

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**

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7 **PECOS RANCH COMMUNITY ASSOCIATION,**

8 **Petitioner,**

9 **v.**

10 **RANDY AND SHARON HOYUM,**

11 **Respondents.**

No. 12F-H1212010-BFS

ADMINISTRATIVE LAW JUDGE

DECISION

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16 **HEARING:** November 5, 2012

17 **APPEARANCES:** Lydia Peirce Linsmeier, Esq. represented Petitioner Pecos Ranch
18 Community Association. Randy and Sharon Hoyum appeared on their own behalf.

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

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21 **FINDINGS OF FACT**

22 1. At all times relevant to this matter, Respondents Randy and Sharon Hoyum
23 resided in the planned community known as Pecos Ranch Community Association
24 ("Pecos Ranch"). The Hoyums reside at 1441 South Cholla Place, referred to also as
25 Lot 4029.

26 2. At all times material to this matter, the community was governed by a Board of
27 Directors ("Board"). Louis Silvestro is the current President of the Board. Larry Buehler
28 is a member of the Board.

29 3. Pecos Ranch is governed by Homeowner Association documents such as the
30 Declaration of Covenants, Conditions and Restrictions ("CC&Rs") and Design
Standards. See Exhibits 1 and 2, respectively.

1 4. On May 10, 2012, Pecos Ranch filed a Petition with the Department of Fire,
2 Building & Life Safety (“Department”) alleging in pertinent part that on or about
3 November 30, 2009, the Hoyums constructed an approximately 10’ x 24’ free-standing
4 accessory structure in their rear yard without first obtaining approval from Pecos Ranch
5 Architectural Committee.

6 5. On May 30, 2012, the Hoyums filed an Answer to the Petition, denying all of the
7 complaint items in the Petition.

8 6. At hearing, Leisha Collins, the Property Manager for Pecos Ranch, testified
9 regarding Pecos Ranch’s governing documents. Ms. Collins testified that the CC&Rs in
10 place at the time the structure was constructed dictate that homeowners are to obtain
11 prior approval prior to constructing such a structure. The CC&Rs specifically state in
12 Section 3 the following in pertinent part:

13 (a) Design Review. . . . (ii) no building, fence, exterior wall, residence, or
14 other structure or grading shall be commenced, erected, maintained,
15 improved, altered or made on any Lot, Parcel or other area at any time,
16 unless and until the Design Review Committee has, in each such case,
17 reviewed and approved the nature of the proposed structure, work,
18 improvement, alteration, or landscaping and the plans and specifications
19 therefore. . . . Notwithstanding anything to the contrary contained herein,
20 the Design Review Committee may, in its sole and absolute discretion,
21 upon written request from an Owner who has violated this subparagraph
22 (a), elect to retroactively approve work done or an alteration made without
23 prior written approval.

24 See Exhibit 1 at 16-17.

25 7. Ms. Collins further testified about the Design Standards for Pecos Ranch relating
26 to storage sheds, which state, “[i]n no event shall storage sheds be located so as to be
27 visible from neighboring property.” See Exhibit 2 at 6.

28 8. Ms. Collins also testified regarding the “Lot File” maintained by the property
29 management company for Pecos Ranch and the contents thereof. The “Lot File”
30 contains a Friendly Reminder letter dated December 1, 2009, requesting the Hoyums to
“remove the unapproved shed structure in back yard as it is visible over fence line and
has not been approved.” See Exhibit 4.

1 9. On December 4, 2009, the Hoyums submitted an Architectural Review Submittal
2 Form to Pecos Ranch requesting approval of a “free standing storage structure in rear
3 yard 10 ft wide by 24 ft long (N/S). 3/2 roof pitch w/concrete tiles to match house.
4 Vertical grooved Hardiboard siding – but possible to stucco –paint (body & trim) same
5 as house.” See Exhibit 19. Construction of the structure commenced in or about
6 November 2009, and was completed in or about April 2010.

7 10. On December 10, 2009, Pecos Ranch issued a Notice of Disapproved Request
8 (“Notice”) to the Hoyums. The Notice states the following in pertinent part:

9 Unfortunately, your request for Architectural Change has been
10 disapproved. Specifically, your request for the following change:

11 **Storage Structure**

12 The Community is charged with the responsibility of preserving the
13 aesthetic appearance of the Community to help protect the value of the
14 homes. Occasionally, this means rejecting a Request for Approval. In this
15 case, the Request was disapproved for the following reason:

16 ***The structure does not meet City Building Codes. The height is too***
17 ***high. Please refer to the Pecos Ranch Design Standards. You did***
18 ***not submit a site plan & other required drawings. . . .***

19 See Exhibit 5. (Emphasis in original.)

20 11. Mr. Buehler, a current Board member, was the Chairman of the Architectural
21 Review Committee at the time the Hoyums built the storage shed. Mr. Buehler testified
22 that the December 1, 2009 Friendly Reminder was sent immediately after the Board
23 realized that the structure was in the process of being constructed. Mr. Buehler testified
24 that the City of Chandler issued a Stop Work Order to the Hoyums because they did not
25 obtain a building permit. On December 4, 2009, the City of Chandler issued an Order to
26 Comply to the Hoyums stating that they were “building without zoning or Building
27 Department approval, permits & inspections.” See Exhibit 13 at 8. On December 16,
28 2010, a Judgment and Sentence was entered against Mr. Hoyum in Chandler Municipal
29 Court for a Uniform Building Code Violation, fining him in the amount of \$320.00. *Id.* at
30 2.

1 12. Mr. Buehler testified that the Hoyums' December 2009 request was discussed in
2 an Architectural Review Committee meeting among three members, and that they
3 decided that the structure was too close to the wall, the roof structure was above the
4 wall, that it looked "out of place," and was aesthetically unappealing. Therefore, the
5 request was denied. Mr. Buehler further testified that after the denial of the request, the
6 Board convened a meeting to "put together guidelines to interpret the CC&Rs" and "to
7 maintain an aesthetic commonality." Mr. Buehler testified that the Board felt that
8 storage sheds should be minimal and not be overpowering. Mr. Buehler was advised
9 by the City of Chandler that storage sheds are restricted to 120 square feet maximum,
10 and that the Hoyums' structure would not be considered a storage shed because it
11 exceeded that square footage. Mr. Buehler testified that the Board felt that the Hoyums'
12 structure infringed upon the setbacks and exceeded the area that it could be built upon.
13 Mr. Buehler also testified that he researched pre-built storage sheds and learned that
14 most are 7'6" at the ridge level. Mr. Buehler testified that most of the walls in the
15 Community are 6' high and that the Board compromised by allowing storage sheds to
16 exceed wall height by 18".

17 13. The evidence of record reflects that effective May 25, 2011, in a Consent to
18 Action, the Board changed the Design Standards in response to the instant dispute with
19 the Hoyums, to reflect the following:

20 A storage shed is defined as any structure used for storage, with a
21 maximum roof area of 120 square feet. The location of this structure must
22 have the prior approval of the Design Review Committee. Any such
23 building and roof thereof should not exceed the rear yard solid fence
24 height by greater than 18 inches at the location of installation. Further, the
25 structure should be screened with vegetation to restrict view, and must be
26 of a "neutral earth tone" color or match the home, to assure the aesthetic
27 appeal.

28 See Exhibit 3.

29 14. Mr. Silvestro, the Board President who was the Vice-president at the time the
30 structure was being constructed, testified that the Hoyums' request was disapproved
because they did not obtain approval from the Design Review Committee, that the
structure violated the CC&Rs, and the Hoyums did not obtain a permit from the City of

1 Chandler. Mr. Silvestro testified that the Hoyums' offer to stucco the shed and plant
2 trees was rejected because trees "would not look right behind the shed."

3 15. Mr. Hoyum testified that he was not aware that he needed permission from the
4 Architectural Review Committee to construct the structure, that the City of Chandler
5 changed its restrictions on storage sheds, and that he needed a permit. Mr. Hoyum
6 testified that the City of Chandler initially issued him a permit, however later rescinded it
7 due to the fact that he did not have approval of the homeowners' association. The City
8 of Chandler advised Mr. Hoyum that he could apply for a variance because the size of
9 the structure rendered it to not be a storage shed and there were setback issues
10 because the setback requirements mandate that the structure be set back 20', but his
11 yard is only 23 ½' deep. However, Mr. Hoyum discovered that the City of Chandler
12 would not accept his application for a variance without homeowners' association
13 approval. The Hoyums find themselves in a quandary in that they cannot obtain a
14 permit or variance from the City of Chandler without Architectural Review Committee
15 approval, and they cannot obtain Architectural Review Committee approval without a
16 permit or variance from the City of Chandler.

17 16. Mr. Hoyum expressed his frustration with the Board stating that they are "an
18 exclusive group of longtime retired friends miffed because a homeowner would build
19 something without their approval." Mr. Hoyum testified that he feels like "he is being
20 picked on" because the area of homes in which his home is located is considered the
21 "poor" area.

22 17. Mr. Hoyum submitted numerous photographs into evidence depicting other
23 homes within Pecos Ranch that have various structures in their yards, including storage
24 sheds, an additional room with skylights protruding from the roof, covered patios, a
25 glass enclosed sunroom, a gazebo, tents, awnings, as well as solar panels, artificial turf,
26 frog statues in a front yard, and overgrown trees, among others. See Exhibits C
27 through AA. Mr. Hoyum argued that the Board was exercising its authority in an
28 arbitrary and capricious manner by not granting him permission for his storage structure
29 notwithstanding the fact that other homeowners are either in violation of the CC&Rs or
30 have received permission from the Architectural Review Committee to deviate from the

1 CC&Rs. Because the issue in this matter revolves around whether the Hoyums have
2 violated the CC&Rs and Design Standards, and not whether other homeowners within
3 Pecos Ranch have done so, Mr. Hoyum's argument in this regard is not a defense in
4 this matter.

5 **CONCLUSIONS OF LAW**

6 1. In this proceeding, Pecos Ranch bears the burden of proving by a
7 preponderance of the evidence that the Hoyums violated its CC&Rs or the Design
8 Standards. See A.A.C. R2-19-119.

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. Article IV, Section 3(a), of the CC&Rs governs design review. That provision states
14 the following in pertinent part:

15 (a) Design Review. . . . (ii) no building, fence, exterior wall, residence, or
16 other structure or grading shall be commenced, erected, maintained,
17 improved, altered or made on any Lot, Parcel or other area at any time,
18 unless and until the Design Review Committee has, in each such case,
19 reviewed and approved the nature of the proposed structure, work,
20 improvement, alteration, or landscaping and the plans and specifications
21 therefore. . . . Notwithstanding anything to the contrary contained herein,
22 the Design Review Committee may, in its sole and absolute discretion,
23 upon written request from an Owner who has violated this subparagraph
24 (a), elect to retroactively approve work done or an alteration made without
25 prior written approval.

26 See Exhibit 1 at 16-17.

27 4. In this case, there is no dispute that the Hoyums constructed a 10' x 24' structure
28 in their rear yard, and that they did so without approval from Pecos Ranch Design
29 Review Committee. The evidence of record established that Pecos Ranch Design
30 Review Committee exercised its discretion in refusing to retroactively approve the
structure because it was constructed without a permit from the City of Chandler and it
does not comply with the City of Chandler's building restrictions regarding size and
setbacks.

1 5. While the Administrative Law Judge is not unsympathetic to the Hoyums' situation,
2 it must be concluded based upon the governing documents and the evidence of record
3 that Pecos Ranch sustained its burden of proving by a preponderance of the evidence that
4 the Hoyums violated the CC&Rs and Design Standards.¹

5 6. The Administrative Law Judge concludes that Pecos Ranch's Petition should be
6 granted.

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¹ Nothing herein should be construed as precluding either party from seeking relief in a court of competent jurisdiction.

RECOMMENDED ORDER

In view of the foregoing, IT IS ORDERED:

- a) The Hoyums shall within 60 days of the effective date of the Order entered in this matter reimburse the filing fee of \$550.00 to Pecos Ranch pursuant to A.R.S. § 41-2198.01; and
- b) The Hoyums shall within 90 days of the effective date of the Order entered in this matter either obtain approval from the Design Review Committee or alter, modify, move, or remove the structure to come into compliance with the Pecos Ranch governing documents.

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

Done this day, November 20, 2012.

/s/ Sondra J. Vanella
Administrative Law Judge

Transmitted electronically to:

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