

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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TERYL HALL, *Plaintiff/Appellant*,

*v.*

COCONINO COUNTY BOARD OF SUPERVISORS, et al.,  
*Defendants/Appellees.*

No. 1 CA-CV 20-0111  
FILED 12-22-2020

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Appeal from the Superior Court in Coconino County  
No. S0300CV201900379  
The Honorable Mark R. Moran, Judge

**AFFIRMED**

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COUNSEL

Weinberger Law, Scottsdale  
By Brian A. Weinberger  
*Counsel for Plaintiff/Appellant*

Coconino County Attorney's Office, Flagstaff  
By Aaron M. Lumpkin  
*Counsel for Defendants/Appellees*

**MEMORANDUM DECISION**

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Jennifer M. Perkins and Judge Maurice Portley<sup>1</sup> joined.

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**C A M P B E L L**, Judge:

¶1 Teryl Hall appeals from the superior court’s judgment dismissing her complaint against the Coconino County Board of Supervisors and the other defendants. Because the court lacked subject matter jurisdiction over Hall’s claim for judicial review and Hall failed to state a cognizable claim for declaratory relief, we affirm.

**BACKGROUND**

¶2 Hall lives in Happy Jack, Arizona. After another resident applied for a conditional use permit to construct and maintain a private cemetery in Happy Jack, several members of the community attended public meetings and wrote letters to the Coconino County Planning and Zoning Commission (“the Commission”) to voice their concerns and opposition to the permit. After reviewing its staff report and hearing the concerns of the residents about the proposed project, the Commission approved the request.

¶3 Hall appealed the Commission’s decision to the Coconino County Board of Supervisors (“the Board”). The Board rejected Hall’s challenge—a final decision under the county’s zoning ordinance.

¶4 Thereafter, Hall filed a complaint against the applicant and the Board in the superior court. After the court dismissed that action for lack of jurisdiction, Hall filed the underlying complaint against the applicant, the Commission, and the Board. Specifically, Hall sought: (1) judicial review of the Board’s decision to issue the conditional use permit, contending the Board improperly interpreted the governing zoning ordinance, Coconino County Zoning Ordinance (“Ordinance”) § 5.3, and violated her due process rights (Count One); and (2) a declaratory judgment

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<sup>1</sup> The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

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that: (i) the Board erroneously interpreted both Ordinance § 5.3 and a related statute governing private cemeteries, A.R.S. § 32-219;<sup>2</sup> (ii) the application for the conditional use permit failed to conform to Ordinance § 5.3's requirements, and (iii) the Commission and Board violated her due process rights (Count Two).

¶5 The Board and other defendants moved to dismiss the complaint arguing the superior court lacked subject matter jurisdiction under both jurisdictional bases cited in the complaint—the Administrative Review Act (“the ARA”), A.R.S. §§ 12-901 to -914, and A.R.S. § 11-815(G). *See* Ariz. R. Civ. P. 12(b)(1). The Board also contended that the complaint failed to state a claim upon which relief could be granted. *See* Ariz. R. Civ. P. 12(b)(6). In response, Hall asserted that the court had jurisdiction under the Uniform Declaratory Judgments Act (“the UDJA”), A.R.S. §§ 12-1831 to -1846, as well as the other bases cited in the complaint.

¶6 After the parties fully briefed the matter, the superior court granted the Board's motion to dismiss the complaint. The court's ruling was reduced to a final judgment and Hall timely appealed.

## DISCUSSION

### I. Subject Matter Jurisdiction Under the ARA - Count One

¶7 Hall challenges the superior court's determination that it lacked subject matter jurisdiction to consider her request for judicial review. “Subject matter jurisdiction is the power of a court to hear and determine a controversy.” *Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588, 594, ¶ 13 (App. 2009) (internal quotation omitted). Whether the court had subject matter jurisdiction is a question of law we review de novo. *Buehler v. Retzer ex rel. Indus. Comm'n*, 227 Ariz. 520, 521, ¶ 4 (App. 2011).

¶8 We likewise review de novo issues of statutory interpretation. *Id.* “When interpreting a statute, our primary goal is to find and give effect to legislative intent.” *Secure Ventures, LLC v. Gerlach*, 249 Ariz. 97, 99, ¶ 5 (App. 2020). Because a statute's plain language is “the best indicator of legislative intent,” we give unambiguous words their ordinary meaning and interpret “different sections of a single statute consistently.” *Id.* “A

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<sup>2</sup> Throughout the proceedings, Hall relied on A.R.S. § 32-219 for the proposition that the burial plots of a private cemetery may not be made available to the public. Although this statute was repealed effective January 1985, the current statutory definition of “private cemetery,” codified in A.R.S. § 32-2101(46), maintains the prior prohibition.

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cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous." *Id.* (quotation omitted).

¶9 "The superior court's jurisdiction pursuant to the ARA exists only by force of statute and is limited by the terms of the statute." *Grosvenor Holdings*, 222 Ariz. at 595, ¶ 13 (internal quotation omitted). In other words, "[j]udicial review of an administrative decision is not a matter of right except in those situations in which the law authorizes review." *Rose v. Ariz. Dep't of Corrs.*, 167 Ariz. 116, 118 (App. 1991).

¶10 Under the ARA, a party may obtain judicial review of "a final decision of an administrative agency," A.R.S. § 12-902(A)(1), or a "decision at an administrative hearing as otherwise provided by statute," A.R.S. § 12-902(A)(2). For purposes of the ARA, "administrative agency" excludes "any political subdivision" and "any agency of a political subdivision." A.R.S. § 12-901(1); *see also Grosvenor Holdings*, 222 Ariz. at 595, ¶ 16 (explaining a county board of supervisors is a political body, not an administrative agency, under the ARA). As such, A.R.S. § 12-902(A)(1) does not afford Hall a path to relief. In contrast, A.R.S. § 12-902(A)(2) allows a party to seek judicial review of an administrative decision by a political subdivision, but "only when there is some special statute expressly making the review procedures of the [ARA] applicable." *Coombs v. Maricopa Cnty. Special Health Care Dist.*, 241 Ariz. 320, 321-22, ¶ 7 (App. 2016) (internal quotation omitted).

¶11 Hall argues judicial review of the Board's decision to issue a conditional use permit is "otherwise provided by" A.R.S. § 11-815(G). As noted by the superior court, A.R.S. § 11-815 authorizes counties to enforce and punish zoning violations. Although Hall contends that the statute "addresses the issuance of permits," it refers only to "building permits" and establishes that "it is unlawful to erect, construct, reconstruct, alter or use any building or other structure within a zoning district . . . without first obtaining a building permit from the inspector." A.R.S. § 11-815(A), (B). The remainder of the statute sets forth the apparatus for counties' enforcement authority: Subsection (D) authorizes counties to establish civil penalties for zoning violations; Subsection (E) permits counties to appoint hearing officers "to hear and determine zoning violations"; Subsection (F) provides for zoning inspectors to present evidence "showing the existence of" zoning violations; and Subsection (G) authorizes county boards of supervisors to review hearing officers' rulings regarding zoning violations. Of particular import to this case, Subsection (G) also provides for "[j]udicial review of the final decisions of the board of supervisors."

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¶12 While Subsection (A) states that county zoning ordinances shall be enforced “by means of withholding building permits,” A.R.S. § 11-815 makes no mention of conditional use permits. More importantly, Subsection (G), read in context, clearly provides for only limited judicial review of a board of supervisors’ final decision *concerning the punishment for a zoning violation*. Because the statute’s limited judicial review provision does not encompass a board of supervisors’ decision to approve or deny a conditional use permit, it does not authorize judicial review under the ARA here. *See Pima County v. State Dep’t of Revenue*, 114 Ariz. 275, 279 (1977) (“Clearly, § 12-902 was not intended and cannot be read to confer the right of appeal from an agency’s decisions on one who has not been included among those given the right of review in the particular statutes that make such review of the agency’s decisions available.”). Had the legislature “intended to create a right to judicial review” of a board of supervisors’ decision concerning conditional use permits, “we presume it would have done so.” *Coombs*, 241 Ariz. at 322, ¶ 9. Therefore, the ARA provides no jurisdictional basis for Hall’s complaint and the superior court lacked subject matter jurisdiction over Count One.

**II. Subject Matter Jurisdiction and Statement of a Cognizable Claim Under the UDJA—Count Two**

¶13 Hall challenges the superior court’s finding that her claim for declaratory relief failed to: (1) provide a valid basis for jurisdiction, and (2) state a claim upon which relief could be granted. As an initial matter, Hall contends that the Board waived any jurisdictional challenge predicated on the UDJA by failing to raise such a claim in its motion to dismiss. But Hall did not cite the UDJA as a basis for subject matter jurisdiction until her *response* to the motion to dismiss, so there is no merit to her suggestion that the superior court improperly relied on the Board’s “waived” jurisdictional argument. In any event, the superior court has an independent duty to confirm its jurisdiction. *See Kim v. Mansoori*, 214 Ariz. 457, 459, ¶ 5 (App. 2007).

¶14 As noted, *supra* ¶ 7, we review de novo whether a court had subject matter jurisdiction over a claim for declaratory relief. *Buehler*, 227 Ariz. at 521, ¶ 4. We likewise review de novo whether a complaint stated a cognizable claim for declaratory relief. *Mayer Unified Sch. Dist. v. Winkleman*, 220 Ariz. 378, 390, ¶ 35 (App. 2008) (vacated on other grounds by *Mayer Unified Sch. Dist. v. Winkleman*, 219 Ariz. 562 (2009)). “Dismissals for failure to state a claim are disfavored and should not be granted unless it appears certain that a party would not be entitled to relief on its asserted claim under any state of facts susceptible of proof.” *Ariz. Soc’y of Pathologists v.*

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*Ariz. Health Care Cost Containment Sys. Admin.*, 201 Ariz. 553, 557, ¶ 19 (App. 2002). In determining whether a complaint states a claim upon which relief can be granted, we “assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom.” *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008).

¶15 Under the UDJA, the superior court has the “power” to hear “any question” concerning the “construction or validity” of any statute or ordinance that affects a party’s rights. A.R.S. §§ 12-1831, -1832. “The declaration may be either affirmative or negative in form and effect . . . .” A.R.S. § 12-1831.

¶16 Here, the complaint contested, in part, the evidentiary basis for several of the Board’s findings under Ordinance § 5.7 and A.R.S. § 32-219. In addressing this portion of the complaint, the superior court correctly found that Hall’s challenge to the sufficiency of the evidence did not provide a “valid basis for jurisdiction” under the UDJA. However, the complaint also alleged that the Board misconstrued Ordinance § 5.3 by reading out several procedural prerequisites in order to approve the nonconforming application. Hall specifically sought a declaratory judgment that the express requirements for a conditional use permit application, set forth in Ordinance § 5.3, are, in fact, prerequisites to the issuance of a permit. Specifically, Hall alleged that: (1) the applicant failed to prepare and submit a Citizen Participation Plan, which required the applicant to “contact neighbors in the vicinity and other affected property owners and hold a neighborhood meeting”; and (2) the Commission failed to provide adequate notice prior to its hearings on the application by advertising the hearings in the local newspaper and notifying all affected property owners by mail. *See* Ordinance § 5.3(2), (4).<sup>3</sup> Because this portion of the complaint challenged the Board’s interpretation of the zoning ordinance, it provided a valid basis for subject matter jurisdiction under the UDJA.

¶17 This does not, however, end our inquiry. The remaining question is whether Count Two of Hall’s complaint set forth a cognizable claim for relief under the UDJA.

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<sup>3</sup> Ordinance available online at:  
<https://coconino.az.gov/DocumentCenter/View/8225/Conditional-Use-Permit-Overview-2018?bidId=>.

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¶18 While the UDJA is remedial and should be liberally construed, A.R.S. § 12-1842, a “complaint must set forth sufficient facts to establish that there is a justiciable controversy.” *Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 468, ¶ 29 (App. 2007). “For a justiciable controversy to exist, a complaint must assert a legal relationship, status or right in which the party has a definite interest and an assertion of the denial of it by the other party.” *Land Dep’t v. O’Toole*, 154 Ariz. 43, 47 (App. 1987). “A controversy is not justiciable when a defendant has no power to deny the plaintiff’s asserted interests.” *Yes on Prop 200*, 215 Ariz. at 468, ¶ 29. To survive a motion to dismiss for failure to state a claim, a justiciable controversy must be real and actual, “not theoretical.” *Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 310 (1972).

¶19 In this case, the superior court found no justiciable controversy existed under the facts alleged in the complaint. First, the court noted that Hall had failed to identify the proximity of her property to the cemetery site. Without question, Hall failed to identify the address of her property, but the complaint nonetheless alleged that she “has a financial and ownership interest in property that is directly and negatively impacted” by the “issuance of the conditional use permit.” Second, the court found Hall’s claim that the cemetery diminished her property’s value was “speculative,” and therefore insufficient to establish a viable claim for relief. While Hall’s complaint cited evidence from the Board’s September 2017 hearing for the proposition that the property value of homes that “directly border the land proposed for rezoning” would likely decline, she expressly alleged that by the time she filed her complaint in August 2019, “the value of her property” had “decreased.”

¶20 Assuming the truth of these allegations for purposes of review, Hall held a specific and definite interest in the rezoning of the proposed cemetery site and suffered a real and actual harm from the issuance of the conditional use permit. *See Mayer Unified Sch. Dist.*, 220 Ariz. at 395, ¶ 55 (explaining a claim for declaratory relief must allege facts that remove the claim from “the realm of mere possibility” to an “actual controversy”) (internal quotation omitted) (vacated on other grounds by *Mayer Unified Sch. Dist. v. Winkleman*, 219 Ariz. 562 (2009)). However, the complaint did not allege facts supporting a claim that Hall was harmed by the Commission and Board’s purported failure to enforce the procedural requirements of the conditional use permit application process. Hall and other community members attended the hearings on the application for a conditional use permit and presented evidence regarding the community impact of the proposed cemetery. Hall’s complaint in fact demonstrates that the substantive rights of affected property owners to participate in the

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zoning approval process were upheld, notwithstanding the technical noncompliance with some of Ordinance § 5.3's procedural requirements. Hall has not identified *any information* she was unable to present for the Commission or Board's consideration because of the procedural noncompliance. Put succinctly, the complaint, read in its entirety, fails to allege that Hall was denied any right based on the Commission and Board's construction of Ordinance § 5.3. We therefore agree with the superior court that no justiciable controversy existed, and the complaint failed to state a cognizable claim for declaratory relief.

**CONCLUSION**

¶21 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court  
FILED: AA