general philosophy, Fences and Yard Walls should be design and placed to minimize their appearance and visual impact on the Community. The objective is to celebrate the architecture and the landscape; and to let the (fences and Yard Walls take a tertiary position in the overall composition.

(ii) Fences and Yard Walls that are visible from Public View shall compliment the architecture and landscape of the home in terms of height, scale, form, geometry, colors and materials.

.....

(iv) In keeping with the philosophy that Fences and Yard Walls shall have minimal visual impact, Fences and Yard Walls that are visible from Public View will not be allowed to have highly decorative materials, artistic patterns, bold colors, signage, murals, logos, graphics, patterns or other decorative elements, unless otherwise approved by the DRC.

.....

(xi) Because there are so many different possibilities, the DRC will review Fences and Yard Walls on a case-by-case basis. The DRC reserves the right to not allow a Fence or Yard Wall that is deemed to be not appropriate in the sole opinion of the DRC.

(m) Fencing and Yard Wall Materials.

(i) Fencing and Yard Walls must be constructed of durable materials, such as masonry, stucco and metal. For all Fences and Yard Walls that are visible from Public View, the materials and colors shall relate to the architectural style and color palette of existing home. The DRC will evaluate materials and colors for Fences and Yard Walls on a case-by-case basis.

1 § 4.98 Swimming Pools and Spas

2 (a) All swimming pools, pools, spas, hot tubs and similar water elements are
3 only allowed within a defined Enclosed Rear Yard, a defined Exposed Rear
4 Yard, or an enclosed side yard. Swimming pools and spas are not allowed in
 the Front Yard.

5
6 (m) Access for pool and spa construction to an enclosed yard shall only be
7 allowed across the subject property through the front fence return location
8 and/or through the existing side yard gate. Access to rear yards for pool
9 construction will not be allowed through side yard fences that face a street or
10 common area. Access for pool construction will not be allowed over any
11 common area, including the landscape parkway between the street and the
12 public sidewalk, without prior written approval from the Association (which
13 approval can be withheld at the sole discretion of the Association). Any
14 damage to site walls, fences and gates caused by pool construction shall be
 restored to match the Original Construction. Any repair or restoration work to
 a wall, fence or gate must seamlessly match the Original Construction. Any
 damage to front or side yard landscaping, or to landscaping along an alley,
 caused by pool construction shall be restored to its condition prior to the
 damage.

15 15. Chapter 5 (Landscape Standards) provided, in pertinent part, as follows:

16 § 5.6.2 Front Yard – Screen Planting

17 (a) Screen Planting not only serves to screen and mitigate Yard Walls, fences
18 and unarticulated building walls, but it provides relief to large exposed areas
19 of hardscape and also provides privacy to residential spaces exposed to
 pedestrian and vehicular traffic.

20
21 § 5.8 Private Zone / Rear Yard Zone

22
23 (e) Provided the landscape within the Private Zone / Rear Yard Zone complies
24 with these Guidelines, the landscape design for the Private Zone / Rear Yard
25 Zone does not require specific approval by the DRC prior to installation, EXCEPT
26 when the Private Zone / Rear Yard Zone is visible from Public View, including
27 conditions with a defined Open Rear Yard or a defined Exposed Rear Yard with
28 View Fencing.

29 IT IS IMPORTANT TO DETERMINE THE TYPE OF REAR YARD FOR YOUR
30 PROPERTY

31
32 REAR YARD LANDSCAPE CRITERIA WILL VARY DEPENDING ON THE TYPE
33 OF REAR YARD.

1 “Enclosed Rear Yard” means a Rear Yard that is surrounded by solid walls and
2 gates that are at least five feet (5'-0") tall around all sides of the Rear Yard. An
3 Enclosed Rear Yard includes those portions of the side yards that are within the
4 solid walls.

5 “Exposed Rear Yard” means a Rear Yard that is surrounded by solid wall,
6 transparent fencing and gates that are at least five feet (5'-0") tall on all sides of
7 the Rear Yard AND all or a portion of the fencing is View Fence. (See definitions
8 for View Fence.) An Exposed Rear Yard includes those portions of the side yards
9 that are within the Yard Walls or fence.

10 “Open Rear Yard” means a Rear Yard that does not have a wall or fence around
11 it on all sides that is at least five feet (5'-0") tall. Open Rear Yards may have no
12 fencing, no walls, or low walls (less than 5'-0" tall) or low fencing (less than 5'-0"
13 tall) on any one side of the Rear Yard. For clarity, if any one side of a Rear Yard
14 does not have a wall or fence that is at least 5'-0" tall, then it is considered an
15 Open Rear Yard.

16 **OTHER REFERENCED AUTHORITY**

17 City of Surprise Ordinance 2025-14 Appendix AC (amended) § AC105.2
18 provides, in pertinent part, as follows:

19 An outdoor swimming pool, including an inground, aboveground or on-
20 ground pool, hot tub or spa shall be provided with a barrier which shall
21 comply with the following:

- 22 1. The top of the barrier shall be at least 48 inches (1219 mm) above
23 grade measured on the side of the barrier which faces away from the
24 swimming pool. The maximum vertical clearance between grade and
25 the bottom of the barrier shall be 2 inches (51 mm) measured on the
26 side of the barrier which faces away from the swimming pool. Where
27 the top of the pool structure is above grade, such as an aboveground
28 pool, the barrier may be at ground level, such as the pool structure, or
29 mounted on top of the pool structure. Where the barrier is mounted on
30 top of the pool structure, the maximum vertical clearance between the
top of the pool structure and the bottom of the barrier shall be 4 inches
(102 mm). Any decorative design work on a barrier located entirely
upon the subject parcel, and on the side away from the swimming pool,
such as protrusions, indentations, or cutouts or other fixed or
moveable, attached or unattached objects within 24 inches of the pool
barrier, which render the barrier easily climbable, are prohibited. The
wall, fence, or barrier shall be at least 20 inches from the water's edge.

2. Openings in the barrier shall not allow passage of a 4-inch-diameter (102 mm) sphere.
3. Solid barriers which do not have openings, such as a masonry or stone wall, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.
4. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches (1143 mm), the horizontal members shall be located on the swimming pool side of the fence. Spacing between vertical members shall not exceed 1.75 inches (44 mm) in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1.75 inches (44 mm) in width.
5. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches (1143 mm) or more, spacing between vertical members shall not exceed 4 inches (102 mm). Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1.75 inches (44 mm) in width.
6. Chain link fencing shall not be used as a barrier.
7. Where the barrier is composed of diagonal members, such as a lattice fence, the maximum opening formed by the diagonal members shall not be more than 1.75 inches (44 mm).

City of Surprise Community Development, Building Inspections and Plan Review's official website page provides further guidance, in pertinent part, as follows:

If you have an existing fence that meets the barrier requirements around your yard, the City of Surprise does not require an additional fence to surround your pool.⁵

HEARING EVIDENCE

16. After receiving Petitioner's appeal of Respondent's denial of her August 2025 yard wall application, Respondent prepared and maintained an internal file containing the documents, information, and research upon which it relied in making its

⁵ <https://surpriseaz.gov/1514/Swimming-Pool-Barriers>

determination to deny the appeal.⁶ The file included photographs of Petitioner's home, a photograph of the existing Community wall, and an aerial photograph of Petitioner's property indicating where the proposed wall would connect with the Community wall. The file also included a satellite map image of Sweetwater Avenue from Petitioner's home to the community boundary. A handwritten note documented with the map image stated, "During an inspection, homes down Sweetwater Ave from Founders Park Blvd headed west to Reems Rd. It was noted that all homes on the north side of Sweetwater [had] stone on their walls if the home [had] stone on it, and homes that [had] no stone [had] a plain stucco wall. **Stone element on home = stone pillars on side wall. NO stone element on home = [plain] stucco wall.**" Additionally, the file included a handwritten note and drawing titled "DRC suggestion after reviewing [Petitioner's] draft idea on August 7, 2025," which depicted a stucco wall with stone pillars accompanied by the notation, "for consistency down SweetW[ater]." Finally, the file included side-by-side photographic comparisons of selected neighborhood properties, showing three homes with incorporated brick elements and their corresponding walls, each featuring brick pilasters and three homes without incorporated brick elements and their corresponding walls, each featuring plain stucco.

17. Petitioner subsequently submitted a second application for approval of a wall design on or around October 29, 2025. On receiving Petitioner's second application, Respondent prepared and maintained an internal file containing documents, information, and research upon which Respondent relied in making its determination.⁷ The file included a grayscale Google map image depicting the same area as the map described above, but in a slightly more cropped and enlarged view. Below the map image were sketches, handwritten notes, and calculations purporting to be measurements of the distance between pilasters on all walls incorporating stone, located on the north side of Sweetwater Avenue from Petitioner's home west to the community boundary. The file also included a typed version of the handwritten

⁶ Respondent Ex. 7 (errors and emphasis in original).

⁷ Respondent Ex. 9.

1 information. The notes and calculation indicated that the average distance between
2 pilasters, as measured along fourteen walls, was ten feet.

3 18. During the evidentiary hearing, Petitioner introduced a live, 360-degree
4 street-level view via Google Maps of a property located at the intersection of
5 Sweetwater Avenue and West 153rd Avenue, west of Petitioner's home. Although
6 Respondent's evidence relied exclusively on satellite views, the property introduced by
7 Petitioner was readily identifiable on Respondent's maps. This street-level view
8 demonstrated that while the exterior of the home was finished in plain stucco without
9 stone accents, the street-facing wall nonetheless incorporated stone pilasters.

10 **TIMELINE**

11 19. In early 2025, the property at issue was listed for sale. At that time,
12 Carmello Musarra, General Manager with FirstService Residential, was Respondent's
13 community manager. On February 18, 2025, in response to a realtor's inquiry regarding
14 what impact the lack of a wall on the property might have to prospective buyers, Mr.
15 Musarra provided a copy of the Design Guidelines noting that while the Design
16 Guidelines indicated the wall color was "Terra Cotta," the color was actually not known,
17 but based on "submittals" it was either "Terra Cotta, Canyon, or Heritage."⁸

18 20. On or about May 16, 2025, Petitioner received a Resale Disclosure
19 (Disclosure) package prepared by FirstService Residential on behalf of Respondent.⁹
20 The Disclosure reported that there were no known Association violations related to the
21 property.

22 21. On July 23, 2025, Petitioner emailed Tiffany Kramer, the new General
23 Manager with FirstService Residential and Mr. Musarra, to inquire how far along the
24 house the theme wall was required to run.¹⁰ Petitioner provided a detailed description of
25 a wall design idea and attached a sketch. Specifically, Petitioner wrote, "[Petitioner]
26 would then plant the same shrubs to block off the rest of [Petitioner's] patio for privacy.
27 [Petitioner] would then like to have a wrought iron pool fence go over to the posts on the
28 west side of [the] patio. Realistically, [it] would save [Petitioner] about 50% of the cost of

29 ⁸ *Id.*

30 ⁹ Petitioner Ex. B.

¹⁰ Petitioner Ex. D.

1 the fence.” Additionally, Petitioner inquired whether it was an option to not put up a
2 theme wall but instead install a fence around the pool “(with shrubbery around the
3 outside) inside the yard.” The sketch depicted tall, mature shrubs (hedging) that lined
4 the property. On the house side of the hedging was a wrought iron fence running the
5 length of the hedging. Thus, from the public, street-side view the fence was concealed
6 behind the greenery.

7 22. On August 1, 2025, Petitioner emailed Ashleigh Facer with FirstService
8 Residential requesting clarification as to which type of wall needed to be built, a
9 “community wall” (pink and bone colored brick) which was constructed by the developer
10 or a “theme wall” which were all “other” walls.¹¹

11 23. On or about August 18, 2025, Petitioner submitted a Design Review
12 Application to the Design Review Committee (DRC) for approval to build a CMU block
13 wall finished with stucco and paint to match the exterior of the house and a return “wall”
14 of wrought iron.¹²

15 24. On or about August 28, 2025, Petitioner received an email and a letter
16 from Respondent denying the application because “Proposed yard wall needs to
17 maintain cohesive with [Respondent’s] esthetic and adhere to the MPCA documents.
18 Resubmit or appeal to the MPCA Board of Directors.”¹³

19 25. On August 29, 2025, Petitioner emailed Ms. Facer to advise that she
20 would attend the September 4, 2025, DRC meeting, and she wished to proceed with an
21 appeal to the Board.¹⁴ Additionally, Petitioner requested that Respondent provide the
22 citations to the governing documents or provisions used to support its determination to
23 deny Petitioner’s application.

24 26. When Petitioner did not receive a response to her inquiry, on or about
25 September 3, 2025, Petitioner sent an email to follow up and again request that
26 Respondent provide the citations upon which it relied.¹⁵

27 ¹¹ Petitioner Ex. E.

28 ¹² Respondent Ex. 4.

29 ¹³ Petitioner Ex. G (errors in original).

30 ¹⁴ Petitioner Ex. H.

¹⁵ *Id.*

1 27. On September 4, 2025, Petitioner emailed Ms. Facer and Ms. Kramer to
2 request a copy of the August 21, 2025, DRC meeting minutes, during which Petitioner's
3 property was discussed, any documents which designated the type of fence or wall that
4 was required at the time the home was originally built, and any documents or
5 correspondence exchanged between Respondent and the previous property owners
6 regarding the wall or lack thereof.¹⁶

7 28. On September 10, 2025, Ms. Facer emailed Petitioner to advise that the
8 DRC had reviewed Petitioner's initial idea regarding the wrought iron fence with hedging
9 and later the addition of a CMU wall, and during a meeting on August 7, 2025, the DRC
10 considered what type of wall would both adhere to established guidelines as well as
11 maintain aesthetic standards.¹⁷ Following that meeting, Ms. Facer stated she had
12 advised Petitioner that the DRC "would be open" to approving a stucco wall, painted to
13 match the home, with stone pillars incorporated that complemented the home's existing
14 stonework elements. Ms. Facer further advised that Respondent had discussed the
15 matter with its attorney, and "as requested previously and disclosed in the purchase of
16 the lot, the community wall shall be constructed to match the adjoining wall." However,
17 Ms. Facer noted, in an effort to resolve the matter, Respondent was willing to allow
18 Petitioner to construct the stucco theme wall, but stone columns were required.

19 29. On September 10, 2025, Petitioner replied to Ms. Facer to request a
20 reconsideration of the decision and clarification explaining why there was a new
21 requirement to add stone pillars.¹⁸

22 30. In response, on or about September 12, 2025, Ms. Facer advised
23 Petitioner that after multiple reviews of Petitioner's proposal without a resolution, the
24 matter would be presented to the Board at the October 13, 2025 meeting during the
25 executive session.¹⁹

26 31. On October 7, 2025, Ms. Kramer emailed Petitioner's real estate agent to
27 inquire whether Petitioner had received the wall design requirements Mr. Musarra

28 ¹⁶ *Id.*

29 ¹⁷ Petitioner Ex. K.

30 ¹⁸ Petitioner Ex. L.

¹⁹ Petitioner Ex. M.

provided in his February 18, 2025, email. Additionally, Ms. Kramer inquired whether the agent could advise her if the credit Petitioner received on closing was given by the seller in consideration of the wall.²⁰

32. On October 10, 2025, Ms. Facer emailed Petitioner to advise that her pool design application was approved; however, the approval did not constitute permission to begin construction.²¹ Stating, in pertinent part, as follows:

[The] wall must be completed prior to starting pool construction. . . . Access for pool and spa construction to an enclosed yard shall only be allowed across the subject property through the front fence return location and/or through the existing side yard gate. Access to rear yards for pool construction will not be allowed through side yard fences that face a street or common area. Access for pool construction will not be allowed over any common area, including the landscape parkway between the street and the public sidewalk, without prior written approval from the Association (which approval can be withheld at the sole discretion of the Association).

33. Ms. Facer further advised Petitioner she would have five minutes to speak to the Board at the upcoming meeting regarding “the wall issue”.²²

34. On or about October 22, 2025, the Board issued an appeal decision upholding the DRC’s determination to deny Petitioner’s application to construct a plain stucco wall.²³ The denial letter provided Petitioner with two specific options the Board would accept: (1) red brick, or (2) a Theme wall with stone pillars that “must be placed at intervals consistent with comparable walls along Sweetwater Avenue.” The Board noted that no other designs would be approved; one of the two provided options must be selected. The letter further provided, “Failure to [choose one of the two options] may result in enforcement action,” and “the Board of Directors [required] construction of [Petitioner’s] side yard wall to be completed within four (4) weeks of receiving DRC approval.” Further Petitioner was “strongly encouraged to submit [her] revised

²⁰ Petitioner Ex. O.

²¹ Petitioner Ex. P.

²² *Id.*

²³ Petitioner Ex. R.

1 application . . . no later than October 30, 2025, by 11:00 AM, to be reviewed at the DRC
2 meeting that same day,” while noting that “[d]elaying [the] submission may significantly
3 impact [Petitioner’s] ability to meet the construction deadline.”²⁴

4 35. On or about October 29, 2025, Petitioner submitted a second Design
5 Review Application to the DRC for approval to build a CMU block wall finished in stucco
6 and paint to match the exterior of the house, with stone pilasters incorporated every
7 nineteen (19) feet including at the east and west ends for a total of five pilasters, “similar
8 to the distance of pilasters on other walls on Sweetwater.”²⁵ The proposed
9 measurements were a length of 95 feet, a height of 6 feet, and width (thickness) of 6
10 inches.

11 36. On October 31, 2025, Ms. Facer emailed Petitioner to advise that “the
12 number of decorative textured pillars along the width of the wall must be increased.”²⁶
13 Ms. Facer further stated, “Management and Maintenance have measured the average
14 spacing of similar pillars on Sweetwater Avenue homes, and to remain consistent,
15 decorative pillars should be placed approximately every 10 feet.” The DRC required a
16 completed scaled plan or map that included all measurements and clearly labeled
17 details by 10 AM on November 7, 2025.

18 37. On November 9, 2025, Petitioner emailed Respondent to request to have
19 her second application placed in abeyance pending resolution of her complaint filed with
20 the Arizona Department of Real Estate (ADRE).²⁷ Specifically, Petitioner advised the
21 request was made because it was her understanding that a homeowner could not be
22 required to construct a Theme wall.

23 38. On or about November 21, 2025, Ms. Kramer sent a letter regarding
24 “Compliance Follow Up” in which she acknowledged receipt of Petitioner’s request and
25 advised that “the orange fencing must be removed no later than November 30, 2025.”²⁸
26 The letter further provided that should the temporary fencing remain up after the given

27 ²⁴ *Id.*

28 ²⁵ Respondent Ex. 8.

29 ²⁶ Petitioner Ex. T.

30 ²⁷ Petitioner Ex. W.

²⁸ Petitioner Ex. Y (errors in original).

1 timeline, a monetary penalty would be imposed each day until the noncompliant orange
2 fencing was removed according to the Noncompliance Enforcement Guidelines, up to
3 \$250 per day. Additionally, “[i]f the application for required wall [was] not received by
4 December 15, 2025 the application [would] not be reviewed at the DRC Meeting on the
5 December 15, 2025 meeting and [Petitioner’s] account [would] begin to incur a
6 monetary fine of up to \$250 per day starting December 16, 2025.”

7 39. Petitioner requested copies of any information or documentation
8 Respondent claimed it sent to Petitioner prior to the home purchase, regarding a
9 requirement that Petitioner build a wall. On or about November 26, 2025, Ms. Kramer
10 responded to Petitioner’s request stating she had consulted with the Disclosure
11 Department regarding any reported violations and the Department confirmed that none
12 were reported. Ms. Kramer further noted that she had requested to have the Disclosure
13 Department provide to Petitioner “what was sent” prior to the sale of the home.²⁹

14 **HEARING TESTIMONY**

15 **TESTIMONY OF CAITLIN BREWER, PETITIONER**

16 40. Ms. Brewer testified in support of the facts as detailed above in the
17 timeline. She expressed that it had been a frustrating nine months, as she attempted to
18 locate any governing authority that required a homeowner to construct a yard wall on an
19 unenclosed lot or to do so with the exact specifications demanded by Respondent,
20 noting that she was quoted over \$35,000.00 to construct a Community wall. Ms. Brewer
21 testified that when she realized her home was the only home that did not have a
22 developer or homebuilder constructed wall, she concluded that when the master
23 developer turnover occurred, Respondent inherited not only the authority to enforce the
24 design guidelines but also the responsibility to maintain and complete any community
25 infrastructure defined as “original construction.” Ms. Brewer testified that per the Design
26 Guidelines street-facing and corner-lot walls were existing elements of original
27 construction, not homeowner-created improvements. Ms. Brewer argued that because
28 her property was a street-facing corner lot, a wall should have been constructed by the
29 developer or homebuilder at the time the house was constructed. Had the wall been

30 ²⁹ Petitioner Ex. X.

1 built at that time, it would have been classified as original construction. Therefore,
2 because the wall was not constructed at the time the home was built, responsibility for
3 later development of the infrastructure transferred to Respondent, not Petitioner. Ms.
4 Brewer further argued that the Design Guidelines governed homeowner modifications to
5 existing walls; they did not establish any authority to require construction of new walls.
6 Ms. Brewer testified that while she “really would love to have a wall,” she had not
7 located nor been presented with any authorities requiring her to construct one,
8 “especially not [the] upgraded wall that [Respondent] [contended Petitioner] need[ed] to
9 build.”

10 41. On cross-examination, Mr. Baillio asked Ms. Brewer whether at the time
11 she purchased the house she had anticipated she would need to build a wall to enclose
12 the backyard. Ms. Brewer responded that she had initially considered building a pool,
13 and knowing she would have to enclose the pool, considered the possibility of installing
14 a wrought iron fence, similar to ones in place across the street from her home.

15 42. Mr. Baillio then asked Ms. Brewer if Mr. Musarra or her real estate agent
16 had communicated to her that “*if*” a wall “*was going to be*” built that it would need to
17 match the other community walls. Ms. Brewer confirmed she had received that
18 information.

19 43. Addressing Ms. Brewer’s testimony that because the Disclosure did not
20 identify any rule violations related to her home, Respondent’s imposition of a
21 requirement to construct a wall was an unexpected and undisclosed cost, Mr. Baillio
22 stated, “it was not a violation to not have a wall” and asked Ms. Brewer, “so, [if it was not
23 a violation] there was nothing [Respondent] would have to report on a disclosure form
24 for [lack of] a wall, correct?” Ms. Brewer responded that she presumed the same when
25 she received the Disclosure; however, Respondent had threatened to levy fines on her
26 property for not having a wall—\$250.00 per day, every day that the wall remained
27 unconstructed. Ms. Brewer stated that she did not believe the absence of a wall was a
28 violation, “but [Ms. Kramer] and the Board [thought] it [was] a violation.” Mr. Baillio
29 commented that Respondent’s contention of a violation was related to the orange
30 temporary fence Petitioner had installed without DRC approval. In response, Ms.

1 Brewer clarified that the November 21, 2025, compliance follow-up letter specified two
2 different fines would be incurred and quoted, "Then if the application for the required
3 wall is not received by December 15th, the application will not be reviewed, and
4 [Petitioner's] account will begin to incur a monetary fine of [up to] \$250.00 per day
5 starting December 16th." Mr. Baillio retorted, "then that [was] how [Petitioner]
6 [interpreted] it, but that [did not] necessarily mean [that was] how [Respondent] intended
7 it. It could [have meant] that [Petitioner] [could not] [install] a construction fence without
8 [active] construction."

9 44. On questioning, Ms. Brewer affirmed that she was not aware of a specific
10 rule or provision that required Respondent to build a wall on her property.

11 45. On redirect examination, Ms. Brewer stated that although, as Mr. Baillio
12 noted, she could not identify a specific provision assigning the responsibility of
13 constructing a wall on her property to "someone else", conversely, neither she nor
14 anyone else had identified a provision that required her to build a wall. Ms. Brewer
15 stated, "[She had] not [found] anything saying that [she could not] just build the view
16 fence that [she] initially planned [to build] in accordance with the [Charter]."

17 46. Ms. Brewer further testified it was her understanding that a Theme wall
18 was any wall that faced a street or open space and was not a Community wall.
19 Therefore, she concluded that because neither the original developer nor homebuilder
20 constructed a wall on the property, if she was required to build a wall, it would, by
21 definition, have to be a Theme wall. Ms. Brewer testified that her initial inquiries
22 regarding wall design requirements were informal conversations with Ms. Kramer and
23 Ms. Facer. During one such conversation, Ms. Brewer inquired whether it was an option
24 to construct a view fence, as seen on many lots in the community, and to plant
25 additional big shrubs—same as the ones already on the property—but was advised that
26 the Board would not approve.

27 47. Ms. Brewer testified that despite her good-faith attempts to comply, she
28 was repeatedly denied. Ms. Brewer stated she "felt like [she] had to do something"
29 because "if [she felt] this trod upon, other people [felt it] too. They just [did not] have a
30 \$40,000.00 wall looking down at them." Ms. Brewer expressed frustration regarding not

1 only the cost, but that it was not disclosed prior to purchasing the home. She testified,
2 “even the most basic stucco block wall cost over \$18,000.00, so it [was] not [an]
3 insubstantial [amount].” Further, Ms. Brewer stated that construction of a view wall was
4 not prohibited by the Design Guidelines, it simply required approval from the DRC or
5 Board. She testified that construction of a view wall would cost “about \$10,000.00 to
6 \$12,000.00” which was “a big cost burden difference.” Ms. Brewer testified that when
7 she was advised that her design application had been denied because the pilasters
8 were not close enough, she asked for clarification, but never received a response. Ms.
9 Brewer noted that the denial stated the pilasters had to be comparable with other
10 houses along Sweetwater Avenue. Ms. Brewer testified, “There [were] houses on
11 Sweetwater [with] pilasters . . . approximately ten feet apart, and there [was] a house on
12 Sweetwater that [had] pilasters approximately twenty feet apart.” Ms. Brewer testified
13 that Respondent’s requirements had shifted multiple times. She stated, “First, it was red
14 brick, then [Petitioner] need[ed] to build the stucco with pilasters, [then] the pilasters
15 need[ed] [different] spacing, then, [Petitioner] can choose either [option] A or B. If [such
16 a requirement] was written anywhere, there [would not] be a choice; [the requirement]
17 would be one or the other.” Ms. Brewer further testified that she requested a citation to
18 the requirements, in writing, six or seven times, but never received the information. Ms.
19 Brewer testified that overall, she requested citations to the requirements at least ten
20 times.

21 **TESTIMONY OF TIFFANY KRAMER, GENERAL MANAGER**

22 48. Tiffany Kramer, General Manager, testified on behalf of Respondent, in
23 support of the facts and Respondent’s exhibits seven and nine as detailed above in the
24 timeline and hearing evidence sections. Ms. Kramer testified generally, as to the
25 purpose of the DRC and the application procedure for requesting approval of
26 modifications or improvements to a home. Ms. Kramer stated that Respondent
27 communicated the design expectations to prospective buyers as part of the resale
28 package provided during closing. Describing the DRC process, Ms. Kramer stated the
29 committee considered the subject home as a whole including details such as house
30 elevation style or where it was located. Ms. Kramer stated the committee considered the

1 overall goal of the project to ensure it was “in line” with the Design Guidelines.
2 Specifically, “[Did] [the project] meet [the Design Guideline] criteria? [Were] [all
3 committee members] on board with how [it was] going to look aesthetically in the
4 community?”

5 49. Ms. Kramer noted the community incorporated several different
6 architectural styles and the DRC was very strict in preserving those styles. Ms. Kramer
7 explained that the DRC determined the exact architectural style of the home and
8 considered the intent of the builder for that style of home and those elements. She
9 stated, “So that way [it was] not kind of mixed in with each other.”

10 50. Specific to the instant matter, Ms. Kramer testified that Petitioner had
11 applied to the DRC for approval to construct a yard wall and separately for a new pool
12 build. Ms. Kramer testified that Mr. Musarra’s February 18, 2025, email advised
13 Petitioner’s real estate agent of the wall design criteria *if* a wall was “*to be*” built on the
14 property. Ms. Kramer testified, therefore, Petitioner was aware prior to purchasing the
15 home that it was on an unenclosed lot and “*if*” Petitioner wanted a wall, she would be
16 responsible for its construction. Ms. Kramer stated that the homeowner inherited
17 whatever peculiarities the builder designed into a specific lot regardless of its prior use.
18 Ms. Kramer testified that she was not aware of any document or guideline that
19 suggested Respondent inherited an obligation to build any structure on homeowners’
20 lots. On questioning, Ms. Kramer acknowledged that she had received, from Petitioner,
21 multiple requests for the citation to the governing document provision that required
22 Petitioner to construct a wall on her property. When questioned whether she had
23 provided the requested information, Ms. Kramer responded, “[Respondent] provided
24 sections of the Design Guidelines.”

25 51. At further hearing, held three months after the initial hearing, Ms. Kramer
26 stated that in October 2025, while Petitioner’s first wall application denial was on
27 appeal, her pool design application was approved. However, she stated, it was only
28 approved in conjunction with the wall being built. On questioning, Ms. Kramer testified
29 that at no point did Respondent attempt to force Petitioner to build a wall on her
30 property; it was only when Petitioner’s desire to build a pool became known that

1 Respondent contended a wall must be built. On questioning, Ms. Kramer acknowledged
2 that the November 21, 2025, enforcement letter referred to potential fines related to the
3 submission, or lack thereof, of a required wall application and did not reference that the
4 wall was only required due to the desire to build a pool because "it was thought when
5 this was all being discussed that there was going to be a pool built as well." Ms. Kramer
6 testified that if Petitioner abandoned her plans to build a pool, Respondent would not
7 require a wall to be constructed. On further questioning, Ms. Kramer testified that she
8 was not aware of any specific provision that required a wall to be constructed if a
9 homeowner built a pool, but she believed it was a safety concern.

10 52. Ms. Kramer testified that at an unspecified point in time, "The association
11 then maintained that the wall was not necessary unless the pool was being built and
12 that a new violation was sent specific to [only] the orange fence which was separate and
13 . . . the enforcement that [Respondent was] discussing was for the orange fencing. The
14 wall was not being discussed any further." Ms. Kramer continued, "The wall was no
15 longer a concern. Because after review of the documents it was established that no wall
16 needed to be built unless the pool was installed and so a separate violation was specific
17 to the orange fence. No other information [had] been sent regarding the wall or talked
18 about." Ms. Kramer further testified, "There [was] no provision requiring a wall be built
19 specifically on [Petitioner's] property regarding 'this situation' and [that was] why it [was
20 not] pursued further by [Respondent] [n]or [were] any fines assessed regarding building
21 a wall. If a wall needs to be built, if a homeowner wants a wall on that property . . . it
22 was determined [the wall] had to be either the red brick theme or the CMU block wall. If
23 the homeowner [did] not want to build a wall, that [was] perfectly fine and [it would not]
24 be enforced."

25 53. Ms. Kramer testified that the stucco wall with a wrought iron return gate
26 that Petitioner initially applied to the DRC to build did not fit the design guidelines
27 because the particular area of Petitioner's home was on a main road, the home was a
28 main feature, and "those" elements did not coincide with the overall aesthetic that was
29 best for that particular area. Ms. Kramer testified that the Board offered to allow
30 Petitioner to construct a stucco wall with integrated pillars of stone elements, rather than

1 the required red brick Community wall, because there were some hardships expressed
2 as far as cost and timeframe with matching the red brick wall. Ms. Kramer stated, the
3 stucco wall was a secondary option that the committee deemed suitable because other
4 homes had stucco walls. However, if the home had stone elements incorporated, the
5 wall did as well.

6 54. On cross-examination regarding whether there were any governing
7 documents that required a red brick wall to be constructed on Petitioner's lot or provided
8 a numerical standard for pilaster spacing, Ms. Kramer responded, "There were outlines
9 regarding different types of walls within the community and 'some of those talk[ed]'
10 about the red brick wall." Regarding pilaster spacing, Ms. Kramer responded, "The
11 Charter simply specifie[d] that the DRC [had] the decision-making ability to [ensure]
12 'everything [was] in line' when [it approved] architectural requests."

13 55. Ms. Kramer testified that while there were divergent opinions as to
14 whether the type of wall Petitioner was required to build was a Community wall or a
15 Theme wall, there was a consensus that it was to be constructed of the same brick as
16 the other red-brick walls found in the community. Ms. Kramer was then asked how
17 Respondent reconciled its determination that a red-brick wall was required, with the
18 Design Guideline definitions of and differentiation between a Community wall—built by
19 the original developer with a common appearance based on an established theme and
20 enhanced character—and a Theme wall defined as walls that face any street, open
21 space, or common area (unless designated as a Community wall) and constructed of
22 CMU, with a painted stucco finish. Ms. Kramer responded, "[She] knew that
23 [Petitioner's] home, in particular, was a special type of home because it [had been] the
24 welcome center. So, it was just a little bit different than the rest of the properties in the
25 community. The fact that it [did not] have a wall [was] what [made] it a little bit different.
26 Also, it [had been] a focal point of the community."

27 56. With specific regard to the home located at 153rd and Sweetwater
28 Avenues, Ms. Kramer was asked how Respondent determined that homes with stone
29 elements must have walls incorporating stone pilasters, and subsequently, that those
30 pilasters must be built at ten-foot intervals. Ms. Kramer conceded that she lacked the

1 foundational knowledge necessary to classify or ascertain a home's architectural style,
2 specifically the referenced home. Ms. Kramer testified that she could not say whether
3 this particular home had been omitted from the survey used to support Respondent's
4 determination that homes with stone elements must have walls incorporating stone,
5 because the surveyors did not identify which walls were viewed and considered, other
6 than they were all located along Sweetwater Avenue. Regarding pilaster spacing, Ms.
7 Kramer testified that she did not know the total number of walls included in the average-
8 spacing calculation, nor did she personally measure the pilaster spacing;
9 measurements were taken and recorded by the maintenance team. She clarified,
10 however, that many of the nine homes located west on Sweetwater Avenue between
11 Petitioner's home and the community boundary with stone pilaster walls were
12 measured.

13 57. On questioning regarding why Respondent's approval of Petitioner's pool
14 build was provided contingent on completed construction of a yard wall, especially given
15 the Design Guidelines prescribed and placed narrow conditions and strict restrictions on
16 when access to enclosed yards, specifically for pool construction would be granted, Ms.
17 Kramer responded that she did not have an answer.

18 58. Ms. Kramer testified that pursuant to Section 6.3(b) of Respondent's
19 Charter, if a home had an architectural style that incorporated stone elements, the
20 theme wall was required to match that style. Additionally, Design Guidelines Section
21 4.30(b)(viii)—requiring a Theme wall to be finished in stucco and painted to match the
22 color and texture of the house, did not override Design Guidelines Section 4.30(b)(ii)—
23 requiring the wall to match the style and architectural character of the residence. The
24 two subsections were consistent. Ms. Kramer stated that despite the Design Guidelines
25 failing to provide requirements specific to pilaster intervals, she believed the DRC's
26 discretion, as applied to Petitioner's wall design applications, was consistent with design
27 intentions noted in the Charter and Design Guidelines. Ms. Kramer further testified that
28 irrespective of the dispute regarding construction requirements and design discretion,
29 Respondent never imposed a fine on Petitioner for not having a wall on the property.
30

59. In response to Petitioner's question whether "at any point in any correspondence or saying words, [did] anyone communicate to [Petitioner] that [Petitioner] [was not required] to build this wall," Ms. Kramer stated, "[She] [thought] at the original meeting it was said, and [that was] when [Mr. Musarra] was still [there], that if a wall was to be built [those] would be the specifics."

CONCLUSIONS OF LAW

1. A.R.S. § 32-2199 authorizes the administrative law judge to "adjudicate complaints regarding and ensure compliance with . . . [t]itle 33, chapter 16 and planned community documents."

2. A.R.S. § 32-2199.01 permits a member of a planned community to file a petition with the Department for a hearing concerning the planned community association's alleged violations as set forth in Title 33, Chapter 16. This matter lies within the Department's jurisdiction. That statute provides that such petitions will be heard before the Office of Administrative Hearings.

3. A.R.S. § 32-2199.02 authorizes the administrative law judge to "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." This Tribunal is not authorized to order other remediation or order civil penalties for other conduct.

4. Petitioner bears the burden of proof to establish that Respondent violated applicable statutes, CC&Rs, and/or Bylaws by a preponderance of the evidence.³⁰ Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.³¹

5. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."³²

6. Restatement (Third) of Property: Servitudes § 6.13 provides, in pertinent part:

³⁰ See 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).

³¹ See A.A.C. R2-19-119(B)(2).

³² MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 (1) In addition to duties imposed by statute and the governing documents,
2 the association has the following duties to the members of the
3 common-interest community:

4

5 (b) to treat members fairly;

6 (c) to act reasonably in the exercise of its discretionary powers
7 including rulemaking, enforcement, and design-control powers;

8 (2) A member challenging an action of the association has the burden of
9 proving a breach of duty by the association . . . [and] that the breach
10 has caused, or threatens to cause, injury to the member individually or
11 to the interests of the common-interest community.

12 7. In Arizona, when construing statutes, courts look first to a statute's
13 language as the best and most reliable index of its meaning. If the statute's language is
14 clear and unambiguous, the Tribunal gives effect to that language and applies it without
15 using other means of statutory construction, unless applying the literal language would
16 lead to an absurd result. Words should be given "their natural, obvious, and ordinary
17 meaning."³³

18 8. Unless defined by the legislature, words in statutes are given their ordinary
19 meanings.³⁴

20 9. Each word, phrase, clause, and sentence of a statute or rule must be given
21 meaning so that no part will be void, inert, redundant, or trivial.³⁵

22 10. Statutes should be interpreted to provide a fair and sensible result.

23 11. In his opening statement, Mr. Baillio asserted that the statutes and
24 governing documents Petitioner cited in her complaint did not apply to the circumstance
25 of whether a wall "need[ed] to be built or not." Further, Mr. Baillio asserted that the
26 statutes and governing documents cited by Petitioner did not relate to the "alleged
27 improper fines or governance on whether a wall [could] be built." Mr. Baillio argued the
28 complaint should be dismissed on procedural deficiencies. However, Mr. Baillio
29 continued in his opening statement that even if the substance of what Petitioner was

30 ³³ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

³⁴ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

³⁵ See *Deer Valley v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 “trying to complain about” was considered, the evidence would show Petitioner wanted
2 to build a pool on her lot, which led to a series of events. Specifically, to get the pool
3 approved by Respondent, Petitioner required a permit from the city; to get the permit,
4 she need[ed] to enclose her backyard; to enclose the backyard, she had to build a wall;
5 and the wall had to comply with Respondent’s design guidelines. The DRC and the
6 board applied the design guidelines in this instance consistently with those guidelines
7 and other properties similarly situated to Petitioner’s house including the design
8 aesthetic.

9 12. On questioning by the undersigned Administrative Law Judge as to
10 whether Mr. Baillio was making an oral motion to dismiss due to incorrect or inaccurate
11 citations of law, Mr. Baillio asserted that he did not believe Petitioner could prove her
12 claim because the statutes she claimed were violated did not match her complaint
13 regarding the authority to require wall construction. Mr. Baillio continued, however, that
14 he was willing to proceed and only wished to note his belief that a procedural issue
15 existed that would make it difficult for Petitioner to prevail.

16 13. After consideration of Mr. Baillio’s objection, the undersigned
17 Administrative Law Judge determined that the objection was a matter of Notice rather
18 than jurisdiction or procedure. Specifically, the undersigned Administrative Law Judge
19 noted that while the legal citations in the complaint may be inaccurate, the narrative of
20 the complaint was clear, and Mr. Baillio presented a well-mapped understanding of
21 Petitioner’s complaint in his opening statement. Pursuant to Arizona Rule of Civil
22 Procedure 8(a)(2), Arizona follows a notice pleading standard to “give the opponent fair
23 notice of the nature and basis of the claim and indicate generally the type of litigation
24 involved.”³⁶ Therefore, the undersigned Administrative Law Judge ruled that Respondent
25 had proper notice of the complaint issue, and the hearing would proceed on the merits.

26 14. The Petition at issue in this matter asserted only that Respondent had
27 improperly required Petitioner to construct a community infrastructure and unlawfully
28 levied fines for non-compliance. Despite Mr. Baillio’s initial objection that Respondent

29 ³⁶ **Cullen v. Auto-Owners Ins. Co.**, 218 Ariz. 417, 189 P.3d 344 (2008), (citing *Mackey v. Spangler*, 81
30 Ariz. 113, 115, 301 P.2d 1026, 1027-28 (1956)).

1 had not received clear notice of the issue to be heard, his opening-statement assertion
2 that the evidence would show not only that Petitioner was required to construct the wall,
3 but also that the wall type and design elements were governed by Respondent's Design
4 Guidelines, and those guidelines were as consistently applied to Petitioner's case as to
5 other properties similarly situated, effectively expanded the scope of the hearing.
6 Petitioner did not object to this expanded scope, and both parties presented evidence in
7 support of their arguments and positions as to the Design Guideline requirements and
8 Respondent's application thereof to Petitioner. Therefore, pursuant to Arizona Rule of
9 Civil Procedure 15(b), in addition to Petitioner's expressly stated issue regarding
10 whether Respondent exceeded the scope of its powers by requiring Petitioner to
11 construct a wall on her property and levying fines for non-compliance, this decision
12 addresses the issue of whether Respondent breached its duty to treat Petitioner fairly
13 and act reasonably in the exercise of its discretionary decision-control powers and if
14 Respondent did so breach this duty, whether such breach caused or threatened to
15 cause injury to Petitioner or to the interests of the community.

16 15. The threshold issue in the instant matter is whether Petitioner was
17 required to construct a yard wall on her property. Respondent did not proffer any statute,
18 regulation, or rule that either explicitly or implicitly required Petitioner to construct a yard
19 wall. On the contrary, the evidentiary record established not only that a provision
20 requiring Petitioner to construct a yard wall did not exist, but also that yard walls,
21 generally, were discouraged. In fact, at the further hearing, Ms. Kramer testified directly
22 that, although she could not recall the exact date, at some point after the initial hearing
23 in this matter, Respondent determined that Petitioner was not required to construct a
24 yard wall.

25 16. Pursuant to Respondent's Design Guidelines, a key objective at Marley
26 Park was to minimize the amount and visibility of fences and yard walls to the greatest
27 extent practicable and reasonable.³⁷ To achieve this objective, the Design Guidelines
28 provided, as a general philosophy, that fences and yard walls should be designed and

29 ³⁷ Respondent Design Guidelines § 4.30.
30

placed to minimize their appearance and visual impact.³⁸ To further support this objective, Section 5.6.2(a) of the Design Guidelines provided that “screen planting” not only served to screen and mitigate yard walls, fences, and unarticulated building walls, but provided relief to large exposed areas of hardscape and privacy to residential spaces exposed to traffic. Additionally, Section 5.8 of the Design Guidelines provided that rear yard landscape in compliance with the guidelines did not require approval prior to installation, unless the rear yard was visible from public view, including conditions with a “defined open rear yard.” The Design Guidelines defined an open rear yard, in pertinent part, as a rear yard that did not have a wall or fence around it on all sides that was at least five feet tall. Collectively, these provisions established a clear community intent to restrict wall usage and preserve visual openness. This objective was evidenced not only by provisions strictly mandating approved wall designs to minimize visibility, but also by the guidelines’ explicit categorization of yards as enclosed, exposed, or open. Specifically, by defining an open yard as one lacking a wall on at least one side and requiring distinct landscaping designs in contrast to enclosed yards, the guidelines favored the preservation of open space. Therefore, the undersigned Administrative Law Judge concludes that Respondent did not have general authority to require Petitioner to construct a yard wall on her property.

17. However, at the further hearing, Ms. Kramer attempted to justify Respondent’s initial directive by asserting that a yard wall was required solely because Petitioner had expressed a desire to build a pool. While Design Guidelines Section 4.98 governed swimming pools, it did not support a sweeping yard wall mandate based merely on intent. Section 4.98 provided that swimming pools were allowed only within a defined enclosed rear yard, a defined exposed rear yard, or an enclosed side yard, while explicitly prohibiting them in front yards. By listing both permissible and impermissible areas for pool construction, Section 4.98 conspicuously excluded “defined open” rear yards from the permissible zones. Therefore, considering the guidelines in their totality, the undersigned Administrative Law Judge concludes that

³⁸ *Id.* at § 4.30(l)(i).

Respondent's authority to require a yard wall under this narrow exception was contingent solely on the actual construction of such an improvement.

18. Having determined that Respondent had the limited authority to require Petitioner to construct a yard wall if she built a pool, it must next be determined whether Respondent acted reasonably and treated Petitioner fairly under its discretionary powers. Pursuant to Restatement (Third) of Property Section 6.13, associations have a duty to treat common-interest community members fairly and act reasonably in exercising discretionary powers including rulemaking, enforcement, and design-control powers. While its governing documents granted Respondent a measure of subjective discretion in managing community aesthetics, that authority was not boundless. Subjective discretion cannot shield arbitrary whims, bad faith, or actions that exceed the scope of Respondent's authorized power.

19. At issue in the case at bar is whether Respondent abused its design-control powers when it issued application denials based on architectural styles it failed to identify. Although Respondent was permitted to utilize subjective judgment to maintain community harmony, such decisions must still be tethered to existing community standards. Discretion becomes an arbitrary abuse of power when used to enforce imaginary rules or shroud bad-faith actions in the guise of aesthetic judgment. While Respondent's Charter and Design Guidelines accorded the DRC such subjective latitude, discretion cannot mask unguided caprice or enforcement of standardless whims. The record revealed a pattern of shifting, ad hoc mandates. Specifically, Respondent initially denied Petitioner's screen-planting fence proposal without explanation, subsequently demanded stone pilasters, and then rejected Petitioner's compliant five-pilaster design by retroactively inventing a specific ten-foot spacing metric.

20. Respondent's justification—that it was strictly preserving authentic architectural styles—was completely unsupported by the evidence. Ms. Kramer testified that the DRC's methodology required identifying a home's specific architectural style before rendering a design decision. However, Ms. Kramer also conceded she lacked the foundational knowledge to ascertain the style of Petitioner's home. Respondent

cannot claim its subjective discretion was exercised to maintain style authenticity when it lacked the baseline capacity to identify the style it was purportedly protecting. Furthermore, Petitioner successfully rebutted Respondent's reliance on a neighborhood 'study' by demonstrating that Respondent inconsistently applied its purported stone-matching formula to other homes within the same parameters. Subjective discretion does not empower Respondent to enforce imaginary, unwritten rules through unverified and discriminatory metrics.

21. Independent of its aesthetic determinations, Respondent's conduct was further illuminated by its enforcement mechanisms. An association's enforcement powers must be executed in good faith, with transparency, and in strict compliance with its own foundational documents.

22. As set forth in Finding of Fact No. 33, Respondent's October 22, 2025, appeal decision letter explicitly stated that construction must be completed "within four (4) weeks of receiving DRC approval." However, the remaining text of that directive completely contradicted the trigger date and exposed a stark logical fallacy. Respondent "strongly encouraged" Petitioner to submit her revised application by October 30, 2025, warning that delaying submission to the November 13, 2025, meeting "may significantly impact [her] ability to meet the construction deadline."

23. This warning was fundamentally nonsensical. If the four-week construction clock truly ran from the future date of "DRC approval," an administrative delay in submitting or reviewing the application would simply push back the approval date—and consequently the final construction deadline. It would have absolutely no impact on Petitioner's physical ability to construct the wall within the allotted four-week window post-approval. By warning Petitioner that missing the October 30, 2025, meeting would jeopardize her deadline, Respondent betrayed its true intent: attempting to retroactively apply an unwritten, manufactured timeline running from the date of the letter itself, effectively stripping Petitioner of her rights.

24. Respondent mandated that Petitioner complete construction within an impossible four-week window, yet simultaneously prevented her from obtaining the very approval needed to start by continuously shifting its aesthetic demands. Most egregious

1 was Respondent's response to Petitioner's reasonable request to place the matter in
2 abeyance pending the resolution of an administrative complaint. Rather than
3 maintaining the status quo or providing a reasoned response, Respondent issued a
4 'Compliance Follow Up' letter, nearly two weeks after Petitioner's request, threatening to
5 assess a compounding monetary fine of \$250.00 per day if a revised application was
6 not received by December 15, 2025.

7 25. Weaponizing daily fines against a homeowner trapped in an approval
8 stalemate of Respondent's own making—while simultaneously ignoring the longer
9 completion timelines set forth in its own foundational documents—constituted a severe
10 breach of the duty of procedural fairness and acted as a definitive badge of bad faith.
11 Therefore, the undersigned Administrative Law Judge concludes that because
12 Respondent used its discretionary power in an attempt to enforce arbitrary whims
13 regarding an unidentified design style, subsequently enforce a deceptive, logically
14 unsound four-week deadline that directly violated the Charter's one-year completion
15 window and the Design Guidelines' stricter six-month window, and issue an imminent
16 threat of a \$250.00 daily fine to coerce compliance, Respondent failed to act reasonably
17 and breached its fiduciary duty to treat Petitioner fairly under Restatement Section 6.13.

18 26. Having determined that Respondent breached its fiduciary duty and acted
19 unfairly under its discretionary powers, it must next be determined whether this breach
20 caused or threatened to cause injury to Petitioner or the interests of the community.
21 Pursuant to Restatement (Third) of Property Section 6.13, a common-interest
22 community member seeking relief from an association's breach of duty must
23 demonstrate that the noncompliance either caused, or threatened to cause, injury to
24 themselves or to the interests of the community. Here, Respondent argued that
25 because it ultimately withheld levying any monetary fines, Petitioner suffered no
26 cognizable injury. However, such defense is rejected. The record supported that
27 Respondent's arbitrary and unfair conduct directly subjected Petitioner to both
28 excessive unnecessary construction cost demands and the immediate threat of financial
29 penalties.
30

27. First, Respondent's standardless aesthetic shifting threatened to cause substantial, financial injury to Petitioner. As established in Findings of Fact Nos. 20, 39, and 46, Petitioner originally proposed a highly economical, screened wrought-iron design that would have reduced construction expenses by approximately half. By denying this proposal without explanation, and repeatedly rejecting subsequent compromise applications, Respondent sought to compel Petitioner to erect a Community wall with a cost exceeding \$35,000.00, or a stucco block wall with stone pilasters, when a basic stucco wall without pilasters exceeded \$18,000.00. Forcing a homeowner to absorb a cost variance potentially exceeding \$25,000.00 through standardless, ad hoc mandates constitutes a direct threat of substantial economic injury.

28. Second, the threat of administrative penalty was concrete, immediate, and coercive. In her November 21, 2025, letter (Finding of Fact No. 37), Ms. Kramer issued an absolute ultimatum: if a newly revised application conforming to the Board's unwritten spacing metrics was not received by December 15, 2025, Petitioner's account would automatically begin incurring a compounding monetary fine of up to \$250.00 per day. This was not a remote or hypothetical penalty; it was a formal compliance directive designed to weaponize financial duress against a homeowner trapped in an approval stalemate of Respondent's own making.

29. To hold that an association may issue severe, bad-faith financial threats and subsequently escape accountability merely by withholding collection until after litigation commenced would void the protective purpose of Section 6.13. Such a finding would actively damage the interests of the community at large by signaling that associations may deploy deceptive timelines, shifting mandates, and predatory penalties as instruments of intimidation without consequence. Therefore, the undersigned Administrative Law Judge concludes that Respondent's breach of its duty to act reasonably and fairly in fact threatened to cause injury to Petitioner and the interests of the community.

ORDER

IT IS ORDERED that Petitioner be deemed the prevailing party in this matter.

IT IS ORDERED that Respondent pay Petitioner the filing fee of \$500.00, to be paid directly to Petitioner within thirty (30) days of this Order.

IT IS ORDERED Respondent is directed to comply with the requirements of the Community Charter for Marley Park, Marley Park Residential Design Guidelines, and Restatement (Third) of Property: Servitudes § 6.13.

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, August 10, 2026.

/s/ Nedra-Su Kawasaki
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile August 10, 2026 to:

Susan Nicolson, Commissioner
Arizona Department of Real Estate
snicolson@azre.gov
mneat@azre.gov
lrecchia@azre.gov
labril@azre.gov
vnunez@azre.gov
gosborn@azre.gov
dmorehouse@azre.gov

Caitlin Brewer
caitlinbrewer@gmail.com

Austin Baillio, Esq.
Maxwell & Morgan, P.C.
abaillio@hoalaw.biz

Marley Park Community Association
tiffany.kramer@fsresidential.com

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

By: OAH Staff