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PATRICIA W. LAND
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 DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

C 20081560

MICHAEL GOODMAN, in his individual
 capacity, and as beneficiary of MAG Exempt
 Trust Holdings,

No.

COMPLAINT

Plaintiffs,

vs.

ACTION FOR DECLARATORY AND
 INJUNCTIVE RELIEF AND DAMAGES

CITY OF TUCSON,

Defendants.

PAUL TANG

COMPLAINT

Plaintiff states for his complaint the following:

I. Parties, Jurisdiction, and Venue.

1. Plaintiff Michael Goodman is an adult resident of Tucson, Arizona. In his personal capacity, as beneficiary of MAG Exempt Trust Holdings, LLC, and as owner of Mike's Italian Foods #1, Plaintiff owns several investment properties within the City of Tucson.

2. The City of Tucson is a municipal corporation organized pursuant to the laws of the State of Arizona.

3. Jurisdiction is proper pursuant to A.R.S. § 12-123 and 42 U.S.C. § 1983.

4. Venue is proper pursuant to A.R.S. § 12-401.

PAID

1 II. Facts Common to All Claims.

2 5. Plaintiff is a residential property developer who specializes in residential in-fill
3 development within the core of the City of Tucson. He purchases properties and, subject to
4 applicable zoning requirements, demolishes and/or renovates structures to provide higher-density
5 housing.
6

7 6. Plaintiff currently owns several properties within the core area of Tucson for which he
8 has a reasonable investment-backed expectation of developing luxury housing based on the
9 applicable zoning and demolition laws in the City of Tucson. All of his residential development
10 meets or exceeds applicable zoning and building standards.

11 7. In June 2007, defendant City of Tucson adopted local amendments to the 2006
12 International Building Code as they relate to the demolition of existing structures, in particular §
13 3303.7 (Demolition in the Historic Central Core). The amendments changed demolition
14 requirements for any structure wholly or partially more than 45 years old within the area that
15 comprised the City limits on October 6, 1953. The amendments, *inter alia*, (1) require that
16 proposed demolitions of such structures must be preceded by a study with detailed information
17 on the structure as well as all properties within 300 feet; (2) allow the City to require additional
18 information; (3) provide for the Tucson/Pima County Historical Commission to issue a finding
19 within 30 days of the report; (4) provide that the City's building officials make a further finding
20 within 30 days thereafter; and (5) provide that such finding may delay demolition for up to 180
21 additional days to allow the City to purchase or arrange for the purchase of the property.
22

23 8. Plaintiff owns the following residential properties that are subject to the local
24 demolition amendments:
25
26

	<u>Address</u>	<u>Pima County Parcel No.</u>
1		
2	233 E. Adams St.	115024370
3	1122 N. First Ave.	11504419A
4	703 E. Speedway Blvd.	115046410
5	713 E. Speedway Blvd.	115046400
6	721 E. Speedway Blvd.	115046390
7	725 E. Speedway Blvd.	115046380
8	733 E. Speedway Blvd.	115046370
9	749 E. Speedway Blvd.	115046360
10		
11	1121 N. Euclid Ave. (Front)	115044180
12	1121 N. Euclid Ave. (Rear)	115044180
13	1127 N. Euclid Ave. (Front)	115044070
14	1127 N. Euclid Ave. (Rear)	115044070
15		
16	728 E. Helen St.	115044100
17	734 E. Helen St.	115044090
18	740 E. Helen St.	115044080
19	1121 E. Mabel St.	123160250
20	1127 E. Mabel St.	123160260
21	1104 E. Drachman St.	123160210
22	1110 E. Drachman St. (Front)	123160200
23	1110 E. Drachman St. (Rear)	123160200
24	1116 E. Drachman St.	123160190
25	1122 E. Drachman St. (Front)	123160180
26		

1 1122 E. Drachman St. (Rear) 123160180

2 9. The local demolition amendments directly regulate the properties listed in the previous
3 paragraph; they alter the rules regarding to the demolition of structures on those properties; and
4 they significantly diminish the value of Plaintiff's properties, a substantial portion of which is
5 based on the ability of the owner to demolish existing structures pursuant to the policies and
6 processes that applied prior to the amendments.
7

8 10. On September 13, 2007, pursuant to A.R.S. § 12-821.01 and § 12-1134(E), Plaintiff
9 submitted to Mayor Bob Walkup, the chief executive officer for Defendant City of Tucson, a
10 claim letter seeking compensation for diminution in the value of his properties caused by the
11 demolition amendments. The letter set the amount of diminished value at \$12,548,450. As of
12 the time of the filing of this Complaint, defendant City has not responded to the demand letter,
13 and the demolition amendments continue to apply to Plaintiff's property.
14

15 III. Causes of Action.

16 First Cause of Action: Arizona Property Rights Protection Act

17 11. In November, 2006, the voters of Arizona enacted by citizen initiative Proposition
18 207, the Arizona Property Rights Protection Act, which is codified at A.R.S. 12-1131, *et seq.*

19 12. A.R.S. § 12-1134(A) provides, "If the existing rights to use, divide, sell or possess
20 private property are reduced by the enactment and applicability of any land use law . . . and such
21 action reduces the fair market value of the property the owner is entitled to just compensation
22 from."
23

24 13. The demolition amendments are a "land use law" within the meaning of A.R.S. § 12-
25 1136(3).
26

1 14. The demolition amendments reduce Plaintiff's previous rights to use, divide, sell, or
2 possess private property that is subject to the demolition amendments, and substantially diminish
3 the value of those properties.

4 15. The demolition amendments do not fall within any of the exceptions listed in A.R.S.
5 § 12-1134(B).
6

7 16. For all of those reasons, Plaintiff has a right to just compensation under the Arizona
8 Property Rights Protection Act.

9 **Second Cause of Action: Due Process of Law**

10 17. The demolition amendments were enacted and are enforced by City officials acting
11 at all relevant times under color of state law.

12 18. The demolition amendments confer upon government entities and officials, including
13 the Tucson/Pima County Historical Commission and City of Tucson building officials, extensive
14 and standard less discretion to deliberate over, issue findings regarding, and delay disposition of
15 a permit for demolition permit. They further empower Defendant City to purchase or arrange for
16 the purchase of property to which the demolition amendments apply and for which a demolition
17 permit is sought.
18

19 19. The demolition amendments provide no standards whatsoever to guide or control the
20 discretion of government officials in preparing studies, issuing findings, delaying the issuance of
21 a demolition permit, or purchasing or arranging for the purchase of property that is subject to the
22 demolition amendments and for which a demolition permit is sought.
23

24 20. In particular, no standards or procedures are provided to determine whether, how, or
25 under what circumstances the City will purchase or arrange for the purchase of property that is
26 subject to the demolition amendments and for which a demolition permit is sought. Likewise,

1 the amendments do not provide standards or procedures for a time frame or the amount of
2 compensation for the disposition of the property.

3 21. The amendments do not provide for notice, a right to be heard, a right to contest, or a
4 right to appeal on the part of property owners whose property is subject to the demolition
5 amendments and for which a demolition permit is sought.

6 22. The demolition amendments are so vague that a reasonable property owner could not
7 know what constitutes an adequate study that now is required as part of the demolition permit
8 process, determine the circumstances under which a demolition permit might be approved or
9 denied, or determine the circumstances under which subject property might be purchased.

10 23. The demolition amendments subject property owners to the prospect of losing
11 ownership of their property without just compensation or due process of law, and thereby subject
12 the right of property ownership and use to unconstitutional conditions.

13 24. For all of the foregoing reasons, the demolition amendments violate the due process
14 rights of Plaintiff as provided and protected by the Arizona and United States Constitutions.

15 IV. Request for Relief.

16 Plaintiff requests that this honorable Court award the following relief:

17 A. A declaration that the demolition amendments violate Plaintiff's due process rights
18 under the Arizona and United States Constitutions;

19 B. A preliminary and permanent injunction enjoining the enforcement of the demolition
20 amendments;

21 C. Compensation for the diminution in value of Plaintiff's properties according to proof
22 at trial;

23 D. Costs and attorney fees pursuant to A.R.S. § 12-840 and 42 U.S.C. § 1988; and
24
25
26

1 E. Such other and further relief as justice and equity require and the Court deems
2 appropriate.

3 DATED this 11th day of March, 2008.

4 ROSE LAW GROUP pc

5 
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10 Attorneys for Plaintiff
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