WILLIAM H. DOYLE, ARIZONA BAR NUMBER 007285
BRANDON D. MILLAM, ARIZONA BAR NUMBER 034696
DOYLE HERNANDEZ MILLAM
11811 N. TATUM BLVD., SUITE 2900
PHOENIX, ARIZONA 85028
TELEPHONE: (602) 240-6711
FACSIMILE: (602) 240-6951
WDOYLE@DOYLELAWGROUP.COM
BMILLAM@DOYLELAWGROUP.COM
FIRM EMAIL: ALG@DOYLELAWGROUP.COM

ATTORNEYS FOR DEFENDANTS CITY OF HOLBROOK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF NAVAJO

ANIL PATEL, an individual; and HOLBROOK MOTEL INVESTMENTS, INC., an Arizona corporation, Plaintiffs, vs. CITY OF HOLBROOK, an Arizona municipal corporation, Defendant.	NO. S0900CV202400037 **DEFENDANT CITY OF HOLBROOK'S REPLY IN SUPPORT OF CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS** **(Oral Argument Requested)** (Assigned to the Honorable Melinda K. Hardy)

Defendant City of Holbrook submits this Reply in Support of its Cross-Motion for Judgment on the Pleadings. In their Response in Opposition to the Motion, Plaintiffs make a variety of, at best, inaccurate statements and provide what can be described as an entirely nonresponsive pleading. The Court should enter judgment in favor of the City and dismiss this lawsuit.

///

///

I. LEGAL ARGUMENT AND REPLY

A. Plaintiffs make a variety of factual and legal inaccuracies.

1. Plaintiffs cannot rely on the veracity of the complaint under Rule 12(c).

Unfortunately, Plaintiffs continue to misrepresent both law and fact to this Court and are creating a situation that controverts their own claimed attempt to "streamline" this lawsuit. Plaintiffs continue to tell this Court the wrong standard that applies to these pleadings and are only creating problems for an appeal that would drive the cost of the litigation up. Since they will claim, later, if they are successful, that they are entitled to attorneys' fees, the City objects to Plaintiffs' improper enlargement of this lawsuit.

With zero legal citation, Plaintiffs tell this Court, wrongly, that the Court is to accept their verified complaint as true. That's patently ridiculous. A Rule 12(c) motion assumes the truth of the *other parties'* allegations; not *their own* allegations. Logic, alone, belies that proposition. By their logic, a party could just get judgments based on their own allegations because they are "verified." The allegations that are relevant to the cross-motion cannot be used to establish aspects of their own case. They are admitted only to test if the allegations are true, whether judgment should be entered against them. So, Plaintiffs cannot make the requisite showing under A.R.S. § 12-1134(E), for example, despite their attempts to the contrary.

2. If the Court converts the pleadings back to summary judgment pleadings, it has to allow for a briefing schedule and discovery under Rule 12(d) and 56(d).

Plaintiffs also posit to this Court that it can convert the motions into summary judgment motions and grant them directly. Summary judgment is a completely different standard. If the Court is inclined to convert the motions, then the Court should require Rule 56(d) discovery, as previously requested, with a proper briefing schedule. To allow otherwise violates Rule 12(d), which provides,

> If, on a motion under Rule 12(b)(6) or (c), matters outside the pleadings are presented to, and not excluded by, the court, the motion must be treated as one for summary judgment under Rule 56. *All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion*.

As the Court should recall, it struck a previously filed summary judgment motion after Plaintiffs agreed that they would make the same arguments within the confines of Rule 12(c). Now they don't want to. They can't have it both ways. The Court either should strike the improper allegations Plaintiffs continue to inject into this briefing, or order proper Rule 56 motions after discovery, but it cannot blur these lines.

B. Plaintiffs do not bother to deal with § 6-2-1(Y)(3), which is dispositive.

The entire premise of this lawsuit is that Ordinance 23-02 disallowed Plaintiffs from being able to use their property for a Residential Care Services facility. Plaintiffs argue that the plain language of Holbrook City Code § 6-2-1(Y) did not apply to them previously. Despite being directly quoted in the Cross-Motion, Plaintiffs do not bother to deal with the dispositive part of the Code. Section 6-2-1(Y)(3) says, in no uncertain terms,

> The use *must* be *authorized by the Planning and Zoning Commission by approval of a Conditional Use Permit*.

"Must" means to "be required by law." *Mirriam-Webster Dictionary*. The "use" is the contemplated Residential Care Service facility. So, Section 6-2-1(Y)(3) required, by law, that Plaintiffs obtain a CUP to use the motel as a Residential Care Facility, regardless of the zoning classification of the property because the section does not segregate by zoning classification. Every single Residential Care Service facility in the City had to (and has to) be authorized via a CUP. Ordinance 23-02 did not change any of that. Plaintiffs had to get a CUP to operate a Residential Care Services facility at the motel by virtue of the use independent of the zoning classification. If they failed to do so, the City could bring an enforcement action to preclude the use until one was obtained. The CUP was denied, and

that is why the lawsuit was brought. But the Private Property Rights Act is not the vehicle to appeal that denial.

C. *Sedona Grand, LLC v. City of Sedona* is inapposite.

Plaintiffs cite, principally, to *Sedona Grand, LLC v. City of Sedona*, to contend that the City here made the same argument as Sedona did. 229 Ariz. 37 (App. 2012). The actual holding in that case concerns A.R.S. § 12-1134(B), which are not raised here. The case concerned short term rentals within the City of Sedona. Sedona Grand claimed violations under the Private Property Rights Act. The Sedona Land Development Code prohibited short-term rentals effective 1995. In 2008, the City enacted a new short-term vacation rental enforcement ordinance. It added a definition for rentals, amongst others, and created criminal penalties for violating the terms under the 2008 ordinance and the 1995 code. Those additional definitions that went beyond normal meanings of the words and included several that differed between the 2008 ordinance and 1995 code. The definitions, in effect, modified the 1995 code such that the 2008 ordinance was a new land use law altogether. The Court of Appeals found that there was a diminution in the rights of Sedona Grand's property for those reasons.

The case here, though, is quite different. No new definitions have been created. It simply highlights for the benefit of the public, who may not have previously known, that there's a pre-existing provision within the Holbrook City Code that does apply to those that want to open Residential Care Service facilities. The public needs to refer to that Code section and ensure they follow the appropriate steps. It does not change any obligations, nor does it create any new "enforcement" mechanisms, like Sedona did. It helps Holbrook citizens cross-reference code provisions they may not have previously been aware of.

///

///

D. Judgment should be entered in favor of the City.

1. This case fails as a matter under the Private Property Act.

As Plaintiffs argue, there are three separate prongs to this cause of action. The first is whether Ordinance 23-02 is a "land use" law under the statute. The ordinance is not a land use law. It is a clarification of existing law.

The second requires Plaintiffs to show that their rights that existed were reduced by the enactment of a land use law. They fail this prong for two reasons. First, the use was not existing at the time of the ordinance. The motel now is the same as it was before the ordinance. Second, the ordinance did not change anything because the CUP they have to get now is the same CUP they had to get before. As shown above, Plaintiffs are in the same position now as they were before the ordinance. The third is necessarily a fact question that cannot be decided here, but it too fails for the reasons stated above.

2. At best, this case is a collateral appeal of the zoning board's decision to not grant a CUP.

Plaintiffs are essentially contending that the CUP should have been granted, but it was not. That would, theoretically, entitle them to state or federal tort causes of action, but Plaintiffs never filed a proper notice of claim for any of those, nor are they plead. Therefore, this case should be dismissed.

II. CONCLUSION

The Court should enter judgment in favor of the City pursuant to Rule 12(c).

///

///

///

///

///

DATED this 6th day of August, 2024.

DOYLE HERNANDEZ MILLAM

By /s/ Brandon D. Millam
William H. Doyle
Brandon D. Millam
11811 N. Tatum Blvd., Suite 2900
Phoenix, Arizona 85028
Attorneys for Defendant City of Holbrook

ELECTRONICALLY filed this 6th day of August, 2024 and COPY e-delivered to:

The Honorable Melinda K. Hardy
Navajo County Superior Court

COPY of the foregoing emailed/mailed on this 6th day of August, 2024 to:

Jonathan Riches, Esq.
Stacy Skankey, Esq.
SCHARF NORTON CENTER FOR CONSTITUTIONAL LITIGATION AT THE GOLDWATER INSTITUTE
500 E Coronado Road
Phoenix, AZ 85004
litigation@goldwaterinstitute.org
Attorneys for Plaintiffs

Grant H. Frazier, Esq.
Dustin D. Romney, Esq.
FRAZIER LAW, PLLC
7702 East Doubletree Ranch Road
Suite 300
Scottsdale, Arizona 85258
gfrazier@frazierlawpllc.com
dromney@frazierlawpllc.com
Co-Counsel for Plaintiffs

/s/ Grace Bisogno