

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

TX 2022-000378

08/04/2026

HONORABLE ERIK THORSON

CLERK OF THE COURT
J. Zinkowich
Deputy

TED D SHEELY

DOUGLAS S JOHN

v.

MARICOPA COUNTY

JAMES M SUSA

JUDGE POLK
JUDGE THORSON

RULING

The following rulings were issued previously on July 29, 2026, but as the proper parties were not endorsed, the Court reissues said ruling with the correct endorsements.

The Court has received and reviewed Plaintiffs' Motion for Summary Judgment and Motion to Exclude, filed April 21, 2026 ("Plaintiffs' Motion"), and Defendant's Motion to Exclude the Testimony and Expert Report of William M. Dominick, filed May 13, 2026 ("Defendant's Motion"), as well as subsequent filings related thereto. Plaintiffs' Motion was fully briefed on June 1, 2026; Defendant's Motion was fully briefed on June 2, 2026. No party requested oral argument, and the Court can decide the issues raised without oral argument. *See* L.R. Prac. Superior Ct.—Civ., Maricopa County, 3.2(d); Ariz. R. Civ. P. 56(c)(1).

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.

The Subject Property is a single parcel of land totaling 111.38 acres located at 2209 North 99th Avenue just south of Thomas Road. (Plaintiffs' Statement of Facts, filed April 21, 2026 ("PSOF"), at ¶¶1, 5, *undisputed*.) Sixty acres of the Subject Property are used for field crops. (PSOF ¶2, *undisputed*.) 51.38 acres are used for recreational fields. (PSOF ¶2, *disputed*

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as to Plaintiffs' characterization of the use.) The Subject Property has been used for recreational purposes such as sports fields, a corn maze, and a haunted house. (PSOF ¶6, *disputed that the events cited would qualify as recreational in context.*)

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

(1) the Subject property should be valued according to its current use; (2) the current use of the Subject 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.

(Pls.' 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. (Pls.' Mot., at 4.) 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. (Pls.' Mot., at 9–10.)

The Court ruled on similar motions in *Sheely v. Maricopa Cty.*, TX2021-000409, 2025 WL 1173735 (Ariz. Tax Ct. Apr. 22, 2025) ("*Sheely I*"). *Sheely I* involved an adjoining parcel to the Subject Property consisting of 49 acres at the corner of 99th Avenue and McDowell Road. *Id.* at 1. The property in *Sheely I* was also used for recreational purposes and agricultural purposes during the recreational off season. *Id.*

In *Sheely I*, Plaintiffs had filed a Motion for Summary Judgment and Motion to Exclude and Defendant Maricopa County filed a Cross-Motion for Summary Judgment and Cross-Motion to Exclude. *Id.* The Tax Court found that the property's current use was fields for recreation and excluded Mr. MacDonald's opinion of value because he did not value the property based on its current use. *Id.* at 2. Plaintiffs ask for the same relief here. (Pls.' Mot., at 1–3.)

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).

Arizona law requires real property be assessed according to its current use. *See* A.R.S. § 42-11054(C)(1). Therefore, **THE COURT FINDS that** summary judgment is appropriate that the Subject Property should be valued according to its current use.

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The County contends that the *Sheely I* ruling is flawed. (Def.'s Resp., filed May 12, 2026, at 2.) The County contends that the Planned Unit Development approved by the City Council on January 30, 2013, provides evidence that the Subject Property is being held solely for development. (Def.'s Resp., at 2–4.)

The County also contends that “highest and best use” and “current use” are not mutually exclusive and that Mr. MacDonald’s conclusion that the “highest and best use” of the Subject Property is the same as its “current usage” does not invalidate his appraisal. (Def.'s Resp., at 4.)

Plaintiffs contend that an owner’s future plan or intent does not play a part in determining current use. (Pls.’ Mot., at 8.) The County contends that the cases cited by Plaintiffs—namely, *Stewart Trust & Title of Tucson v. Pima County*, 156 Ariz. 236 (App. 1987) and *General Motors Corp. v. Maricopa County*, 237 Ariz. 337 (App. 2015)—are distinguishable. (Def.'s Resp., at 9.) Although the circumstances in *Stewart* and *General Motors* are distinguishable, the Court finds the analysis in both cases persuasive in determining current use.

In *Stewart*, the Court of Appeals found that “leased land which otherwise meets the Department’s guidelines for agricultural property . . . must be given that classification and valued using solely the income approach set forth in the statute, notwithstanding the fact that the owner intends ultimately to sell or develop the property for other purposes.” 156 Ariz. at 243.

In *General Motors*, the Court of Appeals analyzed use under A.R.S. § 42-16002(B) and stated, “Interpreting ‘use’ as an objectively verifiable, physical use or activity on the property promotes clarity. An owner may have many, even contradictory or rapidly changing, subjective intents for the property.” 237 Ariz. at 341 ¶21.

Here, Mr. MacDonald states, “The existing structures, soccer fields, and agricultural fields provide an interim use until a mixed use project is developed on the site . . . It is the appraiser’s opinion that the highest and best use of the subject property is for development of a mixed use project that includes a mix of retail, industrial, and multifamily uses.” (PSOF ¶22, *disputed as selectively quoted and misleading*.) But whether the property will ultimately be developed is irrelevant to determination of its current use. *See Stewart*, 156 Ariz. at 243; *General Motors*, 237 Ariz. at 341 ¶21.

Both appraisers acknowledge that the Subject Property is being used for recreational

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purposes. Mr. Dominick stated in this appraisal, “The subject has been utilized for over 10-years, for numerous outdoor activities, including soccer fields, corn maze and haunted house, farmers markets and carnivals.” (PSOF, Exh. 1, TX2022-000378 000038.) Mr. MacDonald stated in his appraisal, “The property is primarily land that is used for soccer field use.” (PSOF, Exh. 2, “Salient Facts”.)

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, as required by Arizona law.

The County disputes that Mr. MacDonald’s report ignores the Subject Property’s current use as Plaintiffs assert. (See PSOF ¶¶22–23; Resp. to PSOF, filed May 12, 2026, at ¶¶22–23.) 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. The County contends multiple times that the current usage is “unimproved commercial property.” (Def.’s Resp., at 2, 3, 4, 6, 8, 11.) And Mr. MacDonald’s report repeatedly references “highest and best use.” (See PSOF ¶¶14, 18, 19.)

Therefore, given the foregoing discussion,

IT IS ORDERED granting Plaintiffs’ Motion for Summary Judgment and Motion to Exclude, filed April 21, 2026.

The County seeks to exclude Plaintiffs’ expert, William M. Dominick, and his report. (Def.’s Mot., at 1.) The County contends that Mr. Dominick’s opinion of value is irreparably flawed because Mr. Dominick analyzes the business conducted on the Subject Property rather than the value of the Subject Property. (Def.’s Mot., at 1–2.) The County further contends that the current usage of the Subject Property is unimproved commercial property and that Mr. Dominick failed to properly apply “current usage” under Arizona law. (Def.’s Mot., at 2.)

Plaintiffs contend that Mr. Dominick appraised the property according to its current use—recreational fields. (Resp. to Def.’s Mot., at 2–3.) Plaintiffs also contend that the alleged flaws do not rise to the level necessitating exclusion of Mr. Dominick’s appraisal. (Resp. to Def.’s Mot., at 3–7.)

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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, **THE COURT FINDS that** the 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's Motion to Exclude the Testimony and Expert Report of William M. Dominick, filed May 13, 2026.

IT IS FURTHER ORDERED that the Parties meet and confer through counsel and submit a revised Joint Report and Word-format proposed Scheduling Order regarding resolution of the remainder of the case, for review by the Honorable Jay Polk, no later than **August 28, 2026**.