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

14 AZNH REVOCABLE TRUST, by and
15 through JOHN and SUSAN
16 SULLIVAN, TRUSTEES, REAL
17 PARTIES IN INTEREST,

18 Plaintiffs,

19 v.

20 SUNLAND SPRINGS VILLAGE
21 HOMEOWNERS ASSOCIATION,

22 Defendant.

Case No. CV2023-096192

**DEFENDANT SUNLAND SPRINGS
VILLAGE HOMEOWNERS
ASSOCIATION'S RESPONSE IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

23 Pursuant to Arizona Rule of Civil Procedure 56, Defendant Sunland Springs
24 Village Homeowners Association (“SSV HOA”), by and through undersigned counsel,
25 hereby submits this Response in Opposition to Plaintiff’s Motion for Summary
26 Judgment. For the reasons explained below, SSV HOA respectfully moves the Court to
27 deny Plaintiff’s Motion for Summary Judgment.

28 **I. INTRODUCTION**

This is a declaratory judgment action seeking to determine whether SSV HOA’s
construction and application of A.R.S. § 33-1804 adversely impacts Plaintiff’s statutory
rights as a homeowner in the community. Plaintiff filed the subject Motion claiming no
genuine issues of material fact and an entitlement to judgment as a matter of law that

1 SSV HOA’s construction and application of A.R.S. § 33-1804 is erroneous and deprives
2 him of the exercise and enjoyment of open meeting rights. (SSOF 6). As set forth
3 below, Plaintiff’s Motion consists primarily of unsupported legal conclusions,
4 inapplicable case law, and impractical suggestions. The outcome of his interpretation of
5 the subject statute would yield absurd, untenable, and unreasonable results. SSV HOA’s
6 application of A.R.S. § 33-1804 favors open meetings, comports with legislative intent,
7 and ensures a reasonable balance between transparency to homeowners and protection of
8 confidential information. Therefore, the Court should deny Plaintiff’s Motion.

9 **II. LEGAL STANDARD**

10 1. **Summary Judgment Standard**

11 In an Arizona declaratory judgment action, summary judgment is only
12 appropriate if there are no genuine issues of material fact rendering the moving party
13 entitled to judgment as a matter of law. *United Ins. Co. v. Lutz*, 227 Ariz. 411, 41, ¶ 8
14 (2011). This is the case only when “the facts produced in support of the claim or
15 defense have so little probative value, given the quantum of evidence required, that
16 reasonable people could not agree with the conclusion advanced by the proponent of the
17 claim or defense.” *Orme Sch. v. Reeves*, 166 Ariz. 310, 309 (1990). Additionally, in
18 reaching its determination, the court must view all facts and draw all reasonable
19 inferences in a light most favorable to the non-moving party. *Farmers Ins. Co. of*
20 *Arizona v. Vagnozzi*, 138 Ariz. 443, 448 (1983). Should there be even the slightest
21 doubt as to the operative facts, the court must deny summary judgment. *Id.* Similarly, if
22 there are any controverted issues of material fact, the court should categorically deny
23 summary judgment. *Phoenix Feed & Seed Co. v. Adams*, 78 Ariz. 292, 296 (1955).

24 **III. LEGAL ARGUMENT**

25 1. **SSV HOA is Subject to the Arizona Planned Communities Act**

26 SSV HOA is a domestic, non-profit corporation subject to the provisions of the
27 Arizona Planned Communities Act, Title 33, Chapter 16 (A.R.S. §§ 13-1801-1819), and
28 Plaintiff is an SSV HOA homeowner. (SSOF 2). Plaintiff brings this declaratory

1 judgment action alleging that SSV HOA’s construction and application of A.R.S. § 33-
2 1804 deprives him of certain statutory rights. (SSOF 3 & 7). Fundamentally, the parties
3 disagree on the construction and application of A.R.S. § 33-1804. (SSOF 1). Both
4 parties agree that this action raises questions of law not fact. (SSOF 4).

5 **2. Plaintiff Conflates the Open Meeting Law in A.R.S. § 38-431.01 with**
6 **A.R.S. § 33-1804(A)**

7 Plaintiff’s Motion erroneously refers to A.R.S. § 33-1804(A) as the “Open
8 Meeting Law,” a term that only properly applies to A.R.S. §§ 38-431 to 431.09. The
9 two statutes govern completely different entities. “Confusion has arisen in the past with
10 respect to the applicability of Arizona’s Open Meeting Law, A.R.S. §§ 38-431 through
11 431.09, to meetings of homeowner associations. The Open Meeting Law only applies to
12 public bodies. Homeowner associations and their Boards are not public bodies and,
13 therefore, are not within the purview of the Open Meeting Law.” Ariz. Op. Atty. Gen.
14 No. I97-012, 2 (1997). An HOA “Board is not a public body with obligations to the
15 public.” *Id.* Further, A.R.S. § 33-431(5) defines “public bodies” as “the legislature, all
16 boards and commissions of the state or political subdivisions, all multi-member
17 governing bodies of departments, agencies, institutions and instrumentalities of the state
18 or political subdivisions, including without limitation all corporations and other
19 instrumentalities whose boards of directors are appointed or elected by the state or
20 political subdivision. Public body includes all quasi-judicial bodies and all standing,
21 special or advisory committees or subcommittees of, or appointed by, such public body.”
22 Conspicuously excluded from the above definition is a homeowner’s association. Even
23 Plaintiff admits that SSV HOA is a “domestic non-profit corporation subject to the
24 provisions of the Arizona Planned Communities Act, Title 33, Chapter 16 (A.R.S. §§ 33-
25 1801 to 1819).” (SSOF 2).

26 Accordingly, Plaintiff’s reliance on case law evaluating A.R.S. § 33-431, *et seq.*
27 is inapplicable to the underlying dispute and should be disregarded. Plaintiff relies most
28

1 heavily on *Johnson v. Tempe Elementary School Dist. No. 3 Governing Bd.* for its
2 finding that “[p]ublic bodies may not take final legal action in executive session.” 199
3 Ariz. 567, 569 (2000). However, SSV HOA **is not** a public body. Even Plaintiff admits
4 the distinction in his Motion by stating that “unlike the planned community Open
5 Meeting Law, public bodies are specifically prohibited from making a final vote or
6 decision at an executive session.” Therefore, by Plaintiff’s own admission, SSV HOA **is**
7 **not subject** to A.R.S. § 38-431, *et seq.* and all analysis of that statute is inapplicable and
8 irrelevant to the Court’s consideration of the underlying Motion and its interpretation of
9 A.R.S. § 33-1804(A).

10 **3. SSV HOA Construes A.R.S. § 33-1804(A) and (F) in Accordance with**
11 **Legislative Intent That Favors Open Meetings**

12 a. **Proper Statutory Construction**

13 Arizona courts “interpret the language of [a] statute ‘to give it a fair and sensible
14 meaning.’” *Cypress on Sunland Homeowners Ass’n v. Orlandini*, 227 Ariz. 288, 297, ¶
15 30 (2011) (quoting *Walter v. Wilkinson*, 198 Ariz. 431, 432, ¶ 6 (App.2000)). Further,
16 “[s]tatutes must be given a sensible construction that accomplishes the legislative intent
17 and which avoids absurd results.” *State v. Affordable Bail Bonds*, 198 Ariz. 34, 37, ¶ 13
18 (Ariz.App.2000) (quoting *Arizona Health Care Cost Containment Sys. v. Bentley*, 187
19 Ariz. 233 (App.1996)). Courts may not “read into a statute something which is not
20 within the manifest intention of the legislature as gathered from the statute itself.” *City*
21 *of Phoenix v. Donofrio*, 99 Ariz. 130, 133 (1965). Additionally, a “court will not inflate,
22 expand, stretch or extend a statute to matters not falling within its expressed provisions.”
23 *State ex rel. Morrison v. Anway*, 87 Ariz. 206 (1960).

24 b. **Legislative Intent of A.R.S. § 33-1804**

25 Notwithstanding Plaintiff’s attempt to *summarize* A.R.S. § 33-1804(A) in his
26 Motion in Plaintiff’s favor, the statute reads in relevant part:

27 Notwithstanding any provision in the declaration, bylaws or
28 other documents to the contrary, all meetings of the members’

1 association and the board of directors, and any regularly
2 scheduled committee meetings, are open to all members of the
3 association ... and all members ... so desiring shall be
4 permitted to attend and speak at an appropriate time during
5 deliberations and proceedings. The board may place
6 reasonable time restrictions on those persons speaking during
7 the meeting but shall permit a member ... to speak once after
8 the board has discussed a specific agenda item but before the
9 board takes formal action on that item ...

10 Moreover, A.R.S. § 33-1804(F) further codifies that legislative intent with the
11 following:

12 It is the policy of this state as reflected in this section that all
13 meetings of a planned community, whether meetings of the
14 members' association or meetings of the board of directors of
15 the association, be conducted openly ... Toward this end, any
16 person or entity that is charged with the interpretation of these
17 provisions, including members of the board of directors and
18 any community manager, shall take into account this
19 declaration of policy and shall construe any provision of this
20 section in favor of open meetings.

21 Contrary to Plaintiff's allegations, SSV HOA acknowledges that the legislative
22 intent of A.R.S. § 33-1804 is to promote and encourage open association meetings when
23 possible. **(SSOF 8).**

24 **4. A.R.S. § 33-1804(A) Permits Closed Executive Meetings**

25 Despite Plaintiff's draconian and inflexible statutory interpretation, A.R.S. § 33-
26 1804(A) permits meetings to be closed when certain subject matter is discussed. The
27 statute does not indicate that association members have unfettered access to every
28 portion of every Board meeting on every subject. **(SSOF 9).** Rather, "[e]xceptions to the
requirements of A.R.S. § 33-1804(A) allow the Board to hold **closed meetings**" when
considering one of the five enumerated exceptions. Ariz. Op. Atty. Gen. No. I97-012, 2
(1997) (emphasis in original); **(SSOF 10).** In relevant part, the exceptions set forth in
subsections 1-5 are:

- 1 1. Legal advice from an attorney for the board or the association.
- 2 2. Pending or contemplated litigation.
- 3 3. Personal, health or financial information about an individual member of
- 4 the association, an individual employee of the association or an
- 5 individual employee of a contractor for the association, including
- 6 records of the association directly related to the personal, health or
- 7 financial information about an individual member of the association, an
- 8 individual employee of the association or an individual employee of a
- 9 contractor for the association.
- 10 4. Matters relating to the job performance of, compensation of, health
- 11 records of or specific complaints against an individual employee of the
- 12 association or an individual employee of a contractor of the association
- 13 who works under the direction of the association.
- 14 5. Discussion of a member's appeal of any violation cited or penalty
- 15 imposed.

16 SSV HOA's practices perfectly align with the requirements set forth in A.R.S. §
17 33-1804(A). **(SSOF 5)**. By default, Board meetings and association meetings are open
18 and accessible to all members unless enumerated topics are discussed. **(SSOF 12)**.
19 Contrary to Plaintiff's assertion that the Board engages in a "scheme of concealment,"
20 the Board makes every effort to be as transparent with members as possible. However,
21 some topics are not for public consumption and the statute permits SSV HOA to hold
22 closed meetings when those topics are addressed. **(SSOF 10)**.

23 **5. A.R.S. § 33-1805 Supports SSV HOA's Interpretation of A.R.S. § 33-**
24 **1804**

25 A.R.S. § 33-1805 states, in relevant part:

- 26 B. Books and records kept by or on behalf of the association and the
- 27 board may be withheld from disclosure to the extent that the portion
- 28 withheld relates to any of the following:
 1. Privileged communication between an attorney for the association and the association.
 2. Pending litigation.

1 3. Meeting minutes or other records of a session of a board meeting
2 that is not required to be open to all members pursuant to § 33-1804.

3 4. Personal, health or financial records of an individual member of
4 the association, an individual employee of the association or an individual
5 employee of a contractor for the association ...

6 5. Records relating to the job performance of, compensation of,
7 health records of or specific complaints against an individual employee of
8 the association or an individual employee of a contractor of the association
9 who works under the direction of the association.
10 (Emphasis added).

11 Subsection (B)(3) permits association boards to withhold production of meeting
12 minutes or other records from executive sessions to association members. As evident in
13 the numerous Board meeting minutes produced to Plaintiff in this matter, the minutes
14 record nothing but the subject matter under consideration and the outcome of the
15 corresponding vote. If Boards were precluded from taking formal action in executive
16 sessions, there would be nothing to include in “meeting minutes or other records” from a
17 meeting “not required to be open to all members pursuant to § 33-1804.” *Id.* If
18 discussion of certain subject matter is protected under § 33-1804(A)(1-5), and the
19 minutes memorializing such discussion are protected under § 33-1805(B)(3), it is only
20 logical that Boards be permitted to take formal action in executive sessions following
21 discussion of confidential matters. A contrary interpretation of both statutes would
22 create an “absurd” result, which Arizona courts do not tolerate. *See Arizona Health
23 Care Cost Containment Sys. v. Bentley*, 187 Ariz. 233 (App.1996).

24 **6. There is No Conflict Between A.R.S. § 33-1804 and A.R.S. § 33-1805**

25 Plaintiff’s Motion includes the argument that A.R.S. § 33-1804 and A.R.S. § 33-
26 1805 do not conflict. SSV HOA agrees that there is no conflict between statutes and
27 Plaintiff concedes the same. Therefore, SSV HOA need not provide further reasoning
28 for an uncontested issue.

1
2 **7. Plaintiff’s Interpretation of A.R.S. § 33-1804(C) Yields Impractical**
3 **and Logistically Infeasible Results That Would Frustrate the Purpose**
4 **of A.R.S. § 33-1804(A) (1-5)**

5 A.R.S. § 33-1804(C) states the following, “[b]efore entering into any closed
6 portion of a meeting of the board of directors, or on notice of a meeting under subsection
7 D of this section that will be closed, the board shall identify under subsection A of this
8 section that authorizes the board to close the meeting.” Plaintiff seems to interpret this
9 unambiguous language to mean that the Board must determine the statutorily
10 permissible reason to conduct a closed meeting in an open session. The statute does not
11 suggest that at all. Specifically, (C) provides an association board with two options – to
12 identify the subparagraphs of (A) while in an open meeting before closing the same **OR**
13 when “on notice of a meeting under subsection D of this section that will be closed.”
14 **(SSOF 11 & 13).**

15 Therefore, SSV HOA is permitted to identify the applicable subsection(s) when
16 on notice of a meeting ... that will be closed. As such, SSV HOA’s practice of
17 determining the items on open and closed agendas outside of an open session is
18 permissible under the statute and does not deprive Plaintiff of any statutory rights. To
19 suggest that (C) requires a preemptive open meeting to decide upon a closed meeting is a
20 statutory interpretation creating an “absurd” result, which Arizona courts do not tolerate.
21 *See Arizona Health Care Cost Containment Sys. v. Bentley*, 187 Ariz. 233 (App.1996);
22 **(SSOF 13).** Far from evidencing a “scheme” to deprive Plaintiff of his rights, the
23 practice is reasonable, practical, and effective while still complying with statutory
24 requirements.

25 **8. HOA’s Notices Comply with Statutory Requirements That Do Not**
26 **Evidence a Scheme of Concealment**

27 A.R.S. § 33-1804(D) states that “notice to members of meetings of the board of
28 directors shall be given at least forty-eight hours in advance of the meeting by

1 newsletter, conspicuous posting, or any other reasonable means as determined by the
2 board of directors ... Any notice of a board meeting shall state the date, time and place
3 of the meeting.” Plaintiff’s Motion does not allege that SSV HOA failed to provide
4 timely notices in advance of closed meetings. However, Plaintiff erroneously claims
5 that the “regularly issued notices of closed meeting dates” have lacked “required”
6 information, misrepresented information, and created agendas without holding an open
7 meeting to decide upon a closed meeting.

8 Notably, A.R.S. § 33-1804 does not provide detailed guidance on what notices
9 and agendas must contain. Rather, (E) indicates that they “contain the information that
10 is reasonably necessary to inform the members of the matters to be discussed or
11 decided.” Closed meetings discuss confidential topics. SSV HOA’s notices properly
12 identify the subsections of (A) permitting a closed session and its agendas provide a
13 general overview of as much “reasonably necessary” information it can provide
14 members without divulging confidential information. **(SSOF 14).**

15 Moreover, Plaintiff’s claim that SSV HOA’s notices “misrepresent” Arizona law
16 are completely unfounded. Plaintiff alleges that meeting notices “misrepresent that
17 closed meetings are mandatory by law.” This interpretation is absurd. SSV HOA
18 notices state that “Per Arizona state law, there are some topics of Association business
19 that are considered confidential, and are not open to homeowners or residents unless
20 specifically invited by the Board.” (Motion, p.9, lines 6-9). That language does not state
21 or imply that Arizona mandated such disclaimer. The notice language accurately
22 explains that Arizona law (namely, A.R.S. § 33-1804) deems certain items of Board
23 business as confidential (as set forth in (A) (1-5)) and that members are not privy to such
24 information unless invited. That is an accurate summary of the language in A.R.S. § 33-
25 1804 and includes no misrepresentation. **(SSOF 15).**

26 As previously explained in detail, A.R.S. § 33-1804(C) does not require Boards to
27 meet in open session only to agree to then meet in closed session. **(SSOF 12).** Such
28 result would be absurd and impractical. Further, by Plaintiff’s own admission, as of

1 August 2023, SSV HOA began providing all members with closed meeting agendas,
2 which evidences the opposite of a “scheme of concealment.” These agendas strike an
3 appropriate balance between providing general notice to the members about subject
4 matter to be addressed while ensuring the confidentiality of any detailed confidential
5 information.

6 **9. Plaintiff is Not Entitled to Costs**

7 In addition to seeking numerous judicial declarations, Plaintiff also seeks costs.
8 Plaintiff, acting as his own counsel, engaged in a voluntary undertaking to file the
9 underlying suit in an effort to create an actual controversy. No actual controversy exists
10 and Plaintiff is not entitled to summary judgment. Therefore, he is not entitled to costs.

11 **IV. CONCLUSION**

12 For the above reasons, SSV HOA respectfully moves the Court to deny Plaintiff’s
13 Motion for Summary Judgment.

14 Dated this 24th day of October, 2024.

15 **FREEMAN MATHIS & GARY, LLP**

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