

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-009027

03/19/2015

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT  
L. Nelson  
Deputy

CITY OF PHOENIX

CHRISTINA E KOEHN

v.

STOCKDALE OFFICE PARTNERS, et al.

GRAEME E HANCOCK

DAVINA DANA BRESSLER  
BART WILHOIT

**RULING**

By minute entry of January 15, 2015 (filed Jan. 20, 2015), the Court denied Defendant Stockdale Office Partners' ("Stockdale") Motion to Dismiss the Complaint. The Court subsequently vacated the January 15 ruling. (*See* Feb. 6, 2015 Minute Entry (filed Feb. 9, 2015).) Now, having read and considered the briefing (including Stockdale's Reply (filed Feb. 17, 2015), and having heard oral argument, the Court issues the following ruling.

Stockdale argues that (1) the City of Phoenix (the "City") improperly delegated its power of condemnation to City employees, (2) the City's appraisal did not comply with A.R.S. § 12-1116, and (3) the address listed on Ordinance S-38518 was ambiguous. The Court disagrees for the reasons stated in its January 15 ruling, which the Court sets forth below.

Stockdale argues that the City lacks authority to condemn the Property because the City Council improperly delegated discretion to City employees (specifically, the City Manager or City Manager's designee). The Court disagrees that *In re Forsstrom*, 44 Ariz. 472, 496-97 (1934) compels the Court to so conclude. The City Council determined it was necessary to take "fee title or a lesser interest in all or portions" of 152 parcels of land located along Broadway Road. The Court finds that determining how much property would need to be acquired from

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each parcel “involves the exercise of administrative discretion” that could be delegated to City employees. *See generally Lake Havasu City v. Mohave Cnty.*, 138 Ariz. 552, 559 (App. 1983).

Stockdale also argues that the City’s appraisal failed to comply with A.R.S. § 12-1116(A).<sup>1</sup> But Stockdale premises its argument on analysis of A.R.S. § 12-1122(A).<sup>2</sup> (Hr’g Br. at 9-10; Reply at 6-8.) The Court agrees with the City that nothing in § 12-1122 specifies what must be contained in an appraisal upon which a “just compensation” offer made under § 12-1116 is based. Indeed, Stockdale’s witness, John Loper, testified that a “full before-and-after” need not be done with regard to “minor acquisitions that have no impact on the operation or the value of the property going forward.” (Tr. Oct. 27, 2014 at 122.) The Court finds no error on this basis.

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<sup>1</sup> A.R.S. § 12-1116(A) provides:

All actions for condemnation shall be brought as other civil actions in the superior court in the county in which the property is located except that, at least twenty days before filing an action for condemnation of property or any interest in property, the plaintiff shall deliver to the property owner of record and as a courtesy to the sole lessee of record, if applicable, according to the records of the county recorder in the county in which the property is located:

1. A written offer to purchase the property or interest in the property and to pay just compensation for the property or interest in the property and for any compensable damages to any remaining property. The offer must constitute the plaintiff’s estimate of just compensation. The offer may be made subject to any lessees of record or any lessees who may claim a compensable interest. The offer does not impose an obligation on the plaintiff to provide a written offer to purchase the lessee’s interest.
2. One or more appraisals that support the amount of the proposed compensation.

<sup>2</sup> A.R.S. § 12-1122(A) provides, in pertinent part:

The court or jury shall ascertain and assess:

1. The value of the property sought to be condemned and all improvements on the property pertaining to the realty, and of each and every separate estate or interest in the property, and if it consists of different parcels, the value of each parcel and each estate or interest in the parcel separately.
2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages that will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff.
3. How much the portion not sought to be condemned and each estate or interest in the portion will be benefited separately, if at all, by construction of the improvement proposed by the plaintiff. If the benefit is equal to the damages assessed under paragraph 2 of this subsection, the owner of the parcel shall be allowed no compensation except for the value of the portion taken, but if the benefit is less than the damages so assessed, the benefit shall be deducted from the damages, and the remainder shall be the only damages allowed in addition to the value.

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Finally, Stockdale argues that Ordinance S-38518 does not authorize the City to condemn the Property (i.e., the Jack in the Box property) because the address listed is incorrect.<sup>3</sup> *But see* City's Resp. at Ex. 1 (Aff. of Prop. Value, Maricopa Cnty. R. No. 2004-0600045 (May 27, 2004), listing the address of the Jack in the Box property as 1929 W. Broadway Rd.). The Court finds no error on this basis.

Accordingly, based on the foregoing,

**IT IS ORDERED** denying Stockdale's Motion to Dismiss the Complaint.

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<sup>3</sup> Stockdale claims the Jack in the Box property is at 1921 W. Broadway Rd. Ordinance S-38518 lists 1929 W. Broadway Rd., which Stockdale posits is an Ace Hardware store down the street. (Hr'g Br. at 8.)