

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

ROA Indianapolis, LLC,
f/k/a FMG Indianapolis, LLC,
d/b/a Reagan Outdoor
Advertising of Indianapolis,
Appellant-Defendant,

v.

City of Fishers,
Appellee-Plaintiff,

and

DVDRJB Real Estate, Inc.,
Appellee-Defendant.

June 6, 2023

Court of Appeals Case No.
22A-PL-2331

Appeal from the Hamilton
Superior Court

The Honorable Michael A. Casati,
Judge

Trial Court Cause No.
29D01-2109-PL-6971

Memorandum Decision by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

- [1] The City of Fishers filed condemnation proceedings against ROA Indianapolis, LLC, seeking to obtain ROA's interests in a billboard off of State Road 37. ROA argues that Fishers failed to make the required good faith offer before turning to the courts.¹ The trial court rejected ROA's arguments, and we affirm, finding that Fishers did, in fact, make the requisite good faith offer.

Facts

- [2] On behalf of the various governmental entities involved in a highway-improvement project, Fishers was tasked with acquiring all relevant property interests needed to complete the project. For this purpose, Fishers attempted to buy ROA's interest in a 30-year-old double-stacked pole sign (billboard) alongside State Road 37 in the City of Noblesville. As the billboard is about 50 feet from the road, the project required either its relocation or removal.
- [3] Fishers hired licensed appraisers to determine the billboard's value. The appraiser's report recommended a purchase price of \$12,500, based on the cost of relocating the billboard elsewhere in Noblesville. But the report noted that

¹ We need not consider ROA's other argument on appeal, that this condemnation action impermissibly interferes with a separate lawsuit, as it appears that other lawsuit has been dismissed. *See Order Granting Stipulation of Dismissal*, Cause No. 29D05-1908-PL-008159 (Apr. 11, 2023). Thus, there is no longer any relief ROA may obtain by this argument.

Noblesville's zoning code now prohibits this type of billboard, meaning ROA could not relocate the billboard unless it obtained a special exception from Noblesville. Fishers, through the Hamilton County Highway Department, made a \$12,500 offer to ROA using the uniform form letter required by statute.

[4] Shortly after, ROA met with Noblesville officials to discuss relocating the sign. The officials, however, indicated that Noblesville would not issue an exception. And later that day, Noblesville issued a Notice of Violation claiming the billboard was illegal in its current location. Although Noblesville and ROA had both assumed the billboard had been grandfathered into Noblesville's ban on pole signs in 1996, aerial records showed that the billboard was "moved about 20 feet north" between 1997 and 1998. App. Vol. II, pp. 140-41. Noblesville's Unified Development Ordinance specified that any sign grandfathered into the new rules "shall immediately lose its legal non-conforming designation if . . . the sign is relocated." *Id.* at 141. Noblesville therefore determined that ROA's billboard was illegal and must be removed immediately or ROA would face fines up to \$300 per day.

[5] Upon learning of these events, Fishers rescinded its initial offer to ROA and engaged the same appraisers to prepare another report. The new appraisal concluded that the sign was worthless for two reasons: The sign was likely illegal in its present location and the billboard appeared to lack Indiana Department of Transportation (INDOT) approval due to the sign's lack of registration numbers and its omission from INDOT's map of approved

billboards. Following this second appraisal, Fishers offered ROA \$1 for its interests in the billboard.

- [6] ROA rejected the offer, and Fishers filed this condemnation suit to acquire ROA's interests in the billboard via eminent domain. After an evidentiary hearing, the trial court found that Fishers had complied with the requirements to initiate condemnation proceedings and overruled ROA's arguments to the contrary. ROA then filed this interlocutory appeal.

Discussion and Decision

- [7] The trial court entered special findings of fact and conclusions of law at the request of the parties. In this situation, “an appellate court applies a two-tiered standard of review—first determining whether the evidence supports the findings and, if so, whether the findings support the judgment.” *Town of Linden v. Birge*, 204 N.E.3d 229, 234 (Ind. 2023) (describing Ind. Trial Rule 52).

Questions of law are reviewed de novo. *Id.*

- [8] Because the “‘State has inherent authority to take private property for public use’ with just compensation,” our judicial review of a condemnation proceeding is “narrow.” *Bender Enter., LLC v. Duke Energy, LLC*, 201 N.E.3d 206, 208 (Ind. Ct. App. 2022) (quoting *Knott v. State*, 973 N.E.2d 1259, 1262 (Ind. Ct. App. 2012)). “Like the trial court, we must restrict our review to whether the condemnation proceedings were legal, whether the condemning entity had authority to condemn the property in question, and whether the property was to be taken for a public purpose.” *Id.* As ROA concedes that

Fishers has the authority to condemn and that the property is to be taken for a public purpose, the only issue before us is the legality of the proceedings.

- [9] The proceeding here involves two stages. The first stage is initiated by a complaint by the condemning authority, to which the property owner can respond by filing objections contesting the condemnation’s legality. Indiana Code §§ 32-24-1-4(a), -8. Essentially, this first stage is “a summary proceeding in which the trial court may rule on the legality of the proposed condemnation based solely on the complaint and objections thereto.” *Bender Enter.*, 201 N.E.3d at 208. The second stage commences if the trial court rejects the property owner’s objections and concludes the proceedings are lawful. The court then turns to the question of just compensation “where the factfinder determines the amount of damages sustained by the property owner.” *Id.* This case involves the first stage of the proceedings only.

Good Faith Offer

- [10] ROA specifically challenges the condemnation proceeding by alleging that Fishers did not comply with the requirements of a good faith offer. Essentially, ROA contends that Fishers’ second offer of \$1 was intended to deprive ROA of its property without just compensation. ROA presents two specific arguments in this regard. First, it alleges the second appraisal did not qualify as independent due to “collusion” between Fishers and Noblesville to lower the purchase price and prevent the billboard’s relocation. Appellant’s Br., pp. 28-29. And second, ROA alleges the second appraisal contained significant factual errors. *Id.* Neither argument is persuasive.

[11] A good faith offer must meet two requirements. The offer must be based on the fair market value of the property as determined by an independent appraisal. *Wagler v. W. Boggs Sewer Dist., Inc.*, 898 N.E.2d 815, 819 (Ind. 2008). The independent appraisal does not have to consider every conceivable factor in determining the fair market value. *Id.* And the offer must be made through the uniform form letter described in Indiana Code Section 32-24-1-5(C). When the condemnor meets these two requirements, “the offer is considered good faith as a matter of law.” *Wagler*, 898 N.E.2d at 819.

[12] Fishers made a good faith offer. ROA does not contest that the second offer complied with the uniform form letter requirement. Instead, ROA first alleges that Fishers “directed” the appraisal “with a predetermined outcome” to undermine the requirement that the appraisal be independent. Appellant’s Br., p. 9. Although it is true, in the literal sense, that Fishers “directed” the appraisers to complete a second report, the record reflects an obvious need for one. Many assumptions made by the appraisers in the first report justifying Fishers’ \$12,500 offer were no longer accurate. For example, since the first appraisal, Noblesville officials had stated to ROA that they would not grant a special exception for the billboard’s relocation, and aside from that, Noblesville believed the billboard to be illegal in its present location.

[13] As these facts directly related to the billboard’s value, Fishers reasonably requested a new appraisal incorporating the changed circumstances. ROA’s claims that Fishers intended its \$1 offer to be rejected is irrelevant so long as the offer complies with the requirements of a good faith offer. *See Wagler*, 898

N.E.2d at 820 (finding an alleged “low-ball bid” was made in good faith because it was based on an independent appraisal and used the uniform offer letter).

[14] While ROA may contest the illegality of the billboard in its present location, the answer to that question can only affect the second stage of the condemnation proceedings: determining just compensation for the seized property. Only “[a]fter considering ‘the legality of the [condemnation] action and any objections which may have been filed’” does the factfinder “determine the amount of damages sustained by the property owner.” *See Bender Enter.*, 201 N.E.3d at 209 (quoting *State ex rel. Bd. of Aviation Comm’rs v. Kosciusko Cnty. Super. Ct.*, 430 N.E.2d 754, 755 (Ind. 1982)) (emphasis added). Thus, Fishers’ request for the second appraisal under these circumstances did not undermine the appraiser’s independence.

[15] ROA also challenges Noblesville’s indicated refusal to allow the billboard’s relocation, arguing that Indiana law “mandates” that Noblesville grant a special exception. Appellant’s Br., p. 26. We disagree. The relevant law states:

(c) If an outdoor advertising sign . . . must be moved or removed, due to . . . construction . . . the owner or operator of the outdoor advertising sign, . . . *may*:

(2) relocate a conforming or nonconforming outdoor advertising sign to a point within the market area.

Ind. Code § 8-23-20-25.6(c)(2) (emphasis added). The local government entity “may, if necessary,” issue “a special exception to the zoning ordinance.” Ind. Code § 8-23-20-25.6(e).

[16] These statutes give local governments, Noblesville in this instance, discretionary authority in deciding whether to grant a special exception for a billboard’s relocation. *See Cemetery Co. v. Warren Sch. Twp.*, 139 N.E.2d 538, 544 (Ind. 1957) (“Statutes of eminent domain being in derogation of the common law rights to property must be strictly construed, both as to the extent of the power and as to the manner of its exercise.”). Of course, ROA is entitled to “full and just compensation” if the billboard is not relocated. Ind. Code § 8-23-20.5-3(a). Accordingly, we see no error in Noblesville’s preliminary decision declining to grant ROA a special exception.

[17] Lastly, ROA argues the appraisal report made significant factual mistakes. Yet the alleged factual mistakes do not undermine the legality of the report’s conclusion that ROA’s billboard is likely worth nothing. For example, ROA argues that the appraisal report erred in finding that the billboard was not properly registered with INDOT. But any mistake on this point does not singlehandedly render Fishers’ offer in bad faith. *See Wagler*, 898 N.E.2d at 815 (noting “an appraisal may be less than perfectly accurate” and the “failure to consider certain factors in the valuation of a property does not render an appraisal invalid as not being made in good faith”). In any event, the second appraisal contains an independent rationale: the Notice of Violation declaring

the billboard illegal. Because this fact alone could have justified the report's conclusion, we see no significant error rendering Fishers' offer invalid.

[18] Ultimately, we find that Fishers made a good faith offer to ROA. Concluding that this first stage of the condemnation proceedings was legal, we affirm the trial court's judgment.

Bailey, J., and Brown, J., concur.