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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2004-000192 11/08/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

PHOENIX GATEWAY PROPERTY OWNERS ASSOCIATION JIM L WRIGHT

v.

MARICOPA COUNTY WILLIAM D RISKE

UNDER ADVISEMENT RULING

The statutory presumption in favor of the government, A.R.S. § 42-16212(B), requires the appealing party (here, Plaintiff as to all three years and Defendant as to 2004) only to present sufficient evidence contradicting the presumption from which the Court can conclude that the valuation is in error. *Inspiration Consolidated Copper Co. v. Arizona Dept. of Revenue*, 147 Ariz. 216, 219 (App. 1985). The sufficiency of the evidence to establish a different value is a separate question. *Crystal Point Joint Venture v. Arizona Dept. of Revenue*, 188 Ariz. 96, 102 (App. 1997). This is a question for the Court in its role as factfinder. *Inspiration, supra* at 219.

This case concerns only two tax parcels, 125-26-016 and, for tax year 2006, 125-26-019 (henceforward referred to as the "road," although the Court recognizes that the parcel includes landscaping and a fountain, and that for 2006 a second, peripheral road is also included). These parcels are therefore the only ones whose taxable value the Court may consider. The County suggests that the assessment of these parcels should include some portion of the value they add to the adjacent properties. The valuation of a property may, indeed must, reflect enhancements to its own value created by other properties, but the value it adds to other properties properly belongs to those other properties. Taxing both the contributor of the benefit and the recipient of the benefit by definition results in double taxation. There is no evidence in the record that the Assessor failed to value the buildings adjoining the road at *their* full value, which would include the increase in their value resulting from the presence of the road; even if he did, the windfall

belongs to the owners of the buildings, not the owner of the road. Defendant does not cite any legal support for its use in property taxation, nor does it contend that it was used in the valuation of the adjacent properties, whose value would have to be reduced by the amount of the imputed transfer.

As the road is, for all intents and purposes, a common area, Plaintiff urges the Court to apply the principle it finds behind A.R.S. § 42-13401 *et seq*., resulting in a tax of $500 per parcel. Plaintiff readily acknowledges that the statute by its express terms applies only to residential and airport properties and this property is neither. Had the legislature wished to extend this statutory tax treatment to commercial properties, it could readily have done so. The Court, therefore, finds Plaintiff's argument unpersuasive.

Plaintiff's use of the property as a road is mandated by the deed restriction. Even were this restraint absent, its narrow serpentine shape makes it ill-suited for anything but a transportation corridor. Both parties agree the highest and best use of these particular parcels is as a road. Whether, had the development been designed differently, there might have been another, more remunerative use is immaterial: the tax is based on what is, not what might have been. *Recreation Centers of Sun City, Inc. v. Maricopa County*, 162 Ariz. 281, 290 (1989). The County's argument that highest and best use must necessarily be profitable is incorrect. If it is the most profitable use available, restrictions on that use may still render the property completely incapable of turning a profit. Again, appeal to how the development might have been laid out to insure a greater profit for the parcel is immaterial.

It is agreed by both parties that the road, by virtue of the deed restriction and its own impractical shape, is unsaleable on the open market. In a real sense, then, the market value is zero. However, it is still necessary to determine a value satisfying A.R.S. § 42-11001(5). This in turn requires interpreting the statutory language. The subsection states that, if no other method is prescribed by statute (the situation faced in this case), "full cash value is synonymous with market value which means the estimate of value that is derived annually by using standard appraisal methods and techniques." Does that language mean that that full cash value is computed through standard appraisal methods and techniques as a pure mathematical exercise, and that market value in its ordinary sense of willing buyer-willing seller is simply irrelevant? Or must the standard appraisal methods and techniques account for the reality of the real estate market? *Recreation Centers, supra* at 289-90, makes the distinction between a voluntary choice to dedicate the property to the benefit of others, which merely divides value among different users, and uses imposed upon the land that affect the intrinsic value of the property. Here, use as a road is imposed upon the parcels both by the deed restrictions and by their shape. Just as the recreation center in the Supreme Court case had to be valued as a recreation center, based on the market value for recreation centers rather than that for apartment complexes or industrial parks, the road here must be valued at the market value for a road. (It may be noted that, even though

the issue is faced as well in *Recreation Centers*, the Supreme Court did not hold the relationship of the burdened and benefited parties to be material to its analysis of either the non-profit restriction or the recreation center restriction. This Court thus concludes that the relationship between the Association and the individual building owners may not affect the valuation.) The question is therefore answered: the method of appraisal must reflect the reality of the marketplace and reach a valuation approximating the market price for roads, adjusted as necessary for any voluntary division in value among different users.

To determine what that market price would be, neither the income method (a road generates no income) nor the comparable sales method (there is no market for roads) is of any use. Only the cost method can provide any basis for valuation, and under the facts of this case must be employed exclusively. *Maricopa County v. Sperry Rand Corp.*, 112 Ariz. 579, 581 (1976). This method incorporates the value of the land as if vacant and the cost of improvements. *Id.* To start with the former, it is helpful first to imagine that the road and the adjacent land on which offices are built are owned by distinct entities, call them *x* and *z* respectively. The presence of *x*'s road increases the value of *z*'s buildings by affording easy access to them. The converse, however, is not true: the value of the road is not enhanced by the presence of the buildings. If the road makes the buildings profitable, *z* gets all the rewards and *x* gets nothing. The inability of the owner of a road to profit from what is placed alongside it is why roads are typically built by government entities as a public service.

Here, *x* and *z* are not completely distinct. The Association, *x*, which owns the road, is comprised of the owners of the various buildings in the development, *z*. This, however, is immaterial. For one thing, the County has shown no fraud or injustice providing a basis to pierce the corporate veil and ascribe the Association's activities to its owners. *Employers Liability Assurance Co. v. Lunt*, 82 Ariz. 320, 323 (1957). That the individual owners benefit from the servitude they have imposed on the Association, and could by consensus relieve the Association from it, does not change the fact that the Association, which is the record owner of the Subject Properties, is bound by a servitude that provides it no benefit. In any event, commonality of ownership cannot affect the analysis. Under the Uniformity Clause mandate that similar property be assessed in the same manner, the assessment of one property cannot depend on what other properties its owner may possess. *In re America West Airlines*, 179 Ariz. 528, 533 and n.5 (1994). Therefore, it cannot matter whether *x* and *z* are separate, one and the same, or something between the two.

Given that the road is to be assessed separately from the remainder of the development, the cost basis of the land must be based on land having the *characteristics* of the road itself. The County's Larger Parcel theory therefore fails. While it may provide a reliable measure in cases where the intensity of the subject parcel's use is comparable to that of a suitably-sized block of the larger parcel, and may even benefit the taxpayer where the intensity of a smaller parcel is

greater than the average of the larger parcel, the situation here is the reverse. The road, a strip of pavement with landscaping and a fountain in the roundabout, plainly cannot be used with anything remotely approaching the intensity of a 3.7-acre (or 6 acre, counting both roads) piece of raw land. Thus, no matter how carefully the larger parcel is chosen to be comparable to the Phoenix Gateway development, the method inevitably fails to reflect the true value of the road. Mr. Duncan's attempt to impute to the road some of the value it contributes to the adjacent buildings merely makes the error that much greater.

The Court is persuaded by the testimony of Plaintiff's expert, Mr. Wirth, which reflects the common-sense notion that a narrow strip of land usable only as a road is worth substantially less than the equivalent acreage in a block usable for many purposes. Mr. Wirth used as his base the value of the properties adjoining the road, properties at least as comparable as those offered by the County. He then reduced that value by 99 percent to reflect the purely nominal value he ascribed to the road. While the 99 percent figure is arbitrary, whether that value or another nominal value is ascribed to the parcel is of little practical consequence. As the County has offered no nominal valuation, the Court adopts that of Plaintiff.

The second element of the cost method is the cost of improvements. The County's expert, Mr. Duncan, determined that the replacement cost basis of the improvements to the road (only parcel 016, as he did not perform an analysis of parcel 019 for 2006) was $1,039,390, which he depreciated at 5 percent to reach an adjusted figure of $987,420 for 2004. Continuing the depreciation at a straight-line 5 percent, the figure for 2005 would be $935,450 and for 2006 (parcel 016 only) $883,480. Plaintiff did not contest the accuracy of these figures, but proposed that the salvage value of the improvements (essentially nil) should be used instead to determine this element. As no competent evidence of a different value was presented, the County's valuation is left standing and must be accepted. *Pima County v. Trico Elec. Co-op.*, 15 Ariz.App. 517, 519 (1971).

Unlike the road itself, the improvements must be assessed at their full value. For one thing, the case law indicates that, unlike the land which is to be valued, the improvements must be included at their cost. *Nordstrom, Inc. v. Maricopa County*, 207 Ariz. 553, 558 ¶ 19 (App. 2004). Furthermore, *Recreation Centers* guides the analysis here as well. The road can only be used as a road and consequently must be assessed as a road. However, a road can be a simple graded path without amenities. The choice to build instead a road with high-quality paving, colorful plants, and an attractive fountain centerpiece was a conscious decision to benefit the owners of the adjacent properties. It is analogous to the grant of non-profit beneficial use to the residents of Sun City in *Recreation Centers*. The full value of the improvements must therefore be included in the assessment.

The proper valuation, then, for tax year 2004 is $14,500 for the land plus $987,420 for the improvements, giving a total of $1,001,920; and for tax year 2005, it is $19,300 for the land plus $935,450 for the improvements, a total of $954,750. The Court can only give a partial value for 2006, as no evidence has been presented by either side with respect to the improvements on the peripheral road, parcel 125-26-019. The total will be $42,000 for the land plus $883,480 for the improvements to parcel 125-26-016, for a total of $925,480, to which must be added the value of the improvements to parcel 019.

Therefore, IT IS ORDERED the proper valuation for tax year 2004 is $1,001,920.00; for tax year 2005 is $954, 750; and for tax year 2006 is $925,480 (to which must be added the value of the improvements to parcel 019).