BOARD OF EQUALIZATION MINUTES
GILA COUNTY, ARIZONA

Date: June 18, 2013

MICHAEL A. PASTOR
Chairman

TOMMIE C. MARTIN
Vice-Chairman

JOHN D. MARCANTI
Member

MARIAN E. SHEPPARD
Clerk of the Board

By: Marian Sheppard
Clerk of the Board

Gila County Courthouse
Globe, Arizona

PRESENT: Michael A. Pastor, Chairman; Tommie C. Martin, Vice-Chairman (via ITV); John D. Marcanti, Supervisor; Don McDaniel, Jr., County Manager; Deborah Hughes, Assessor; Larry Huffer, Chief Appraiser; and Marian E. Sheppard, Clerk of the Board.

Item 1 - CALL TO ORDER

Chairman Pastor called this hearing to order at 11:15 a.m.

Item 2 - REGULAR AGENDA ITEMS:

A. Information/Discussion/Action regarding a Petition for Review of Taxpayer Notice of Claim that was submitted by Michael Killion of Frazer Ryan Goldberg & Arnold LLP on behalf of Globe Pacific Associates for Assessor's tax parcel number 205-24-006-W.

Chairman Pastor called on Michael Killion, Property Tax Consultant, for Globe Pacific Associates, to present his case. Mr. Killion advised that the subject property is the Madera Peak Vista Apartments, a 60-unit LIHTC (Low Income Housing Tax Credit) property and a rent restricted property. Mr. Killion referred to his first handout and reviewed the differences between market apartments and rent restricted apartments, such as Madera Peak Vista. He advised that due to legal restrictions imposed by the Declaration of Affirmative Land Use and Restrictive Covenants (LURA), market rent cannot be charged for apartments that fall under LIHTC; therefore, the subject property's value has been significantly affected. He pointed out that 100% of the units must be occupied by someone 55 years old or older and if a qualified tenant cannot be found, the units must remain off the market until a qualified tenant is found. Mr. Killion stated that regardless of the fact that the tax credits on this property expire in 10 years, the Land Use Restriction Agreement remains in place for 30 years.

He provided the background on this case. For the 2011 tax year, the property was valued at $2,393,153. For the 2012 tax year, the property was valued at $2,885,478 at which time a petition was filed with the County Assessor contesting that valuation based upon an Arizona Tax Court case entitled "Cottonwood vs. Yavapai County." The Gila County Assessor agreed to reduce the full cash value of the subject property for the 2012 tax year to $890,919. For the 2013 tax year, another petition was filed for the subject property. The value for the 2013 year was the same as for 2012. Mr. Killion believes that the County Assessor correctly valued this property and stated that it was agreed to value it at $600,000, which the County Board of Equalization approved last year. Mr. Killion referred to A.R.S. § 42-16251(1) (e) and read aloud that section of the statute concerning an error correction. He stated that the County Assessor has made two errors. He then referred to a handout entitled "Taxpayer Notice of Claim-Real Property for the 2011 Tax Year", which was filed for the subject property. Mr. Killion advised that the first error was that the Assessor relied on the incorrect legal standard for valuing LIHTC properties, when the Assessor should have relied on the legal standard outlined in the Cottonwood vs. Yavapai County court case to value the subject property. He read aloud the Assessor's written statement under "Tax Officer Disputes Claim of Error Based on the Following" on the Taxpayer Notice of Claim-Real Property, which was dated February 22, 2013. He then referred to the attachment to that Notice of Claim which was a Guideline from the Arizona Department of Revenue (ADOR) on Subsidized Housing Valuation issued on December 1, 1998. Mr. Killion stated that the Assessor's claim was based on that Guideline even though the Cottonwood vs. Yavapai County case decision was issued in 2003. Mr. Killion next referred to page 3 of the first handout and this page is entitled "State of Arizona Board of Equalization Substantive Policy Statement Number SBOE-04-004" effective June 18, 2004. He read aloud the second paragraph of that document and stated "That is how the property should have been valued." Mr. Killion advised that the second error made by the Assessor was that she used the cost approach to value the property for the tax years in question, and he feels the cost method overstates the value of the property. He also stated that the second error was that the property was valued as a non-rent restricted apartment complex and he believes that it was not valued according to the land restriction. Next he referred to the fourth page of the first handout entitled "Petition for Review of Real Property Valuation for the 2013 Tax Year", which states that the property's full cash value was reduced by the Assessor from $890,919 to $600,000. He also stated that the Assessor will probably mention that an appeal was not filed for the 2011 tax year; however, Mr. Killion advised that under statute, the owners of the subject property were not required to file an appeal under the error of claim. He proceeded to provide additional information to support his claim that the Assessor made two errors in valuing the subject property. Mr. Killion ended his presentation by stating, "We have the legal right to go back and ask that the property be reviewed under the error of claim. We also have the legal right

that if the error is granted; to request that the Assessor utilize the correct method to value said property, and the correct method is Cottonwood...The error is that the Assessor did not value the property correctly. Not knowing about the LURAs, the land restriction agreement is an error. If they knew about the LURAs and opt not to use them, that is an error, too. At this time I'd like to say thank you for letting me present my case."

Larry Huffer, Chief Appraiser, presented the Board with two handouts and some pictures of the subject property. The first handout is entitled "Information Supporting the Assessor's Response to the Notice of Claim Filed for Parcel 205-24-006W for Tax Year 2011." He then referred to page two of the second handout, which was the 2011 Notice of Change. He stated, "The value as shown on this Notice is based on the cost approach to value as all properties are initially valued in our County and probably all of the other counties within the state of Arizona with only one exception. Within the Arizona Revised Statutes, it does say that shopping centers, if they did want to file on an income approach to value, they may submit it to the Assessor earlier so that when the Notice of Value card goes out, they may utilize that methodology." Mr. Huffer stated that since the owner did not submit a Petition for Review of Notice of Change, it appeared to the Assessor that there was no problem with the value. Mr. Huffer agreed with Mr. Killion's statement that there is not a statutory valuation method prescribed by law in the state of Arizona for low income tax credit apartments. He addressed Mr. Killion's reference to ADOR's Guideline for Subsidized Housing Valuation. He clarified that the Board of Equalization to which Mr. Killion referred is a State Board of Equalization and it only applies to Pima and Maricopa Counties, and possibly Pinal County – any county with a population over 500,000 people. Mr. Huffer stated that it is his opinion that any ruling rendered by the State Board of Equalization does not mean that it must be adhered by the local county Board of Equalization. Mr. Huffer referred to the handout entitled (A.R.S.) "§ 42-16255 Evidence that may be considered at hearings; extent of correction; pending administrative and judicial appeals" and he read aloud paragraph B. He stated that Article 2 of this title (Chapter 16) is the administrative appeal process with the Assessor; Article 3 addresses the State Board of Equalization; Article 4 addresses the County Board of Equalization; and Article 5 addresses the Arizona Tax Court. He further stated that Chapter 19, Article 2, addresses personal property and it would not be applicable to this matter. Mr. Huffer stated his opinion that the Assessor did not error in the valuation of the subject property for the 2011 tax year because the Assessor's Office did follow state law as there is no Subsidized Housing Statutory Valuation Method. He acknowledged the Cottonwood vs. Yavapai County court case and added that there was a settlement on that case; it did not receive a State Supreme Court ruling. He advised that if an appeal had been submitted for the 2011 tax year, he is unsure how it would have been handled because the Assessor's Office wasn't given an income and expense statement. As for the subsequent tax years, an appeal was filed based on an income to approach value....at that time the Assessor chose to value property

based on the Cottonwood vs. Yavapai County, and he added that it was not required by law. He added that the Assessor looked at the property as a tax credit apartment, even though there was no requirement to do so. Actual income and expenses were reviewed for the apartment complex. Mr. Huffer advised that even though the ADOR Guideline has not been updated since 1998, it is because ADOR did not feel it was necessary, even since the Cottonwood vs. Yavapai County case transpired. He also mentioned that the Legislature considered creating a statutory method; however, that bill failed. In ending his presentation, Mr. Huffer stated, "I believe that the County Assessor never made an error. We sent out the Notice of Value and the owner of the property did not file an appeal. That is the basis of our response."

At this time the Board asked Mr. Huffer to provide a recap for each tax year, which was done. Vice-Chairman Martin stated that the problem is that the property owners missed the deadline to appeal the property valuation, to which Mr. Huffer confirmed that the appeal was not filed in a timely manner. Vice-Chairman Martin stated that Mr. Killion claimed that was not required. Mr. Killion responded by stating that the property owners are not required to file an appeal in order to file an error correction. He stated that the error was an error in valuing the property; the restrictions were not taken into account. He stated, "I think if you look at the 2012 and 2013 years, that shows that. You can file an error correction without filing an appeal." Mr. Killion wanted to rebut a few comments made by Mr. Huffer. As far as using the cost approach to value method, Mr. Killion agrees that was correct. He referenced a comment about the State Board of Equalization, and stated there was a memorandum from the State Board of Equalization. Mr. Killion advised that the Cottonwood vs. Yavapai County lawsuit was actually decided in Arizona Tax Court. He further advised that Yavapai County appealed the Court's ruling to the Arizona Court of Appeals and it was settled in the Arizona Court of Appeals. He stated, "It is a published opinion of the Tax Court. It is not binding authority on Arizona Court of Appeals or the Arizona Supreme Court. It is binding on the State Board of Equalization and also on the County Board of Equalization, and it also gives clear guidance for local county Assessors. The subject's property value should be determined from its restricted income potential without regard to the low housing income tax credits which create a disincentive for a current owner to sell in little if any incentives for a new buyer to buy. That's the crux of Cottonwood...The taxpayer did not file an appeal; that is undisputable."

There was further discussion on whether the Arizona Tax Court's decision on Cottonwood vs. Yavapai County provides a legal basis for appeals. Mr. Killion stated that in the end, the opinion of value is decided by the local county Board of Equalization and it is that Board's decision whether to utilize or not the Cottonwood vs. Yavapai County court ruling.

Deborah Hughes, Assessor, stated that this Notice of Claim is for tax year 2011 and she reiterated that the property owner did not appeal the Assessor's

opinion of value on the subject property. She then proceeded to recap the events for the subsequent tax years.

Upon motion by Supervisor Marcanti, seconded by Vice-Chairman Martin, the Board unanimously upheld the Assessor's opinion of value in the amount of $2,393,153 for tax year 2011 on Assessor's tax parcel number 205-24-006W.

There being no further business to come before the Board of Equalization, Chairman Pastor adjourned the hearing at 12:05 p.m.

APPROVED:

Michael A. Pastor, Chairman

ATTEST:

Marian Sheppard, Clerk of the Board