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*** Electronically Filed ***
05/21/2010 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2008-000578 05/19/2010

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

AUDREY A HANKS, et al. K LAYNE MORRILL

v.

PINAL COUNTY ROBERTA S LIVESAY

MINUTE ENTRY

The Court took this matter under advisement following oral argument on April 15, 2010.

It is undisputed that the parcel in question does not meet the requirement of A.R.S. § 42-12152(A)(1) that it have been used in active agricultural production for at least seven of the last ten years. The Court observes that in subsection B of that statute, the legislature excluded from the seven-out-of-ten-year requirement relocated feedlot and dairy operations for their first seven years of operation. It wrote no such provision for new feedlot and dairy operations or for feedlot and dairy operations expanding onto a noncontiguous parcel, nor did it make any exception at all for grazing land. Rather, in A.R.S. § 42-12154(A) it said,

> The county assessor may:
>
> 1. Approve the agricultural classification of property if the property has either:
>
> (a) Fewer than the minimum number of acres or animal units as prescribed in § 42-12151.
>
> (b) Been in commercial agricultural production for less than the period prescribed in § 42-12152, subsection A, paragraph 1.

The usual sense of the word "may" is to indicate permissiveness or discretion. *Scheehle v. Justices of the Supreme Court of Arizona*, 203 Ariz. 520, 522 (2002). The Court sees no reason to treat it differently here; in fact, the element of permissiveness was enhanced in 1999, when prior language requiring the approval of the Department of Revenue for approval was repealed. Laws 1999, Ch. 240, § 2.

Plaintiff misconstrues the statutes. The principle urged by Plaintiff, that taxation is based solely on current use, has been modified here: the legislature has required, not only that the property be currently used for qualifying agriculture, but that (with the inapplicable exception of relocated feedlots and dairies) it have been so used in seven of the preceding ten years. To qualify as agricultural property under A.R.S. § 42-12152, the parcel must satisfy all the statutory criteria. Plaintiff's property does not satisfy all the criteria; it is therefore not eligible for classification as a matter of law as property used for agricultural purposes. *Title USA v. Maricopa County*, 174 Ariz. 534 (Tax 1993), simply does not address the issue. In that case, the County, for whatever reason, waived the taxpayer's noncompliance with what is now A.R.S. § 42-12152(A)(1); with this disqualifying factor eliminated, the Court could and did weigh conformity with the remaining statutory criteria. The waiver in that case certainly does not bind Pinal County seventeen years later. Here, Plaintiff's only recourse is to A.R.S. § 42-12154, which grants the assessor discretion, *notwithstanding that the property does not qualify as agricultural under the statute*, to so classify it. The statute does not prescribe some quantum of attributes that must result in agricultural classification, permitting the Court to review whether that quantum is present. Nor does it indicate that current use for agricultural purposes, even if those uses would be sufficient to qualify it had they extended over the preceding seven years, obligates the assessor to grant agricultural status. The legislature conferred discretion upon the assessor; the Court may intervene only if that discretion has been abused.

The Court cannot so find. It notes that not only does the property fail the seven-out-of-ten-year requirement, it also fails to support the minimum number of animal units incorporated in the definition of "agricultural real property" at A.R.S. § 42-12151(3); while Section 12154(A) permits the assessor to waive that as well, and assumes without deciding that the word "either" in the statute includes "both," a property requiring waiver of both criteria stands on less solid footing than a property satisfying one of the two. Moreover, two of the factors cited by Plaintiff to show the parcels' functional contribution to his ranching operations, the reduction of per-acre salaries and overhead and the eligibility for added grazing allotments on other land, could presumably have been achieved if no cow ever laid a hoof on them. While A.R.S. § 42-12152 recognizes similar uses, *in conjunction with all the other criteria*, as providing a functional contribution or otherwise constituting a qualifying agricultural use, it is not an abuse of discretion to find them, standing outside the statute, insufficient for waiver.

Accordingly,

IT IS ORDERED denying Plaintiff's Cross-Motion for Summary Judgment filed November 17, 2009.

IT IS FURTHER ORDERED granting Defendant's Motion for Summary Judgment filed January 25, 2010.

IT IS FURTHER ORDERED that within thirty days, Defendant shall: 1) lodge a simple form of judgment, including blanks for an award of costs and an award of fees (if appropriate); 2) file any Statement of Taxable costs; and 3) file any Application for Attorneys' Fees (if sought) with necessary affidavits and supporting documentation.