

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2005-050090

02/07/2007

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

GEORGE A HORMEL II, et al.

JIM L WRIGHT

v.

MARICOPA COUNTY BOARD OF
SUPERVISORS

JERRY A FRIES

MINUTE ENTRY

The Court has considered Defendant's Motion for Reconsideration of its November 13, 2006 ruling.

The Court, in recounting Ms. Candelaria's actions, neither made nor intended a personal attack on her. The reality is that she is a key figure in this case: both parties have made her so in their briefing of their respective Motions for Summary Judgment. It is assumed that the County including Ms. Candelaria was well-intentioned. However, whether the County acted with good intentions does not resolve the matter. The County alleges that Plaintiff failed to follow proper procedure in filing its application for Class 6 historic status. The matter as briefed by the parties shows that the departmental procedures relied upon by the County at that time existed, if at all, only within the institutional memory of Ms. Candelaria. The record is bereft of any written evidence documenting this institutional memory or that it was shared by Ms. Head. The record is also bereft as to promulgation or publication of the draft guidelines to the relevant employees within the Assessor's Office. The Taxpayer Notice of Claim Form (4-1-07) does not set forth any substantive reason for the denial the County now asserts. [It was in this context that the Court used the word secretiveness.] The County's Motion for Reconsideration, at 7:7-10 states: "Additionally, following Ms. Candelaria's decision not to honor Ms. Head's consent, Ms. Head forwarded to Mr. Wolfe the DOR's *draft* guidelines that addressed the classification of historic properties and the application process" (emphasis added). *Draft*, meaning not yet promulgated

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or published. It is not clear whether the undated draft even existed at the time of Plaintiff's application: according to her affidavit, Ms. Head did not receive it and knew nothing of it until some eight months after the claim was assigned to her, six months after she completed her work. (Affidavit of Cindy Head at 6:6-12, attached as Exhibit B to Maricopa County's Separate Statement of Facts in Support of Motion for Summary Judgment.) If the Assessor's own appraiser was ignorant of the purported regulations, is it unreasonable to expect private counsel to have been familiar with them? As the Assessor's employees apparently did not know of the draft regulations, Mr. Wolfe could not have learned of them by telephoning the Assessor's Office; nor are the practices of the SHPO material here, as that office had no problem with any irregularities that might have existed in Plaintiff's application. The County's Cross-Motion never raised the argument that had Plaintiff "timely satisfied all statutory historic requirements" (i.e., submitted the proper form), it would only have been entitled to Class 7 status rather than Class 6. Therefore, discussion of Class 7 status in the Motion for Reconsideration is untimely and procedurally improper. The County's Cross-Motion argued only for Class 2 status; neither party has briefed Class 7, and the Court has not addressed its appropriateness.

The issue is not whether the County was acting in good faith. Despite the County (Ms. Candelaria) acting in good faith, the "sham" (or, if the County prefers, futile) investigation and meeting the Court referred to were those involving Mr. Wolfe and Ms. Head. Both Ms. Head and Mr. Wolfe were unaware of their illusory nature. The County appears to concede as much with respect to Ms. Head. (Page 3, lines 20 through 21, page 4, line 1 of Defendants' Motion for Reconsideration). Ms. Candelaria by her own account knew they were futile because, as neither Ms. Head nor Mr. Wolfe could have known, the application failed to conform to the (unwritten) procedural requirements. (Affidavit of Socorro Candelaria at 3:19-22, attached as Exhibit A to Maricopa County's Separate Statement of Facts in Support of Motion for Summary Judgment.) As pointed out by the County, Ms. Candelaria was required by A.R.S. § 42-16254(D) to schedule a meeting irrespective of the merits of the claim. However, this statutory obligation necessarily *implies* an obligation *to inform* the taxpayer of *the reason* for the denial, so that the taxpayer can prepare the necessary documentation to bring to the meeting. The County's failure to do so regardless of the reason denied the taxpayer a genuine opportunity to present its case. In a real sense, then, the meeting was a sham and it is in this sense that the Court used the term. The use of the word futile rather than sham is one of semantics in this context. Nevertheless, the Court sees no point in holding steadfast to the use of the word sham if it alleviates Ms. Candelaria and the County's misapprehension about the context in which the word was used. That the County employee believed the flaw in the application to be irreparable does not address the fact that the taxpayer was still denied is opportunity to argue its position or simply to forego the meeting if it was doomed to futility.

As for the 2004 classification, Plaintiff remained silent, both in its Complaint and in its Response to the County's Cross-Motion, as to its propriety. Appeal of the classification for prior

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or subsequent years, even if the factual predicate applies equally to 2004, does not constitute a challenge to the 2004 classification. (A challenge to the jurisdiction of the court is distinct from an objection on the merits. *Gatecliff v. Great Republic Life Ins. Co.*, 154 Ariz. 502, 506 (App. 1987).) The Court addressed the County's motion with respect to the 2004 classification *sua sponte*, based on its power to deny an uncontested motion for summary judgment. *Orme School v. Reeves*, 166 Ariz. 301, 309 n.11 (1990). *Its* objection does not trigger the clause (allegedly) allowing the County to seek back taxes from 2004 against Plaintiffs. The Court therefore reiterates that the issue of whether the property was properly assessed for tax year 2004 is moot.

Finally, on the Court's supposed order that the property receive Class 6 status for fifteen years, that is not an order of the Court but merely the legal consequence, pursuant to A.R.S. § 42-12102(C), of the Court's finding that Class 6 status was validly granted. Plaintiff's Complaint requested that the Court direct the County to correct the tax roll; implicit in this is a request that the Court determine the proper status. The Court mentioned the fifteen years only to make the point that Plaintiff, having received approval of Class 6 status, was entitled to rely on not having to submit a new application until the expiration of that period, contrary to the County's argument that it should have applied anew for Class 6 status for the 2005 and 2006 tax years and could not therefore invoke the doctrine of estoppel. The Court's order does not preclude the County from instituting such appropriate error correction processes as may be available during that period and are therefore not precluded by *res judicata*.

Therefore, IT IS ORDERED: Denying Maricopa County's Motion for Reconsideration and striking the sentence "Ms. Candelaria offers no explanation for her secretiveness or for her failure to disclose to Plaintiffs that the investigation and meeting were to be no more than a sham as the decision would not (or, according to the County's position, could not) be affected by the result," and replacing it with "The County offers no explanation for its failure to disclose to Plaintiffs that the investigation and meeting were to be futile or meaningless as the decision would not (or, according to the County's position, could not) be affected by the result."