ARIZONA TAX COURT

TX 2003-000198 01/19/2006

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT
L. Slaughter
Deputy

FILED:_____

MARICOPA COUNTY

LISA J. BOWEY
ROBERTA S. LIVESAY

v.

TWC-CHANDLER, LLC. AND THE ARIZONA STATE BOARD OF EQUALIZATION

PAUL J. MOONEY
REX C. NOWLAN

**UNDER ADVISEMENT RULING**

This matter was taken under advisement after oral argument held November 21, 2005. The Court has considered the Plaintiff's Motion for Summary Judgment, Defendant TWC-Chandler, LLC's ("TWC") Motion for Summary Judgment and arguments of counsel.

## I. THE ISSUE

Plaintiff Maricopa County (the "County") challenges of the State Board of Equalization's ("SBOE") decision to reject the County's proposed increases in TWC's real property values for parcels at Chandler Fashion Center for the 2002 tax year.[1]

## II. FACTUAL BACKGROUND

On September 11, 2002, the Assessor mailed Taxpayer a Notice of Proposed Correction for each of the following parcels: 301-65-003C, 301-65-004K, 301-65-004L, 301-65-004M, 301-65-004N, 301-65-004P, 301-65-004Q, 301-65-004S, 301-65-004T, 301-65-004V, 301-65-004W, 301-65-004X, 301-65-004Y, 301-65-005E, and 301-65-881. All are parcels of land on which the Chandler Fashion Center is built. Taxpayer appealed the values as to parcels 301-65-004L, 301-65-004T, and 301-65-881 to the SBOE, claiming that these parcels were "overvalued on cost." The SBOE heard argument on these three parcels simultaneously on January 9, 2003. After the evidentiary hearing, the SBOE determined the values assigned by the County were excessive and valued the parcels based on a cost valuation method as of the valuation date.

[1] The Subject Property is identified by Maricopa Parcel numbers: 301-65-004L, 301-65-881, and 301-65-004T.

The County is now appealing the SBOE's 2002 valuation of the parcels and also challenging the authority of the Board to increase or decrease a valuation pursuant to A.R.S. §§ 42-16205, 42-16203, 42-16207, and 12-1831 *et seq.* The County contends SBOE, in its decision, eliminated all components of value associated with the improvements on the three parcels of real property that are the subject of this action. The County further asserts the land had buildings on it, specifically an entire shopping center, and those buildings had an assessed value of over $125,000,000 million dollars, and that the SBOE removed all value attributed to those buildings from the 2002 tax roll, leaving only the value of the land which had an assessed value of $16,963,682 million dollars.

## III. ARGUMENTS OF THE PARTIES

***- Maricopa County's Arguments -***

### A. THE ASSESSOR'S ERROR IS CORRECTABLE AND THE SEPTEMBER 11, 2002 NOTICE OF PROPOSED CORRECTION WAS PROPER.

The error that the Assessor sought to correct was his failure to timely capture on the 2002 tax roll a change in value caused by new construction and the splitting of one parcel of real property into two or more parcels. This error is "exclusively factual in nature … objectively verifiable without the exercise of discretion, opinion or judgment, and is demonstrated by clear and convincing evidence." A.R.S. § 42-16251(3)(e). The Assessor sought to make this correction for tax year 2002 using a September 11, 2002 Notice of Proposed Correction. A.R.S. § 42-16251(3)(e)(iii) specifically permits the correction of this error, and the September 11, 2002 Notice was the proper means by which to make the correction. A.R.S. § 42-16252.

The Assessor attempted to split parcel 301-65-004J into new parcels 301-65-004S, 30165-004T, and 301-65-881, but mistakenly cancelled parcel 301-65-004J in August 2001 while attempting to split that parcel. The three new parcels involved in the split were not active until October 1, 2001. Thus, the Assessor failed to timely[2] capture on the tax roll a change in value caused by new construction and the splitting of one parcel (parcel 301-65-004J) into three new parcels (301-65-004S, 301-65-004T, and 301-65-881) per A.R.S. § 42-16251(3)(e)(iii).

Taxpayer's argument focuses on the "re-valuations" that the Assessor staff attributed to the parcels between October 1, 2001 and September 2002. Taxpayer attempts to combine this "multiple valuation" scenario with the definition of a correctable error. Taxpayer argues that the Assessor's "re-valuations" required the appraisers to exercise their discretion, opinion or judgment, and therefore, the County cannot use the error correction statutes to change values that had been set prior to the statutory deadline imposed for increasing values pursuant to A.R.S. § 42-15105.

[2] "Timely" would be on or before the September 30 deadline imposed by A.R.S. § 42-15105.

This argument is flawed for several reasons. First there was no Notice of Change involving parcels 301-65-004T and 301-65-881 because those parcels were not active until October 1, 2001, the day after the September 30, 2001 Notice deadline. The only parcel in this case that had a Notice of Change sent out was parcel 301-65-004L. The factual history of parcel 301-65-004L is entirely different from and has absolutely nothing to do with the history of parcels 301-65-004J, 301-65-004T, or 301-65-881. What Taxpayer did was to lump all three parcels together and then argue to the SBOE and now to this Court, the facts and law that pertained only to parcel 301-65-004L as though they applied to parcels 301-65-004T and 301-65-881 as well. Contrary to Taxpayer's claim, the County did not use the error correction statutes to change values that had been set prior to the statutory deadline imposed for increasing values pursuant to A.R.S. § 42-15105 because with respect to parcels 301-65-004T and 301-65-881, there were no "set" values to change.

Second, while the isolated exercise of determining value does require the use of discretion, opinion or judgment, the error that the Assessor was originally seeking to correct was his failure to timely capture on the tax roll a change in value caused by new construction and the splitting of one parcel of real property into two or more new parcels. A.R.S. § 42-16251(3)(e)(iii). The Assessor was not correcting an error made in the calculation of the property's FCV. For Taxpayer to suggest that exercising discretion, opinion or judgment in order to determine the value of the subject parcels negates the applicability of the error correction statute, is contrary to the plain language of A.R.S. § 42-16251(3)(e)(iii).

Arizona's Courts have held that when interpreting a statute, each word, phrase, clause and sentence must be given meaning so that no part will be void, inert, redundant or trivial and that whenever possible, a court should construe meaning of several statutes so that effect can be given to all. *See, Adams v. Bolin*, 74 Ariz. 269, 247 P.2d 617 (1952); *Lemons v. Superior Court of Gila County*, 141 Ariz. 502, 687 P.2d 1257 (1984). Where different statutory provisions deal with the same subject matter, statutes should be construed together in an attempt to arrive at a result in accord with the intent expressed therein. *In re Maricopa County Appeal*, 15 Ariz. App. 536, 489 P.2d 1238 (App. 1971).

Steve Shives, an appraiser with the Assessor's Office calculated for tax year 2002, the values attributed to the newly created parcels 301-65-004T and 301-65-881. The calculation accounted for new construction, thereby changing the improvement value from 15% complete on January 1, 2001 to 90% complete as of October 1, 2001. Mr. Shives' FCV for parcel 301-65-004T was $30,203,031[3] and his FCV for parcel 301-65-881 was $136,260,170.[4]

After Mr. Shives calculated values for these parcels, and before the preparation of the September 11, 2002 Notice of Proposed Correction, the Assessor's Office determined that Mr. Shives' figures were not correct. Several appraisers at the Assessor's Office attempted to

[3] Land value of $1,301,801 plus the improvement value of $28,901,230.
[4] Land value of $8,162,494 plus improvement value of $128,097,676.

calculate the correct values for the subject parcels. Appraiser Pat Starbuck calculated the values set forth in the Notice of Proposed Correction. Ms. Starbuck used her judgment and years of experience in property valuation to determine the improvement values in that Notice. The combining of the land values into a single economic unit and the revised calculation of the improvement values involving parcels 301-65-004T and 301-65-881, resulted in values for those parcels of $18,533,563 and $110,229,458, respectively at 90% complete. Those are the values set forth in the September 11, 2002 Notice of Proposed Correction. The values in the Notice are actually lower than the figures that Mr. Shives had calculated.

The values for parcels 301-65-004T and 301-65-881 in the Notice of Proposed Correction are correct. Whether or not Ms. Starbuck exercised her discretion, opinion or judgment in determining those values has no bearing on whether the Assessor's error in failing to timely capture on the tax roll a change in value due to new construction or the splitting of one parcel of real property into two or more new parcels, is correctable per A.R.S. § 42-16251(3)(e)(iii).

Taxpayer's argument about the applicability of A.R.S. §§ 42-16255(B) and 42-15105 (the purported issuance of a September 30 Notice of Change for parcels 301-65-004T and 301-65-881) has no merit. That argument is based entirely upon a set of facts that simply do not apply in this case. The County did not prepare a Notice of Change for parcels 301-65-004T and 301-65-881, thus, there was no re-valuation prior to September 30, 2001 and no opportunity to file an appeal.

**B. TAXPAYER ADVOCATES THE NULLIFICATION OF A.R.S. § 42-16251(3)(E)(iii) AND § 42-16256 IN THIS CASE.**

If this Court determines that the values set forth in the September 11, 2002 Notice of Proposed Correction is not correct, the proper values for the subject property for tax year 2002 must be the values calculated by Mr. Shives for new parcels 301-65-004T and 301-65-881 as of October 1, 2001. The values cannot, as a matter of law, be only the actual construction cost of the improvements that were actually in place on the parcel on January 1, 2001. Taxpayer's argument effectively nullifies A.R.S. § 42-16251(3)(e)(iii) and § 42-16256. That is clearly contrary to the legislature's intent.

There is no doubt that the Assessor's error is correctable under A.R.S. § 42-16251(3)(e)(iii) and that on October 1, 2001 the improvements located on parcels 301-65-004T and 301-65-881 were 90% complete. The Arizona legislature, by enacting A.R.S. § 42-16251 *et seq*. clearly intended for the Assessor to be able to capture on the tax roll a change in value caused by new construction or the splitting of one parcel of real property into two or more new parcels if the Assessor failed to timely capture that value through the Notice of Change process.

The error correction statutes permit the correction of errors for three years - the current tax year in which the Notice of Proposed Correction is filed and the two immediately preceding years. A.R.S. § 42-16256. Therefore, the Assessor may capture the change in value caused by

new construction or the splitting of one parcel into two or more new parcels for tax year 2002 (date of value January 1, 2001) since the correction was made in September 2002. When read together, A.R.S. § 42-15105, § 42-16251(3)(e)(iii), and § 42-16256 clearly permit the Assessor to capture the value of new construction for tax year 2002 and relate it back to January 1, 2001.

If it is held that the values set forth in the Notice of Proposed Correction are not correct, then there is competent evidence before this Court to support a finding that the values for the subject parcels would be Mr. Shives' values calculated for the October 1, 2001 split. Mr. Shives' values were the first values calculated with the improvements at 90% complete and with the specific intent to capture the value of the new construction located on those parcels for tax year 2002 as relating back to the January 1, 2001 date of value as permitted by A.R.S. § 42-16251(3)(e)(iii) and A.R.S. § 42-16256.

The error correction statute permits the correction of the Assessor's error of not timely capturing on the tax roll the change in value caused by new construction and the splitting of one parcel into two or more new parcels. § 42-16251(3)(e)(iii). Taxpayer, by arguing that the only valid value the SBOE and this Court may utilize as "reliable" is the value of the improvements actually located on the subject parcels on January 1, 2001, is advocating for the nullification of § 42-16251(3)(e)(iii) and § 42-16256. Taxpayer's argument is contrary to the explicit provisions of A.R.S. § 42-16251(e)(3)(iii) and § 42-16256, and the specific intent to permit the Assessor to capture the value of new construction that has occurred on those parcels since the January 1, 2001 value date, even though the Assessor failed to timely capture those improvements pursuant to A.R.S. § 42-15105. Either the values set forth in the Notice of Proposed Correction or the values calculated by Mr. Shives for the October 1, 2001 split that reflect the improvements at 90% complete may be adopted.

## C. THIS COURT HAS ALREADY DENIED TAXPAYER'S JURISDICTION CHALLENGE.

The County has previously addressed Taxpayer's jurisdiction challenge and the issues raised by Taxpayer in its citing of *In re Westward Look Development Corp*, 138 Ariz. 88, 673 P.2d 26 (App.1983) in the County's Response to Taxpayer's Motion to Dismiss and in the County's Response to Taxpayer's Motion for Summary Judgment. For the purpose of judicial economy, simply refer to those documents and the Court's minute entry dated October 3, 2003.

## D. THE SBOE'S DECISION GIVES THE TAXPAYER AN UNCONSTITUTIONAL TAX EXEMPTION.

The County has no dispute about the decision of the SBOE with respect to parcel 301-65-004L. However, the SBOE, by removing all improvement value from the 2002 tax roll for parcels 301-65-004T and 301-65-881, acted arbitrarily, capriciously, without statutory authority, and in violation of its duties as set forth in A.R.S. § 42-16162(A). Because of the SBOE's action, Defendant received an unconstitutional exemption from taxation equal to the amount of

value for the improvements associated with parcels 301-65-004T and 301-65-881. *See* Article IX, § 2, subsection (12).

The SBOE failed to follow A.R.S. § 42-16251(3)(e)(iii) concerning what is a correctable error. The SBOE did not follow the provisions of A.R.S. § 42-16251(3)(e)(iii), § 42-16252, and § 42-16256. Instead, it relied upon Taxpayer's erroneous legal theory and factual argument that the value of the improvements should be the actual cost of the improvements actually located on the parcels on January 1, 2001. There were improvements located on the relevant parcels on January 1, 2001. In September 2000, those improvement values were noticed at 15% complete for tax year 2001. Thus, SBOE either had no evidence before it of the actual cost of the improvements located on the subject parcels on January 1, 2001, or it completely disregarded that evidence. Had the SBOE considered those costs, the SBOE's decision should not have reflected a value of zero ($0) for those improvements because undoubtedly, those improvements would have had at least some value attributed to them. The SBOE did not base its determinations on the evidence before it or in accordance with Arizona tax law.

***- TWC-Chandler, LLC.'s Arguments -***

## A. THE COUNTY CONDUCTED MULTIPLE RE-VALUATIONS OF THE SUBJECT PROPERTY BUT SUCH RE-VALUATIONS ARE NOT CORRECTABLE "ERRORS" AS DEFINED BY A.R.S. § 42-16252.

### 1. County Assessors Shives, Mitchell, Estrada, and Starbuck Each Valued the Subject Property Creating Multiple, Different "Valuations" for the Property for the 2002 Tax Year.

As Pat Starbuck, one of the Assessor's Representatives assigned to value the Subject Property for the 2002 tax year, noted, at least six different valuations were generated by the Assessor for the Subject Property for the 2002 tax year after the final 2002 values were established. The Assessor's Representatives involved in its various valuations of the Subject Property for 2002 included: Ms. Starbuck, Steven Shives, Patrick Mitchell, Ron Gibbs, Bill Lindenthaler, Nancy Estrada, Russ Thimgan, and Sal Ramirez. Additionally, Socorro Candelaria, the County's Appraisal Coordinator, had the responsibility to sign and issue the 2002 Notices of Proposed Correction at issue here.

First, Assessor Representative Steven Shives valued the Subject Property for the 2002 tax year on at least one occasion prior to September 30, 2001. Second, beginning in November 2001, Assessor Representative Patrick Mitchell valued the Subject Property for the 2002 tax year pursuant to instructions received by his supervisors Sal Ramirez and Ron Gibbs. His valuation was completed on or about November 19, 2001. Third, Assessor Representative Nancy Estrada valued the Subject Property for the 2002 tax year on or about March 8, 2002. Finally, Ms. Starbuck valued the Subject Property for the 2002 tax year on at least two occasions; first, in or

about September, 2002, and second on or about December 16, 2002. She was assisted in her valuations by, among others, Ron Gibbs.

**2. As the County Admits, Each Post-September 30, 2001, Re-Valuation Required Use of the Assessor's Discretion, Judgment and/or Opinion.**

**a. Mr. Mitchell's November 2001 Valuation Of The Subject Was A New Valuation, Not The Correction Of An Error.**

Mr. Mitchell's November 2001 valuation of the Subject Property required him to "rework" Mr. Shives' cost approach valuation. Mr. Mitchell converted the earlier work done by Mr. Shives based upon the segregated cost method to the square foot method. Mr. Mitchell did not need to refer to Mr. Shives' valuation to conduct his revaluation of the Subject Property.

In order to perform his valuation, Mr. Mitchell, among other things, visited the property to "get a general interpretation of the property", including determination of the wall construction type, physical condition of the property, and "opinion factors." Opinion factors include a determination of both rank and quality of the Subject Property.

Importantly here, Mr. Mitchell's work was reviewed by his supervisor, Sal Ramirez. Mr. Ramirez' habit was to review Mr. Mitchell's work and to make him correct any errors he found with the work. Mr. Ramirez reviewed Mr. Mitchell's valuation here, and determined it did not need corrections. Indeed, to the best of his knowledge, Mr. Mitchell's valuation was not used in any manner in the notice of value set forth by the County in the September 2002 Notice of Proposed Correction issued by the County for the Subject Property.

**b. Ms. Starbuck's September 2002 and December 2002 Valuations Of The Subject Were Not Error Corrections.**

Ron Gibbs gave Ms. Starbuck her initial assignment regarding the Subject Property. Ms. Starbuck's assignment regarding the Subject Property for 2002 was to do "an evaluation and put the mall on at cost, correct any errors." Her initial assignment was not related to the generation of a notice of proposed correction.

Ms. Starbuck did not do an analysis of either Mr. Shives' or Mr. Mitchell's valuations of the Subject Property. Instead, Ms. Starbuck did her own valuation of the Subject Property, which required her to use her experience and judgment to determine an opinion of value for the September 2002 notice of proposed correction.

Ms. Starbuck's September 2002 valuation of the Subject Property for her proposed notice of correction, was a different valuation than either Steven Shives' valuation or Patrick Mitchell's November 2001 valuation of the Subject Property. For example, Ms. Starbuck's initial notices of

proposed correction showed that the full cash values she determined for each parcel comprising the Subject Property were lower than the full cash value indicated by Mr. Shives' work, but that her valuations were higher than the full cash values determined by Mr. Mitchell for 2002. Notably, Ms. Starbuck's valuation in support of the County's September 2002 Notices of Proposed Correction included changes in land values. As Ms. Starbuck admitted, land valuations require the use of discretion, opinion, and/or judgment by the appraiser.

Ms. Starbuck's valuation of the Subject Property in December 2002, is the valuation she presented to the SBOE. The County made two critical errors in its presentation of Ms. Starbuck's work product to the SBOE. First, Ms. Starbuck relied on the sales comparison approach to value the Subject Property. As she admitted during her deposition, this required her to use her experience, judgment, discretion and opinions in rendering a recommendation of full cash value to the SBOE based upon the sales comparison approach. Second, she used a September 30, 2001 valuation date. As the Court and the County are aware, the valuation date for a Notice of Proposed Correction is January 1, not September 30. *See* A.R.S. § 42-16251.

If further evidence is needed of the subjective nature of Mr. Mitchell's and Ms. Starbuck's work, consider the following. First, it is undisputed that land valuations require use of judgment regarding the comparability of the sales used to determine the subject's land value. Second, DOR's cost model requires, among other things, that the appraiser rate the quality of the improvements. Such determinations necessarily require use of the appraiser's judgment. And third, Mr. Mitchell and Ms. Starbuck allegedly based their opinions of value on the same set of "objective" facts (their term) when determining the Subject Property's full cash value, yet they reached completely different opinions of value.

Mr. Mitchell's November 2001 valuation and Ms. Starbuck's September 2002 and December 2002 valuations each required the Assessors to exercise discretion, judgment, and opinion when generating their opinions of the Subject's full cash value. Thus, they are not a basis upon which an "error" can be corrected. *See* A.R.S. § 42-16251, *et seq.*

**3. The County's Use Of Discretion, Judgment And Opinion Negates Its Attempts To Reassess The Subject Property Pursuant to Section 42-16251, *et seq*.**

The definition of an "error" for purposes of the provisions codified in Article 6 of Title 42, preclude either the Assessor or a taxpayer from using the error-correction statutes to change valuation judgments. In those limited circumstances where a change in value is allowed (due to a true "error"), the statutes carefully circumscribe the exercise of that privilege so as to preclude decisions based on "discretion, opinion or judgment" which is a phrase repeated at two separate places in the definition statute. *See*, A.R.S. § 42-16251(3)(e) and (e)(v). Indeed, Ms. Starbuck admitted that an error correction has to be objectively verifiable, and cannot require the exercise of discretion, opinion, or judgment. She further admitted that she was "wrong" to attempt to use a notice of proposed correction to increase the value of the Subject Property before the SBOE.

Here, the County is claiming that the "error" is a "failure to timely capture on the tax roll a change in value caused by new construction . . . or splitting . . . interests in real property existing on the valuation date." A.R.S. § 42-16251(3)(e)(iii). Assuming that there was a "change in value caused by new construction" or a lot split (the two bases asserted by the County here), the statute contains three important limitations that the County completely ignores.

First, the language in the subsection at issue is expressly conditioned and made "[s]ubject to the requirements of § 42-16255." This provision precludes changes in value that could have been the subject of a timely appeal under the relevant valuation appeal statutes in Title 42. Here, the County controlled this process by setting the original value early in 2001 and then by issuing an increase by way of a Notice of Change prior to September 30, 2001, both of which implicate the valuation appeals process.

Second, the statute requires that the change be "timely." The County fails this test here for two reasons: (1) the County revalued the Subject Property under the provisions of Section 42-15105 for the 2002 tax year prior to September 30, 2001, and (2) the attempted change occurred after the levy date for the 2002 tax year and after the taxes assessed against the Subject Property were already paid by TWC. *See e.g., Park Central Mall, LLC v. Maricopa County*, 197 Ariz. 532, 4 P.3d 1075 (App. 2000).

Third, the statute limits the change in value to a determination made as of the "valuation date." In this case, the relevant valuation date was January 1, 2001. As Ms. Candelaria admitted, when the Assessor makes a change under the error correction statute for a prior year, the valuation date for the proposed correction is January 1 of the tax year in question. Here, however, the Assessor's Notice of Proposed Correction sought to increase the value to almost 100% of the value of the completed shopping center, using a September 2001 valuation date.

**4. The SBOE Did Not Act Arbitrarily Or Capriciously In Rendering Its Decision Herein.**

Both the law and the facts support the SBOE's decision. *See* A.R.S. §§ 42-15105, -16251 *et seq.* The County was not "correcting an error" pursuant to A.R.S. 42-16252. Rather, it was attempting to improperly revalue and reassess the Subject Property long after the 2002 tax year was closed. Furthermore, the County admittedly was attempting to revalue the Property as of September 2001, when the law and the Assessor both recognize that the valuation date for an error correction, if one were to be made herein, was January 1, 2001. *See* A.R.S. § 42-16251.

**B. THE COUNTY'S COMPLAINT AGAINST TWC IS LEGALLY AND FACTUALLY WITHOUT MERIT AND THEREFORE SHOULD BE DISMISSED.**

**1. The Court Has No Jurisdiction Over A Valuation Appeal Here.**

Contrary to the County's argument, the Court has the authority to re-visit its prior decision regarding TWC's Motion to Dismiss in this case; Arizona law unequivocally provides that the defense that the Court lacks subject matter jurisdiction is one that can be raised at any time and that it cannot be waived. *See, e.g., Switchenberg v. Brimer*, 171 Ariz. 77, 82, 828 P.2d 1218, 1223 (App. 1991) (subject matter jurisdiction over claim cannot be conferred by court). Thus this is not a horizontal appeal and this Court can properly re-visit its prior ruling. This case was filed by the County to challenge the SBOE's ruling on a Notice of Proposed Correction issued by the County to TWC pursuant to A.R.S. § 42-16252. As such, the County was bound to follow those procedures in order to appeal; it did not. Hence, its complaint should be dismissed.

**2. The *Westward Look* Opinion Is Applicable Here, And It Precludes The Relief Requested By The County.**

Simply put, the relief the County requests can no longer be granted as against TWC. *See In re Westward Look Development Corp*., 138 Ariz. 88, 673 P.2d 26 (App. 1983). The rule is applicable herein and, contrary to the County's argument, the rule has not been superseded. Because the property taxes against the Subject Property for the 2002 tax year had been assessed, levied and collected from TWC based on the values established by the Assessor in his September 30, 2001 Notice of Change under A.R.S. § 42-15105, the Assessor's attempt to get the SBOE to approve its use of the error-correction statutes to increase TWC's values retroactively now is barred.

Because the property taxes against the Subject Property were already assessed, levied and collected for the 2002 tax year prior to the SBOE hearing on the Notice of Proposed Correction, any change in the value of that property can only be corrected prospectively under the rule announced in *Westward Look.* There is no dispute that the property taxes at issue here constitute a lien on TWC's real property. Anyone searching the records of the County Treasurer would find that all property taxes levied and assessed against the Subject Property were timely paid in full prior to the SBOE hearing on the County's improper error correction claim. Accordingly, by the time the SBOE heard TWC's appeal in this case, all 2002 property taxes assessed against the Subject Property had been assessed, levied and paid. Importantly here, this argument was presented to the SBOE and it formed an independent basis for the SBOE's decision.

**C. ALTERNATIVELY, IF THE PROPOSED NOTICES OF PROPOSED CORRECTION ARE VALID, THE ONLY EVIDENCE OF THE SUBJECT PROPERTY'S FULL CASH VALUE IS TWC'S ACTUAL CONSTRUCTION COSTS AS OF JANUARY 1, 2001.**

The County's claim, even if it is cognizable here, requests values for the Subject Property that are blatantly excessive and that cannot be supported either legally or factually. Pursuant to A.R.S. § 42-16251 and -16252, the County is limited to the correction of factual errors that that are "objectively verifiable without the exercise of discretion, opinion, or judgment." Further, the County must be able to prove such errors by clear and convincing evidence, and the capture of

missing property caused by new construction and/or the splitting of one parcel of property into two or more new parcels is limited to the property "existing on the valuation date." A.R.S. § 42-16252(e)(iii). For real property tax valuation purposes, Arizona defines the valuation date as "January 1 of the year preceding the year in which taxes are levied." A.R.S. § 42-11001(16). Indeed, Ms. Candelaria acknowledged that the valuation date to be used in the correction of an "error" is January 1, 2001. Thus, even if the notices of proposed correction in this case are valid, they only allow for a change in valuation to reflect the real property that can be shown, by clear and convincing evidence and without the use of judgment, discretion, or opinion, to have been in place as of January 1, 2001.

Here, the County cannot point to any evidence to dispute TWC's actual cost information. Its bare assertion regarding the full cash value set forth in the notices of proposed correction does not constitute evidence. Moreover, as Ms. Starbuck testified, this value was only one of six "proposed" full cash values; clearly this is not a value established by clear and convincing evidence. *See*, A.R.S. § 42-16251. The only evidence before this Court of real property value as of January 1, 2001, that does not require the use of "discretion, opinion, or judgment" is provided by TWC's actual costs incurred in developing the property as of that date. Accordingly, as a matter of law based on the undisputed facts, and assuming that there is any legal basis for the Court to consider the County's appeal herein, the maximum full cash value of the Subject Property for the 2002 tax year is no more than the Subject Property's land value as of January 1, 2001, ($9,397,584) plus the actual construction costs incurred as of that date, ($28,306,136) which totals $37,705,720.

***- SBOE'S Arguments -***

**A. SBOE IS NOT A NECESSARY OR EVEN AN APPROPRIATE PARTY.**

The County is the party that brought the action before the SBOE. The SBOE conducted a hearing and made a decision. The hearing was conducted pursuant to statute, the parameters of the hearing are dictated by statute and the authority of the SBOE is granted by statute. A public agency is given broad discretion in the interpretation of its own statutes.

If the County disagrees with the decision of the SBOE, it has a simple remedy available to it, by making a *de novo* appeal to this court, but in that case, the SBOE is not a necessary or even an appropriate party.

**B. THE SBOE HAS THE AUTHORITY TO INCREASE OR DECREASE THE VALUATION OF PROPERTY.**

The County is incorrect in its assertion that the SBOE lacks the authority to increase or decrease the valuation of property to determine the full cash value of the property. The authority granted by statute is clear and straight forward.

The authority of the SBOE to address questions of valuation is created by statute. The SBOE may, "[b]ased on evidence presented at a hearing on an appeal . . . increase or decrease a valuation . . . to properly reflect the full cash value . . ." of the property. A.R.S. § 42-16162 (A). The SBOE is specifically given jurisdiction to make any error correction. A.R.S. § 42-16255.

The County acknowledged that it had not captured on the tax rolls the value of improvements to the real property parcels 301-65-881, 301-65-004L and 301-65-004T for Tax Year 2002 and in only one case did the County give appropriate notice of a change in valuation to the property owner. Approximately one year after the last date for the capture of construction improvements, the County issued its Notices of Proposed Correction dated September 11, 2002, for each of the parcels pursuant to the requirements of A.R.S. § 42-16252.

The failure the County apparently wished to address is defined in A.R.S. § 42-16251 (3)(e)(iii) as "a failure to timely capture on the tax roll a change in value caused by new construction, the destruction or demolition of improvements, the splitting of one parcel of real property into two or more new parcels or the consolidating of two or more parcels of real property into one parcel existing on the valuation date." The County and the Taxpayer met and discussed the proposed correction, but there was no agreement as to the values. On November 6, 2002, the County issued the Notice, as required by A.R.S. §42-16252 (F), that it was correcting the values previously assessed. On December 16, 2002, the County sent a letter to the Taxpayer and the SBOE giving notice that at the hearing it would be seeking an additional increase in value for the subject parcels based on the sales of other identified properties.

A.R.S. § 42-16255 allows either party to "present any evidence regarding property tax errors" related to the subject parcels, which include by definition the existence or non-existence of improvements on those parcels as of the valuation date. "Valuation date" is a defined term. The definition of "valuation date" "for purposes of real property . . . means January 1 of the year preceding the year in which taxes are levied." A.R.S. § 42-11001 (16). In this case January 1, 2001, is the valuation date. Evidence was given by both parties before the SBOE, as to the value of the parcels and the amount of construction that had or had not been completed on the subject parcels as of the valuation date.

The charge of the SBOE under the statutory scheme invoked by the County is to determine a value for the parcels that was "existing on the valuation date", from any evidence presented by the parties. A.R.S. §§ 42-16251(3)(e)(iii) and 16255.

Each parcel was given a value the SBOE considered appropriate as of January 1, 2001, using a cost basis. Nothing in the statutes authorizes or even suggests using some other valuation date.

## C. THERE WAS NO UNCONSTITUTIONAL REMOVAL OF PROPERTY FROM THE TAX ROLL

The County claims that an unconstitutional exemption was granted to the Taxpayer based on the assumptions that (1) the improvements to be valued must include those that existed not just on the valuation date, but also as of some later date; and (2) the appropriate value of those improvements was the value attributed to them by the County.

The SBOE did not grant any exemption let alone an unconstitutional exemption. The SBOE did no more or less than perform its statutory responsibility based upon the facts presented at hearing. The County is seeking to increase the established value of the parcels by means of the "error correction" statutes. Axiomatic to correcting an error by an increasing property value, however, is the right of the taxpayer to challenge the County's proposed increased value of the property. A.R.S. § 42-16252 (D) provides that the "owner may appeal valuation issues that arise from the correction." A.R.S. § 42-16255 allows either party to present any evidence regarding the property tax errors in an "error correction" hearing before the SBOE.

Contrary to the position taken by the County, that the value of improvements was stripped from the property, the SBOE determined the existence and value of improvements as of the valuation date, based on the evidence presented at the hearing. The findings of the SBOE were, that Taxpayer "appealed the full cash value as excessive based on the current use of the subject property", that the County's "basis for value was the sales comparison approach to value and sales data submitted to support the value estimate" but "the full cash value [was] excessive based on the cost approach to value. . ."

## IV. THE COURT'S FINDINGS AND CONCLUSIONS

In essence, the County asks the Court to read A.R.S. § 42-16251(3)(e)(iii) and A.R.S. § 42-15105 together to allow the County to capture improvements made to the Subject Property as of September 30, 2001, using the error-correction statutes, A.R.S. §§ 42-16251 et seq. However, this interpretation would be contrary to the plain language of A.R.S. § 42-16251(3)(e)(iii).

The Court appreciates the County's argument there was no Notice of Change involving parcels 301-65-004T and 301-65-881 because those parcels were not active until October 1, 2001, the day after the September 30, 2001 Notice deadline, and that the only parcel in this case that had a Notice of Change sent out was parcel 301-65-004L. The County further asserts that the factual history of parcel 301-65-004L is entirely different from the history of parcels 301-65-004J, 301-65-004T, or 301-65-881, and that Taxpayer lumped all three parcels together in its arguments. Finally, the County states that it did not use the error correction statutes to change values that had been set prior to the statutory deadline imposed for increasing values pursuant to A.R.S. § 42-15105 because with respect to parcels 301-65-004T and 301-65-881, there were no "set" values to change. While these factual distinctions are important to an understanding of the history of this case, they are not determinative and do not change the language or meaning of the error-correction statute upon which the County relies.

After considering the arguments of all parties, the Court adopts Defendant TWC's alternative argument set forth above. This decision is based on the plain language of A.R.S. § 42-16251(3)(e)(iii), which permits correction of an "error" based on a "failure to timely capture on the tax roll a change in value caused by new construction [not land values] . . . or splitting . . . interests in real property existing on the valuation date." The valuation date is January 1, 2001. A.R.S. § 42-11001(16). The only evidence before this Court of real property value as of January 1, 2001, that does not require the use of "discretion, opinion, or judgment" is provided by TWC's actual costs incurred in developing the property as of that date. Accordingly, as a matter of law based on the undisputed facts, the full cash value of the Subject Property for the 2002 tax year is the Subject Property's land value as of January 1, 2001 ($9,397,584) plus the actual construction costs incurred as of that date ($28,306,136), which totals $37,705,720.

**IT IS THEREFORE ORDERED** granting in part and denying in part Defendant's Motion for Summary Judgment to the extent set forth above.

**IT IS FURTHER ORDERED** granting in part and denying in part Plaintiff's Motion for Summary Judgment to the extent set forth above.