

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 In the Matter of:

3 No. 25F-H128-REL

4 Cyndie Shaffstall,

5 **ADMINISTRATIVE LAW JUDGE**
6 **DECISION**

7 **Petitioner,**

8 v.

9 Pinetop Lakes Association,

10 **Respondent.**

11 **HEARING:** June 29, 2026 at 3:00pm

12 **APPEARANCES:** Petitioner Cyndie Shaffstall appeared on her own behalf with
13 observer Patricia Love. Attorney Augustus Shaw appeared on behalf of Respondent
14 Pinetop Lakes Association with witness Dawn Yarosh and observer Sylvia Sander.
15 Observer Karen Kansfield.

16 **ADMINISTRATIVE LAW JUDGE:** Nicole Robinson

17 **EXHIBITS ADMITTED INTO EVIDENCE:** Arizona Department of Real Estate
18 Packet ("AZDRE Packet"). Petitioner Exhibits A through F. Respondent Hearing
19 Memorandum and Exhibits A through C.

20 **FINDINGS OF FACT**

21 **BACKGROUND AND PROCEDURE**

22 1. The Arizona Department of Real Estate ("Department") is authorized by
23 statute to receive and to decide petitions for hearings from members of homeowners'
24 associations and from homeowners' associations in Arizona.

25 2. On or about December 5, 2025, Cyndie Shaffstall ("Petitioner") filed a one
26 issue petition with the Department which alleged that the Pinetop Lakes Association
27 ("Respondent") violated its covenants, conditions, and restrictions ("CC&Rs").¹

28 3. The relief requested by Petitioner, other than ordering Respondent to pay
29 to Petitioner the filing fee required by ARIZ. REV. STAT. § 32-2199.01 if Petitioner

30 ¹ See AZDRE Packet – HOA Petition Request Form. Petitioner had two issues listed in her complaint and
in this hearing, the Tribunal heard the issue regarding whether or not Petitioner's structure was
considered a "fence" which would require architectural approval. The Tribunal did not hear Petitioner's
allegation that Respondent violated the open meeting law. Petitioner was advised that she paid the filing
fee for only one issue.

1 prevailed, included the following, (1) to order Respondent to abide by the Arizona
2 statute specified in the complaint section and (2) order Respondent to abide by the
3 section(s) of the condominium/planned community document(s) specified.²

4 4. On February 26, 2026, the Department sent a Homeowner's Association
5 ("HOA") Notice of Petition to Respondent which informed Respondent of the petition
6 initiated against it.³ In addition, the petition informed Respondent to send a timely
7 response to the Department and to Petitioner no later than March 18, 2026.⁴

8 5. On or about March 18, 2026, Respondent returned its ANSWER to the
9 Department whereby it denied Petitioner's claims and moved to dismiss the matter.⁵

10 6. On or about May 18, 2026, the Department referred this matter to the
11 Office of Administrative Hearings ("OAH"), an independent state agency, for an
12 evidentiary hearing to address the issues set forth as follows:

13 The Petitioner's allegation within the petition states, "According to CC&R
14 article A, section 7, the Pinetop Lakes Association has improperly
15 classified my movable decorative plant backdrop as a "fence" requiring
16 prior architectural approval and violated Arizona's open meeting law and
17 due process requirements in reaching its decision."⁶

18 **THE PARTIES AND GOVERNING DOCUMENTS**

19 7. Respondent is a planned community association whose members own
20 properties in the Pinetop Lakes residential real estate development located in Pinetop,
21 Maricopa County, Arizona.

22 8. Petitioner is a property owner in Pinetop Lakes, purchasing her home
23 around March 2017.

24 9. The governing documents include the CC&Rs, official title, DECLARATION
25 OF ESTABLISHMENT OF CONDITIONS, RESERVATIONS, AND RESTRICTIONS AND MUTUAL AND
26 RECIPROCAL COVENANTS AND LIENS, RUNNING WITH THE LAND – Pinetop Lakes Country
27 Club Unit One, Lots 1-103.⁷

28 10. The CC&Rs provides, in pertinent part, these sections:

29 ² *Id.*

30 ³ See AZDRE Packet – Notice of Petition.

⁴ *Id.*

⁵ See AZDRE Packet – Complaint Response Executed.

⁶ See AZDRE Packet – HOA Petition Request Form.

⁷ See Respondent Exhibit A.

1 **Article A, Section 7**

2 No building, **fence**, wall, antenna, broadcasting tower or other structure
3 shall be commenced, erected, maintained or remodeled until the plans
4 and specifications showing the nature, kind, shape, color, height, material,
5 floor plats, location and approximate cost of such a structure shall have
6 been submitted to and approved by the Association and a copy thereof, as
7 finally approved, lodged permanently with said Association. Failure of said
8 Association to reject in writing said plans and specifications within thirty
9 days from the date the same are submitted shall constitute approval of
10 said plans and specifications.

11 Approval of plans or specifications shall not be unreasonably withheld,
12 and rejection of any plats or specifications must be based on reasonable
13 judgment as to the effect that said construction changes and alterations
14 will have on the subdivision as a whole. The Association shall have the
15 right to refuse to approve any such plans or specifications or grading plan,
16 which are not suitable or desirable, in its opinion, for aesthetic, or any
17 other reasons, and in so passing upon such plans, specifications, and
18 grading plans, it shall have the right to take into consideration the
19 suitability of the proposed building or other structure, and of the materials
20 of which it is to be built to the site upon which it is proposed to erect the
21 same, the harmony thereof with the surroundings and the effect of the
22 building or other structure as planned on the outlook from the adjacent or
23 neighboring property. All subsequent additions to or changes or
24 alterations, including but no limited to painting of exterior surfaces of any
25 building, fence, wall or other structure, shall be subject to the prior
26 approval of the Association.

27 11. Effective June 2025, Respondent's Rules & Regulations⁸ provides, in
28 pertinent part, these sections:

29 **3.7 Fences**

30 The Association must approve all fencing prior to erecting the fence.
 Plans for any type of fencing showing the nature of the building material,
 as well as where the fence will be located on the lot, must be submitted for
 approval to the association, prior to construction. Fencing permits are
 valid for 60 days from the date of issuance.

3.22 Permanent Landscape Structures

 Permanent landscape structures such as fire-pits, outdoor fireplaces,
 gazebos, courtyards and decorative borders require a permit from the

⁸ See Petitioner Exhibit C.

Association. Permanent landscape structures must be constructed of natural materials.⁹

12. Respondent's CC&Rs do not define the word fence, the following word is defined, as such:

Dictionary.com defines fence as "a barrier enclosing or bordering a field, yard, etc., usually made of vertical posts connected with horizontal sections of sturdy material or materials, as wood, metal, vinyl, or wire, used to prevent entrance, to confine, or to mark a boundary."¹⁰

Wikipedia defines decorative fencing as "to enhance the appearance of a property, garden or other landscaping."¹¹

Britannica defines fence as a "barrier erected to confine or exclude people or animals, to define boundaries, or to decorate. Timber, soil, stone, and metal are widely used for fencing. Fences of living plants have been made in many places, such as the hedges of Great Britain and continental Europe and the cactus fences of Latin America."¹²

HEARING EVIDENCE

13. Petitioner testified on her own behalf. Respondent presented the testimony of Dawn Yarosh, General Manager. Administrative notice was taken of the Department's electronic file and NOTICE OF HEARING.

14. Ms. Yarosh testified that the CC&Rs nor the rules and regulations define the word "fence." However, Ms. Yarosh argued that the "temporary landscaping structure" or "non-permanent decorative border" which were two ways Petitioner described the installation, were not easy to move and included many cinder blocks and wood planks. Ms. Yarosh contended that the landscaping section in the rules and regulations require that "decorative borders" require a permit from the Association. Ms. Yarosh testified that the feature installed by Petitioner is a fence and Petitioner did not submit a request nor did she receive approval to install.

15. Ms. Shaffstall argued that her installation did not include any glue, it was not permanent/affixed, not attached to her home, was movable, and followed the

⁹ *Id.*

¹⁰ <https://www.dictionary.com/browse/fence>

¹¹ <https://en.wikipedia.org/wiki/Fence#:~:text=A%20fence%20is%20a%20structure,boards%2C%20wire%2C%20rails%20or%20netting>

¹² <https://www.britannica.com/technology/fence-barrier>

1 property line. Ms. Shaffstall explained that she wanted “something of height” and that
2 “delineated [her] driveway.” Ms. Shaffstall further testified that she wanted to keep
3 people off her landscaping, deter cars from driving, and keep others off the yard due to
4 the school bus stop right next to her property. Ms. Shaffstall testified that the
5 Association Board gave her fifteen days to take down her installation. Ms. Shaffstall
6 stopped beautifying the installation with flowers due to her request for fair hearing and
7 complaint filing.

8 **ARGUMENTS**

9 Petitioner’s argument

10 16. Petitioner argued that she referred to her installed structure as a
11 nonpermanent, decorative border. Petitioner adamantly contested that the structure
12 was not permanent, it should not be considered a fence, and that she built a pretty
13 border. Petitioner testified that the installation included less than 100 cinder blocks and
14 about 50 4x4 wood planks. Petitioner further described the installation weighing
15 approximately 70 pounds per section, that there were about 35 to 40 sections, and that
16 the materials weighed about 600 pounds. Petitioner requested that the Tribunal grant
17 her appeal.

18 Respondent’s argument

19 17. Respondent argued that Petitioner installed a “fence,” a “structure,”
20 without approval per the CC&Rs. Respondent argued that Petitioner installed a wooden
21 structure that was intended to be a boundary with a plant backdrop on some of the
22 posts. Respondent argued that Petitioner did not provide any definitions, written
23 documents, case law or authority that defines the installed structure as a “movable plant
24 backdrop.” Respondent argued that Petitioner has failed to meet her burden and the
25 Tribunal rule that the structure constitutes a fence.

26 **CONCLUSIONS OF LAW**

27 1. The Department’s jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and
28 32-2199 *et seq.*, regarding a dispute between an owner and a planned community
29 association. The owner or association may petition the department for a hearing
30 concerning violations of community documents or violations of the statutes that regulate

1 planned communities as long as the petitioner has filed a petition with the department
2 and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

3 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-
4 2199.01(D), 32-2199.02, and 41-1092 *et seq.*, OAH has the authority to hear and
5 decide the contested case at bar. OAH has the authority to interpret the contract
6 between the parties.¹³

7 3. In this proceeding, Petitioner bears the burden of proving by a
8 preponderance of the evidence that Respondent violated the aforementioned CC&Rs.¹⁴

9 4. A preponderance of the evidence means “proof which leads the [trier of
10 fact] to find that the existence of the contested fact is more probable than its
11 nonexistence.”¹⁵

12 5. Petitioner referred to her installation as a “movable decorative plant
13 backdrop” and a “nonpermanent decorative border,” among other terms. The evidence
14 established that the installation was “pretty,” however the issue to be decided was not in
15 regard to the structure’s aesthetic beauty. The Oxford Learners Dictionary defined
16 “structure” as “the way in which the parts of something are connected together,
17 arranged or organized; a particular arrangement of parts.”¹⁶

18 6. The preponderance of the evidence establishes that the installation
19 constructed by Petitioner constitutes a “structure,” at the least. The CC&Rs and the
20 Rules & Regulations clearly express that this “structure” needed to receive approval by
21 the Association prior to its erection. The Petitioner did not submit plans or receive
22 approval from the Association to erect the structure. Accordingly, because Petitioner
23 failed to meet her burden of proof, her petition must be denied.

24 **ORDER**

25 Based on the foregoing,

26 **IT IS ORDERED** that Petitioner’s petition be denied.

27
28 ¹³ See *Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

29 ¹⁴ See ARIZ. ADMIN. CODE R2-19-119.

30 ¹⁵ *In re William L.*, 211 Ariz. 236, 238 (App. 2005) (quoting *Matter of Appeal in Maricopa Juv. Action No. J-84984*, 138 Ariz. 282, 283 (1983)).

¹⁶ https://www.oxfordlearnersdictionaries.com/us/definition/english/structure_1

IT IS FURTHER ORDERED pursuant to ARIZ. REV. STAT. § 32-2199.02(A), Respondent shall not reimburse Petitioner's filing fee as required by ARIZ. REV. STAT. § 32-199.01.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be forty (40) days from the date of that certification.

Done this day, July 20, 2026

/s/ Nicole Robinson
Administrative Law Judge

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