

ARIZONA TAX COURT

TX 2003-000170

04/18/2006

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT
L. Slaughter
Deputy

FILED: _____

CAMELBACK ESPLANADE ASSOCIATION,
THE

JIM L WRIGHT

v.

MARICOPA COUNTY

JERRY A FRIES

PAUL J MOONEY
PAUL MOORE

UNDER ADVISEMENT RULING

This matter was taken under advisement after Oral Argument on Plaintiff's Motion for Partial Summary Judgment and Defendant's Cross-Motion for Summary Judgment and Motion to Dismiss held April 3, 2006. The Court has considered the papers and arguments of counsel.

I. ISSUES PRESENTED

1. Under the error correction statutes, does a taxpayer waive the right to file a Notice of Claim when the taxpayer has consented to an earlier Notice of Proposed Correction concerning the same property and tax year but relating to a different error?
2. Under Arizona case law, is the Tax Court allowed to consider an affidavit in a Motion to Dismiss for Lack of Jurisdiction when the affidavit is outside the plaintiff's Complaint?
3. Under A.R.S. § 42-16251, does a County Assessor commit an error by not considering the land use restrictions that encumber a property when determining the property's full cash value?

II. BRIEF ANSWERS

1. No. Under the error correction statutes, when the Notices relate to separate and distinct errors, there is no specific provision preventing a taxpayer from filing a Notice of Claim even though the taxpayer has consented to an earlier Notice of Proposed Correction concerning the same property and tax year. The Notices filed by the Association and the County related to distinct errors, as the term is defined in A.R.S. § 42-16251(3).
2. Yes. Under Arizona case law, when an affidavit concerns issues outside the plaintiff's Complaint, it can be taken into account when considering a Motion to Dismiss for Lack of Jurisdiction. The jurisdictional issue is whether the Association could file Notice of Claim after it had consented to a Notice of Proposed Correction. The Association's Complaint concerned whether the County Assessor erred in valuing the Association's property.
3. Yes. Under A.R.S. § 42-16251, an Assessor is required to consider current use when determining a property's full cash value. The land use restrictions on the Subject Property limit its use to roadways and associated uses.

III. STATEMENT OF FACTS

Plaintiff, The Camelback Esplanade Association ("Association"), is contesting the assessment of its property for tax years 2000, 2001, and 2002 as determined by Maricopa County ("County"). The Association owns legal and equitable title to Maricopa County parcel number 163-17-089K ("Subject Property"). The Subject Property has been dedicated to the City of Phoenix for easements and rights-of-way. The Subject Property runs the circumference of the Esplanade Development, and the easements and rights-of-way restrict a portion of the Subject Property to use as roadways, bus lanes, turn lanes, and associated uses. The Maricopa County Assessor ("Assessor") determined the valuations of the Subject Property for tax years 2000, 2001, and 2002. The Assessor used the cost method, which consists of determining the value of the land based on comparable vacant properties and then adding to that the depreciated value of the improvements. Taxes have been assessed and paid for each of those tax years based on these valuations.

The Assessor issued three Notices of Proposed Correction pursuant to A.R.S. § 42-16252 for tax years 2000, 2001, and 2002, wherein the Assessor sought to capture the value of improvements by increasing the full cash value of the Subject Property. The Association consented to the Notices of Proposed Correction for tax years 2000 and 2001. However, the Association disputed the Notice of Proposed Correction for tax year 2002. In addition the Association filed a Notice of Claim with the Assessor pursuant to A.R.S. § 42-16254 for tax years 2000, 2001, and 2002, contending that the Subject Property had been improperly assessed because its value had been determined based upon errors, as defined in A.R.S. § 42-16251(3). The Assessor disputed the Notice of Claim by asserting, "The Assessor does not address requests for classification changes that are not clerical or computational errors. A.R.S. § 42-16255(B)

does not authorize an independent review of the overall valuation of property that could have been appealed pursuant to A.R.S. § 42-16051.” The County and the Association could not come to an agreement in a subsequent meeting. Consequently, the Association appealed to the State Board of Equalization, where its claim was denied.

IV. PLAINTIFF’S ARGUMENTS

A. Motion to Dismiss¹

1. The Association’s Complaint states a claim for relief over which the Tax Court has jurisdiction.

The Complaint states that the Association filed a Notice of Claim, a petition with the State Board of Equalization, and then an action in the Tax Court within 60 days, pursuant to A.R.S. 42-16254(G). When a complaint is a target of a motion to dismiss, the court must assume the truth of all of the complaint’s material allegations, accord the plaintiffs the benefit of all inferences which the complaint can reasonably support, and deny the motion unless certain that plaintiffs can prove no set of facts which would entitle them to relief upon their stated claims. *Luchanski v. Congrove*, 193 Ariz. 176, 971 P.2d 636 (App. 1998). According to the Association, the Tax Court has jurisdiction for these reasons as well as under A.R.S. 42-16255.

2. The Assessor’s Notice of Proposed Correction and the Association’s Notice of Claim address distinct errors.

According to the Association, the County’s argument is without merit because, although both the Assessor’s Notice of Proposed Correction and the Association’s subsequent Notice of Claim involve the same tax years, both address distinct errors, as the term “error” is defined in A.R.S. § 42-16251(3). According to the Association, the “error” identified in the County’s Notice of Proposed Correction involved the failure to tax certain improvements (e.g., curbing) which existed on the valuation date, pursuant to A.R.S. § 42-16251(3)(e)(iv). However, the Association claims the errors identified in its Notice of Claim are completely different. According to the Association, these errors include: (a) failure to consider the Subject Property’s dedication to the City of Phoenix and its land use restrictions; (b) failure to recognize that the Subject Property’s value has been attributed to the adjacent properties; (c) double valuation and taxation of the Subject Property; (d) erroneous designation of the Subject Property’s current use; (e) failure to value and classify the Subject Property in the same manner as similarly situated properties; (f) erroneous determination of the Subject Property’s classification; and (g) application of the wrong assessment ratio percentages.

According to the Association, these are errors that occurred for the 2000 and 2001 tax years and had nothing to do with the County’s Notice of Proposed Correction. The Association

¹ Defendant’s Motion to Dismiss addresses only the 2000 and 2001 tax years.

sets forth as an example that designating an incorrect classification and assessment ratio are separately defined errors set for in A.R.S. §§ 42-16251(3)(b) and (c). Moreover, the Association argues that the error correction statutes contain no provision precluding either the taxpayer or the Assessor from separately seeking to correct, in a timely manner, more than one error for the same tax year. The distinctive nature of the errors allows the Association to consent to the correction of one error while subsequently seeking to correct another unrelated error.

3. Affidavit of Socorro Candelaria

The Association argues that the Affidavit of Socorro Candelaria and the attached exhibits constitute extrinsic evidence, which is improper and cannot be considered in resolving the County's Motion to Dismiss. The Association claims that a proper motion to dismiss for failure to state a claim assumes the complaint's allegations are true, attacks the legal sufficiency of the complaint, and excludes matters outside the pleadings. *Parks v. Macro-Dynamics, Inc.*, 121 Ariz. 517, 591 P.2d 1005 (App. 1997).

B. Motions for Summary Judgment

1. The Assessor must consider land use restrictions when valuing the Subject Property.

According to A.R.S. § 42-11054(B), the Assessor must consider "current usage" when valuing property. Current usage is defined as the "use to which property is put at the time of valuation by the assessor." A.R.S. § 42-11001(4). The Association claims that the Assessor failed to take into account the land use restrictions on the Subject Property and its current use when determining its value but, rather, valued the Subject Property as if it was any piece of commercial property, unencumbered by land use restrictions. According to the Association, the restrictions mean that the Subject Property is not and cannot be used as commercial property. Moreover, the restrictions bind all users and affect the inherent value of the land. Accordingly, the Association argues that the Assessor must consider the limitations on use when determining the Subject Property's full cash value. *See Recreation Ctrs. of Sun City, Inc. v. Maricopa County* 162 Ariz. 281, 290, 782 P.2d 1174, 1183 (1989) (limitations restricting land use to recreational activities affect the inherent value of the land and, therefore, must be considered in the valuation formula because they mean that the property cannot be used for other purposes even though it may be properly located and zoned).

2. The Assessor did not consider land use restrictions on the Subject Property when determining its full cash value.

Representatives of the Maricopa County Assessor responsible for the Subject Property's valuation have testified that they were not aware of the land use restrictions on the Subject Property until the depositions related to this case. The Association claims that this testimony

shows that the Assessor failed to consider the land use restrictions on the Subject Property when determining its full cash value.

According to the Association, the sole issue is the effect the dedication and land use restrictions have on the Subject Property's value, not whether the Subject Property's use enhances the value of the adjacent parcels. The Association claims that the value of access and utilities available to the adjoining commercial parcels is already captured in the full cash values associated with those parcels and is irrelevant to the value of the Subject Property. Therefore, any attempt by the County to suggest that the alleged enhancement in value of the adjoining parcels caused by the Subject Property provides a source of relevant value to the Subject Property fails to consider the terms of the restrictions placed on the Subject Property and is essentially an attempt to assess that value twice.

V. DEFENDANT'S ARGUMENTS

A. *Motion to Dismiss*

1. *The Association cannot file a Notice of Claim on a property against which it has already agreed to a Notice of Correction on the same matter.*

The County moves to dismiss the Association's claims for lack of jurisdiction and for failure to state a claim upon which relief can be granted. The County claims that the Tax Court lacks jurisdiction and the Association has otherwise failed to state a claim upon which relief can be granted because the applicable statutes do not permit the claims the Association has made. According to the County, the error correction statutes do not permit a property owner who consents to an error to later file a Notice of Claim on a matter that the owner has already consented to. Thus, the County claims the Tax Court lacks jurisdiction because the Association consented to the 2000 and 2001 Notices of Proposed Correction.

Under A.R.S. § 42-16252(C), a taxpayer has the option to dispute the proposed error correction with the Assessor within 30 days following its receipt of the Notice. The Association did not dispute the proposed corrections and, instead, consented to the Assessor's commercial classification of the Subject Property and addition to its value. Therefore, under A.R.S. § 42-16252(D), the County is allowed to promptly correct its tax roll and "the owner may appeal valuation issues that arise from the correction as provided in this section." After the Association consented to the Notices of Proposed Correction, it did not appeal the resulting higher values for tax years 2000 and 2001 pursuant to A.R.S. § 42-16252(D). Thus, the County claims that the Association lost any right to challenge those values later.

According to the County, the Notices of Proposed Correction implicated all aspects of the Subject Property's taxation (i.e., error correction, valuation, and classification). The County argues that, according to A.R.S. § 42-16252, the Association was obligated to consent or dispute the changes within the time limit provided, and the Association consented to all aspects of the

changes. Therefore, according to the County, the Association's error claims are simply different valuation theories that it could and should have raised as defenses when it had the opportunity and obligation to dispute the County's Notice of Proposed Correction and resulting value increases and commercial classification for the Subject Property for tax years 2000 and 2001.

2. *If the Court denies the Motion to Dismiss, the County should be entitled to collect taxes on the Notices of Proposed Correction for tax years 2000 and 2001.*

The County claims that if the Tax Court permits the Notices of Claim to proceed, then the Association is disputing, not consenting to, the County's 2000 and 2001 Notices of Proposed Correction. Thus, the County argues that in the event it prevails, and the increased improvement values are maintained, it should be entitled to collect all taxes, interest, and penalties due on the increased values. According to the County, pursuant to A.R.S. § 42-16252(D), a taxpayer disputing a county's Notice of Proposed Correction is obligated to pay additional back year taxes if it loses its challenge.

3. *Affidavit of Socorro Candelaria*

According to the County, *Moulton v. Napolitano*, 205 Ariz. 506, 73 P.3d 637 (App. 2003), makes it clear that affidavits outside of the Association's Complaint may be considered by the Tax Court when considering the County's Motion to Dismiss for Lack of Jurisdiction. In *Moulton*, the court stated that when "jurisdictional fact issues are not intertwined with fact issues raised by a plaintiff's claim on the merits, the resolution of those jurisdictional fact issues is for the trial court." *Id.* at 510, 73 P.3d at 641 (citing *Switchtenberg v. Brimer*, 171 Ariz. 77, 82, 828 P.2d 1218, 1223 (App. 1991)).

According to the County, the jurisdictional issue in this case is whether the error correction statutes permit the Association to file a Notice of Claim on a property after it had consented to an earlier Notice of Proposed Correction concerning the property. However, the Association's substantive error claim is that the County taxed the property in error under a variety of theories that are not concerned with that jurisdictional issue.

B. Motions for Summary Judgment

1. *No taxation error exists with respect to the Assessor's taxation of the Subject Property.*

According to the County, the error correction statutes are only intended to provide relief for property owners from taxation errors, and are not valuation appeal statutes. A.R.S. § 42-16255(B) provides that "this article does not authorize an independent review of the overall valuation of property that could have been appealed pursuant to article 2, 3, 4, or 5 of this chapter." Therefore, the County argues that if the Association believed the recorded easements affected the Subject Property's value, it should have appealed the valuation pursuant to A.R.S. §

42-16201 instead of under the error correction statutes. The County claims this is clarified by A.R.S. § 42-16251(3)(e), which defines “error” as:

Any mistake in assessing or collecting property taxes resulting from ... a valuation that is based on an error that is exclusively factual in nature or due to a specific legal restriction that affects the subject property and that is objectively verifiable without the exercise of discretion, opinion or judgment and that is demonstrated by clear and convincing evidence.

2. *Uses of the Subject Property added value.*

According to the County, several points contradict the Association’s arguments that the use of the Subject Property adversely affects the value of the property. First, the fact that public access, water drainage, and similar utility easements are necessary for a successful commercial development. Second, the Association’s concessions for the 2000 and 2001 tax years to the addition of value for the improvements that had escaped taxation in response to the Notices of Proposed Correction. Third, the property manager’s testimony that he could not identify any negative attributes to the property associated with the easements.

3. *The Subject Property must be valued as part of the larger economic unit.*

The County argues that because the land use restrictions on the Subject Property were voluntarily imposed, and add value to the larger commercial Esplanade Development, the Subject Property must be valued by considering its current use as part of the larger economic unit. The County cites to *Arizona State Land Department v. State ex rel. Herman*, 113 Ariz. 125, 128, 547 P.2d 479, 482 (1976), an eminent domain case, which states that “if the property taken is not capable of an economic use because of its unusual or irregular size, resort must be made to the tract from which it was taken to arrive at a value for the property taken.”

According to the County, similar valuation principles apply in property tax cases. In *Recreation Centers of Sun City, Inc. v. Maricopa County*, 162 Ariz. 281, 782 P.2d 1174 (1989), the homeowners’ association argued that a facility it owned had no marketability and, hence, no value because of a non-profit deed restriction on the facility that also restricted its use to a recreation facility. The court held that while owner-imposed restrictions for the benefit of a larger enterprise may affect a property’s market value, the property may still be of great value to the owner, and such restrictions “cannot be permitted to remove valuable property from the tax rolls.” *Id.* at 289, 782 P.2d at 1183. The court further stated that its conclusion “[did] not preclude the assessor from considering the effect of the portion of the restriction that limits the use of the land to recreational activity” and that the assessor “must consider ‘current usage’ when valuing property.” *Id.* at 290, 782 P.2d at 1183.

According to the County, the Assessor did consider the Subject Property’s current use as part of the larger commercial Esplanade Development. The head of the Assessor’s modeling

department, Mr. Thigman, testified that the restrictions must be looked at according to their market value, and in this case, the Subject Property's use as a road was an integral part of the value of the larger commercial development.

VI. ANALYSIS

The Defendant's Motion to Dismiss presents a close question. The statutes in question are somewhat ambiguous in terms of the effect of consenting to an assessor's error correction under A.R.S. § 42-16252(C). While a reasonable argument may be made that consenting to the overall valuation in an assessor's error correction precludes a subsequent error correction claim that seeks a lower valuation, there is no specific prohibition in the statutes. Generally, ambiguities in tax statutes are resolved in the favor of the taxpayer. *Wilderness World, Inc. v. Arizona Department of Revenue*, 182 Ariz. 196 (1995). Therefore, the Court agrees with the Association's argument that its Notice of Claim concerns separate and distinct errors than the County's Notice of Proposed Correction and, as a result, is not precluded by the Association's earlier consent to the County's Notice of Proposed Correction.

With respect to the Motions for Summary Judgment, the Court finds that the error alleged by Plaintiff, failure to consider restrictions on use, is objectively verifiable without the exercise of discretion, opinion or judgment and is demonstrated by clear and convincing evidence. The Court further finds that the Subject Property has value, but that its value must be determined by considering its current use.

In *Recreation Centers of Sun City, Inc. v. Maricopa County*, 162 Ariz. 281, 782 P.2d 1174 (1989), the property involved had a non-profit deed restriction that limited its use to a recreation facility. The court reasoned that there were in fact two restrictions on the property: the non-profit restriction and the recreational use restriction. *Id.* at 287, 782 P.2d at 1180. The court concluded that deed restrictions may destroy marketability of the property but do not destroy value. *Id.* at 290, 782 P.2d at 1183. Therefore, "the assessor may not consider them when valuing property." *Id.* However, the court stated, "Land use restrictions, on the other hand, affect the inherent value of the land as an entire property in use." *Id.* at 291, 782 P.2d at 1184. "The property cannot be valued as if it were property to be used for residences, apartments, retail stores, or industry ... even though it may be now properly located and zoned." *Id.* at 290, 782 P.2d at 1183. Therefore, the land use restrictions must be considered in the valuation formula. *Id.* at 291, 782 P.2d at 1184.

In the present case, the Subject Property has inherent value because its use adds value to the adjacent commercial properties by providing access to those properties. However, in accordance with the reasoning of *Recreation Centers*, that value must take into account the land use restrictions placed on the Subject Property that limit its current use to roadways and associated uses. Therefore, the Subject Property should not necessarily be valued the same as the commercial properties surrounding it.

VII. CONCLUSIONS

IT IS ORDERED denying Defendant's Motion to Dismiss and Motion for Summary Judgment, except as otherwise stated below.

IT IS FURTHER ORDERED granting Plaintiff's Motion for Partial Summary Judgment, except as otherwise stated below.

IT IS FURTHER ORDERED denying Plaintiff's Motion to Strike.

IT IS FURTHER ORDERED expressly reserving ruling on the County's argument that if the Tax Court permits the Notices of Claim to proceed [as the Court has indeed decided], then the Association is disputing, not consenting to, the County's 2000 and 2001 Notices of Proposed Correction under A.R.S. § 42-16252(D). *See* paragraph V(A)(2), above.