

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2004-001025

07/24/2007

HON. PAUL A KATZ

CLERK OF THE COURT  
W. Bobrowski  
Deputy

CITY OF SCOTTSDALE

CHARLES K AYERS

v.

EDMUNDS-TOLL CONSTRUCTION  
COMPANY, et al.

ROBERT V KERRICK

ROBERT BRUCE WASHBURN

**UNDER ADVISEMENT RULING**

The Court having taken Plaintiff City of Scottsdale's Motion to Strike Toll Brothers' Witness Nate Nathan and Nathan Opinion Testimony Relied upon by Other Toll Brothers' Experts under advisement; having reviewed the memoranda of the parties and legal authorities cited therein; and good cause appearing,

IT IS ORDERED granting Plaintiff's Motion to Strike Toll Brothers' Witness Nate Nathan and Nathan Opinion Testimony Relied upon by Other Toll Brothers' Experts, in part. Pursuant to A.R.S. §12-1122, an individual is entitled to just compensation when his land is taken for public use. In this case, just compensation is the fair market value of the unimproved property put to its highest and best use. The parties in this case have agreed that the highest and best use of the subject property would be for future residential use. The operative question then is: "What would a reasonable real estate developer or home builder have paid for the subject property on January 16, 2004?"

The property was not subdivided or improved on the date in question, and hypothetical lot premiums or discounts as individual items of damage are inadmissible. These amounts are inherent in the value of the underlying land and should have been accounted for in the appraised

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value proffered by Defendant's expert Kabat. It should be the role of the appraiser to distinguish the uniqueness of this parcel compared to others similarly situated. However, Mr. Nathan may testify as to the uniqueness of the subject parcel, if it is established that this is the type of information reasonably relied upon by Mr. Kabat, that he in fact relied upon the same and that as an appraiser he was not independently able to render an opinion on the uniqueness of this parcel in the context of local real estate development custom and practice. He will not be allowed to testify as to the value of any lot premiums, which fall within the purview of the appraiser when evaluating the property as a whole, and Mr. Kabat will not be allowed to add the value of these lot premiums to his appraisal of the whole parcel.<sup>[1]</sup>

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<sup>[1]</sup> It is interesting to note that Mr. Nathan wishes to add lot premiums for certain unique or high-priced hypothetical lots to the appraised value of the property as a whole, but does not wish us to consider deducting lot discount from the bulk value based upon potential lots that are less desirable.