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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

**Plaintiff's Statement of Facts
Supporting
Summary Judgment**

Oral Argument Requested

Tier 2 Case

**Assigned to:
Honorable Rodrick Coffey**

1 **A. INTRODUCTION**

2 The Complaint seeks Declaratory Judgment regarding the provisions of A.R.S. § 33-1804 of
3 the Planned Communities Act (A.R.S. §§ 33-1801 to 1820). The parties are identified herein as
4 “Homeowner” (Plaintiff) and “HOA” (Defendant).

5 The facts herein are drawn from pleadings, interrogatories, produced documents, admissions
6 and communications between the parties.

7 Consistent with Superior Court Civil Rule 5.1(c)(2)(B) discovery and disclosure documents
8 do not accompany this filing. Such documents shall be made available for the Court's
9

1 examination if they become relevant to the determination of an issue before the court; e.g., the
2 HOA disputes content or accuracy. Ariz. R. Civ. P. 5.1(c)(2)(B).

3 **B. Facts**

4 1. The parties disagree on the construction of A.R.S. § 33-1804.

5 **[See: Complaint & Answer ¶ 19.]**

6 2. The Complaint alleges the HOA’s construction of the statute deprives the Homeowner
7 of the following statutory rights:

- 8 a. The right to have the provisions of A.R.S. § 33-1804 construed in favor of open
9 meetings by any person or entity that is charged with the interpretation of its
10 provisions, including, but not limited to, the members of the Board of Directors;
11 b. The right to speak once after the board has discussed a specific agenda item but
12 before the board takes formal action on that item in addition to any other
13 opportunities to speak;
14 c. The right to attend Board meetings which are required to be open for the
15 Homeowner’s attendance;
16 d. The right to receive notices and agendas for Board meetings that contain the
17 information that is reasonably necessary to inform the members of the matters to
18 be discussed or decided; and,
19 e. The right to speak at open Board Meetings at an appropriate time during
20 proceedings.

21 The HOA denies all the above allegations.

22 **[See: Complaint & Answer ¶¶ 11, 20, 21.]**

23 3. The HOA asserts that its Board of Directors may take formal action on matters under
24 their consideration in a closed session of a Board meeting.

25 **[See: HOA Amended Response to Request for Admissions #1.]**

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1 7. In response to discovery about the below closed meeting dates:

2 Jan. 20, 2023; Feb. 21, 2023; April 21, 2023;
3 July 21, 2023; Sept. 15, 2023; Oct. 20, 2023; and,
4 Nov. 17, 2023,

5 the HOA admits that the Board did not meet in open session to identify the paragraph
6 under A.R.S. § 33-1804(A) that authorized the board to close the meeting.

7 **[See Homeowner’s Request for Admission #3 and the HOA Amended Response.]**

8 8. Prior to all Board meetings, the HOA manager decides which matters appear on an open
9 meeting or closed meeting agenda, and prepares proposed meeting agendas. Thereafter,
10 the Board President meets with the HOA manager to review the proposed meeting
11 agendas to confirm that each item has been placed on the correct agenda. At that time,
12 the Board president approves the Board’s open and closed meeting agendas.

13 **[See: HOA Second Amended Answer to Interrogatory #4, p.3, lines 19-28,**
14 **continued to p.4, lines 1-12 continued to “Amended Response” p.5-7. See attached,**
15 **Homeowner’s Exhibit A, interrogatory #4 and HOA answer.]**

16 9. The HOA has stated:

17 “Before each closed executive session, the Association posts a notice identifying the
18 applicable subsection(s) of A.R.S. § 33-1804 that permit the Board to conduct a
19 closed meeting. Therefore, it is the Association’s contention that it fully complies
20 with the requirements set forth in A.R.S. § 33-1804(C) by identifying on the
21 executive meeting notice the applicable statutory subsection authorizing the Board
22 to conduct a closed meeting.”

23 **[See: HOA Second Amended Answer to Interrogatory #4, p.6, lines 24-28,**
24 **continued to p.7, lines 1-2.]**

25 10. The notices of the above paragraph are identified by HOA Bates #'s:

26 SSHOA 000002; SSHOA 000004; SSHOA 000009;
27 SSHOA 000013; SSHOA 000014; SSHOA 000015;
28 SSHOA 000017; SSHOA 000018; SSHOA 000020.

1 All the above notices announce “Board Executive Meeting” followed by the meeting
2 date, and all notices contain the following statement identical to Bates # SSHOA
3 000002, but with differing statutory references:

4 Closed to Owners in accordance with

5 ARS § 33-1804 A.1, A.3, and A.5

6 Executive meetings are posted per law, and not
7 open to Owners except by invitation.

8 **[See: HOA Second Amended Answer to Interrogatory #4, p.6, lines 21-24 & p.7,
9 lines 6-9]**

10 **[See: HOA Documents produced (with Bates #'s as shown) in response to
11 Homeowner’s Request for Production.]** See attached, Plaintiff’s Exhibit B (HOA
12 “Board Executive Meeting” notices).

13 **11.** The HOA has stated in meeting notices: “Per Arizona state law, there are some topics of
14 Association business that are considered confidential, and are not open to homeowners
15 or residents unless specifically invited by the Board.”

16 **[See: HOA Second Amended Answer to Interrogatory #4, p.6, lines 21-24.]**

17 **12.** The HOA admits that Homeowner holds title to real property within Sunland Springs
18 Village, a Planned Community in Mesa, AZ and is a mandated member of the HOA
19 (Sunland Springs Village Homeowners Association) pursuant to a Declaration of
20 Covenants, Conditions and Restrictions.

21 **[See: HOA counsel’s email, Jan. 31. 2024.]**

22 **13.** The HOA admits that Sunland Springs Village Homeowners Association, is a domestic
23 non-profit corporation subject to the provisions of the Arizona Planned Communities
24 Act, Title 33, Chapter 16 (A.R.S. §§ 33-1801 to 1819), and has a place of business at
25 11214 E. Laguna Azul Cir., Mesa, AZ 85209.

26 **[See: Complaint & Answer ¶ 1.]**

27 **14.** Personal & Subject matter jurisdiction, as well as venue, are proper in the Superior
28 Court for Maricopa County.

1 **[See: Complaint & Answer ¶¶ 4 & 5.]**

2 **15.** The parties agree this action raises questions of law and not questions of fact, and no
3 witnesses are anticipated.

4 **[See: Homeowner’s Initial Disclosure sec III.]**

5 **[See: HOA Amended Initial Disclosure sec. III, lines 21-23.]**

6 **16.** The HOA admits that the documents it has produced in this action (Bates # SSHOS
7 000001-000146 and including the amended replacement documents produced via email
8 on May 20, 2024) are records of regularly conducted activity within the meaning of
9 Ariz. R. Evid. 803.

10 **[See: HOA Amended Response to Request for Admissions #2.]**

11 **17.** At closed meetings, the HOA Board:

- 12 a. authorized a budget line item of \$917,000.00 ;
- 13 b. granted the contracted community manager discretionary spending up to
14 \$7,000.00;
- 15 c. addressed (13) age waivers (HOA is age 55+ restricted community); and,
- 16 d. authorized foreclosure actions against two homeowners.

17 **[See: HOA May 10, 2024, Email (un-numbered pages) Response to Request for**
18 **Production – “Executive Session” “Minutes” for nine (9) different meetings.]**

19 More specifically, see closed meeting minutes for:

- 20 (a.) **Sept. 15, 2023**, sec. VI;
- 21 (b.) **Nov. 17, 2023**, sec. VII, B;
- 22 (c.) **April 21, 2023**, secs. V & VI, B; **July 21, 2023**, sec. V;
23 **Sept. 15, 2023**, sec. IV; **October 20, 2023**, secs. VI, A & B;
24 **Nov. 17, 2023**, sec. V, A, B, & C; **March 22, 2024**, sec. IV, A, B, & C; and,
25 **April 19, 2024**, sec. IV.
- 26 (d.) **Feb. 21, 2023**, sec. IV, B; **Sept., 15, 2023**, sec. III, A.

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1 Dated: Sept. 24, 2024

/s/ *John F. Sullivan*

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CERTIFICATE OF SERVICE

10 A copy hereof was served this date upon Defense counsel via the Court's electronic filing
11 service.

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/s/ *John F. Sullivan*

13

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

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Attorney for Plaintiff

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