

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 **CLIFFORD AND JEAN BUTLER**

8 **Petitioners,**

9 **vs.**

10 **HAPPY TRAILS COMMUNITY**
11 **ASSOCIATION,**

12 **Respondent.**

No. 12F-H1212004-BFS

ADMINISTRATIVE LAW JUDGE
DECISION

13
14
15 **HEARING:** June 18, 2012

16 **APPEARANCES:** Petitioners Clifford and Jean Butler appeared on their own behalf.
17 Maria Kupillas, Esq. represented Respondent Happy Trails Community Association.

18 **ADMINISTRATIVE LAW JUDGE:** Sondra J. Vanella

19
20 **RULING**

21 This hearing involved Clifford and Jean Butlers' allegation that Happy Trails
22 Community Association ("Happy Trails") is enforcing a policy contrary to the provisions
23 of the Amended and Restated Declarations of Covenants, Conditions and Restrictions.
24 Specifically, the Butlers allege that Happy Trails is not allowing its residents to reside in
25 an Arizona Room without a Residence Vehicle present on their respective lots. The
26 Administrative Law Judge concludes that the Butlers failed to prove that Happy Trails
27 violated any provision of the governing documents.

28 **FINDINGS OF FACT**

29 1. At all times relevant to this matter, Petitioners Clifford and Jean Butler resided in
30 Happy Trails. The Butlers have resided in Happy Trails full-time for approximately 12
years and continue to reside in Happy Trails. Happy Trails is an over-55 years of age

1 planned community comprised of approximately 2,000 lots divided into ten subdivisions.
2 Approximately 500 lots contain Arizona Rooms, and less than 1000 lots will
3 accommodate a Residence Vehicle. Some of the lots are allocated for permanent
4 manufactured homes.

5 2. Happy Trails is governed by the Amended and Restated Declarations of
6 Covenants, Conditions and Restrictions for Happy Trails Resort ("CCR's") dated
7 February 14, 2005. See Exhibit A. The CCR's define "Arizona Room" at section 1.31
8 as "a separate structure located on the Lot used, in part, for residential purposes, *but*
9 *that does not serve as the main residence on the Lot.*" (Emphasis added.) See Exhibit
10 A at 13. The CCR's at section 11.1 state the following:

11 Residential Use. Each lot may be used only for residential purposes and
12 none other. Except as otherwise set forth in this section, *individuals may*
13 *only reside in a Residence Vehicle and no other portion of the Lot may be*
14 *occupied as a residence.* Individuals who reside on Lots on which Arizona
15 Rooms are allowed *may also occupy an Arizona Room* on the Lot so long
16 as the entire Lot is occupied by no more than two individuals, . . .
17 (Emphasis added.)

18 See Exhibit A at 34.

19 3. On February 29, 2012, the Butlers filed a Petition with the Department of Fire,
20 Building and Life Safety ("Department") alleging the following in pertinent part:

21 The association is enforcing a policy that is not in accord with the CC&Rs.
22 The policy is that owners cannot reside in the Arizona Room unless there
23 is a recreation vehicle parked on the lot. This policy is unreasonable,
24 doesn't make sense and is costly to the owners.

25 They are enforcing the policy thusly:

26 If I move my recreational vehicle off my lot for any reason (even to consign
27 it for sale) I have three choices.

- 28 1. Move out of my Arizona Room, which has been my home for over 10
29 years. I am a resident of Arizona and have no other home.
- 30 2. To purchase another recreational vehicle to park on my lot. [S]everal
owners have purchased 24 ft. travel trailers, that will never be used at
a cost of \$10,000 or more.
3. The Associatio[n] will levy fines of up to [\$]2,500[.]

I find no authority in the CC&Rs for fining an owner for not having a
recreational vehicle on their lot. Because the CC&Rs trump policy this
policy must be declared invalid.

1 4. On March 28, 2012, Happy Trails filed a Response to Petition asserting in part
2 that: (i) the CCR's require that owners occupy a Residence Vehicle as a main
3 residence; and (ii) the CCR's allow owners with approved Arizona Rooms to
4 contemporaneously occupy the Arizona Room in addition to the required Residence
5 Vehicle.

6 5. On April 23, 2012, the Department issued a Notice of Hearing to the parties
7 notifying them that the Butlers have alleged "violations of Happy Trails Community
8 Association . . . Covenants, Conditions and Restrictions."

9 6. At hearing, Mr. Butler asserted that the "policy" being enforced by Happy Trails of
10 not allowing a resident to live in an Arizona Room without the presence of a Residence
11 Vehicle on the lot is unreasonable, costly, and not supported by the CCR's. Arizona
12 Rooms in the Happy Trails Community are actually residences that range in value from
13 \$200,000.00 to \$300,000.00, constructed on the respective lots. Mr. Butler testified that
14 he sold his Residence Vehicle and wants to purchase a house outside of Happy Trails,
15 however, he has been unable to sell his lot. Mr. Butler wishes to live full-time in his
16 Arizona Room on his lot until he can sell his lot. Mr. Butler has approached Happy
17 Trails to request that he be allowed to do so. However, Happy Trails issued a Courtesy
18 Notice on May 8, 2012, stating in pertinent part, "You are living in the Arizona Room
19 without an RV on the property. This is not allowed according to the CC&R's and the
20 Design Guidelines. Please put a Motor Home or Trailer, 24 feet or longer on the
21 property right away." See Exhibit 2. The Butlers have temporarily borrowed a
22 Residence Vehicle to place on their lot so as to not be in violation of the CCR's.

23 7. Mr. Butler testified at length regarding the history of Happy Trails and the
24 previous governing CCR's for Happy Trails. Mr. Butler testified that historically, Happy
25 Trails has condoned residents occupying Arizona Rooms since 1997. Mr. Butler
26 testified that the 1985 CCR's that were in effect at the time he purchased his lot in
27 Happy Trails in 1999 required residents to reside in their Residence Vehicles and did
28 not permit Arizona Rooms to be constructed on the lots. However, residents began to
29 construct Arizona Rooms notwithstanding this provision and Mr. Butler constructed his
30 Arizona Room in 2000 to 2001. Mr. Butler testified that Happy Trails sanctioned the

1 Butlers' use of their Arizona Room as a full-time residence. Mr. Butler testified that all of
2 the residents who have Arizona Rooms live in them full-time. Mr. Butler asserted that it
3 is expensive to maintain a Residence Vehicle that is not used by its owners, as it
4 depreciates in value, and the owners must have current licensure and insurance for the
5 vehicle.

6 8. Mr. Butler expressed his concern that there is not a specified fine for not having a
7 Residence Vehicle on a lot and Happy Trails' Community Manager could not advise him
8 as to the fine schedule. However, both parties stipulated that Happy Trails has not
9 assessed any fines to the Butlers for not having a Residence Vehicle on their lot.

10 9. Mr. Butler called Sal Ognibene as a witness. Mr. Ognibene has resided in Happy
11 Trails since 1996. Mr. Ognibene testified that he has resided in his Arizona Room since
12 it was constructed. Mr. Ognibene testified that he attempted to have a referendum
13 passed to change the CCR's to allow residents to reside in their Arizona Rooms without
14 the need for a Residence Vehicle to be present on their lots. The referendum process
15 was abandoned and replaced by an April 12, 2012 proposed amendment to the CCR's
16 for the same purpose. Mr. Ognibene testified that an amendment would require 1,001
17 votes, and it was unlikely to pass because Happy Trails has never had more than 800
18 votes for any proposal. Mr. Ognibene testified that due to the economy, as well as the
19 age and health concerns of the current residents, the requested change to the CCR's is
20 a necessary one.

21 10. Beth McWilliams, Happy Trails Community Manager, testified that the proposed
22 amendment to the CCR's will be voted upon in December 2012, but the CCR's require
23 1,001 votes to effectuate the amendment and it is unlikely that the required number of
24 votes will be obtained. Ms. McWilliams testified that Happy Trails only allows a resident
25 to occupy an Arizona Room full-time when the resident's Residence Vehicle is out for
26 repair, and that Happy Trails requires some form of evidence of the repair. Ms.
27 McWilliams also testified that Happy Trails has received applications for variances and
28 waivers, but the Board of Directors ("Board") has voted not to grant any variances or
29 waivers because if the Board grants a variance or waiver for one resident, it will be in
30 the position of having to grant variances or waivers for all residents who make such

1 application. Jim Weihman, Happy Trails' Board President, testified consistently with Ms.
2 McWilliams testimony regarding variances and waivers. Ms. McWilliams testified that
3 currently, there are no residents of Happy Trails occupying an Arizona Room without a
4 Residence Vehicle on the lot.

5 **CONCLUSIONS OF LAW**

6 1. In this proceeding, the Butlers bear the burden of proving by a preponderance of
7 the evidence that Happy Trails has violated the governing CCR's. See A.A.C. R2-19-
8 119.

9 2. A preponderance of the evidence is "[e]vidence which is of greater weight or more
10 convincing than the evidence which is offered in opposition to it; that is, evidence which as
11 a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW
12 DICTIONARY 1182 (6th ed. 1990).

13 3. The Butlers failed to establish that Happy Trails violated the governing CC&R's.
14 The definition of "Arizona Room" contained in Happy Trails' CCR's state that an Arizona
15 Room "does not serve as the main residence on the lot." See Exhibit A. The CCR's
16 further state that "individuals may reside only in a Residence Vehicle and no other
17 portion of the lot may be occupied as a residence." *Id.* The CCR's further set forth that
18 "individuals who reside on lots on which Arizona Rooms are allowed may also occupy
19 an Arizona Room." *Id.* This means that owners with Arizona Rooms may
20 contemporaneously occupy the Arizona Room in addition to occupying a Residence
21 Vehicle, and the Arizona Room cannot be used as the main residence on the lot.
22 Therefore, a Residence Vehicle must be present on the lot for the owners to reside in it.
23 By the Butlers' own admission, as well as that of their witness, Mr. Ognibene, the CCR's
24 currently require a Residence Vehicle to be present on the lot. No action has been
25 taken by Happy Trails that was shown to be in violation of the CCR's and Happy Trails'
26 position with respect to Residence Vehicles and Arizona Rooms comports with the
27 provisions of the governing CCR's.

28 4. While the requirement of the presence of a Residence Vehicle on the lot may not
29 necessarily be economical or practical for many residents at this time, if residents are
30 dissatisfied with this requirement, procedures exist to amend the CCR's to reflect the

1 owners' needs and desires, and that process is currently being utilized by way of a
2 proposed amendment. The Butlers and those similarly situated have an opportunity to
3 garner the requisite number of votes needed to amend the CCR's prior to the December
4 2012 Board meeting.

5 5. The Administrative Law Judge concludes that the Butlers failed to establish by a
6 preponderance of the evidence that Happy Trails violated any provision of the CCR's as
7 alleged, and therefore, the Petition should be dismissed.

8 **RECOMMENDED ORDER**

9 In view of the foregoing, IT IS ORDERED that no action is required of Happy
10 Trails in this matter and that the Petition be dismissed.

11 *In the event of certification of the Administrative Law Judge Decision by the*
12 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
13 *five (5) days from the date of that certification.*

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15 Done this day, July 5, 2012.

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17 /s/ Sondra J. Vanella
18 Administrative Law Judge

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20 Transmitted electronically to:

21 Gene Palma, Director
22 Department of Fire Building and Life Safety
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