

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 DEANNA MORRIS,

8 Petitioner,

9  
10 vs

11 SUNDANCE RESIDENTIAL HOA,

12 Respondent.

**No. 15F-H1515001-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

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15 **HEARING:** June 10, 2015, at 8:00 a.m.

16 **APPEARANCES:** Deanna Morris (hereinafter “Ms. Morris” or “Petitioner”) appeared on her own behalf. Sundance Residential HOA (hereinafter “Sundance” or “Respondent”) was represented by its attorney, Mark Sahl, Esq., Carpenter, Hazlewood, Delgado & Bolen, PLC.

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19 **ADMINISTRATIVE LAW JUDGE:** M. Douglas

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22 Evidence and testimony were presented and the following Findings of Fact, Conclusions of Law and Recommended Order are made:

23 **FINDINGS OF FACT**

24 **Background**

25 1. The Department of Fire, Building and Life Safety (the “Department”) is authorized by statute to receive Petitions for Hearings from members of homeowners’ associations and from homeowners’ associations in Arizona.

- 26  
27  
28 1. Sundance is a homeowners’ association located in Buckeye, Arizona.  
29 2. Ms. Morris owns a residence in and is a member of Sundance.  
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1           3.       On or about January 5, 2015, Ms. Morris filed a multi-issue petition with  
2 the Department alleging that Sundance had violated numerous provisions of  
3 Sundance's CC&Rs, including Article VII, Sections 7.01, 7.03, and 7.04, Article 1,  
4 Sections 1.64, 1.65, Article II, Section 2.08, and Article X, Section 10.16. Ms. Morris  
5 alleged that her neighbor's new gazebo and walkout balcony do not comply with  
6 Sundance's CC&Rs and were not built within approved time frames. Ms. Morris also  
7 alleged that Sundance had added an invoice for \$1,076.00 to her quarterly HOA bill  
8 without explanation.<sup>1</sup>

9           5.       Sundance's Answer to the Petition provided, in part, as follows denied all  
10 of the complaint items in the Petition.<sup>2</sup>

11           6.       In the cover sheet for her exhibits, Ms. Morris asserted that when the  
12 Sundance Architectural Committee (hereinafter "Committee") approved the plans for the  
13 gazebo and walkout balcony for her neighbor's residence, the Committee violated the  
14 CC&Rs of Sundance. Ms. Morris said the neighbor's build application (hereinafter  
15 "build") was approved under the Committee's rules for 1/1/2011. Ms. Morris asserted  
16 that the Committee should have utilized the Committee rules of 2/1/14, which became  
17 effective on April 1, 2014.

18           7.       Ms. Morris asserted that the Committee rule process should have ensured  
19 the walkout balcony and gazebo structure at her neighbor's house could not have been  
20 constructed. Ms. Morris asserted that deviations to plans occurred and should not  
21 have been allowed.

22           8.       Ms. Morris asserted that her neighbor's gazebo structure was not a  
23 gazebo as it is normally defined. Ms. Morris asserted that her neighbor's walkout  
24 balcony and gazebo structure were not in harmony with the Sundance neighborhood.

25           9.       Ms. Morris asserted that her neighbor's walkout balcony and gazebo  
26 structure deviated from approved plans and specifications and that the structures were  
27 not completed within the time frame allowed.

### 28           **Testimony**

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30           <sup>1</sup> See Petition in electronic record.

<sup>2</sup> See Respondent's Answer in electronic record.

1           10. Ms. Morris reviewed her exhibits and testified in accordance with her  
2 statements on her evidence cover sheet. Ms. Morris testified that her neighbor's new  
3 gazebo and walkout balcony do not comply with Sundance's CC&Rs and were not built  
4 within approved time frames. Ms. Morris stated that her neighbor's walkout balcony and  
5 gazebo structure were not constructed in accordance with approved plans and  
6 specifications. Ms. Morris said that Sundance had failed to protect her property's views,  
7 privacy, and value.

8           11. Ms. Morris asserted that her neighbor's walkout balcony and gazebo  
9 structure blocked her view. Ms. Morris testified that she would never be able to see the  
10 sunset again. Ms. Morris said that the unobstructed views of the sunset was one of the  
11 reasons she purchased the house in Sundance.

12           12. Ms. Morris acknowledged that Sundance had removed the invoice for  
13 \$1,076.00 for attorney's fees from her quarterly bill from Sundance. Ms. Morris testified  
14 that the bill was taken off her account on May 13, 2015, after she filed the petition at  
15 issue.

16           13. Ms. Morris testified that there are twelve lights on the inside of her  
17 neighbor's patio under the walkout balcony that were not approved and that there is a  
18 light in the gazebo structure that was not approved. Ms. Morris said that the lights are  
19 very bright and that it "looks like a park when it is lit up." Ms. Morris acknowledged that  
20 she had not filed a complaint about the lighting with Sundance. Ms. Morris said that she  
21 had not filed a complaint about the lighting because Sundance ignores her complaints.

22           14. Ms. Morris acknowledged that her request for documents from Sundance  
23 was not in writing.

24           15. Rod Fleishman (hereinafter "Mr. Fleishman") testified that he is the co-  
25 owner of Petitioner's residence in Sundance. Mr. Fleishman stated that the construction  
26 of the walkout balcony and gazebo structure has blocked a portion of the scenic view  
27 from Petitioner's residence.

28           16. On or about November 18, 2013, Martha Duran (hereinafter "Ms. Duran")  
29 submitted an Architectural Change Request to the Committee. Ms. Duran requested  
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1 approval for the construction of a backyard gazebo, a walkout balcony, and a second-  
2 story addition to her residence.<sup>3</sup>

3 17. On or about December 20, 2013, the Committee approved Ms. Duran's  
4 Architectural Change Request for the construction of a walkout balcony and gazebo but  
5 denied her request for approval for the construction of a second-story addition.<sup>4</sup>

6 18. Ms. Duran testified that she and her husband are the owners of the  
7 residence directly to the west of Petitioner's residence. Ms. Duran stated that she  
8 purchased her residence in Sundance before Petitioner purchased her residence. Ms.  
9 Duran said that she and her husband decided to add a balcony and gazebo to her  
10 residence in 2013.

11 19. Ms. Duran testified that she applied for approval from Sundance before  
12 commencing construction of the new walkout balcony and gazebo structure. Ms. Duran  
13 stated that she applied for and received a building permit from the City of Buckeye.

14 20. Ms. Duran stated that Sundance and the City of Buckeye approved the  
15 plans for the walkout balcony and gazebo structure and that construction of the walkout  
16 balcony and gazebo structure was started within the time period allowed by Sundance.  
17 Ms. Duran said that the walkout balcony and gazebo structure were constructed in  
18 accordance with plans and specifications and that the completed structures were  
19 inspected and approved by the City of Buckeye and Sundance.

20 21. Willard Brunner (hereinafter "Mr. Brunner") testified that he is a member of  
21 the Committee. Mr. Brunner stated that he purchased a home in Sundance in 2004.  
22 Mr. Brunner said that Committee treats all members the same and that it always follows  
23 guidelines. Mr. Brunner said that there are numerous approved balconies and gazebos  
24 in Sundance.

25 22. Mr. Brunner testified that initially, the Architectural Change Request  
26 submitted by Ms. Duran requested approval for a second-story addition, a gazebo, and  
27 a walkout balcony. Mr. Brunner said that the Committee denied approval for the  
28 requested second-story addition. Mr. Brunner said that the Committee approved the  
29 request for approval for the construction of a walkout balcony and a gazebo.

30 <sup>3</sup> See Exhibit C and Exhibit D (Ms. Duran's submission/approval for gazebo/walkout balcony).

<sup>4</sup> See Exhibit D (Denial of addition).

1           23. Mr. Brunner testified that the completed gazebo and the walkout balcony  
2 at the Duran residence had been measured and approved by Sundance and by the City  
3 of Buckeye. Mr. Brunner stated that neighbors do not have a veto power for  
4 construction projects that have been approved by Sundance.

5           24. Mr. Brunner reviewed the photographs in Petitioner's Exhibit 12 and  
6 Respondent's Exhibits E and F. Mr. Brunner testified that the construction of the  
7 walkout balcony and gazebo at the Duran residence was within community standards.

8           25. Mr. Brunner's testimony is found to be credible.

9           26. Tom Campanella (hereinafter "Mr. Campanella") testified that he is the  
10 community manager for Sundance. Mr. Campanella stated that the walk-out balcony  
11 and the gazebo for the Duran residence were approved in accordance with applicable  
12 CC&Rs and design guidelines for Sundance. Mr. Campanella said the inclusion of the  
13 attorney's fees in the invoice that Respondent issued to Petitioner was an administrative  
14 error.

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16           **Provisions Of Sundance's CC&Rs Referenced At Hearing**

17           1. Article VII, Section 7.01 provides, in relevant part, as follows:

18           All plans and specifications will be reviewed by the Architectural  
19 Committee for harmony and compatibility of external design and  
20 location in relation to surrounding structures, landscaping,  
21 topography and views from neighboring living units....<sup>5</sup>

22           1. Article VII, Section 7.04 provides, in relevant part, as follows:

23           All approvals of the Architectural Committee are intended to be in  
24 addition to, and not in lieu of, any required municipal or county  
25 approvals or permits, and Owner is responsible to ensure  
26 conformity with municipal and county building codes and building  
27 permits, if applicable....<sup>6</sup>

28           2. Article VII, Section 7.07 provides, in relevant part, as follows:

29           Decisions of the Architectural Committee may be appealed to the  
30 Board.... The decision of the Board will be final and not further  
appealable as to matters involving architectural control, and no

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<sup>5</sup> See Petitioner's Exhibit 1 and Respondent's Exhibit A (CC&Rs for Sundance).

<sup>6</sup> See Petitioner's Exhibit 1 and Respondent's Exhibit A (CC&Rs for Sundance).

1 matter of architectural control will be subject to the alternate  
2 dispute resolution procedures outline below.<sup>7</sup>

3 3. Sundance's 2011 Design Guidelines provide, in relevant part, as follows:

4 Approval Expiration- Construction must be started within 90 days  
5 of the date of the Committee's approval of the application or the  
6 Committees' approval shall be deemed withdrawn and plans must  
7 be resubmitted in accordance with these Rules.

8 Construction Period- Once started; construction shall be pursued  
9 diligently in order to assure prompt completion thereof. Absent a  
10 different deadline for completion of construction (which may be  
11 shorter or longer, at the Committee's discretion), such  
12 construction shall be completed within six (6) months of the date  
13 of the Committee's approval of the application.<sup>8</sup>

#### 14 **CONCLUSIONS OF LAW**

15 1. A.R.S. § 41-2198.01 permits an owner or a planned community  
16 organization to file a petition with the Department for a hearing concerning violations of  
17 planned community documents or violations of statutes that regulate planned  
18 communities. That statute provides that such petitions will be heard before the Office of  
19 Administrative Hearings.

20 2. The burden of proof at an administrative hearing falls to the party  
21 asserting a claim, right, or entitlement and the standard of proof on all issue in this  
22 matter is by a preponderance of the evidence. See A.A.C. R2-19-119.

23 3. Proof by "preponderance of the evidence" means that it is sufficient to  
24 persuade the finder of fact that the proposition is "more likely true than not." *In re*  
25 *Arnold and Baker Farms*, 177 B.R. 648, 654 (9<sup>th</sup> Cir. BAP (Ariz.) 1994).

26 4. The Architectural Change Request submitted by Ms. Duran requested  
27 approval for a second-story addition, a gazebo, and a walkout balcony. The Committee  
28 denied approval for the requested second-story addition, but granted approval for the  
29 construction of the requested walkout balcony and gazebo. Credible testimony  
30 established that the Committee reviewed the plans and specifications submitted by Ms.  
Duran for the construction of the walkout balcony and gazebo structure and determined

<sup>7</sup> See Petitioner's Exhibit 1 and Respondent's Exhibit A (CC&Rs for Sundance).

<sup>8</sup> See Respondent's Exhibit B (Sundance's Design Guidelines adopted in 2011).

1 that the plans for the proposed walkout balcony and gazebo structure were consistent  
2 with community standards and applicable design guidelines. The completed "as-built"  
3 gazebo and walkout balcony were inspected and found to comply with approved plans  
4 and specifications. Petitioner failed to prove by a preponderance of the evidence that  
5 Sundance violated its governing documents (CC&Rs) in this matter.

6 **RECOMMENDED ORDER**

7 In view of the foregoing, it is ORDERED that Respondent be deemed the  
8 prevailing party in this matter.

9 It is further ORDERED that this petition be dismissed.

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

13 Done this day, June 23, 2015.

14  
15 /s/ M. Douglas  
16 Administrative Law Judge

17 Transmitted electronically to:

18 Debra Blake, Interim Director  
19 Department of Fire Building and Life Safety  
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