

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

ORIGINAL

Present: HONORABLE JAIME A. RIOS  
Justice

IA PART 8

OS

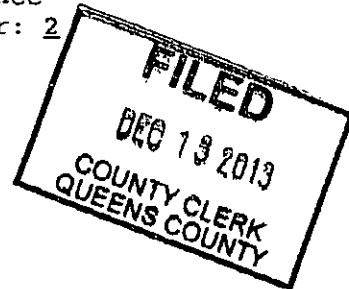
In the Matter of the Application of the CITY OF NEW YORK, relative to Acquiring Title were not heretofore acquired in Fee Simple to All or Parts of

X Index  
Number: 14225/12

Motion  
Date: June 19, 2013

Chandler Street from Nameoke Avenue to Battery Road, Nameoke Avenue from McBride Street to Chandler Street, Dix Avenue from Chandler Street to McBride Street, McBride Street from Nameoke Street to Mott Street

Sequence  
Number: 2



In the Borough of Queens, City and State of New York.

X

The following papers numbered 1 to 10 read on this motion by claimant TD Equities, Inc. pursuant to Eminent Domain Procedure Law (EDPL) § 303 for an order compelling condemnor City of New York to immediately issue advance payment offers and make payments accordingly for Claimant's properties located at Block 15662 Lot 22, damage parcels 50A and 52A.<sup>1</sup>

Papers  
Numbered

Notice of Motion-Affidavits-Exhibits-Cross Motion-Exhibits.....	1-4
Answering Affidavits-Exhibits.....	5-7
Reply Affidavits.....	8-10

Upon the foregoing papers it is ordered that this motion is determined as follows:

Title to the property that is the subject matter of this proceeding vested in the City of New York on September 13, 2012. This proceeding included more than 80 parcels, which were acquired for the installation of new storm and sanitary sewers and the upgrading of existing water mains in Edgemere/Far Rockaway section

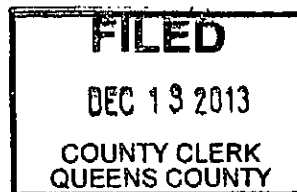
<sup>1</sup> Claimant has withdrawn the part of its motion for advance payments with respect to Parcels 50 and 52.

of Queens, New York. Pursuant to EDPL § 303 the City sent advance payment for certain of the damaged parcels.

The City, however, did not send advance payment offers for parcels 50A and 52A. It is undisputed that these parcels are in the bed of the street. The City contends as such, the land has no value. Since these parcels have no value, the City contends that it made an EDPL § 303 offer on all the parcels including the bed of the street parcels. The claimant contends that the bed of the street has value.

In a condemnation proceeding, the burden of proof remains upon the claimant, but the municipality has an independent obligation to pay just compensation and, in connection therewith, to present its own appraisal of the highest (see Chase Manhattan Bank v State of New York, 103 AD2d 211 [2d Dept 1984]). There is a constitutional mandate for the court to give just a fair compensation for property taken (Yaphank Dev. Co. v County of Suffolk, 203 AD2d 280 [2d Dept 1994]). In cases where the City contends the land has no value, to prevail the City must show that there is no factual question that the property is without value (see Matter of City of New York Grantwood Retention Basin-Cassino Contr. Corp., 33 Misc 3d 586 [Sup Ct, Richmond County 2011]). Here, while the City argues that the bed of the street parcels are valueless, the City has not presented any appraisal attesting to the fact that the bed of the street has no value. Additionally, there is no merit to the argument that the bed of the street is valueless as a matter of law. While the street might be encumbered with a public easement, that does not render the property valueless as a matter of law (see e.g., Story v New York El. R.R. Co., 90 NY 122 [1882]). The City has, thus, not established that the bed of the street parcels are valueless.

Accordingly, the motion is granted only to the extent that the City must provide an Advance Payment offer based on an actual appraisal for the subject bed of the street parcels.



Dated: November 25, 2013  
Index No.: 14225/12-Seq. 2

J.S.C.