ARIZONA TAX COURT

TX 2004-000799 05/08/2006

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT
L. Slaughter
Deputy

FILED:_____

SUN CITY GRAND COMMUNITY ASSOCIATION

ANGELA L POTTS

v.

MARICOPA COUNTY

KATHLEEN A PATTERSON

CURTIS S EKMARK
JERRY A FRIES

UNDER ADVISEMENT RULING

This matter was taken under advisement after oral argument on Plaintiff's Motion for Summary Judgment, held March 20, 2006. The Court has considered the papers and arguments of counsel.

I. THE ISSUE

A.R.S. § 42-13403 states that "[L]and, buildings and improvements used for common areas shall be valued at five hundred dollars per parcel." The issue in this case is whether the actual public use of portions of the Subject Property contravenes an *intended use* by owners, residents and their invited guests, thereby disqualifying the property from common area status under A.R.S. § 42-13402.

II. FACTUAL BACKGROUND

Plaintiff filed its Complaint in this case on December 2, 2004, alleging that the Subject Property, parcel 232-44-189, is "qualified common area property" and should have a 2005 Full Cash Value of $500.00, pursuant to A.R.S. § 42-13401 through 42-13404. The County denied these allegations and affirmatively asserted that the property was property classified and valued.

The Subject Property consists of 13.802 acres of land with improvements built in 2002 that include a 33,221 SF clubhouse, 1,980 SF utility storage building, commercial yard improvements (parking lot, landscaping, tennis courts, fencing and lighting) and a swimming pool completed in 2003.

A field inspection of the property on July 17, 2003 by a Deputy Assessor revealed that portions of the property were open to use by the public. According to County Assessor records, the inspection revealed that certain property improvements including the country club building containing a retail pro shop and snack shop, cart barn and the parking lot were open to the general public in connection with public play on the adjacent Cimarron Golf Course. The inspection report also indicated that the remainder of the country club building, the tennis courts and swimming pool were for homeowner use only.

On or about September 2003, Plaintiff received a transfer of title to the Subject Property but the Developer retained rights to the use and control of the Subject Property as provided in Plaintiff's governing documents, which identify the Developer as "Declarant" and as a "Class B" member in Plaintiff's Association. The Developer had control of the Association's Board of Directors for 23 months after the Date of Valuation, until November 2005. All employees of the Association were Del Webb/Pulte Homes employees. Until November 2005, the transfer of Association control and responsibilities from the Developer was in transition. In 2003 and 2004, the Developer used the Subject Property on occasion for its own business purposes. Also, in 2003 and 2004, the Developer of the Subject Property was financially responsible for any shortfalls in revenue from the operation of the Subject Property. The Developer paid subsidies to Plaintiff Association in 2003 and 2004 to cover shortfalls in revenue from the operation of the Subject Property. Revenue from public golf play benefited the Developer by offsetting the amounts that the Developer had to subsidize for shortfalls in revenue from the operation of the Subject Property.

In the administrative appeal process, developer Del Webb Home Construction, Inc. ("Del Webb") appealed the original "postcard" classification as Class 1.12, (Commercial) and 2005 Full Cash Value at $5,938,624. Del Webb requested that the property be given a Class 4 classification and $500.00 Full Cash Value for 2005 as a "qualified common area property." The Deputy Assessor with the responsibility to review the owner's appeal, considered the information available in the County Assessor records regarding the property to determine whether it was a "common area" under A.R.S. § 42-13402. Based on that information, the County Assessor determined that the public use of the Subject Property meant that it did not qualify as a "common area" under A.R.S. § 42-13402(B) as it was not "intended for the use of owners and residents of a residential subdivision or development and invited guests of the owners or residents." Given the mixed public and private uses being made of the Subject Property, the County Assessor denied the owner's claim for a $500.00 valuation and Class 4.7 assessment ratio. The County Assessor then issued the decision that the legal classification of the Subject Property is Class 1 (Commercial) and the assessed Full Cash Value of $5,938,624 for 2005.

III. PLAINTIFF'S ARGUMENTS

Plaintiff, a non-profit homeowners association, owns, operates, and maintains the Cimarron Clubhouse ("Subject Property"). Pursuant to A.R.S. § 42-13401, "this article

establishes the exclusive method for identifying and valuing common areas." Applying this statute, Plaintiff believes that the Subject Property qualifies as a common area. As a common area, the Plaintiff asserts that the Subject Property is subject to a deed restriction on the common use area. A.R.S. § 42-13404. Furthermore, Plaintiff asserts that since the Subject Property is a common area and is subject to a deed restriction, the "value for common areas shall be made on the assumption that no other property use is possible" and that the "common areas shall be valued at five hundred dollars per parcel." A.R.S. § 42-13403 (A) & (B).

Despite the language contained in A.R.S. § 42-13403 (A) & (B), the County Assessor valued the Subject Property at $5,938,624.00 for the year 2005. Plaintiff asks this Court to revalue the Subject Property at $500.00.

IV. DEFENDANT'S ARGUMENTS

A. Description of the Property and Improvements.

The Subject Property consisted of 13.802 acres of land and improvements consisting of two buildings and yard improvements. The improvements are described as follows:

1) The Subject Property consists of a one-story building built in 2002, with 33,221 SF of floor area. Its amenities include: four (4) meeting rooms (known as the *Gila Room, Agua Fria Room, Cimarron Club Room and the Cimarron Conference Room*); the aerobics room; a fitness center; a massage spa (known as the *Cimarron Day Spa*); men's and women's locker rooms; lounge; kitchen; business offices; a golf pro shop; tennis courts; hallways and miscellaneous storage areas and outdoor swimming pool.

2) A utility building, known as the *Cimarron cart barn* and attached snack bar known as the *Cimarron Snack Bar* consists of 1,980 SF of floor area for golf cart rental, maintenance and storage.

3) Parking lot and lighting.

B. Areas Used Exclusively by Residents and Invited Guests.

Defendant argues that the fitness center, aerobics (multi-purpose) room, business offices, swimming pool, cabana and tennis courts at the Subject Property were designated by Plaintiff for use and were used exclusively by residents and their invited guests.[1]

C. Areas Intended for Use and Used by the General Public.

Defendant asserts that at all material times, the Subject Property was intended for public

[1] For convenience, the term "residents" is used herein to refer to Plaintiff's members as defined by Plaintiff.

use and was used by members of the general public as follows: (1) spa services and retail products at the *Cimarron Day Spa*; (2) facilities on the Subject Property used in conjunction with the adjacent public *Cimarron Golf Course*, including (a) the *Cimarron Pro Shop* for golf play and retail merchandise sales; (b) the *Cart Barn* for golf cart rental; and (c) the *Cimarron Snack Bar* for drinks and snack service; (3) rental of the meeting rooms in the *Cimarron Gila Room, Agua Fria Room, Cimarron Club Room* and the *Cimarron Conference Room*, with or without kitchen privileges; and (4) the parking lot.

Defendant believes that the intended general public use was manifested by Plaintiff's higher rental rates for *any type of use by nonresidents* in order to generate revenue from the public to offset Plaintiff's maintenance expenses, and thereby reduce the assessments charged to residents. Revenue from the general public was intended by Plaintiff to minimize the residents' user fees and help to cover fixed costs or maintenance and maintain the property's amenities at a quality level.

D. Defendant's Valuation and Classification of the Property is Correct.

1. Use as of the Date of Valuation is Relevant to Property Valuation.

Arizona's property tax statutes require that property be classified and valued according to current use as of the valuation date. A.R.S. §§ 42-11054, 42-11001(4) and (16); *see also, Golder v. Department of Revenue*, 123 Ariz. 260, 265, 599 P.2d 216, 221 (1979) (Current usage of the property shall be used to determine cash value); *Kunes v. Mesa Stake of Church of Jesus Christ of Latter-Day Saints*, 17 Ariz. App. 451, 453, 498 P.2d 525, 527 (1972) (It is the use of property, not the use of proceeds or income that is decisive in determining tax exempt status).

Under A.R.S. § 42-13401 *et seq*, *use* is a key element in qualifying real property as a "common area." A.R.S. §42-13402(B) provides that qualifying areas of property "consist of . . . real property that is *intended for the use* of owners and residents of a residential subdivision or development *and invited guests* of the owners or residents." Section 42-13402(C)(4) provides that "[A]ll members of the association or residential property owners in the development, their immediate families and, if provided by rules of the association or corporation, guests must have a *right to use* and enjoy the common areas." In addition, Section 42-13404(A) specifically requires a deed restriction on *actual use* as a common area, *i.e*., intended for use by owners, residents and invited guests. Furthermore, Section 42-13404(B) instructs the assessor to change a common area classification and revalue the property "[i]f the property is converted to a *different use* in violation of the restrictions", *i.e.*, a disqualifying use.

2. Plaintiff Has Not Carried Its Burden of Proof.

Pursuant to A.R.S. §42-16212(B), the County Assessor's valuation and classification of the Subject Property is presumed to be correct and lawful. Further, although the Supreme Court liberally construes statutes imposing taxes, it also mandates that statutes be construed as a whole

and that Legislative intent be discerned and given full effect. *See, e.g., State ex rel. ADOR v. Capitol Castings, Inc.*, 207 Ariz. 445, 88 P.3d 159 ¶9 (2004).

Defendant contends that Plaintiff has not carried its burden of proof that the valuation is excessive by proof that it meets each and every qualifying element of the common area statutes. Additionally, Defendant asserts that Plaintiff has failed to prove that general public use is a qualifying use for common area status. This is crucial because Plaintiff is seeking the special *de minimus* tax benefits of the common area statutes. *See, Recreation Centers of Sun City, Inc. v. Maricopa County*, 162 Ariz. 281, 284, 782 P.2d 1174, 1177 (1989) ("Zero assessment effects a *de facto* exemption that reduces the state's ability to raise revenue…" contrary to the "policy of the constitution: all property not exempted must bear its share of the tax burden."); A.R.S. §42-11002.

V. ANALYSIS

This case, although complicated, presents a very straightforward question: whether the Subject Property is "intended for the use" by owners, residents and invited guests under A.R.S. § 42-13402.

A. This Court must apply the standard applicable to tax valuation statutes and cannot apply the standard applicable to exemption statutes.

The matter before this Court is not an appeal regarding exemption status; it is an appeal regarding the valuation of property. The standard for exemption status is extraordinarily strict in light of the fact that once a party earns exemption status, that party pays no taxes for the exempt property. To the contrary, the person who appeals the County Assessor's valuation of a property is inherently accepting that some tax shall be paid. Since the statute at issue in this case involves a valuation as opposed to an exemption, the cases cited by Defendant for the proposition that exemption statutes are to be strictly construed do not apply to this case. This Court must apply the standard that properly applies to tax appeals relating to the valuation of property. As recently as January 2006, the Arizona Court of Appeals held, "[I]n the tax field, we liberally construe statutes imposing taxes in favor of taxpayers and against the government. *AZ Dept. of Rev. v. Salt River Project*, 212 Ariz. 35, 126 P.3d 1063, 1066-67, (App. 2006) *quoting State ex ret. AZ Dept. of Rev. v. Capital Castings, Inc.* 207 Ariz. 445, 447, 88 P.3d 159, 161 (2004).

Additionally, "[A]mbiguities in tax statutes are to be interpreted in favor of the taxpayer, and words in such statutes should not be strained for the sake of imposing a tax." *Estancia Devlpt. Assoc. v. City of Scottsdale*, 196 Ariz. 87, 993 P.2d 1051 (Ariz. App. 1991); *citing AZ Dept. of Rev. v. Phoenix Lodge No. 708*, 187 Ariz. 242, 247, 928 P.2d 666, 671 (Ariz. App. 1996). Therefore, any ambiguities must be construed in favor of the Association.

B. Statutory Interpretation.

In the present case, there is no dispute that the property is intended to be used by owners, residents and guests. There is also no dispute that the property is actually used by owners, residents and guests. The parties dispute whether the Subject Property must be used or intended to be used exclusively by members of the Association. Defendant asserts that the term "common area" contained within A.R.S. § 42-13402(B) does not include the general public, therefore disqualifying the Subject Property from common area status. To the contrary, not only does Plaintiff believe that the language in the statute does not include this requirement, but also contends that the legislative history shows that the Legislature specifically rejected this requirement when enacting this statute.

When identifying and valuing common areas, the parties agree that A.R.S. § 42-13401 through A.R.S. § 42-13404 establish the statutory method for identifying and valuing common areas. The first issue to be addressed is whether the Subject Property is a common area pursuant to A.R.S. § 42-13402. A.R.S. § 42-13402(C) sets forth a five-part test to determine whether the Subject Property is a common area. The five requirements, which the parties agree have all been satisfied, are as follows:

1. The property must be owned by a nonprofit homeowners' association, community association or corporation.

2. The association or corporation must be organized and operated to provide for the maintenance and management of the common area property.

3. All residential property owners in the development must be required to be and must actually be members of the association or corporation, or must be obligated to pay mandatory assessments to maintain and manage the common areas.

4. All members of the association or residential property owners in the development, their immediate families and, if provided by rules of the association or corporation, guests must have a right to use and enjoy the common areas. This right must be appurtenant to and pass with title to each lot and parcel. The association or corporation may assess fees for particular uses of individual common areas.

5. The common areas must be deeded to the association or corporation.

Plaintiff asserts that since all five elements of the test are met, A.R.S. § 42-13402(A) requires that the County Assessor "shall identify common area for valuation under this article." However, Defendant argues that another test exists. Specifically, Defendant relies on the general statement found in A.R.S. § 42-13402(B), which states:

> In general, common areas consist of improved or unimproved real property that is intended for the use of owners and residents of a residential subdivision or

> development and invited guests of the owners or residents and include common beautification areas and common areas used as an airport. Areas that do not qualify as common areas shall be valued using standard appraisal techniques. (Emphasis added.)

Defendant believes that the statutory definition of common area in this subsection of the statute does not include the general public and, as a result, public use disqualifies the Subject Property from common area status.

Since the Legislature sets forth actual, specific, objective criteria, it is not for the Defendant or the Court to add another criterion. According to the rules of statutory construction, specific statutory provisions will control over general statutory provisions. *City of Phoenix v. Superior Court and County of Maricopa*, 139 Ariz. 175, 178, 677 P.2d 1283, 1286 (1984), *citing*, *State v. Davis*, 119 Ariz. 529, 534, 582 P.2d 175, 180 (1978). Furthermore, a statute that enumerates the subjects or things upon which it is to operate will be construed as excluding from its effect all those not especially mentioned. *Elfbrandt v. Rusell*, 97 Ariz. 140, 397 P.2d 944 (1965), certiorari granted 86 S. Ct. 116, 82 U.S. 810, 15 L.Ed. 2d 59, reversed on other grounds 86 S.Ct. 1238, 384 U.S. 11, 16 L.Ed.2d 321. If the Legislature wanted the County Assessor to subjectively analyze whether the property was exclusively "intended for use by owners, residents and guests," then the Legislature would have included that test in subsection C along with the other tests that need to be met before the property can qualify for the statutory valuation.

When the Court looks closely at the five specific tests in A.R.S. §42-13402(C), it sees that the tests are consistent with direct and objective evidence that the property is "intended for use of owners . . . residents . . . and invited guests." Therefore, if the five factors are present in a particular case, then generally there is sufficient objective evidence to show that the common area is "intended for the use of owners, residents and guests." The five factors ensure that the property is owned, and title is held by a non-profit association who has a contractual and fiduciary duty to manage the common area. The five factors also ensure that all the residents and owners have a duty to pay assessments to maintain the common area; have a "right" to use the common area; and that their right runs appurtenant to their status as a resident or owner. All of these factors are objective evidence, which illustrate that the property is, in fact, "intended for the use of owners, residents and guests."

1. Even if This Court Finds That There is Another Test to be Analyzed, the Association Meets Such a Test.

There are five tests set forth in subsection C, and subsection B is nothing more than a general statement or description. However, even if the Court finds that A.R.S. § 42-13402(B) is a test, the Association would meet this test. This is because subsection B does nothing more than

mention that common areas are generally intended for use by owners, residents or guests.[2] Thus, even if this section were a test, the Association must do nothing more than show that the property at issue is intended to be used by owners, residents or guests, which it has done.

2. Qualifying Users under A.R.S. §42-13402(B).

A.R.S. § 42-13402(B) defines qualifying areas of property as real property that is *intended for the use of owners and residents and their invited guests*. The section further states that "[a]reas that do not qualify as common areas shall be valued using standard appraisal techniques."

It is clear from the plain language that the Legislature intended to define common areas in A.R.S. § 42-13402(B) in terms of intended use by a finite group of qualifying users: owners, residents and their invited guests. The statutory scheme plainly contemplates that there are specific users of property, which can qualify it for "common area" status. *Aida Renta Trust v. Dept. of Revenue*, 197 Ariz. 222, 232, 3 P.3d 1142, 1152 ¶24 (Ariz. App. 2000) (Applying the rule that: "The legislature enacted the statutory language which it intended.")

It is equally clear that since there are qualifying users then there may be users who disqualify the property use. In fact, Section 42-13404(B) requires the County Assessor to change a common area status and revalue the property "[i]f the property is converted to a different use in violation of the restrictions", *i.e.,* a disqualifying use.

Thus, because owners, residents and their invited guests are identified as the finite group of users of property for it to qualify for common area status, Defendant asserts that members of the general public are disqualifying users, and intended and actual use by the general public is a disqualifying use. However, "actual use" is not a factor for valuation. Instead, the statute states that common area is, in general, the property that is "intended for use by owners . . . residents . . . and invited guests." *See* A.R.S. § 42-13402(B). Nowhere within A.R.S. § 42-13402(B) or (C) is the phrase "actual use" or "current use" inserted.

Defendant also relies on A.R.S. § 42-11054, § 42-11001 and *Golder v. Dept. of Rev.*, 123 Ariz. 260, 599 P.2d 216 (1979) to support its position that general public use of the Subject Property is a disqualifying use. However, reliance on other statutes is improper because A.R.S. § 42-13401 provides that "[T]his article establishes the **exclusive** method for identifying and valuing common areas."(Emphasis added.) In addition, A.R.S. § 42-13402 (A) expressly requires that "[t]he county assessor shall identify common areas for valuation under this article." Also, the statutes cited by Defendant refer to standard appraisal methods and techniques. The statute at

[2] The distinction between owners and residents recognizes that some owners may rent their property. The inclusion of guests recognizes that some common areas, such as guest parking lots, are used only by guests and are not used by owners or residents.

issue in this case (A.R.S. § 42-13402(B)) specifically states that "[A]reas that do not qualify as common areas shall be valued using standard appraisal techniques."

Golder does not apply to the present case because the Court was asked to analyze a valuation statute that contained the language "current use." As explained above, the statute at issue in the present case does not contain the term "current use." According to the *Hayden* Court analysis below, it is reversible error for this Court to apply an "actual use" analysis when the statute requires an "intended use" analysis. *See Hayden Partners Ltd. Partnership v. Maricopa County*, 166 Ariz. 121, 800 P. 2d 987 (Ariz. App. 1990).

Hayden was a property tax appeal regarding a tax classification dispute, namely whether the property would be eligible for the 10% residential use classification. The Tax Court initially ruled in favor of Maricopa County who urged the Court to analyze the phrase "intended use," using subjective criteria, such as the mental state of the person owning the property as of the classification date. To that end, the County argued that the developer of the property intended the sale of homes in a subdivision for commercial gain and therefore could not have "intended" the property for residential use. Maricopa County also argued that the "current use" of the land was the proper test, even though the plain statutory language required analysis of the "intended use" of the land.

The Appellate Court rejected all of Maricopa County's arguments. First, the Court held the term "intended use" refers to an objectively ascertainable end use of property under development, and that this use should be determined according to an "objective, functional standard and not by reference to the motivating purpose of the current owner." *Id.* at 123-25 & 989-91. Second, the Court pointed out that Maricopa County incorrectly relied upon a case, which focused upon the "current use" of the property instead of the "intended use" of the property. *Id.* at 124 & 990, *citing Stewart Title and Trust of Tucson. v. Pima County*, 156 Ariz. 236, 751 P.2d 552 (Ariz. App. 1987). The *Hayden* Court held, "*Stewart Title* concerns the current usage of land in use, not the intended usage of land under development; thus, it is of little assistance in deciding this case." *Id.*[3]

In the present case, the clear and objective indicia that demonstrates the property is "intended for the use of owners, residents and invited guests" is as follows: 1) the Association owns the common area; 2) the Association has a contractual duty and a fiduciary duty to maintain, replace and repair the common area; 3) the homeowners have a duty to pay assessments to maintain the common area; 4) the homeowners have a right to use and enjoy the common area; 5) the homeowners' right to enjoy the land runs appurtenant to the homeowners' title; 6) the public use that is allowed of the common area is in accordance with the Sun City Grand Declaration; 7) the use by the public is minimal, namely less that 11% in the 2003 tax

[3] The statute analyzed in *Hayden* was superseded in later years by a different version which removed the "intended use" language, although the Arizona Courts still refer to the *Hayden* Court's "intended use" analysis. *See Waddell v. 38th Street Partnership*, 173 Ariz. 137, 840 P.2d 313 (Az. Tax Court 1992); *U-Stor Bell v. Maricopa County*, 204 Ariz. 79, 59 P.3d 843 (Ariz. App. 2002).

year and decreasing every year; and 8) most of the common area in Sun City Grand is reserved for the sole use of the owners, residents and guests. All of this objective evidence illustrates that the common area within Sun City Grand was intended for the use of the owners, residents and invited guests.

Defendant, in the present case, improperly urges this Court to analyze the phrase "intended use" by looking to the "current or actual use." Defendant attempts to rely on the definition of "airport" in A.R.S. § 42-13402 as evidence of legislative intent. However, this actually supports the Association. A.R.S. § 42-13402(D) states:

> For purposes of this section "airport" means runways and taxiways that are used primarily by residents of the residential subdivision but that may be designated as a reliever airport by the federal aviation administration and that receives no public funding.

In addition to the fact that this argument was flatly rejected in *Hayden*, the language in the statute shows that the Legislature knows how to require that a court evaluate actual use to determine whether the actual use is primarily by residents.

Defendant also urges this Court to rule in its favor because the Developer controlled the Association until November 2005. Again, this argument was rejected in *Hayden*. The fact that a developer controls an association through the appointment of directors until a certain number of homes are sold is irrelevant to the intended use of the property. The bottom line is that the recreation center is intended to be used by the owners, residents and guests.

There is no dispute that the property at issue is intended to be used by owners, residents and guests. Use of the phrase "in general" and the use of the phrase "intended use" are important. So is the failure to use words like "exclusively," "primarily" or "only." So is the fact that the Legislature did list the way in which an association could be disqualified. All of these contradict Defendant's position that any actual use by the public or commercial use disqualifies the Association.

Finally, some public or commercial use does not justify the conclusion that the property is not intended to be used by the owners, residents or guests. There is no language in the statute stating that any use by the public or any commercial use will result in disqualification.[4]

[4] In the present case, public use of the common areas is allowed. Specifically, the Sun City Grand Declaration states, "[e]very owner shall have a right . . . of access, and enjoyment in and to the Common Area, subject to: . . . [t]he right of the Board to permit entry upon the Common Area, or to grant licenses permitting the use of the Common Area by third parties for purposes deemed, in the discretion of the Board, to benefit the Properties; . . . ." *See* Section 2.1, paragraph (f) on pg 8 of the Declaration. Furthermore, the Rules explain that access to the common area by third parties benefits the community. *See* Pg 6 of the Rules. Therefore, public use is not in contradiction to the Declaration and the Assessor may not deny common area valuation status.

C. Legislative Intent Regarding the "Exclusivity" Test.

In constructing statutes, the Supreme Court begins "with the text of the statute. This is so because the best and most reliable index of a statute's meaning is the plain text of the statute." *Arizona ex rel. Romley v. Hauser*, 209 Ariz. 539, 105 P.3d 1158 ¶4 (2005).

Two Senate Bills ("SB") are of importance in determining whether the Subject Property qualifies as a common area, which in turn, determines the type of valuation made on the Subject Property. SB 1264 proposed to provide that "residential common area" meant "improved or unimproved real property that is restricted for the current exclusive use and benefit of the residents of a residential subdivision." Public records reflect that SB 1264 was tabled. SB 1372 provided that "common area" meant "improved or unimproved real property that is intended for the use of owners and residents of a residential subdivision or development and invited guests of the owners or residents." Thus, where SB 1264 defined the qualifying users as "exclusively residents," SB 1372 expanded the class of qualifying users to include not only residents, but also "owners and the invited guests of owners and residents."

The parties do not dispute that SB 1264 contained exclusivity language when defining residential common area. SB 1264 was tabled on March 4, 1999, and never moved forward. Two weeks after SB 1264 was tabled, a motion was made to amend SB 1372 by deleting all of the language after the enacting clause and inserting the language that became the common area valuation statute. The motion to amend the bill was passed on March 23, 1999, and enacted on May 18, 1999. This SB did not contain the exclusivity language that SB 1264 had contained. SB 1372, stated:

> In general, common areas consist of improved or unimproved real property that is intended for the use of owners and residents of a residential subdivision or development and invited guests of the owners or residents and include common beautification areas and common areas used as an airport. Areas that do not qualify as common areas shall be valued using standard appraisal techniques . . .

When comparing the language in SB 1264 and SB 1372, it appears that the Legislature, by removing the terms "exclusive" and "not used for commercial purposes" intended to exclude the exclusivity and commercial activity requirement.

Additionally, this Court's minute entry dated October 24, 2005, stated that:

> As a threshold matter, the Court agrees with Plaintiff that there is no exclusivity requirement in A.R.S. §42-13402(B). The Court also agrees with Plaintiff that the statute does not by its terms preclude all commercial uses in common areas. The Court finds it

very significant that the Legislature in 1999 specifically considered and removed such provisions from proposed legislation at the time.

VI. CONCLUSION

Based on the above analysis,

IT IS ORDERED granting the Plaintiff's Motion for Summary Judgment and finding that the subject property qualifies as common area.

IT IS FURTHER ORDERED denying Defendant's Motion for Partial Reconsideration.