

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-008978

09/08/2016

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT

C. Green

Deputy

CITY OF SCOTTSDALE

CHRISTOPHER W KRAMER

v.

ROBERT ONG HING, et al.

STEVEN A HIRSCH

DAVINA DANA BRESSLER

**UNDER ADVISEMENT RULING**

**FINDINGS OF FACT**

1. The real property at issue in this case (the "Subject Property") consists of a 1.5 acre parcel located near the intersection of Hayden Road and Indian Bend Road ("Hayden and Indian Bend") in Scottsdale, Arizona. The Subject Property is owned by Defendants Robert Ong Hing and Alice Y. Hing (collectively, "the Property Owners"), who purchased the Subject Property, as well as other real property in the area of Hayden and Indian Bend, in 1971. At the hearing in this matter on August 9, 2016 (the "August 9<sup>th</sup> hearing"), Mr. Hing testified that, in 2014, the Property Owners began negotiating to sell the Subject Property, along with an adjoining parcel, for development by others.<sup>1</sup>

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<sup>1</sup> During these proceedings, the Property Owners have taken the position that the real property at issue is merely a portion of a single 6.74-acre parcel of land that is the site of the Scottsdale Athletic Club. Hing Defendants' Prehearing Statement at pp. 1-2. *See also* Defendant Hings' Notice of Lodging Proposed Findings of Fact and Conclusions of Law at proposed Finding of Fact Nos. 12-13, 16. In their dealings with the City prior to the initiation of these proceedings, however, the Property Owners acknowledged that the property that is the subject of the proposed condemnation is a 1.5-acre parcel that is separate from, and not a part of, the adjacent 5.24-acre parcel that is the site of the Scottsdale Athletic Club. In a May 5, 2016 letter to various City officials, for example, Mr. Hing

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2. The City of Scottsdale Fire Department (the “Department”) “delivers fire, emergency medical service (EMS), and other emergency response” services. Exhibit 16 at p. 13. The Department currently has 15 fire stations in operation. *Id.* at pp. 1, 126.

3. The City of Scottsdale (the “City”) seeks to condemn the Subject Property for use as the new site for a relocated fire station, Fire Station 603 (which also sometimes referred to as Fire Station No. 3). Fire Station 603 is the oldest fire station still operational within Scottsdale, having been constructed in 1971. It is located on McDonald Drive east of Scottsdale Road. Exhibit 9 at p. 1; Exhibit 16 at p. 127. The current location of Fire Station 603 was selected at a time when Rural/Metro provided emergency services to both Scottsdale and Paradise Valley; the location was intended to “be advantageous for Rural/Metro to provide services to both...” Exhibit 34 at p. 1.

4. In 2015, the City retained Emergency Services Consulting International (“ESCI”) to prepare an updated Standard of Coverage and Deployment Plan, including an assessment of existing facilities and other resources. Exhibit 9 at p. 1.

5. At the hearing in this matter on August 9, 2016 (the “August 9<sup>th</sup> hearing”), Daniel Worth, the City’s Director of Public Works, testified that “[t]he City’s intent was to take [the report from ESCI] as one of many inputs to figure out in a resource-constrained world where we needed to make our investments to get the greatest improvement the soonest with new fire stations.” August 9, 2016 Testimony of Daniel Worth.

6. In June 2015, ESCI issued a report entitled “City of Scottsdale Fire Department Standards of Coverage and Deployment Plan, 2015” (the “SCDP”). *See* Exhibit 16.

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identified the property that is the subject of the proposed condemnation as “the former location of the Scottsdale Racquet Club” with an address of “8201 East Indian Bend Road” which, Mr. Hing stated, is “adjacent” to the present Scottsdale Athletic Club, with an address of “8225 East Indian Bend Road.” Exhibit 26. Mr. Hing’s letter thus referred to the Subject Property and the site of the Scottsdale Athletic Club as two adjoining but separate parcels with separate addresses. *See id.* *See also* Exhibit 12, June 21, 2016 Memorandum from Stockton & Hing at pp. 1-2 (stating that the Property Owners have entered a contract to sell “the Scottsdale Athletic Club land (5.24 acres) and the adjacent vacant lot (1.58 acres),” and later repeating that “this Lot is part of a sale that includes the adjacent Scottsdale Athletic Club’s 5.24 acres.”). Consistent with the position taken by the Property Owners before these proceedings began, the Court rejects the suggestion that the property that is the subject of the proposed condemnation is merely a portion of a single parcel of land consisting of 6.74 acres, and instead considers the Subject Property to be a 1.5-acre parcel of land that is adjacent to a separate parcel that is the site of the Scottsdale Athletic Club.

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7. The SCDP states that its purpose is to assist the Department “in ensuring a safe and effective response force for fire suppression, emergency medical services, and specialty response situations.” Exhibit 16 at page *i*.

8. Pursuant to national guidelines and standards, fire and emergency personnel should take no longer than four minutes to travel to and arrive at the scene of an incident. Exhibit 16 at p. 74 (stating that the “performance standard” for “time from initiation of response until arrival at the incident” is “[w]ithin 4 minutes 90% of the time”); *id.* at p. 81 (“Within the [National Fire Protection Association] standards, four minutes is allowed for the first response unit to arrive at an incident.”). The interval “between notification...that an emergency is in progress” and the “arrival of the first fire department response unit at the emergency” is referred to as “response time.” *Id.* at p. 85.

9. The SCDP found that the Department’s response time exceeds national standards by nearly three minutes, and that “[o]nly in the southern most [*sic*] portion of Scottsdale can an effective response force be delivered within the time specified in the national standard.” Exhibit 16 at p. 2.

10. The SCDP warns that “[c]urrent fire station locations do not provide sufficient coverage of the city to meet response performance in accordance with the recommended response time goal...”, and states that “[a]dditional fire stations and response units are needed to deliver service within four travel minutes, 90 percent of the time.” The SCDP therefore recommended not only “the relocation of existing stations,” but the construction of “additional fire stations.” Exhibit 16 at p. 112.

11. The SCDP states that the most important factor to consider when selecting the location for a fire station is the impact that the station’s location will have on response times. According to the SCDP, “[a] fire station’s location will dictate, to a large degree, response times to emergencies.” Exhibit 16 at p. 13.

12. The SCDP makes clear that a fire station’s location is important not only in terms of its proximity to population centers, but to its access to major streets. *See* Exhibit 16 at p. 81 (while “[t]he distance between the fire station and the location of the emergency influences response time the most,” other factors that influence response times include “traffic” and “[t]he quality and connectivity of streets”). “More highly connected, grid patterned street systems contribute to faster response times,” as compared with “areas with meandering streets with numerous dead-ends.” *Id.* at p. 84. *See also id.* at p. 112 (“Meandering streets, lack of connectivity, and single access neighborhoods are challenges to emergency response.”).

13. Among the fire stations whose relocation was recommended by the SCDP is Fire Station 603. The SCDP reports that Fire Station 603 “is not very functional and does not meet

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the current standards established by” the Department. Exhibit 16 at p. 127. The SCDP concludes that, overall, the condition of Fire Station 603 “is very poor and would indicate that the facility has reached the limits of its functional life.” *Id.* In addition to the poor state of the facilities, the location of Fire Station 603 is problematic as well; it is located in a wash, leading to “severe site drainage issues.” *Id.* The SCDP recommends that the station’s “replacement/relocation should be considered in the near future.” *Id.*

14. The SCDP recommends that, to bring response times in line with national standards, Fire Station 603 be relocated directly to the east, to the intersection of Hayden Road and McDonald Drive (“Hayden and McDonald”). Exhibit 16 at pp. 114, 117.

15. The SCDP recommends the addition of at least nineteen more fire stations, in addition to the relocation of some of the existing fire stations. Exhibit 16 at p. 114.<sup>2</sup>

16. The SCDP acknowledges that “[p]erformance goals must be tailored to match community expectations, community conditions, and the ability to pay for the resources necessary to attain the desired level of service. Levels of service and resource allocation decisions are the responsibility of the community’s elected officials, in this case the Scottsdale City Council. The policy making body must carefully balance the needs and expectations of its citizenry when deciding how much money to allocate to all of the services it provides.” Exhibit 16 at p. 105.

17. In June 2015 the SCDP was presented to the City Council in a work study, meaning that it was presented to council members for informational purposes “and possible direction from the Council.” August 9, 2016 Testimony of Daniel Worth.

18. Most of Fire Station 603’s “designated service area” is in the McCormick Ranch and Gainey Ranch neighborhoods.” Exhibit 34 at p. 2. After considering the SCDP and other information, City staff decided that relocating Fire Station 603 toward the McCormick Ranch area “would provide for a better level of service” and would “decrease response times.” *Id.* at p. 1.

19. City officials prepared a document entitled “Relocate Fire Station 603” in preparation for an upcoming bond election. *See* Exhibit 34. This document summarizes the proposal as follows: “Buy land, design and build a new site for Fire Station 603 in the

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<sup>2</sup> Figure 74 of the SCDP contains a list of locations for additional fire stations, which are numbered N1 to N21. For reasons that are unclear, however, the list skips from N5 to N8, with no reference to N6 or N7. *See* Exhibit 16 at p. 114. It is unclear, therefore, whether the recommendation is for twenty-one new fire stations, or only nineteen.

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McCormick Ranch area to improve response times to that portion of the city.” *Id.* at p. 1. The document indicates that the SCDP indicates “that the city and its residents would be better served if FS603 were relocated to the northeast in the McCormick Ranch Area.” *Id.*

20. The relocation of Fire Station 603 and two other fire stations was approved by the City’s voters as part of a bond election held on November 3, 2015. Exhibit 9 at p. 1; August 9, 2016 Testimony of Daniel Worth.

21. On December 30, 2015, Maria Muiser, the Asset Management Coordinator for the City, sent an email to Mr. Hing informing him that the City “is potentially interested in purchasing some vacant land that you own on Indian Bend Rd., adjacent to the Scottsdale Resort and Athletic Club.” Exhibit 17 at p. 1; August 9, 2016 Testimony of Robert Ong Hing; August 9, 2016 Testimony of Maria Muiser.

22. Mr. Hing testified that, the same day that Ms. Muiser sent the email, he and Ms. Muiser had a telephone conversation in which he informed her that he was not interested in selling the Subject Property. In his testimony, Mr. Hing stated that, during this conversation, he informed Ms. Muiser of the plans that were underway for development of the Subject Property and the adjoining parcel as a residential community for seniors. In her testimony, Ms. Muiser stated that Mr. Hing told her that he did not want to sell the Subject Property to the City for use as a fire station, but denied being informed of the nature of the proposed development that was under discussion. In any event, it is undisputed that Mr. Hing told Ms. Muiser, during their December 30, 2015 telephone conversation, that he was not interested in selling the Subject Property to the City.

23. On February 9, 2016, Ms. Muiser, acting on behalf of the City, sent the Property Owners a letter informing them that the City had determined the need to purchase the Subject Property to construct a fire station. The letter offered to purchase the Subject Property for \$1,250,000.00. The letter also included an offer to purchase, for \$500.00, the Property Owners’ interest in the 18,425 square feet of land immediately north of the Subject Property that is subject to an existing right-of-way easement for Indian Bend Road. Attached to the letter was an appraisal that the City had obtained, which supported the proposed purchase prices. Exhibit 20.

24. Two days later, on February 11, 2016, Ms. Muiser sent another offer letter identical to the preceding letter except for the addition of the sentence, “This offer is contingent upon City Council Approval.” Exhibit 21. In the email to which the February 11, 2016 letter was attached, Ms. Muiser explained that she had “just noticed that the offer letter sent to you on Tuesday February 9<sup>th</sup>, did not include the statement that the offer is contingent upon approval by City Council,” and so the offer letter “has been revised to include that requirement...” *Id.*

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25. The Property Owners did not respond to the offer letters Ms. Muiser sent in February 2016.

26. On March 22, 2016, the Property Owners entered into a Purchase and Sale Agreement to sell “approximately 7.6 gross acres” of land, including the Subject Property and the adjoining parcel to Investment Properties Associates, LLC (“IPA”) for \$10,000,000. Exhibit 24. IPA intended to develop the land that was the subject of the Purchase and Sale Agreement as a senior living community with on-site memory care facilities. August 9, 2016 Testimony of Robert Ong Hing.

27. Mr. Hing testified that, because IPA planned to raze the existing Scottsdale Athletic Club building on the parcel adjoining the Subject Property, the \$10,000,000 price that IPA agreed to pay under the Purchase and Sale Agreement reflects the value that IPA placed on the land itself, rather than the value of any structures thereon. August 9, 2016 Testimony of Robert Ong Hing. No evidence was presented to refute Mr. Hing’s testimony on this point, which the Court accepts.

28. The legal description of the property that was the subject of the Purchase and Sale Agreement is omitted from Exhibit 24. Mr. Hing’s testimony at the August 9<sup>th</sup> hearing indicated that the land that was the subject of the Purchase and Sale Agreement consisted of 6.74 acres. The \$10,000,000 price IPA agreed to pay under the Purchase and Sale Agreement therefore amounts to approximately \$34.06 per square foot.

29. After signing the Purchase and Sale Agreement, IPA then began the process of seeking City approvals for its planned construction of a senior living community. August 9, 2016 Testimony of Robert Ong Hing. *See also* Exhibit 32 (June 30, 2016 letter from IPA to the City referring to IPA’s “PUD Application 15-ZN-2016”).

30. Based on the lack of response from the Property Owners to the City’s February 2016 offer letters, City staff began to evaluate whether other alternative sites were available that would be appropriate for the relocation of Fire Station 603. Exhibit 10.

31. A team of City employees including members from the Public Works, Fire, and Real Estate Departments identified and evaluated eight different potential locations for the new location of Fire Station 603. Exhibits 8, 10; August 9, 2016 Testimony of Daniel Worth.

32. Mr. Worth testified at the August 9<sup>th</sup> hearing that City officials considered each of the eight possible locations for the relocation of Fire Station 603 in terms of each site’s ability to “meeting that operational need, that 4-minute response time” while “reducing the overlap with adjacent fire stations,” as well as such factors as whether each site’s size is “adequate for what

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we need to build and the way that we need to operate,” the proximity “to major roads for access,” “compatibility with the neighborhoods,” and “cost.” August 9, 2016 Testimony of Daniel Worth. Mr. Worth testified that the Subject Property was the site that would result in the highest reduction in the amount of population that was outside the 4-minute response time. *Id.*

33. Ryan Freeburg, the Department’s Executive Assistant Fire Chief with twenty years of experience in public safety, testified at the August 9<sup>th</sup> hearing that he participated in the evaluation of eight alternative sites for the relocation of Fire Station 603. August 9, 2016 Testimony of Ryan Freeburg. He testified that his evaluation led him to conclude that the Subject Property, as opposed to the alternative sites, is the most desirable site for the relocated Fire Station 603 because relocating Fire Station 603 to the Subject Property would offer the greatest reduction in the geographic area that is outside the current 4-minute response time range. *Id.* He also testified that the Subject Property would be more appropriate than alternative sites because it is on one major thoroughfare and is close to another, it is vacant, and it is not in a residential neighborhood and so relocating the station there would have “limited residential impact.” *Id.*

34. City officials completed a Site Evaluation Matrix that identified and compared the advantages and disadvantages of the eight alternative sites, including the Subject Property. Exhibit 8. The matrix reflects that most of the alternative sites are presently occupied; relocating Fire Station 603 to those sites would have involved displacing residents and incurring the expense of razing existing structures. *See id.* at p. 1. Some of the alternative sites lacked the access to major streets; such access is important in reducing response times. Most of the alternative sites also have the disadvantage of being located in residential neighborhoods. *Id.* The matrix includes a point system for such factors of “location and response time,” “costs,” and “neighborhood impact,” and reflects that the Subject Property scored a total of 97 of 100 possible points overall, a higher score than any of the other alternative sites. *Id.* at p. 2; August 9, 2016 Testimony of Daniel Worth.

35. Based on the analysis and evaluation of the potential locations, City officials concluded that relocating Fire Station 603 to the Subject Property would result in the greatest reduction in area and population outside the four-minute response zone, and that the Subject Property is the best location for relocation of Fire Station 603. Exhibit 10; August 9, 2016 Testimony of Daniel Worth.

36. Specifically, City officials concluded that relocating Fire Station 603 to the Subject Property would result in a 30% reduction in the geographic area, and a 31% reduction in the population, that would fall outside the desired 4-minute response time. No other alternative site provided the same improvement in response time. *See* Exhibit 11 at p. 10; August 9, 2016 Testimony of Daniel Worth.

37. Mr. Hing testified at the August 9<sup>th</sup> hearing that in early May 2016, he learned,

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from checking the City's website and with no direct notice from the City, that the City Council would discuss the proposed acquisition of the Subject Property in an executive session on May 10, 2016. August 9, 2016 Testimony of Robert Ong Hing.

38. On May 5, 2016, Mr. Hing sent a letter to the City Mayor and Council, informing them that the Subject Parcel is adjacent to the site of the Scottsdale Athletic Club, and that the Subject Parcel "is a very integral and essential part of my plans for the redevelopment of the present Scottsdale Athletic Club, which redevelopment plans are now underway." Exhibit 26 at p. 1. Mr. Hing went on to state that "a fire station located next to our Club and boutique resort is a distinct liability, and detrimental to business." *Id.* He warned that proceeding with the proposed acquisition of the Subject Property would "cause substantial consequential damages resulting from its negative impact and possible termination of present development plans." *Id.* at p. 2. He concluded his letter by "question[ing] the legal necessity for using this particular parcel," adding, "[c]ertainly, in the entire City of Scottsdale, there are other suitable locations for a new fire station." *Id.*

39. On May 10, 2016, the City Council met in executive session to discuss the proposed condemnation of the Subject Property. Pursuant to A.R.S. § 38-431.03(A)(3), the Property Owners were not allowed to attend that executive session.

40. On May 13, 2016, Mr. Hing sent City Attorney Washburn an email asking to be notified of any City Council hearing regarding the Subject Property. Mr. Washburn replied the same day, agreeing to provide him with such notice. Exhibit 67.

41. On June 1, 2016, Mr. Washburn notified Mr. Hing by email that a proposal to approve the City's acquisition of the Subject Property would be considered at a City Council meeting on June 21, 2016. Exhibit 68.

42. On June 7, 2016, Mr. Worth signed and approved a report to the City Council (the "June 7<sup>th</sup> Report") containing the staff's recommendation that the City acquire the Subject Property for use as the new site for relocated Fire Station 603. Exhibit 9; August 9, 2016 Testimony of Daniel Worth.

43. The June 7<sup>th</sup> Report states that "[s]taff investigated multiple sites in the target area of McCormick Ranch," and found the Subject Property to be the most suitable location for relocated Fire Station 603 because the site "is vacant, located on a major street and is primarily surrounded by commercial uses." The "other site options in the area," by contrast, "would have required locating the new station within a residential area, relocating existing property owners and razing existing buildings." Exhibit 9 at p. 2.

44. On or about June 6, 2016, Mr. Hing spoke with Mayor Lane regarding the



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proposed acquisition of the Subject Property. August 9, 2016 Testimony of Robert Ong Hing.

45. On June 9, 2016, Mr. Hing met with City Attorney Washburn, expressed his opposition to the acquisition of the Subject Property and provided the City Attorney a document listing what he labeled “Relevant Facts Regarding Indian Bend Road Lot (8201 East Indian Bend Road).” Exhibit 69; August 9, 2016 Testimony of Robert Ong Hing.

46. The document that Mr. Hing provided to the City Attorney on June 9, 2016 stated that the Subject Property and adjoining lot that is the site of the Scottsdale Athletic Club were presently under contract for sale for \$10,000,000, and that the buyer had already submitted a rezoning application with the City to develop an “independent living, assisted living, and memory care facility.” Exhibit 69.

47. The document that Mr. Hing provided to the City Attorney on June 9, 2016 made reference to potential litigation, stating that “[i]nterference with contract or business relationships is a tort,” that “[b]oth Seller and Buyer...would have damages above and beyond value of subject lot against the City,” and that “[t]he largest civil verdict in U.S. history,” in the amount of “10.53 billion dollars,” resulted “from damages for interference with contract.” Exhibit 69.

48. As the date for the City Council meeting approached, Mr. Hing continued to try to contact the City's elected officials to discuss the matter with them. August 9, 2016 Testimony of Robert Ong Hing.

49. On June 17, 2016, Councilmember Korte sent Mr. Hing an email stating, “Mr. Hing, I have been advised by our attorneys that a meeting with you would not be in the best interest of the City. Therefore I will not be responding to your request.” Exhibit 27; August 9, 2016 Testimony of Robert Ong Hing.

50. On June 21, 2016, Mr. Hing sent the mayor and city council members an email complaining of their failure to respond to his efforts to contact them. He attached to his email a list of alternative sites for the new fire station, and asked the mayor and city council members to “consider these other alternative sites before attempting a highly questionable taking, which most assuredly will involve many years of litigation.” Exhibit 30 at p. 1.

51. Attached to the email that Mr. Hing sent the mayor and city council members on June 21, 2016 is a list of eleven alternative sites that Mr. Hing proposed for the new fire station. Exhibit 30 at p. 2.

52. Also attached to the email that Mr. Hing sent the mayor and city council members on June 21, 2016 is a memorandum of the same date from the law offices of Stockton & Hing

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outlining the Property Owners' legal position. *See* Exhibit 30.

53. The June 21, 2016 memorandum from the law offices of Stockton & Hing states in part that, “[i]n view of the availability of many other sites for the fire station,” the City had failed to establish the necessity of the taking as required by A.R.S. § 12-1112. Exhibit 30 at p. 3. The memorandum states that the Subject Property is larger than is required for a fire station and therefore would result in an unnecessary taking, and further states that alternative sites have “advantages over the subject Lot, from the standpoint of cost and location.” *Id.* at pp. 3-4. The memorandum states that City officials have failed to conduct the balancing of greatest public good and least private injury required by A.R.S. § 12-1115, complaining specifically that City officials failed to “sit down with” the Property Owners “to determine the extent of the injury” they would suffer from the taking and that City officials had not considered the tax revenue that would be lost if the development of the Subject Property did not occur as planned. *Id.* at p. 4. The memorandum states that the condemnation of the Subject Property would adversely affect the value of “the adjacent Scottsdale Athletic Club’s 5.24 acres...for future development purposes,” and warns that proceeding with the proposed condemnation would “expos[e] the City to damages” for “tortuously interfering with” the Property Owners’ contract for the sale of the Subject Property for development purposes. *Id.* The memorandum concludes, “Overall, we believe that any condemnation action would create costs and damages that far outweigh the benefit of this site as opposed to other available sites, or the retrofitting of the present [Fire Station 603].” *Id.* at p. 5.

54. Prior to the June 21, 2016 City Council meeting (the “Council Meeting”), Mr. Hing spoke with Vice Mayor Littlefield by telephone regarding his opposition to the acquisition of the Subject Property. Exhibit 10; August 9, 2016 Testimony of Robert Ong Hing.

55. At the Council Meeting, Mr. Worth presented to the Council members the City staff’s conclusion that relocating Fire Station 603 to the Subject Property will result in the greatest reduction in area and population outside the four-minute response zone, and that the Subject Property is the best available location for relocation of Fire Station 603. Exhibit 10.

56. At the Council Meeting, Mr. Worth presented a graphic in the form of a map of Scottsdale that depicts the geographic area that can be reached from the current location of Fire Station 603 within a 4-minute response time. The graphic reflects that the area to the south of current Fire Station 603 overlaps with the coverage area of Fire Station 602, duplicating coverage to the south of current Fire Station 603. The graphic reflects that a large area that is north of current Fire Station 603 but south of Fire Stations 604 and 605 is outside the 4-minute response time from any fire station. The area that cannot be reached from any fire station within a 4-minute response time includes much of the McCormick Ranch area as well as the area to the east and southeast of McCormick Ranch. The graphic states that over 3.5 square miles currently

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cannot be reached within a 4-minute response time, and that over 11,000 Scottsdale residents live in the area that cannot be reached within a 4-minute response time. Exhibit 10; Exhibit 11 at p. 4; Exhibit 42.

57. As Mr. Worth informed the City Council members, the location of Fire Station 603 in relative close proximity to Fire Station 602 to the south results in significant overlap of coverage to the south while leaving “gaps in coverage” in the area that is north of current Fire Station 603, but south of Fire Stations 604 and 605. Exhibit 10.

58. Mr. Worth then presented a second graphic consisting of the same map of Scottsdale, but which depicts the geographic area that could be reached from Fire Station 603 if Fire Station 603 were relocated to the Subject Property at Hayden and Indian Bend, northeast of its current location at Scottsdale Road and McDonald Drive. Exhibit 11 at p. 6. This graphic shows that relocating Fire Station 603 to this location would result in far greater geographic area, including the McCormick Ranch area and the area to the east and southeast of McCormick Ranch, being within Fire Station 603’s 4-minute response time. The graphic also shows that relocating Fire Station 603 in this manner would result in a far smaller geographic area overlapping with the coverage area of Fire Station 602. The graphic states that, if Fire Station 603 were relocated from its current location to the Subject Property, only about 2.53 square miles would fall within the area that cannot be reached within a 4-minute response time, and that the number of Scottsdale residents who live in the area that cannot be reached within a 4-minute response time would be reduced by more than 3,500 people. *Id.*

59. Mr. Worth also addressed the information presented by Mr. Hing, plotting Mr. Hing’s potential alternative sites and analyzing their suitability for the relocation of Fire Station 603. Exhibit 10.

60. Mr. Worth advised the Council that the alternative locations proposed by Mr. Hing were evaluated, and that none of the locations proposed by Mr. Hing were as advantageous as the Subject Property from an operational perspective in terms of providing the same reduction in the area outside the 4-minute response time. Exhibit 10; August 9, 2016 Testimony of Daniel Worth.

61. Mr. Worth testified at the August 9<sup>th</sup> hearing that the SCDP’s recommendation of Hayden and McDonald as the site of the relocated Fire Station 603 is not feasible because that intersection is located in “a FEMA-designated flood wash, floodway,” and that the intersection of Hayden and McDonald was “impassible” due to flooding “as recently as two summers ago.” August 9, 2016 Testimony of Daniel Worth.

62. At the Council Meeting, Mr. Hing addressed the City Council for approximately

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five and one-half minutes, expressing his opposition to the acquisition of the Subject Property. During his remarks, he referred to the potential alternative sites for Fire Station 603 that he contended were preferable to the Subject Property. Calling the Council members' attention to two of his recommended alternatives, Mountain Ranch Park and Notary Park, Mr. Hing told the Council members that a portion of either of these parks could serve as an appropriate location for Fire Station No. 603 because both parks are "located right in McCormick Ranch, which is your primary service area." Exhibit 10.

63. At the Council Meeting, Mr. Worth specifically addressed Mr. Hing's proposal that Fire Station 603 be relocated to a portion of one of those two parks. Mr. Worth stated that those parks are well to the north of the Subject Property, and relocating Fire Station 603 to either of those parks would result in an overlap of coverage area with fire stations to the north (*i.e.*, Fire Stations 604 and 605). Mr. Worth stated that relocating Fire Station 603 to Hayden and Indian Bend, a location midway between Fire Station 602 to the south and Fire Stations 604 and 605 to the north, would provide the greatest additional emergency service coverage while reducing overlap with other fire stations. Exhibits 10, 13.

64. At the Council Meeting, Jean Constantine, a representative of IPA, addressed the City Council regarding IPA's proposed development of the Subject Property and the adjacent parcel. Ms. Constantine made clear in her remarks that IPA does not believe that its plans to develop the senior living community would be feasible if the Subject Property were not included in the development. Exhibit 10.

65. At the Council Meeting, Cylee Gutting, a member of the Orange Coalition, addressed the City Council regarding that organization's views about the use of eminent domain and its opposition to the City's acquisition of the Subject Property. Exhibit 10.

66. The City Council unanimously passed Resolution 10475, which provides in part, "the Council of the City of Scottsdale deems it necessary and essential as a matter of public welfare and in the public interest that fee simple interests in [the Subject Property] be acquired for the public purpose of constructing a Fire Station along Indian Bend Road between Hayden and Pima Roads." Exhibit 4.

67. Resolution 10475 further, provides, "the Council of the City of Scottsdale has considered alternatives available to it, has balanced the public good and the private injury resulting from the acquisition of the [Subject Property], and has determined that locating the Fire Station on the property results in the greatest public good and the least private injury." Exhibit 4.

68. The following day, June 22, 2016, IPA notified the Property Owners that it was cancelling the Purchase and Sale Agreement. Exhibit 31. Soon thereafter, IPA withdrew its

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rezoning application. Exhibit 32.

69. At the August 9, 2016 hearing, Peter J. Martori, a certified general real estate appraiser, presented evidence regarding his opinion of potential alternative sites for the relocation of Fire Station 603. August 9, 2016 Testimony of Peter J. Martori.

70. Mr. Martori testified that, as part of his evaluation, he physically inspected the eight alternative sites considered by the City and the eleven alternative sites recommended by Mr. Hing. As to each site, he considered such factors as location, access, current use, and the character of the surrounding neighborhood. August 9, 2016 Testimony of Peter J. Martori.

71. Mr. Martori consulted with James McMullen, a fire safety expert retained by the Property Owners, in conjunction with his evaluation. Mr. Martori testified that Mr. McMullen told him that he wanted him to “look at all the sites, but, more importantly, work within close proximity of the area in and around the vicinity of McDonald Drive and Hayden Road in particular.” August 9, 2016 Testimony of Peter J. Martori. Mr. Martori testified that, based on his evaluation and Mr. McMullen’s directive to focus on the area of Hayden and McDonald, he identified three alternative sites in the vicinity of Cattle Track Road and McDonald Drive that he considers to be more suitable for relocated Fire Station 603 than the Subject Property. *Id.* Mr. Martori testified that he selected these sites because they “seemed to fall into the category of good access, some were vacant, they were adjacent to public utilities so there would be not necessarily an impact on residential or other users, things like that.” *Id.*

72. Some of the sites recommended by Mr. Martori include parcels with single family residences. *See* August 9, 2016 Testimony of Peter J. Martori. Mr. Martori did not speak to the homeowners, and no other evidence was presented of the impact that condemnation of that property would have on the families who occupy those homes.

73. Mr. Martori did not evaluate his three recommended sites from an operational perspective, nor did he attempt to make any determination of the impact on response times of relocating Fire Station 603 to one of these three locations.

74. The three sites that Mr. Martori identified as potential alternative sites for the relocation of Fire Station 603 were all potential sites that were, in fact, presented to City Council for consideration, either by Mr. Worth or Mr. Hing, prior to the passage of Resolution 10475. Exhibit 10.

75. In his testimony, Mr. Martori did not dispute the conclusion presented to City Council that the relocation of Fire Station 603 to the Subject Property would provide additional service coverage for more people than any other site considered by the City. August 9, 2016

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Testimony of Peter J. Martori.

76. James McMullen, a forensic fire expert witness with extensive experience in the field of fire safety (including seven years as Chief Fire Marshal of the state of California), testified at the August 9<sup>th</sup> hearing on behalf of the Property Owners. Referring to the SCDP's recommendation that Fire Station 603 be relocated to Hayden and McDonald, Mr. McMullen agreed with Mr. Worth's testimony that the Hayden and McDonald site is "unacceptable" because it is located in "a floodplain." Mr. McMullen testified, however, that Fire Station 603 should be relocated to a site as close as possible to the Hayden and McDonald site recommended by the SCDP. August 9, 2016 Testimony of James McMullen.

77. Mr. McMullen was critical of the Site Evaluation Matrix used by City staff to compare eight alternative sites, *see* Exhibit 8, testifying that he has never seen a Site Evaluation Matrix of this kind. He testified that location and response time are the "most critical" considerations, and appeared to question the appropriateness of considering the other factors reflected in the Site Evaluation Matrix, *i.e.*, cost and neighborhood impact. August 9, 2016 Testimony of James McMullen.

78. The Site Evaluation Matrix reflects that the Subject Property received a higher score - - 50 points, out of a possible 50 points - - for location and response time. *See* Exhibit 8 at p. 2. Therefore, even if the factors of cost and neighborhood impact were disregarded, the Subject Property still would have received a higher score on the Site Evaluation Matrix than any of the other seven alternative sites.

79. Mr. McMullen testified that four alternative sites were superior to the Subject Property for the relocation of Fire Station 603 due to their proximity to the intersection of Hayden and McDonald. Three of the sites were those recommended by Mr. Martori; the fourth is a site that is also located near the intersection of Cattle Track Road and McDonald Drive. Exhibit 42; August 9, 2016 Testimony of James McMullen.

80. Mr. McMullen did not do any independent analysis, modeling or studies in this case as to the relative suitability of the Subject Property as opposed to other locations in terms of 4-minute response time or other operational requirements. August 9, 2016 Testimony of James McMullen.

81. The sites that Mr. McMullen identified as potential alternative sites for the relocation of Fire Station 603 were all potential sites presented to City Council for consideration, either by Mr. Worth or Mr. Hing, prior to the passage of Resolution 10475.

82. Mr. McMullen's testimony made clear that he based his recommendation that Fire

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Station 603 be relocated to a site as close as possible to Hayden and McDonald on the understanding that the City would also adopt the other recommendations of the SCDP, including the recommendation that the City construct numerous additional fire stations. August 9, 2016 Testimony of James McMullen.

83. Mr. McMullen acknowledged that adopting and implementing all of the recommendations of the SCDP would be quite expensive but he “didn’t get into the financial analysis.” August 9, 2016 Testimony of James McMullen.

84. Mr. McMullen agreed that it is appropriate for municipal governments to take available resources into account when deciding where to place new fire stations. August 9, 2016 Testimony of James McMullen.

85. Mr. McMullen testified that, if the City found the SCDP’s recommendations to be cost-prohibitive, the City should not proceed with any new construction or relocation of fire stations, but should instead commission “an analysis of the whole operation, a new ESCI-type report” to prepare a new set of recommendations that would be less expensive. August 9, 2016 Testimony of James McMullen.

86. Mr. McMullen testified that, assuming that the City did not relocate any other fire stations as recommended by the SCDP, he had no basis to dispute the Department’s determination that relocating Fire Station 603 to the Subject Property would provide a greater reduction in the area outside the 4-minute response time than any alternative site. August 9, 2016 Testimony of James McMullen.

87. Dennis Lopez, a certified general real estate appraiser, testified that he completed an appraisal of the Subject Property based on the recent sales prices of comparable parcels in Scottsdale. He testified that his appraisal indicated that the Subject Property was worth \$1,250,000.00. He also testified, however, that, since completing his original appraisal, he has updated his opinion of the value of the Subject Property based on recent improvements in the real estate market. He is now of the opinion that the Subject Parcel is worth \$1,400,000.00. August 9, 2016 Testimony of Dennis Lopez.

88. The \$1.4 million value that Mr. Lopez places on the Subject Property amounts to \$20.43 per square foot.

89. Mr. Lopez testified that, when he conducted his appraisal, he was unaware of, and had not considered, IPA’s offer to purchase the Subject Property and adjoining parcel for \$10,000,000, or approximately \$34.06 per square foot. He also testified that he had not seen the Purchase and Sale Agreement between the Property Owners and IPA, and is not familiar with its

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terms. August 9, 2016 Testimony of Dennis Lopez.

90. Mr. Martori also testified about the probable value of the Subject Property, although he acknowledged that he has not completed an appraisal of the Subject Property. August 9, 2016 Testimony of Peter J. Martori.

91. In developing his opinion about the probable value of the Subject Property, Mr. Martori took into consideration the terms of the Purchase and Sale Agreement with IPA, which involved a purchase price of just over \$34 per square foot. August 9, 2016 Testimony of Peter J. Martori.

92. Mr. Martori testified that, in this area of Scottsdale, land allowing higher density dwelling or rental units may sell for a price in a range of \$34 to \$46 per square foot. He used a figure from the middle of that range, \$40 per square foot, in determining the probable value of the Subject Property. August 9, 2016 Testimony of Peter J. Martori.

93. Mr. Martori testified that it was his opinion that the Subject Property has a probable value of \$40 per square foot, or approximately \$2,600,000. August 9, 2016 Testimony of Peter J. Martori.

94. Mr. Hing also testified concerning his opinion of the value of the parcel sought by the City. August 9, 2016 Testimony of Robert Ong Hing.

95. Mr. Hing testified that, in his opinion, the Subject Property is worth \$3,000,000.00. He testified that he arrived at this figure by beginning with the per-square-foot price of the Subject Property under the Purchase and Sale Agreement with IPA and adding a 35% premium to account for the Subject Property's highly visible location along a busy street, which makes it a desirable spot for retail development. August 9, 2016 Testimony of Robert Ong Hing.

96. The Purchase and Sale Agreement sets forth a purchase price for the Subject Property and the adjoining parcel in the amount of \$34.06 per square foot. No evidence has been presented to suggest that the Purchase and Sale Agreement is anything other than an arms' length transaction between a willing buyer and a willing seller. The Court finds insufficient evidence to support the testimony of Mr. Lopez that the Subject Property has a fair market value of only \$20.43 per square foot, substantially less than what IPA agreed to pay for it. The Court also finds no reason to believe that the Property Owners would have agreed to sell the Subject Parcel to IPA for less than its fair market value, and therefore finds no reason to believe that the Subject Parcel is worth more than the purchase price set forth in the Purchase and Sale Agreement.



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**CONCLUSIONS OF LAW**

1. The Arizona Constitution allows governmental entities to exercise the power of eminent domain to take private property for public use if just compensation is paid to the property owner for the taking and damage to the property. Ariz. Const. art. II, § 17. *See also City of Phoenix v. Superior Court*, 137 Ariz. 409, 411, 671 P.2d 387, 389 (1983) (“At the outset, we note that generally no condemning body may exercise the power of eminent domain unless the property which is to be taken is to be put to a ‘public use’.”).

2. The relocation, construction, operation and maintenance of Fire Station 603 is a proper public purpose for which the power of eminent domain may be exercised. *See Bailey v. Myers*, 206 Ariz. 224, 228, 76 P.3d 898, 902 (App. 2003) (“When the government proposes to take a person’s property to build streets, jails, government buildings, libraries or public parks that the government will own or operate, the anticipated use is unquestionably public.”).

3. Before property may be taken, the condemnor must establish that the use to which the property is to be applied is a use authorized by law, and that the taking is necessary to such use. A.R.S. § 12-1112; *City of Phoenix v. Phoenix Civic Auditorium & Convention Ctr. Ass’n*, 99 Ariz. 270, 276, 408 P.2d 818, 822 (1965).

4. Public necessity often means...public convenience and advantage.” *City of Phoenix v. Phoenix Civic Auditorium*, 99 Ariz. at 276, 408 P.2d at 822 (citation and internal quotations omitted). “The word ‘necessary’, when used in or in connection with eminent domain statutes, means reasonable necessity, under the circumstances of the particular case.” *City of Tacoma v. Welcker*, 65 Wash.2d 677, 683, 399 P.2d 330, 335 (1965).<sup>3</sup> “Necessary” does not mean “indispensable.” *Id.* “The meaning of the term “necessary” is “interwoven with the concept of public use...and embraces the right of the public to expect and demand the service and facilities to be provided by a proposed acquisition or improvement.” *Id.* “Reasonable necessity for use in a reasonable time is all that is required.” *Id.*

5. A court must defer to a legislative determination of necessity absent fraud, or arbitrary and capricious conduct. *City of Phoenix v. McCullough*, 24 Ariz.App. 109, 114, 536 P.2d 230, 235 (1975) (“[A] condemnor’s determination of necessity should not be disturbed on judicial review in the absence of fraud or arbitrary and capricious conduct.”). *See also Bailey*, 206 Ariz. at 227 n.1, 76 P.3d at 902 n.1 (“[A] deferential standard of review is applied to the question of necessity.”).

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<sup>3</sup> Arizona courts have noted that decisions from the State of Washington are persuasive in construing the eminent domain provision of the Arizona constitution. *See Bickel v. Hansen*, 169 Ariz. 371, 374, 819 P.2d 957, 960 (App. 1991).

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6. Action is arbitrary and capricious if it is “unreasoning action, without consideration and in disregard for facts and circumstances; where there is room for two opinions, the action is not arbitrary or capricious if exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” *Maricopa Cty. Sheriff’s Office v. Maricopa Cty. Employee Merit Sys. Comm’n*, 211 Ariz. 219, 223, 119 P.3d 1022, 1026 (2005) (citation and internal quotations omitted).

7. A court reviewing a legislative determination of necessity considers whether “the findings of the governing body have some reasonable support in the facts.” *City of Phoenix v. Superior Court*, 137 Ariz. at 416, 671 P.2d at 394. If so, “the findings of the governing body must be sustained,” even “though those findings may be reasonably doubtful or fairly debatable.” *Id.* See also *Tucson Community Dev. & Design Ctr. v. City of Tucson*, 131 Ariz. 454, 459, 641 P.2d 1298, 1303 (App. 1981) (“If the evidence is such that the city could reasonably have found necessity...the resolution is not arbitrary. Even if the City’s action is reasonably doubtful or even fairly debatable, we cannot substitute our judgment for that of the City Council.”) (citations, internal quotations, and internal punctuation omitted).

8. The evidence presented does not support a finding that the City Council acted arbitrarily or capriciously in determining the necessity of the condemnation of the Subject Property. The City Council unanimously passed Resolution 10475 after considering the recommendation of staff and the staff’s assessment of available alternatives.

9. Certainly, no one could fairly call the City Council’s failure to adopt the recommendation of the SCDP that Fire Station 603 be relocated to the intersection of Hayden and McDonald arbitrary or capricious. At the August 9<sup>th</sup> hearing, Mr. Worth testified that the intersection of Hayden and McDonald is not a suitable site for a fire station because it is located “in the middle of an active wash” that is subject to flooding. The Property Owners’ expert witness, Mr. McMullen, acknowledged that the site proposed by the SCDP is “unacceptable” for that same reason. No witness at the August 9<sup>th</sup> hearing suggested that the City Council should have implemented the SCDP’s recommendation that Fire Station 603 be relocated to a site in a wash.

10. Although the Property Owners complain that the City “ignored” the SCDP’s recommendation “that Fire Station [No.] 603 be relocated to the vicinity of Hayden Road and McDonald Drive,” Defendants Robert Ong Hing and Alice Y. Hing’s Proposed Findings of Fact and Conclusions of Law, Proposed Finding No. 41, the Court finds that this is not a fair characterization of the City’s position. It cannot fairly be said that the City has “ignored” the SCDP’s recommendations. The SCDP’s recommendation that Fire Station 603 be relocated to Hayden and McDonald was simply one part of a larger recommendation for the construction of at least nineteen new fire stations and the relocation of other stations. The decision not to adopt

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those recommendations cannot be dismissed as arbitrary and capricious in view of the expense that adopting those recommendations would have entailed. As Mr. Worth testified at the August 9<sup>th</sup> hearing, “Our decisions are constrained by resources. We could not build the ideal situation that they identified in the [SCDP]. We’re building a situation that’s going to vastly improve service to our community.” August 9, 2016 Testimony of Daniel Worth.

11. While the relocation of Fire Station 603 to a site close to Hayden and McDonald may have made sense in conjunction with the construction of numerous new facilities to provide emergency coverage for other parts of Scottsdale, a municipal government does not act arbitrarily and capriciously in taking financial constraints into account.

12. The Court finds no basis for Mr. McMullen’s assertion that, if the City was not going to adopt the recommendations of the SCDP *in toto*, it should have started over by commissioning yet another assessment, this time directing the consultant to come back with less expensive recommendations. The City is not required to take an all-or-nothing approach to the SCDP’s recommendations. The SCDP itself acknowledges that available resources must be considered in determining whether to adopt and implement its recommendations. The SCDP states that “[p]erformance goals must be tailored to match community expectations, community conditions, and the ability to pay for the resources necessary to attain the desired level of service. Levels of service and resource allocation decisions are the responsibility of the community’s elected officials, in this case the Scottsdale City Council. The policy making body must carefully balance the needs and expectations of its citizenry when deciding how much money to allocate to all of the services it provides.” Exhibit 16 at p. 105.

13. The SCDP’s intended purpose was, as Mr. Worth testified, to be one of a number of sources of data and information for the City staff to consider in making its recommendations. August 9, 2016 Testimony of Daniel Worth. The evidence shows that the SCDP was used for its intended purpose.

14. The Property Owners have complained that City officials were unwilling to discuss the proposed taking with them, comparing the City’s actions in this matter unfavorably to the “great lengths” to which the Town of Gilbert went “to engage [the property owner] in the [condemnation] process” in *Queen Creek Summit, LLC v. Davis*, 219 Ariz. 576, 581, 201 P.3d 537, 542 (App. 2008). *See* Hing Defendants’ Pre-Hearing Statement at pp. 4-5. While it is certainly true that most of the communication between the City and the Property Owners regarding the proposed taking was initiated by the latter, it cannot be said that the City Council took up Resolution 10475 without a clear understanding of the Property Owners’ position on the relevant issues. Prior to passing Resolution 10475, the City officials received and considered verbal and written communications from Mr. Hing detailing the Property Owners’ legal position, their opposition to the City’s acquisition of his property, and their identification of other sites

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that they believe were superior to the Subject Property as the site of the relocated Fire Station 603. *See* Exhibits 10, 26, 30, 69. While the Property Owners complain that Mr. Hing was given only a few minutes to address the City Council at its June 21, 2016 meeting, the Property Owners have not identified what information Mr. Hing would have presented to the City Council, had he been given additional time, that he had not already presented to the City either verbally or in writing.

15. Although the Property Owners assert that “[t]he record demonstrates that other available locations would provide the City with a far more suitable fire station location,” Defendants Robert Ong Hing and Alice Y. Hing’s Proposed Findings of Fact and Conclusions of Law, Proposed Finding No. 91, the issue before the Court is not the wisdom of the City Council’s decision to relocate Fire Station 603 to the Subject Property as opposed to any of the other alternative sites proposed by Mr. Hing, Mr. McMullen, and/or Mr. Martori. Instead, the issue before the Court is whether the City Council’s decision has “some reasonable support in the facts.” *City of Phoenix v. Superior Court*, 137 Ariz. at 416, 671 P.2d at 394. If so, the Court must defer to the City Council’s determination of necessity, even if the City Council’s decision may be said to “be reasonably doubtful or fairly debatable.” *See id.* Here, the City Council’s decision certainly has “some reasonable support in the facts.” City staff determined that relocating Fire Station 603 to the vicinity of Hayden and Indian Bend would result in a greater reduction in the area and population that is outside the desired 4-minute response time than any other alternative site. At the August 9<sup>th</sup> hearing, no witness for the Property Owners identified any other alternative site that would lead to a comparable reduction in the area and population that is outside a 4-minute response time. A decision to relocate Fire Station 603 to the location that will provide the greatest increase in emergency coverage within national standards is certainly a decision with “reasonable support in the facts.”

16. The record shows that the City Council considered available alternatives, including alternatives proposed by the Property Owners, considered the objections asserted by the Property Owners, and unanimously voted to accept the City staff’s recommendation that the Subject Property is the best location for relocation of Fire Station 603. The City Council’s decision in this matter cannot be considered “unreasoning action, without consideration [or] in disregard for facts and circumstances.” *See Maricopa County Sheriff’s Office*, 211 Ariz. at 223, 119 P.3d at 1026. Instead, the council reached its decision “honestly and upon due consideration,” *see id.*, and therefore the City Council cannot be said to have acted arbitrarily or capriciously.

17. The Court finds that substantial evidence supports the City’s determination that the Subject Property is necessary for use as the site of a fire station, that there is no evidence (or even suggestion) of fraud in the City’s determination, and that the City did not act arbitrarily or capriciously.

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18. A.R.S. § 12-1115(A) provides that property taken for a public use “shall be located in the manner which will be most compatible with the greatest public good and the least private injury.” The statute thus requires “a balancing of the greatest public good and the least private injury in locating land for condemnation.” *Queen Creek Summit*, 219 Ariz. at 579, 201 P.3d at 540.

19. In a condemnation action, the landowner bears the burden of proving, by clear and convincing evidence, that the condemnor did not comply with A.R.S. § 12-1115(A) and the proposed taking is “unnecessarily injurious.” *Queen Creek Summit*, 219 Ariz. at 579-80, 201 P.3d at 540-41.

20. A.R.S. § 12-1115(A) does not “mandate a specific procedure for evaluating ‘least private injury’.” *Queen Creek Summit*, 219 Ariz. at 581, 201 P.3d at 542. A consideration of “least private injury” may require both a collective inquiry and one specific to each landowner. *Id.* at 580, 201 P.3d at 541.

21. The evidence does not support the Property Owners’ suggestion that the City Council failed to consider the private injury they would suffer if the proposed condemnation were to proceed. Prior to the vote passing Resolution 10475, the City Council was informed, by both the Property Owners and a representative of IPA, that if the proposed taking were to proceed, IPA would withdraw from its contract to purchase the Subject Property and the adjoining parcel for \$10,000,000. Prior to casting her vote in support of the resolution, Councilmember Milhaven expressly stated that the Property Owners’ injury would be redressed by an award of just compensation through the legal system. The Court finds that the Property Owners have failed to establish, by clear and convincing evidence, that the City Council failed to consider the private injury the Property Owners would sustain as a result of the taking.

22. No evidence has been presented to suggest that an alternative site would be less injurious. Some of the alternative sites proposed by Mr. Martori are occupied by single family residences. No evidence has been presented of the injury those homeowners would suffer as a result of the loss of their homes. As for the other alternative sites proposed by the Property Owners, no evidence was presented of the plans that any of the other property owners may have for their property, and thus the Court has no reason to believe that the injury to the Property Owners, in the form of their lost sale opportunity, is any greater than the injury that any of the other property owners would sustain. More important, no witness contradicted the testimony of Mr. Worth that no alternative site provided as great a benefit to public safety in the form of a reduction in the area and population that are outside the 4-minute response time. The Court finds that the Property Owners have failed to establish, by clear and convincing evidence, that, in selecting the Subject Property as the site for relocated Fire Station 603, the City Council failed to appropriately balance the greatest public good and least private injury.

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23. The Court finds that the Property Owners have failed to establish, by clear and convincing evidence, that the Scottsdale City Council's determination that locating Fire Station 603 on the Subject Property is not compatible with the greatest public good and least private injury.

24. "Fair market value" has been defined as "the price at which a willing seller will sell to a willing buyer." *Maricopa Cty. v. Barkley*, 168 Ariz. 234, 240, 812 P.2d 1052, 1058 (App. 1990). See also *Stockholders & Spouses of Carioca Co. v. Superior Court*, 141 Ariz. 506, 509, 687 P.2d 1261, 1264 (1984) ("[C]ompensation for condemned property is determined by the market value of the property taken, or the price at which a willing seller will sell and a willing buyer will buy.").

25. There are a number of methods of valuation, including "that which estimates market value based on sales of property comparable to the condemned property." *Barkley*, 168 Ariz. at 241, 812 P.2d at 1059.

26. "The best evidence of value, if available, is third-party sales value, and reliable evidence of third-party sales should be considered in determining fair value." *Pro Finish USA, Ltd. v. Johnson*, 204 Ariz. 257, 261, 63 P.3d 288, 292 (App. 2003) (citation and internal quotations omitted). Evidence of the purchase price as agreed upon by a willing seller and a willing buyer in an arms-length transaction is, therefore, a better indicator of fair market value than an appraiser's estimate based on the sales price of comparable property. See *Honeywell Info. Sys., Inc. v. Maricopa Cty.*, 118 Ariz. 171, 174, 575 P.2d 801, 804 (App. 1977) ("The test of fair market value is not necessarily what an appraiser thinks the property is worth but rather what the property would sell for between a willing buyer and a willing seller in an arms-length transaction.").

27. The Court finds the \$34.06-per-square-foot purchase price set forth in the IPA Purchase and Sale Agreement to be the best evidence available of the Subject Property's fair market value, and so finds the fair market value of the 1.5-acre Subject Property to be approximately \$2,225,000.00.

Therefore, as a result of the findings and conclusions entered by this Court,

**IT IS ORDERED** that Plaintiff City of Scottsdale is entitled to immediate possession of the Subject Property as described in Exhibit "A" to the Complaint, upon posting a cash bond of \$2,225,000.00 with the Clerk of the Court. The Plaintiff shall submit a separate form of Order of Immediate Possession.

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**IT IS FURTHER ORDERED** that the amount of the bond may not be introduced in evidence and is without prejudice to any party at the trial of this action. A.R.S. § 12-1116(O).

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Daniel J. Kiley  
Judge of the Superior Court