IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

ENCANTERRA RESIDENTS AGAINST ANNEXATION,
AN ARIZONA NONPROFIT CORPORATION;
CARRAS, GREGORY A & JEANNE M REVISED TRUST,
AN ARIZONA TRUST;
GAYLE PETERS AND JAMEY PETERS, WIFE AND HUSBAND;
AND MICHAEL POWER AND SUSAN POWER, HUSBAND AND WIFE,
Plaintiffs/Appellants,

v.

TOWN OF QUEEN CREEK, ARIZONA, A PUBLIC ENTITY,
Defendant/Appellee.

No. 2 CA-CV 2020-0002
Filed March 9, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. S1100CV201901736
The Honorable Stephen F. McCarville, Judge

AFFIRMED

COUNSEL

Timothy A. La Sota PLC, Phoenix
By Timothy A. La Sota
Counsel for Plaintiffs/Appellants

Dickinson Wright PLLC, Phoenix
By Scott A. Holcomb, Michael S. Rubin, and Bradley A. Burns
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring concurred and Judge Brearcliffe dissented in part and concurred in part.

V Á S Q U E Z, Chief Judge:

¶1 Encanterra Residents Against Annexation (ERAA), along with Carras, Gregory A & Jeanne M Revised Trust, Gayle and Jamey Peters, and Michael and Susan Power (collectively, the property owners), appeal from the trial court's dismissal of ERAA's complaint seeking to enjoin the Town of Queen Creek from enforcing its ordinance annexing the Encanterra subdivision. They argue the court erred in concluding that ERAA lacked standing to file the complaint and that its first amended complaint, which added the property owners as plaintiffs, was untimely and did not relate back to the day of the original filing. They additionally contend the court erred in determining that the Town complied with statutory requirements (1) to approve a plan, policy, or procedure to provide Encanterra with infrastructure and services and (2) to provide proper notice of the meeting at which the Town Council passed and adopted the annexation ordinance. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 The relevant facts are undisputed. In June 2018, an application to annex the Encanterra subdivision, a largely developed area in San Tan Valley, was filed with the Town. Six months later, in December 2018, a public hearing on the annexation was held, and the petition sheets were circulated for signature by the residents of Encanterra. In October 2019, the petition sheets with a sufficient number of valid signatures were recorded with the Pinal County Recorder, and the Town adopted Ordinance No. 712-19 to finalize the annexation.

¶3 As part of the annexation process, the Town Council received a staff report discussing Encanterra's needs for public utilities and services, including water, electricity, gas, garbage disposal, and fire and police

protection. On October 16, 2019, the Town Council held a meeting during which it passed and adopted Ordinance No. 712-19. Of particular relevance here, Section 5 of the ordinance states: "The Town Council approves and affirms that it is the policy of the Town to provide the newly annexed territory with infrastructure and services (to the extent not already provided) commensurate with other areas of the Town within 10 years after the annexation becomes final."

¶4 The following month, on November 14, 2019, ERAA filed its articles of incorporation with the Arizona Corporation Commission. ERAA indicated that it had no members but listed its chairman of the board (Gayle Peters), director (Michael Power), and treasurer (Jeanne Carras), all of whom had addresses within the area to be annexed. ERAA also listed its attorney as the statutory agent and his business address in Phoenix as its "Known Place of Business."

¶5 The following day, ERAA filed its complaint for special action with the trial court, requesting declaratory and injunctive relief. [1] Specifically, it asserted that the Encanterra annexation was "null and void and ineffective" based on three counts: (1) "an insufficient number of real and personal property owners signed the petition sheet," (2) "the Town failed to follow the proper procedures for annexation," in that it "ha[d] not lawfully adopted a plan, policy or procedure" to provide Encanterra with infrastructure and services, and (3) "the Town failed to hold the requisite public hearing to adopt the annexation ordinance" in violation of Arizona's open meeting laws.

¶6 Shortly thereafter, the Town filed a motion to dismiss the complaint for lack of standing and for failure to state a claim upon which relief could be granted. The Town argued that ERAA was not an "interested party within the territory to be annexed," as statutorily required for standing under A.R.S. § 9-471(C), because "[i]t owns no property within the annexed area" and "was incorporated . . . *after* the annexation ordinance was adopted." It further asserted that ERAA lacked associational standing, in part, because it had no members to represent in that capacity. The Town also maintained that counts two and three should be dismissed because it

[1]In addition to the Town, the complaint listed as defendants the mayor and councilmembers in their official capacities. However, the trial court later dismissed those individuals, pursuant to the parties' stipulation.

had approved an infrastructure plan and had fully complied with Arizona's open meeting laws.

¶7 Along with its response to the motion to dismiss, ERAA filed a first amended complaint, adding the property owners as plaintiffs and asserting they all "own real and personal property within the Encanterra Annexation area." The trial court heard oral argument on the motion to dismiss and took the matter under advisement. ERAA later voluntarily dismissed count one of its complaint alleging an insufficient number of valid signatures.

¶8 In its subsequent ruling, the trial court granted the Town's motion to dismiss. The court concluded that ERAA lacked standing to file the complaint because it was not an interested party within the meaning of § 9-471(C). It explained, "The Arizona Legislature has made it clear that property owners within the annexation area are the only parties . . . entitled to challenge an annexation ordinance after it has been adopted." The court further reasoned that the first amended complaint did not correct any deficiencies because it needed to be filed within thirty days after adoption of Ordinance No. 712-19, pursuant to § 9-471(C). The court observed that if "any party without standing who brought a complaint was given additional time to then search for 'an interested party' after the 30 days has expired," the "statutory purpose of ensuring these matters are resolved on an expedited basis" would be "defeat[ed]."

¶9 Although it determined standing was "dispositive," the trial court nonetheless addressed the other two substantive issues, rejecting ERAA's claims that the Town had failed to adopt a plan, policy, or procedure for infrastructure and services and had failed to comply with the open meeting laws for the October 16, 2019 meeting. The court's ruling included finality language pursuant to Rule 54(c), Ariz. R. Civ. P. This

appeal followed.[2] We have jurisdiction pursuant to A.R.S. §§ 9-471(C), 12-120.21, and 12-2101(A)(1).[3]

Standard of Review

¶10 We review issues of law, including those of statutory interpretation, de novo. *Premier Physicians Grp., PLLC v. Navarro*, 240 Ariz. 193, ¶ 6 (2016). Similarly, we review a trial court's order granting a motion to dismiss de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, ¶ 7 (2012). In doing so, "we assume the truth of the allegations set forth in the complaint and uphold dismissal only if the plaintiffs would not be entitled to relief under any facts susceptible of proof in the statement of the claim." *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996).

Standing

¶11 ERAA and the property owners argue the trial court erred in granting the motion to dismiss based on a lack of standing. They maintain that ERAA has standing both "in its own [r]ight" and in a representational capacity. They also contend the court erred in concluding that the first amended complaint was untimely and did not relate back to the date of the original filing.

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[2]"Generally, a person who is not a party to an action is not aggrieved and cannot appeal from findings adverse to him." *MCA Fin. Grp., Ltd. v. Enter. Bank & Tr.*, 236 Ariz. 490, ¶ 8 (App. 2014) (quoting *Wieman v. Roysden*, 166 Ariz. 281, 284 (App. 1990)). However, "a non-party with a 'direct, substantial and immediate' interest who 'would be benefitted by reversal of the judgment' is entitled to appeal." *Id.* (quoting *Wieman*, 166 Ariz. at 284); *see also* Ariz. R. Civ. App. P. 1(d). Although the property owners were not parties to the proceedings below, insofar as they were not included in the complaint and the trial court determined the first amended complaint was untimely, we nonetheless conclude they can appeal because they are aggrieved non-parties with direct and substantial interests in the dismissal. *Cf. Walls v. Ariz. Dep't of Public Safety*, 170 Ariz. 591, 596-97 (App. 1991) (denial of motion to amend complaint generally must be challenged by special action except where final judgment entered therewith).

[3]The parties stipulated to accelerating this appeal under Rule 10, Ariz. R. Civ. App. P. They also stipulated to the record on appeal, filing an appendix as the official record in this matter.

¶12 "Any incorporated city or town may annex territory in an adjacent county pursuant to the provisions of § 9-471." A.R.S. § 9-134. Pursuant to § 9-471(C), "[a]ny city or town, the attorney general, the county attorney or any other interested party within the territory to be annexed may on verified petition move to question the validity of the annexation for failure to comply with this section." The language "within the territory to be annexed" was added to § 9-471(C) in May 2019. 2019 Ariz. Sess. Laws, ch. 205, § 2. Whether ERAA has standing in this case hinges on the meaning of "any other interested party within the territory to be annexed."

¶13 "We interpret statutes to give effect to the legislature's intent." *Parrot v. DaimlerChrysler Corp.*, 212 Ariz. 255, ¶ 7 (2006). A statute's plain language is the best indicator of legislative intent, and, if that language is plain and unambiguous, we will apply it as written without resorting to other methods of statutory interpretation. *Mathews ex rel. Mathews v. Life Care Ctrs. of Am., Inc.*, 217 Ariz. 606, ¶ 6 (App. 2008).

¶14 ERAA and the property owners argue that the trial court improperly interpreted "any other interested party within the area to be annexed," § 9-471(C), to mean "property owners within the annexation area." They reason that if the legislature had intended such a meaning, it could easily have said so. By contrast, relying on other provisions of § 9-471, the Town argues that "the only reasonable interpretation" of the statute "is that the only 'interested parties' with standing are the property owners subject to taxation by the municipality."

¶15 As our starting point, we note that the phrase "any other interested party within the territory to be annexed" is not statutorily defined. *See* A.R.S. §§ 9-471 to 9-479. We must therefore apply the commonly accepted meaning and may use dictionary definitions as a guide. *See Sierra Tucson, Inc. v. Pima County*, 178 Ariz. 215, 220 (App. 1994). "[I]nterested party" commonly means "[a] party who has a recognizable stake (and therefore standing) in a matter." *Party*, Black's Law Dictionary (11th ed. 2019); *see also* The American Heritage Dictionary 914 (5th ed. 2011) (defining "[i]nterested" as [p]ossessing a right, claim, or share"). "[W]ithin the territory to be annexed" is plain and is defined individually in each case by the description and map on the annexation petition. *See* § 9-471(C).

¶16 In evaluating the Town's position, we must next consider the meaning of "property owner," which is likewise not statutorily defined. *See* §§ 9-471 to 9-479. However, "property owner" commonly means one who owns property. *See* The American Heritage Dictionary 1412 (5th ed. 2011) (defining "property" as "[s]omething owned" and "possession"). Thus, as

applied here, "property owner" is narrower than "interested party," and using "property owner" in place of "any other interested party" in § 9-471(C) would limit the legislature's apparent meaning. *See City of Tempe v. Fleming*, 168 Ariz. 454, 457 (App. 1991) ("As a rule of statutory construction, we will not read into a statute something which is not within the manifest intent of the legislature as indicated by the statute itself.").

¶17 The Town nevertheless points to § 9-471(P), which provides that "[i]f a property owner prevails in any action to challenge the annexation of the property owner's property, the court shall allow the property owner reasonable attorney fees and costs relating to the action from the annexing municipality." It therefore contends that the "interested parties" with standing under § 9-471(C) must be "property owners." We acknowledge that the legislature's use of the term "property owner" in § 9-471(P) suggests that property owners can challenge an annexation under § 9-471(C), but it does not limit those who can bring such challenges to only property owners. Notably, § 9-471(C) also allows a city, a town, an attorney general, and a county attorney to file a petition. But those parties are not mentioned in § 9-471(P).

¶18 Indeed, the statutory scheme as a whole, including § 9-471(P), supports our conclusion that "any other interested party within the territory to be annexed" is not limited to property owners. *See Sempre Ltd. P'ship v. Maricopa County*, 225 Ariz. 106, ¶ 5 (App. 2010) (we interpret statutes to harmonize their provisions); *Hourani v. Benson Hosp.*, 211 Ariz. 427, ¶ 7 (App. 2005) (in construing statute, we consider statutory scheme as whole and presume legislature does not include redundant, void, inert, trivial, superfluous, or contradictory provisions). Because other subsections of § 9-471 use "property owner," we presume the legislature knew how to use that term and yet intentionally chose to use "any other interested party within the territory to be annexed" in § 9-471(C). *See Luchanski v. Congrove*, 193 Ariz. 176, ¶ 14 (App. 1998) ("When the legislature has specifically included a term in some places within a statute and excluded it in other places, courts will not read that term into the sections from which it was excluded.").

¶19 However, our determination that "any other interested party within the territory to be annexed" is not limited to property owners does not end our inquiry. § 9-471(C). The question remains whether ERAA is an "interested party within the territory to be annexed." *Id.*

¶20 Based on the common meaning and dictionary definitions discussed above, we agree with the trial court that an "interested party

within the territory to be annexed," § 9-471(C), plainly must be those who are "currently and directly impacted by the annexation" based on their location, *see Party*, Black's Law Dictionary (11th ed. 2019); The American Heritage Dictionary 914 (5th ed. 2011); *cf. Town of Miami v. City of Globe*, 195 Ariz. 176, ¶¶ 7-8 (App. 1998) (Miami was interested party with standing to challenge annexation where Globe acknowledged annexation would "directly and significantly impact" Miami). The language "within the territory to be annexed" suggests the annexation has not yet occurred. Accordingly, the party must be personally interested at the time of the procedures discussed in § 9-471(A)–(C), such that he or she could be harmed by annexation sufficient to merit standing under § 9-471(C). *See Bennett v. Napolitano*, 206 Ariz. 520, ¶ 16 (2003) (to have standing, plaintiffs must "plead and prove palpable injury personal to themselves"); *All. Marana v. Groseclose*, 191 Ariz. 287 (App. 1997) ("A party has standing to sue in Arizona if, under all circumstances, the party possesses an interest in the outcome of the litigation.").

¶21 Applying that standard here, we conclude ERAA does not have standing under § 9-471(C) "in its own [r]ight." ERAA is a nonprofit corporation that was formed on November 14, 2019—twenty-nine days after the Town's adoption of Ordinance No. 712-19 on October 16, 2019.[4] ERAA's articles of incorporation provide that both its "Physical Address" and "Known Place of Business" are in Phoenix. It has no office and owns no property in Encanterra. Although ERAA's three officers have addresses within the Encanterra subdivision, ERAA—not those three individuals—initiated this action to challenge the annexation. Notably, the three individuals are not mentioned at all in the complaint. And ERAA asserted no personal harm—either below or on appeal—sufficient to warrant standing. Simply put, ERAA has no recognizable stake in the annexation of the Encanterra subdivision.

¶22 In addition, ERAA cannot assert standing in a representative capacity. First, § 9-471(C) expressly limits those who can bring an annexation challenge—"[a]ny city or town, the attorney general, the county attorney or any other interested party within the territory to be annexed"—and it does not provide for associational standing. ERAA nevertheless cites

[4]Section 9-471(D) provides that an "annexation shall become final after the expiration of thirty days after the adoption of the ordinance . . . subject to the review of the court." Section 6 of Ordinance No. 712-19, however, specifies that it shall become effective at 8 a.m. on November 19, 2019.

Scenic Arizona v. City of Phoenix Board of Adjustment, 228 Ariz. 419 (App. 2011), for the proposition that a statute need not expressly allow associational standing for it to exist. In that case, we concluded Scenic Arizona had associational standing under A.R.S. § 9-462.06(K), which allows a "person aggrieved" to seek review of a board's decision. *Id.* ¶¶ 5, 8-9, 16. Our conclusion was based on the plain language of the statute, which we described as "broad" and "expansive." *Id.* ¶¶ 9, 12, 16. Here, by contrast, § 9-471(C) does not use such language, and "any other interested party within the territory to be annexed" is narrower than a "person aggrieved." *See Mendelsohn v. Superior Court*, 76 Ariz. 163, 169 (1953) ("person aggrieved" has "broader signification"). We therefore find *Scenic Arizona* distinguishable.

¶23 Second, even assuming such standing were permitted under § 9-471(C), associational standing allows "an association or other organization . . . to assert the claims of its members in a representational capacity." *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Ariz.*, 148 Ariz. 1, 5 (1985). Thus, as the Town points out, the Arizona cases that discuss associational standing do so based on their members' injuries or interests. *See id.* at 5-6 ("The issue in Arizona is whether, given all the circumstances in the case, the association has a legitimate interest in an actual controversy involving its members and whether judicial economy and administration will be promoted by allowing representational appearance."); *see also Home Builders Ass'n of Cent. Ariz. v. Kard*, 219 Ariz. 374, ¶¶ 10-21 (App. 2008) (in determining representational standing, courts may consider whether members would have standing in own right, whether interests sought to be protected align with organization's purpose, and whether claim or defense requires participation of individual members). Because ERAA has no members, it has no interests to represent.[5] Accordingly, the trial court did not err in concluding that ERAA lacked standing to file its complaint under § 9-471(C). *See Premier Physicians Grp., PLLC*, 240 Ariz. 193, ¶ 6; *Coleman*, 230 Ariz. 352, ¶ 7.[6]

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[5] Thus, although the complaint alleged ERAA "is comprised of individuals who own real and personal property in the Encanterra Annexation area," putting the Town on notice of the officers' interests was insufficient for associational standing when ERAA expressly stated it had no members.

[6] We acknowledge that our result might seem harsh, particularly in light of ERAA's claim, as evidenced by its name, that its "reason for

¶24 ERAA and the property owners next argue that the complaint was amended to include the property owners as plaintiffs and that the trial court erred in concluding that the first amended complaint did not relate back to the date of the original complaint.[7] As relevant here, Rule 15(a)(1)(B), Ariz. R. Civ. P., explains that a plaintiff may amend its complaint once as a matter of course if the defendant serves upon the plaintiff a motion to dismiss under Rule 12(b), Ariz. R. Civ. P., provided that the amendment is filed on or before the date on which a response is due. And "[a]n amendment relates back to the date of the original pleading if the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading." Ariz. R. Civ. P. 15(c).

¶25 In support of their argument, ERAA and the property owners rely on *Watts v. State*, 115 Ariz. 545 (App. 1977), in which this court concluded that the plaintiffs' amended complaint filed after expiration of the statute of limitations related back to the original complaint under Rule 15(c). We explained that Rule 15(c) should be construed liberally and that the substitution of the personal representative of the decedents in place of the guardian for the decedents' minor daughter "was no more than a change of the nominal party plaintiff after the [defendant] had full notice that [the daughter] had suffered the actual loss." *Id.* at 547-48.

¶26 This case, however, is distinguishable from *Watts* because, as discussed above, ERAA expressly stated that it has no members. The Town

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existence is to oppose the annexation." But when a "statute might produce unintended or unfair results in some cases, it is the role of the legislature, not this court, to clarify or change the statute." *Bridgestone/Firestone N. Am. Tire, L.L.C. v. A.P.S. Rent-A-Car & Leasing, Inc.*, 207 Ariz. 502, ¶ 51 (App. 2004).

[7] To the extent ERAA and the property owners challenge the under-advisement ruling because the trial court relied on case law concerning a notice of claim against a government agency, the court seemed to be using it as an analogy, not as binding precedent. Indeed, the court pointed out that like an amended notice of claim must be filed within 180 days of the action accruing, the amended complaint in this case had to be filed within thirty days after adoption of the ordinance approving the annexation, consistent with § 9-471(C). In any event, we may affirm the court's ruling if it is correct for any reason. *See Sw. Non-Profit Hous. Corp. v. Nowak*, 234 Ariz. 387, ¶ 10 (App. 2014).

was therefore not on notice when the original complaint was filed about any others whose interests ERAA was seeking to protect. *See id.*

¶27 As the Town points out, § 9-471(C) provides that a petition to challenge the validity of an annexation "shall be filed within thirty days after adoption of the ordinance annexing the territory by the governing body of the city or town and not otherwise." In addition, that statute further explains:

> An action shall not be brought to question the validity of an annexation ordinance unless brought within the time and for the reasons provided in this subsection. All hearings provided by this section and all appeals therefrom shall be preferred and heard and determined in preference to all other civil matters, except election actions.

§ 9-471(C).

¶28 "The power of the legislature over the methods and procedure of annexation is plenary." *Town of Scottsdale v. State ex rel. Pickrell*, 98 Ariz. 382, 385-86 (1965); *accord City of Tucson v. Garrett*, 77 Ariz. 73, 76 (1954). The plain language of § 9-471(C) establishes that the legislature intended annexation challenges to be handled in a specific manner, as expediently as possible. *See Cornman Tweedy 560, LLC v. City of Casa Grande*, 213 Ariz. 1, ¶ 30 (App. 2006) (in § 9-471(C), legislature allowed "for interested parties . . . to expeditiously challenge a defective petition"). We can find no language in § 9-471(C) suggesting that the legislature intended to give courts the power to specify different timelines than those the legislature itself set forth in the statute. *Cf. Fid. Nat'l Title Co. v. Town of Marana*, 220 Ariz. 247, ¶¶ 6, 11 (App. 2009) (discussing triggering event for calculation of thirty days to appeal rezoning ordinance).

¶29 Allowing the amendment of the complaint in this case beyond the thirty-day requirement of § 9-471(C) runs contrary to the legislature's intent of expedited annexation challenges. Because the statute, § 9-471(C), is specific, it takes precedence over the general rule, Rule 15(c). *See Greer v. Greer*, 56 Ariz. 394, 398 (1940) (general rule must give way to specific statute); *see also In re Marriage of Waldren*, 217 Ariz. 173, ¶ 20 (2007) (court rules may not enlarge or modify litigant's rights). We therefore agree with the trial court that a complaint—or an amendment thereto—to challenge the validity of an annexation must be filed within thirty days after adoption

of the ordinance. And because the first amended complaint was not timely filed within thirty days after the adoption of Ordinance No. 712-19, the court did not err in dismissing ERAA's complaint for lack of standing.[8] *See Premier Physicians Grp., PLLC*, 240 Ariz. 193, ¶ 6; *Coleman*, 230 Ariz. 352, ¶ 7.

Statutory Requirements

¶30 Although the trial court noted that dismissal of ERAA's complaint was proper on the standing issue alone, it nonetheless considered the substantive issues raised in the motion to dismiss, specifically, whether the Town had properly adopted a plan, policy, or procedure for providing Encanterra with infrastructure and services and whether the Town had violated the open meeting laws. On appeal, ERAA and the property owners again argue that the Town's failure to comply with these statutory requirements rendered the annexation "ineffective" and "void." Because the trial court addressed these issues, we will do so as well.

Plan, Policy, or Procedure

¶31 ERAA and the property owners argue the Town Council failed to approve a plan, policy, or procedure to provide Encanterra with

[8]Our dissenting colleague reasons that the trial court should have permitted the first amended complaint under Rule 17(a)(3), Ariz. R. Civ. P. *See infra* ¶¶ 48-49. But the Town neither moved to dismiss the complaint for failure to prosecute in the name of the real party in interest below, nor raised this Rule 17 issue on appeal. Additionally, ERAA and the property owners likewise, neither below nor on appeal, claimed that the Town had an obligation to raise an issue under Rule 17 for the court to dismiss the action on timeliness grounds. Moreover, our colleague has not cited, nor are we aware of, any authority for the proposition that the court had the obligation to sua sponte consider the motion to dismiss under Rule 17. We therefore deem any Rule 17 issue waived. *See Safeway Ins. Co. v. Collins*, 192 Ariz. 262, ¶ 21 (App. 1998) (lack of capacity to sue because claimant not real party in interest not jurisdictional and can be waived); *see also Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167 (App. 1996) ("Issues not clearly raised and argued in a party's appellate brief are waived."). In any event, Rule 17(a)(3) does not apply in this case, where ERAA upon discovery of its mistake effectively sought to substitute the property owners as plaintiffs "to take advantage of the suspension of the limitation period." Ariz. R. Civ. P. 17 bar committee note.

infrastructure and services, rendering the annexation "ineffective." It relies on § 9-471(O), which provides as follows:

> On or before the date the governing body adopts the ordinance annexing territory, the governing body shall have approved a plan, policy or procedure to provide the annexed territory with appropriate levels of infrastructure and services to serve anticipated new development within ten years after the date when the annexation becomes final pursuant to subsection D of this section.

¶32 The trial court determined that Section 5 of Ordinance No. 712-19 "provides for the necessary and appropriate infrastructure and services for the annexed area." It explained that "the area being annexed was not raw/undeveloped land" and that "[a]ll utility services are already in place." The court thus reasoned, "[T]his is not a case where the annexed property did not have services and the Town was required to identify how those services would be extended from existing services to the annexed area." The court also noted that "the staff report satisfie[d]" the requirement of § 9-471(O).

¶33 On appeal, ERAA and the property owners contend that the "trial court's finding on this point is simply erroneous." With regard to Section 5 of the ordinance, they maintain the Town "simply stated" that it intended to adopt a policy without actually doing so. They further assert that the staff report does not meet the statutory requirement because "the Town Council never approved [it]." In response, the Town maintains that it "complied, or at least substantially complied, with" § 9-471(O) in three ways: (1) Section 5 of Ordinance No. 712-19, (2) the staff report presented to the Town Council in support of the Encanterra annexation, and (3) "Resolution 1298-19, which expanded the Town's General Plan to expressly include Encanterra."[9]

[9]In its answering brief, the Town urges us to take judicial notice of Resolution 1298-19, as contained in the agenda packet, and the Town's General Plan as "public record[s] on a governmental website." In reply, ERAA points out that this argument was not raised below and thus should be waived on appeal. However, this court can "take judicial notice of anything of which the trial court could take notice, even if the trial court

¶34 Section 9-471 "does not require absolute and literal compliance for annexation." *Town of Scottsdale*, 98 Ariz. at 384-85. Only "substantial compliance is necessary to effectuate the purpose of the statute." *Id.* at 385; *see also Glick v. Town of Gilbert*, 123 Ariz. 395, 398 (App. 1979) ("[A]bsolute literal compliance with statutory annexation requirements is not required."). "The reason is clear. Absolute and literal compliance with the statute would result in defeating the purpose of the statute in situations where no one has been or could be misled." *State ex rel. Helm v. Town of Benson, Cochise Cty.*, 95 Ariz. 107, 108 (1963).

¶35 Substantial compliance "generally means that the information provided has satisfied the purpose of the relevant statute." *State v. Galvez*, 214 Ariz. 154, ¶ 19 (App. 2006); *see also Wilhelm v. Brewer*, 219 Ariz. 45, ¶ 2 (2008) (on form of initiative petitions, substantial compliance means petition, as whole, fulfills purpose of relevant statutory requirements, despite lack of strict technical compliance); *Aesthetic Prop. Maint. Inc. v. Capitol Indem. Corp.*, 183 Ariz. 74, 77-78 (1995) (substantial compliance adequate when general policy or purpose of statute satisfied). In deciding whether there has been substantial compliance with statutory requirements, courts may consider various factors, including the nature of the requirements, the extent of the deviation from the requirements, and the purpose of the requirements. *See Feldmeier v. Watson*, 211 Ariz. 444, ¶¶ 1, 14 (2005) (discussing substantial compliance in context of petitions for ballot initiative).

¶36 Applying those principles in this case, we conclude the Town substantially complied with the "plan, policy or procedure" requirement of § 9-471(O). Preliminarily, as the trial court observed, much of the Encanterra subdivision is already developed and receiving the necessary infrastructure and services. Nevertheless, the Town Council expressly affirmed in Section 5 of Ordinance No. 712-19 that it would provide "infrastructure and services (to the extent not already provided) commensurate with other areas of the Town." At the same meeting where

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was never asked to take notice." *In re Sabino R.*, 198 Ariz. 424, ¶ 4 (App. 2000); *see also State v. Rojers*, 216 Ariz. 555, ¶ 25 (App. 2007) (explaining that appellate courts often utilize judicial notice to add facts necessary to affirm trial court). Accordingly, we take judicial notice of Resolution 1298-19 and the Town's General Plan. *See* Ariz. R. Evid. 201(c)(2) (court must take judicial notice if party requests it and supplies necessary information); *cf. Pedersen v. Bennett*, 230 Ariz. 556, ¶ 15 (2012) (taking judicial notice of documents on state website).

it adopted Ordinance No. 712-19, the Town Council also adopted Resolution 1298-19, amending its "General Plan Planning Area Boundary" to include Encanterra. In addition, the staff report presented to the Town Council in support of the annexation detailed Encanterra's needs and analyzed how the Town would meet them.

¶37 In support of their argument that the staff report cannot satisfy the statutory requirement because the Town Council never "approved" it, ERAA and the property owners rely on *Wally v. City of Kannapolis*, 722 S.E.2d 481 (N.C. 2012). At issue in that case was whether the city had approved a statement of reasonableness, as statutorily required, before enacting a zoning ordinance. *Id.* at 450. The North Carolina Supreme Court rejected the city's argument that it had complied by "impliedly approving the staff report by virtue of having the report in hand when adopting the zoning amendment." *Id.* at 453. The court explained that the statute did not authorize "an implied approval." *Id.* However, not only is this out-of-state case not binding here, it is also factually distinguishable. *See Swenson v. County of Pinal*, 243 Ariz. 122, ¶ 12 (App. 2017) (laws of other jurisdictions instructive, not binding).

¶38 Unlike in *Wally*, the Town Council here expressly adopted Section 5 of Ordinance No. 712-19, consistent with the purpose of § 9-471(O), affirming that it would provide the necessary and appropriate infrastructure and services to Encanterra. *See Galvez*, 214 Ariz. 154, ¶ 19. The staff report merely provided detail about how that would be accomplished. Based on the documents "as a whole," *Wilhelm*, 219 Ariz. 45, ¶ 2 (quoting *Feldmeier*, 211 Ariz. 444, ¶ 15), no one "could have been misled by the annexation process," *Town of Miami*, 195 Ariz. 176, ¶ 13. The Town was therefore in substantial compliance with § 9-471(O), and the trial court did not err in dismissing count two of ERAA's complaint. *See Premier Physicians Grp., PLLC*, 240 Ariz. 193, ¶ 6; *Coleman*, 230 Ariz. 352, ¶ 7.

Open Meeting Laws

¶39 ERAA and the property owners also argue the Town "did not properly notice" the October 16, 2019 meeting under Arizona's open meeting laws, rendering the annexation "null and void." Pursuant to A.R.S. § 38-431.01(A), "All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." Consistent therewith, notices and agendas must be provided for meetings of public bodies, and they must "contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided." A.R.S. § 38-431.09(A). With this in

mind, we must construe Arizona's open meeting laws "in favor of open and public meetings." *Id.*

¶40 As relevant here, the Town Council's amended agenda for its October 16, 2019 meeting provided that the meeting would start at 5:30 p.m. but that "Public Hearings will not be heard prior to 7:00 p.m." The agenda then listed various headings with items that the Town Council intended to address. "Public Hearings" was the twelfth heading, and "Final Action" was the thirteenth. Listed under "Final Action" was "Discussion and Possible Action on Ordinance 712-19." Both the "Public Hearings" and "Final Action" headings indicated that those who wished to "speak to the Council on an item listed [thereunder]" needed to request to do so and were limited to three minutes each.

¶41 The trial court concluded, "Although the plaintiff did not anticipate the action being heard before 7:00 p.m., that does not render the action in violation of" the open meeting laws. It also noted that "the Town Council may amend the agenda items by moving them up or down on the agenda."

¶42 On appeal, ERAA and the property owners maintain the amended agenda was "unnecessarily confusing" because "an agenda item that is noticed for public comment and possible Council action is the essence of a 'public hearing.'" And they contend "the agenda led to actual confusion" because opponents of the annexation "presented themselves prior to 7 p.m. at the October 16, 2019 meeting," thinking it was a "Public Hearing," "only to be told that the agenda item had already been heard."[10] They therefore reason, "If an agenda confuses, and a reasonable reading of the agenda can lead to the conclusion that an agenda item will be heard at a different time than it is, the Town has failed to comply with the Arizona open meetings law."

[10]To the extent ERAA suggests the Town intentionally tried to pass the ordinance without hearing from the opposition, we disagree. As the Town points out in its answering brief, video of the meeting is a matter of public record for which we can, and do, take judicial notice. *See* Ariz. R. Evid. 201(c)(2); *see also Pedersen*, 230 Ariz. 556, ¶ 15. The video shows that the Town Council took efforts to allow those claiming confusion over the timing of the agenda items to nonetheless speak before taking a vote on Ordinance No. 712-19. Two of ERAA's officers—Gayle Peters and Michael Power—spoke against annexation at that time.

¶43 Contrary to ERAA and the property owners' suggestion otherwise, the open meeting laws do not require an agenda to provide the specific times at which different items will be addressed during a public meeting. *See* §§ 38-431.01(A), 38-431.09(A); *see also* A.R.S. § 38-431.02. Indeed, ERAA and the property owners acknowledge that "the Town may modify its agenda order." Although individuals may have been confused about the timing of various items on the amended agenda, they nonetheless were on notice that the meeting started at 5:30 p.m. and of the matters that would be considered at the meeting.

¶44 The amended agenda for the October 16, 2019 meeting provided notice that Ordinance No. 712-19 would be discussed and possibly acted upon. *See* § 38-431.09(A). In addition, the meeting was open to the public, with individuals both for and against the Encanterra annexation present and given an opportunity to speak. *See* § 38-431.01(A). Construing Arizona's open meeting laws in favor of open and public meetings, as we must, we cannot say the Town "did not properly notice" the October 16, 2019 meeting. *See* § 38-431.09(A). Accordingly, the trial court did not err in dismissing count three of ERAA's complaint. *See Premier Physicians Grp., PLLC*, 240 Ariz. 193, ¶ 6; *Coleman*, 230 Ariz. 352, ¶ 7.

Attorney Fees and Costs

¶45 ERAA and the property owners request their attorney fees on appeal pursuant to A.R.S. §§ 12-348(A)(2) and 9-471(P). However, because they did not prevail on appeal, they are not entitled to their attorney fees. The Town is entitled to its costs, upon compliance with Rule 21, Ariz. R. Civ. App. P.

Disposition

¶46 For the reasons stated above, we affirm.

B R E A R C L I F F E, Judge, dissenting in part and concurring in part and in the result:

¶47 I fully concur in the majority opinion in its analysis of the Town of Queen Creek's compliance with its statutory annexation requirements and with its determination that Encanterra Residents Against Annexation ("Encanterra"), a nonprofit corporation, was not a proper party to this annexation challenge under A.R.S. § 9-471(C). But I disagree with the majority on the matter of the Appellants' right to file an amended complaint substituting (certain) plaintiffs as real parties in interest. The trial court erred and should have permitted the filing of the amended complaint,

and so I dissent in part. Nonetheless, because, even if brought in the first instance by proper parties, the Town would have prevailed, I also concur in the result here.

¶48 The majority is, and the Town and the trial court were, correct that Appellants were barred from substituting in individual property owners as named plaintiffs under Rule 15, Ariz. R. Civ. P. Nonetheless, because three of the officers of Encanterra at the time of the timely filing of the original complaint were within the class of parties entitled to bring a challenge to the annexation, once the Town objected to the plaintiff corporation's lack of "standing," the court should have permitted their substitution as named plaintiffs under Rule 17, Ariz. R. Civ. P.

¶49 As stated in Rule 17(a)(1), "An action must be prosecuted in the name of the real party in interest." But if it is not, such a failure is not fatal to the claim. Under subsection (a)(3) of Rule 17:

> The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

As stated by this court in *Toy v. Katz*, this provision was "intended to prevent forfeiture when determination of the proper party to sue is difficult or when an understandable mistake has been made." 192 Ariz. 73, 87 (App. 1997) (quoting Ariz. R. Civ. P. 17(a)(3) bar committee note to 1966 amend.) (citing *Watts v. State*, 115 Ariz. 545, 549 (App. 1977) ("[S]o long as the defendant is put on notice of the . . . occurrence giving rise to the damages, amendments should be permitted to relate back even though they may change the original theory of recovery or introduce new theories."). In *Toy*, a legal malpractice action, in the course of litigation, and after the statute of limitations had expired, the parties discovered that the claim was properly held by a related corporation rather than the named individual plaintiffs. *Id*. at 80. The defendant then filed a motion for summary judgment asserting that the individual plaintiffs did not have standing to recover damages suffered by their corporation. *Id*. The trial court granted the motion finding that the corporation was the real party in interest. *Id*. On appeal, this court concluded that the trial court erred, and that, rather than

dismissing the case, it should have permitted the addition of the corporation as a named plaintiff under Rule 17, with the relation back of the amendment to the date of the filing of the original complaint. *Id*. at 88.

¶50 Here, in response to the Town's motion to dismiss for lack of standing, the plaintiffs sought to add, among other plaintiffs, three owners of real property within the annexation area who were and had been officers of the original named plaintiff corporation. It is plain from the papers and argument below and on appeal, that they (through their counsel) believed they could properly bring their challenge to the annexation through a corporation that itself did not qualify as a proper party under § 9-471(C). Nonetheless, once they offered an amended complaint naming qualified parties as named plaintiffs, under the plain language of Rule 17 and the reasoning in *Toy*, the trial court should have permitted the amended complaint, and it erred in failing to do so. Had the court allowed it, the amendment—at least as to the three named plaintiffs who had been officers of the corporation—would have related back to the timely filing of the original complaint.

¶51 Additionally, I see nothing in the language of § 9-471(C) that forecloses the application of the Arizona Rules of Civil Procedure, including Rule 17, to an annexation action. The majority concludes that the "more specific" deadline for filing of an annexation challenge by itself supersedes the rules permitting amendments to complaints. If that were the case, any cause of action governed by a legislatively-enacted statute of limitations (which is, I believe, every cause of action) would be unamendable under a mere rule of procedure. The majority cites to no authority saying so. We do not lightly find irreconcilable conflicts between statutes and rules. Indeed, "[r]ules and statutes 'should be harmonized wherever possible and read in conjunction with each other.'" *State v. Hansen*, 215 Ariz. 287, ¶ 7 (2007) (quoting *Phoenix of Hartford, Inc. v. Harmony Rests., Inc.*, 114 Ariz. 257, 258 (App. 1977)). If the legislature had intended to bar amendments to complaints in this context or any other, it could easily have done so expressly and nothing in the statute indicates that intent. *See Garcia v. Browning*, 214 Ariz. 250, 252 (2007) ("The legislature plainly knows how to provide for the retroactivity of measures that it enacts"); *see Martin v. Althoff*, 27 Ariz. App. 588, 591 (1976) ("It is the rule of statutory construction that courts will not read into a statute something which is not within the express manifest intention of the Legislature as gathered from the statute itself . . . .").

¶52 For the foregoing reasons, I respectfully dissent in part, but concur fully otherwise and in the result.