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 **CROSS-APPELLANT SUNLAND SPRINGS VILLAGE HOMEOWNERS ASSOCIATION'S REPLY BRIEF ON CROSS-APPEAL**

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ARGUMENT

I. The Opinion of the Attorney General is silent on the question directly before this Court related to Closed Meetings.

Plaintiff/Appellant/Cross-Appellee, AZNH Revocable Trust ("Homeowners") spent considerable time addressing and analyzing Attorney General Opinion 197-012 from 1997 ("AG Opinion"). However, the AG Opinion, which is non-binding authority, provides no direct guidance regarding how closed meetings as authorized by A.R.S. § 33-1804(A) are to be conducted. A benefit that can be derived from reference to the AG Opinion is to understand that the Open Meeting Laws that apply to public bodies do not apply to homeowner associations. AG Opinion, p. 2. Consequently, to the extent Homeowners argue that the board of directors for Sunland Springs Village Community Association ("Sunland Springs") should be treated like a public body and held to the same standards applicable to public bodies, the AG Opinion suggests that Homeowners are mistaken. AG Opinion, p. 2. However, the AG Opinion neither acknowledges nor provides direct guidance on how to conduct a meeting permissibly closed to members pursuant to A.R.S. § 33-1804(A).

The AG Opinion addressed the question of whether informal meetings, where no votes are taken but where discussion is held on open-session topics, were required to be open to members of a homeowners association. AG Opinion, p. 1.

The AG Opinion answered that question affirmatively. *Id*. However, the AG Opinion provided no direction on closed meetings to address items that fall within the built-in statutory exceptions to the open meeting requirement of the Arizona Planned Communities Act.

It should be pointed out, however, that according to the Attorney General, the Legislature used the words "deliberation" and "proceedings" to describe two separate components of an open meeting. AG Opinion, p. 2. The AG Opinion explained that "deliberation" encompassed the discussion portion of the meeting where ideas and positions are shared by the Board Members, and that "proceedings" encompassed the voting and formal taking of action following the deliberation. *Id*. Consequently, the Legislature clearly knew how to use language intended to limit behavior to discussion only. *Id*. Homeowners attempt to read the language of A.R.S. § 33-1804(A) as though the Legislature had instructed that "Any portion of a meeting may be closed only if that closed portion of the meeting is limited to [deliberation] of one or more of the following [five topics]." *See* Homeowners' Brief, p. 12. However, the Legislature did not use the word "deliberation" to describe permissible action in a closed meeting. A.R.S. § 33-1804(A). Instead of using "deliberation" to denote discussion only, they used an entirely different word. Consequently, because the Legislature clearly knew how to denote discussion only by using the word "deliberation" when establishing

parameters for open meetings, they must have meant something different by use of the word "consideration" with respect to closed meetings. As explained in its Opening Brief on Cross-Appeal, Sunland Springs submits that the use of the word "consideration" is broader than the word "deliberation" and allows for arriving at a conclusion following discussion on the sensitive, confidential items carved out from the open meeting requirement.

II. Homeowners' Reliance on *Tunkey* Supports Sunland Springs' position with respect to the policy expressed in A.R.S. § 33-1804(F).

Despite Homeowners' and the trial court's substantial reliance on the policy articulated in A.R.S. § 33-1804(F) to assert that voting should not take place in Closed Meetings, Homeowners in their Response Brief argue that the policy of A.R.S. § 33-1804(F) should be discounted in favor of the plain meaning of the A.R.S. § 33-1804(A). This position supports Sunland Spring's position and does not assist Homeowners.

Homeowners' argument is based on the language of the Concurrence in *Ariz. Dep't of Revenue v. Tunkey,* 254 Ariz. 432, 524 P.3d 812 (2023). The Justices who joined the Concurrence in *Tunkey* explained that courts interpreting statute should use the plain meaning of the language to determine the significance and should not concern themselves with the legislative intent. *Tunkey*, 254 Ariz. at 438, ¶¶ 27-28. Despite this holding, the trial court expressly explained in its decision that it was

heavily influenced by the language of the Policy of A.R.S. § 33-1804(F). According to Homeowners and their reliance on *Tunkey*, the trial court should not have put so much weight into the policy of A.R.S. § 33-1804(F) and instead focused on the language used in A.R.S. § 33-1804(A).

Sunland Springs has consistently argued that the policy of A.R.S. § 33-1804(F) regarding the rule related to open meetings should not be applied to the exception to the rule. As explained by Sunland Springs in its opening brief on Cross-Appeal, the policy of interpreting the statutory language in favor of open meetings should not apply to the expressly written exception to the open meeting standard. The Concurrence in *Tunkey* supports this position and directs this Court to look to the language of the exception and not to restrict its view based on a policy directive unrelated to the exception.

Furthermore, in their Response, Homeowners summarize the language of A.R.S. § 33-1804(A) and then falsely claim that "[i]t is evident that the Legislature allows . . . a Board to meet in a closed session for the limited purpose of *deliberation* on specified confidential and privacy matters, . . .". Homeowners' Response, p. 12 (emphasis added). However, as explained above, the Legislature did not use the term "deliberation" when describing Closed Meetings. Rather, the Legislature, which could have used the word "deliberation" if they wanted to be clear that only discussion was allowed, used instead the word "consideration", which includes

coming to a decision, and that can only be done for a multi-person board of directors through a vote.

III. A.R.S. § 33-1804 does not conflict with A.R.S. § 33-1805; However, the trial court's interpretation of A.R.S. § 33-1804 renders A.R.S. § 33-1805 Superfluous.

Homeowners incorrectly assert that Sunland Spring raised a conflict argument in its Opening Brief on Cross-Appeal. However, Sunland Springs did not raise a conflict argument. Sunland Springs has maintained and continues to maintain that A.R.S. § 33-1804 does not conflict with A.R.S. § 33-1805, but rather, that the two statutes taken together support Sunland Springs' position with respect to voting in Closed Meetings on statutorily protected topics. The facts that A.R.S. § 33-1805(B) indicates that homeowner associations must keep minutes of their Closed Meetings and protect their confidentiality, and that A.R.S. § 10-11601(A) requires the actions of the corporation to be captured in the meeting minutes, support Sunland Springs' position that voting on confidential topics can take place in Closed Meetings.

Sunland Springs continues to maintain that A.R.S. § 33-1804(A) and A.R.S. § 33-1805(B) are not in conflict. However, the trial court's improper ruling that no voting can take place in Closed Meetings renders superfluous the language of A.R.S. § 33-1805(B). As explained in Sunland Springs' Opening Brief, because meeting minutes do not contain conversations but are required to contain actions taken, there

would be no need to keep meeting minutes of closed meetings if no actions could be taken therein. There would simply be nothing to record and no reason to protect blank minutes. Nevertheless, because A.R.S. § 33-1805(B) requires meeting minutes of Closed Meetings to be kept and protects them from disclosure to homeowners, A.R.S. § 33-1805(B) supports Sunland Springs' position that voting can take place on Closed Meeting items in a Closed Meeting.

CONCLUSION

Sunland Springs respectfully requests this Court reverse the trial court's ruling requiring the Board to vote only in open meetings and hold that the Board may not only deliberate but also vote on statutorily protected, confidential matters in Closed Meetings.

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

Dated this 29th day of September, 2025.

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