Clerk of the Superior Court
*** Electronically Filed ***
04/22/2025 8:00 AM

THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2021-000409 04/21/2025

HONORABLE ERIK THORSON

CLERK OF THE COURT
A. Smith
Deputy

TED D SHEELY DOUGLAS S JOHN

v.

MARICOPA COUNTY JACK O'CONNOR III

RULING

The Court held oral argument on February 20, 2025, regarding Plaintiffs' Motion for Summary Judgment and Motion to Exclude, filed October 9, 2024; Defendant Maricopa County's Cross Motion for Summary Judgment, filed November 8, 2024; and Defendant Maricopa County's Cross Motion to Exclude, filed November 8, 2024; and Defendant Maricopa County's Motion to File a Surreply to Plaintiffs' Reply in Support of its Motion for Summary Judgment, filed January 10, 2025, as well as subsequent filings related thereto.

The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case, and—considering all facts and reasonable inferences therefrom in the light most favorable to the non-movants, respectively—hereby finds as follows regarding the Motions.

As an initial matter, Defendant seeks to file a surreply that contains its Amended Appraisal Report, dated December 19, 2024 in response to Plaintiffs' Motion to Exclude. (Mot. to File Surreply, at 1–2.) Plaintiffs contend that Defendant is trying to rewrite its appraisal in a surreply. (Resp. to Mot. to File Surreply, filed January 22, 2025, at 3.)

IT IS ORDERED granting Defendant Maricopa County's Motion to File a Surreply to Plaintiffs' Reply in Support of its Motion for Summary Judgment, filed January 10, 2025.

The Subject Property is made up of two parcels totaling approximately 49 acres at the corner of 99th Avenue and McDowell Road. (Plaintiffs' Statement of Facts, filed October 9, 2024 ("PSOF"), at ¶¶1, 3, *undisputed*.) For over ten years, the Subject Property has been used for recreational purposes such as sports fields, a corn maze, and a haunted house. (PSOF ¶4, *undisputed*.) It has also been used for agricultural purposes of growing hay during the off season. (PSOF ¶4, *undisputed*.)

Plaintiffs ask the Court to find as a matter of law that:

> (1) the Plaintiffs' property should be valued according to its current use; (2) the current use of the Property on the valuation date was as fields for recreation purposes; and (3) the Defendant's appraisal and expert testimony should be excluded under Rules 401 and/or 702 of the Arizona Rules of Evidence.

(Plaintiffs' Mot., at 10.)

Plaintiffs contend that the County's appraiser, Steve W. MacDonald, appraised the Subject Property according to its highest and best use for mixed use development and not based on its current use. (Plaintiffs' Mot., at 3.) As a result, Plaintiffs contend that Mr. MacDonald's appraisal does not comply with Arizona law and the Department guidelines, is not based on reliable principles and methods, and is inadmissible. (Plaintiffs' Mot., at 9–10.)

First, summary judgment is appropriate if "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a); *General Motors Corp. v. Maricopa Cty.*, 237 Ariz. 337, 339 ¶7 (App. 2015).

The County does not dispute that Arizona law requires real property to be valued according to its current use. (Cross-MSJ, at 3.) Therefore, **THE COURT FINDS that** summary judgment is appropriate that the Subject Property should be valued according to its current use. *See* A.R.S. § 42-11054(C)(1).

The County also does not dispute that the Subject Property has been used for recreational purposes such as sports fields, a corn maze, and a haunted house and for growing hay during the off season. (PSOF ¶4, *undisputed*; *see also* Defendant's Statement of Facts, filed November 8, 2024, at ¶¶8–9 and Plaintiffs' Controverting Statements of Facts, filed December 13, 2024, at ¶¶8–9.) However, the County contends that the current use of the property is an interim use until it is developed. (Reply to Cross-MSJ, filed December 20, 2024, at 3.)

The County relies on *Golder v. Dept. of Revenue*, 123 Ariz. 260 (1979). (Cross-MSJ, at 3; Reply to Cross-MSJ, at 3–4.) But *Golder* is distinguishable. In *Golder*, the Arizona Supreme Court found:

> Since A.R.S. § 42-123(A)(5) requires that "current use" be considered in assessing the property, the agricultural user is taxed only to the extent that the land has value for agricultural purposes. The excess is excluded as the statute requires. However, when vacant land is being held solely for purposes of speculation, it makes no sense to refer to a Portion of the market price as being paid for "future anticipated property value increments," since that is the speculator's Only purpose in buying property.

123 Ariz. at 265–66. Here, the County does not point to any facts in the record to support its position that the Subject Property is being held solely for development. **THE COURT FINDS that** summary judgment is appropriate that the Subject Property's current use is fields for recreation purposes.

As to the exclusion of Mr. MacDonald's appraisal and expert testimony, **THE COURT FINDS that** Mr. MacDonald's opinion of value should be precluded because Mr. MacDonald failed to value the Subject Property based on its current use as fields for recreation purposes.

The County disputes that Mr. MacDonald's report ignores the Subject Property's current use as Plaintiffs assert. (Cross-MSJ, at 4.) The County disputes that Mr. MacDonald valued the Subject Property exclusively using its highest and best use. (Defendant's Resp. to PSOF, filed November 8, 2024, at ¶¶1–4.) However, the County does not point to anything in Mr. MacDonald's report showing he valued the Subject Property according to its current use as fields for recreation purposes. Mr. MacDonald's report repeatedly references "highest and best use." Even his Amended Appraisal Report states, "[I]t is the appraiser's opinion that the current use as of the effective date of value was to hold for investment." (Defendant's Surreply, Exh. A, at 3.)

Therefore, given the foregoing discussion,

IT IS ORDERED granting Plaintiffs' Motion for Summary Judgment and Motion to Exclude, filed October 9, 2024.

Turning now to the County's Motions, the County seeks to exclude Plaintiffs' expert witness and report. (Cross-Mot. to Exclude, at 7.) In its Cross-Motion for Summary Judgment, the County also seeks summary judgment as to Plaintiffs' Count Two and affirming the County's

classification of Class 1 commercial property. (Cross-MSJ, at 6.) Plaintiffs agree dismissal of Count Two is appropriate. (Resp. to Cross-MSJ, filed December 13, 2024, at 6.) Therefore,

THE COURT FINDS that summary judgment is appropriate.

IT IS FURTHER ORDERED granting Defendant Maricopa County's Cross Motion for Summary Judgment, filed November 8, 2024.

The County contends Mr. Dominick's sales approach is not competent and unreliable because of data obtained from agricultural properties and the assumption the Subject Property would receive agricultural classification. (Cross-Mot. to Exclude, at 4–5.) The County further contends that Mr. Dominick performed a business valuation rather than a property valuation in his income approach. (Cross-Mot. to Exclude, at 5–7.) Plaintiffs contend that the alleged flaws do not rise to the level necessitating exclusion of Mr. Dominick's appraisal. (Resp. to Cross-Mot. to Exclude, filed December 13, 2024, at 4.)

THE COURT FINDS that Mr. Dominick's opinion of value is permissible under Ariz. R. Evid. 702. "[A]lleged flaws in the application of a reliable methodology should not result in exclusion of evidence unless they so infect the procedure as to make the results unreliable." *State v. Bernstein*, 237 Ariz. 226, 230 ¶17 (2015) (internal quotations omitted). Although the County contends that Mr. Dominick's expert opinion of value is fatally flawed, such alleged flaws do not rise to the level requiring exclusion of his testimony.

"Moreover, 'cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible [expert] evidence.'" *State ex rel. Montgomery v. Miller*, 234 Ariz. 289, 298 ¶20 (App. 2014) (*quoting Heller v. Shaw Indus., Inc.*, 167 F.3d 146, 152 (3d Cir. 1999)). Therefore, given the foregoing discussion,

IT IS FURTHER ORDERED denying Defendant Maricopa County's Cross Motion to Exclude, filed November 8, 2024.