

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2013-012245

11/22/2013

HONORABLE KATHERINE COOPER

CLERK OF THE COURT  
C. Keller  
Deputy

CITY OF CHANDLER, THE

DIANE M MILLER

v.

J X NIPPON MINING AND METALS U S A,  
INC, et al.

DALE S ZEITLIN

DAVINA DANA BRESSLER

**UNDER ADVISEMENT RULING**

The Court has reviewed Defendant JX Nippon Mining and Metals USA's Rule 12(b)(6) and 12(b)(1) Motion to Dismiss for Failure to Comply with A.R.S. § 12-1116(A) filed October 2, 2013; Plaintiff's Response filed October 9, 2013; and Defendant's Reply filed October 21, 2013. Having also heard oral argument, the Court concludes:

1. The City of Chandler did not comply with A.R.S. § 12-1116 before filing its Complaint. The statute requires a government to give a property owner a written offer with a supporting appraisal at least 20 days before filing a condemnation action. Chandler provided Defendant with three appraisals and one offer. The one offer accompanied the first appraisal which did not include additional land the City seeks to condemn per its Complaint and the second and third appraisals. Thus, the City did not provide Defendant with an appraisal *and* an offer for the land it filed for.

The Amended Complaint in Condemnation and Application for Immediate Possession filed November 1, 2013 does not cure the City's non-compliance with the statute since the statute requires an offer and appraisal before the complaint is filed.

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2. The City has not shown that immediate and irreparable harm outweighs the property owner's statutory right to compliance with A.R.S. § 12-1116 such as to allow the Court to waive the statutory requirements.

Accordingly, **IT IS HEREBY ORDERED** granting Defendant's Motion and dismissing Plaintiff's Complaint without prejudice.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.