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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' MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

Pursuant to Ariz. R. Civ. P. 56, Plaintiffs Anil Patel and Holbrook Motel Investments, Inc. ("Plaintiffs") move for partial summary judgment on Count Two of Plaintiffs' Verified Complaint for Just Compensation and Declaratory Relief. Pursuant to A.R.S. § 12-1831–1846, Plaintiffs seek declaratory judgment that (1) Ordinance 23-02 ("Ordinance") is a "land use" law under the Arizona Private Property Rights Protection Act, A.R.S. § 12-1134; that (2) the Ordinance affected Plaintiffs' rights to use, sell, and possess private real property; and (3) Plaintiffs complied with the requirements of § 12-1134(E), and thus, the City of Holbrook ("City") is required to compensate Plaintiffs for the diminution in value the Property has suffered as a result of the Ordinance.

There are no genuine disputes as to any material fact, and Plaintiffs are entitled to judgment as a matter of law. If judgment is entered for Plaintiffs on Count 2, the only

1 remaining issue before the Court will be the *amount* of the property value reduction
2 caused by the City’s land use law.

3 This Motion is supported by the accompanying Plaintiffs’ Separate Statement of
4 Facts (“PSOF”) and the Memorandum of Points and Authorities set forth below.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **INTRODUCTION**

7 Under the Arizona Private Property Rights Protection Act, when the state or a
8 political subdivision enacts a land use law that reduces existing rights to “use, divide, sell
9 or possess private property,” and that law “reduces the fair market value of the property,”
10 the owner is entitled to just compensation. A.R.S. § 12-1134(A). In this case, the City
11 enacted a land use law that reduced Plaintiffs’ existing rights to use, divide, sell, or
12 possess private real property, and did so without providing Plaintiffs just compensation.

13 On March 9, 2023, the City enacted Ordinance 23-02, which removed a previously
14 approved use for Residential Care Service in a C-1 Commercial Zone. According to
15 statements made by City leaders, this measure was an effort to selectively exclude people
16 from entering Holbrook and doing business there.

17 The City’s actions significantly diminished the value of Plaintiffs’ property and
18 impaired Plaintiffs’ ability to sell their property to a potential buyer at market rates,
19 including to a buyer with whom Plaintiffs were already in escrow. Plaintiffs submitted a
20 demand for compensation as required by Section 12-1134(E), but the City has provided no
21 compensation to Plaintiffs and has not issued a binding “waiver of enforcement.” *Id.*

22 **FACTUAL BACKGROUND**

23 Plaintiff Anil Patel, by and through Holbrook Motel Investments, Inc. (“HMI”),
24 owns real property located at 2608 Navajo Boulevard Holbrook, Navajo County, Arizona
25 (the “Property”). PSOF ¶ 1. Plaintiff HMI is owned and operated by Plaintiff Patel and
26 holds title to the Property. PSOF ¶ 2. The Property is located just off Interstate 40 in
27 Navajo County and is currently a Howard Johnson motel. PSOF ¶ 3. Plaintiff HMI has
28 continuously owned the Property since June 1992. PSOF ¶ 4.

1 The City is an Arizona municipal corporation organized under the laws of Arizona,
2 located in Navajo County. PSOF ¶ 5.

3 In December 2022, the Property was zoned in a C-2 General Commercial Zone,
4 which allowed the principal permitted uses of a hotel, inn, or motel. PSOF ¶ 6. The C-2
5 Commercial Zone also allowed for any principal permitted uses that were allowed in a C-
6 1 Commercial Zone. PSOF ¶ 7. One of the principal uses of a C-1 Commercial Zone was
7 Residential Care Service, which is defined as “in-home care services for disabled and
8 senior citizens.” *Id.*

9 In December 2022, Plaintiffs accepted an offer to sell the Property to a buyer who
10 planned to use it as a Residential Care Service. PSOF ¶ 8. While the sale was pending,
11 City Planning and Zoning Administrator Michael Young confirmed that a conditional
12 permit would not be required for the buyer’s intended purpose of Residential Care
13 Service. PSOF ¶ 12. Relying on Mr. Young’s statements regarding the zoning
14 requirements, the Plaintiffs and buyer proceeded with the sale, and set a closing date for
15 the end of February 2023. PSOF ¶ 13.

16 Then, at a Holbrook City Council meeting on February 23, 2023, Mr. Young
17 proposed the initial reading and discussion of Ordinance 23-02 (“Ordinance”). PSOF ¶ 14.
18 The Ordinance removed Residential Care Service from being a principal permitted use in
19 a C-1 Commercial Zone. PSOF ¶ 15. Instead of a principal permitted use, the Ordinance
20 made Residential Care Service a *conditional* use in C-1 and C-2 Commercial Zones. *Id.*

21 The City’s Mayor, Kathleen Smith, was aware that this Ordinance would affect the
22 pending sale of Plaintiffs’ Property and would limit use of the Property. According to
23 Mayor Smith, one purpose of the Ordinance was to give the City more “control” to keep
24 newcomers out of Holbrook. PSOF ¶ 16. During the discussion of the Ordinance, one city
25 council member specifically asked how the Ordinance would affect the pending sale of the
26 Property. *Id.* Mayor Smith replied, that the Property “is exactly what this [Ordinance] is in
27 regards to. ... [T]his [Ordinance] keeps our commercial property again, where we have a
28

1 little more control of who's coming in." *Id.* The Ordinance was unanimously approved by
2 the Holbrook City Council on March 9, 2023. PSOF ¶ 17.

3 By removing the principal permitted use of Residential Care Service and making
4 this a conditional use instead, the Ordinance has the effect that property owners, such as
5 Mr. Patel, must obtain a conditional use permit in order to use their property to provide
6 Residential Care Service. PSOF ¶ 19. Consequently, the Property's buyer, a company
7 called ChangePoint, applied for a conditional use permit—which was denied. PSOF ¶ 20.
8 An appeal to the City Council of that denial was also denied. PSOF ¶ 21.

9 Prior to the enactment of the Ordinance, Mr. Patel received four other offers to
10 purchase the Property. PSOF ¶ 9. The offers made by those prospective buyers were
11 substantially less than the offer made by ChangePoint. PSOF ¶ 10. ChangePoint's offer
12 was based on the value of the Property for uses that were then permitted in a C-1
13 Commercial Zone. PSOF ¶ 11.

14 The Ordinance unquestionably restricted a use of the Property. PSOF ¶ 18. Because
15 the Ordinance restricted a property use, ChangePoint backed out of the sale of the
16 Property. PSOF ¶ 22. Now, the Property does not have any other potential buyers. PSOF ¶
17 24. As a result of the Ordinance, the Property's fair market value was reduced, and
18 Plaintiff was unable to complete the sale of the Property. PSOF ¶ 23, 25.

19 On October 3, 2023, Plaintiffs submitted a written demand to the City for just
20 compensation pursuant to Section 12-1134(E). PSOF ¶ 26. Plaintiffs' property value has
21 been reduced by at least \$675,000.00. *Id.* The City did not offer any compensation for its
22 enactment of the Ordinance, and did not offer to waive applicability of the Ordinance.
23 PSOF ¶ 27. Indeed, the City did not respond to the written compensation demand at all.
24 PSOF ¶ 28. Because the City did not respond to Plaintiffs' written demand for just
25 compensation, Plaintiffs have a cause of action under Section 12-1134(E).¹

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28 ¹ Based on these undisputed facts, Plaintiffs also move for a declaration that they have
complied with the requirements for just compensation under A.R.S. § 12-1134(E).

LEGAL STANDARD

Summary judgment is appropriate “if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Ariz. R. Civ. P. 56(a). Summary judgment may be entered “if parties agree as to operative facts and only dispute application of the law to these facts.” *Nat’l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 118 ¶ 24 n.8 (App. 2008). Summary judgment is appropriate here because there are no material factual disputes: the City enacted a land use law that restricted the use, possession, and sale of Plaintiffs’ Property, and that land use law reduced the value of Plaintiffs’ Property.

ARGUMENT

In 2006, Arizona voters passed the Private Property Rights Protection Act. A.R.S. §§ 12–1131–1138. The Act requires, among other things, just compensation for diminution in value when “any land use law” enacted after an owner received an interest in property reduces “the existing rights to use, divide, sell or possess private real property.” A.R.S. § 12–1134(A). The Ordinance is a land use law that was enacted after Mr. Patel had an existing right to use, possess, and sell his Property as a Residential Care Service. He is thus entitled to just compensation for the lost value of his Property under Section 12-1134(E).

I. The Ordinance is a land use law.

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

Ordinance 23-02 is an “ordinance” passed by the City of Holbrook, a political subdivision of Arizona. PSOF ¶¶ 5, 17.

The Ordinance “remov[ed] ‘Residential Care services’ from 6-1-14 C-1 Neighborhood Commercial Zone B Principal Permitted Uses.” Ordinance 23-02 § 1. Thus, by its plain terms, the Ordinance “regulates the use ... of land [and] any interest in land.” A.R.S. § 12-1136(3); *see also Sedona Grand, LLC v. City of Sedona*, 229 Ariz. 37,

1 40 ¶ 13 (App. 2012) (“By its plain terms, the Ordinance regulates transactions involving
2 the possession of real property, and is therefore a land use law within the meaning of
3 A.R.S. § 12–1136(3).”).

4 The Ordinance is a land use law.

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

6 The Private Property Protection Act *requires* just compensation for any land use
7 law that reduces “the existing rights to use, divide, sell or possess private real property.”
8 A.R.S. § 12–1134(A).

9 Prior to the enactment of the Ordinance, Plaintiffs had a right to use the Property
10 for “Residential Care services” as a “Principal Permitted Use[.]” PSOF ¶ 7. Under City
11 Code, a “principal use” means “the main use of land or structures.” Holbrook City Code §
12 6-1-3. Critically, a permitted use is a use that is permitted in a zoning district that is *not*
13 subject to further review by the City. *Sw. Soil Remediation, Inc. v. City of Tucson*, 201
14 Ariz. 438, 441 ¶ 10 (App. 2001) (distinguishing between conditional uses, which are
15 subject to approval by the City, from permitted uses, which are not). Conditional uses, on
16 the other hand, are subject to special review by the City. *Id.*

17 The Ordinance removed (i.e., reduced) the right to use the Property as a
18 “Residential Care service,” and changed that right to one that is conditional, or subject to
19 City approval. As a result, the Ordinance “contain[ed] new restrictions on land use,”
20 *Sedona Grand, LLC*, 229 Ariz. at 41 ¶ 17, that did not previously exist, thus reducing
21 Plaintiffs’ right to use, sell, and possess the Property. As a matter of law, the Ordinance is,
22 therefore, a land use law that restricts or reduces a property use as defined by Section 12-
23 1134(A)).

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

26 Where a city’s enactment of a land use law reduces the fair market value of the
27 property, the owner is entitled to just compensation. A.R.S. § 12-1134(A). To receive just
28 compensation, the property owner must first make a written demand for a specific amount

1 to the city that enacted the land use law. A.R.S. § 12-1134(E). Plaintiffs did so, and
2 Defendant did not respond. PSOF ¶¶ 26, 28. Plaintiffs have complied with the
3 requirements of state law and can pursue this cause of action for the diminution in value to
4 their Property as a result of the Ordinance.

5 What's more, as a result of the Ordinance, the Property's buyer must obtain a
6 conditional use permit to use the Property as he had intended and as he originally had a
7 right to do. PSOF ¶ 19. Unsurprisingly, based on Mayor Smith's comments that the
8 Ordinance was intended to "control ... who's coming in," the City denied the buyer's
9 conditional use permit. PSOF ¶¶ 20–21.

10 As a consequence of the buyer's inability to use the Property as a Residential Care
11 Service, the buyer backed out of the sale and left Plaintiffs without a buyer for the
12 Property. PSOF ¶¶ 22–24. The Property's value has been reduced by the enactment of the
13 Ordinance.²

14 CONCLUSION

15 The Ordinance is a land use law that reduces Plaintiffs' existing property rights.
16 The Arizona Private Property Rights Protection Act requires cities to compensate owners
17 when they enact ordinances restricting property owners' right to use their property.

18 Based on the foregoing, this Court should grant partial summary judgment to
19 Plaintiffs on Count Two and declare that (1) the Ordinance is a land use law; that (2) the
20 Ordinance affected Plaintiffs' rights to use, sell, and possess private real property; and (3)
21 Plaintiffs are therefore entitled to just compensation.

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28 ² The only factual question to be resolved by the Court is the *amount* of that lost value.
A.R.S. § 12-1134(E). Plaintiffs allege that the Property value has been reduced by *at least*
\$675,000.00. PSOF ¶ 26 (emphasis added). Defendant denies this allegation. PSOF ¶ 29.

1 **RESPECTFULLY SUBMITTED** this 30th day of April 2024.

2
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4 /s/ Stacy Skankey

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19
20 **CERTIFICATE OF SERVICE**

21 ORIGINAL E-FILED this 30th day of April 2024, with a copy delivered via the ECF system to:

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