

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

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3 **ALJFIN ALJ Decision final by statute**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 JOHN E. MACKEY,

8 Petitioner,

9 vs.

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11 CONTINENTAL RANCH COMMUNITY
12 ASSOCIATION

13 Respondent.

No. 08F-H078009-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

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16 **HEARING:** January 30, 2008

17 **APPEARANCES:** John E. Mackey on his own behalf and David A. McEvoy,
18 Esq. for Continental Ranch Community Association

19 **ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

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21 **Procedural Background**

22 At the commencement of the hearing, John Mackey and Ikuko Mackey agreed
23 that John Mackey be the designated Petitioner in this matter. The Caption of this matter
24 is amended accordingly.

25 **Ruling**

26 John Mackey (Petitioner”) is contesting the fines that Continental Ranch
27 Community Association (“Association”) has imposed against him for failing to comply
28 with Design Guidelines relating to landscaping (“Guidelines”) that were adopted by the
29 Association. The Guidelines contained requirements for minimum front yard
30 landscaping to be followed by members of the Association. Although Petitioner had
reasons for not maintaining his front yard landscaping, he failed to meet the minimum

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1 front yard landscaping requirements of the Guidelines that were in effect as of the time
2 when the fines were imposed. The Association's Declaration of Covenants, Conditions,
3 and Restrictions ("CC&Rs") authorizes the Association to amend the Guidelines from
4 time to time. Thus, it is determined that the Association acted appropriately in enforcing
5 the Guidelines and CC&Rs when it imposed fines against Petitioner for failing to
6 maintain his front yard in accordance with the Guidelines.

7 **FINDINGS OF FACT**

- 8 1. Petitioner and his wife reside at lot 13 of Continental Ranch Community and have
9 been members of the Association since they moved into the community in 1993.
- 10 2. Petitioner hired a professional landscaper to handle his landscaping at his home
11 and believes that, when he moved into the community, he was in compliance with the
12 Guidelines.
- 13 3. Petitioner testified that when he moved into the home, he had a tree in the front
14 yard that was dying that became an eyesore, causing him to have the tree cut down.
15 Petitioner represented that he has tried to plant other trees and plants in the front yard
16 but that area does not support to vegetation.
- 17 4. When Petitioner moved into the home, he planted two Ocotillo cacti in the front
18 yard, however only one remains. Petitioner contends that the remaining Ocotillo should
19 be considered a substitute for the tree requirement set forth in the Guidelines.
- 20 5. Petitioner testified that he has bushes (Texas Rangers) planted on the right side
21 of his yard.
- 22 6. Petitioner and his wife are concerned about having bushes in the front yard
23 because of their experience that such vegetation attracts snakes and constitutes a
24 safety issue.
- 25 7. When Karen Mathews ("Ms. Mathews"), Assistant Manager for the Association,
26 patrolled the community in September 2006, she noticed that Petitioner did not have a
27 tree or bushes in his front yard, causing her to issue the September 6, 2006 letter to
28 Petitioner.
- 29 8. On September 6, 2006, the Association issued a notice of violation to Petitioner
30 advising him that he was not in compliance with the front yard minimum landscaping

1 requirements set forth in the Guidelines. Specifically, the letter addressed the fact that
2 Petitioner did not have any trees or bushes in his front yard.

3 9. The Guidelines in effect on September 6, 2006 provided that: "A front yard
4 landscape package must be installed by the builder/developer within thirty (30) days of
5 close of escrow. The minimum landscape package for each unit shall consist of at least
6 one (1) 24" box tree, one (1) shrub per 20 square feet, and rock or other materials which
7 will aide in dust abatement." Exhibit 3.

8 10. The evidence of record established that from September 6, 2006 through 2007,
9 the Association issued other violation notices for Petitioner's failure to maintain his front
10 yard in accordance with the minimum landscaping requirements.

11 11. Ms. Mathews testified that the Association maintains a policy that after two
12 notices of violation are issued for the same violation within a calendar year, the next
13 letter the Association sends out imposes a \$25.00 fine with other letters increasing the
14 fine until a maximum fine of \$100.00 is reached. In the third notice of violation issued to
15 Petitioner on November 2, 2006, the Association informed Petitioner that, as of that
16 date, Petitioner had not submitted an application to the Architectural Review Committee
17 to bring the front yard landscaping into compliance with the Guidelines.

18 12. Ms. Mathews testified that the Association's Architectural Review Committee
19 has, upon request, permitted an Ocotillo to satisfy the front yard tree requirement.
20 However, Ms. Mathews testified that the Architectural Review Committee has never
21 received any request from Petitioner to consider the Ocotillo on Petitioner's property as
22 a substitute to the front yard tree requirement of the Guidelines.

23 **CONCLUSIONS OF LAW**

24 1. Petitioner must prove by a preponderance of the evidence that the
25 Association violated the provisions of A.R.S. § 33-1803(B), Sections 1.28 and 4.5 of the
26 CC&Rs and the Guidelines.

27 2. A "preponderance of the evidence is evidence which is of greater weight
28 or more convincing than the evidence which is offered in opposition to it; that is,
29 evidence which as a whole shows that the fact sought to be proved is more probable
30 than not." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

Lewis D. Kowal
Administrative Law Judge

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By _____