ARIZONA COURT OF APPEALS

DIVISION ONE

AZNH REVOCABLE TRUST, by and through JOHN and SUSAN SULLIVAN, TRUSTEES, REAL PARTIES IN INTEREST, Plaintiff/Appellant/Cross-Appellee, v. SUNLAND SPRINGS VILLAGE HOMEOWNERS ASSOCIATION, Defendant/Appellee/Cross-Appellant.	No. 1 CA-CV 25-0424 Maricopa County Superior Court No. CV2023-096192 **APPELLEE/CROSS-APPELLANT SUNLAND SPRINGS VILLAGE HOMEOWNERS ASSOCIATION'S ANSWERING BRIEF / OPENING CROSS-APPEAL BRIEF**

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INTRODUCTION

Arizona regulates the conduct of homeowners associations and their governing boards by statute. This appeal and cross-appeal involve a dispute regarding the statutory balance created by Ariz. Rev. Stat. § 33-1804 between the rights of homeowners to attend and speak at board meetings and the need for boards to consider certain issues confidentially.

The Superior Court correctly upheld this balance in holding that both the process by which the Appellee's board notified association members of closed meetings and the content of those notices comply with Ariz. Rev. Stat. § 33-1804. The court's ruling on these issues is supported by both the plain language of Ariz. Rev. Stat. § 33-1804 and the clearly discernible legislative intent of the statute. The court's ruling on these issues should be affirmed.

In cross-appeal, the Superior Court jeopardized the balance maintained by Ariz. Rev. Stat. § 33-1804 in holding that the Appellee's board could not vote in closed session. The ruling creates needless inefficiencies for boards and provides no meaningful new rights to association members. Boards will be forced to reconvene to hold an open vote on an appropriately confidential issue. The reasons for the right to attend and speak applicable to open meetings will be empty rights in the context of voting on issues considered in closed meetings because members will lack necessary context.

Requiring boards to provide such context would undo the purpose for authorizing closed meetings – to allow boards to freely discuss sensitive topics. That policy objective is why the minutes of closed meetings are protected from disclosure to association members, and its mandate applies with equal force to permit boards to hold votes on issues properly the subject of closed meetings. The Superior Court's ruling prohibiting voting in closed meetings should be reversed.

JURISDICTIONAL STATEMENT

The Arizona Court of Appeals, Division One has jurisdiction over this matter pursuant to Ariz. Rev. Stat. § 12-2101, which grants jurisdiction over an appeal from "a final judgment entered in an action or special proceeding commenced in a superior court". Ariz. Rev. Stat. § 12-2101(A)(1). This cause involves claims under Ariz. Rev. Stat. § 33-1804. On April 17, 2025, the Superior Court entered a final judgment that disposed of all issues. IR 56. Homeowners filed their Notice of Appeal on May 11, 2025, and Sunland Springs filed its Notice of Cross-Appeal on May 30, 2025. IR 57; IR 61.

ISSUES PRESENTED FOR REVIEW

ON APPEAL

I. The trial court correctly ruled that a homeowner's association may designate the statutory section from Ariz. Rev. Stat. ("A.R.S.") § 33-1804(A) for a meeting notice administratively outside of an open meeting.

II. The trial court correctly ruled that Appellee's notices of closed meetings satisfy the requirements of A.R.S. § 33-1804.

ON CROSS APPEAL

III. The trial court misapplied A.R.S. § 33-1804(F) in a way that failed to accomplish the policy objectives of A.R.S. § 33-1804(F) and instead created meaningless administrative burdens while providing no additional transparency.

IV. The trial court erred by holding that the word "consideration" as used in A.R.S. § 33-1804(A) prevents the Association's Board from making decisions in closed sessions on statutorily enumerated and protected topics.

V. The protection afforded to closed session meeting minutes by A.R.S. § 33-1805 supports the ability of the Association's Board to vote in closed session.

STATEMENT OF FACTS

Sunland Springs Village Homeowners Association ("Sunland Springs") is a domestic, non-profit corporation subject to the provisions of the Arizona Planned Communities Act, Title 33, Chapter 16. IR 1-2, ¶ 1; IR 8, ¶ 1.

Appellant AZNH Revocable Trust ("Homeowners") holds title to real property within Sunland Springs Village. IR 1-2, ¶ 2. Appellants John and Susan Sullivan are the Trustees of AZNH Revocable Trust. IR 1-2, ¶ 3.

The parties agree that this action raises questions of law, not fact. IR 44-46, ¶ 15. The dispute centers on the construction and application of A.R.S. § 33-1804. IR 44-46, ¶ 1. A.R.S. § 33-1804 sets forth requirements for meetings held by members' associations and boards of directors in planned communities.

By default, meetings convened under A.R.S. § 33-1804 are open to members of the association and their representatives (hereinafter, "open meetings"). An association board may convene meetings closed to everyone except board members (hereinafter "closed meetings") to consider certain issues enumerated in A.R.S. § 33-1804(A). The enumerated issues are:

> 1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
>
> 2. Pending or contemplated litigation.

> 3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
>
> 4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.
>
> 5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

A.R.S. § 33-1804 includes requirements pertaining to open meetings, exceptions to open meetings, frequency of meetings, notice of meetings, and meeting agendas. A.R.S. § 33-1804's subsection F states that:

> 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 in advance 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.

Homeowners argue that closed meetings convened by Sunland Springs' Board ("Board") do not comply with A.R.S. § 33-1804. IR 1-2, ¶ 17. Homeowners further argue that Sunland Springs' conduct of closed board meetings deprives Homeowners of statutory rights. IR 1-2, ¶¶ 20-21.

The Board provides a meeting notice when scheduling a closed meeting. IR 44-46, ¶ 9. These notices specify the applicable subsection from A.R.S. § 33-1804(A) that permits the closed meeting. IR 44-46, Exhibit B. The Sunland Springs Board has voted in closed session on items properly raised in a closed session. IR 44-46, ¶ 5.

Homeowners sought a judicial declaration from the trial court that "a closed meeting of the [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 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." IR 1-2, ¶ 23. Additionally, Homeowners sought court declaration of a series of "rights" the Homeowners claim are proffered by A.R.S. § 33-1804. IR 1-2, ¶ 24.

STATEMENT OF THE CASE

Homeowners filed their complaint on December 18, 2023. The complaint sought declaratory relief regarding meetings convened by Sunland Springs and voting undertaken therein. Homeowners moved for summary judgment on September 24, 2024. On February 24, 2025, the Superior Court granted summary judgment in part, "declaring that all votes by the HOA must occur in open meetings", and denied "the other issues that were raised therein." IR 50, 4.

On February 26, 2025, Homeowners filed a motion for reconsideration as to the ruling that "[a]s long as the meeting notice identifies the subsection of A.R.S. § 33-1804(A) that authorizes it to meet in a closed session, Defendant has satisfied its obligations under A.R.S. § 33-1804(C)." IR 51, 1-2. On March 11, 2025, the Superior Court denied Homeowners' motion. IR 52.

On April 17, 2025, the Superior Court issued its Rule 54(c) order on the summary judgment motion, finding in part, "declaring that all voting or formal actions by the Defendant's Board of Directors must occur in open meetings." IR 56, 1. The Superior Court finalized its denial of Homeowners' motion for summary judgment in part "with regard to other issues that were raised therein" and found there "are no matters still pending in this case." IR 56, 1-2.

Homeowners filed their notice of appeal on May 11, 2025, and Sunland Springs filed its notice of cross-appeal on May 30, 2025. IR 57; IR 61.

ARGUMENT

The Court should uphold the statutory balance between privacy and transparency established by the legislature in A.R.S. § 33-1804. Homeowners' attempt to alter the content and disclosure of information from closed board meetings directly contradicts A.R.S. § 33-1804. As conducted, the meetings held by the Board comply with the statute. When scheduling a closed meeting, the Board provides the statutorily required notice identifying the applicable subsection of the statute permitting a closed meeting. Further, the amount of specificity provided in the meeting notices and agendas is statutorily sufficient.

Requiring the Board to vote in open meetings on matters discussed in closed meetings would curtail the statutory purpose of closed meetings. The word "consider" does not preclude voting, as the trial court held in reaching its ruling. Further, other Arizona statutory law clarifies that formal Board action in closed meetings is not only permissible but expected.

Sunland Springs agrees with Homeowners that all issues presented are reviewed *de novo*. *Wilmot v. Wilmot*, 203 Ariz. 565, 568-69 (2002) (holding questions of law, statutory construction, and mixed questions of fact and law are reviewed *de novo*). "Statutory interpretation is a question of law that we review de novo. [Citation omitted.] We review the trial court's legal conclusions, such as the interpretation of a contract, de novo. [Citations omitted.] The court of appeals also

interprets deed restrictions de novo." *Wilson v. Playa de Serrano*, 211 Ariz. 511, 513, 123 P.3d 1148, 1150 (App. 2005).

A. On Appeal

I. The Court should uphold the Superior Court's ruling because Sunland Springs has met the statutory requirement of subsection C by identifying the applicable paragraph of subsection A.

In Arizona, the board of directors of a planned community may close "[a]ny portion of a meeting . . . if that closed portion of the meeting is limited to consideration" of five topics enumerated in A.R.S. § 33-1804. Ariz. Rev. Stat. § 33-1804(A). In the notice for a closed meeting, "the board shall identify the paragraph under subsection A of this section that authorizes the board to close the meeting." Ariz. Rev. Stat. § 33-1804(C).

Pursuant to Arizona law, Board meetings are open to all members of the association unless the meeting is closed for consideration of one of the topics enumerated in ARS § 33-1804. IR 39-40, 5 ¶ 12. When a meeting is closed, the Board provides a notice that states A.R.S. § 33-1804's applicable subsection. IR 44-46, Exhibit B.

The Superior Court correctly ruled that the notices provided by Sunland Springs satisfy A.R.S. § 33-1804's requirements. In its order, the Superior Court agreed that Sunland Springs "can identify what subsection of the statute applies

during an open session or … it can identify the applicable statutory exemption in the meeting notice that is provided to its members before meetings occur." IR 50, 3. The Superior Court found that "[a]s long as a meeting notice identifies the subsection of A.R.S. § 33-1804(A) that authorizes it to meet in a closed session, [Sunland Springs] has satisfied its obligations under A.R.S. § 33-1804(C)." IR 50, 3-4. Homeowners claim the "Superior Court did not address or analyze the requirement that the Board of Directors must identify the applicable paragraphs of § 33-1804(A) to comply with § 33-1804(C)." Opening brief, p. 9. This is not true. The Superior Court expressly ruled that Sunland Springs satisfies its obligations under A.R.S. § 33-1804 by issuing a meeting notice that identifies the enumerated prong of subsection A authorizing a closed meeting.

Homeowners ask this court to infer a new provision into A.R.S. § 33-1804 that is unsupported by the actual statutory language. A.R.S. § 33-1804 expressly authorizes Sunland Springs to determine which enumerated basis(es) authorizes the board to close the meeting. A.R.S. § 33-1804 states, "the board shall **identify the paragraph** under subsection A of this section that authorizes the board to close the meeting." Ariz. Rev. Stat. § 33-1804(C) (emphasis added). Arizona courts may not "read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself." *City of Phoenix v.*

Donofrio, 99 Ariz. 130, 133 (1965). Nor can a court "inflate, expand, stretch or extend a statute to matters not falling within its expressed provisions." *Id.*

Granting Homeowners' argument would impermissibly inflate A.R.S. § 33-1804 to add a fully new, legislatively unintended provision. Nothing in the statute suggests that identifying a statutory subsection is anything other than an administrative task to allow members of the association to confirm that the subject meeting is properly closed.

Homeowners offer no reasoning as to why alleged rights provided to Homeowners under the statute would supersede authority given to the Board by the same statute. Homeowners offer no policy justification for forcing the Board to waste valuable open meeting time providing information identical to that already provided in the notices that the Board undisputedly issues.

Homeowners suggest that the current process deprives them of the right to attend and speak at open Board meetings but fail to explain how this right is meaningful in the context of closed meetings. Homeowners also suggest that the current process deprives them of the right to receive "notices and agendas" of matters to be discussed or decided by the Board. But Homeowners undisputedly do receive the required notice of closed meetings. Nothing in A.R.S. § 33-1804 grants Homeowners a statutory right to agendas for closed meetings. Homeowners do not explain why such a right exists or how agendas would not

undercut the purpose of closed meetings on the enumerated topics.

Sunland Springs has met the statutory requirement of identifying the statutory subsection that permits a closed meeting, and any further requirement imposed by the Court would amount to impermissible inflation of the statute.

II. Sunland Springs' meeting agendas and notices comply with what is statutorily required under A.R.S. § 33-1804.

Arizona has adopted the policy "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". Ariz. Rev. Stat. § 33-1804(F). To promote this, A.R.S. § 33-1804 requires "that notices and agendas be provided in advance 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". Ariz. Rev. Stat. § 33-1804(F) (emphasis added).

Sunland Springs' conduct meets this requirement. The Superior Court "reviewed the sample meeting notices Plaintiff provided and determined that those meeting notices satisfy the requirements of A.R.S. § 33-1804(F). . . . [T]o the extent that issues fall within the scope of the limited topics set forth in [A.R.S. § 33-1804(A)], "the descriptions given in Defendant's meeting notices are sufficient under A.R.S. § 33-1804(F)." IR 50, 4. When issuing a notice

regarding a closed meeting, Sunland Springs meets the statutory requirement by including the applicable statutory subsection. IR 44-46, Exhibit B.

The notice and agenda requirement in subsection F only applies to open meetings. The statute states Arizona's policy regarding open meetings and states that requirements for notices and agendas apply "for those meetings" – i.e., open meetings. Ariz. Rev. Stat. 33-1804(F). Accordingly, the Legislature's requirement for notices and agendas was intended to apply only to open meetings.

The matters that can be considered in closed meetings include legal advice, pending litigation, and personal information regarding individual members or employees. A.R.S. § 33-1804 was obviously drafted to allow boards to consider these topics confidentially due to their sensitive nature. Thus, A.R.S. § 33-1804 restricts the flow of information for specific sensitive information.

Nothing in A.R.S. § 33-1804 states that closed meetings are subject to the notice or agenda requirements imposed for open meetings. Further, the basis for the reasonable information requirement in the statute would not translate to closed meetings. Homeowners argue that the notices do not provide information that is "reasonably necessary to inform the members of the matters to be discussed or decided", but they fail to acknowledge that the reason for this notice is "to ensure that members have the ability to speak after discussion of agenda items". Ariz. Rev. Stat. § 33-1804(F). By definition, Homeowners would not be

present to speak on the agenda of a closed meeting. The requirement that "reasonably necessary" information be provided to Homeowners simply does not apply to closed meetings. Judicially imposing such a requirement in the absence of express language would contravene the purpose of closed meetings, which is to allow for confidential consideration of sensitive topics.

The language of the statute is clear as it permits restriction of information as to five topics outlined in subsection A. Under Arizona law, "[i]f a statute's language is clear, it is the best indicator of the authors' intent and as a matter of judicial restraint we must apply it without resorting to other methods of statutory interpretation, unless application of the plain meaning would lead to impossible or absurd results." *In re Est. of Bolton*, 233 Ariz. 584, 586, 315 P.3d 1241, 1243 (Ct. App. 2013) (internal quotation marks removed). To expand the statute to require additional disclosure of information would violate the plain meaning of the statute. Additionally, adopting Homeowners' argument would absurdly require disclosure of information despite the limited exceptions provided by the Legislature to restrict information on sensitive topics. Homeowners provide no legal support for the lengthy examples included in their brief and fail to address the implications of expanding the statute to require additional disclosure of information. This expansion of the statute is impermissible under Arizona law.

Sunland Springs' meeting notices and agendas comply with the statutory requirements of A.R.S. § 33-1804 and any additional information disclosure is not required by statute.

B. On Cross-Appeal

III. The trial court misapplied A.R.S. § 33-1804(F) in a way that failed to accomplish the policy objectives of A.R.S. § 33-1804(F) and instead created meaningless administrative burdens while providing no additional transparency.

The trial court misapplied A.R.S. § 33-1804(F) in a way that failed to accomplish the policy objectives of A.R.S. § 33-1804(F) and instead created meaningless administrative burdens while providing no additional transparency. A.R.S. § 33-1804(F) provides as follows:

> 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 in advance 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.

Accordingly, the policy as explained in A.R.S. § 33-1804(F) is that meetings are to be conducted in the open. Furthermore, those charged with enforcing these statutes

should take into account the policy of open meetings when construing the same. *See* A.R.S. § 33-1804(F). However, the policy articulated by the Legislature cannot be applied or construed in a vacuum. *See Nicaise v. Sundaram*, 245 Ariz. 566, 432 P.3d 925 (2019). Rather, the policy must be construed within the context of the purpose behind the policy, which is also clearly stated in A.R.S. § 33-1804(F). *Id*., 245 Ariz. at 568, ¶ 11, 432 P.3d at 927 ("[w]e interpret statutory language in view of the entire text, [and] consider[] the context").

A.R.S. § 33-1804(F) explains that the policy of favoring open meetings exists to ensure that sufficient information is provided to members about the meetings so that they know what will be "discussed and 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." A.R.S. § 33-1804(F). As such, the policy of favoring open meetings exists for the purpose of ensuring homeowners the ability to hear the board's discussion and to be able to comment on agenda items before a vote is taken. *See id*.

Despite the policy and purpose, A.R.S. § 33-1804(A) expressly carves out five topics and unequivocally affirms that homeowners are not entitled to hear the discussion of the board regarding these five topics. Statute expressly directs homeowner association boards that they may consider the protected topics in closed meetings. *See* A.R.S. § 33-1804(A). Consequently, the protected topics of

A.R.S. § 33-1804(A)(1-5) constitute a statutorily sanctioned exception to the policy and purpose of open meetings.

In evaluating the Homeowners' motion for summary judgment, the trial court erred by improperly applying the policy of A.R.S. § 33-1804(F) without considering the context and purpose for the policy. IR 50. Under the system established by the trial court, the Board of Directors for Sunland Springs is permitted to discuss sensitive and confidential items in an executive, or closed, meeting where homeowners cannot attend or participate; however, they are required to cast their votes as to the items discussed in closed meetings in an open meeting while still preserving the confidential nature of the closed-meeting matters. Functionally, the result is that the board must assign each closed-meeting item a number, conduct all discussion of each numbered item in a closed meeting, but then in an open session formally move and vote on each closed-meeting item referencing each item only by number. As a result, the script for the vote that takes place in the open goes something like this:

> Board Member No. 1: "I move to approve closed meeting item number 1."
> Board Member No. 2: "I second the motion."
> Board President: "Any comments from homeowners?"
> [Homeowners cannot comment because they do not know what item number 1 is and did not hear the board's discussion on the protected topic.]
> Board President: "Having no homeowner comments, all in favor say aye?"
> Each Board Member casts his or her vote.

This system provides no more meaningful opportunity for homeowners to comment on closed-meeting topics than would a system that allowed votes on closed-meeting topics to be taken in a closed meeting. There is no additional transparency by following the burdensome process established by the trial court. There is no additional information shared with the homeowners. There is no ensuring homeowner's right to speak. In short, requiring the board of directors to vote in an open meeting on items discussed in a closed meeting is a meaningless administrative burden that does not accomplish the policy objective of A.R.S. § 33-1804(F).

Alternatively, if the Board of Directors were to phrase its voting in open meetings so as to accomplish the policy objectives of A.R.S. § 33-1804(F), the protections afforded confidential information as established by A.R.S. § 33-1804(A) would be utterly useless. If the trial court's system were enforced while also requiring Sunland Springs to be transparent in its open-meeting voting on closed-meeting matters, the result would be absurd. Under this scenario the following might well be a motion made in an open meeting based on discussion that took place in closed meeting:

> Board Member No. 1.: "I move to accept the payment plan of $100.00 per month proposed by Ms. Smith to resolve her $4,000 delinquency because she is going through chemotherapy to treat her breast cancer."

While such a motion would inform the members of the matters discussed in closed meeting and provide them with the opportunity to speak about the issue, such a motion would absolutely destroy the confidentiality of sensitive matters that is expressly preserved by A.R.S. § 33-1804(1-5). It cannot have been the intent of the Legislature to allow sensitive, confidential information regarding homeowners to be discussed in closed meeting pursuant to A.R.S. § 33-1804(A)(1-5) only to have confidentiality destroyed by a vote required to be taken in an open meeting pursuant to A.R.S. § 33-1804(F). This would be absurd. Yet this would be the result if the policy objectives of A.R.S. § 33-1804(F) are applied with respect to closed meetings.

As the cumbersome system established by the trial court's interpretation of A.R.S. § 33-1804 does not accomplish the purpose behind the policy, the policy was improperly applied without taking into account the context thereof. *See Nicaise*, 245 Ariz. 566, 432 P.3d 925. Applying the policy without considering the purpose for the policy led to an absurd result that does not accomplish the policy objectives. *See Arizona Health Care Cost Containment Sys. v. Bentley*, 187 Ariz. 229, 233 (App.1996). As such, the trial court erred in applying the A.R.S. § 33-1804(F) policy in a manner inconsistent with the purpose and context for the policy and in opposition to the exception to the policy.

IV. The trial court erred by holding that the word "consideration" as used in A.R.S. § 33-1804(A) prevents Sunland Spring's Board from making decisions in closed sessions on statutorily enumerated and protected topics.

The trial court erred by holding that the word "consideration" as used in A.R.S. § 33-1804(A) prevents Sunland Spring's Board from making decisions in closed sessions on statutorily enumerated and protected topics. A.R.S. § 33-1804(A) provides in pertinent part as follows:

> (A) . . . 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 for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
>
> 2. Pending or contemplated litigation.
>
> 3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
>
> 4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

> 5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

(Emphasis added.) Consequently, A.R.S. § 33-1804(A) specifically enumerates five topics that may be addressed in a meeting closed to the members of the community. There is no dispute that A.R.S. § 33-1804(A) permits Sunland Springs to discuss topics protected by subsections (A)1-5 in a closed meeting. However, the trial court ruled that although discussion of closed-meeting items may take place in a closed meeting, the board may not vote on those items in a closed meeting. IR 50, 4. The trial court's ruling that Sunland Springs was prevented from voting on closed meeting items in a closed meeting turned on the definition of "consideration." IR 50, 3. However, the trial court improperly inserted its own definition of "consideration" in place the definitions from trusted dictionaries and thus misconstrued the meaning of A.R.S. § 33-1804(A).

As correctly cited by Homeowners in their Motion for Summary Judgment, the term "consideration" is not defined in the Arizona Planned Communities Act. IR 34, 4. A.R.S. § 1-213, which was also cited by Homeowners in their Motion for Summary Judgment, confirms that "words and phrases shall be construed according to the common and approved use of the language." The Arizona Supreme Court has repeatedly held that courts "may consider dictionary definitions where a statute does not define a term." *Shepherd v. Costco Wholesale Corp*., 250

Ariz. 511, ¶ 20, 382 P.3d 390 (2021). Consequently, consistent with A.R.S. § 1-213 and applicable case law, Homeowners provided three definitions of the word "consideration" as taken from Merriam-Webster's Collegiate Dictionary, 11th Ed. (the definition is also accessible online at https://www.merriam-webster.com/dictionary/consideration): "[1] continuous and careful thought; [2] a matter weighed or taken into account when formulating an opinion or plan; and [3] an opinion obtained by reflection." IR 34, 4:9-11]. Homeowners argued, and the trial court agreed, that these definitions allowed for discussion but prevented voting in closed meetings IR 34, 4, IR 50, 3. However, the language of the definitions does not support this interpretation.

The plain language of the first definition, "continuous and careful thought," seems to suggest that "consideration" is purely a mental exercise. IR 34, 4:9-11. "Careful thought" does not equate to participating in a discussion. According to the plain language of the first definition, it can be argued that discussion is not permitted in closed meeting, only silent, personal contemplation by each individual board member. However, such a strict adherence to the plain language of this first definition would lead to an absurd result and as such must not be utilized alone. *State v. Affordable Bail Bonds*, 198 Ariz. 34, 37, ¶ 13 (Ariz.App.2000).

The second definition, "a matter weighed or taken into account when formulating an opinion or plan," allows more than just thought and seems to align

more closely with the legislature's intent. IR 34, 4:9-11. The second definition allows not only the weighing of a matter and the taking into account various aspects of a situation but also permits such actions for the purpose of "formulating an opinion or plan." IR 34, 4:9-11. In order for a Board of Directors comprised of more than one person to formulate an opinion or come up with a plan, both discussion and decision are required. There is no way for a board of five directors, for example, to form a plan with which to address a closed-meeting topic without discussing their options and taking a vote to identify the majority's opinion. No one member of a multi-person board can unilaterally establish a plan or formulate an official corporate opinion on how to address a closed-meeting item. Any such decision of Sunland Springs requires consensus of a majority of the board members. As such, forming a plan or opinion for Sunland Springs requires a vote of the board members. Consequently, the Merriam-Webster definition of "consideration" cited by Homeowners allows the Board of Directors not only to think about closed session topics in a closed session, but also to weigh them through discussion and form an official opinion or establish a plan to address the closed session item through a vote.

The third definition, "an opinion obtained by reflection," likewise suggests that more than mental contemplation is permitted under the term "consideration." IR 34, 4:9-11. As explained above, no formal opinion can be obtained or

established by a multi-person board of directors without allowing the board members to express their position on the proposed opinion through a vote. While "reflection" may take place without a vote, obtaining a formal opinion of a multi-person board of directors cannot. Accordingly, the third definition encompasses not only thought and discussion, but also obtaining an opinion of the board through a vote.

In addition to the foregoing, the Merriam-Webster dictionary is not the only source that can supply reliable definitions. The Cambridge Dictionary defines "consider" as follows: "to spend time thinking about a possibility or making a decision." "Consider." Dictionary.Cambridge.org. 2025. https://dictionary.cambridge.org/dictionary/english/consider (8/20/2025). Consequently, the Cambridge Dictionary expressly defines the word "consider" to mean spending time "making a decision". *See id*. As the standard of review for questions of statutory interpretation is *de novo*, Sunland Springs requests this Court to adopt the definition of the word "consider" from the Cambridge Dictionary. *Wilson v. Playa de Serrano*, 211 Ariz. 511, 513, 123 P.3d 1148, 1150 (App. 2005).

In its ruling on Homeowners' Motion for Summary Judgment, on which its subsequent Judgment & Order was based, the trial court acknowledged the lack of authoritative statutory and case law, but failed to adopt a dictionary-based definition. Instead, the trial court improperly substituted its own definition of

"consideration." IR 50, 3, IR 56. In its Ruling on Summary Judgment, the trial court declared "Consideration encompasses, thought and discussion about matters. It does not encompass voting, which is the formal expression of a final decision that occurs after a matter has been considered." IR 50, 3. However, this definition directly contradicts the Merriam-Webster definition of "consideration," which expressly allows for formulation of a formal opinion or formulation of a formal plan. IR 34, 4:9-11. Likewise, this definition directly contradicts the Cambridge Dictionary definition, which expressly includes "making a decision." A.R.S. § 1-213 requires trial courts to construe words "according to the common and approved use of the language," and case law urges courts to use dictionary definitions when terms must be defined in statutory construction. *See Shepherd*, 250 Ariz. 511, 482 P.3d 390. In light of the record, which confirms that the trial court was encouraged to follow the direction of A.R.S. § 1-213 and rely on the definition as provided by a dictionary, it was an error for the trial court to create its own definition and construe the statute based thereon. Had the trial court cited to the definition provided by Homeowners from Merriam-Webster and affirmed that "consideration" includes weighing and taking into account matters "when formulating an opinion or plan" IR 34, 4:9-11, or had the trial court reviewed the definition from the Cambridge dictionary, which includes "making a decision," the trial court would have been forced to conclude that a Board may formulate a plan,

obtain an opinion and make a decision in a closed meeting. And as a multi-person board can only formulate a plan, adopt an opinion and make a decision by a vote, the use of the word "consideration" allows the Boad to vote in closed meetings.

The trial court erred by substituting the court's own definition of the word "consideration" for the "approved use of the language" as found in reliable dictionaries. *See* A.R.S. § 1-213; *see also Shepherd*, 250 Ariz. 511, 482 P.3d 390. This error resulted in improperly eliminating Sunland Springs's right to weigh sensitive matters in order to formulate a formal corporate opinion or establish a plan in a closed meeting, which can only be accomplished by a vote.

V. The protection afforded to closed meeting minutes by A.R.S. § 33-1805 supports the ability of the Board to vote in closed meetings.

The protection afforded to closed meeting minutes by A.R.S. § 33-1805 supports Sunland Spring's ability to vote in closed meetings. A.R.S. § 33-1805(B) provides in pertinent part as follows:

> B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following: . . .
>
> 3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1804.

Consequently, meeting minutes from a closed meeting are expressly protected from disclosure to homeowners. A.R.S. § 33-1805(B). The Arizona Non-Profit

Corporations Act, at A.R.S. § 10-11601(A), provides guidance as to what information must be contained in meeting minutes of a non-profit homeowners association. A.R.S. § 10-11601(A) provides as follows:

> A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting and a record of all actions taken by a committee of the board of directors on behalf of the corporation.

The language of A.R.S. § 10-11601(A) makes it clear that the statutory priority when it comes to corporate record keeping is maintaining the "record of all actions taken" by the corporation. When it comes to keeping a permanent record of actions taken by a non-profit corporation, A.R.S. § 10-11601(A) identifies three types of documents that can never be destroyed: (1) meeting minutes; (2) record of all actions taken without a meeting; and (3) record of all actions taken by a committee of the board. A.R.S. § 10-11601(A). Inasmuch as the statute specifically requires actions taken without a meeting or actions taken by a committee to be recorded and kept permanently in addition to the minutes of all board meetings, the statute directly indicates that the actions taken by the corporation through its board of directors at a meeting must be recorded in the meeting minutes. A.R.S. § 10-11601(A).

There is no requirement in A.R.S. § 10-11601(A) that a record of discussion be kept. While it may be permissible to include the content of discussion in the

meeting minutes, the statute gives no indication that such a narrative is required. The only component of a meeting that must be kept and recorded in the meeting minutes, based on the direction of A.R.S. § 10-11601(A) as a whole, is a record of the actions taken by the board during the meeting. *See id*.

With the understanding that the actions taken by the board at a meeting must be recorded in the meeting minutes, the protection of closed meeting minutes by A.R.S. § 33-1805(B) becomes instructive. A.R.S. § 33-1805(B) expressly protects from disclosure the "[m]eeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1804." Additionally, A.R.S. § 10-11601(A) requires the meeting minutes to record action taken by the board during the meeting. Therefore, meeting minutes form a closed meeting must be protected because they record the action taken by the board on closed-meeting items. If meeting minutes did not record the actions taken by the board, there would be no need to take them. There is no requirement in Arizona law to keep a permanent record of discussions among board members where no decisions are made. Consequently, the very act of A.R.S. § 33-1805(B)(3) to protect from disclosure meeting minutes from a closed meeting, indicates that action will be taken in closed meetings on closed-meeting items that must be recorded and documented. For this reason, meeting minutes from closed meetings

must be kept but are statutorily protected from disclosure to homeowners pursuant to A.R.S. § 33-1805(B)(3).

CONCLUSION

Sunland Springs respectfully requests this Court affirm the trial court's rulings on the issues raised by Homeowners, as Sunland Springs has met the statutory requirement to hold a closed meeting and its meeting notices comply with the statutory requirements set forth in A.R.S. § 33-1804. Any further requirements imposed by the Court would constitute impermissible inflation of the statute.

Additionally, Sunland Springs respectfully requests this Court reverse the trial court's ruling requiring the Board to vote only in open meetings as it violates the purpose of the statutory permissions for closed meetings.

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Sunland Springs respectfully requests its costs pursuant to A.R.S. § 12-342.

Dated this 2nd day of September, 2025.

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