

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

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

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6  
7 ELLSWORTH PONTIUS

8 Petitioner,

9 vs.

10  
11 SUN CITY GRAND COMMUNITY  
12 ASSOCIATION MANAGEMENT.

13 Respondent.

**No. 07F-H067037-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

14  
15  
16 **HEARING:** August 14, 2007

17 **APPEARANCES:** Ellsworth Pontius, Petitioner; Rocky Roccanova, on behalf of  
18 Respondent

19 **ADMINISTRATIVE LAW JUDGE:** Michael K. Carroll

20  
21  
22 On June 11, 2007, a Petition was filed with the Department of Fire, Building and  
23 Life Safety alleging that Respondent failed to follow its governing documents with  
24 respect to granting approval for the installation of an evaporative cooler on the outside  
25 of Petitioner's residence.

26 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

27 **Findings of Fact:**

28 (1) Petitioner is a resident of Sun City Grand and a member of Sun City Grand  
29 Community Association (Respondent).

30 (2) In June, 2006, Petitioner submitted an application with the Sun City Grand  
Architectural Review Committee (Committee), requesting approval for the installation of

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1 an evaporative cooler on an exterior wall of his residence. The application contained a  
2 section near the bottom in which the Committee could indicate whether the request was  
3 (a) "Approved;" (b) "Approved as Noted (the request submitted is conditionally approved  
4 subject to noted conditions);" or (c) "Disapproved (the entire request is not approved  
5 and **must be re-submitted** with revisions)." Exhibit P6.  
6

7 (3) The approval process was governed by Respondent's Amended and  
8 Restated Declaration of Covenants, Conditions, and Restrictions (Declaration) which  
9 referred applicants to "Design Guidelines" (Guidelines). Those Guidelines "set forth the  
10 procedure and any additional information for submission of the Plans." Exhibits P1 and  
11 P3.

12 (4) After submitting his application (Exhibit P6), Petitioner was asked to resubmit  
13 his application on a new approval form (Exhibit P4). He submitted the new form along  
14 with a simple diagram of his house and lot (Exhibit P4). On the diagram he indicated  
15 his first and second choices for the location of the cooler along the exterior wall of his  
16 garage. Petitioner's first choice placed the cooler next to the wall 24 feet from the front  
17 corner of the garage. Petitioner's second choice placed the cooler 12 feet from the front  
18 corner of the garage. The new approval form contained only two options for the  
19 Committee to select: "**APPROVED** (all work must be completed within 90 days of  
20 approval.)" and "**DISAPPROVED** (the entire request is not approved and **must be re-**  
21 **submitted** with revisions.)" Exhibit P4.

22 (5) When the Committee returned the form to Petitioner, the form had been  
23 checked next to "APPROVED." However, in a space below the approval line labeled  
24 "ARC Comments" there was a handwritten note which stated "Option #1 only #2  
25 disapproved." That note was crossed out and, in its stead, was another handwritten  
26 note which said "only approved with wall surrounding evaporative cooler." Attached to  
27 the approval form was Petitioner's diagram. On that diagram, the Committee had drawn  
28 an arrow to the location listed as Petitioner's first choice and wrote "Approved Location."  
29 Petitioner's second choice was circled, next to which was the notation "This location  
30 disapproved." A third page attached to the approval plan was a plot plan of Petitioner's

1 house supplied by the Committee. On that plan, the Committee had circled a location  
2 and indicated in red ink that "distance of 12' disapproved." Exhibit P5.

3 (6) After receiving the approval form, Petitioner discovered that, because built-in  
4 cabinets took up much of the space along the interior of the garage wall where the  
5 cooler was to be installed, the location 12 feet from the front corner of the garage was a  
6 more suitable location than the location he had originally indicated as his first choice.  
7 He installed the cooler 12 feet from the front corner of the garage.

8 (7) After the cooler was installed, Petitioner received a notice from the  
9 Committee that he had violated the Committee Guidelines and the Declaration by  
10 installing the cooler at a location different from the one which had been approved by the  
11 Committee.

12 (8) Petitioner challenged the Committee's notice of violation, claiming that, under  
13 the Guidelines, the Committee had only two choices available when an application was  
14 submitted: approved or disapproved. Exhibits P2 and P3. He argued that the form he  
15 received back from the Committee had been checked next to the line "Approved," and  
16 that, if either of the options he had indicated on his application diagram did not meet  
17 with the Committee's approval, the Committee's only choice was to indicate  
18 "Disapproved" on the form, and direct that the application be resubmitted in conformity  
19 with suggestions made by the Committee.

20 (9) Respondent argued that the Committee's action with respect to Petitioner's  
21 application, although confusing in some respects, was perfectly clear with respect to the  
22 approved location for the cooler. Respondent's president, Rocky Roccanova, testified  
23 that, at Petitioner's request, several meetings had been scheduled with the Committee  
24 and the Board to discuss the placement of Petitioner's cooler, but Petitioner failed to  
25 attend any of those meetings. Mr. Roccanova indicated, however, that, after Petitioner  
26 had installed his cooler, Respondent passed a new residential design guideline which  
27 authorized cooler installations at the 12' location originally rejected by the Committee on  
28 Petitioner's application. Exhibit P7. He indicated that, if Petitioner were to resubmit his  
29 application, his installation would be approved, with perhaps only minor modifications  
30

1 relating to the cooler paint color and the planting of a shrub to screen the cooler from  
2 the street.

3 **Conclusions of Law:**

4 Petitioner bases his claim that the placement of his cooler was not in violation of  
5 the Declaration or the Guidelines on two arguments: (1) the Declaration, and, more  
6 specifically, the Guidelines permitted the Committee to either approve or disapprove an  
7 application – there was no longer an option allowing for the approval of an application  
8 subject to conditions imposed by the Committee; and (2) the signed approval form  
9 created some ambiguity because it clearly indicated his application had been  
10 “Approved” and, significantly, the line indicating *which* of his two options were approved  
11 had been crossed out.

12 Petitioner’s first argument, while bolstered somewhat by the subsequent revision  
13 of the application form to delete the Committee’s option of granting conditional  
14 approvals, is, nevertheless, in conflict with the language and intent of both the  
15 Declaration and the Guidelines. The Declaration provides:

16 The Reviewing Body shall, within the period specified in the Design  
17 Guidelines, advise the party submitting the Plans, in writing, at an address  
18 specified by such party at the time of submission, of (i) the approval of  
19 Plans, or (ii) *the segments or features of the Plans which are deemed by*  
20 *the Reviewing Body to be inconsistent or not in conformity with this*  
*Declaration and/or the Design Guidelines, the reasons for such finding,*  
*and suggestions, if appropriate, for the curing of such objections.*

21 Declaration, Section 10.4 (b). Emphasis added. Exhibit P1.

22 The Guidelines specifically state that the Committee’s response to an application  
23 will be made

24 “...by returning one set of plans and a copy of the Application for Approval  
25 to the Owner ... in one of the following two forms:

- 26 a. Approved – The entire document submitted is approved in total.  
27 b. Disapproved – The entire document submitted is not approved  
28 and no work may commence. *The response will set forth the*  
*reasons for disapproval thereof and suggestions for bringing the*  
*document into conformity with the Declaration and these RDGs.*

29 Guidelines, Section A. 2. Emphasis added. Exhibit P3.  
30

1 Clearly, both the Declaration and the Guidelines contemplate that the Committee  
2 may approve applications subject to certain conditions being satisfied by the applicant.  
3 It would be contrary to the obvious intent of the documents and would not serve the  
4 legitimate interests of either Respondent or the Association's members to interpret  
5 those documents as strictly as Petitioner suggests.

6 As to Petitioner's argument that the approval form he received back from the  
7 Committee was ambiguous, it was sloppy perhaps, but it was not ambiguous. The two  
8 plot plans attached to the approval form sent back to Petitioner by the Committee were  
9 unequivocal. They clearly indicated (one in red ink) that the proposed location 24 feet  
10 from the front corner of the garage was the approved location and that the location 12  
11 feet from the front corner of the garage was specifically disapproved. At a minimum, the  
12 Committee's response should have prompted Petitioner to request clarification from the  
13 Committee before he proceeded with the installation if he felt the Committee's action  
14 was confusing.

15 Inherent in any contract, and particularly one between neighbors, is a spirit of  
16 mutual cooperation and reasonableness. Homeowner association committees and  
17 boards are generally comprised of volunteers who frequently possess neither the time  
18 nor the expertise to act with the technical precision suggested by the Petition filed in this  
19 case. More importantly, the community documents which govern in this case simply do  
20 not require such precision.

21 **ORDER**

22 For the reasons stated above, **IT IS ORDERED** denying the Petition.<sup>1</sup>

23 Done this day, August 20, 2007.

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27 \_\_\_\_\_  
28 Michael K. Carroll  
29 Administrative Law Judge

30 \_\_\_\_\_  
<sup>1</sup> This Order is the final administrative decision and is not subject to a request for a rehearing. A.R.S. §41-2198.02 (B).

1 Original transmitted by mail this  
2 \_\_\_\_\_ day of \_\_\_\_\_, 2007, to:

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9 Ellsworth Pontius  
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15 By \_\_\_\_\_  
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