



Chandler • Arizona
Where Values Make The Difference

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JAN 27 2011

CITY OF CHANDLER
CITY CLERK

MEMORANDUM

Real Estate - Council Memo No. RE11-095

DATE: JANUARY 27, 2011

TO: MAYOR AND CITY COUNCIL

THRU: RICH DLUGAS, ACTING CITY MANAGER *RD*
PAT MCDERMOTT, ASSISTANT CITY MANAGER *[Signature]*
R. J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJZ*
SHEINA HUGHES, CITY ENGINEER *[Signature]*

FROM: ERICH KUNTZE, REAL ESTATE COORDINATOR *EK*

SUBJECT: APPROVAL OF CONDEMNATION SETTLEMENT IN *CITY OF CHANDLER v. SAFEWAY, INC., A DELAWARE COPORATION* IN THE SUM OF \$85,000.

RECOMMENDATION: Staff recommends approval of settlement for the sum of \$85,000.

BACKGROUND/DISCUSSION: This condemnation action was filed to acquire a temporary drainage easement that is required for the McQueen Road Improvement Project between Queen Creek Road and Riggs Road ST-0810. This drainage easement is needed to hold water runoff from both sides of McQueen Road due to the City landfill project on the west side of McQueen at this location. The City's original offer was rejected. Safeway felt that they would have to redesign a proposed site plan due to the additional retention requirement and the redesign would require use of underground storage. The City acquired immediate possession and has continued to negotiate a settlement with Safeway. Both sides have supported their respective positions with appraisals and engineering reports from reputable and experienced appraisers and engineers. The City was able to provide a suggested alternative grading plan that eliminated a need for underground storage thus lowering Safeway's counter-proposal from \$350,000 to \$165,000. This amount was rejected by the City and after further negotiations a settlement amount was reached.

Subject to Council approval, a settlement has been reached for the sum of \$85,000, plus accrued statutory interest. The settlement amount is based upon a rate of \$5.00 per square foot for the vacant land which is less than the mid-point between the two competing appraiser's opinions of value; plus the estimated cost of additional grading required. Staff recommends the settlement as a fair and reasonable compromise.

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Settlement
January 27, 2011
Page Two

FINANCIAL IMPLICATIONS: Payment will come from funds budgeted or allocated for the road project.

PROPOSED MOTION: Move to approve settlement in *City of Chandler v. Safeway, Inc., a Delaware corporation* in the sum of \$85,000, plus statutory interest.

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5 Phoenix, Arizona 85003-1448
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7 *Attorneys for The City of Chandler*
8 dm@millerkramer.com/ck@millerkramer.com

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

11 THE CITY OF CHANDLER, a municipal
12 corporation of the State of Arizona,

13 Plaintiff.

14 v.

15 SAFEWAY, INC., a Delaware corporation; and
16 COUNTY OF MARICOPA;

17 Defendants.

18 APN 303-42-949

No. CV2010-004560

STIPULATED JUDGMENT

Hon. John A. Buttrick

19 IT IS ORDERED, ADJUDGED, AND DECREED that judgment is entered as follows:

- 20 1. All Defendants were properly served.
- 21 2. Plaintiff has judgment condemning a drainage easement in the real property
22 described in Exhibit "A" attached (the "subject property").
- 23 3. Defendant Maricopa County having filed a Disclaimer of Interest shall take
24 nothing by this judgment.
- 25 4. Defendant Safeway, Inc. has judgment against Plaintiff in the amount of
26 \$85,000.00 as total just compensation for the taking of the described interest in the subject
property.
5. Plaintiff has previously deposited the sum of \$44,385.00.00 pursuant to this
Court's Order for Immediate Possession which has not been withdrawn. Plaintiff shall deposit

1 the additional sum of \$40,615.00 with the Clerk. Immediately upon deposit of the additional
2 funds, the Clerk shall, without further order, issue and mail a check in the total amount deposited
3 to Safeway, Inc. to be mailed to its attorney of record, Jeffrey J. Goulder, Stinson Morrison
4 Hecker LLP, 1850 North Central Avenue, Suite 2100, Phoenix, AZ 85004-4584.

5 6. Upon receipt of the funds, counsel for Defendant shall execute and file with the
6 Court a Satisfaction of Judgment.

7 7. Once the funds specified in paragraph 5 above have been paid by the Clerk, this
8 Court shall enter its Final Order of Condemnation vesting a drainage interest in the subject
9 property to Plaintiff.

10 8. Upon payment of this judgment, the assets, interest and claims of all Defendants
11 herein shall be fully terminated and title to and possession of the subject property shall not be
12 subject to or encumbered by any existing or future rights, liens, claims or other encumbrances,
13 including, but not limited to, taxes and assessments upon or against the property while owned or
14 possessed by Defendants or by any persons, firms, corporations claiming any interest in the
15 subject property under or by virtue of said Defendants.

16 9. No other person, firm, or corporation has any right, title or interest in and to the
17 subject property, or any part thereof, and any person, firm or corporation claiming any interest in
18 or to the subject property, or any part thereof, subsequent to the recording of the Notice of the
19 Lis Pendens in this matter, in the office of the County Recorder, on February 22, 2010,
20 Document No. 2010-0143441, is hereby adjudged and decreed to be without any right, title or
21 interest in or to the subject property.

22 10. Each party shall bear its own costs and attorney's fees.

23 DONE IN OPEN COURT this _____ day of _____, 2011.
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25

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...

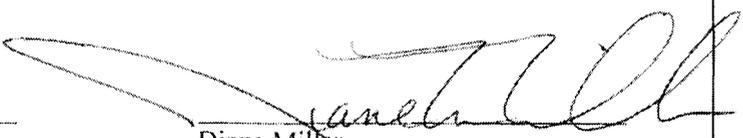
The Honorable John A. Buttrick
JUDGE OF THE SUPERIOR COURT

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Stipulated as to Form and Content:

MILLER KRAMER, PLLC

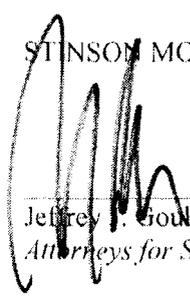
DATED: 1-3-11



Diane Miller
Chris Kramer
Attorneys for The City of Chandler

STINSON MORRISON HECKER LLP

DATED: 12/30/10

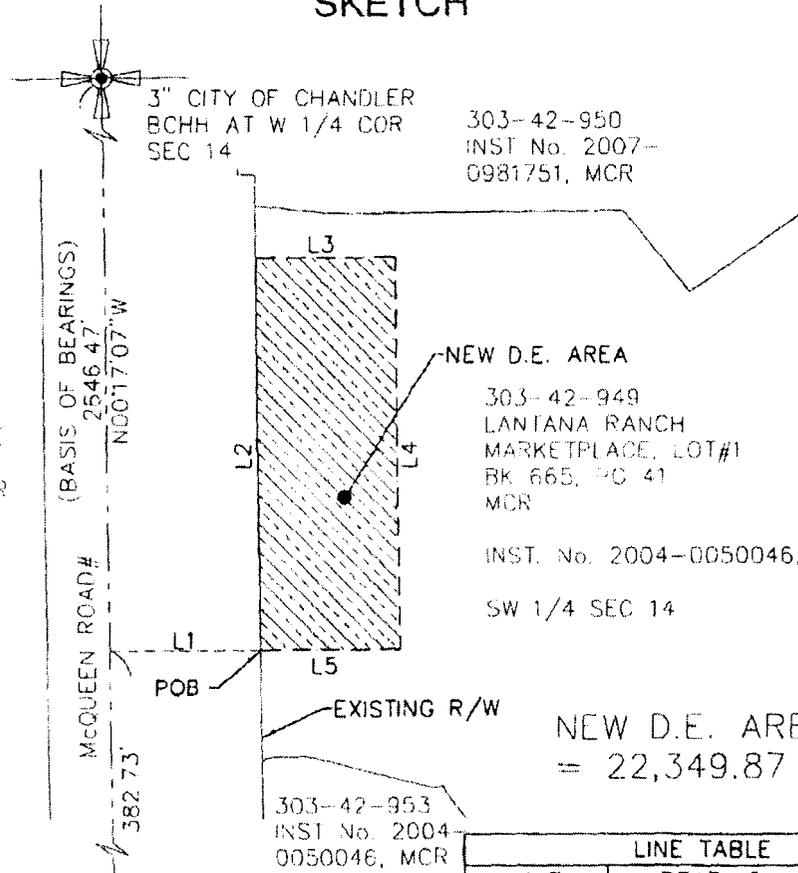


Jeffrey J. Goulder
Attorneys for Safeway, Inc.



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PARCEL No. 303-42-949 EXHIBIT A SKETCH



NEW D.E. AREA
= 22,349.87 S.F.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N89°42'53"E	97.00'
L2	N00°17'07"W	248.43'
L3	N89°42'53"E	89.96'
L4	S00°17'07"E	248.43'
L5	S89°42'53"W	89.96'

#BK. 578, PG. 39, MCR SEC 14, T2S, R5E
BK. 1 OF ROAD MAPS, PG. 41, MCR
DK 8420, PG. 90, MCR
#=RIGHT-OF-WAY REFERENCE

**McQUEEN ROAD IMPROVEMENTS
PROJECT No.: 28012
NEW DRAINAGE EASEMENT**

Date: 9/2/09

Preparing Firm: **RITTOCH-POWELL & ASSOCIATES, INC.**
3800 N. Central Ave., Suite 605
Phoenix, AZ 85012
Ph: 602-263-1177
Fax: 602-277-6286



EXPIRES 6/30/2011



PARCEL No. 303-42-949
EXHIBIT A
LEGAL DESCRIPTION

A drainage easement over Lot 1 as shown on the plat of Lantana Ranch Marketplace recorded in Book 665, Page 41, Maricopa County Records (MCR) being one of those tracts of land as conveyed to Safeway, Inc. by deed of record in Instrument Number 2004-0050046, MCR and located in the Southwest Quarter of Section 14, Township 2 South, Range 5 East of the Gila & Salt River Meridian, City of Chandler, Maricopa County, Arizona, more particularly described as follows:

Commencing at the southwest corner of said Section 14 (3" City of Chandler brass cap in hand hole) from which point the west quarter corner thereof (3" City of Chandler brass cap in hand hole) bears N 00°17'07" W a distance of 2646.47 feet;

Thence N 00°17'07" W, along the west line of said Southwest Quarter, a distance of 382.73 feet;

Thence N 89°42'53" E, across the right-of-way of McQueen Road, a distance of 97.00 feet to a point on the east line thereof, the POINT OF BEGINNING;

Thence N 00°17'07" W, along said east right-of-way line, a distance of 248.43 feet;

Thence across said tract the remaining courses and distances:

Thence N 89°42'53" E a distance of 89.96 feet;

Thence S 00°17'07" E, along a line 89.96 feet east of and parallel to said east right-of-way line, a distance of 248.43 feet;

Thence S 89°42'53" W a distance of 89.96 feet to the POINT OF BEGINNING.

The above described easement contains 0.5131 acre of land (22,349.87 s.f.), more or less, including any easements of record.

McQUEEN ROAD IMPROVEMENTS
PROJECT No.: 28012
NEW DRAINAGE EASEMENT

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EXPIRES 6/30/2011



PARCEL No. 303-42-949
EXHIBIT A
LEGAL DESCRIPTION

The basis of bearing for the above description is N 00°17'07" W for the west line of the Southwest Quarter of Section 14, Township 2 South, Range 5 East of the Gila & Salt River Meridian, City of Chandler, Maricopa County, Arizona as shown on the PLSS Subdivision Record of Survey-Maricopa County Geodetic Densification and Cadastral Survey recorded in Book 589, Page 48, Maricopa County Records.

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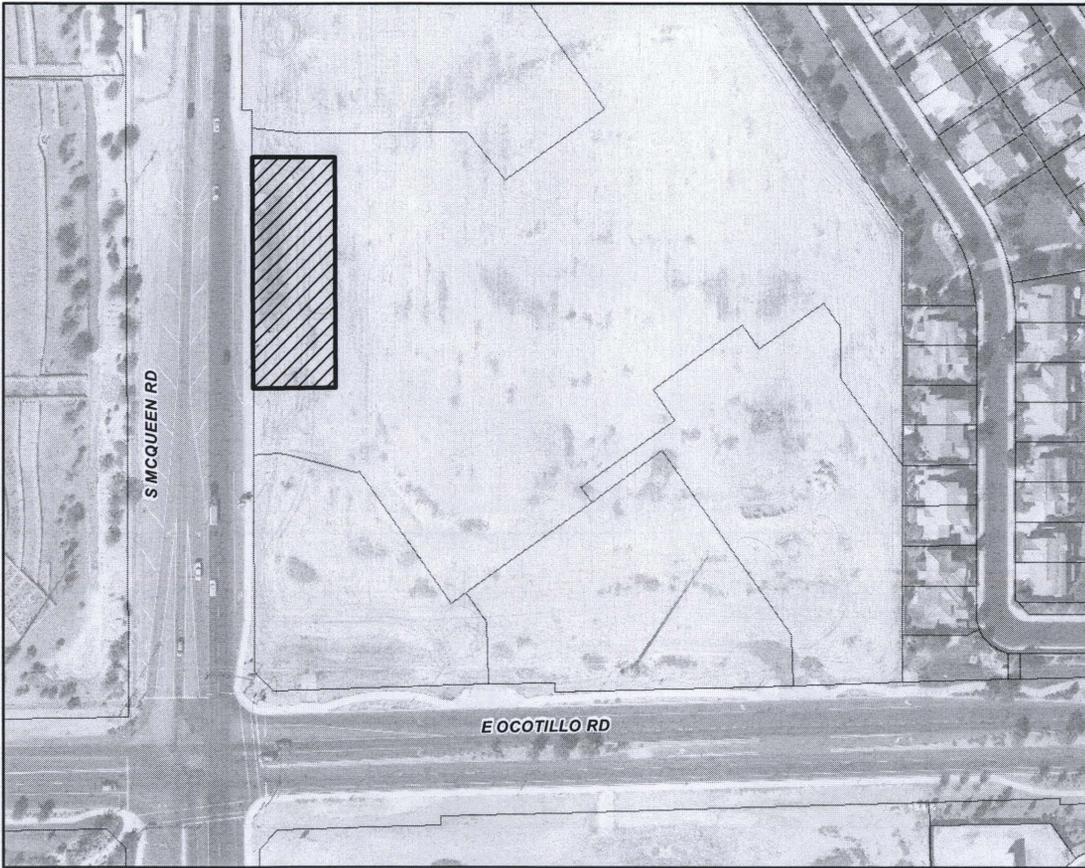
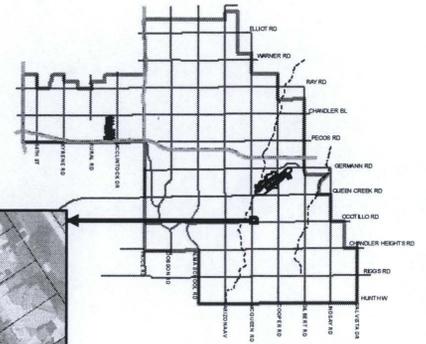
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EXPIRES 6/30/2011



SAFEWAY, INC., SETTLEMENT



MEMO NO. RE11-095

 DRAINAGE EASEMENT

