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6 *Petitioner-Appellant, Pro Per*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 In the Matter of
10 **TOM BARRS**
11 *Petitioner/Appellant,*
12 vs.
13 **DESERT RANCH HOMEOWNERS'**
14 **ASSOCIATION,**
15 *Respondent/Appellee.*

No. LC 2023-00179 001
APPELLANT'S OPENING
BRIEF
OAH Nos. 22F-H2222050-REL
22F-H2222054-REL
Agency Case Nos. HO22-22050
HO22-22054

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1 **APPELLANT’S OPENING BRIEF**

2 **ABBREVIATIONS**

3 In addition to other terms defined herein, appellant Tom Barrs (Petitioner
4 below) employs the following abbreviations in this Opening Brief:

5 A.R.S.	Arizona Revised Statutes
6 OAH	Office of Administrative Hearings
6 ROA # _____	Record on Appeal as reflected in the Index filed herein by OAH By the Office of Administrative Hearings
7 Ex P _____	Petitioner’s exhibit number from OAH record
8 App. Ex. _____	Appendix

8 **Statement of the Case**

9 Appellant Tom Barrs (“Barrs”) is a property owner and member of the
10 appellee Desert Ranch Homeowners’ Association (the “Association”). As a
11 member of the Association, Barrs is statutorily entitled to information and access
12 to books and records of the Association. Barrs made various requests for
13 information from the Association. Barrs made various requests for
14 information from the Association. When those requests were not complied with or
15 incompletely complied with, Barrs filed four petitions (as next described) with the
16 Arizona Department of Real Estate (“ADRE”) as permitted by statute. **This**
17 **Appeal has been narrowed down and is based solely on Petition #3.**

18
19
20 On April 18, 2022, Barrs filed three single-issue petitions with ADRE
21 alleging statutory violations by the Association, and filed a fourth single-issue
22 petition around May 12, 2022. The petitions are summarized as follows:
23

24 **Petition #1** alleged violations of A.R.S. §33-1805 for Respondent
25 withholding various records including communication records, contracts, land
26 survey documents, etc. (ROA #146-147, Ex P276&279)
27
28

1 **Petition #2** alleged violations of A.R.S. §33-1804(A) for the Association's
2 production of incomplete or edited audio/video records in light of the Association's
3 preclusion of recording by homeowners. (ROA #146-147, Ex P282)
4

5 **Petition #3** alleged a violation of A.R.S. §33-1805 for Respondent's refusal
6 to provide copies or access to the membership list. (ROA #146-147, Ex P285)

7 That petition alleged as follows (emphasis added):
8

9 Associated Asset Management Company on behalf of Desert Ranch
10 Homeowners Association refuses to provide the Membership Roster.
11 The record was requested on 10/21/2021. This is a record that has been
12 provided to the membership for over 20 years. Now all of a sudden, the
13 management company is refusing to follow state law. Lori Loch-Lee of
14 Associated Asset Management contemptuously responded to my request
15 as follows: "The Owner Directory is not made available to the residents.
16 You have asked and I have answered. Not sure what you do not
17 understand that **AAM is not providing any type of listing** to a non-
18 Board Member.

19 **Petition #4** (similar to Petition #1) also alleged violations of A.R.S. §33-1805 for
20 Respondent withholding various records including communication records,
21 contracts, land survey documents, etc. (ROA #146-147, Ex P276&279).
22

23 On April 28, 2022, ADRE issued a Notice of Petition in Case #HO22-22050
24 to the Respondent Association. On May 16, 2022, the Association filed its Answer
25 with ADRE whereby it denied all allegations. (ROA #146-147, Ex P285)
26

27 On May 25, 2022, ADRE referred the above-captioned matters to the OAH,
28 an independent state agency, for an evidentiary hearing by an administrative law

1 judge (“ALJ”). All four Petitions were consolidated for hearing originally
2 scheduled for July 2022. (ROA #1)

3 After several continuances, the evidentiary hearing in this matter was held
4 January 9-10, 2023 and a ruling (the “Ruling”) was issued by the ALJ on February
5 21, 2023 (ROA #186). The ALJ ruled largely in favor of Barrs on Petition #s1 & 4
6 regarding board communication records and land survey documents, but denied
7
8 Petition #s 2 & 3.
9

10 On March 23, 2023, Barrs timely filed a detailed petition for rehearing with
11 ADRE, pursuant to A.R.S. § 32-2199.04, objecting to the inaccuracies in the
12 findings of fact, conclusions of law, and the overall Ruling (ROA #111 & 112).
13 Barrs also pointed out that information received after the hearing demonstrated
14 false testimony by the Association’s witnesses that impacted material portions of
15 all four petitions. On April 7, 2023, the Association filed only a three-sentence
16 response through the ADRE Message Center merely disagreeing with the rehearing
17 request and stating, “[The Association] also believes that the law was followed not
18 only in the hearing process, but in the Judges ultimate decision” (ROA #113-123).
19
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22 On April 19, 2023, the ADRE Commissioner denied the motion for
23 rehearing without any specified reason. A.R.S. § 32-2199.04(C). A copy of the
24 *Order Denying Rehearing Request* was mailed to the parties on April 19, 2023
25 (ROA #113-123).
26
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1 Appellant then filed a timely notice of appeal with the Maricopa County
2 Lower Court of Appeals on May 23, 2023. On June 2, 2023, a Notice of Action
3 was filed with the OAH requesting the administrative record to be transferred
4 pursuant to A.R.S. §12-904(B) (ROA #124-127). Jurisdiction for this appeal exists
5 pursuant to A.R.S. §12-904.
6

7 June 15, 2023, this Court granted a stipulation by the Parties to a temporary
8 stay in the proceedings for settlement purposes. The parties made some positive
9 progress, but were unable to come to a full agreement on the best way to resolve all
10 errors within the ruling due to differing opinions between past and newly elected
11 board members. On September 12, 2023 the stay was lifted and the Appellant was
12 ordered to submit an opening brief by November 6, 2023.
13
14

15 Appellant has narrowed his Opening Brief to addressing Petition #3 only.
16

17 **Statement of Facts**

18 **Association Background:**

19 The Association is a small, planned community in Scottsdale, Arizona
20 consisting of twenty-eight (28) homes and six (6) vacant lots. (ROA #140-141, Ex
21 P19-23) The Association is governed by a board consisting of 5 owners and is
22 subject to articles, bylaws, and CC&Rs. The Association is a registered nonprofit
23 corporation subject to title 33 chapter 16 Planned Community statutes and title 10
24 chapters 24-40 Nonprofit Corporation statutes (ROA #152-153, Ex 63). Barrs
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owns a home subject to the applicable CC&Rs and has been a member of the Association since approximately 2001. (ROA #105&106, pg. 4 line 9)

Some members only own vacant lots while other members reside out of state, in another city or out of the country therefore mailing addresses are different from the physical address. (ROA #144-145, Exhibit P135-140)

General Records Request Process:

At times relevant to this matter, the Association was managed by Associated Asset Management, LLC (“AAM”) until April of 2023 (ROA #152-153, Ex 63). Amanda Shaw of AAM was the designated Statutory Agent for the Association (ROA #152-153, Exhibit 267) and Lori Loch-Lee of AAM became the primary contact handling all pertinent records requests for the Association during the timeframe at issue. After the onset of COVID restrictions, inspection of records was exclusively conducted through email via soft copies provided as attachments to the Association’s reply email(s). *See example* (ROA #148-149, Ex P346)

The membership list is a designated record of the Association:

The membership list is a requirement set forth in both state corporate law and the Association’s bylaws which require the Association secretary or management company to, “keep appropriate current records showing the Members of the Association together with their addresses.” Arizona Revised Statutes require non-profit corporations to keep a copy of the membership list pursuant to A.R.S. §

1 10-11601 as acknowledged by AAM's management contract and record retention
2 policy (ROA #152-153, Exhibit 80).

3 **Members voluntarily add, remove and/or update their information in the list:**
4

5 On February 6, 2018, one homeowner sent an address update in response to
6 the board's solicitation for corrections to the 2018 roster. He openly CC'd his
7 email to all 30+ members including Barrs. (ROA #144-145, Ex P210)
8

9 **Other homeowners also use the membership list to garner or lend support for**

10 **Association issues and express their concerns:**

11 On October 4, 2020, Ms. Dryden (another member) wrote an email to the
12 board and Ms. Loch-Lee informing them that, "When I sent my original email to
13 the board and you [Ms. Loch-Lee], **I BCC the homeowners** in our community...**I**
14 **have had responses in support of my comments** and it shows I'm not the only
15 one who has had enough." The stated purpose from Ms. Dryden for including other
16 members was, "I personally hope to get enough people to stand with me and say
17 Enough is Enough" with respect to the board's actions (emphasis added)(ROA
18 #146-147, Ex P315). Dryden's earlier email sent to the homeowners and board
19 stated, "You the board decided we needed a property management company to
20 oversee our SMALL community. So, can you please advise me on what the
21 Management company provides us?" (ROA #146-147, Ex P316)
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1 On November 27, 2021, Barrs sent an email to the board while copying
2 several other members who had expressed similar concern about the event which
3 violated the CC&Rs causing harm to the homeowners. (ROA #146-147, Ex P324).
4
5 Those members replied in support of Barrs. The only complaint was from the
6 board President who denied having any knowledge of the event even though the
7 City of Scottsdale Police at the event stated he had granted approval. Evidence
8 obtained after the hearing demonstrated Barrs was correct.
9

10 On November 29, 2021, one homeowner, “demanded an emailed response to
11 Tom's email (Re: Desert Ranch HOA Board Negligence) from the Desert Ranch
12 HOA Board of Directors to all home owners regarding said event in which [they],
13 and others, were not made aware of prior to.” (ROA #146-147, Ex. P322)
14

15 In September of 2020, then president Mangieri sent an email to the
16 membership complaining about Barrs while excluding Barrs from the email blast.
17 (ROA #146-147, Ex P327) Fortunately other homeowners began notifying Barrs
18 about the email and expressing support for Barrs. Ms. Glass responded, “I think
19 you and the sitting board have had an ongoing vendetta against Mr. Barrs, because
20 he WORKS to keep you and our board accountable to how our dues are spent.”
21 (ROA #146-147, Ex P317) (emphasis in original)
22
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25 Another homeowner, Mr. Pickett, replied in support of Barrs stating in part
26 (emphasis added),
27
28

1 In my opinion, **no-one does more for Desert Ranch than the Barr**
2 **family**, they are trusted neighbors. Their yard is always meticulous, their
3 assistance to others in the community clearly adds value and frankly
4 **Toms actions and motives are in the best interest for everyone.**

(ROA #146-147, Ex P316)

5 *AAM and the board use the membership list to “blast” members with meeting*
6 *notices and receive ballots for annual elections:*

7
8 Notice for all board meetings is given via email to the members pursuant to
9 A.R.S. §10-3141(C) and A.R.S. §33-1804 (ROA #148-149, Ex. P352). In 2013, the
10 board president reminded homeowners to keep their emails updated as, “The
11 primary channel for communication to the Homeowners will be via email” while
12 simultaneously attaching “an updated Desert Ranch Homeowners Association
13 Roster” including all email addresses used for contact/notification purposes (ROA
14 #144, Exhibit P225).
15
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17 In 2020 and beyond, annual meetings have shifted to zoom with all voting
18 done via absentee ballots submitted in advance of the meeting. *See* (ROA #144-
19 145, Ex. 125 & 190) Members are allowed to vote by mail, fax and email in
20 accordance with A.R.S. § 33-1812 as stated in AAM’s meeting notice (ROA #148-
21 149, Ex. P357).
22
23

24 ARS 33-1812 (A) and ARS 33-1250 (C) require Associations to allow
25 Owners to vote through various methods. These methods include: in
26 person, by mail, by absentee mail ballot, by fax, by email, or other
27 reasonable means.
28

1 Some owners chose to vote by email whereby their email served as the name
2 address and signature requirement of A.R.S. § 33-1812 (ROA #144-145, Ex.
3 P128).
4

5 **Examples of past Membership Lists from 2002 to 2020 provided to Barrs:**

6 Barrs has historically requested and received updated membership lists as a
7 homeowner from 2002 through 2020 including names, mailing addresses, physical
8 addresses, email addresses, and phone numbers. The following is a summary of the
9 roster exhibits offered as examples and entered into the record.
10

11 In 2002, shortly after moving into the community, Barrs received a copy of
12 the Association roster dated 2/26/2002 with names, addresses, and phone numbers
13 (ROA #146-147, Exhibit P299).
14

15 On May 13, 2010, the Association management company, provided a copy
16 of the 2010 roster to all homeowners stating, "Please see the attached file for an
17 updated list of the owners and their contact information." (ROA #146, Exhibits
18 P300-301). The roster contained names, email addresses and phone numbers.
19
20

21 On August 11, 2011, the Association management company provided a copy
22 of the 2011 roster to all homeowners stating, "Please see the attached file for an
23 updated owners list. If any changes are needed please let me know as soon as
24 possible." (ROA #146-147, Exhibits P302-303) The roster contained names, email
25 addresses, and phone numbers.
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1 On March 31, 2013, the new board president sent out an open email to the
2 homeowners. That email included the 2013 membership list with names, email
3 addresses, and phone numbers. (ROA #150 Exhibit P82-84) (ROA #144 Exhibit
4 P224-225).

6 In 2017, a copy of the membership list was provided containing names,
7 addresses, and phone numbers as usual. (ROA #146, Exhibit P304).

9 On January 30, 2018, board president, Catherine Overby, emailed a copy of
10 the 2018 roster to all homeowners stating, "Please see attached the new
11 Homeowners' Roster. Changes received have been made." The roster included
12 names, email addresses, and phone numbers. (ROA #146, Exhibits P305-306).

14 On January 15, 2019, Barrs requested a copy of the 2019 roster to which the
15 board president responded on January 18, 2019, "Per your request of January 15,
16 2019...Please find attached: 2019 Homeowner's Roster." (ROA #146-147, Ex
17 P307).

19 On November 11, 2020, AAM sent out a community bulletin eBlast to the
20 membership. At the bottom of the email it stated in part, "*And don't forget to*
21 *download our mobile app, AAM All Access and get to always ... your neighbors'*
22 *contact info...*" (emphasis added) (ROA #146-147, Ex P328).

25 On April 9, 2021 Ms. Loch-Lee of AAM provided Barrs a copy of the 2020
26 roster (ROA #144, Exhibits P135-140) as part of an election materials request.

1 *AAM's denial of Barrs' request for a 2021 membership list*

2 Several homes changed hands after the 2020 roster, thus Barrs requested an
3 updated listing as he had always done in the past to keep his records up to date.
4

5 On October 21, 2021, Petitioner made a two-part request via email to Lori
6 Loch-Lee of AAM for Association records. Copies were requested "For [his]
7 personal record, and per ARS 33-1805..." The first part of the request asked for
8 multiple records including the Environmental Design Committee ("EDC")
9 communications (ROA #140-141, Exhibit P38) as follows: (emphasis added)
10

11
12 A copy of any/all corresponding EDC submittals, requests, approvals,
13 denials, correspondence (email, written or other) to/from/between
14 EDC/board/contractor/applicant/homeowner, etc (September 2020 -
15 October 2021) For the sake of clarity, please include any attachments
16 thereto (e.g. plans, tearsheets, pdfs, etc).

17 The second part of the request per A.R.S. §33-1805 asked for the updated
18 2021 membership list for personal membership use (ROA #152, Exhibit 20) (ROA
19 #144, Exhibit P199). This request was titled "Records Request 10/21121 - Part 2"
20 and was also sent Lori Loch-Lee of AAM¹ as usual.
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27 ¹ Barrs always copied Amanda Shaw on his requests as the statutory agent.
28

1 On November 19, 2021, Lori Loch-Lee of AAM replied on behalf of the
2 Association, providing all EDC related email correspondence as requested^{2,3} (ROA
3 #146-147, Ex. P239 & 249-250)&(ROA #140, Ex. 37&39-50), but refusing to
4 provide the membership list, stating in part, “**I do not publish the owner list to**
5 **anyone**”⁴ (emphasis added)(ROA #152, Exhibit 21)&(ROA #140, Ex. 37) (ROA
6 #146-147, Ex. 250). This 2021 Roster is the membership list central to this Appeal
7 and central to Barrs’ Petition #3 in Agency Case No. HO22-22050. (ROA #146-
8 147, Ex P285).

9 On November 22, 2021, Barrs sought clarification as to, “Who has
10 instructed you not to provide this record?” referring to the 2021 roster (ROA #152,
11 Exhibit 21). Ms. Loch-Lee responded November 29, 2021 by annotating Barrs’
12 email with the following note (emphasis added) (ROA #140, Exhibit P52):

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17 **AAM: The Owner Directory is not made available to the residents.**
18 **You have asked and I have answered. Not sure what you do not**
19 **understand that AAM is not providing any type of listing to a non-**
20 **Board Member.**

21
22 ² This correspondence included unredacted email addresses and phone numbers of
23 multiple members. See example (ROA #140, Ex. 40 & 45)

24 ³ In 2019, the OAH previously levied civil penalties in the amount of \$500.00 in
25 Case No. 19F-H1918037-REL-RHG against the Association for a similar refusal to
26 produce design review and homeowner email communication records. (ROA
27 #105&106, pg. 2 lines 5-7)

28 ⁴ Lori Loch-Lee’s statement was made in a PDF attachment (ROA #146-147, Ex.
29 249-250) labeled “Records Request Tom Barrs.pdf” in the email header of her
30 November 19, 2021 response (ROA #146-147, Ex. P239)

1 On July 11, 2022, after Barrs had filed his Petition and the hearing date had
2 been set, AAM provided a copy of the 2022 roster dated 7/5/2022 with names and
3 account numbers, but lacking all other information typically found in past
4 membership lists such as mailing addresses, email addresses, and phone numbers.
5 (ROA #140, Exhibits P19-22). Ms. Loch-Lee's email stated in relevant part, "A
6 list of the owners is provided per your request which is up for debate in the current
7 ADRE petitions." (ROA #146-147, Ex P329). This was a list of names only.

8
9
10 ***Summary of multiple past membership list examples⁵:***

- 11 • 2002 roster with names addresses and phone numbers (ROA #146-147,
12 Exhibit P299) (first page of record provided as example)
- 13 • 2010 roster with names, addresses and phone numbers (ROA #146-147,
14 Exhibits P300-301)
- 15 • 2011 roster with names, addresses and phone numbers (ROA #146-147,
16 Exhibits P302-303)
- 17 • 2013 roster with names, addresses and phone numbers (ROA #150-151,
18 Exhibit P82-84)(ROA #144-145 Exhibit P225)
- 19 • 2017 roster with names, addresses and phone numbers (ROA #146-147,
20 Exhibit P304)
- 21 • 2018 roster with names, addresses and phone numbers (ROA #146-147,
22 Exhibits P305-306)
- 23 • 2019 roster with names, addresses and phone numbers (ROA #146-147,
24 Exhibits P307-308)
- 25 • 2020 roster with names, addresses and phone numbers (ROA #144-145,
26 Exhibits P135-140)

27 ***Summary of membership list requested but not received by Barrs:***
28

25 ⁵ This is not an exhaustive list of membership lists received by Barrs throughout
26 the years. It is only as small subset of examples as submitted for the OAH hearing.
27 Other membership lists included a 3/14/2019 roster from AAM in response to a
28 3/13/19 records request.

1 Access to the 2021 membership list was requested on October 21, 2021 but
2 was withheld by the Association.

3 ***Summary of insufficient/incomplete membership list provided late by***
4
5 ***Association:***

6 7/5/2022 Resident directory included names but no other address
7 information. It was provided after the hearing date had been scheduled in this
8 matter. (ROA #140-141, Exhibits P19-22)
9

10 **Issues Presented for Review**

- 11
- 12 1. Did the final ruling err in concluding that withholding an association
13 record until after 10 business days was not a violation of A.R.S. §33-
14 1805?
 - 15 a. Was the membership list a record that should have included names
16 and addresses at a minimum or does A.R.S. §33-1805(B)(4) permit
17 withholding of the entire record?
 - 18 b. Was the word “personal” improperly defined yielding absurd
19 results?
 - 20 c. If names and addresses are not personal, did the ALJ err in
21 determining the Association was not required to produce a
22 membership list within 10 business days?
 - 23 2. Does the evidence in the record support the findings of fact or
24 conclusions of law?
 - 25 3. Did the ALJ error in not granting all relief sought in Petition 3
26

27 **Standard of Review**

28 The resolution of this controversy depends upon the meaning and
application of the word “personal” as used in A.R.S. § 33-1805(B)(4). An overly
broad application of “personal” as a means of nondisclosure could cause conflicts

1 between related statutes. “In the interpretation of a statute the primary duty of the
2 Court is to give effect to the legislative intent. To arrive at that intention [the court
3 should] look to the words, context, subject matter, effects and consequences,
4 reason, and spirit of the law.” *State ex Rel. Flourney v. Mangum*, 113 Ariz. 151,
5 152 (Ariz. 1976) Related planned community statutes such as A.R.S. §33-1812,
6 A.R.S. §33-1804, and A.R.S. §33-1813 as well as corporate law should be
7
8 scrutinized to ascertain the effects and consequences that various interpretations of
9
10 “personal” may yield. These statutes may also grant added context such that if
11 other planned community statutes including A.R.S. §33-1812 require mandatory
12 disclosure of a record or portion thereof then the information contained in those
13 mandated records should be referenced. If the term “personal” is not applicable to
14 the record sought, whether in whole or in part, then that record should be disclosed
15 pursuant to A.R.S. §33-1805.
16
17

18 Legislation must also be given a sensible construction that avoids absurd
19 results (See *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 204, ¶ 17 (App. 2007)). If the
20 legislature has offered a definition of a membership list, those statutes should be
21 scrutinized to see the legislature’s intent of the list.
22

23 The standard of review for setting aside findings of fact pursuant to Ariz. R.
24 Civ. P. 52(a)(6) is that those findings of fact must be clearly erroneous, and the
25 reviewing court must give due regard to the trial court’s opportunity to judge the
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1 credibility of witnesses. When the trial court sits without a jury, the standard of
2 review on appeal is whether there was competent evidence to support the trial
3 court's findings of fact and whether its conclusions of law were proper in light of
4 such facts. *Shear v. Stevens Bldg. Co.*, 107 N.C. App. 154, 160, 418 S.E.2d 841,
5 845 (1992) The Administrative Law Judge (ALJ) in this matter determined that,
6 “Neither party clearly presented their evidence in this matter.” Thereby the ALJ
7 determined to, “rely heavily on the exhibits that had been admitted into the record.
8 To that end, however, the material facts in this matter are distinguishable.” (ROA
9 #186, p.17 lines 9-10) Therefore, a review of those same material facts should be
10 able to support the ALJ’s findings of fact. If the material facts do not support the
11 findings of fact, the findings which are clearly in error should be set aside and, if
12 necessary, the case remanded for proper review of the facts.

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17 In reviewing relief granted by the OAH or lack thereof, “If the petitioner
18 prevails, the administrative law judge shall order the respondent to pay to the
19 petitioner the filing fee required by section 32-2199.01” according to A.R.S. §32-
20 2199.01(A). Also, “The administrative law judge may order any party to abide by
21 the statute, condominium documents, community documents or contract provision
22 at issue and may levy a civil penalty on the basis of each violation.” (*Id.*)
23
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1 **Argument**

2 **Introduction**

3 Section 33-1805 establishes a policy that Association records should
4 generally be available to Association members, such as Barrs within a reasonable
5 time provided by statute. It provides, in relevant part, that “**all** financial and other
6 **records** of the association shall be made reasonably available for examination by
7 any member.” A.R.S. §33-1805(A) (emphasis added). Subsection B permits some
8 exceptions to the general rule, but that places the burden on the Association to
9 prove why such records may be withheld. *See id.* (B).
10
11

12
13 **I. THE FINAL RULING ERRED IN CONCLUDING THAT
14 WITHHOLDING A RECORD UNTIL AFTER 10 BUSINESS
15 DAYS WAS NOT A VIOLATION OF A.R.S. §33-1805**

16 *The membership list is a record and must include names and addresses at a
17 minimum*

18 The membership list is clearly a record defined in the nonprofit corporate
19 statutes. The corporate record requirement for membership lists is found under
20 A.R.S. §10-11601(C) which states (emphasis added),
21

22 A corporation or its agent **shall maintain a record of its members** in a
23 form that permits preparation of a list of the **names and addresses** of all
24 members and in alphabetical order by class of membership showing the
25 number of votes each member is entitled to cast and the class of
26 memberships held by each member.
27
28

1 AAM's contractual obligation recognizes this statute and the need to keep a
2 membership list pursuant to the statute (ROA #152-153, Ex. 80). And as a record
3 of the Association, the membership list is subject to request pursuant to A.R.S.
4 §33-1805.
5

6 Since the Association recognized the membership list as a record, they chose
7 to assert "privilege"⁶ over the record in order to justify not complying within the
8 prescribed time period. However, that assertion is not supported by a careful
9 scrutinizing of the meaning behind "personal" as used in the Section 1805(B)(4)
10 cited by the Association and incorrectly upheld by the ALJ as reason for denying
11 the Petition. Incorrectly applying privilege to the record at issue caused the ALJ to
12 erroneously conclude that A.R.S. 33-1805 was not violated.
13
14

15 Further, these records must be maintained "in written form or in another
16 form capable of conversion into written form within a reasonable time." A.R.S. §
17 10-11601(D). So, names and addresses of the members of the Association are
18 business records of the Association, rather than private, personal information of the
19 members.
20
21

22 ***A.R.S. §33-1805(B)(4) only permits withholding of a specific "portions" of***
23 ***records not an entire record***
24
25

26 ⁶ There is no identified common law or statutory privilege applicable to the
27 information sought.
28

1 The clause used by the Association to withhold the record was A.R.S. §33-
2 1805(B)(4), permits withholding of records by an association only “to the extent
3 that **the portion withheld** relates to . . . [p]ersonal, health or financial records of an
4 individual member of the association . . . including records of the association
5 directly related to the personal, health or financial information about an individual
6 member of the association,” among other exceptions not relevant here (emphasis
7 added). That section of the statute permits nondisclosure of only limited portions of
8 records and it is the Association which must show its nondisclosure justified.
9

10
11 AAM’s initial response on behalf of the Association was to withhold the
12 entire membership list suggesting that all information contained therein, including
13 names and addresses, falls within the exemption. Even if this court is to believe
14 that some members did not like the opinions of others or did not want to receive
15 notices, those members could have requested their information to be removed from
16 the list, but no one ever did. *See* (ROA #144-145, Exhibits P135-140)
17
18

19 As shown in the Statement of Facts and exhibits within the record, there has
20 been nothing but support among members for homeowners expressing their
21 opinions via email.
22

23
24 ***The word “personal” was improperly defined yielding absurd results:***

25 The ALJ’s interpretation of A.R.S. § §33-1805(B)(4)—which interpreted the
26 statute to permit Desert Ranch to redact members’ addresses and contact
27
28

1 information from its membership roster—was erroneous. That statute provides, in
2 relevant part:

3
4 B. Books and records kept by or on behalf of the association and the
5 board may be withheld from disclosure to the extent that the portion
6 withheld relates to any of the following:

7 . . .

8 4. Personal, health or financial records of an individual member of the
9 association . . . including records of the association directly related to the
10 personal, health or financial information about an individual member of
11 the association[.]

12 A.R.S. § 33-1805(B)(4).

13 ***Generally everything private is personal but not everything personal is private***

14 The ALJ erred in loosely interchanging the definitions of “personal” and
15 “private” without ascribing a proper definition to avoid yielding absurd results.

16 (ROA #186, page 17, Line 20) The ALJ acknowledges that, “Each word, phrase,

17 clause, and sentence must be given meaning so that no part of the legislation will

18 be void, inert, or trivial,” (ROA #186, page 17, Line 1-2); however, here the ALJ

19 and Association first apply “personal” in its broader context to act as a drag net for

20 any information relating to any member. Then the ALJ and Association

21 erroneously deny access based on the narrower definition of the term “personal” as

22 it relates to “private.”

23 “Private” is a subset of the term “personal” and is what the legislature

24 intended when defining the exclusions of Section 1805. Interpreting the word

25 “personal” to mean “relating to a particular person,” renders it meaningless. If

1 “personal information” meant any and all information related to any person, the
2 exception would render meaningless the requirement that there be access to **all**
3 **records** of the Association. The ALJ’s interpretation hinged upon the word
4
5 “personal” in the statute. But membership rosters are not the type of “personal”
6 records or information that the Legislature intended to exclude from production.

7
8 A.R.S. §33-1804 uses the same category “Personal, health or financial
9 information about an individual member...” to offer association boards the ability
10 to discuss “private” and potentially embarrassing matters about an individual
11 member within a closed meeting. However, if this section was to be interpreted in
12 light of the ALJ’s definition, virtually nothing could be discussed in open meetings
13 because it would be “personal” in some way. According to the definitions of
14 A.R.S. §33-1802, an "Association" is, “a nonprofit corporation or unincorporated
15 association of owners” whereby, “owners of separately owned lots, parcels or units
16 are mandatory members.”
17
18

19
20 ***A member’s name or address is not an embarrassing piece of information. It is***
21 ***the action attached that is the personal information***

22 It is impossible to argue that Members’ names or addresses in a 28-home
23 community are private or “personal,” as the word is used in the statute. *See e.g.,*
24 *Com. v. Duncan*, 572 Pa. 438, 455 (2003) (“[A]ny subjective expectation of
25 privacy that appellant may have had in the name and address information is not an
26 expectation which society would be willing to recognize as objectively reasonable
27
28

1 in light of the realities of our modern age.”); *Int'l Union, United Plant Guard*
2 *Workers of Am. (UPGWA) v. Dep't of State Police*, 422 Mich. 432, 458, 373
3 N.W.2d 713, 724 (1985) (“I confess to great difficulty in identifying any basis for
4 the conclusion, in this day and age, that one's name, address, and the identity of his
5 employer is “information of a personal nature,” within the meaning of the
6 exemption from disclosure provisions of § 13 of the FOIA”); *Tobin v. Michigan*
7 *Civil Service Comm'n*, 416 Mich. 661, 331 N.W.2d 184, 189 (1982) (“Names and
8 addresses are not ordinarily personal, intimate, or embarrassing pieces of
9 information”).
10
11
12

13 Courts are required to “determine the meaning of the words the legislature
14 chose to use,” which the Court does “according to the plain meaning of the words
15 in their broader statutory context.” *AUDIT-USA v. Maricopa Cnty.*, 254 Ariz. 536 ¶
16 10 (Ct. App. 2023). Here, as used in the statute, the word “personal,” means
17 “private” or “secret,” as opposed to meaning “relating to a particular person.”
18
19

20 If the legislature had intended to prevent disclosure of records and
21 information relating to individual members of a homeowners' association, it could
22 have affected that purpose by permitting the withholding of “records pertaining to
23 any individual member of the association,” without regard for whether those
24 records are “personal,” “health” or “financial” records. Accordingly, the word
25 “personal” must mean something other than “relating to a particular person.” *See*
26
27
28

1 *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 204 (Ct. App. 2007) (“When interpreting a
2 statute, we must give ‘each word, phrase, clause, and sentence ... meaning so that
3 no part of the statute will be void, inert, redundant, or trivial.’”); *U.S. W.*
4
5 *Commc'ns, Inc. v. Arizona Dep't of Revenue*, 193 Ariz. 319, 323 (Ct. App. 1998)
6 (noting “cardinal rule of statutory construction that statutes should be interpreted
7 so that no clause, sentence, or word is rendered superfluous or void”); *Walker v.*
8
9 *City of Scottsdale*, 163 Ariz. 206, 210 (Ct. App. 1989) (“[E]ach word, phrase,
10 clause, and sentence must be given meaning so that no part of the statute will be
11 void, inert, redundant, or trivial.”).

12
13 Second, the canon of construction *noscitur a sociis* supports that “personal”
14 means “private” or “secret.” The canon *Noscitur a sociis* “dictates that a statutory
15 term is interpreted in context of the accompanying words.” *Est. of Braden ex rel.*
16
17 *Gabaldon v. State*, 228 Ariz. 323, 326, ¶ 13 (2011). The word “personal” is
18 grouped with “health” and “financial.” Both “health and financial” records and
19 information are of the types generally recognized as being afforded significant
20 privacy interest. *See generally* Healthcare Insurance Portability and Accountability
21 Act of 1996, 42 U.S.C. § 1320d-6; Right to Financial Privacy, 12 U.S.C. § 3402.

22
23 Finally, the broader context of the statutory scheme informs the meaning of
24 the word “personal.” This statute governs homeowner associations, which are non-
25 profit corporations, in which each unit owner is a voting member. *See* A.R.S. § 33-
26
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1 1802(4). Given that members of homeowner associations have the right to vote on
2 various issues, *see* A.R.S. §§ 33-1812 & 33-1813, they certainly must have the
3 right to organize as a collective and hold the board accountable⁷. Indeed,
4 transparency and accountability in homeowner associations was a paramount
5 concern of the legislature in enacting the statutes governing associations. *See*
6 A.R.S. § 33-1804(F) (stating that “[i]t is the policy of this stated that all meetings
7 of a planned community . . . be conducted openly,” and “any person or entity that
8 is charged with the interpretation of these provisions . . . shall take into account
9 this declaration of policy and shall construe any provision of this section in favor
10 of open meetings”). Part of transparency and accountability is providing
11 association members with membership roster—including contact information—of
12 other members. Indeed, as a corporation, the contact information of its members is
13 a business record the Association is required to maintain, rather than private or
14 secret information of the members.
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19 ***Denying access to the membership list violates the spirit of planned community***
20 ***statutes and corporate law***
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25 ⁷ During the timeframe at issue, COVID-19 restrictions limited and/or prevented
26 many in person gatherings including annual member meetings (ROA #144-145,
27 Ex. 190), making communications by alternative electronic means the only form of
28 contact.

1 “In the interpretation of a statute the primary duty of the Court is to give
2 effect to the legislative intent. To arrive at that intention [courts] look to the words,
3 context, subject matter, effects and consequences, reason, and spirit of the law.”
4
5 *State ex Rel. Flourney v. Mangum*, 113 Ariz. 151, 152 (Ariz. 1976) Clarity in the
6 legislature’s intent for association policy can be found in A.R.S. 33-1804 which
7 clearly states that “The board shall provide for a reasonable number of persons to
8 speak on each side of an issue.” Only allowing for the board to recommend their
9 candidates and promote their vision for the community does not fit the spirit of
10 Section 1804.
11

12
13 Moreover, to find out what the Arizona legislature considered private
14 information, one need look no further than other planned community statutes such
15 as A.R.S. §33-1812(A)(6-7)&(B). “The cardinal rule of statutory interpretation is
16 to determine and give effect to the legislative intent behind the statute.” *Calvert v.*
17 *Farmers Ins. Co. of Arizona*, 144 Ariz. 291, 294 (Ariz. 1985) Section 1812 of the
18 planned community statutes sets a mandatory requirement for associations to
19 divulge names and addresses associated with election materials. A.R.S. §33-
20 1812(A)(6) requires election materials to contain the “name, address and signature
21 of the voter” while Section 1812(A)(7) requires that those election materials,
22 “...shall be retained in electronic or paper format and **made available for**
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1 member inspection for at least one year after completion of the election..”

2 Therefore, providing names and addresses is not optional, it is mandatory.

3
4 Further scrutinizing this statute shows that the legislature made a
5 differentiation between information which can optionally be made private through
6 amendments of community documents and information that must remain readily
7 available for community wide inspection. Section 1812(A)(6) says in part, “except
8 that if the community documents permit secret ballots, only the envelope shall
9 contain the name, address and signature of the voter.” So while the content of the
10 members voting choice can remain private at an association’s discretion, the
11 members’ identity information must remain available for scrutiny by other
12 members. If the legislature did not intend for names and mailing addresses to be
13 private in the context of elections, it would be absurd to conclude that privacy
14 could be ascribed to the same information merely based on the record holding the
15 identical information. Legislation must be given a sensible construction that avoids
16 absurd results. *State v. Gonzales*, 206 Ariz. 469, 471, ¶12 (App. 2003).
17
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20

21 Even the Association recognized the requirements of A.R.S. §1812(A)(6-7)
22 when they provided soft copies of envelopes, emails and ballots for the 2020 and
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1 2021 elections⁸ containing much of the same information only to consider that
2 same information private a few months later when the membership list was
3 withheld.
4

5 A basic principle of democratic societies is that members are allowed to
6 discuss issues and then take the vote. The legislature made certain in the crafting
7 of A.R.S. §33-1804(A) to allow members the opportunity to reasonably speak,
8 “before the board takes formal action” or “before a vote of the board of ...[the]
9 members.” Yet with meetings being held via zoom and all balloting completed
10 ahead of the meeting via email or mailed absentee ballots, there is no reasonable
11 way for members to express their support or dissent for any measure put before
12 them without reasonable access to a membership list containing the same contact
13 information used by the board to give notice and to transmit the absentee ballots.
14
15

16
17 A.R.S. §33-1804(F) is even more revealing of the legislature’s intent
18 regarding communication ahead of member voting (emphasis added):
19

20 **It is the policy of this state** as reflected in this section that all meetings
21 of a planned community, whether meetings of the members' association
22 or meetings of the board of directors of the association, be conducted
23 openly and that notices and agendas be provided for those meetings that
24 contain the information that is reasonably necessary to inform the
25 members of the matters to be discussed or decided and to ensure that
26 **members have the ability to speak** after discussion of agenda items,
27

28
26 ⁸ 2020 and 2021 election envelopes containing names and addresses were provided
27 to Barrs (ROA #144-145, Ex. P160-168) as were the emails of members who
submitted their ballot via email (ROA #144-145, Ex. P128)

1 but **before a vote** of ... members is taken. Toward this end, any person
2 or entity that is charged with the interpretation of these provisions,
3 including members of the board of directors and **any community**
4 **manager, shall take into account this declaration of policy** and shall
5 construe any provision of this section **in favor of open meetings**.

6 For instance, the June 13, 2020 Annual Meeting Notice stated “there will be
7 no in person meeting due to the COVID-19 pandemic” and further stated, “23
8 ballots have been received by the deadline of June 3rd”⁹ (ROA #148-149, Ex. 357).
9 This meant that 10 days before a zoom meeting was held, all ballots were received
10 either by mail or email as permitted by A.R.S. §33-1812(B). Thus, the Association
11 would have been out of compliance with A.R.S. §33-1804(F) if the membership
12 would not have had contact information of other members with which to discuss
13 the balloting measures ahead of the meeting. “In the interpretation of a statute the
14 primary duty of the Court is to give effect to the legislative intent. To arrive at that
15 intention we look to the words, context, subject matter, effects and consequences,
16 reason, and **spirit of the law**.” *State ex Rel. Flournoy v. Mangum*, 113 Ariz. 151,
17 152 (Ariz. 1976)(emphasis added)

18
19
20 Mr. Schoefler, the secretary of the Association testified during the January
21 2023 hearing regarding an email he sent December 6, 2021, that he would, “blind
22 copy people that [he didn’t want] to be responding back to the email... So these
23
24

25
26 _____
27 ⁹ The 2021 notice similarly required that all ballots, “must be received by March
28 24, 2021” which was 2 days before the March 26, 2021 meeting. Thus the voting
had ended before the zoom meeting began.

1 people would understand what actually happened without being [given] a platform
2 for them then to voice their responses back.”

3 Again, under A.R.S. §33-1813, members are granted the right to circulate
4 petitions necessary for the removal of board members. If enough members lived
5 out of state, the board could effectively evade removal by denying access to
6 contact information necessary to circulate a petition. In fact, in *Worldmark v.*
7 *Wyndham Resort Dev. Corp.*, No. C061019, 3-4 (Cal. Ct. App. Aug. 24, 2010) the
8 court reviewed a similar case and determined, “We shall conclude that the term
9 “members... addresses,” in section 8330, subdivision (a) (1), **which a corporation**
10 **is required to disclose, is sufficiently broad to encompass email addresses in**
11 **light of the sections purpose and in light of allied sections that allow a corporation**
12 **to communicate with its members for the purpose of the corporation’s business”**
13 **(emphasis added).** Arizona Revised Statute 10-3720(A) likewise requires that the
14 corporation must allow members access to the membership list “[f]or the purpose
15 of communication with other members concerning” meetings. *See* A.R.S. §10-
16 3720(B). As one member said in October of 2020, “When I sent my original email
17 to the board and you [Ms. Loch-Lee], I BCC the homeowners in our
18 community...I personally hope to get enough people to stand with me and say
19 Enough is Enough.” (ROA #146-147, Ex P315)
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1 Accordingly, as rules of statutory construction require these statutes to be
2 harmonized, the nondisclosure language of A.R.S. §33-1805(B) cannot apply to
3 this contact information. “In arriving at the intention of a statute resort may be had
4 to the words, context, subject matter, effects and consequences, spirit and reason of
5 the law, and other acts in pari materia.” *Isley v. School District No. 2 of Maricopa*
6 *County*, 81 Ariz. 280, 286 (Ariz. 1956)
7
8

9
10 ***Because names and addresses are not personal, the ALJ erred in determining the***
11 ***Association was not required to produce a membership list within 10 business***
12 ***days.***

13 The membership list was not private or privileged in whole or in part, thus
14 the Associations choice to withhold the entire record was in violation of A.R.S.
15 §33-1805.
16

17 It is incongruous to argue that the membership list is completely “personal”
18 or private, if statutes governing non-profit corporations and planned community
19 statutes require a corporation, like the Association, to make this information
20 accessible to its members. This is especially true where the legislature apparently
21 considered the membership list to be fundamental to the right of a member to
22 communicate with other members in the Association. The Association cannot
23 claim that the entire membership list is “personal,” and therefore exempt from
24 production upon request. As such, Petitioner should have received a copy of the
25
26
27
28

1 2021 membership list with names and addresses of all members as had been done
2 from 2002-2020. This should have been done within 10 business days of his
3 request. The ALJ's Ruling is clearly in error regarding the application of A.R.S.
4 §33-1805, as she interpreted it in way that yields absurd results. *State ex rel.*
5 *Montgomery v. Brain*, 244 Ariz. 525, 531 (Ct. App. 2018) ("We strive to construe
6 statutes 'sensibly to avoid reaching an absurd conclusion.'").
7

8
9 The ALJ improperly concluded that A.R.S. §33-1805 was not violated when
10 the Association refused to provide "any type of listing" within 10 business days
11 pursuant to A.R.S. §33-1805(A).
12

13
14 **II. THE EVIDENCE IN THE RECORD DOES NOT SUPPORT THE
FINDINGS OF FACT OR CONCLUSION(S) OF LAW**

15 **Finding of Fact 14(i)**

16
17 Finding of Fact 14(i) erroneously states that, "Although AAM generated a
18 Resident Directory on June 06, 2020,⁴¹ the information was not provided to
19 Petitioner." First, the referenced footnote number 41 links to Petitioner Barrs'
20 exhibits 19-23 (ROA #140, Exhibits P19-22) which is the roster dated July 05,
21 2022, not June 06, 2020. The exhibit numbers that the ALJ probably intended to
22 refer to was Petitioner's exhibits 135-140 (ROA #144, Exhibits P135-140). Second,
23 it would be absurd for the ALJ to reference an exhibit submitted by Petitioner as
24 evidence that Petitioner did not receive the very information he submitted. Again,
25
26
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28

1 both the 2020 was received by Petitioner. It was the 2021 roster that was withheld.

2 The exhibits in the record clearly show a pattern of Barrs receiving membership
3 lists all the way up to and including 2020.
4

5 A correct rendering of this finding of fact shows that the capricious denial of
6 the membership list in 2021 was baseless.
7

8 **III. PROPER RELIEF WAS NOT GRANTED**

9 ***Inappropriately withholding a record is grounds for relief:***

10 The ALJ erroneously denied Barrs' Petition #3 on the grounds that the
11 request for inspection of the membership list was "unable to be fulfilled due to
12 [it's] privileged and/or private nature." (ROA #186, page 17, line 20) As presented
13 earlier, there is no merit to the claim that the entire membership list was private
14 and/or privileged. The Association even acknowledged the position of withholding
15 names was absurd when, months after the initial request, they released a mostly
16 redacted copy of the roster only containing only names. (ROA #140-141, Ex. P19-
17 22) Therefore, the ALJ should have acknowledged that the Association violated
18 A.R.S. 33-1805 in not providing a sensible membership list within a reasonable
19 amount of time.
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24 A.R.S. 32-2199.02(A) mandates in part, "If the petitioner prevails, the
25 administrative law judge shall order the respondent to pay to the petitioner the
26 filing fee required by section 32-2199.01."
27
28

1 ***The ALJ should have granted injunctive relief***

2 The ALJ improperly concluded that ARS 33-1805 was not violated when the
3 Association refused to provide “any type of listing” within 10 business days
4 pursuant to A.R.S. §33-1805. The request for the membership list was made on
5 October 21, 2021. Not until November 19, 2021 did the Association provide
6 response that, “I do not publish the owner list to anyone...” (ROA #146-147, Ex.
7 P239 & 249-250) (ROA #152, Exhibit 21) and again on November 29, 2021,
8 “AAM is not providing any type of listing to a non-Board Member” (ROA #140,
9 Exhibit P52). No attempt was made by the Association to provide a membership
10 list record of any type within a reasonable period of time. It is clear that the
11 Association had no intent to allow Barrs the opportunity to inspect or copy the
12 record in any way due to asserted privacy. It was not until July 11, 2022¹⁰ after the
13 hearing had been scheduled that the Association provided a list consisting of
14 names but no other relevant information (ROA #140, Exhibits P19-22).

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16
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18
19 Even if the Association would have provided a complete list at this point, or
20 if Barrs would have accepted the list containing only names, Barrs would have still
21 been unable to recover his filing fee. A.R.S. §32-2199.01(A) provides in part that,
22 “...On dismissal of a petition at the request of the petitioner **before a hearing is**
23
24
25

26
27 ¹⁰ The ADRE referred the matters to the OAH on May 25, 2022 for an evidentiary
28 hearing on July 25, 2022. *See* Statement of Case

1 **scheduled** or by stipulation of the parties **before a hearing is scheduled**, the filing
2 fee shall be refunded to the petitioner.” (emphasis added)

3 Because the Association was unwilling to provide a sensible record as
4 required by the statutes governing planned communities and nonprofit
5 corporations, the ALJ should have ordered the injunctive relief sought by Barrs as
6 well. A.R.S. 32-2199.02(A) provides in part that, “The administrative law judge
7 may order any party to abide by the statute, condominium documents, community
8 documents or contract provision at issue and may levy a civil penalty on the basis
9 of each violation.”

13 **Request for fees and costs**

14 As a result of the Association’s unwillingness to provide a simple record that
15 had been provided without issue for approximately 20 years, Barrs was forced to
16 file a petition with the ADRE to seek relief. Upon failure of the OAH to grant
17 proper injunctive relief, Barrs has filed an appeal with this Court to seek access to
18 the record sought. Appellant therefore, humbly asks this Court to consider granting
19 him relief based on the following statute:

22 Pursuant to A.R.S. §10-11604(A)&(C),

24 A. If a corporation does not allow a member who complies with section
25 10-11602, subsection A to inspect and copy any records required by that
26 subsection to be available for inspection, the court in the county where
27 the corporation's known place of business is located may summarily
28

1 order inspection and copying of the records demanded at the
2 corporation's expense upon application of the member.

3 ...

4 C. If the court orders inspection and copying of the records demanded, it
5 shall also order the corporation to pay the member's costs, including
6 reasonable attorney fees, incurred to obtain the order, unless the
7 corporation proves that it refused inspection in good faith because it had
8 a reasonable basis for doubt about the right of the member to inspect the
9 records demanded. The court may order a member to pay all or a portion
10 of the corporation's costs, including reasonable attorney fees, if the
11 demand to inspect is denied in whole or in material part.

12 **Conclusion**

13 For the reasons stated above, the Administrative Ruling against Appellant
14 Barrs should be amended and reversed. A.R.S. §33-1805(B)(4) cannot be
15 reasonably applied to members' names and addresses without violating other
16 provisions of the planned community statutes. Even email addresses are not seen
17 as private within the limited realm and express use of communicating for
18 association related purposes. Barrs' request was proper and well intentioned and
19 should have been complied with in the reasonable 10 business day period.
20 Appellant prays that this Honorable Court will grant the relief sought, including
21 injunctive relief ordering that a sensible membership list be produced containing
22 names and contact addresses as required, and that the Association be ordered to
23 comply with A.R.S. 33-1805 with respect to future membership list requests.

24 Appellant further prays for any other relief this Court should deem just
25 and proper.
26
27
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3 RESPECTFULLY SUBMITTED this 6 day of NOVEMBER, 2023.
4

5 By /s/
6 Tom Barrs
7 PO Box 14122
8 Scottsdale, AZ 85267
9 TBarrs360@gmail.com

8 ORIGINAL of the foregoing
9 filed this 6 day of NOVEMBER 2023:
10 Copy of the foregoing emailed/mailed this
11 Same date to:

11 LOWER COURT AND ADMINISTRATIVE APPEALS

12 Attention: Hon. Joseph Mikitish

13 201 W. Jefferson St.

14 4th Floor

15 Phoenix, AZ 85003

16 DESERT RANCH HOMEOWNERS ASSOCIATION

17 PO Box 3081

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19 By: /s/
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3 **I. CERTIFICATE OF COMPLIANCE**
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5 1. This certificate of compliance concerns:

6 A brief, and is submitted under Rule 14(a)(5)

7 An accelerated brief, and is submitted under Rule 29(a)

8 A motion for reconsideration, or a response to a motion for reconsideration, and
9 is submitted under Rule 22(e)

10 A petition or cross-petition for review, a response to a petition or cross-petition,
11 or a combined response and cross-petition, and is submitted under Rule 23(h)

12 An amicus curiae brief, and is submitted under Rule 16(b)(4)

13 2. The undersigned certifies that the brief/motion for reconsideration/petition or
14 cross-petition for review to which this Certificate is attached uses type of at least
15 14 points, is double-spaced, and contains approximately 8600 words.

16 3. The document to which this Certificate is attached does not exceed the 14,000
17 word limit that is set by Rule 14 as applicable.

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Tom Barrs *Petitioner/Appellant*

By: /s/ Tom Barrs