

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-013543

03/21/2011

HONORABLE JEANNE GARCIA

CLERK OF THE COURT
M. Hovorka
Deputy

SCOTTSDALE CITY

TIMOTHY J THOMASON

v.

HUALAPAI L L C, et al.

DALE S ZEITLIN

J LAWRENCE MCCORMLEY
STEVEN B PALMER

RULING

Defendant's Motion for Reconsideration Re: City's Waiver of Project Influence Rule Argument

The court has considered Defendant's Motion for Reconsideration Re: City's Waiver of Project Influence Rule Argument and reviewed the transcript subsequently provided with its Notice of Filing June 22, 2009 Transcript (etc.). Defendant asserts that because the court overlooked its ruling from June 22, 2009, it should reverse its most recent ruling that the Project Influence Rule applies to prohibit the lease from being considered in the valuation of the property. The June, 2009 ruling was the result of Defendant's Motion to Compel pursuant to the Plaintiff's obligations under A.R.S. §12-1116 to update its appraisal. Defendant successfully argued that the Plaintiff was required to update its initial appraisals with the lease being considered because the initial appraisals did not take into account the court's ruling of January 9, 2009 which held that the lease was valid. Defendant explained that it was simply trying to move the case forward and was an issue of which party should proceed first with the updated appraisal, the government or the landowner. Plaintiff never referenced "Project Influence Rule" and Defendant never advised the court it was seeking a definitive ruling on whether the "Project Influence Rule" would apply in the ultimate determination of value. The application of the "Project Influence Rule" was not squarely before the court at that time. While the parties may have known back then that the "Project Influence Rule" was an issue, the court did not intend by its June 2009 ruling to form the law of the case on the applicability of the "Project Influence Rule". The court also disagrees with Defendant that Plaintiff waived the doctrine by not raising it sooner than it did. Therefore,

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IT IS ORDERED denying Defendant's Motion for Reconsideration.

Defendant's Motion for Reconsideration Re Project Influence Rule

Defendant asserts that because it purchased the property with the expectation that the City would pay the rent due under the lease, the Project Influence Rule should not apply and the value should be determined with the expected stream of income. The City's intent to purchase the land for the purpose of the water treatment facility was known in 2002. Because the City later entered into the lease so that it could begin construction of the facility, the lease is directly tied to the project and may not be considered in the valuation. The Project Influence Rule cannot be ignored just because the lease created a revenue stream; the expected revenue is attributed to the project. Cases from other jurisdictions cannot be applied to avert Arizona's adoption of the Project Influence Rule. Therefore,

IT IS ORDERED denying Defendant's Motion for Reconsideration.

Defendant's Motion for Legal Determination Regarding Scope of the Court's Project Influence Ruling (etc.)

The court has considered Defendant's Motion for Legal Determination Regarding Scope of the Court's Project Influence Ruling (etc.), Plaintiff's Response, and Defendant's Reply. Given the court's ruling that the Project Influence Ruling applies, the bid price is not admissible because it is based on the value of the land with the improvements. Any appraisal without consideration of the leasehold interest is admissible, including Mr. Wirth's. Accordingly,

IT IS ORDERED granting Defendant's Motion for Legal Determination by clarifying that the bid amount may not be considered as a comparative sale but Mr. Wirth's appraisal may be considered. Given that the improvements are part of the project, the Project Influence Rule does not allow them to be considered in the valuation either.

Deadlines for Expert Reports and Discovery

IT IS ORDERED that the deadline for revised expert reports is **June 3, 2011** and the deadline for post-appraisal discovery is **August 19, 2011**.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.