

Atty. JOHN SULLIVAN
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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

v.

SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,

Defendant

No. CV2023-096192

COMPLAINT for
DECLARATORY JUDGMENT

NOW COMES THE PLAINTIFF, in the above-captioned matter, seeking declaratory judgment with respect to the Planned Communities open meeting statute and states as follows:

I. Parties

1. **Defendant (“the HOA”)**, Sunland Springs Village Homeowners Association, is a domestic non-profit corporation subject to the provisions of the Arizona Planned Communities Act, Title 33, Chapter 16 (A.R.S. §§ 33-1801 to 1819), and has a place of business at 11214 E. Laguna Azul Cir., Mesa, AZ 85209.
2. **Plaintiff (“the Homeowner”)**, AZNH Revocable Trust, holds title to real property within Sunland Springs Village, a Planned Community in Mesa, AZ, and is a statutorily mandated member of the HOA pursuant to A.R.S. § 33-1802, 4.

3. John & Susan Sullivan (*real parties in interest*) are the Trustees of AZNH Revocable Trust which has its principal place of administration at 336 Intervale Rd., Unit B1, Gilford, NH 03249.

II. Venue & Jurisdiction

4. Venue & personal jurisdiction are proper in the Superior Court for Maricopa County.
5. The Superior Court has subject matter jurisdiction pursuant to Ariz. Const. art. VI, § 14, A.R.S. §§ 12-122, 12-123, 12-1831 and 12-1832 (2023).
6. The Homeowner seeks declaratory judgment pursuant to Arizona’s Uniform Declaratory Judgments Act, A.R.S. Title 12, Ch. 10, Art. 2. “Any person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations thereunder. A.R.S. § 12-1832.

III. Planned Community Open Meeting Requirements –

Relevant Excerpts & Homeowner Rights

7. A.R.S. § 33-1804, A (underline and bold added):

Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the . . . board of directors . . . are open to all members of the association . . . and all members . . . so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board . . . shall permit a member . . . to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. . . . Any portion of a meeting may be closed only if that closed portion of the meeting is limited to **consideration** of one or more of the following:

1. Legal advice from an attorney;
2. Pending or contemplated litigation;
3. Personal, health or financial information about an individual;

4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of either the Association or a contractor; and,
5. Discussion of a homeowner's appeal of any violation cited or penalty imposed by the Association except on request of the affected homeowner that the meeting be held in an open session.

8. A.R.S. § 33-1804, D:

Notice to members of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting.

9. A.R.S. § 33-1804, E:

The agenda for Board meetings "shall be available to all members attending."

* * *

"Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting."

10. A.R.S. § 33-1804, F (bold added):

It is the policy of this state as reflected in this section that all meetings of a planned community, whether meetings of the members' association or meetings of the board of directors of the association, be conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided and to ensure that members have the ability to speak after discussion of agenda items, but before a vote of the board of directors or members is taken. Toward this end, **any person or entity that is charged with the interpretation of these provisions, including members of the board of directors and any community manager, shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.**

11. A.R.S. § 33-1804 provides the Homeowner with the right: (1) to have the provisions of A.R.S. § 33-1804 construed in favor of open meetings by any person or entity that is charged with the interpretation of its provisions, including, but not limited to, the members of the Board of Directors; (2) to speak once after the board has discussed a

specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak; (3) to receive notice of all Board meetings; (4) to attend Board meetings; (5) to receive notices and agendas for Board meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided; and, (6) to speak at Board Meetings at an appropriate time during the deliberations and proceedings.

IV. Construing the Open Meeting Statute – No Voting in Closed Meetings

12. With respect to Board of Directors meetings, A.R.S. § 33-1804, A, states, in part, “Any portion of a meeting may be closed only if that closed portion of the meeting is limited to **consideration** of” one of the matters listed in A.R.S. § 33-1804, A, 1-5. A.R.S. § 33-1804, A (bold added). Thus, any closed portion of a Board meeting is strictly limited to “**consideration**” of a qualifying matter under A.R.S. § 33-1804, A, 1-5.
13. The words and phrases of a statute shall be construed according to the common and approved use of the language. A.R.S. § 1-213 (2023).
14. “**Consideration**” is defined as: continuous and careful thought; a matter weighed or taken into account when formulating an opinion or plan; or, an opinion obtained by reflection. Merriam-Webster’s Collegiate Dictionary, 11th Ed.
15. A.R.S. § 33-1804, F, specifically requires that Board meetings be conducted in a manner which ensures that homeowners have the ability to speak after discussion of agenda items, but before a vote of the Board of Directors is taken.
16. When the definition of “consideration” is combined with the requirement that meetings be conducted in a manner which ensures that homeowners have the ability to speak after discussion of agenda items, but before a vote of the Board of Directors is taken, and the

requirement that the statute (A.R.S. § 33-1804) be construed in favor of open meetings, the conclusion is inescapable that voting is not allowed in a closed Board meeting.

17. The HOA Board has been voting (or taking formal actions) in closed meetings and, after the open meeting requirements were brought to the attention of the HOA by email, the HOA attorney replied that the Board may vote in executive session and they intend to continue to do so.
18. When the Homeowner sent a follow-up email to the HOA attorney, the Board President stated that that HOA shall no longer discuss the matter with the Homeowner.

V. The Basis for Declaratory Judgment

19. The parties disagree on the construction of the statute (A.R.S. § 33-1804).
20. The HOA's construction and application of the statute adversely affects the Homeowner's rights granted by the statute.
21. The HOA's construction of the statute (to wit: the Board may vote in closed meetings) has the effect of depriving the Homeowner of the following statutory rights:
 - a. The right to have the provisions of A.R.S. § 33-1804 construed in favor of open meetings by any person or entity that is charged with the interpretation of its provisions, including, but not limited to, the members of the Board of Directors;
 - b. The right to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak;
 - c. The right to attend Board meetings which are required to be open for the Homeowner's attendance;

- d. The right to receive notices and agendas for Board meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided; and,
- e. The right to speak at open Board Meetings at an appropriate time during proceedings.

VI. Prayer for Declaratory Judgment

- 22. The Homeowner incorporates by reference, all allegations and averments made in all preceding paragraphs.
- 23. The Homeowner respectfully requests a declaration from this Court that a closed meeting of the HOA Board is limited to consideration of the matters identified in A.R.S. § 33-1804, A, 1-5, and that there is nothing in the Planned Communities Act (Title 33, Chapter 16 [A.R.S. §§ 33-1801 to 1819]) which allows the HOA Board of Directors to take formal actions, to vote, to make collective decisions or to commit the HOA to any action or inaction in a closed meeting.
- 24. The Homeowner respectfully requests a declaration from this Court that the Homeowner has the following statutory rights pursuant to A.R.S. § 33-1804:
 - a. The right to have the provisions of A.R.S. § 33-1804 construed in favor of open meetings by any person or entity that is charged with the interpretation of its provisions, including, but not limited to, the members of the HOA Board of Directors;
 - b. The right to speak once after the HOA Board has discussed a specific agenda item but before the Board takes formal action on that item in addition to any other opportunities to speak;

- c. The right to attend HOA Board meetings which are required to be open for the Homeowner's attendance;
- d. The right to receive notices and agendas for HOA Board meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided; and,
- e. The right to speak at open HOA Board Meetings at an appropriate time during the deliberations and proceedings.

25. The Homeowner respectfully requests such other and further declarations or relief for the Homeowner as this Honorable Court deems appropriate and proper.

26. The Homeowner respectfully asks the Court to award costs pursuant to A.R.S. § 12-1840 ("In any proceeding under this article the court may make such award of costs as may seem equitable and just.").

Dated this 18th day of December, 2023.

/s/ John F. Sullivan

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