

# ***E-NEWSLETTER***

## **The Legend of the Purple Gazebo** By Joshua M. Bolen, Esq.

We have heard so much about the legend of the purple gazebo that many do not believe it exists. Nevertheless, each day, more Associations are combating the architectural anomaly that is the unapproved purple gazebo. (or its relatives - the unapproved twenty foot rockslide, the unapproved blaze orange house paint color, or the unapproved three-story garage with a turret).

It used to be enough for a board or architectural committee to rely on its broad discretion to deny a prohibited or unapproved structure. However, Arizona law has recently clarified the standard by which an association approves architectural changes and enforces its architectural standards. In Tierra Ranchos HOA v. Kitchukov, 216 Ariz. 195, 165 P.3d 173, (App. 2007), the Court adopted the review standard under the Restatement, imposing the duty on the Association to, “*act reasonably* in the exercise of its discretionary powers including rulemaking, enforcement, and deign-control powers.”

How does a board or architectural committee “act reasonably”? Unfortunately, the law does not set forth the criteria a board or architectural committee must follow in order to ensure that they are acting reasonably in denying an architectural request. This makes the standard of reasonableness a bit of a moving target, because each judge’s/jury’s idea of reasonableness may differ.

So what can the Association do to protect its interest and preserve the community’s architectural integrity? Below are some suggestions for a Board or Association to consider in reviewing architectural requests:

1. Enforce your documents strictly against all owners equally.
2. Draft a clear and comprehensive set of design guidelines and appeal procedures
3. Strictly follow the Association’s fine policy or architectural appeal procedures
4. Carefully consider all architectural submissions, even if the submission is after the improvement is constructed.
5. Provide detailed explanations for the denial of an architectural application.
6. If an owner requests a meeting with the board or the architectural committee, meet with the owner to discuss the issue.
7. Rely on the advice of your counsel on all contested architectural matters.
8. Do not assume facts about the architectural request, if you need more information about the request, deny the initial request and ask for more information from the Owner.



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