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11 ATTORNEYS FOR DEFENDANTS CITY OF HOLBROOK

12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

13 **IN AND FOR THE COUNTY OF NAVAJO**

14 ANIL PATEL, an individual; and
15 HOLBROOK MOTEL INVESTMENTS,
16 INC., an Arizona corporation,

17 Plaintiffs,

18 vs.

19 CITY OF HOLBROOK, an Arizona
20 municipal corporation,

21 Defendant.

NO. S0900CV202400037

**DEFENDANT CITY OF HOLBROOK'S
RESPONSE IN OPPOSITION TO
PLAINTIFFS ANIL PATEL AND
HOLBROOK MOTEL INVESTMENTS,
INC.'S MOTION FOR JUDGMENT ON
THE PLEADINGS AND CROSS
MOTION FOR JUDGMENT ON THE
PLEADINGS**

(Assigned to the Honorable Melinda K.
Hardy)

22 Pursuant to Ariz. R. Civ. P. 12(c), Defendant City of Holbrook Responds in Opposition
23 to Plaintiffs Anil Patel and Holbrook Motel Investments, Inc.'s Motion for Judgment on the
24 Pleadings. The City also moves for judgment on the pleadings in their favor. This Response
25 is supported by the attached Memorandum of Points and Authorities and the Record before
26 this Court.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. RELEVANT STANDARD**

3 **A. Plaintiffs inject inappropriate allegations in their Motion that should either**
4 **be stricken or cause the Motion to be converted to a motion for summary**
5 **judgment, with discovery under Rule 56(d), as previously contemplated.**

6 Plaintiffs are entitled to judgment on the pleadings only if the complaint sets forth a
7 claim for relief and the answer fails to assert a legally sufficient defense. *Tanner v. Woloszyn*
8 *Invest', LLC*, No. 1 CA-CV 21-0239, ¶ 11 (Ariz. Ct. App. 2023) (Mem. Dec.) (citing *Walker*
9 *v. Estavillo*, 73 Ariz. 211, 215 (1952).¹ In so reviewing, the factual allegations in the complaint
10 and answer *both* must be accepted as true. *Id.* (citing *Neiderhiser v. Henry's Drive-In, Inc.*,
11 96 Ariz. 305, 308 (1964). Meaning, if an allegation is denied or the answer states the City is
12 without information sufficient, the corresponding paragraph in the complaint cannot be
13 referenced or relied on. The Court of Appeals reviews any legal conclusions *de novo*. *Id.*

14 Following the standard delineated above, the only allegations that can be accepted as
15 true for purposes of Plaintiffs' Motion are in ¶¶ 6, 7, 11-13, 17, 19, 22, 23, and 25 of the
16 complaint. Any additional facts to be considered require the court to convert this into a motion
17 for summary judgment, with both sides entitled to full briefing after proper discovery. Any
18 extraneous information must be excluded and any reliance will lead to reversal on appeal.
19 *Strat. Dev. & Const., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 65 ¶ 21 (App. 2010).

20 Plaintiffs' attempts to inject ¶¶ 24, 28, 30, and 39, amongst others, expressly violates
21 the standard applicable to this Motion and should result in either the denial of the Motion, the
22 sections to be stricken from the record, or to convert this to a motion for summary judgment.
23 As the Court should recall, it was Plaintiffs' idea to do it this way instead of agreeing to do
24 discovery under Rule 56(d) and as such they should be required to abide by the rules.

25 ///

26 ¹ Cited in compliance with Ariz. Sup Ct. R. 111(c). Free copy available [here](#).

1 **B. For the purposes of the City’s motion, the Court considers all allegations**
2 **in the complaint as true.**

3 The City’s Motion for Judgment of Pleadings admits all material allegations of the
4 complaint as true. *Food for Health Co. v. 3839 Joint Venture*, 129 Ariz. 103, 106 (App. 1981).

5 **II. RELEVANT FACTS**

6 **A. Plaintiffs can only rely on certain allegations in their affirmative motion.**

7 Assuming the allegations of the Answer to be true, as is required above, the following
8 facts, only, can be considered in Plaintiff’s Motion.

- 9 ➤ Defendant City of Holbrook is an Arizona municipal corporation. Compl. ¶ 6.
- 10 ➤ This lawsuit concerns real property. Compl. ¶ 7.
- 11 ➤ The Property is located just off Interstate 40 in Navajo County and is currently a
12 Howard Johnson Motel. Compl. at ¶ 11.
- 13 ➤ In December 2022, the Property was zoned C-2 –General Commercial Zone, which
14 at the time included the principal permitted uses of: hotel, inn or motel. Compl. at
15 ¶ 12.
- 16 ➤ Also, in December 2022, C-2 zoning allowed any principal use allowed in a C-1
17 Commercial Zone. Included in the principal use of a C-1 Commercial Zone was
18 Residential Care Services, which is defined as “in home care services for disabled
19 and senior citizens.” See City Ordinance 6-1-3. Compl. at ¶ 13. However, under
20 any circumstances a conditional use permit (CUP) was required. Ans. at ¶ 13 .
- 21 ➤ On February 23, 2023, the Holbrook City Council held an initial reading and
22 discussion of Ordinance 23-02, proposed by Mr. Young. Compl. at ¶ 17.
- 23 ➤ The Ordinance states,

24 **WHEREAS**, Holbrook City Code section 6-1-14 C-1 Neighborhood
25 Commercial Zone, lists residential care services as a Principal Permitted Use;
26 and

WHEREAS, Holbrook City Code section 6-1-15 C-2 General Commercial Zone
 B.28 allows for any principal use permitted in C-1 Commercial Zone; and

WHEREAS, Holbrook City Code section 6-2-1 General Regulations Y.
 Residential Care Service Criteria 3 is arguable inconsistent with Principal
 Permitted Uses by requiring a Conditional Use Permit; and

WHEREAS, it is the desire of the City Council to remove this contradiction
 and replace it with clear and concise language.

1 **NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND**
2 **COUNCIL OF THE CITY OF HOLBROOK:**

3 **Section 1:** Holbrook City Code is modified as follows:

4 By removing ‘Residential care services’ from 6-1-14 C-1 Neighborhood
5 Commercial Zone B Principal Permitted Uses.

6 By adding ‘Residential Care Services meeting the criteria in Article 6-2-1,
7 subsection Y, to 6-1-14 C-1 Neighborhood Commercial Zone C. Conditional
8 Uses.

9 By adding “Residential Care Services meeting the criteria in Article 6-2-1,
10 subsection Y’ to 6-1-15 C-2 General Commercial Zone C. Conditional Uses.
11 Compl. at ¶ 19; Ex. B.

- 12 ➤ Holbrook City Code § 6-2-1(Y), in turn, under “Residential Care Service Criteria,”
13 states,

14 [. . .]

- 15 3. *The use must be authorized* by the Planning and Zoning Commission by
16 *approval of a Conditional Use Permit*. The Commission must find that:
17 Residential Care Services are not concentrated in one area; the design
18 and appearance of the facility is compatible with the residential character
19 of the neighborhood; and the number of clients is appropriate for the
20 location, given the size of the property, the size of the building, the
21 number of staff members and the nature of the service provided.

22 Ex. B. [*Emphasis added*]

- 23 ➤ During the discussion of the Ordinance, a City Council member asked how the
24 Ordinance would affect the pending sale of the Property. Mayor Smith responded,
25 this [Ordinance] is exactly what this is in regards to.” Mayor Smith added “this
26 [Ordinance] keeps our commercial property again, where we have a little more
control of who’s coming in.” Compl. at ¶ 22.
- On March 9, 2023, the City Council unambiguously approved the Ordinance.
Compl. at ¶ 23.
- The Property’s buyer filed for an application for a conditional use permit as
required by the Ordinance, and it was denied. A subsequent appeal to the City
Council was also denied. Compl. at ¶ 25.
- Plaintiffs did not suffer the loss or reduction of an existing right and thus A.R.S. §
12-1134 does not apply. Aff. Def. at ¶ 9.
- Any claimed nonconforming right or grandfathered right or use had not vested as
of the date the ordinance passed. Aff. Def. at ¶ 10.

1 **III. LEGAL ARGUMENT**

2 **A. The Court should deny Plaintiffs' Motion in its entirety.**

3 1. Ordinance 23-02 clarified already existing law.

4 Plaintiffs argue that Ordinance 23-02 qualifies as a land use law because it regulates
5 the use or division of land. A.R.S. § 12-1136(3). But Ordinance 23-02 merely clarified the
6 already existing zoning code because City Code § 6-2-1(Y)(3) set forth requirements for
7 Residential Care Services for *all* zoning classifications. It does not qualify as a land use law
8 for purposes of A.R.S. § 12-1136(3).

9 2. Ordinance 23-02 did not affect Plaintiffs' property because a CUP was
10 always required under City Code § 6-2-1(Y)(3).

11 The primary legal contention raised in this lawsuit is that Ordinance 23-02, by
12 requiring a CUP for Residential Care Services in C-1 Neighborhood Commercial Zones, is a
13 land use law that affected Plaintiffs' right to use, divide, sell or possess private real property
14 because it requires Plaintiffs to obtain a CUP to use the property as a Residential Care Facility.
15 The argument is, at best, a complete misunderstanding of Holbrook City Code. City Code §
16 6-2-1(Y), quoted above, and available [here](#) at p. 6-46, *always* required a CUP. Section § 6-2-
17 1(Y)(1) expressly regulates Residential Care Services in homes and facilities *throughout the*
18 *City*. Section 6-2-1(Y)(1)(a) expressly states that "All Residential Care Services shall comply
19 with the requirements and restrictions set forth in this section, as determined in the regulations
20 for each zone." Section 6-2-1(Y)(3) expressly conditions the allowance of a property owner
21 to operate a Residential Care Service in *any* zoning classification on allowance by the
22 Planning and Zoning Commission by Approval of a CUP. That was true before Ordinance
23 23-02, and it is true now. A cause of action under A.R.S. § 12-1134 occurs only when.

24 [T]he existing rights to use, divide, sell or possess private real
25 property are reduced by the enactment or applicability of any land
26 use law enacted after the date is transferred to the owner and such
action reduces the fair market value of the property.

1 Plaintiffs' misapprehension of the Code is not a basis to impute liability to the City because
2 Plaintiffs *always needed a CUP for the use* they are complaining about here. At best, this case
3 is a collateral appeal of the City Councils' denial of that permit, and subsequent appeal.

- 4 3. Plaintiffs have not complied with A.R.S. § 12-1134(E), and have failed
5 to state an applicable claim for relief. The City is not required to
6 compensate Plaintiffs.

7 Plaintiffs contend that the City's enactment of Ordinance 23-02 reduced the fair market
8 value of the property. Those allegations are not ones that can be considered, unless this Motion
9 is to be converted back to a motion for summary judgment. Likewise, ¶ 39 violates the
10 standard that applies to this motion. Plaintiffs cannot rely on the veracity of their own
11 allegations, a motion for judgment on the pleadings assumes the truth of the *other party's*
12 allegations. This contention fails.

13 **B. The Court should enter judgment in favor of the City.**

- 14 1. Plaintiffs failed to state a claim for relief as a matter of law.

15 As explained above, a cause of action under A.R.S. § 12-1134 requires the enactment
16 of a land use law that reduces existing rights to use, divide, sell or possess private real
17 property. Plaintiffs' property was not affected by Ordinance 23-02. Section 6-2-1(Y) always
18 required a CUP for Residential Care Facilities, regardless of the zoning classification. Since
19 no existing rights to use Plaintiffs' property were affected by the Ordinance, Plaintiffs do not
20 have a case under A.R.S. § 12-1134.

21 **IV. CONCLUSION**

22 For the foregoing reasons, the Court should deny Plaintiffs' Motion for Judgment on
23 the Pleadings because Plaintiffs have failed to meet their burden as a matter of law. The Court
24 should strike extraneous and inappropriate allegations made within Plaintiffs' Motion.
25 Finally, the Court should grant judgment in favor of the City as a matter of law because
26

1 Plaintiffs are in the same position they were in before the enactment of the Ordinance
2 complained of.

3 DATED this 11th day of July, 2024.

4 DOYLE HERNANDEZ MILLAM

5
6 By /s/ Brandon D. Millam

7 William H. Doyle

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9
10 **ELECTRONICALLY** filed this 11th day of
July, 2024 and COPY e-delivered to:

11 The Honorable Melinda K. Hardy
12 Navajo County Superior Court

13 **COPY** of the foregoing emailed/mailed
on this 11th day of July, 2024 to:

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