

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

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3 **ALJCERT ALJ decision certified as final**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 SAMUEL G. SCHECHTER,

8 Petitioner,

9
10 VS

11 PUEBLO DEL SOL POA VILLAGE ONE,

12 Respondent.

No. 15F-H1515002-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

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15 **HEARING:** September 22, 2015, at 8:00 a.m.

16 **APPEARANCES:** Samuel G. Schechter (hereinafter "Petitioner" or "Mr.
17 Schechter") appeared on his own behalf. Pueblo Del Sol POA Village One (hereinafter
18 "Respondent" or "Pueblo") was represented by its attorney, Steven D. Leach, Esq.

19 **ADMINISTRATIVE LAW JUDGE:** M. Douglas

20
21 Evidence and testimony were presented and the following Findings of Fact,
22 Conclusions of Law and Recommended Order are made:

23 **FINDINGS OF FACT**

24 1. The Department of Fire, Building and Life Safety (the "Department") is
25 authorized by statute to receive Petitions for Hearings from members of homeowners'
26 associations and from homeowners' associations in Arizona.

27 2. Pueblo is a homeowners' association located in southern Arizona.

28 3. Petitioner owns a residence in and is a member of Pueblo.

29 4. Petitioner filed a petition with the Department alleging that Respondent had
30 violated certain provisions of its Bylaws and applicable Arizona statutes. Petitioner

1 alleged that Respondent had violated the provisions of its Bylaw Article VII(1) and
2 Section 11.g of Respondent's CC&Rs. Petitioner specifically alleged as follows:

3 On 9/8/14 the plaintiff submitted a complaint with regard to
4 association-wide violations of our POA's CC&R section 11.g
5 prohibiting the presence of junk motor vehicles on owners' lots.
6 From Sept. 8, 2014 through the filing of this petition, Jan. 16,
7 2015 (more than 4 months), the POA has failed to take
8 enforcement action. The Board of Directors['] failure to enforce
9 the CC&Rs violates POA By-Laws, Article VII Duties & Powers
10 of the Board Section 1. Rights.... The Board shall have the
11 exclusive right and responsibility to perform diligently all
12 obligations & functions of the Association as set forth in these
13 By-Laws, in the Declaration and in the Articles of Incorporation.

14 5. Respondent's Answer to the Petition provided, in relevant part, as follows:

15 At a meeting of the Board of Directors (the "Board") in
16 September 2014, the Board was given a list of alleged vehicle
17 violations by the Petitioner and Peter Dodge ("Mr. Dodge").
18 The Petitioner and Mr. Dodge were on the Board the previous
19 year and were on the Environmental Control Committee (the
20 "ECC") while on the Board. The Petitioner and Mr. Dodge
21 alleged the list of violations was based on their observations
22 during their time on the ECC. At that time, the Petitioner and
23 Mr. Dodge requested the Board take on the list of alleged
24 violations. The list was provided to the [then] current Chairman
25 of the ECC, Ron Murray ("Mr. Murray"). The alleged violations
26 were not addressed by the Board at the October Board meeting
27 because Mr. Murray passed away suddenly and unexpectedly
28 between the September and October meetings. Not knowing
29 what progress Mr. Murray had made on the list of alleged
30 violations, the Board had to begin its investigation of the
alleged violations from scratch.

In October 2014, Roxanna McGinnis ("Ms. McGinnis"), acting in
her capacity as President of the Board, began investigating the
alleged violations by driving by the properties on the
Petitioner's list. Ms. McGinnis found that the Petitioner's list
included incorrect addresses and information but she attempted
to investigate the matter to the best of her ability. Ms. McGinnis
presented her findings to the Board at the November Board
meeting, and requested that the Petitioner and Mr. Dodge
resubmit an updated list of their complaints, as outlined in the
Association rules, due to the outdated and inaccurate nature of
many of the original complaints. Neither the Petitioner nor Mr.

1 Dodge ever submitted an updated list of complaints, as
2 requested.

3

4 The Petitioner alleges the board has failed for months to take
5 enforcement action on the CC&Rs by failing to take action on
6 the list of alleged violations. Based on the foregoing, the
7 Respondent contends the Petitioner's claim is completely
8 without merit. Therefore the Petitioner's only complaint is
9 denied and the complaint should be dismissed in its entirety.

10 **Hearing Evidence**

11 6. Mr. Schechter testified that on September 8, 2014, he submitted a complaint
12 to Pueblo regarding violations of Section 11(g) of Pueblo's CC&Rs. Mr. Schechter said
13 that Pueblo failed to take any enforcement action regarding his complaint. Mr.
14 Schechter said that the Board of Directors (hereinafter "Board") failure to take
15 enforcement action in response to his complaint violated Pueblo's By-Laws.

16 7. Mr. Schechter testified that he had previously been a member of the Board
17 from September 2011, through July 1, 2014. Mr. Schechter said that he and Peter
18 Dodge (hereinafter "Mr. Dodge") became concerned about the number of stripped
19 down, wrecked, or junk motor vehicles that were present in the community. Mr.
20 Schechter said that while he was a member of the Board, he and Mr. Dodge took
21 photographs of the various stripped down, wrecked, or junk motor vehicles.¹ Mr.
22 Schechter reviewed the photographs and stated that they were true and accurate as of
23 the date the photographs

24 8. Mr. Schechter testified that he and Mr. Dodge filed a complaint with the Board
25 regarding the stripped down, wrecked, or junk motor vehicles. Mr. Schechter said that
26 the Board's response to his complaint was not serious.

27 9. Mr. Schechter acknowledged that some of the vehicles had been removed
28 since the filing of the petition at issue. Mr. Schechter said that there were still stripped
29 down, wrecked, or junk motor vehicles in Pueblo.

30 10. Mr. Dodge testified that he had been a member of the Board for Pueblo from
approximately September 2011, through July 1, 2014. Mr. Dodge said that he

¹ See Exhibit 1 (Photographs).

1 accompanied Mr. Schechter when the photographs were taken. Mr. Dodge said that he
2 and Mr. Schechter had noticed the problem with derelict vehicles while he and Mr.
3 Schechter were conducting an inspection of Pueblo to ensure that fire dangers in the
4 community were properly removed.

5 11. Mr. Dodge acknowledged that Pueblo conducted its own investigation of the
6 derelict vehicles and found that only three of the alleged derelict vehicles were actually
7 present in the community.

8 12. Mr. Dodge acknowledged that the Board requested that he and Mr.
9 Schechter conduct a second survey and submit the results to the Board. Mr. Dodge
10 said that he and Mr. Schechter declined to conduct a second survey because they were
11 no longer members of the Board. Mr. Dodge opined that it was a fool's errand.

12 13. Mr. Dodge testified that it was his experience that people in the southwest
13 are reluctant to file written complaints against their neighbors. Mr. Dodge said that,
14 normally, if you let people know that there is a problem, they will comply with the rules.

15 14. Theodore Pahle (hereinafter "Mr. Pahle") testified that he has been president
16 of the Board since July 1, 2015. Mr. Pahle said that he served on the Board on
17 previous occasions. Mr. Pahle said that Pueblo requires complaints to be submitted in
18 writing on a form provided by Pueblo. Mr. Pahle said that complaint forms are provided
19 to new residents and that the complaint form is available on the website. Mr. Pahle said
20 that the complaint filed by Mr. Schechter and Mr. Dodge was not on the proper form.

21 15. Mr. Pahle testified that Pueblo requires written complaints to contain current
22 factual information. Mr. Pahle said that Mr. Schechter and Mr. Dodge's complaint
23 contained information that was nine months old when the complaint was filed with
24 Pueblo. Mr. Pahle said that the Mr. Schechter's photographs had never been presented
25 to the Board.

26 16. Mr. Pahle testified that on October 2014, Roxanna McGinnis (hereinafter
27 "Ms. McGinnis"), acting in her capacity as President of the Board, began investigating
28 the alleged violations by driving by the properties on the Petitioner's list. Mr. Pahle said
29 that she found that the Petitioner's list included incorrect addresses and information but
30 she attempted to investigate the matter to the best of her ability. Mr. Pahle said that Ms.

1 McGinnis presented her findings to the Board at the November Board meeting, and
2 requested that the Petitioner and Mr. Dodge resubmit an updated list of their
3 complaints, as outlined in the Association rules, due to the outdated and inaccurate
4 nature of many of the original complaints. Mr. Pahle testified that Mr. Schechter and Mr.
5 Dodge failed to provide the board with the requested updated list of complaints.

6 17. Erescene Johnson-Stokes (hereinafter "Ms. Johnson-Stokes") testified that
7 she was a resident of Pueblo. Ms. Johnson-Stokes said that she had filed three
8 complaints with Pueblo over the period of time that she had been a resident of Pueblo.
9 Ms. Johnson-Stokes said that all of her complaints were oral complaints and that she
10 was not required to put her complaints into writing.

11 **PUEBLO BYLAWS AND CC&RS REFERENCED AT THE HEARING**

12
13 1. Article VII Duties and Powers of the Board, Section 1. Rights, provides, in
14 relevant part, as follows:

15 The Board shall have the exclusive right and responsibility to
16 perform diligently all the obligations and functions of the
17 Association, as set forth in these By-Laws, in the Declaration
18 and in the Articles of Incorporation.

19 1. Section 11.g of Pueblo's CC&RS provides as follows:

20 No stripped down, wrecked or junk motor vehicle shall be kept,
21 parked, stored or maintained on any lot. No commercial vehicle
22 bearing commercial insignias or names (except pickup trucks)
23 shall be parked on any lot except within an enclosed structure or a
24 screened area which prevents such view thereof from adjoining
25 lots, road, and Association Property unless such vehicle is
26 temporarily parked for the purpose of serving such lot. The
27 parking and storage of mobile homes, truck campers, house
28 trailers, boats and similar vehicles on lots shall be in accordance
29 with Association rules in effect from time to time, but in no event
30 shall such vehicle be parked or maintained within the minimum
front or rear setback areas.

CONCLUSIONS OF LAW

1 1. A.R.S. § 41-2198.01 permits an owner or a planned community organization
2 to file a petition with the Department for a hearing concerning violations of planned
3 community documents or violations of statutes that regulate planned communities. That
4 statute provides that such petitions will be heard before the Office of Administrative
5 Hearings.

6 2. The burden of proof at an administrative hearing falls to the party asserting a
7 claim, right, or entitlement and the standard of proof on all issue in this matter is by a
8 preponderance of the evidence. See A.A.C. R2-19-119.

9 3. Proof by “a preponderance of the evidence” means that it is sufficient to
10 persuade the finder of fact that the proposition is “more likely true than not.” *In re*
11 *Arnold and Baker Farms*, 177 B.R. 648, 654 (9th Cir. BAP (Ariz.) 1994).

12 4. In October 2014, Ms. McGinnis, acting in her capacity as President of the
13 Board, began investigating the violations alleged by Petitioner and Mr. Dodge by driving
14 by the properties on the Petitioner’s list. Ms. McGinnis found that the Petitioner’s list
15 included incorrect addresses and information. Ms. McGinnis presented her findings to
16 the Board at the November Board meeting, and requested that the Petitioner and Mr.
17 Dodge resubmit an updated list of their complaints, as outlined in the Association rules,
18 due to the outdated and inaccurate nature of many of the original complaints. Mr.
19 Schechter and Mr. Dodge failed to respond to the Board’s request. This Tribunal
20 concludes that the Board’s actions were reasonable and prudent under the
21 circumstances. This Tribunal further concludes that Mr. Shechter failed to satisfy his
22 burden of proof for his petition.

23 **RECOMMENDED ORDER**

24 In view of the foregoing, it is ORDERED that no action is required of Respondent
25 in this matter and that the petition is dismissed.

26 *In the event of certification of the Administrative Law Judge Decision by the*
27 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
28 *five days from the date of that certification.*

29 Done this day, October 9, 2015.

30 /s/ M. Douglas

Administrative Law Judge

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Transmitted electronically to:
Debra Blake, Interim Director
Department of Fire Building and Life Safety