

Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

MICHAEL FAIRFIELD,

Petitioner,

vs.

RANCHO MANANA
HOMEOWNERS ASSOCIATION

Respondent.

No. 07F-H067008-BFS

ADMINISTRATIVE
LAW JUDGE DECISION

HEARING: January 22, 2007

APPEARANCES: James L. Tanner, Esq. represented Complainant Michael Fairfield. Brian W. Morgan, Esq. represented Respondent Rancho Manana Homeowners Association.

ADMINISTRATIVE LAW JUDGE: Daniel G. Martin

Michael Fairfield filed a petition with the Department of Fire, Building and Life Safety (the "Department") alleging that Rancho Manana Homeowners Association had improperly denied his request to install an extension to his driveway, in violation of the Declaration of Covenants, Conditions and Restrictions applicable to the Rancho Manana subdivision, and the rules and standards adopted thereunder. Based on the evidence of record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Rancho Manana ("Rancho Manana" or "the subdivision") is a subdivision in Cave Creek, Arizona comprised of 108 lots and related common areas. Petitioner Michael Fairfield is the owner of lot 93.
2. The lot owners in Rancho Manana are subject to a Declaration of Covenants, Conditions and Restrictions (the "Declaration"). See Exhibits P125-P152.

1 3. Pursuant to the terms of the Declaration, responsibility for the
2 management of Rancho Manana is vested in a Homeowners Association (the
3 “Association”). See Exhibit P132, at § 3.4; see *also* Exhibit P128, at § 1.1.
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1 4. Section 9 of the Declaration (Architectural Control) provides:

2 9.1 Reservation. For the purpose of preserving the values
3 and amenities in and upon the Property and of subjecting the
4 Property to the reservation of architectural control, as hereinafter
5 provided, which reservation is for the benefit of the Property and
6 each Owner of any part thereof, . . . there is hereby reserved to an
7 Architectural Committee, the members of which shall be designated
8 from time to time by the Board of Directors, the right and power to
9 approve or disapprove, as to the harmony of external design and
10 location in relation to surrounding improvements and topography,
11 all improvements, alterations, painting, redecorating, excavations,
12 landscaping, and all other work which in any way improves or alters
13 the exterior appearance of any Lot or improvements located on any
14 portion of the Property, either permanently or temporarily and
15 whether already constructed or which any person or entity seeks to
16 commence, erect, place or maintain upon any Lot or portion of the
17 Property.

18 9.2 Approval. Any request for such approval shall be
19 submitted to the Architectural [C]ommittee in writing and shall be
20 deemed submitted only when receipt of such request is
21 acknowledged in writing by a member of the Architectural
22 Committee. Such request shall be accompanied by plans and
23 specifications showing the nature, kind, shape, height, materials,
24 color, location and other material attributes of the proposed
25 improvement or other change. Before acting on any such request,
26 the Architectural Committee may require additional information
27 about the proposed improvement or other change. If the
28 Architectural Committee fails to disapprove such proposed
29 improvement or other change within thirty (30) days after the
30 receipt of such request and receipt of any additional information
requested by such Committee, whichever occurs last, the same
shall be deemed approved. The Architectural Committee shall
have no duty to exercise the power of approval or disapproval
hereby reserved, and non-exercise of such power in one or more
instances shall not be deemed to constitute a waiver of the right to
exercise the power in other or different instances. Likewise,
approval of any one set of plans and specifications shall not be
deemed to constitute approval of any other or different plans and
specifications or of the same at a different time or location.

Exhibit P140.

1 5. In Rancho Manana, the Architectural Committee is comprised of the
2 members of the subdivision's Board of Directors. Mike Kaus is the President of the
3 Association and a member of the Board of Directors (and thus, by extension, a member
4 of the Architectural Committee).

5 6. In December 2005, Mr. Kaus learned that Mr. Fairfield was planning to
6 add an extension to his driveway that would connect the driveway to the rear of Mr.
7 Fairfield's property. On at least two occasions, Mr. Kaus advised Mr. Fairfield that he
8 would need to submit a request to the Architectural Committee for approval of the
9 extension prior to proceeding with the installation. Mr. Fairfield agreed that he would do
10 so.

11 7. The foregoing representations to Mr. Kaus notwithstanding, Mr. Fairfield
12 proceeded with the installation of the extension in January 2006 without having first
13 obtained the approval of the Architectural Committee.¹

14 8. By letter dated January 23, 2006, Mr. Green advised Mr. Fairfield and his
15 wife Sarah that their installation of a driveway without prior approval constituted a
16 violation of Section 9.2 of the Declaration. See Exhibit P010. Mr. Green instructed the
17 Fairfields to immediately submit the plans for the driveway to the Architectural
18 Committee.

19 9. By letter dated January 31, 2006, Mr. Fairfield submitted a copy of the
20 plans for the extension to the Board of Directors with a request that the extension be
21 approved (in the letter, Mr. Fairfield refers to the extension as a "walkway/driveway").
22 Mr. Fairfield wrote, in pertinent part:

23 The walkway that I am requesting approval for is 10' feet by 68' feet
24 long and extends from the current driveway up the east side of the
25 house to the back patio. The walkway is from 4' feet in some
26 places to 6' feet from the right side of the house (left side of the
27 walkway) and from 5' feet to 12' feet on the right side of the set
28 back and property lines (see attached plat map). There is no height
29 of the walkway because it is at the surface level of the

29 ¹ In the early evening hours on December 22, 2005, Mr. Fairfield called Mr. Kaus and stated that he
30 wanted to drop the plans off at Mr. Kaus' house. Mr. Kaus declined, as he had plans for the evening,
and instructed Mr. Fairfield to provide the plans to Charles Green ("Mr. Green"), the Association's
manager.

1 ground flush with the gravel. The walkway is composed of the
2 same adjoining exposed natural cement as the current existing
3 driveway and [the] same color.

4 Knowing that the HOA may have more stringent Guidelines I first
5 checked with the Town Hall zoning requirements in order not to
6 violate any restrictions. The zoning requirements for Rancho
7 Manana, according to the Town Hall internal guidelines, do not
8 consider walkways/driveways a *structure* by their definition (see
9 attached zoning definition) as well as exclude driveways and
10 walkways from any set back encroachment as long as the grading
11 conforms to local drainage patterns. I had an engineer come out
12 on the 30th and approve my walkway. The Rancho Manana
13 adopted Architectural Standards define a structure to be Buildings,
14 gazebos, additions and porches² in which my walkway is none by
15 this definition or by the zoning definition set by the City of Cave
16 Creek for Rancho Manana.

17 The driveway/walkway I have attached to my current driveway is
18 well within the zoning requirements set forth by the town of Cave
19 Creek for Rancho Manana and by the Architectural Standards for
20 Rancho Manana. The appearance of my walk is pleasant and of
21 value when I have guests. I am not storing anything on my
22 property through its use and only hope to seek resolution with its
23 approval. I apologize for not seeking its approval up front and will
24 gladly pay its fine.³

25 Exhibit P001 (emphasis in original).

26 10. By letter dated February 13, 2006, the Association's Board of Directors
27 advised the Fairfields that the Board had reviewed Mr. Fairfield's request for approval of
28 the driveway extension and that the request could not be approved because in
29 accordance with Paragraph 2 of the Association's Architectural Standards, "All driveway
30 approaches must lead to a private garage within the building envelope." See Exhibits
P006 (February 13, 2006 letter) and P043 (architectural standards). The Board
instructed the Fairfields to "remove the new concrete driveway and restore the front
yard to its original condition by April 1, 2006." Exhibit P006.

² This statement is inaccurate. The Architectural Standards for Rancho Manana do not define "structure". Further, as discussed in more detail below, those standards specifically reference driveways.

³ Mr. Green had indicated in his January 23, 2006 letter that the Rancho Manana enforcement policy allowed the Association to levy fines if the violation was not corrected.

1 11. Subsequent to receiving the Board's February 13, 2006 letter, Mr. Fairfield
2 retained legal counsel and sought to resolve the dispute informally. Those efforts,
3 however, were unsuccessful. By letter dated October 12, 2006, the Association,
4 through counsel, advised counsel for Mr. Fairfield that the Association could "no longer
5 tolerate" the Fairfield's violation of the Association's governing documents, and that the
6 Association would commence levying fines at the rate of not less than \$100.00 per day
7 until the violation was corrected. See Exhibit R8.

8 12. On November 15, 2006, Mr. Fairfield filed a petition with the Department
9 challenging the Association's denial of his request for approval for the driveway
10 extension. Specifically, Mr. Fairfield alleged:

11 The Architectural Standards state that all Driveway approaches
12 must lead to a private garage. We feel that the driveway is
13 consistent with the guidelines and that the Approach is not defined
14 and does in fact lead to a garage. Furthermore, there is no
15 definition to any extensions or as to where the approach may or
16 may not begin. (Citing Paragraph 2 of the Architectural Standards).

17 [The] Association cannot use its rules and regulations to Amend or
18 add provisions to the declaration. (Citing *Shamrock v. Wagon
19 Wheel Park Homeowners Association*, 206 Ariz. 42, 75 P.3d 132
20 (App. 2003)).

21 Enforcement of the declaration & governing documents must be
22 reasonable. We feel they are not and the driveway extension is
23 clearly more aesthetically pleasing than other improved driveways
24 in the community. (Citing *Powell v. Washburn*, 211 Ariz. 553, 125
25 P.3d 373 (2006)).

26 See Administrative Record.

27 13. On November 16, 2006, the Department forwarded Mr. Fairfield's petition
28 to the Association.

29 14. On December 5, 2006, the Association, through counsel, filed a response
30 to Mr. Fairfield's petition.

 15. On December 12, 2006, the Department issued a Notice of Hearing
 setting this matter for hearing before the Office of Administrative Hearings, an
 independent state agency.

1 16. At hearing, Mr. Fairfield testified that prior to installing the driveway
2 extension, he spent between 24 and 48 hours reviewing the Association's governing
3 documents, including the Declaration and the Architectural Standards, and discerned
4 nothing in his actions that might constitute a violation of those documents. Such
5 testimony was neither credible nor persuasive, as the Declaration plainly requires prior
6 approval for "all improvements, alterations, painting, redecorating, excavations,
7 landscaping, and all other work which *in any way* improves or alters the exterior
8 appearance of any Lot" (Section 9.1, emphasis added), and Mr. Kaus specifically told
9 Mr. Fairfield that he would need to obtain approval from the Architectural Committee
10 prior to constructing the extension.

11 17. In view of the foregoing, the Administrative Law Judge finds that Mr.
12 Fairfield violated the terms of the Declaration when he installed the extension without
13 first obtaining approval from the Architectural Committee.

14 18. The issue as to whether Mr. Fairfield's installation of the driveway
15 extension violated the Architectural Standards presents a closer question. The relevant
16 language of the Architectural Standards provides only that "[a]ll driveway approaches
17 must lead to a private garage within the building envelope." Exhibit P043.

18 19. The term "driveway approach" is not defined in the Architectural Standards
19 or elsewhere in the Association's governing documents. However, the parties were in
20 general agreement that a "driveway approach" consists of the section of driveway that
21 leads to or from the street.

22 20. According to Mr. Kaus' testimony, Mr. Fairfield's driveway extension is in
23 fact not a driveway at all, but an independent structure. Specifically, Mr. Kaus testified:

24 Q: Do you consider a driveway extension to be part of a
25 driveway?

26 A: No.

27 Q: You do not consider a driveway extension to be part of a
28 driveway?

29 A: No we do not.
30

1 Q: So it's a separate . . .

2 A: A separate entity. It was built separately.

3 Q: Right. And should that separate entity fall within those same
4 guidelines, as all driveway approaches must lead to a private
5 garage.

6 A: Yes.

7 Q: And why is that?

8 A: <No answer>

9 Q: Well, I'm going to withdraw that, you've already answered.

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11 1/22/07 Hearing Record at 2:14:29-2:14:57.

12 21. Applying Mr. Kaus' testimony, which was the most probative evidence on
13 the issue of whether Mr. Fairfield's driveway extension violates the Association's
14 Architectural Standards, the Administrative Law Judge finds that the extension is not a
15 "driveway approach" because it does not lead to or from the street. No significant
16 parsing of the relevant language is required to reach this determination; had the drafters
17 of the Architectural Standards intended to require that a driveway connect only the
18 street and a private garage, they could have so stated in plain words. The drafters did
19 not do so, and the Administrative Law Judge will not read the language so as to render
20 the term "approach" superfluous (stated another way, the fact that the Architectural
21 Standards place a limitation on one particular section of driveway, the "approach",
22 implies that no similar limitation was intended to be placed on other sections of
23 driveway, including, as in this case, a driveway extension).

24 22. The fact that Mr. Fairfield's driveway extension does not constitute a
25 "driveway approach" means only that Mr. Fairfield does not stand in violation of the
26 Architectural Standards; it does not absolve him from his violation of Section 9 of the
27 Declaration.

28 23. Mr. Kaus credibly testified that the Architectural Committee considers the
29 type of extension installed by Mr. Fairfield to conflict with the harmony of the external
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1 design of lots within the subdivision, and that in the past six years, the Architectural
2 Committee has not granted any requests to install such extensions. Having considered
3 such testimony in conjunction with the broad scope of authority that is granted to the
4 Architectural Committee under Section 9.1 of the Declaration, the Administrative Law
5 Judge finds that the Architectural Committee did not exceed its authority, or act
6 arbitrarily or capriciously, when it denied Mr. Fairfield's request for approval of his
7 driveway extension.

8 **CONCLUSIONS OF LAW**

9 1. In this proceeding, Mr. Fairfield bears the burden to prove, by a
10 preponderance of the evidence, the violations alleged in his petition. See Arizona
11 Administrative Code R2-19-119. Stated more broadly, Mr. Fairfield must prove that the
12 Association acted in violation of the Association's governing documents when it denied
13 his request for approval for the installation of the driveway extension.

14 2. A preponderance of the evidence is "such proof as convinces the
15 trier of fact that the contention is more probably true than not." Morris K. Udall, ARIZONA
16 LAW OF EVIDENCE § 5 (1960).

17 3. Mr. Fairfield raised three allegations in his petition. Mr. Fairfield's
18 first allegation was:

19 The Architectural Standards state that all Driveway approaches
20 must lead to a private garage. We feel that the driveway is
21 consistent with the guidelines and that the Approach is not defined
22 and does in fact lead to a garage. Furthermore, there is no
23 definition to any extensions or as to where the approach may or
24 may not begin.

25 4. As set forth in Finding of Fact No. 21, the extension that Mr.
26 Fairfield installed is not a "driveway approach". Therefore, that extension is not subject
27 to the limitation expressed in the Architectural Standards.

28 5. Mr. Fairfield's second allegation was:

29 [The] Association cannot use its rules and regulations to Amend or
30 add provisions to the declaration.

1 6. In support of the foregoing allegation, Mr. Fairfield cited *Shamrock*
2 *v. Wagon Wheel Park Homeowners Association*, 206 Ariz. 42, 75 P.3d 132 (App. 2003).
3 Strictly speaking, the Department’s petition form requires a petitioner to cite either (i) the
4 applicable section of the condominium or planned community documents, or (ii) the
5 applicable section of the Arizona Revised Statutes, and Mr. Fairfield did not do so with
6 respect to the second allegation. However, to the extent that Arizona case law is
7 applicable to and informs an alleged violation, it should be considered, and the
8 Administrative Law Judge will do so herein.

9 7. In *Shamrock*, the Court of Appeals addressed the issue of whether
10 mandatory membership in a newly created homeowner’s association could be imposed
11 on the residents of an existing subdivision. In concluding that it could not, the Court
12 observed, among other things, that a planned community association could not
13 mandate membership in the association through an amendment to its bylaws. See 206
14 Ariz. at 46, 75 P.3d at 136. In reaching this conclusion, the Court stated: “Owners of
15 lots within a community may modify or extinguish deed restrictions. However, the
16 manner of making such modifications is governed by the declaration in effect.” See *id.*

17 8. *Shamrock* generally supports Mr. Fairfield’s *legal* contention that
18 the Association may not amend the Declaration through the adoption of rules and
19 regulations (including the Architectural Standards). However, as a question of fact, Mr.
20 Fairfield failed to demonstrate that such amendment occurred in the instant case. The
21 adoption of the Architectural Standard at issue in this case (*i.e.*, the restriction on
22 driveway approaches) cannot be said to constitute an amendment of the Declaration,
23 but was instead a reasonable exercise of the Association’s authority granted under
24 Section 9.1 of the Declaration.

25 9. Mr. Fairfield’s third allegation was:

26 Enforcement of the declaration & governing documents must be
27 reasonable. We feel they are not and the driveway extension is
28 clearly more aesthetically pleasing than other improved driveways
29 in the community.
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1 10. In support of the foregoing allegation, Mr. Fairfield cited *Powell v.*
2 *Washburn*, 211 Ariz. 553, 125 P.3d 373 (2006). In *Powell*, the Arizona Supreme Court
3 adopted the approach of the Restatement (Third) of Property: Servitudes and held that
4 “restrictive covenants should be interpreted to give effect to the intention of the parties
5 as determined from the language of the document in its entirety and the purpose for
6 which the covenants were created.” See *id.* at 554, 125 P.3d at 374.

7 11. In ruling on the merits of Mr. Fairfield’s third allegation, the
8 Administrative Law Judge first observes that Mr. Fairfield comes before this Tribunal
9 with unclean hands in that he directly violated the terms of the Declaration by
10 proceeding with the installation of the driveway extension without first obtaining the
11 approval of the Architectural Committee (approval he knew he was required to have).
12 While such circumstances do not directly impact the resolution of Mr. Fairfield’s petition
13 on the merits, they do imbue his arguments for reasonableness with a hollow ring.

14 12. On the merits, and applying the holding of *Powell* to the facts
15 presented, the Administrative Law Judge concludes that the Association did not violate
16 the terms of the Declaration when it denied Mr. Fairfield’s request for approval of his
17 driveway extension. The intent of the Declaration with respect to architectural control,
18 “as determined from the language of the document in its entirety and the purpose for
19 which the covenants were created”, is plain and unambiguous. The Architectural
20 Committee is granted wide latitude to approve or disapprove any and all work that
21 improves or alters the exterior of any lot within the subdivision. Thus, as long as such
22 authority is exercised reasonably and in a consistent manner, the actions of the
23 Architectural Committee will be deemed to comport with the terms of the Declaration.

24 13. The evidence in the instant case demonstrated that the
25 Architectural Committee considers the type of extension installed by Mr. Fairfield to
26 conflict with the harmony of the external design of lots within the subdivision, and that in
27 the past six years, the Architectural Committee has not granted any requests to install
28 such extensions. In view of the foregoing, the Architectural Committee cannot be
29 deemed to have acted in violation of the Declaration, and Mr. Fairfield’s contention to
30 the contrary must be rejected.

1 Copy transmitted by mail this ____ day of February, 2007, to:

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By _____