DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DENNIS L. SCHILLING, a citizen and qualified elector of Mohave County, Arizona; and REFUGE COMMUNITY ASSOCIATION IN SUPPORT OF THE QUALIFICATION OF 12-REFUGE REF AND IN OPPOSITION TO THE PASSAGE OF THE BALLOT MEASURE, a Mohave County political committee, Plaintiffs/Appellants, Cross Appellees, v. ALLEN TEMPERT, in his official capacity as the Mohave County Elections Director; MOHAVE COUNTY, an Arizona body politic and corporation; the MOHAVE COUNTY BOARD OF SUPERVISORS; GARY WATSON, in his official capacity as Mohave County Supervisor, District 1; TOM SOCKWELL, in his official capacity as Mohave County Supervisor, District 2; and BUSTER D. JOHNSON, in his Official capacity as Mohave County Supervisor, District 3, Defendants/Appellees, Cross Appellants, and	1 CA-CV 12-0505 EL DEPARTMENT D **MEMORANDUM DECISION** (Not for Publication-Rule 28, Arizona Rules of Civil Appellate Procedure)

CITY CENTER EXECUTIVE PLAZA, LLC and INFORMATION SOLUTIONS, INC.	)
Intervenors/Appellees, Cross Appellants.	)

Appeal from the Superior Court in Mohave County

Cause No. CV2012-00781

The Honorable Lee Frank Jantzen, Jr. Judge

AFFIRMED

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G O U L D, Judge

¶1 In this appeal we examine whether the trial court erred in rejecting an action for mandamus and injunction to compel the Mohave County Elections Director to accept referendum petition 12-REFUGE REF and determine whether the referendum qualifies for the ballot. Finding no error, we affirm.

Facts and Procedural Background

¶2 This action involves a number of parcels of land of a planned development known as The Refuge at Lake Havasu. In 2012, the Mohave County Board of Supervisors ("the Board") passed Resolution No. 2012-070, approving a plan for a Recreational Vehicle Park ("RV park") on these parcels. Appellants Dennis L. Schilling and Refuge Community Association ("Appellants") argue that allowing an RV park to be developed on these parcels is a legislative act that entitles them to use a referendum. To determine whether allowing the RV park represents a legislative act changing the existing zoning classification or, in contrast, merely an implementation of the existing zoning classification policy, we begin by considering the zoning history of the parcels in question.

¶3 Over ten years ago, the Board passed Resolution No. 2001-407 to rezone the parcels at issue as Commercial Recreation ("C-RE"): "THE REFUGE AT LAKE HAVASU, Tract 3701, *will be rezoned* to . . . C-RE (Commercial Recreation) . . . as shown on the Zoning Exhibit." The C-RE zoning classification permits recreational vehicle parks, as well as several other uses, including a golf course. Mohave County Zoning Regulations, Sec. 15(B)(2)(c) (Sept. 20, 2012), http://legacy.co.mohave.az.us/depts/pnz/forms/Mohave_County_Zoning_Ordinance.pdf.

¶4 Prior to the passage of Resolution No. 2001-407, Mohave County negotiated with the original developer regarding the property. On September 28, 2000, Mohave County had originally requested that "[a] conservation easement for the golf course should be established [by the developer] to ensure the durability of this feature of the subdivision." The original developer responded with a letter stating that it preferred that the matter be addressed with stipulations instead of an easement. The original developer then met with a number of individuals who were associated with Mohave County to discuss these issues; afterwards, the developer sent a letter to Karl Taylor, whose title was listed in the letter as "Planner II" of Mohave County Planning & Zoning. The letter stated that the original developer was listing the notes and minutes from the meeting. One of the notes in the letter stated that "[t]he golf course as an enduring feature of The Cliffs community can be addressed with stipulations and conditions versus a conservation easement."

¶5 After Resolution No. 2001-407, several resolutions were passed. Resolution No. 2001-408 (a companion resolution to No. 2001-407) provided that "Lots within the recorded Final Plat of this subdivision will not be further divided." In addition, Resolution No. 2002-281 "set[] forth an approval of a

subdivision final plat" for the parcels in question and provided that "[l]ots and parcels within the recorded Final Plat for The Refuge at Lake Havasu, Tract 3701, will not be further divided."

¶6 In 2007, after the golf course was built, the original developer asked the Board to consider changing the "will not be further divided" condition stated in the 2002 Final Plat approval (2002-281), but this request was denied in Resolution No. 2007-084, except with regard to one parcel. The Board noted that "[t]he ability to split any and all parcels would not be in the best interest of the subdivision residents who bought into the [golf course] concept as well as the physical location."

¶7 After the property went into foreclosure, another developer (one of the Intervenors/Appellees) purchased the property in September 2009.

¶8 In 2012, after the Board adopted Resolution No. 2012-79 (authorizing the RV park plan), Appellants filed a referendum petition (12-REFUGE REF) seeking to refer "only the legislative portion of Resolution No. 2012-070 that approves RV Park lease spaces on the two golf course parcels." The County rejected the petition, with the explanation that "the approval of the RV Park Plan was an administrative act and, as such, is not subject to a referendum." Appellants then filed a mandamus action to compel

the filing officer to accept the referendum petition pursuant to A.R.S. § 19-142(A).

¶9 The superior court held an evidentiary hearing to determine whether Resolution No. 2012-070 constituted an administrative or legislative act by the Board. After examining Resolution Nos. 2001-407, 2001-408, 2002-281, and 2007-084, the court concluded that while "[c]hanging the zoning classification of a property" is a legislative act, "[b]ecause Resolution No. 2001-407 rezoned [the parcels] to C-RE," and C-RE "allows RV parks as of right," RV parks became a permitted use in 2001, making the 2012 resolution merely an implementation of existing policy, and hence an administrative act not subject to referendum. The court therefore denied the request for mandamus and permanent injunction.

¶10 Appellants timely appeal. Appellees cross-appeal certain factual findings made by the court, including the following finding: "It was agreed that keeping the golf course as an enduring feature of [the] community be addressed with stipulations and conditions versus a conservation easement." We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 19-122(C) (West 2012).

Discussion

¶11 The trial court held as a matter of law that Resolution No. 2012-070 was an administrative act that was not referable because it merely applied the existing zoning classification for the property. We review this holding de novo. *Fritz v. City of Kingman*, 191 Ariz. 432, 433, ¶ 6, 957 P.2d 337, 338 (1998).

¶12 Our inquiry is guided by the general principle that legislative acts are subject to referendum, while administrative acts are not referable. Ariz. Const. art. 4, pt. 1, § 1(8) (limiting the referendum power to those matters on which a governmental body is "empowered by general laws to legislate"); *Fritz*, 191 Ariz. at 432, ¶ 1, 957 P.2d at 337 (explaining that legislative acts are subject to referendum while administrative acts are not).

¶13 "To constitute legislation, a proposal must enact something; it must be a 'definite, specific act or resolution.'" *Fritz,* 191 Ariz. at 339, ¶ 11, 957 P.2d at 434 (internal citation omitted). Even official goals and principles that are adopted as part of a general plan do not constitute legislative acts because they "enact[] nothing definite or specific, nor [do they] implement any law, purpose, or policy previously declared by a legislative body." *Id.* at ¶¶ 12, 16 (holding that a

general plan listing such principles was not a legislative act but an act preliminary to a legislative act). To be a legislative act, the act in question must "declare[] a public policy *and* provide[] the ways and means for its accomplishment." *Redelsperger v. City of Avondale*, 207 Ariz. 430, 436, ¶ 21, 87 P.3d 843, 849 (App. 2004) ("[W]e find that the Zoning Ordinance represented legislative action because it declared a public policy *and* provided the ways and means for its accomplishment.") (emphasis added).

¶14 Here, the parties agree that Resolution No. 2001-407 zoned the parcels at issue as C-RE, and that the C-RE classification permits RV parks. The parties also agree that Resolution No. 2012-070 approved RV park lease spaces on the parcels. Thus, in order to prevail, Appellants must establish that the original 2001 C-RE zoning was either limited when it was adopted, or that some intervening act/resolution by the Board created a zoning classification prohibiting development of an RV park on the previously C-RE-zoned parcels. Only under such conditions would the 2012 resolution constitute a change in zoning policy (which would be referable) rather than an administrative implementation of existing zoning policy (which would be non-referable).

A. The Language of the Resolutions

¶15 Appellants concede that the resolutions adopted by the Board are analogous to statutes, and thus are subject to our jurisprudence regarding statutory interpretation. If a statute's language is clear and unambiguous, we apply it without resorting to other methods of statutory interpretation, unless doing so would lead to impossible or absurd results. *Bilke v. State*, 206 Ariz. 462, 464, ¶ 11, 80 P.3d 269, 271 (2003). We attempt to give effect to every word or phrase of the statute, assigning to the language its usual and commonly understood meaning unless the legislature clearly intended that a different meaning should control. *Id.* *See also Cochise County v. Broken Arrow Baptist Church*, 161 Ariz. 406, 409, 778 P.2d 1302, 1305 (App. 1989) (court will interpret terms and definitions in a zoning ordinance "according to their common, plain, natural and accepted usage").

¶16 According to Appellants, after the Board filed Resolution No. 2001-407, it created, through a series of resolutions, a limitation prohibiting all non-golf course uses on the subject parcels. Appellants argue that although the subject parcels were originally zoned as C-RE in Resolution No. 2001-407, the zoning classification was conditioned upon approval of the Final Plat. The Final Plat, which was approved

by Resolution No. 2002-281, labeled the subject parcels as "Golf Course/D.E."[1] According to Appellants, when the Board passed Resolution No. 2002-281 adopting the Final Plat, it adopted the alleged "golf course" limitation listed on the Final Plat for the subject parcels.[2]

¶17 As proof of the Board's intent to adopt the alleged "golf course" zoning classification, Appellants point to the fact that Resolution No. 2002-281 stated that the parcels "will not be further divided." Appellants interpret this phrase somewhat broadly; according to Appellants, "will not be further divided" prohibits not only splitting the lots but also changing the use of the land in any way. Appellants point to the Mohave County Zoning Ordinances to support their interpretation, in which the phrase "Division, Land" is defined as the "layout, organization, density and balance of land uses in reference to land development proposals." Appellants contend that this definition, when inserted into Resolution No. 2002-281, expresses the Board's intent that no further changes could occur

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[1] The abbreviation "D.E." stands for "Drainage Easement."

[2] Appellants do not argue that the Final Plat itself changed the zoning classifications for the subject parcels. *See Smith v. Beesley*, 226 Ariz. 313, 319, ¶ 19, 247 P.3d 548, 554 (App. 2011) (holding that a final plat does not control development of parcels in a subdivision nor does it function as a restrictive covenant).

to the "layout, organization, density, and balances of land uses" for the parcels at issue, or essentially, that they could not be changed in any way.

¶18 However, Appellants' interpretation of the "will not be further divided" phrase is problematic. If, as Appellants contend, the Board passed Resolution No. 2002-281 for the purpose of prohibiting all non-golf course uses of the parcels, it is unclear why the Board would use such a convoluted and circuitous path to impose this limitation. On its face, Resolution 2002-281 states nothing about a golf course use limitation, nor does it reference or incorporate the unusual and uncommon definition of "divided" employed by Appellants. *See McPeak v. Indus. Comm'n*, 154 Ariz. 232, 234, 741 P.2d 699, 701 (App. 1987) ("When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, courts must accept that meaning and enforce it.")

¶19 The Board gave no indication the language "will not be further divided" amounted to a golf course limitation when, several years later, it adopted Resolution No. 2007-084. After the golf course had been built, the original developer asked the Board to consider changing the "will not be further divided" condition stated in Resolution No. 2002-281. This request was denied in Resolution No. 2007-084, except with regard to one

parcel not at issue here. The Board noted that "[t]he ability *to split* any and all parcels would not be in the best interest of the subdivision residents who bought into the [golf course] concept as well as the physical location." (Emphasis added.) Notably, the Board did not mention or analyze the definition of "Division, Land," or discuss the "layout, organization, density or balance of land uses" in reference to the proposal; it merely considered whether the lot would need to be split or divided.[3] While the Board's statement confirms its intent to protect the golf course, it also suggests that the Board believed that simply prohibiting lot splits was the protection they intended to accord to the golf course in Resolution No. 2002-281.

¶20 Appellants acknowledge that their reading of "will not be further divided" might not be legally enforceable because it is not sufficiently "clear and definite," but argue that the enforceability of the provisions is an "incorrect analytical framework." According to Appellants, the proper question is whether a resolution provided actual notice to a citizen that a parcel could be used in a specific way and not whether the citizen had actual notice that the municipality enacted a procedurally and substantively valid act.

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[3] The 2012 proposal to add an RV park for the users of the golf course did not require any parcels to be split, which explains why it was adopted.

¶21 However, under Appellants' proposed interpretation of Resolution No. 2002-281, it is unlikely that the average citizen would have any clear notice of the golf course limitation. Appellants' interpretation that "will not be further divided" amounts to a golf course limitation is complex, and relies upon a patchwork of documents spanning several years. Without some clearer indication, we find it highly improbable the average citizen could reasonably be expected to understand that the Board had imposed a golf course restriction on the parcels.

B. Other Evidence

¶22 Appellants also argue that negotiations that took place prior to the C-RE zoning demonstrate that the Board intended to preclude any other use of the parcels besides as a golf course. They rely on the testimony of Karl Taylor and notes from the original developer stating that "[t]he golf course as an enduring feature of The Cliffs community can be addressed with stipulations and conditions versus a conservation easement."

¶23 However, this statement does not evidence an agreement as to any actual stipulations or conditions; at face value, it merely states that the County no longer wished to pursue a conservation easement, but was willing to consider creating stipulations and conditions to make sure that the golf course

was an enduring feature of the community. Moreover, an "enduring feature of the community" does not translate to "exclusive use of the parcels." Even if the Board members intended to preserve the golf course, it does not follow that the Board members intended to preclude all other potential uses of the parcels.

¶24 We decline to reverse the court's finding that "[i]t was agreed that keeping the golf course as an enduring feature of the community be addressed with stipulations and conditions versus a conservation easement" because we interpret this sentence to mean that *if* such an enduring feature were desired, it would be addressed with stipulations and conditions instead of a conservation easement; the letter provides evidence to support this finding. However, this finding does not support the conclusion that the Board actually agreed to make such stipulations and conditions, as Appellants argue.

¶25 Nor does Karl Taylor's deposition testimony support that there was an official agreement to exclude other uses or an official policy to preclude any non-golf course uses from moving forward. While Mr. Taylor did testify that he believed that the "will not be further divided" language was meant to protect the golf course, it was not clear from his testimony how this protection was to come about (whether by simply preventing

subdivisions/lot splits or by prohibiting *any* changes to the land's use). Moreover, even if a member of the zoning staff unofficially desired to prevent non-golf course uses, this would not reflect a legislative act of the Board. Unspoken or unwritten policies are not legislative acts because they enact nothing at all. *See Fritz,* 191 Ariz. at 339, ¶ 12, 957 P.2d at 434 (explaining that even official goals and principles of a general plan are non-referable because they "enact[] nothing definite or specific, nor [do they] implement any law, purpose, or policy previously declared by a legislative body"); *Redelsperger,* 207 Ariz. at 436, ¶ 21, 87 P.3d at 849 (explaining that a referable legislative act must "declare[] a public policy *and* provide[] the ways and means for its accomplishment") (emphasis added).

¶26 Having found no evidence of a legislative policy that altered the C-RE zoning classification enacted in 2001, we hold that Resolution No. 2012-070 merely applied the existing zoning classification and was thus an administrative act not subject to referendum. We therefore affirm.[4]

¶27 Given that Appellants are not the prevailing party in this appeal, we deny their fee request.

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[4] We need not reach the additional arguments raised in the cross-appeal.

Conclusion

¶28 For the foregoing reasons, we affirm the ruling below.

/S/_____
ANDREW W. GOULD, Judge

CONCURRING:

/S/_____
MICHAEL J. BROWN, Presiding Judge

/S/_____
DONN KESSLER, Judge