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**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,

Case No. S0900CV202400037

**PLAINTIFFS' CONSOLIDATED
REPLY IN SUPPORT OF
MOTION FOR JUDGMENT ON
THE PLEADINGS
-AND-
RESPONSE IN OPPOSITION TO
DEFENDANT'S CROSS-MOTION
FOR JUDGMENT ON THE
PLEADINGS**

Pursuant to Ariz. R. Civ. P. 12(c), Plaintiffs Anil Patel and Holbrook Motel Investments submit this Consolidated Reply in Support of their Motion for Judgment on the Pleadings and Response in Opposition to Defendant's Cross Motion for Judgment on the Pleadings. This Reply and Response is supported by the following Memorandum of Points and Authorities, and incorporates the arguments set forth in Plaintiffs' Motion for Judgment on the Pleadings ("Motion") as if fully set forth herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The Arizona Private Property Rights Protection Act requires just compensation for the lost value when "any land use law" reduces "the existing rights to use, divide, sell or possess private real property." A.R.S. § 12-1134(A). To be entitled to relief, Plaintiffs must satisfy three factors: (1) the City enacted a "land use" law within the meaning of

1 Section 12-1136(3); (2) the land use law reduced Plaintiffs’ right to “use, divide, sell or
2 possess private real property;” thereby (3) reducing the value of Plaintiffs’ property.
3 A.R.S. § 12-1134(A).¹ The first two elements are *legal* questions. The last element,
4 regarding the *amount* of lost value, may be a *factual* question, and has not been raised in
5 the Motion.

6 The City enacted Ordinance 23-02 (“Ordinance”), which removed “Residential
7 Care Services” as a “Principal Permitted Use” within the C-1 Neighborhood Commercial
8 Zone. *See* Motion at Appendix B. The Ordinance changed Residential Care Services from
9 a “Principal Permitted Use” to a “Conditional Use meeting the criteria in Article 6-2-1,
10 subsection Y” within the C-1 Neighborhood Commercial Zone and C-2 General
11 Commercial Zone. The primary and consequential difference between a Principal
12 Permitted Use and a Conditional use is that the latter requires additional approval from the
13 City for the property use, while the former does not.

14 In simpler terms, whereas Plaintiffs could formerly have used their property to
15 provide Residential Care Services, the Ordinance effectively prohibited that use, absent
16 City permission. And by removing a property right that previously existed, the City’s
17 actions have impaired Plaintiffs’ ability to use, sell and possess their property.

18 **II. Legal Standard for Motion for Judgment on the Pleadings**

19 A motion for judgment on the pleadings “tests the sufficiency of the complaint,”
20 and in making that test, the Court accepts the “factual allegations of the complaint” as
21 true. *Mobile Cmty. Council for Progress, Inc. v. Brock*, 211 Ariz. 196, 198 ¶ 5 (App.
22 2005) (internal quotation and citation omitted). A motion for judgment on the pleadings
23 should be granted where the moving party is clearly entitled to judgment as a matter of
24 law. *Food for Health Co. v. 3839 Joint Venture*, 129 Ariz. 103, 106 (App. 1981).

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26
27 ¹ Plaintiffs must also satisfy a procedural requirement under Section 12-1134(E), which
28 they have done by submitting a written demand to the City for just compensation for the
diminution in value to Plaintiffs property, and receiving no relief thereby.

1 Arizona Rule of Civil Procedure 12(c) allows either party to move for judgment on
2 the pleadings. A plaintiff is entitled to judgment on the pleadings if the allegations of the
3 complaint “set[s] forth a claim for relief and the answer fails to assert a legally sufficient
4 defense.” *Pac. Fire Rating Bureau v. Ins. Co. of N. Am.*, 83 Ariz. 369, 376 (1958). A
5 defendant is entitled to judgment on the pleadings “if the complaint fails to state a claim
6 for relief.” *Brock*, 211 Ariz. 196 ¶ 5 (internal quotation and citation omitted).

7 Additionally, if any matters outside the pleadings are presented, “and not excluded
8 by the court, the motion must be treated as one for summary judgment under Rule 56.”
9 Ariz. R. Civ. P. 12(d). *See also KCI Rest. Mgmt. LLC v. Holm Wright Hyde & Hays PLC*,
10 236 Ariz. 485, 487 ¶ 7 (App. 2014).

11 In its Response in Opposition and Cross Motion for Judgment on the Pleadings
12 (“Response”), the City contends that “if an allegation is denied or the answer states that
13 the City is without information sufficient, the corresponding paragraph in the complaint
14 cannot be referenced or relied on.” Response at 2. That is incorrect. Instead, the Court
15 must accept the factual allegations in Plaintiffs’ Verified Complaint as true. What’s more,
16 the City’s Answer admits all allegations necessary to rule on this Motion. *See* Plaintiffs’
17 Verified Complaint for Just Compensation and Declaratory Relief (“Compl.”) ¶¶ 6–7, 11–
18 13, 17, 19, 22–23, 25; Answer ¶¶ 6–7, 11–13, 17, 19, 22–23, 25. Plaintiffs did not allege
19 any factual allegations outside the pleadings.²

20 LEGAL ARGUMENT

21 I. The Ordinance is a land use law.

22 A land use law is “any statute, rule, *ordinance*, resolution or law enacted by this
23 state or *a political subdivision of this state* that regulates the use or division of land or any
24 interest in land.” A.R.S. § 12-1136(3) (emphasis added).

25
26
27 ² It is not necessary to convert the Motion to a motion for summary judgment.
28 Nevertheless, should the Court choose to do so, Plaintiffs are entitled to judgment as a
matter of law as there is no genuine dispute as to any material fact. *See* Ariz. R. Civ. P.
56(a).

1 The City admits that Ordinance 23-02 is an “ordinance” passed by the City of
2 Holbrook, a political subdivision of Arizona. Compl. ¶¶ 6, 19, 23; Answer ¶¶ 6, 19, 23.

3 By its plain terms, the Ordinance regulates the use of land and interests in land.
4 A.R.S. § 12-1136(3). *See Sedona Grand, LLC v. City of Sedona*, 229 Ariz. 37, 40 ¶ 13
5 (App. 2012) (looking to the ordinance’s plain terms to determine it “regulates transactions
6 involving the possession of real property, and is therefore a land use law”). The Ordinance
7 states that it “remov[ed] ‘Residential Care services’ from 6-1-14 C-1 Neighborhood
8 Commercial Zone B Principal Permitted Uses.” Ordinance 23-02 § 1, Compl. Ex. B. The
9 City admitted the same. Compl. ¶ 19; Answer ¶ 19. Since this is a rule governing the use
10 of land, it qualifies as a regulation of land use.

11 The City, however, argues that Ordinance 23-02 “merely clarified the already
12 existing zoning code” and therefore that it is not a land use law. Response at 5. That is
13 untenable. Indeed, in *Sedona Grand*, 229 Ariz. at 40 ¶ 13, the City of Sedona made the
14 same argument, and the court rejected it. Sedona claimed that the ordinance “proscribe[d]
15 the same conduct” as a previous law, and therefore was not subject to the Property Rights
16 Protection Act. *Id.* The court looked to the plain language of the ordinance and concluded
17 that the City “did not merely reaffirm the existing ban,” but added an enforcement
18 mechanism and additional definitions to it. *Id.* at ¶ 14. This meant it was a land use law
19 within the meaning of Section 12-1136(3). *Id.* at ¶ 13.

20 The language of the Ordinance is plain. It accomplished three distinct actions, none
21 of which merely reaffirmed the existing zoning code. In fact, it said the “Holbrook City
22 Code is modified as follows:” (1) “By *removing* ‘Residential care services’ from” the
23 Principal Permitted Use in a C-1 Commercial Zone; (2) “By *adding* ‘Residential Care
24 Services’ meeting the criteria in Article 6-2-1, subsection Y” as a conditional use in a C-1
25 Commercial Zone; and (3) “By *adding* ‘Residential Care Services’ meeting the criteria in
26 Article 6-2-1, subsection Y” as a conditional use in a C-2 Commercial Zone. Motion at
27 Appendix B (emphases added). Words such as “modified,” “adding,” and “removing”
28

1 indicate that the Ordinance was not merely reiterating what was already on the books, but
2 was changing it.

3 Additionally, it is nonsensical for the City to contend that a conditional use permit
4 was always required as a matter of zoning law. A “principal permitted use” is a use
5 allowed *by right*, and does not require a conditional permit. *See* USE, Black’s Law
6 Dictionary (11th ed. 2019) (defining a conditional use as being “subject to special controls
7 and conditions”). PAS Quick Notes No. 41, American Planning Association (a conditional
8 use requires a set of conditions or requirements).³ By contrast, a conditional use is one
9 that is infrequently used and requires additional approvals. *See* A.R.S. § 9-462.01(C). The
10 City’s own code defines principal use and does not impose additional conditions or
11 requirements on principal uses—whereas conditional uses require additional requirements
12 and approval by the City. *See* Motion at Appendix C at 6-5. In other words, if a land use is
13 classified as a principal permitted use in the zoning code, it is not subject to *additional*
14 requirements and approval that attend to conditional uses.

15 The Ordinance is a land use law because it changes a use of land from being
16 permitted by right into requiring additional approval.

17 **II. The Ordinance reduces existing rights to use, possess, and sell the Property.**

18 Reclassifying a principal permitted use to a conditional use reduces Plaintiffs’
19 existing rights to use, divide, sell or possess their private property. As noted above, a
20 principal permitted use is permitted by right and is of a permanent duration, whereas a
21 conditional use may be temporary and subject to renewal requirements. *Redelsperger v.*
22 *City of Avondale*, 207 Ariz. 430, 436 ¶ 23 (App. 2004). “Principal permitted uses” are not
23 subject to further requirements or review by the City. Motion at Appendix C at 6-13. *See*
24 *also Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, 441 ¶ 10 (App. 2001).
25 But a “conditional use” is a more a restricted property right because it is subject to
26 additional requirements and discretionary review by the City. *Id.*

27
28 ³ <https://planning-org-uploaded-media.s3.amazonaws.com/document/PASQuickNotes41.pdf>.

1 Moreover, even after the City’s review and approval of a conditional use permit,
2 the use is temporary and requires subsequent renewal. *Redelsperger*, 207 Ariz. at 436
3 ¶ 23. In Holbrook City Code, conditional uses are “subject to special requirements
4 different from those usual requirements for the zone in which the conditional use may be
5 located.” Holbrook City Code § 6-1-3. For example, conditional use permits may require
6 written applications, fees, and notice to neighboring landowners for public hearing. *Id.* See
7 also Holbrook City Code § 6-2-1(I). If a conditional use permit is denied, the property
8 owner is barred from submitting the same or substantially similar use for the property for
9 one year. *Id.* And, even if a conditional use permit is approved by the City, the approval
10 only lasts six months and may be audited annually for revocation. *Id.* No such
11 requirements or temporary duration for use apply to principal permitted uses.

12 The City argues that the conditional use permit was always required for the
13 principal permitted use of Residential Care Services, because Holbrook City Code § 6-2-
14 1(Y) (“Subsection Y”) applies to all Residential Care Services. Response at 5. But this is
15 contradicted by the plain language of the City Code. Under Section 6-1-14(B)(7), the C-1
16 Commercial Zone is the *only* zone where Residential Care Service is classified as a
17 principal permitted use. In all other zones, Residential Care Service is a conditional use.
18 See Holbrook City Code §§ 6-1-5(C)(8) & (13), 6-1-9(C)(1), 6-1-11(C)(8).

19 What’s more, in these other zones, conditional uses include specific language that
20 references, “Residential Care Services *meeting the criteria in Article 6-2-1, subsection Y.*”
21 See Holbrook City Code §§ 6-1-5(C)(8) & (13), 6-1-11(C)(8) (emphasis added). In other
22 words, prior to the enactment of the Ordinance, the conditional use requirements of
23 Article 6-2-1, subsection Y, did *not* apply to property in the C-1 Commercial Zone. The
24 conditional use requirement *only* applied to *other* zones.

25 This reading of the City Code is further bolstered by subsection Y, which states,
26 “All Residential Care Service uses shall comply with the requirements and restrictions set
27 forth in this section, *as determined in the regulations for each zone.*” Holbrook City Code
28 § 6-2-1(Y)(1)(a). In other words, each zone has different regulations, and property in the

1 C-1 Commercial Zone, including Plaintiffs' property, *did not* require a conditional use
2 permit under subsection Y. Instead, Subsection Y only applied to the other zones—the
3 ones that already required a conditional use permit.

4 Thus the City is wrong that it always required a conditional use permit for property
5 located in a C-1 Commercial Zone. It did not. That, in fact, is just why the City enacted
6 the Ordinance in the first place. If the City's contention that a conditional use permit was
7 always required for property located in C-1, of course, no amendment to the Ordinance
8 would have been necessary.

9 City Council members themselves acknowledged during the hearing on the
10 Ordinance, that this was the case. At that hearing, as the City admits, Compl. ¶ 22;
11 Answer ¶ 22, a City Council member asked if the Ordinance would affect the pending sale
12 of Plaintiffs' Property, and the City Mayor answered, "this [Ordinance] is exactly what
13 this is in regards to." Thus, the City was aware of the fact that the Ordinance would limit
14 Plaintiffs' right to use their property, and in fact passed the Ordinance for that very
15 reason.

16 The Ordinance removed "Residential Care Services" as a principal permitted use
17 for property located in C-1, and changed that use to a conditional use. It has, therefore,
18 reduced the Plaintiffs' existing right to use, possess, and sell the Property as a Residential
19 Care Service by requiring Plaintiffs to seek a conditional use permit that was not
20 necessary prior to the enactment of the Ordinance.

21 **III. Plaintiffs complied with A.R.S. § 12-1134(E), and are therefore entitled to just**
22 **compensation for the City's enactment of the Ordinance.**

23 Under Section 12-1134(A), where a city enacts a land use law that reduces the fair
24 market value of the property, the owner is entitled to compensation. To receive
25 compensation, the property owner must comply with Section 12-1134(E) by making a
26 written demand for a specific amount to the city that enacted the land use law.

27 Plaintiffs made their written demand with a specific amount, in compliance with
28 Section 12-1134(E). Compl. ¶ 39. Exhibit A to the Complaint shows the letter sent with

1 the tracking information. *Id.* The City alleged it is without sufficient knowledge or
2 information to admit or deny the allegation. Answer ¶ 39. But under the “mailbox rule,”
3 courts presume a letter properly sent was delivered to the addressee. In fact, in *Lee v.*
4 *State*, 218 Ariz. 235, 239 ¶ 20 (2008), the Supreme Court expressly held that under this
5 rule, “proof of mailing is evidence that the [government] received [a plaintiff’s] notice of
6 claim.” Thus, absent some evidence to overcome the presumption of delivery, the City has
7 failed to raise a legally sufficient defense. *Pac. Fire Rating Bureau*, 83 Ariz. at 376. Nor
8 can they. Plaintiffs have attached to their Complaint the Compensation Demand letter
9 with tracking information, and that, combined with the Court’s obligation to accept
10 Plaintiffs’ allegations as true, *Brock*, 211 Ariz. at 198 ¶ 5, means Plaintiffs are entitled to a
11 declaration that they have complied with Section 12-1134(E)’s demand requirement.

12 CONCLUSION

13 As a matter of law, the Ordinance is a land use law that reduces Plaintiffs’ existing
14 property rights. As a result, they have satisfied the first two criteria for a claim for just
15 compensation under the Arizona Private Property Rights Protection Act. Also, Plaintiffs
16 have satisfied the demand requirement of Section 12-1134(E).

17 The Court should grant partial judgment on the pleadings in favor of Plaintiffs on
18 Count Two and declare that (1) the Ordinance is a land use law; that (2) the Ordinance
19 affected Plaintiffs’ rights to use, sell, and possess private real property; and (3) Plaintiffs
20 are therefore entitled to just compensation.

21 **RESPECTFULLY SUBMITTED** this 22nd day of July 2024.

22
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CERTIFICATE OF SERVICE

ORIGINAL E-FILED this 22nd day of July 2024, with a copy delivered via the ECF system to:

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