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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2007-000535 08/09/2010

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

ARIZONA MILLS L L C

PAUL MOORE

v.

MARICOPA COUNTY, et al.

ROBERTA S LIVESAY

KENNETH J LOVE
PAUL J MOONEY

MINUTE ENTRY

The Court took this matter under advisement following oral argument on August 4, 2010. The Court has considered Plaintiff's Motion for Partial Summary Judgment.

The parties agree that Arizona Mills is a shopping center under the relevant statutes. They differ on the effect of A.R.S. § 42-13203. Subsection A, the only one applicable, reads, "Except as provided by § 42-13204, the county assessor shall determine the valuation of a shopping center by using the replacement cost less depreciation method." A.R.S. § 42-13204 reads, "In lieu of valuation under § 42-13203, the owner of a shopping center may elect to have the valuation of the shopping center determined by the income method commonly known as the straight line building residual method if the owner submits all reasonably necessary income and expense information for the owner's three most recent fiscal years to the county assessor before September 1 of the year immediately preceding the year for which the property will be valued." Arizona Mills has not elected the latter method, and therefore concludes that the replacement cost less depreciation method is mandatory under Section 13203(A). The County relies on *Business Realty of Arizona, Inc. v. Maricopa County*, 181 Ariz. 551 (1995), which interpreted the predecessor statute, to conclude that the duty to ascertain full cash value requires the Court to use whatever method it deems appropriate and trumps any statutory restriction. It therefore argues in the alternative that Section 13203(A) does not in fact limit the discretion of the Court or, if it does, then the statute is unconstitutional.

A close reading of *Business Realty* does not support either of the County's alternative arguments. The prior statute established a three-stage process, with different valuation rules applying at each stage. At the first stage, the assessor was to use the RCLD method. At the second stage, the property owner could elect the SLBR method. Finally was analysis by the reviewing body. At this stage, if the SLBR method had been used or elected, the reviewing body could determine that "other valuation factors must be applied to determine the value of the property" and in that event could "utilize such other factors as it finds necessary." *Id*. at 556. The Court concluded that the statute compelled the reviewing body to use the authority granted by this statutory language – so critical that the Supreme Court italicized it, *id*. at 554 – to determine full cash value by any appropriate method. *Id*. at 556.

A.R.S. § 42-13203 was enacted in 1997 and took effect in 1999. Most important here is what it does not contain: language authorizing the reviewing body to utilize "other valuation factors." Instead, A.R.S. § 42-15202(A) states that the two methods prescribed in Sections 15203 and 15204 are the exclusive valuation methods. The language necessary for the County's position having been deleted by the legislature, its construction of the statute must fail.

There remains the constitutional argument. A.R.S. Const. Art. IX § 1 requires uniform valuation of all property within the same class under the jurisdiction of the taxing authority. The County concludes from this that the limitations contained in A.R.S. § 42-13203 and 14204 must in the end give way to market value as determined by whatever method the Court deems most accurate. In support, it offers only an ambiguous comment from Justice Zlaket's concurrence in *Business Realty*: "I agree with the majority that fair market value is the ultimate goal of each and every appraisal method that has been discussed. I also concur that the statute, when adopted, sought to provide an analytical framework for reaching fair market value and should still be construed with that end in mind. Nothing in this record persuades me that shopping centers are entitled to be taxed on any other basis, and I would have serious constitutional concerns were it otherwise." *Id*. at 562 (Zlaket, J., specially concurring). The remainder of the Court, while hinting at similar concerns, did not deem it necessary to face the constitutional question. "Subsection (A) [now A.R.S. § 42-13203(A)] uses the replacement cost approach, and subsection (B) [now A.R.S. § 42-13204] uses a variation of the income approach. Both techniques estimate fair market value." *Id*. at 559. *Business Realty*, of course, found that the statute allowed for the use of additional methods by the reviewing body, but it did not hold that the estimates of fair market value yielded by the two prescribed methods were constitutionally inadequate. The situation today is starker than it was then. Given the deletion from the current statute of the language italicized by the Supreme Court, replaced by the unambiguous instruction that RCLD and, if the owner elects, SLBR are the exclusive valuation methods to be used throughout the process (with a very minor, and in the present case immaterial, exception contained in A.R.S. § 42-13205(A) allowing the use of "other information that is customarily analyzed under the income method [SLBR] to properly apply the income method" if and only if

the owner has elected SLBR instead of RCLD), there is no legal support for the use of any method other than RCLD or SLBR. The Court cannot act as a super-legislature to insert the italicized language back into the statute, so its only option would be to declare the entirety of Article 5 unconstitutional. The Court does not believe that the vague expressions of concern in *Business Realty* justify such a drastic step. Nor has the County followed the necessary prerequisites for challenging the constitutionality of a statue.

Therefore, IT IS ORDERED granting Plaintiff's Motion for Partial Summary Judgment filed June 4, 2010.

IT IS FURTHER ORDERED denying Defendant Maricopa County's Motion to Compel Plaintiff to Produce its Income and Expense Data filed April 29, 2010.