

CLERK OF THE SUPERIOR COURT  
FILED  
FEB 19 2025 *L. Gutierrez*  
L. Gutierrez, Deputy

John F. Sullivan, Esq.  
1909 E. Ray Rd., Suite 9198  
Chandler, Arizona 85225  
(602) 793-9301  
Bar No. 023018  
Attorney for Plaintiff/Appellant

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

**AZNH REVOCABLE TRUST,  
by and through  
JOHN and SUSAN SULLIVAN,  
TRUSTEES, REAL PARTIES IN  
INTEREST**

Plaintiff/Appellant

v.

**ARIZONA DEPARTMENT OF REAL  
ESTATE,**

Defendant/Appellee

**SUNLAND SPRINGS VILLAGE  
HOMEOWNERS ASSOCIATION,**

Defendant/Appellee

No. LC2025-000025-001

**PLAINTIFF'S REPLY  
ON PLAINTIFF'S MOTION  
FOR EVIDENTIARY HEARING TO  
INTRODUCE ADDITIONAL  
EVIDENCE**

**(Unclassified Civil)**

**Assigned to  
Hon. Joseph Mikitish**

1 //  
2 //

1       **I.       Relevant Evidence**

2       The underlying allegation:

3               Sunland Springs Village Homeowners Association (“HOA”) failed to produce all  
4               ballots (including electronic ballots) and related materials for inspection as  
5               required by A.R.S. § 33-1812(A)(7).

6       The HOA defended on the sole basis that no electronic ballots were used in the 2024 election.

7       Therefore, any evidence that tends to show the HOA used electronic ballots in the 2024  
8       election is of consequence in determining the action and, consequently, it is relevant evidence.  
9       *See State v. Togar*, 248 Ariz. 567, 572 (Div. 2, 2020)(citing Ariz.R.Evid. 401 and defining  
10       relevant evidence). “To be relevant, it is not necessary that such evidence be sufficient to  
11       support a finding of an ultimate fact; it is enough if the evidence, if admitted, would render the  
12       desired inference more probable.” *Id.*

13       The judicial rules of evidence do not apply in administrative hearings. A.R.S. 41-  
14       1092.07(F)(1). Instead, the administrative hearing procedures provide, in pertinent part:

15               All relevant evidence is admissible, but the administrative law judge may exclude  
16               evidence if its probative value is outweighed by the danger of unfair prejudice, by  
17               confusion of the issues or by considerations of undue delay, waste of time or  
18               needless presentation of cumulative evidence.

19       A.R.S. § 41-1092.07(D). Therefore, the only test for admissibility is whether the proffered  
20       evidence is relevant.

21       **II.       The Processing of Supplemental Evidence**

22       In an action to review an administrative decision, relevant and admissible exhibits and  
23       testimony that were not offered during the administrative hearing shall be admitted, and  
24       objections that a party failed to make to evidence offered at the administrative hearing shall be  
25       considered. A.R.S. § 12-910(B). Thus, any party to the superior court review may avail itself of  
26       this provision.

1 Because the HOA has made their objections in writing and is asserting there is no need for an  
2 evidentiary hearing, the AZNH Revocable Trust (“Trust”) agrees that there does not seem to be  
3 any need for an evidentiary hearing. “Section 12-910 requires an evidentiary hearing *only* upon  
4 a showing that a hearing is necessary for the court’s determination on review.” *Curtis v.*  
5 *Richardson*, 212 Ariz. 308, 311 (Ariz. Ct. App. 2006). Therefore, at the appropriate time, the  
6 Court may proceed in the manner prescribed by *Shaffer v. Arizona State Liquor Bd.*, 197 Ariz.  
7 405 (Div. 1, 2000).

8 *Shaffer* recognizes that A.R.S. § 12-910(B) allows for supplementing the administrative  
9 record in the superior court. *Shaffer* at 409. The court then determines from the administrative  
10 record and the supplementing evidence whether substantial evidence still exists in the record to  
11 support the administrative decision. *Id.* If the court concludes that the supplementing evidence  
12 is such that, had it been introduced in the administrative proceedings, no reasonable fact finder  
13 would have reached the administrative decision, then the administrative decision is not  
14 supported by substantial evidence. *Id.* The superior court may then choose to reverse, modify  
15 or vacate and remand the agency action. *Id. citing* A.R.S. § 12-910(E).

16 The Trust’s supplemental evidence provides the Court with a basis to find that the  
17 administrative decision is not supported by substantial evidence. See *Plaintiff’s Memorandum*  
18 *in Support of Evidentiary Hearing to Introduce Additional Evidence* (“Plaintiff’s  
19 Memorandum”). Moreover, the Trust’s opening brief establishes additional grounds for the  
20 same result.

### 21 **III. HOA Business Records**

22 The supplemental evidence is derived from email correspondence within the business records  
23 of the HOA. The HOA’s email correspondence accompanies the Plaintiff’s Memorandum. See  
24 Memorandum Exhibit A, Attachment 2. The Plaintiff’s Memorandum accurately states:

25 The Affidavit which accompanies this Memorandum shows that the HOA's  
26 custodian of records, Ms. Fowers, had the electronic ballot which the Vendor

1 created for use in the electronic election; she viewed and approved it. See Exhibit  
2 A, Attachment 2.

3 Plaintiff's Memorandum, p.7, lines 17-19.

4 Any claim that the electronic ballot was never in the possession, custody or control of the  
5 HOA is, *at best*, disingenuous and intellectually dishonest. The link to that ballot is plainly  
6 identified in the email chain – “Click this link to view the Ballot” (see mail dated Jan. 25, 2024,  
7 at 11:54 a.m., from Jonathan Lobley (vendor representative) to Kathy Fowers). *Id.* See Ms.  
8 Fowers' reviewed and approved that ballot by emails on Jan. 25, 2024, at 1:12 p.m. and 1:58  
9 p.m., between Mr. Lobley and Ms. Fowers. *Id.*

10 The HOA asserts that “the 50-second video should be excluded from evidence, as it was  
11 never within the Association's control and was not something the Association had any  
12 obligation to provide during the administrative hearing.” HOA *Opposition to Motion for*  
13 *Evidentiary Hearing*, p.5, lines 15-17. Both of these objections are without merit.

14 First, for purposes of supplementing evidence under A.R.S. § 12-910(B), there is no  
15 requirement that the opponent to the evidence have a pre-existing duty to produce it at the  
16 administrative hearing.

17 Second, the video is a business record of the HOA. The vendor whom the HOA employed to  
18 assist in the 2024 election sent the video multiple times to the HOA via a hyperlink in emails for  
19 the express purpose of demonstrating that the vendor's election system operates with a ballot. It  
20 is the Trust's position that a link or hyperlink in an email is the functional equivalent of an  
21 attachment to an email or an enclosure with a written letter. The video links can be found in the  
22 following emails sent by the vendor to Ms. Fowers:

23 October 25, 2022:

24 “If you haven't seen how it works CLICK HERE to see the owner voting  
25 demo.” (‘CLICK HERE’ is the hyperlink)

26 December 2, 2021, 11:28 a.m.: (same as above)

27 December 2, 2021, 11:30 a.m.: (same as above)

1                   Nov. 29, 2024:

2                   “See how it works in 3 easy steps” (‘3 easy steps’ is the hyperlink)

3                   See the emails; **Exhibit A** attached hereto (an arrow points to each link).

4                   The vendor’s video demonstration establishes that a ballot is used in the election process, and  
5 the video completely eviscerates the HOA’s argument that no electronic ballot was used in the  
6 2024 election. The video shows how a voter makes selections on a ballot and then clicks  
7 “submit” to send their selections to the vendor. No vote or selections are transmitted to the  
8 vendor until the voter clicks “submit” on the electronic ballot.

9                   **IV. Conclusion**

10                   The supplemental evidence is relevant and admissible, and it lends support to a conclusion  
11 that the administrative decision is not supported by substantial evidence. Because the HOA has  
12 made its objections in writing and has not proposed any additional evidence, there does not  
13 appear to be any need for an evidentiary hearing. Thus, the Court may proceed according to the  
14 *Shaffer (supra)* procedure at the appropriate time.

February 19, 2025

Plaintiff/Appellant, AZNH Revocable Trust

By:

/s/ *John F. Sullivan*

John F. Sullivan, Esq. (Bar # 023018)

Attorney for Plaintiff/Appellant

1909 E. Ray Rd., Suite 9198

Chandler, AZ 85225

480-818-5070

Email: Info@SullivanAppeals.com

Facsimile: 480-210-8328

**CERTIFICATE OF SERVICE**

A copy hereof shall be sent by email on February 14, 2025, to:

Atty. Chad Gallacher and Atty. B. Austin Baillio (counsel for Sunland Springs Village

Homeowners Assoc.) at their email address: cgallacher@hoalaw.biz and  
abailio@hoalaw.biz.

Asst. Atty. General Lynette Evans (counsel for Az. Dept. of Real Estate) at her email address  
Lynette.Evans@azag.gov

Judge Mikitish's Judicial Assistant at joel.grajeda@jbazmc.maricopa.gov.

/s/ *John F. Sullivan*

Attorney for Plaintiff/Appellant

# EXHIBIT A

December 2, 2021, 11:28 a.m., email

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**Re: Online Voting Site Ready - Sunland Springs Village HOA (email 1 of 3)**

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**From** Kathy Fowers <Kathy.Fowers@fsresidential.com>

**Date** Wed 12/8/2021 4:17 PM

**To** Jon Loblely <jonathan.lobley@votehoanow.com>

Hi Jon,

Received the emails.

Kindly,  
Kathy



**SUNLAND SPRINGS VILLAGE**

**KATHY FOWERS**

General Manager


FirstService Residential

11214 E. Laguna Azul Circle | Mesa, AZ 85209

Direct: 480-354-8758 ext 201 | Fax 480-354-8761

Email: [kathy.fowers@fsresidential.com](mailto:kathy.fowers@fsresidential.com)

[www.fsresidential.com](http://www.fsresidential.com)

 1487098467711\_First

**Sunland Springs Village**

[www.ssvhoa](http://www.ssvhoa)

Professionally managed by **FirstService Residential**

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**From:** Jon Loblely <jonathan.lobley@votehoanow.com>

**Sent:** Thursday, December 2, 2021 11:28 AM

**To:** sunlandsspringsvillage@ivotehoa.com <sunlandsspringsvillage@ivotehoa.com>

**Subject:** Online Voting Site Ready - Sunland Springs Village HOA (email 1 of 3)

# VOTE·HOA·NOW

## Online Voting Site Ready

Hello Kathy Fowers,

Thank you for choosing Vote HOA Now for your electronic voting needs! I will be the manager for the upcoming online vote and your primary point of contact moving forward. You have been listed as our Single Point of Contact for Sunland Springs Village HOA e-voting; responsible for providing us with the ballot information, owner data, and approvals. If someone else should be our Single Point of Contact please let us know.

The voting site is ready and this email will provide you with information about the next steps (*Process doc attached*) and contains the voting site link.

### **1. Tell me that you received this email**

We've assigned you the email address "[sunlandspringsvillage@ivotehoa.com](mailto:sunlandspringsvillage@ivotehoa.com)" which forwards to your regular email address (this is necessary due to anti-spam measures). **PLEASE ADD the email address to your approved email list (or address book) along with @votehoanow.com (and my email), if you have that type of thing to be sure you receive all our emails.**

**2. Give your association a heads up about the upcoming e-vote by providing this information in your notice, website, etc.** (*Sample Notice Language attached - be sure to replace the xxx placeholders with your association-specific info*)

Link to the owner registration page of the voting website:

<https://sunlandspringsvillage.ivotehoa.com/register>

A QR code that links to the voting site registration page is also attached, if you'd like to use on your notice.


Email the voting invite is going to come from: [sunlandspringsvillage@ivotehoa.com](mailto:sunlandspringsvillage@ivotehoa.com)

### **3. Gather the vote/ballot information and owner data spreadsheet**

Please keep in mind we need the ballot and owner information at least 4-5 business days before the requested start date to ensure a smooth experience and avoid rush fees.

I am also sending two separate emails titled "**Items Needed to Setup a Vote**" (email 2 of 3) and the "**Owner Data Needed**" (email 3 of 3). These two emails explain what information we need to set everything up and should be your **primary focus** for a smooth vote setup.

#### Additional Notes:

- 
- If you haven't seen how it works [CLICK HERE](#) to see the owner voting demo.
  - It is very important that you read all of our emails in their entirety when we send them as they contain important information that will help you throughout the online voting process and save you time and frustration.

- As a reminder, to help ensure the integrity of your vote it is important that my contact information is not to be shared with anyone in the community as I cannot respond to them, only to you, my direct point of contact.

Thanks,

Jon Loble, EBP  
Vote HOA Now  
Direct: 503-820-6280  
<https://www.votehoanow.com>

**VOTE·HOA·NOW**

<https://votehoanow.com>

December 2, 2021, 11:30 a.m., email

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Online Voting Site Ready - Sunland Springs Village HOA (email 1 of 3)

---

From Jon Lobley <jonathan.lobley@votehoanow.com>  
Date Thu 12/2/2021 11:30 AM  
To sunlandsspringsvillage@ivotehoa.com <sunlandsspringsvillage@ivotehoa.com>

 2 attachments (817 KB)

Vote HOA Now Process.pdf; Sample Notice Language.pdf;

# VOTE HOA NOW

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Direct: 503-820-6280  
<https://www.votehoanow.com>

**VOTE·HOA·NOW**

<https://votehoanow.com>

October 25, 2022 email

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**Re: Online Voting Site Ready - Sunland Springs Village HOA (email 1 of 3)**

---

**From** Kathy Fowers <Kathy.Fowers@fsresidential.com>

**Date** Tue 10/25/2022 9:09 AM

**To** Jon Loblely <jon@votehoanow.com>

Received



**SUNLAND SPRINGS VILLAGE**

**KATHY FOWERS CMCA® AMS®**

General Manager


FirstService Residential

11214 E. Laguna Azul Circle | Mesa, AZ 85209

Direct: 480-354-8758 ext 201 | Fax 480-354-8761

Email: [kathy.fowers@fsresidential.com](mailto:kathy.fowers@fsresidential.com)

[www.fsresidential.com](http://www.fsresidential.com)

 1487098467711\_First

**Sunland Springs Village**

[www.ssvhoa](http://www.ssvhoa)

Professionally managed by **FirstService Residential**

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**From:** Jon Loblely <jon@votehoanow.com>

**Sent:** Tuesday, October 25, 2022 7:04 AM

**To:** sunlandspringsvillage@ivotehoa.com <sunlandspringsvillage@ivotehoa.com>

**Subject:** Online Voting Site Ready - Sunland Springs Village HOA (email 1 of 3)

You don't often get email from jon@votehoanow.com. [Learn why this is important](#)

**VOTE · HOA · NOW**

# Online Voting Site Ready

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Thank you for choosing Vote HOA Now for your electronic voting needs! I will be the manager for the upcoming online vote and your primary point of contact moving forward. You have been listed as our Single Point of Contact for Sunland Springs Village HOA e-voting; responsible for providing us with the ballot information, owner data, and approvals. If someone else should be our Single Point of Contact please let us know.

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Thanks,

Jon Loble, EBP, M100 Certified  
Vote HOA Now  
Direct: 503-820-6280  
<https://www.votehoanow.com>

**VOTE HOA NOW**

<https://votehoanow.com>

Nov. 29, 2024 email

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**Sunland Springs Village HOA Voting Site RENEWAL - Vote HOA Now**

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**From** Vote HOA Now <estimates@votehoanow.com>

**Date** Fri 11/29/2024 10:31 AM

**To** Kathy Fowers <kathy.fowers@fsresidential.com>

You don't often get email from estimates@votehoanow.com. [Learn why this is important](#)


## Sunland Springs Village HOA is coming up for renewal on 01/10/2025

[Email not displaying correctly? View email in browser](#)

Hi Kathy Fowers,

We're coming up on the annual account renewal (**1/10/2025**) for your voting site and we are wondering if Sunland Springs Village HOA will be using our services again. [If renewing, please click the green "I agree to renewal" button below.](#)

### **New to Vote HOA Now?**

 See how it works in [3 easy steps](#)  
Click here to view our [process](#), [presentation](#), [what's included](#), and [FAQ](#)  
or join a webinar to get your questions answered, [view the schedule](#)

The cost for the year (includes voting site and full-service management of one vote) will be **\$1775.00** for **2850** homes/units (price valid up to 3500 homes/units; detailed price chart below). This is **NOT** the invoice. Upon acceptance of the renewal, an invoice will be sent around the renewal date of 1/10/2025.

**Vote Administrator:** We have **Kathy Fowers listed as the primary contact** for Sunland Springs Village HOA. This is the person who will be our contact to setup the ballot, receive system emails, and send approvals. **If this is not correct, please let us know before renewing.**

**Board Contact:** Please confirm the primary board contact is correct (this person is not contacted unless the association switches management company).

We currently have:  
Paul Marena

paulmssv@gmail.com