

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-004839

05/06/2004

HON. PAUL A KATZ

CLERK OF THE COURT
B. Navarro
Deputy

FILED: 05/14/2004

CAVEECREEK-CAREFREE LIMITED
PARTNERSHIP

RON KILGARD

v.

CAREFREE TOWN

MARY GRACE MCNEAR

AMY N.L. HANSON
1201 THIRD AVENUE # 3200
SEATTLE WA 98101

ORAL ARGUMENT

8:36 a.m. This is the time set for oral argument on Defendant's Motion for Partial Summary Judgment on Count I (Zoning in Violation of the General Plan; Defendant's Motion for Summary Judgment Re: Counts II (Zoning Lacking a Rational Basis), III (Zoning in Derogation of Investment-Backed Expectations) and IV (Zoning as Inverse Condemnation; Defendant's Motion for Partial Summary Judgment to Preclude the Further Development or Use of Certain Factual Allegations; Defendant's Motion to Exclude Improper Expert Testimony, and; Plaintiff's Motion to Exclude Defense Experts for Non-Disclosure. Plaintiff is represented by counsel, Ron Kilgard and Amy N.L. Hanson. General Partners of Cavecreek-Carefree Limited Partnership, Saul Diskin and Fred Rosenbaum, are present. Defendant is represented by counsel, Mary Grace McNear, Paige A. Martin and Jeffrey S. Leonard.

Court Reporter, Bethany Campbell, is present.

LET THE RECORD REFLECT that the Court also has received Defendant's Motion to Continue Trial.

Discussion is held as to what order the parties would like to proceed.

Oral argument is presented on Defendant's Motion to Continue Trial.

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IT IS ORDERED taking Defendant's Motion to Continue Trial under advisement.

Oral argument is presented on Plaintiff's Motion to Exclude Defense Experts for Non-Disclosure. (Let the Record Reflect that Plaintiff withdraws its motion to exclude Defendant's expert witness appraiser Dennis L. Lopez).

For the reasons set forth on the record,

IT IS ORDERED denying Plaintiff's motion to exclude Defense expert witness Paul Thorp and allowing said expert witness to testify.

IT IS FURTHER ORDERED excluding John Lassen as an expert witness for the Defense.

Oral argument is presented on Defendant's Motion to Exclude Improper Expert Testimony.

For the reasons set forth on the record,

IT IS ORDERED allowing Elliott Pollack to testify as an expert witness on the issue of economic usage of this type of property from his economist experience and his experience as a real estate developer only as to what was disclosed in the deposition and not beyond that.

IT IS FURTHER ORDERED that Elliott Pollack shall not be allowed to render opinions regarding the value of the property or criticize the methodology that might have been implied by the appraisals.

The Court defines the scope of permissible testimony as to expert witness Ken O'Dell as stated on the record.

Oral argument is presented on Defendant's motions for summary judgment as to Counts I through IV and Defendant's Motion for Partial Summary Judgment to Preclude the Further Development or Use of Certain Factual Allegations.

10:04 a.m. The court stands at recess.

LET THE RECORD REFLECT that the Court has received a Stipulation of Parties to Consent to Bench Trial.

10:15 a.m. Court reconvenes with respective counsel and the representatives of Plaintiff present.

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Court Reporter, Bethany Campbell, is present.

Oral argument continues.

For the reasons set forth on the record,

IT IS ORDERED denying Defendant's Motion for Partial Summary Judgment to Preclude the Further Development or Use of Certain Factual Allegations.

IT IS FURTHER ORDERED taking Defendant's motions for summary judgment as to Count I through IV under advisement.

11:08 a.m. Matter concludes.

LATER:

Pursuant to the stipulation of the parties,

IT IS ORDERED that this matter will be a bench trial rather than a jury trial.