

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-015460

02/15/2018

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

TROON NORTH ASSOCIATION

FRANCIS J SLAVIN

v.

CITY OF SCOTTSDALE, et al.

ERIC C ANDERSON

FREDERICK E DAVIDSON
REMAND DESK-LCA-CCC

HEARING

Courtroom: ECB-912

10:03 a.m. This is the time set for oral argument on (1) Plaintiff MBA Development Partners, LLC's January 19, 2018 Motion to Disqualify Counsel and (2) Plaintiff MBA Development Partners, LLC's January 19, 2018 Motion to Dismiss Troon North Association Appeal. Plaintiff MBA Development Partners, LLC is represented by Counsel Frederick E. Davidson and Chad R. Kaffer. MBA's client representatives, Mike Anderson, Mike Lofton, and Buddy Satterfield, are also present. Plaintiff Troon North Association is represented by Counsel Francis J. Slavin and Daniel J. Slavin. Defendants City of Scottsdale, Board of Adjustment of the City of Scottsdale, the individual members of the Board of Adjustment of the City of Scottsdale, and the Zoning Administrator of the City of Scottsdale are represented by Counsel Eric C. Anderson.

A record of the proceedings is made digitally in lieu of a court reporter.

Oral argument is presented on the Motion to Disqualify.

Oral argument is presented on the Motion to Dismiss.

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IT IS ORDERED taking these matters under advisement.

Discussion is held regarding further proceedings.

Counsel for MBA requests leave to conduct limited discovery prior to submitting briefs in this matter.

Counsel are directed to confer regarding what constitutes the official transcript in the lower court proceedings. If counsel are unable to come to agreement, counsel shall contact the court for resolution and should be prepared at that conference to advise the court of their legal arguments regarding this issue.

IT IS ORDERED that MBA file a memorandum, no later than the close of business on **February 16, 2018**, specifying what discovery it believes it needs and the amount of time it will take to complete that discovery. By the close of business on **February 23, 2018**, the City will file any objection to that memorandum.

11:20 a.m. Matter concludes.

Later

1. Motion to Disqualify.

The court finds no conflict of interest or appearance of impropriety that would preclude the City Attorney's Office from representing Defendants in this special action. And MBA has articulated no prejudice it suffers by having the City Attorney's Office defend the Board of Adjustment's decision than a private attorney.

IT IS ORDERED denying the Motion.

2. Motion to Dismiss.

MBA makes several arguments for dismissal of Troon's appeal from the Board of Adjustment's decision, but one is dispositive. Troon acknowledges that, as a property owner, it has no "special damage" that would give it standing to complain about a zoning decision on adjacent property. *Buckelew v. Town of Parker*, 188 Ariz. 446, 450, 937 P.2d 368, 372 (App. 1996). It is therefore representing the property interests of its members. But its CC&R's do not authorize it to file a zoning appeal like this on behalf of its members' collective interests.

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The court will, however, permit Troon to file an amicus brief in opposition to MBA's brief if it wishes.

IT IS ORDERED granting the Motion.

IT IS FURTHER ORDERED that Troon may file a brief in opposition to MBA's opening brief.