

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2009-000793

11/26/2012

HONORABLE DEAN M. FINK

CLERK OF THE COURT  
S. Brown  
Deputy

MIHAN FILLMORE L L C

DOUGLAS S JOHN

v.

MARICOPA COUNTY

OTIS SMITH

STEVEN B PALMER

**UNDER ADVISEMENT RULING**

The Court took this matter under advisement following oral argument on November 19, 2012. Upon further consideration of Plaintiff's Motion for Partial Summary Judgment, the Court finds as follows.

The Court first notes that *Stewart Title & Trust of Tucson v. Pima County*, 156 Ariz. 236 (App. 1987), dealt specifically with what is now A.R.S. § 42-13101, and is limited to the language of that particular statute. It is inapposite in a case where an agricultural use is not alleged.

The Court believes that, according to the plain language of A.R.S. § 42-11001(4), "current use" is the use to which the property is being put on the valuation date, subject to the limited exception contained in A.R.S. § 42-12051. Current use can include holding the property for speculative purposes. *Golder v. Dept. of Revenue*, 123 Ariz. 260, 265-66 (1979); *Burns v. Herberger*, 17 Ariz.App. 462, 468-69 (1972); *see also Krausz ex rel. KGC Trust I v. Maricopa County*, 200 Ariz. 479, 480-81 and n.2 (App. 2001). There appears to be at least a fact question as to whether any of the property can qualify under subsection B of the latter statute, which requires for an improvement to qualify as partially completed that the foundation of the structure or structures be in place, or subsection D, which requires that property without a structure be "actively used" for its commercial purpose on the valuation date. There also appears to be a fact question about the commercial use to which Plaintiff intended to put the property on the valuation date, potentially relevant to the subsection D analysis. And of course there is a fact

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2009-000793

11/26/2012

question as to the current use to which Plaintiff put the property as of the valuation date. Finally, A.R.S. § 42-11054(B) requires only that current use be considered in determining full cash value, not that it be the sole factor; it will be for the factfinder, after listening to the expert appraisal testimony, to decide how to weight the various factors.

Accordingly,

**IT IS ORDERED** denying Plaintiff's Motion for Partial Summary Judgment filed July 27, 2012.