

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

UNITED STATES OF AMERICA)
)
 Plaintiff,)
) C.A. No: 01-445-GMS
 v.)
)
 9.57 ACRES OF LAND, MORE)
 OF LESS, SITUATED IN)
 NEW CASTLE COUNTY, STATE OF)
 DELAWARE, AND DIAMOND)
 STATE PORT CORPORATION, et al.)
)
 Defendants.)

MEMORANDUM AND ORDER

I. INTRODUCTION

On June 29, 2001, the United States of America (the “United States”), on behalf of the United States Army Corps of Engineers, brought a condemnation action against the defendants, 9.57 Acres of Land, More or Less situated in New Castle County, Delaware, and Diamond State Corporation, seeking three tracts of property. Thereafter, the United States filed a Complaint, a Notice of Condemnation, and a Declaration of Taking pursuant to Federal Rule of Civil Procedure 71A and 40 U.S.C. § 258a. The United States also filed the legal description for each of the three tracts of property (“Schedule A”) and the plat plans for the three tracts (“Schedule B”). The United States then deposited a check in the amount of \$11,000 with the Registry of the Court.

On July 13, 2001, the United States filed a Motion for Order of Delivery of Possession. At that time, counsel for the United States reviewed Schedules A and B. During that review, counsel became aware that both Schedules “contained minor inaccuracies that warranted correction.” Consequently, on February 22, 2002, the United States filed an Amended Complaint, a Notice of

Filing of Amended Schedules A and B, a Motion to Withdraw its Motion for Delivery without prejudice, and a Second Motion for Delivery of Possession.

II. DISCUSSION

The United States may enter land condemnation proceedings by exercising its right to eminent domain. *See* U.S. CONST. amend. V. To perfect such a proceeding, the United States is required to file a Declaration of Taking and to deposit just compensation with the Registry of the Court. *See* 40 U.S.C. § 258a. Thereafter, the landowner must deliver possession of the land to the United States. *See id.*

A. Declaration of Taking

Pursuant to 40 U.S.C. § 258a, the Declaration of Taking must contain the following information: (1) “[a] statement of the authority under which and the public use for which said lands are taken,” (2) “[a] description of the lands taken sufficient for the identification thereof,” (3) “[a] statement of the estate or interest in said lands taken for said public use,” (4) “[a] plan showing the lands taken,” and (5) “[a] statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.” 40 U.S.C. § 258a. Further, an amended Declaration of Taking is permissible where the proposed amendment rectifies a mistake in the original Declaration of Taking. *See United States v. 76.208 Acres of Land, More or Less, in the Township of Horsham*, 580 F. Supp. 1007, 1009 (E.D. Pa 1983).

In the present case, the United States filed an amended complaint to correct minor inaccuracies. Specifically, the amended complaint reflects the following three changes: (1) Colm F. Connolly replaced Richard G. Andrews as the United States Attorney for the District of Delaware, (2) the United States substituted the proper names and addresses of possibly interested parties, and

(3) the United States supplied modified details regarding the legal description of the land in Schedules A and B. Annexed to the amended complaint are the corrected versions of Schedules A and B. As the Declaration of Taking references Schedules A and B, it is also amended to reference the corrected Schedules.

B. Just Compensation

The Fifth Amendment precludes the United States from taking property by means of condemnation without providing the landowner with just compensation. *See U.S. v. Miller*, 317 U.S. 369, 373 (1943). To fulfill its “just compensation” obligation, the United States is required to pay the full and perfect monetary equivalent of the property taken. *See id.* at 373. The Supreme Court has recognized that this requirement entitles the landowner to the land’s fair market value as of the date of the taking. *See id.* at 374.

Based on the interest in land, coupled with all the buildings and improvement thereon, Gregory R. Dahlberg, Acting Secretary of the Army, estimated the amount of just compensation as \$11,000. The United States properly deposited that amount with the Registry of the Court. No entity has contested the fairness of this amount. Additionally, there is no evidence that the United States’ amended documents have altered the amount of just compensation due. Accordingly, the court finds that the United States has fulfilled its just compensation obligations.

III. CONCLUSION

For these reasons, IT IS HEREBY ORDERED that:

1. The United States’ Motion to Withdraw its Motion for Delivery without prejudice and with leave to re-file a second motion (D.I. 19) is GRANTED.

2. The United States' Second Motion for Delivery of Possession (D.I. 20) is GRANTED.
3. All persons in possession or control of the aforesaid property shall immediately surrender possession thereof to the United States of America.

Dated: April 30, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE