

1 **Final agency action regarding decision below:**

2
3 **ALJFIN ALJ Decision final by statute**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 W. Douglas Stickler,

8 Petitioner,

9
10 V

11 Orange Grove Mobile Estates Homeowners
12 Association

13 Respondent.
14

No. 07F-H067001-BFS

**ADMINISTRATIVE LAW JUDGE
DECISION**

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17 **HEARING:** December 18, 2006.

18 **APPEARANCES:** W. Douglas Stickler appeared personally. The Orange Grove
19 Mobile Estates Homeowners Association was represented by its attorney, Tanis A.
20 Duncan, Esq.

21 **ADMINISTRATIVE LAW JUDGE:** Brian Brendan Tully
22

23
24 Based upon the evidence of record, the following Findings of Fact, Conclusions
of Law and Order are made:

25
26 **FINDINGS OF FACT**

- 27
28 1. W. Douglas Stickler ("Petitioner") and his wife, Patricia Ronell Stickler, are the
29 owners of the following property as joint tenants with rights of survivorship:
30

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 Lots 138, 139 of ORANGE GROVE MOBILE ESTATES, a
2 subdivision of Pima County, Arizona, according to the map
3 of record in the Pima County Recorder's Office in Book 22 of
4 Maps and Plats at Page 91.

- 5 2. The Orange Grove Mobile Estates Homeowners Association ("Respondent") is
6 an Arizona non-profit corporation and the homeowners' association for
7 Petitioner's property.
- 8 3. At the time Petitioner and his wife purchased their property, the property was
9 subject to, among other things, the restrictions, reservations, conditions and
10 covenants contained in the Declaration of Restrictions for Orange Grove Mobile
11 Estates dated October 18, 1971, recorded March 31, 1972 in Docket 4220 at
12 Page 486 in the records of Pima County, Arizona ("1971 Declaration").
- 13 4. The 1971 Declaration had no age limitation for mobile homes affixed to the
14 property of a homeowner of the association. However, paragraph (1) of the 1971
15 Declaration required that "[n]o building, including any addition or accessory,
16 mobile home, fence, wall, planting exceeding two feet in height, or other structure
17 or improvement, shall be commenced, created, erected or maintained, nor shall
18 any addition to or change or alteration therein be made until the plans, and
19 specification showing the nature, kind, shape, heights, floor plan, materials,
20 location and approximate cost of such structure or improvement, shall first have
21 been submitted to and approved in writing by the Trustee." The Trustee at that
22 time was Stewart Title & Trust, for the benefit of Gene E. Anderson.
- 23 5. In 1987, the majority of lot owners of Orange Grove Mobile Estates approved the
24 Declaration of Covenants, Conditions and Restrictions for Orange Grove Mobile
25 Estates ("1987 Declaration"), which was subsequently recorded in Docket 8048
26 at Page 1848 of the records of Pima County, Arizona.
- 27 6. The 1987 Declaration removed all real property described on the plat recorded at
28 Book 28, Page 75 of the Maps and Plats in the Pima County, Arizona, Recorder's
29 Office, from the Orange Grove Mobile Estates subdivision. The 1987 Declaration
30 further revoked and superseded the previous restrictions on the remaining lots,
 which included the Petitioner's property.

1 7. The 1987 Declaration required, among other things, that “[f]rom and after the
2 date of recording of this Declaration, any newly installed mobile home or any
3 replacement of an existing mobile home must not be more than five (5) years of
4 age at the time of installation.” The 1987 Declaration further provided that “[i]n
5 the event of hardship or for good cause shown to the Committee, the Committee
6 may waive all or any part of the foregoing age or dimension requirements.”

7 8. The 1987 Declaration defined “Committee” as “the Architectural Control
8 Committee established pursuant to this declaration.”

9 9. Paragraph 4.04(a) of the 1987 Declaration provides for the following restrictions:

10
11 Except as already erected upon a Lot prior to the recording of this
12 Declaration no building, fence, mobile home, wall, antenna, satellite
13 dish, awning, sun shade, exterior landscaping (except in fully
14 enclosed yards on a Lot), or other improvement, attached or
15 detached from other structures, shall be erected, placed, altered, or
16 maintained on any Lot until the construction plans and
specifications and a plan showing the location of the structure or
plot plan have been approved by the Committee as to harmony with
the use restrictions as contained in this Declaration.

17 10. Paragraph 4.04(c) provides, among other things, that the Committee may grant
18 hardship variances as follows:

19
20 The Committee may at any time or times, in its sole discretion,
21 except as otherwise limited by these Declarations, grant a
22 reasonable hardship variance from the restrictions contained in
23 these Declarations, upon such terms and conditions as it shall
24 deem appropriate, subject however, to existing County building
codes and zoning regulations.

25 11. By letter dated September 12, 1995, Petitioner wrote a letter to the Committee
26 seeking permission to erect a carport on his property. The request was made by
27 Petitioner prior to his commencing any work. This demonstrated Petitioner’s
28 knowledge and compliance of the 1987 Declaration’s requirement for requesting
29 prior approval.
30

1 12. By letter dated June 29, 2006, Petitioner requested permission from the
2 Committee to replace his mobile home. There was no disclosure of the age of the
3 new mobile home. Petitioner requested approval as soon as possible "as the
4 Pima County Replacement Home Permit should be issued sometime in the next
5 7-10 days."

6 13. On or about July 6, 2006, Petitioner was notified that the Committee would not
7 approve his plans for a replacement home because the new home was older
8 than five years, as required by the 1987 Declaration.

9 14. The Committed determined the age of the replacement mobile home during its
10 investigation.

11 15. By letter dated July 7, 2006, Petitioner advised the Committee that he was
12 unaware of the age restriction for replacement homes under the 1987
13 Declaration and stated that he had relied upon the 1971 Declaration, which did
14 not have the restriction. Petitioner requested a hardship waiver from the 1987
15 Declaration's replacement home restriction for the following reasons:

16 (1) We are between a rock and a hard place and could literally be
17 homeless. Most of our savings has already paid for the
18 replacement home. We are under contract for the transfer of
19 ownership of our present home.

20 (2) We are not financially able to upgrade to a home meeting the age
21 restriction because of ongoing medical expense and health issues.
22 We bought a replacement home that was within our budget in order
23 to live out our "Golden Years" in OGME.

24 (3) Our reason for obtaining a replacement home is because the
25 structural integrity of our home has been compromised due to water
26 damage when the main waterline from the street had to be replaced
27 recently; replacement of the electrical service about 18 months ago,
28 and termite damage. Our home is 30 years old and its life is ending.

29 (4) We believe the exterior appearance and condition of the
30 replacement home is appropriate for the neighborhood (picture
enclosed) and could not be considered detrimental in any way.

2. By letter dated July 12, 2006, Charles Rucker, president of the association,
informed Petitioner that the Committee had denied his plot plan for the
replacement home. Mr. Rucker noted that Petitioner's request failed to disclose

1 that the replacement home was eleven years old. He noted that Petitioner should
2 have discussed the matter with the Committee prior to his purchasing the
3 replacement home. Petitioner was invited to have the matter placed on the Board
4 of Directors' July 2006 agenda for discussion if he wanted.

5 3. By letter dated July 16, 2006, Petitioner acknowledged receipt of Mr. Rucker's
6 letter and asked that his request be placed on the agenda for the Board of
7 Directors' July 26, 2006 meeting.

8 4. By letter dated July 29, 2006, Petitioner advised Mr. Rucker that he
9 acknowledged receiving the latter's telephone call advising that Petitioner's
10 request could not be brought before the Board of Directors until its August 31,
11 2006 meeting. Petitioner stated that such a meeting was not necessary. He wrote
12 that after reviewing the 1987 Declarations, he felt that there was a "grandfather
13 clause" due to the recital language that prior Declarations were revoked by the
14 1987 Declaration "...except as to...contracts made or rights accrued under the
15 foregoing declarations." Petitioner opined that the his right to bring any age
16 replacement home, which was permitted by the 1971 Declaration, was not
17 revoked by the 1987 Declaration. He stated that the 1987 Declaration restrictions
18 would only apply to a subsequent purchaser of his property.

19 5. By letter dated August 7, 2006, counsel for the Board of Directors responded to
20 Petitioner's July 29, 2006 letter. Counsel expressed the Board's interpretation of
21 the 1987 Declaration and opined that the "rights accrued" recital meant that
22 Petitioner did not have to remove and replace his existing mobile home, which
23 was older than five years of age when the 1987 Declaration became effective.

24 6. Petitioner subsequently filed a Petition against Respondent with the Arizona
25 Department of Fire, Building and Life Safety alleging that Respondent used the
26 1987 Declaration to deny his right to replace his home without age restriction
27 pursuant to his rights accrued under the 1971 Declaration.

28 7. There is credible evidence that Respondent has consistently denied member
29 homeowners permission to replace their homes with homes older than five years
30 pursuant to the 1987 Declaration.

CONCLUSIONS OF LAW

1. Petitioner filed his petition against Respondent with the Department of Fire, Building and Life Safety, pursuant to A.R.S. § 41-2198.01.
2. The Department of Fire, Building and Life Safety referred this matter to the Office of Administrative Hearings for hearing and the issuance of an Order, pursuant to A.R.S. §§ 41-2198.01(D) and 41-2198.02.
3. Pursuant to A.A.C. R2-19-119(B), Petitioner has the burden of proof in this matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A).
4. The 1987 Declaration superseded the 1971 Declaration.
5. The 1987 Declaration governs, among other things, the “replacement of an existing mobile home.” Therefore, it is concluded that Petitioner is subject to the provisions of the 1987 Declaration, which was approved by a majority of the association’s homeowners as required by the 1971 Declaration.
6. The Administrative Law Judge concludes that the recital of “accrued rights” in the 1987 Declaration does not give Petitioner a retained right to replace his existing mobile home with a new home without age restriction as provided for in the 1987 Declaration. Petitioner’s position would result in the 1987 Declaration not superseding the restrictions, covenants and conditions of the 1971 Declaration except for subsequent purchasers of association homeowners’ properties after the effective date of the 1987 Declaration. That is clearly not the intent of the 1987 Declaration and the majority of homeowners approving it.
7. Petitioner failed to obtain Committee approval of his proposed replacement of his existing mobile home prior to purchasing it as required by both the 1987 and 1971 Declarations.
8. Respondent did not abuse its discretion to grant Petitioner a hardship variance to the replacement age limitation under the 1987 Declaration. The evidence of

record demonstrated that Respondent has consistently denied variance requests to the replacement home age limitation.

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ORDER

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3 IT IS ORDERED that Petitioner's Petition in this matter be denied. Pursuant to
4 A.R.S. § 41-2198.02(B), this Order is the final administrative decision and is not subject
5 to a request for rehearing.

6 Done this day, January 8, 2007

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8 _____
9 Brian Brendan Tully
10 Administrative Law Judge

11
12 Copies transmitted by mail this
13 _____ day of _____, 2007, to:

14
15 Robert Barger, Director
16 Department of Fire Building and Life Safety - H/C
17 ATTN: Joyce Kesterman
18 1110 W. Washington, Suite 100
19 Phoenix, AZ 85007

20 W. Douglas Stickler
21 3597 W. Apricot Drive
22 Tucson, AZ 85741

23 Tanis A. Duncan, Esq.
24 Law Office of Tanis A. Duncan
25 548 E. Speedway
26 Tucson, AZ 85705-7478

27 By _____
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