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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2006-000396 04/01/2009

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

SWIFT TRANSPORTATION CO INC DONALD P ROELKE

v.

MARICOPA COUNTY STEVEN B PALMER

UNDER ADVISEMENT RULING

(Defendant's Motion For Summary Judgment and Plaintiff's Cross-Motion For Summary Judgment)

The material facts are not in dispute. Swift Transportation owns property at 2200 South 75th Avenue in Phoenix. For tax year 2006, the valuation was set by a ruling of the State Board of Equalization, which pursuant to A.R.S. § 42-16002 was to be carried over to the 2007 tax year unless there was "new construction, structural change or a change of use on the property." After the 2006 tax year, Swift built a parking structure on the land; this was recognized by a supplemental notice of valuation in September 2006, in which the entire property was revalued. Swift, while acknowledging that the value of the parking structure was properly added, disputes the county's right to revalue the entire property, including those parts on which the parking structure was not built.

Most of the issues in Defendant's Motion for Summary Judgment have been conceded by Plaintiff. The only remaining issue appears to be whether the assessor's valuation of the subject property should have been limited to adding the fair market value of the new improvements to the fair market value set the preceding year by the State Board of Equalization.

A.R.S. § 42-13302(A) provides in relevant part[1] that the limited property value shall be (re-)established at a level comparable to other properties of similar use or classification for "Property that has been modified by construction, destruction or demolition since the preceding valuation year." It is the valuation of the entire property that must be reassessed and compared to its peers, not merely the new construction. *See* A.R.S. § 42-13301(C); *Transamerica Development Co. v. Maricopa County*, 107 Ariz. 396, 398 (1971). (While Title 42 has been completely revised – twice, in fact – since that case, there is no basis to believe that the intent of the legislature has changed.) Central to the unitary theory of assessment is the holistic principle that a change in a part of the property affects the valuation of the whole. In other words, the addition of new construction may work changes in the value of already-existing structures and of the land, changes that cannot be assessed until the new construction is in existence. The unitary concept is central to property taxation in Arizona, and A.R.S. § 42-15105 must if possible be harmonized with it. Plaintiff's argument that the unitary concept applies only to valuation appeals, and not to valuation itself, does not square with the Supreme Court's interpretation in *Transamerica*, *supra*: "property *valuation* must be treated as a single entity [emphasis added]." *In re Westward Look Development Corp., Inc.*, 138 Ariz. 88, 89 (App. 1983), summarized the holding of *Transamerica* as that "the Arizona taxation scheme was what is known as the 'unitary plan' in which improvements and the land are valued together as a 'property.'" Not only the valuation appeal, but the valuation itself is based on the unitary value of the property. The Court finds no indication in the language of A.R.S. § 42-15105 that the legislature intended to depart from the unitary concept when a property is modified by new construction.

By its terms, A.R.S. § 42-15105 addresses only the procedure by which the assessor is to notify the taxpayer of the change in valuation. However, the Court of Appeals in *Magellan South Mountain Ltd. v. Maricopa County*, 192 Ariz. 499 (App. 1998), analyzed the predecessor statute to Section 15105 substantively in the context of an equal protection and uniformity clause challenge. The court distinguished between a parcel on which new construction (or destruction or demolition) has occurred and a parcel on which there has been no external occurrence to change the established valuation, and concluded that the constitutional requirements were met. "Changes in valuation that arise from new construction and parcel reconfigurations are qualitatively different from changes in valuation that flow from other factors," *id*. at 504. The court did not limit "changes … that arise from new construction" to the newly-added parts of the property or prohibit the revaluation of parts in existence as of the valuation date. Rather, it held that the new construction changes the property as a whole. Thus, "no true valuation change occurs. The newly-valued property is now either greater or lesser than the property that existed before," *id*. at 503. Thus, Section 15105 works in harmony with Section 13302(A).

[1] The 2007 amendment to this statute has no bearing on the issues raised here.

A.R.S. § 42-15105 is titled, "Supplemental notice and appeal of valuation in case of new construction." It is only the notice that is described as "supplemental," not the valuation. (Grammatically, the word "supplemental" could also attach to the appeal, but both logic and case law indicate that it cannot, as only one appeal can be pursued: if the supplemental notice creates a new basis for appeal, the appeal of the supplemental notice would subsume the appeal of the now-superseded original notice, or alternatively, if the supplemental notice resolves the objection to the original notice, the appeal becomes moot.) As the statute is written, the word "supplemental" is accurate: the assessor is required only to notify the taxpayer of "any change in the valuation," not of the new total valuation. However, nothing in the title or the text leads to the conclusion that the assessor is limited to "supplementing" the valuation by adding to his initial valuation the value of the new construction.

Therefore, IT IS ORDERED:

1. Plaintiff's Cross-Motion For Summary Judgment is denied.

2. Defendant's Motion For Summary Judgment is granted.