Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
09/12/2013 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2010-000815 09/10/2013

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

ORACLE CROSSINGS OWNERS ASSOCIATION — PAUL D BANCROFT

v.

PIMA COUNTY — DAVID W KRULA

UNDER ADVISEMENT RULING

The Court took this matter under advisement following oral argument on September 5, 2013. Upon further consideration of the Plaintiff's Motion for Partial Summary Judgment, the Court finds as follows.

The Court cannot escape the conclusion that Plaintiff's construction of § 42-13201 would make § 42-13206 completely meaningless. § 42-13206 addresses the taxation of any part of the land of a shopping center limited by zoning or contract to parking or common area use. But if Plaintiff is correct, parking and common areas, which are by definition not commercial establishments, could never be part of a shopping center, rendering § 42-13206 an absurdity. The Court is obligated to reconcile the statutes if possible, and can do so only by accepting that the "land" comprising a shopping center may include parking and other common areas; the term is not limited to the actual retail structures and the land upon which they rest. It seems clear to the Court that Common Area "A" satisfies the statutory requirement that the land in question be limited by zoning or contract to parking or common area use. The final plat, as quoted in Plaintiff's statement of facts, dedicates it to, among other things, parking.

That leaves the issue concerning *Nordstrom, Inc. v. Maricopa County*, 204 Ariz. 553 (App. 2004), which can be summarized as, is Oracle Crossings a shopping center? (Only if it is not a shopping center valued according to the statutory formula is the *Phoenix Gateway* case similar.) The Court is of course bound by *Nordstrom*, but must at the same time acknowledge that it offers no clues about how it is to be applied beyond its specific facts. In *Nordstrom*, the

Court of Appeals held that a Nordstrom store was "a single commercial establishment attached to a shopping center," and was therefore not an area comprised of three or more commercial establishments, *id*. at 557 ¶ 10. Unfortunately, it did not explain why the Nordstrom store was not, or could not have been, one of the three or more commercial establishments comprising the shopping center, or why the same unidentified principle distinguishing the Nordstrom store from the shopping center would not apply to every store in every shopping center (as is being argued here). At 557 ¶ 13-14, it recognized the problem, which had been pointed out by the Tax Court in *May Department Stores Co. v. Maricopa County*, 205 Ariz. 442 (Tax 2003): if every store is a distinct entity, there can be no area comprised of three or more commercial establishments, so the shopping center statute vanishes (even with respect to the parking lots and common areas, for there is no longer anything for them to belong to). There is language in ¶ 13 arguably supporting this conclusion: "Although Taxpayers contend that the Store should be valued as a 'shopping center' because it is part of an 'area' that is a shopping center, we are unable to agree that the language of § 42–13201 permits the conclusion that the Store itself is a 'shopping center.'" Taken literally, that could mean that the statute would apply only in the impossible situation that a single store is three stores. Yet the Court of Appeals did not disapprove *May Co.*, as it could easily have done, or strike down the statute as unsalvageably absurd, but merely concluded, again without explaining why, that the Nordstrom store was different. This case stretches *Nordstrom* to its limit and beyond. As the Court pointed out at oral argument, Plaintiff's interpretation of *Nordstrom* would allow an owner to decide whether his property is or is not a shopping center, without even any requirement that he make one choice or the other. The Court is simply not persuaded that the Court of Appeals intended in *Nordstrom*, by a hyperliteral construction of the statutory language, to reduce the statutory scheme for the valuation of shopping centers to a nullity. Regardless of the status of any individual store, there is plainly a shopping center at Oracle Crossings. The existence of a shopping center is sufficient to place Common Area "A" under A.R.S. § 42-13206.

Additionally, this matter is distinguishable from the *Nordstrom* case in that *Nordstrom* did not involve an interpretation of A.R.S. § 42-13206, which is the statute that defines a shopping center's "common area". Here, Common Area "A" is clearly "part of the land of a shopping center that is limited by a zoning requirement or contractual covenant to parking or common area use," as discussed in A.R.S. § 42-13206.

Accordingly, and for the reasons set forth by Pima County in its briefs and argument,

IT IS ORDERED denying Plaintiff's Motion for Partial Summary Judgment.

IT IS FURTHER ORDERED granting partial summary judgment in favor of Pima County on this issue.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2010-000815 09/10/2013

FILED: Exhibit Worksheet