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9 *Attorneys for Plaintiffs*

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF NAVAJO**

12 ANIL PATEL, an individual; and
13 HOLBROOK MOTEL INVESTMENTS,
14 INC., an Arizona corporation,

15 Plaintiffs,

16 vs.

17 CITY OF HOLBROOK, an Arizona
18 municipal corporation,

19 Defendant,

Case No.

**VERIFIED COMPLAINT FOR
JUST COMPENSATION AND
DECLARATORY RELIEF**

20 **INTRODUCTION**

21 1. This lawsuit seeks just compensation for the City of Holbrook's unlawful
22 violation of private property rights. The City enacted a land use law which reduces the
23 Plaintiffs' existing rights to use, divide, sell, or possess private real property, and did so
24 without just compensation in violation of the Arizona Private Property Rights Protection
25 Act (A.R.S. § 12-1131 *et seq.*).

26 2. In an effort to selectively exclude newcomers from entering Holbrook, the
27 City enacted Ordinance 23-02 to eliminate that anticipated use of property within the zone
28 affected by Ordinance 23-02. The City's actions diminished Plaintiffs' property value and
impaired their ability to sell to a potential buyer at market rates. The City has not
compensated Plaintiffs for their actions in reducing the fair market value of the property,
and has no apparent plans to do so.

1 3. Under the Arizona Private Property Rights Protection Act, when a city
2 enacts a land use law that reduces existing rights to use property, and thereby reduces the
3 fair market value of the property, the owner is entitled to just compensation. The City,
4 however, has ignored Plaintiffs’ demand for just compensation.

5 **PARTIES, JURISDICTION, AND VENUE**

6 4. Plaintiff Anil Patel, by and through Holbrook Motel Investments, Inc., owns
7 certain real property located at 2608 Navajo Boulevard, Holbrook, Navajo County,
8 Arizona (the “Property”).

9 5. Plaintiff Holbrook Motel Investments, Inc., is an Arizona corporation,
10 owned and operated by Plaintiff Patel, which holds title to the Property.

11 6. Defendant City of Holbrook (the “City”) is an Arizona municipal
12 corporation organized under the laws of the State of Arizona, located in Navajo County.

13 7. This lawsuit concerns real property located in Navajo County, Arizona.

14 8. On October 3, 2023, Plaintiffs Patel and Holbrook submitted a written
15 demand to the City for just compensation (the “Compensation Demand”) pursuant to
16 A.R.S. §12-1134(E), which is attached hereto and incorporated herein, as Exhibit A. The
17 City has not responded to this demand.

18 9. This Court has jurisdiction pursuant to the Arizona Constitution art. VI, § 14
19 and A.R.S. §§ 12-123, 12-1134(E), and 12-1831.

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

21 **FACTUAL BACKGROUND**

22 11. The Property is located just off Interstate 40 in Navajo County and is
23 currently a Howard Johnson motel.

24 12. In December 2022, the Property was zoned C-2 – General Commercial
25 Zone, which at that time included the principal permitted uses of: hotel, inn or motel.

26 13. Also, in December 2022, C-2 zoning allowed any principal use allowed in a
27 C-1 Commercial Zone. Included in the principal use of a C-1 Commercial Zone was
28

1 Residential Care Service, which is defined as “in home care services for disabled and
2 senior citizens.” *See* City Ordinance 6-1-3.

3 14. In December 2022, the Plaintiffs accepted an offer to sell the Property to a
4 buyer who planned to use the Property as a Residential Care Service.

5 15. During the due diligence phase for the sale of the Property, it was confirmed
6 by the City Planning and Zoning Administrator Michael Young that a conditional use
7 permit would not be required for the buyer’s intended purpose of a Residential Care
8 Service.

9 16. In reliance on Mr. Young’s statement regarding the zoning requirements for
10 the Property, Plaintiffs and their buyer proceeded with the sale closing at the end of
11 February 2023.

12 17. On February 23, 2023, the Holbrook City Council (the “City Council”) held
13 an initial reading and discussion of Ordinance 23-02 (the “Ordinance”), proposed by Mr.
14 Young. The Ordinance is attached hereto and incorporated herein, as Exhibit B.

15 18. The Ordinance modified the relevant provisions of C-1 and C-2 Commercial
16 Zones to remove Residential Care Services from the Principal Permitted Uses. The
17 Ordinance makes Residential Care Services a conditional use with a requirement for a
18 conditional use permit, instead.

19 19. The Ordinance states:

20 “**Section 1:** Holbrook City Code is modified as follows:

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

23 By adding ‘Residential Care Services meeting the criteria in Article
24 6-2-1, subsection Y’ to 6-1-14 C-1 Neighborhood Commercial Zone C.
25 Conditional Uses.

26 By adding ‘Residential Care Services meeting the criteria in Article 6-2-1,
27 subsection Y’ to 6-1-15 C-2 General Commercial Zone C. Conditional Uses.”
28

1 20. Plaintiffs are informed and believe and, on that basis, allege that Ordinance
2 23-02 was proposed to reduce Plaintiffs’ and other property owner’s rights to use, sell,
3 and possess their property.

4 21. Holbrook Mayor Kathleen Smith knew that the Ordinance was intended to
5 reduce Plaintiffs’ right to use, sell, and possess Plaintiffs’ property.

6 22. During the discussion of the Ordinance, a City Council member asked how
7 the Ordinance would affect the pending sale of the Property. Mayor Smith responded,
8 “this [Ordinance] is exactly what this is in regards to.” Mayor Smith added that “this
9 [Ordinance] keeps our commercial property again, where we have a little more control of
10 who’s coming in.”¹

11 23. On March 9, 2023, the City Council unanimously approved the Ordinance.

12 24. With the passage of the Ordinance, the Property’s use is now restricted and
13 any owner seeking to operate a Residential Care Use on the property must now obtain a
14 conditional use permit.

15 25. The Property’s buyer filed for an application for a conditional use permit as
16 required by the Ordinance, and it was denied. A subsequent appeal to the City Council
17 was also denied.

18 26. Due to the restricted property use because of the Ordinance, the buyer
19 backed out of the sale of the Property.

20 27. Due to the restricted property use because of the Ordinance, the Property’s
21 value has been diminished and the fair market value reduced.

22 28. Plaintiffs are left with a restricted use on their Property, without a potential
23 buyer for the Property, and a diminished and reduced fair market value of the Property.

24 29. The City did not offer any compensation for its enactment of a land use law
25 that restricted the property use and reduced the fair market value of the Property.

26

27 ¹ Holbrook, AZ, City Council Meeting 2.23.2023, Facebook (Feb. 27, 2023),
28 https://www.facebook.com/Holbrookaz/videos/1359283654915277/?extid=CL-UNK-UNK-UNK-IOS_GK0T-GK1C&mibextid=2Rb1fB&ref=sharing.

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30. As a result of the land use restriction from the Ordinance, the value of Plaintiffs' property has been reduced by at least \$675,000.00.

31. The City has not responded to Plaintiffs' written Compensation Demand, which was submitted more than 90 days ago.

**Count 1:
Taking Without Just Compensation, Diminution in Value
(A.R.S. § 12-1134)**

32. Plaintiffs re-allege and incorporate the preceding paragraphs.

33. The Ordinance is a land use law that reduces the right to use, sell, or possess private real property.

34. Plaintiffs previously had the right to use, sell, or possess their private real property as a Residential Care Service.

35. The Ordinance removed this previously existing property right and substituted a requirement for special zoning approval.

36. The Ordinance diminished the value of the Property and reduced the fair market value of the Property.

37. A.R.S. § 12-1134 requires the City to justly compensate Plaintiffs for the diminution of value caused by the Ordinance for land use restriction on the Property.

38. No applicable exception to A.R.S. § 12-1134 applies.

39. On October 3, 2023, Plaintiffs sent the City a Compensation Demand for a specific dollar amount of compensation, in compliance with A.R.S. § 12-1134(E), to which the City has not responded. Exhibit A.

40. More than 90 days have passed since Plaintiffs made their Compensation Demand, and it has therefore been deemed denied by operation of law.

41. The City's actions therefore violate A.R.S. § 12-1134, and Plaintiffs are entitled to just compensation.

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**Count 2:
Declaratory Relief
(A.R.S. § 12-1831 *et seq.*)**

42. Plaintiffs re-allege and incorporate the preceding paragraphs.

43. This Court has the power to determine the rights, legal relations, and status of the parties with respect to statutes and municipal ordinances and may determine any question of construction or validity with respect to the same.

44. There exists a live controversy between the parties with respect to just compensation of the diminution in value of the Plaintiffs' Property.

45. Plaintiffs are entitled to, *inter alia*, a declaration that they are entitled to just compensation under A.R.S. § 12-334.

Request for Relief

WHEREFORE, Plaintiffs request judgment against the City and an order for relief as follows:

- A. That this Court enter an Order finding and declaring that Ordinance 23-02 affected Plaintiffs' rights to use, sell, and possess private real property and that Ordinance 23-02 reduced the fair market value of Plaintiffs' property under the Arizona Private Property Rights Protection Act, A.R.S. § 12-1134;
- B. That this Court award Plaintiffs just compensation in an amount to be determined at trial for the diminution of the fair market value of the Property pursuant to the Arizona Private Property Rights Protection Act, A.R.S. § 12-1134;
- C. Award Plaintiffs their costs and attorney fees pursuant to A.R.S. § 12-1135(D); and
- D. Award such other and further legal or equitable relief as may be just and proper.

RESPECTFULLY SUBMITTED this 1st day of February 2024.

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GOLDWATER INSTITUTE

/s/ Stacy Skankey

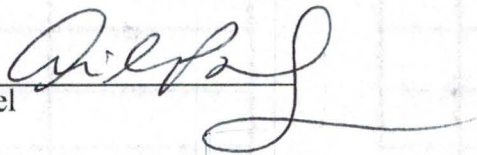
Jonathan Riches (025712)
Stacy Skankey (035589)
Scharf-Norton Center for
Constitutional Litigation at the
GOLDWATER INSTITUTE
500 E. Coronado Rd.
Phoenix, Arizona 85004

Attorneys for Plaintiff

VERIFICATION

I, Anil Patel, individually and as President of Holbrook Hotel Investments, Inc., being duly sworn upon my oath, state that I am familiar with the allegations in the foregoing complaint and verify that the allegations contained therein are true and correct, except for those counts alleged upon information and belief, which I reasonably believe to be true.

Dated this 31 day of January 2024,

By: 
Anil Patel

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October 3, 2023

Via email and certified mail

Mayor Kathleen Smith
City Council Members
City of Holbrook
465 N 1st Av
P.O. Box 970
Holbrook, AZ 86025
mayorkathleensmith@gmail.com

Subj: Holbrook City Ordinance 23-02

Dear Mayor Smith and City Council Members:

Anil Patel, by and through Holbrook Motel Investments, Inc., is the property owner of the Holbrook property, presently a Howard Johnson motel, located at 2608 Navajo Boulevard (the “Property”). The Goldwater Institute represents Mr. Patel to assert his rights against the City of Holbrook (“City”) for its land use regulation that has diminished Mr. Patel’s property value.

In December 2022, the Property was zoned as a C-2 – General Commercial Zone. The C-2 Zone has principal permitted uses of a hotel, inn or motel, and allows any principal use allowed in a C-1 commercial zone, notably Residential Care Services.

On February 23, 2023, the Holbrook City Council held its initial reading and discussion of Ordinance 23-02. Ordinance 23-02 modifies the relevant provisions in C-1 and C-2 Commercial Zones to remove Residential Care Services from the Principal Permitted Uses and makes Residential Care Services a Conditional Use with a requirement for a conditional use permit. At the second reading on March 9, 2023, Ordinance 23-02 passed unanimously.

Ordinance 23-02 has removed a previously existing right for Mr. Patel to use his property, which has resulted in a diminished value to the Property.

Arizona’s Private Property Rights Protection Act provides as follows:

If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property

Mayor Kathleen Smith

October 3, 2023

Page 2 of 2

the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law.

A.R.S. § 12-1134(A). A land use law is any ordinance enacted by any political subdivision of this state that “regulates the use or division of land or any interest in land.” A.R.S. § 12-1136(3).

Thus, under A.R.S. § 12-1134, the government must compensate property owners for land use restrictions that diminishes the value of their property.

Prior to the City’s adoption of Ordinance 23-02, the Property with the then-existing permissible uses for which the property was valued for at least \$2.8 million dollars. As a result of the land use restrictions in Ordinance 23-02, we estimate an average diminution in value to the Property to be \$675,000.

Based on the foregoing, and pursuant to A.R.S. § 12-1134, please accept this letter as a written demand for just compensation in an amount of \$675,000.

As you know, if the City does not provide just compensation to Holbrook Motel Investments Inc., or “amend[], repeal[], or issue[] to the landowner a binding waiver of enforcement of the land use law on the owner’s specific parcel,” within 90 days, the owner has a cause of action to enforce the protections of A.R.S. § 12-1134, including for an award of as attorney fees and costs for a successful action. A.R.S. § 12-1135.

I look forward to working with you to quickly resolve this matter. Should you have any questions in the meantime, please do not hesitate to contact me at (602) 462-5000 or sskankey@goldwaterinstitute.org.

Sincerely,



Stacy Skankey

Staff Attorney

Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute

cc (via email only):

Councilmember Robert Black, robertblack01956@gmail.com

Councilmember Tim Dixon, Timforholbrookaz@gmail.com

Councilmember Mike Nilsson, Mnilsson1957@gmail.com

Councilmember Arcenia Pacheco, pacheco.holbrookcitycouncil@gmail.com

Councilmember Karina Pack, packrunner@gmail.com

Councilmember Teri Tafoya, ttafoya622@gmail.com

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mayor Kathleen Smith
 City of Holbrook
 465 N. 1st Ave
 PO Box 970
 Holbrook, AZ 86025



9590 9402 4757 8344 1894 26

2. Article Number (Transfer from service label)

7019 0140 0000 6342 9538

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
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- Registered Mail™
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- Signature Confirmation Restricted Delivery

ORDINANCE 23-02

AN ORDINANCE OF THE CITY OF HOLBROOK, ARIZONA, REGARDING RESIDENTIAL CARE SERVICES IN THE COMMERCIAL ZONES

WHEREAS, Holbrook City Code section 6-1-14 C-1 Neighborhood Commercial Zone, lists Residential care services as a Principal Permitted Use; 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 arguably 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.

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

SECTION 1: Holbrook City Code is modified as follows:

By removing “Residential care services” from 6-1-14 C-1 Neighborhood Commercial Zone B. Principle Permitted Uses.

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

By adding “Residential Care Services meeting the criteria in Article 6-2-1, subsection Y” to 6-1-15 C-2 General Commercial Zone C. Conditional Uses.

SECTION 2: The City Manager is authorized to carry out the terms of this Ordinance.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HOLBROOK, ARIZONA, this March 9, 2023.

APPROVED/EXECUTED:

APPROVED AS TO FORM:

Kathleen Smith, Mayor

Bradley A. Burns, City Attorney

ATTEST:

Lisa Hunt, City Clerk