

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-009027

01/15/2015

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

In this eminent domain action, the City of Phoenix ("City") seeks to acquire a portion of real property along Broadway Road ("Property") as part of a larger street improvement project. The owner of the Property is Defendant Stockdale Office Partners ("Stockdale"); the lessor in possession is Defendant Jack in the Box, Inc. ("Jack in the Box").

On October 27, 2014, the Court conducted an evidentiary hearing pursuant to A.R.S. § 12-1116(H) to determine probable damages and necessary use.

Stockdale's Motion to Dismiss Proceeding

At the close of the City's case, Stockdale moved to dismiss the proceeding for lack of discovery. The Court finds that, in light of the limited nature of the hearing, there was adequate time to prepare. Accordingly,

IT IS ORDERED denying the Motion to Dismiss Proceeding on this basis.

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Stockdale's Motion to Dismiss the Complaint

In connection with its Hearing Brief Regarding Immediate Possession, Stockdale orally moved to dismiss the Complaint for the City's failure to comply with statutory prerequisites to pursuing an action for condemnation. The City filed a Response to the Motion. Stockdale requested leave to file a Reply. The Court finds that the briefing is sufficient. The Court also finds that further oral argument would not add to the Court's consideration of the issues presented; accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. 7.1(c)(2) to expedite the business of the Court.

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 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).¹ But Stockdale premises its argument on analysis of A.R.S. § 12-1122(A).² (Hr'g Br.

¹ 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.

² 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.

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at 9-10.) 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.

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.³ *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,

IT IS ORDERED denying the Motion to Dismiss the Complaint.

Hearing

The Court has considered the evidence presented at the hearing.

The Court finds that the City has demonstrated that this taking is part of a larger Broadway Road widening and improvement project and that Defendant’s property is a necessary part of this public project.

The Defense argues that the Nagy Appraisal fails to account for the value of the Jack in the Box lease. Specifically, it argues that since the Jack in the Box payment is predicated upon the amount of property leased, a reduction in property is a reduction in income or value.⁴

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.

³ 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.)

⁴ The Defense witness, Steve Laney, believes that any land reduction would impact the payment calculation. While he opines that probable damages are \$200,000 to \$250,000, it is unclear that the lease would follow his interpretation or what this calculated damage would be.

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On the other hand, the City maintains that because no functional part of the property is being taken, there is no reduction to the fair market value of the lease.

The Court finds that the disagreement over the approach to leasehold value does not render the Nagy appraisal legally flawed.

Having considered the record,

The Court finds probable damages to be \$60,020.00.

IT IS THEREFORE ORDERED granting the City immediate possession with the deposit of \$60,020.00, as probable damages as required by law.

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