

1 William M. Fischbach (SBN 019769)
2 Gianni Pattas (SBN 030999)
3 David M. Barlow (SBN 035812)

4  **TIFFANY & BOSCO**
5 SEVENTH FLOOR CAMELBACK ESPLANADE II
6 2525 EAST CAMELBACK ROAD
7 PHOENIX, ARIZONA 85016-4237
8 (602) 255-6000 (PHONE)
9 (602) 255-0103 (FACSIMILE)
10 EMAIL: wmf@tblaw.com; gp@tblaw.com; dmb@tblaw.com
11 *Attorneys for Plaintiff*

12 **SUPERIOR COURT OF ARIZONA**

13 **MARICOPA COUNTY**

14 AMERICA M. YOUNG,
15 INDIVIDUALLY AND AS TRUSTEE OF
16 THE TRUST ESTABLISHED BY HER
17 ON THE 19TH DAY OF DECEMBER,
18 1997,

19 Plaintiff,

20 vs.

21 THE CITY OF PHOENIX,
22 Defendant.

Case No. CV2020-003148

PROPOSED JURY INSTRUCTIONS

(Assigned to Hon. Scott Blaney)

23 Pursuant to Rule 16(f), Ariz. R. Civ. P., and the Court's order filed herein on June
24 19, 2023, the parties submit the following proposed jury instructions.

Preliminary and Standard Instructions – RAJI (Civil) (7th ed.)

- 25 • Preliminary 1 – Duty of Jurors;
- 26 • Preliminary 2 – Importance of Jury Service;
- 27 • Preliminary 3 – Evidence;
- 28 • Preliminary 4 – Rulings of the Court;
- Preliminary 5 – Credibility of Witnesses;
- Preliminary 6 – Expert Witness;
- Preliminary 7 – Evidence, Statements of Lawyers and Rulings;
- Preliminary 8 – No Transcript Available to Jury; Taking Notes;

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- Preliminary 9 – Admonition;
- Preliminary 11 – Questions by Jurors;
- Preliminary 12 – Exclusion of Witnesses;
- Preliminary 13 – Alternate Jurors;
- Preliminary 14 – Claims Made and Issues To Be Proved (modified);
- Preliminary 15 – Scheduling During Trial;
- Preliminary 16 – Order of Trial;
- Standard 2 – Burden of Proof (More Probably than Not);
- Standard 7 – Excused Alternate Jurors; (Defendant objects as Preliminary Instruction, but agrees as a Final Instruction)
- Standard 8 – Closing Instruction. (Defendant objects as Preliminary Instruction, but agrees as a Final Instruction)

Final Instructions – RAJI (Civil) (7th ed.)

- Eminent Domain 5 – Highest and Best Use
Defendant’s objection: (1) this is a diminution in value case, not an eminent domain case; (2) Eminent Domain 5 is inapplicable as A.R.S. §12-1134(1) is based on just compensation for reduction in fair market value cause by a land use law, not highest and best use, for a diminution in value claim; (3) “fair market value” and “just compensation” are defined in A.R.S. §12-1136.
- Eminent Domain 13 - Information Discovered After Date of Valuation.
Defendant’s objection: (1) this is a diminution in value case, not an eminent domain case; (2) Eminent Domain 13 is inapplicable as A.R.S. §12-1136(1) provides the applicable definition of fair market value for a diminution in value claim, A.R.S. §12-1136 provides the definition of just compensation, and those are not determined by information discovered after the adoption of the applicable land use law.

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- Standard 7 – Excused Alternate Jurors;
- Standard 8 – Closing Instruction.

Non-RAJI (Attached Hereto)

Plaintiff:

- Plaintiff’s Preliminary 14 Modified
- Plaintiff’s Standard 4 Modified
- Plaintiff’s Eminent Domain 1 Modified
- Plaintiff’s Eminent Domain 2 Modified
- Plaintiff’s Eminent Domain 3A Modified
- Plaintiff’s Eminent Domain 4 Modified
- Plaintiff’s Eminent Domain 6, 7, and 8 Combined and Modified
- Plaintiff’s Eminent Domain 10 Modified

Defendant:

- Defendant’s Preliminary 14 Modified
- A.R.S. §12-1134(A) Diminution in value; just compensation
- A.R.S. §12-1136(1)
- Fair Market Value; Definition
- A.R.S. §12-1136(2) Just Compensation; Definition
- Damages; Non-Speculative

Plaintiff's Non-RAJI Instructions

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1 **PLAINTIFF’S PRELIMINARY 14 MODIFIED**

2 **Arizona Private Property Rights Protection Act**

3 This case was brought under the Arizona Private Property Rights Protection Act.
4 The Plaintiff in this case is America M. Young, Individually and as Trustee of the Trust
5 Established by her on the 19th Day of December, 1997. Generally, any suit involving a
6 trust must be brought by or against its trustee.¹ For simplicity, I may refer to the Plaintiff
7 as “the America Young Trust.” The Defendant in this case is the City of Phoenix. For
8 simplicity, I may refer to the Defendant as “the City.”

9 The Arizona Private Property Rights Protection Act was approved by a majority of
10 voters as a ballot initiative 2006. In general, this law requires the City to pay just
11 compensation to a property owner if the City passed an ordinance or other law that causes
12 the value of the property to decrease.

13 The America Young Trust owned property located at 7019 North Central Avenue
14 in Phoenix, Arizona. For simplicity, I may refer to 7019 North Central Avenue as “the
15 Property.” The America Young Trust has brought a claim just compensation under the
16 Arizona Private Property Rights Protection Act against the City. The basis for the claim is
17 Ordinance G-6648, enacted by the Phoenix City Council on December 4, 2019. Ordinance
18 G-6648 placed a historic preservation zoning ordinance on the Property, despite opposition
19 from the Property owner, the America Young Trust.

20 Zoning ordinances typically regulate the use to which land within various parts of
21 the city may be put.² For example, if a vacant property has been previously zoned for
22 residential use, the property generally cannot be used for commercial purposes. But if the
23 property may be more valuable if used for commercial purposes, the owner may request
24 that the municipality approve a change in the property’s zoning from residential to
25 commercial. This is called a “rezone” or “rezoning”

26 Requests to rezone private property typically originate from the property owner.³
27 An exception to this is when the City seeks to rezone a specific property as a “historic
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¹ *McLeod v. Deutsche Bank Nat’l Tr. Co.*, 1 CA-CV 15-0504, 2017 WL 2189498, at *3
(Ariz. Ct. App. May 18, 2017)

² ZONING ORDINANCE, Black's Law Dictionary (11th ed. 2019).

³ City of Phoenix, Rezoning and Special Permits, available at
<https://www.phoenix.gov/pdd/services/rezoning-and-special-permits>; A.R.S. § 11-814(B)
 (“A property owner or authorized agent of a property owner desiring a rezoning shall file
 an application for the rezoning.”).

1 property” or “HP.”⁴ The City of Phoenix has specific procedures to rezone specific
2 property as HP in its Zoning Ordinance. In general, when the City rezones private property
3 as HP, the property owner is prohibited from demolishing or altering the structures on that
4 property.⁵

5 Your role is to determine how much, if any, just compensation the City should be
6 required to pay the America Young Trust under the Arizona Private Property Rights Act.
7 “Just compensation” means the sum of money that is equal to the reduction in fair market
8 value of the property resulting from the enactment of Ordinance G-6648 on December 4,
9 2019. The America Young Trust has the burden of proof on the issue of just compensation.

10 **Defendant’s objection: (1) This is an argumentative, prejudicial narrative and**
11 **“speaking instruction” of Plaintiff’s position, rather than a clear, concise statement**
12 **of the law for the jury; (2) The Arizona Private Property Rights Protection Act**
13 **resulted in A.R.S. §12-1134 and the jury needs only to be instructed as to that law,**
14 **not its history, nor the argumentative elaboration of Plaintiff’s claims as part of the**
15 **instruction; (3) Defendant has proposed a more appropriate Preliminary 14**
16 **Modified.**

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28 ⁴ City of Phoenix Zoning Ordinance, Section 803 (Definitions) (“Historic property: One or
more parcels of land, sites, houses, buildings, structures, objects, or areas which have been
zoned HP.”)

⁵ Historic-Preservation Law, Black's Law Dictionary (11th ed. 2019).

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PLAINTIFF’S STANDARD 4 MODIFIED

Trust as Party

The America Young Trust is the plaintiff in this case. As I instructed you at the outset of this case, any suit involving a trust must be brought by or against its trustee.⁶ In this case, America Young was the trustee of the America Young Trust. America Young was therefore the appropriate person to file suit on behalf of the America Young Trust.

Trusts are equivalent to ordinary persons in the eyes of the law. The America Young Trust is entitled to the same fair and impartial consideration, and is entitled to justice reached, under the same legal standards as ordinary persons.

Defendant’s objection: The cited case does not support this instruction, merely that a trust may only sue or be sued through its trustee. There is no standing argument being made. This instruction is unnecessary.

⁶ *McLeod v. Deutsche Bank Nat’l Tr. Co.*, 1 CA-CV 15-0504, 2017 WL 2189498, at *3 (Ariz. Ct. App. May 18, 2017)

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PLAINTIFF'S EMINENT DOMAIN 1 MODIFIED

Outline of Trial

The trial will now begin. First, each side may make an opening statement. An opening statement is not evidence; it is an outline of the expected evidence. It is offered to help you understand and follow the evidence that will be presented during trial. Next, the America Young Trust will present witnesses and the City of Phoenix may cross-examine them. Then the City of Phoenix may present witnesses and the America Young Trust may cross-examine. The America Young Trust may then present further evidence.

After the evidence has been presented, the attorneys will make their closing arguments. I will also instruct you on the law you are to apply in deciding the case. You will then go to the jury room to deliberate and decide the case. The final instructions I give you at the end of the trial may differ from these preliminary instructions based upon the evidence presented at the trial. The preliminary jury instructions will be replaced by the final jury instructions I will give you at the end of the trial. The final instructions will govern your deliberations.

Defendant's objection: (1) This is not a version of Eminent Domain 1 – Outline of Trial, which is about condemnation, not diminution in value; (2) Personalizing this to the Plaintiff trust is unnecessary; (3) Both parties have already agreed to the unmodified version of Preliminary 16 – Order of Trial and it is sufficient.

1 **PLAINTIFF’S EMINENT DOMAIN 2 MODIFIED**

2 **Arizona Private Property Rights Protection Act**

3 This case pertains to private property located at 7019 North Central Avenue,
4 Phoenix, located in Phoenix, Arizona. It has been referred to throughout this case as “the
5 Property,” and includes the land, structures, and any other improvements, such as
6 landscaping or driveways.

7 The City of Phoenix imposed a historic preservation zoning ordinance on the
8 Property over the objection of the owner. Zoning ordinances typically regulate the use to
9 which land within various parts of the city may be put.⁷ For example, if a vacant property
10 has been previously zoned for residential use, the property generally cannot be used for
11 commercial purposes. But if the property may be more valuable if used for commercial
12 purposes, the owner may request that the municipality approve a change in the property’s
13 zoning from residential to commercial. This is called a “rezone” or “rezoning.”

14 Requests to rezone private property typically originate from the property owner
15 desiring a change in the property’s use.⁸ An exception to this is when the municipality
16 seeks to rezone a particular property as a “historic property” or “HP.”⁹ The City of Phoenix
17 has set forth specific procedures to rezone private property as HP in its Zoning Ordinance.

18 Under the Arizona Private Property Rights Act, if a “land use law” reduces the
19 Property Owner’s rights to use, divide, sell or possess private real property, and such
20 and such action reduces the fair market value of the property, the owner is entitled to just
21 compensation from the municipality that enacted the land use law.¹⁰ A “land use law” is
22 any statute, rule, ordinance, resolution or law enacted by a municipality that regulates the
23 use or division of land or any interest in land.

24 In this particular case, on December 4, 2019 the Phoenix City Council passed
25 Ordinance G-6648, which rezoned the Property as HP. America Young, the owner of the
26 Property, opposed Ordinance G-6648. Ordinance G-6648 is a “land use law” under the
27 Arizona Private Property Rights Act.

28 ⁷ ZONING ORDINANCE, Black's Law Dictionary (11th ed. 2019).

⁸ City of Phoenix, Rezoning and Special Permits, available at <https://www.phoenix.gov/pdd/services/rezoning-and-special-permits>; A.R.S. § 11-814(B) (“A property owner or authorized agent of a property owner desiring a rezoning shall file an application for the rezoning.”).

⁹ City of Phoenix Zoning Ordinance, Section 803 (Definitions) (“Historic property: One or more parcels of land, sites, houses, buildings, structures, objects, or areas which have been zoned HP.”)

¹⁰ A.R.S. § 12-1134(A).

1 You must determine if Ordinance G-6648 reduced the rights of American Young,
2 the owner, to use, divide, sell or possess the Property and, if so, the just compensation owed
3 by the City of Phoenix to the Property's owner America Young.

4 **Defendant's objection: (1) This is an argumentative, prejudicial narrative and**
5 **"speaking instruction" of Plaintiff's position, rather than a clear, concise statement**
6 **of the law for the jury; (2) This is not remotely a version of Eminent Domain 2 –**
7 **Power of Eminent Domain, which is inapplicable; (3) The Arizona Private Property**
8 **Rights Protection Act resulted in A.R.S. §12-1134 and the jury needs only to be**
9 **instructed as to that law, not its history, nor the argumentative elaboration of**
10 **Plaintiff's claims as part of the instruction; (4) this misstates A.R.S. §12-1134.**

1 **PLAINTIFF’S EMINENT DOMAIN 3A MODIFIED**

2 **Definition of Just Compensation and Burden of Proof**

3 “Just compensation” means the sum of money that is equal to the reduction in fair
4 market value of the property resulting from the enactment of the land use law as of the date
5 of enactment of the land use law.¹¹ In this case, Ordinance G-6648 was enacted on
6 December 4, 2019. "Fair market value" means the most likely price estimated in terms of
7 money which the land would bring if exposed for sale in the open market, with reasonable
8 time allowed in which to find a purchaser, buying with knowledge of all the uses and
9 purposes to which it is adapted and for which it is capable.¹²

The America Young Trust has the burden of proof on the issue of just compensation.

10 **Defendant’s objection: No objection to this as stating the statutory definition from**
11 **A.R.S. §12-1136(2), provided Defendant’s instructions on A.R.S. §12-1134(A) and**
12 **A.R.S. §12-1136(1) are also given.**

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¹¹ A.R.S. § 12-1136(2).

¹² A.R.S. § 12-1136(1).

1 **EMINENT DOMAIN 6, 7, & 8 COMBINED AND MODIFIED**

2 **Process Influence and Variances**

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4 There has been testimony about whether or not certain variances would have been
5 granted for the Property by the City of Phoenix. A variance relieves the duty to comply
6 with a zoning ordinance’s technical requirements, such as setback line, frontage
7 requirements, height limitations, lot size requirements, density regulations, and yard
8 requirements.¹³

9
10 In determining just compensation, you may consider whether the City of Phoenix
11 would have granted a variance or variances for the Property if you find: (1) it was
12 reasonably probable a variance or variances would have been granted; (2) a willing buyer
13 would pay a more for that probability as of December 4, 2019. You may not consider the
14 mere possibility or speculation that a variance or variances would have been granted.

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16 In determining just compensation, you cannot consider the influence of the City of
17 Phoenix’s decision to rezoning the Property as HP, nor can you consider the influence of
18 the underlying process. In other words, in determining whether it was reasonably probable
19 a variance or variances would have been granted for the Property, you must proceed under
20 the factual presumption that City of Phoenix never contemplated rezoning the Property as
21 HP.¹⁴ Similarly, you must disregard any decrease in market value to the Property caused
22 by the likelihood or possibility that the City of Phoenix could or would rezone the Property
23 as HP.

24 **Defendant’s objection: (1) This is an argumentative, prejudicial narrative and**
25 **“speaking instruction” of Plaintiff’s position, rather than a clear, concise statement**
26 **of the law for the jury; (2) This is not an eminent domain case and these concepts do**
27 **not apply; (3) the statute is limited to “existing rights,” not possible variances that**
28 **were never applied for; (4) variances are not part of the cited RAJI instructions and**
the proposed instruction does not include the 4 requirements for a variance; (5)
A.R.S. §12-1134 involves determining “just compensation” for diminution in “fair

24 ¹³ *Pawn 1st, LLC v. City of Phoenix*, 242 Ariz. 547, 552, ¶ 14, 399 P.3d 94, 99 (2017) (“An
25 area variance relieves the duty to comply with a zoning ordinance's technical requirements,
26 such as “setback line, frontage requirements, height limitations, lot size restrictions, density
27 regulations and yard requirements”). (Note: While the *Pawn 1st* case was distinguishing an
28 area variance from a use variance, the latter is not applicable in this case. For simplicity’s
sake, the proposed instruction uses the general term “variance.”)

¹⁴ *Town of Paradise Valley v. Young Fin. Services, Inc.*, 177 Ariz. 388, 391 (App. 1993)
(project influence doctrine requires that the factfinder consider the “value of property as it
would have been if no such [project] had been contemplated”) (quoting *State v. Hollis*, 93
Ariz. 200, 206 (1963) (bracket in original)). 13

market value” resulting from a land use law and those terms are specifically defined in A.R.S. §12-1136 for which Defendant has proposed concise instructions.

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Defendant's Non-RAJI Instructions

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DEFENDANT’S PRELIMINARY 14 (modified)
Claims Made and Issues To Be Proved

In this case, Ordinance G-6648 applying a Historic Preservation or HP Overlay to Plaintiff’s Property is a land use law. Plaintiff claims it caused a diminution in value of the Property. The City’s position is that it did not cause any diminution in value. It is Plaintiff’s burden to prove whether that HP Overlay caused a diminution in the fair market value of the Property and, if so, then in what amount.

[Give a brief statement of the claims and defenses being asserted, and the elements of those claims and defenses.]Source: Bench Book For Superior Court Judges.

Use Note: 1 The jury will not have any information before trial begins about the claims being made, the legal elements of those claims, the defenses being asserted, or the legal elements of those defenses unless some instruction is given to them during the reading of the Preliminary Instructions. Thus, if at least some instruction does not address claims and defenses, the jury may not appreciate the relevancy of certain evidence.]

Plaintiff’s Objection: Plaintiff’s proposed instructions better explain the issues to the jury.

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A.R.S. §12-1134(A)
Diminution in value; just compensation

If the existing rights of Plaintiff to use, divide, sell or possess Plaintiff's real property were reduced by the City's enactment of Ordinance G-6648 applying a Historic Preservation or HP Overlay to that property, and such action reduced the fair market value of the property, then Plaintiff is entitled to just compensation from the City for enacting that land use law.

Source: A.R.S. §12-1134.

Plaintiff's Objection: Plaintiff's proposed instructions better explain the issues to the jury.

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A.R.S. §12-1136(1)
Fair Market Value; Definition

“Fair market value” means the most likely price estimated in terms of money which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all the uses and purposes to which it is adapted and for which it is capable.

Source: A.R.S. §12-1136(1).

Plaintiff's Objection: None.

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A.R.S. §12-1136(2)
Just Compensation; Definition

“Just compensation” for purposes of an action for diminution in value means the sum of money that is equal to the reduction in fair market value of the property resulting from the enactment of the land use law as of the date of enactment of the land use law.

Source: A.R.S. §12-1136(2).

Plaintiff’s Objection: Plaintiff’s proposed instructions better explain the issues to the jury. It should also not be disputed that the land use law was enacted on December 4, 2019.

Damages; Non-Speculative

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A claim for diminution in value that is speculative, remote, or uncertain may not form the basis for your award.

Sheppard v. Crow-Barker Paul No. 1 Ltd. P'ship, 192 Ariz. 539, 548, ¶ 51, 968 P.2d 612, 621 (Ct. App. 1998).

Plaintiff's Objection: Plaintiff's proposed instructions better explain the issues to the jury in a manner consistent with eminent domain law. Additionally, the case cited pertains to ordinary damages—namely the plaintiff's claim that his damages included a lost NBA salary. The case did not involve eminent domain or just compensation.

1 RESPECTFULLY SUBMITTED this 24th day of June, 2024.



2
3 By: /s/William M. Fischbach
4 William M. Fischbach
5 Gianni Pattas
6 David M. Barlow
7 Seventh Floor Camelback Esplanade II
8 2525 East Camelback Road
9 Phoenix, Arizona 85016-4237
10 *Attorneys for Plaintiff*

BURCH & CRACCHIOLO, P.A.

11 By: /s/ Andrew Abraham
12 Andrew Abraham
13 Daryl Manhart
14 702 East Osborn Road
15 Phoenix, Arizona 85014
16 *Attorneys for Defendants*

17 **ORIGINAL** of the foregoing e-mailed and
18 mailed upon request this 24th day of June, 2024
19 to:

20 Andrew Abraham
21 Daryl Manhart
22 BURCH & CRACCHIOLO, P.A.
23 702 East Osborn Road
24 Phoenix, Arizona 85014
25 AAbraham@bcattorneys.com
26 DManhart@bcattorneys.com
27 *Attorneys for Defendant City of Phoenix*

28 By: /s/ Megan Bowen