BOARD OF EQUALIZATION MINUTES
GILA COUNTY, ARIZONA

Date: December 18, 2012

TOMMIE C. MARTIN
Chairman

SHIRLEY L. DAWSON
Vice-Chairman

MICHAEL A. PASTOR
Member

JOHN F. NELSON
Clerk of the Board

By: Marian Sheppard
Chief Deputy Clerk

Gila County Courthouse
Globe, Arizona

PRESENT: Tommie C. Martin, Chairman; Shirley L. Dawson, Vice-Chairman; Michael A. Pastor, Supervisor; Hazel Dillon, Chief Deputy Assessor; Larry Huffer, Chief Appraiser; Bryan Chambers, Chief Deputy County Attorney; and Marian Sheppard, Chief Deputy Clerk.

GUESTS: Chris Roll, Chief Deputy Attorney, Pinal County Attorney's Office; Michael J. Harper, Esq. of the law firm of Walker & Harper, PC; and D. McCall, Managing Member of Strawberry Ridge Estates, LLC.

Item 1 – Call to Order

Chairman Martin called the meeting to order and asked everyone present to announce their name and title into the record. Mr. Roll stated that he is present today to represent the Gila County Board of Equalization with regard to this case.

Item 2 – REGULAR AGENDA ITEMS:

A. **1:30 P.M. - Information/Discussion/Action regarding a Petition for Review of Notice of Claim submitted by Michael J. Harper, Esq. on behalf of Strawberry Ridge Estates, LLC for tax parcel numbers 301-59-057, 301-59-073 through 301-59-075, 301-59-077 through 301-59-084, and 301-59-088 through 301-59-096.**

Chairman Martin read aloud the agenda item and then called on Larry Huffer, Chief Appraiser, to present his case, who in turn, advised that the petitioner should first present arguments to the Board of Equalization (BOE). Michael Harper, Esq., addressed the BOE at this time.

Mr. Harper advised that the development of Strawberry Ridge Estates was most active in 2007. Back to that period of time, Mr. Harper stated that

Gila County never issued a final approval of the subdivision; however, it did assess the parcels in the subdivision as if the subdivision had been officially approved. He referred to Exhibit A of his appeal, which was a letter dated July 31, 2012, to Assessor Dale Hom and Mr. Huffer with attached Notice of Claims relating to all parcels owned by Strawberry Ridge Estates, LLC in the subdivision. The Notice seeks an adjustment of the assessed values for the tax years 2008-2011 to match the parcels' assessed values for 2012. The appeal letter states that there has been an "error" in the manner of the taxation of these properties as that term is defined in A.R.S. § 42-16251(3). It also states that Strawberry Ridge Estates is informed and believes that Gila County has already acknowledged this error as to other parcels in the subdivision and issued appropriate tax adjustments with respect thereto.

Mr. Harper noted that in 2008, the subject undeveloped parcels were assessed between $150K-$320K per parcel. In 2009, the values dropped to $100K-$240K per parcel. In 2010, the values dropped a little less and stayed about the same in 2011. Mr. Harper believes those values would only have made sense if this subdivision had been given a final approval.

Mr. Harper stated that in 2011, the County recorded an Affidavit-Notice of Gila County Subdivision Code Violation stating that the subdivider was in violation of Gila County Subdivision Regulations in that the street known as Tomahawk Trail was not completed in accordance with Gila County Street Standards in accordance with (section) 300.09 of the Gila County Subdivision Regulations. The County stated that because there had never been a final approval issued for the subdivision, no building permits would be issued. Mr. Harper advised that at the time the Affidavit was recorded on July 6, 2011, it was at that point that the property valuations on the subject parcels were reduced to $2K-$5K per parcel. He stated, "That's how big a problem this lack of approval was. That's how serious a problem it was in terms of tax valuation and frankly, it is proof positive and essentially an admission that when you see a property drop that dramatically that because this approval had never been issued, that the prior values were just way, way, way too high."

Mr. Harper emphasized two points which he feels are critically important: 1) The County, specifically the Community Development Division, was aware in 2008 through 2011 that no final approval had been given for this subdivision, but at the same time Gila County was valuing these properties as if it had been approved. It issued tax bills and later issued and sold Certificates of Purchase on inflated values. He believes this is clearly an error on the County's part. He stated that the error has already been determined by this BOE in connection with previous property valuation adjustments made on two separate tax appeal cases submitted by Thomas Stedronsky and Dina Galasinni. Mr. Stedronsky and Ms. Galasinni each own property within the Strawberry Creek Foothills, which is also known as

Strawberry Ridge Estates. Mr. Harper believes the only issue at hand with regard to this appeal is to determine the reason the developer is being treated differently. Mr. Harper advised that Mr. D. McCall, the petitioner of this tax appeal, is now the owner of Strawberry Ridge Estates in its entirety. Mr. Harper stated that Mr. McCall purchased Certificates of Purchase at inflated values for these parcels, which are now outstanding, which are over $130K to redeem and that they should have never been sold at the inflated amounts. He concluded his presentation at this time and requested an opportunity to offer a rebuttal after the Assessor's Office presented its case.

Larry Huffer reviewed the history of this subdivision. In 2006, Gila County received a Subdivision Public Report from the State of Arizona Department of Real Estate authorizing the transfer of this real property. There were basically 4 parcels that were undeveloped and valued very low for the initial subdivision. In 2008, the Assessor's Office valued the lots based on the realtors' asking prices. In 2009, the Assessor's Office obtained the actual sales prices for the lots. No other sales occurred until 2011, when Mr. Stedronsky lost one parcel to M&I Bank and it was at the same time the zoning violation was in place. Mr. Huffer stated that the average sales price for perspective buyers is listed on the Subdivision Public Report as $200K.

Mr. Huffer advised that he met with Assessor Dale Hom prior to the appeal hearings of Mr. Stedronsky and Ms. Galasinni to discuss what would happen if these cases proceeded to State Tax Court. He stated, "The difference between these buyers in good faith and the developer is the limitations of filing a Notice of Claim." He proceeded to read aloud A.R.S. § 42-16256(A). He stated that Mr. Stedronsky and Ms. Galasinni purchased in good faith because they had a Subdivision Public Report with an assurance that the roads would be put in properly, so that is the reason the values were reduced for those two property owners. He stated, "When the developer actually purchased these parcels, at that time the roads were not put in. Actually there was no real cause or proceedings to be initiated on a Notice of Claim at that time because the roads were not put in. I believe that is really our case right there."

Bryan Chambers, Chief Deputy County Attorney, advised that the key point is the developer is the one who was responsible for putting in the road and that certainly the developer was in a position to have known about the problems whereas these purchasers in good faith did not know of that problem. He then read aloud A.R.S. § 42-16254(G) and stated that in this case, taxes were not paid before delinquency and because of that Certificates of Purchase were issued.

Chris Roll, attorney for the BOE, affirmed that he understood Mr. Chambers' argument about the taxes not being paid prior to delinquency,

and then asked if that is a prerequisite for appealing a ruling in this proceeding to which Mr. Chambers confirmed was correct.

Mr. Chambers then read aloud A.R.S. § 42-16256(A) and stated that in this case the developer could have appealed all of these valuations. He stated, "Also, the argument the developer is making today is that the subdivision never received final approval. That is something the developer certainly knew and could have used other procedures to appeal the assessed valuation...Before any taxes were effectively paid, this could have been resolved through an appeal each year as he received the assessment." He then read aloud A.R.S. § 42-16251(3) and he stated that the Assessor's position is that this really doesn't fit the definition of error. Additionally, under A.R.S. § 42-16257, the Assessor would argue that the valuations were correct using the valuation and legal classification criteria at the time of the valuation, which is required according to A.R.S. § 42-16257. He also pointed out that according to A.R.S. § 42-16256, even if the BOE were to determine there was an error that must be corrected, the petitioner is limited to the current year and 3 years prior. The first year the petitioner is arguing is 4 years prior and he would not be entitled to any relief for that 4th year being 2008.

Mr. Huffer briefly revisited the history of this subdivision and stated that even though we are one county, as Mr. Harper stated, until 2011 when Mr. Stedronsky's case was heard, the Assessor's Office was unaware there were any problems with the roads. It was Mr. Stedronsky who brought the issue of the roads to the attention of the Assessor's Office during his appeal hearing. He stated that had the Assessor's Office known of the problem with the roads, the valuations may have been looked at differently.

Mr. Harper reiterated that the County did know of the problem. He said there was an error; errors happen and this error leads to tax certificates that are very inflated. Mr. Harper also addressed the second argument that the developer was not a purchaser in good faith. He stated, "The developer bought the property with the idea of developing it and making it a good thing." He also disagreed with Mr. Chambers that this case could have been appealed by different measures.

Vice-Chairman Dawson referenced the developer receiving a tax valuation notice each year, yet taking no action at that time. She stated, "You're saying they made all the errors. Didn't you make some errors in not either paying your taxes or appealing your taxes in 2009, saying 'Wait a minute; we're not selling the lots like before.'? You made the comment that the developer goes into the development with the idea of making money. Okay, we all were there a few years ago. The fact that things went downhill; we all took consequences of it. It would seem that you had the burden at that point of saying 'no', I am not going to build the roads' and; therefore, the

value of this property is not there... Once that stopped, then there is an obligation to come and say this is why."

Mr. Harper replied that there are different types of errors; however, the error that is talked about in the A.R.S. is an error of mis-assessment of property. He believes that is the type of error being discussed today.

Vice-Chairman Dawson continued to comment on the downturn in the economy during these years with Mr. Harper placing the emphasis on the fact that the values of these parcels weren't gradually reduced each year, but were drastically reduced from $300K-$240K to $5K and Mr. Harper reiterated there was an error on the County's part.

Mr. Huffer reviewed the actual full cash values of properties from 2008 through 2010. The values for those years are as follows: 2008 - $130,681, 2009 - $104,550, and 2010 - $52,275. Mr. Huffer noted that in 2009 he spoke with Rose Harper, a local realtor, about the properties and she agreed with the values. Mr. Huffer pointed out at that time that Ms. Harper also was obviously unaware there were any problems with the roads in that subdivision.

Supervisor Pastor inquired as to the time the County became aware that the roads were not up to the required road standards and Mr. Huffer replied that in 2011, it was disclosed in a letter from Mr. Stedronsky to the County. Chairman Martin said that it appears the problem seems to be with the Certificates. Mr. Chambers once again provided further explanation on A.R.S. § 42-16256(A) regarding a correction of errors for real or personal property and reiterated that the developer was aware of problems with the roads. The issue of the Certificates was discussed further and Mr. Harper requested some relief. At this time County Treasurer Debi Savage stated that Terri Powell of her staff also had a discussion with Mr. McCall regarding the Certificates. Ms. Powell addressed the BOE and stated that she had prepared a spreadsheet earlier this year to determine a grand total of the number of investors of parcels in this subdivision. Vice-Chairman Dawson inquired whether Ms. Powell's normal practice was to call people who owe taxes and Ms. Powell replied that she received a phone call from Mr. McCall to find out the status of parcels at which time she provided him information that the parcels would be offered at an upcoming Treasurer's tax lien sale. Vice-Chairman Dawson inquired if Mr. McCall was represented as CCC&S on the spreadsheet and Ms. Powell affirmed that is correct. Ms. Powell replied that Mr. McCall changed the name and "...he bought up anything that hadn't already been purchased." Mr. Harper wanted to make it clear that he didn't want to portray Mr. McCall as the developer on this site and stated, "I don't want you to think he was involved in a direct way in the development." Mr. McCall stated that he was 12.5% director until last June and stated, "This entity that bought the tax liens

(Certificates of Purchase) had nothing to do with the partnerships. Chairman Martin said, "It looks to me like the developer may have known about the roads, but you didn't." She also stated that the Community Development Division may have known about the roads, but the Assessor's Office did not know about them.

Mr. McCall advised that he has 100% ownership of the land and it was his understanding that only a land owner could appeal the Assessor's decision, so that is the reason he hired Mr. Harper to appeal the decision. Both Vice-Chairman Dawson and Supervisor Pastor made comments on the fact that there is always a risk in any investment, such as Mr. McCall's investment in this subdivision.

Mr. Harper reiterated that the only legal issue at hand today is to determine whether the County made an error when assessing these properties when the subdivision had not received a final approval.

At this time Vice-Chairman Dawson made a motion to uphold the Assessor's valuations on the parcels as listed on the agenda item, which was seconded by Supervisor Pastor and unanimously approved by the BOE.

Mr. Roll then advised that per A.R.S. § 42-16254(F), the BOE needed to issue a written decision on this case. At this time a discussion ensued regarding the appeal process should the petitioner want to choose to pursue this matter in tax court. Mr. Huffer mentioned there is actually a question whether the Arizona Tax Court would allow this case to be heard as the taxes have not been paid. Mr. Chambers confirmed that a written decision is required per statute, to which Mr. Harper also agreed. Mr. Roll stated there may be a request to report findings of fact, which could also be included in the written decision.

Vice-Chairman Dawson moved to recess the hearing for one hour to write the written decision. No second was given to her motion. There was some discussion at this time as to the content that needed to be included in the written decision.

Supervisor Pastor made a motion that the BOE include the six (6) bullet points which outline the reasons the Assessor's Office dispute the claim of error that are listed on a document from the County Assessor dated September 28, 2012, are to be included in the written decision as the findings of fact. Vice-Chairman Dawson seconded the motion which passed with a unanimous vote.

The six (6) bullet points are as follows:

1. Taxpayer has not paid the taxes in question. A.R.S. § 42-16254(G).

2. Taxpayer is not purchaser in good faith as defined in A.R.S. § 42-16256.

3. The valuations in question could have been appealed using other procedures. A.R.S. § 42-16255(B).

4. The valuations are not in error as defined by A.R.S. § 42-16251(3).

5. The evaluations were correct using the valuation and legal classification criteria in effect at the time of the valuation (by) A.R.S. § 42-16257.

6. The error correction statutes are limited to the current year and the three immediately preceding years. A.R.S. § 42-16256.

Upon motion by Vice-Chairman Dawson, seconded by Supervisor Pastor, Chairman Martin recessed the meeting at 3:07 p.m. for 30 minutes so that a written decision could be drafted. Chairman Martin reconvened the meeting at 3:41 p.m. and she requested that the written decision be read into the record and reviewed by the Board members.

Supervisor Pastor made a motion that the Chairman of the Gila County BOE be authorized to sign the decision document that has been developed and presented to the BOE for a final action, which was seconded by Vice-Chairman Dawson and unanimously approved by the Board.

At this time, Mr. Chambers read aloud A.R.S. § 42-16254(G) into the record.

Mr. Chambers asked whether the Chief Deputy Clerk had all of the documents for the official record of the Board, to which Ms. Sheppard presented all of the documents to him. He then reviewed the documents with Mr. Huffer and Mr. Harper. Mr. Harper asked that the documents be identified for the record. He stated, "On the record, first just for the record, we do obviously dispute the finding, dispute that the evidence presented supports the six (6) findings of the Board..." Mr. Harper then read aloud the records, as follows:

1. Five (5) exhibits that were sent to the Clerk today from my office, that is marked Clerk's Copy on top of the first document.

2. 2008 Strawberry Ridge Estates land full cash values – 3 pages.

3. A number of emails to and from the Board – approximately 8 or 9 of those.

4. A November 28, 2012, letter to my office from the Chief Deputy Clerk.

5. A set of exhibits that was submitted earlier by my office. There's two (2) exhibits along with an email dated December 11th and those are partially duplicative of the exhibits submitted today.

6. A Petition for Review of Taxpayer Notice of Claim with attachments – approximately 12 pages.

7. Assessor's Office exhibit package...A July 31, 2012, letter from my office, an Affidavit and Notice of Gila County Subdivision Code Violation, a Petition for Review of Taxpayer Notice of Claim, a State of Arizona Real Estate Department Subdivision Public Report, an agreement recorded with the County Recorder's Office entitled Assurance of Subdivision Improvements for Strawberry Ridge Estates, and a printout from the Arizona Corporation Commission.

8. We have a compilation of several statutes.

9. Finally, a large map laid out before the Board today.

10. A list of parcel numbers, taxes, interest, penalties – a handout from Terri Powell from the Treasurer's Office.

11. A December 18, 2012, Decision.

There being no further business to come before the Board of Equalization, Chairman Martin adjourned the meeting at 3:58 p.m.

APPROVED:

Tommie C. Martin, Chairman

ATTEST:

Marian Sheppard, Chief Deputy Clerk