



MEMORANDUM

Date: February 28, 2018

To: The Honorable, Chairman and
Members Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Reminder to the Board reference Assessor Private Employment of Counsel and reimbursed by the County**

Supervisor Christy asked during discussion regarding consent calendar agenda item 1, if the Assessor had hired private counsel on his own and then sought reimbursement from the County. The answer is yes, the Assessor hired Law Offices of Terri A. Roberts and made payments to Ms. Roberts totaling \$7,000.00 from his personal account and then filed a claim against the County. Then Chief Civil Deputy County Attorney Tom Weaver wrote to the Board and me informing us that the Assessor had retained counsel outside of the normal process. I authorized payment for the invoices from Ms. Roberts who then reimbursed the Assessor for the \$7,000.

County policy specifically, Board of Supervisors Policy Number C6., allows the County Attorney and the County Administrator to hire outside counsel this policy is attached for your information. The prudent part of the policy states:

In instances where the County Attorney has determined that its office cannot provide legal advice or representation, due to conflict or other reason, the County Attorney or County Administrator shall promptly arrange for competent legal advice or representation outside of the County Attorney. Only the County Attorney and County Administrator have authority to retain counsel outside of the County Attorney. Private counsel retained without compliance with the provisions of this policy and related Administrative Procedures shall not constitute a legitimate charge of Pima County and shall be the personal obligation of the individual retaining private counsel.

The particular case related TX2016-000873 v. Core Campus & SBOE. In that case, the Assessor appealed the decision of the State Board of Equalization (SBOE) when the SBOE ruled in favor of the taxpayer that the Limited Property Value (LPV) could not be increased as determined by the Assessor. Core Campus had constructed a student housing tower which the Assessor had assessed for 2015 with a Full Cash Value (FCV) of \$29,487,610 and a LPV of \$28,047,140. Taxes, as you know, are levied against the LPV. For 2016, the

The Honorable Chairman and Members Pima County Board of Supervisors
Re: Reminder to the Board reference Assessor Private Employment of Counsel and
reimbursed by the County
February 28, 2018
Page 2

Assessor increased the FCV to \$46,803,520 and the LPV to \$43,321,338. The taxpayer appealed to the SBOE which ruled in its favor, holding that the LPV could only increase by the normal five percent authorized by statute. The Assessor filed an appeal to the Arizona Tax Court. That appeal was dismissed by the Tax Court because it was filed late. Thus, the County essentially lost the case and received no increase in the tax base. Attorney fees for this case were in excess of \$11,500. Although the Assessor lost this case, the County at least did not have to also pay the taxpayer's attorney fees, as we did in the Primavera Foundation case I wrote to you about on September 21, 2016, happening in the same year as the Core Campus case.

I am attaching court records for the Core Campus case. In one of the pleadings, the State Board of Equalization's Motion for Summary Judgment describes how it sees its function for taxpayers: "..., if the Pima County Assessor's request is granted [challenging the jurisdiction of the SBOE], the SBOE will be prevented in many cases from serving its vital function of providing swift resolutions in a neutral-but-informal forum, thereby (a) forcing taxpayers challenging alleged assessor errors to go directly to formal and expensive litigation in this [Tax] Court, and (b) significantly (and unnecessarily) increasing this Court's workload."

CHH/mp

Attachments

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BOSSÉ ROLLMAN PC

3507 NORTH CAMPBELL AVENUE, SUITE 111
TUCSON, ARIZONA 85719 520.320.1300

Richard M. Rollman SB#004116
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Attorneys for Defendant Core Campus Tucson I LLC

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT**

No. TX2016-000873

BILL STAPLES, Pima County Assessor,
Plaintiff,

JUDGMENT

(Hon. Christopher Whitten)

vs.

CORE CAMPUS TUCSON I LLC, a Delaware
limited liability company; STATE BOARD OF
EQUALIZATION, an administrative agency of
the State of Arizona,

Defendants.

Defendant Core Campus Tucson I LLC brought before this Court its Motion to Dismiss filed March 14, 2016. The motion was heard on June 20, 2016. For the reasons set forth in the Court's Minute Entry of June 20, 2016, the Court finds the appeal was not timely filed and has granted Defendant Core Campus Tucson I LLC's Motion to Dismiss the entire case including the complaint and counterclaim.

IT IS HEREBY ORDERED that the Complaint filed by Plaintiff and Counterclaim filed by Core Campus be dismissed each to bear their own costs and fees.

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No further matters remain pending and the Judgment is entered pursuant to ARIZ. R.
Civ. P. Rule 54 (c).

DATED _____.

By: _____
Hon. Christopher Whitten
Superior Court Judge

eSignature Page 1 of 1

Filing ID: 7628144 Case Number: TX2016-000873
Original Filing ID: 7534750

Granted as Submitted



/S/ Christopher Whitten Date: 8/8/2016
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: TX2016-000873

SIGNATURE DATE: 8/8/2016

E-FILING ID #: 7628144

FILED DATE: 8/9/2016 8:00:00 AM

BENJAMIN R NORRIS

RICHARD M ROLLMAN

TERRI A ROBERTS

MICHAEL K. JEANES
Clerk of the Superior Court
By Cassandra Knotts, Deputy
Date 01/20/2016 Time 14:30:58

Description	Amount
CASE# TX2016-000873	
TAX CASE FEE	304.00 W
TOTAL AMOUNT	0.00
Receipt# 25003165	

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5 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**

6 **IN THE ARIZONA TAX COURT**

7 BILL STAPLES, Pima County Assessor,

8 Plaintiff,

9 vs.

10 CORE CAMPUS TUCSON I LLC, a
Delaware limited liability company; STATE
11 BOARD OF EQUALIZATION, an
administrative agency of the State of
12 Arizona;

13 Defendants.

Case No.: TX2016-000873

**COMPLAINT AND NOTICE OF
PROPERTY TAX APPEAL
AND
PETITION FOR SPECIAL ACTION**

Assigned to:
Hon. Christopher Whitten

15 For his cause of action, Plaintiff, Pima County Assessor Bill Staples, through
16 undersigned counsel, alleges as follows:

17 **1.0 JURISDICTION AND VENUE**

18 1.1 The Court has jurisdiction over this case pursuant to A.R.S. §§ 42-16168,
19 42-16203, 42-16207, 12-1831 *et seq.* and 12-163.

20 1.2 The property which is the subject of this action ("Subject Property") is
21 located in Pima County, Arizona.

1 1.3 All acts complained of occurred in Pima County, Arizona.

2 **2.0 PARTIES**

3 2.1 Plaintiff Bill Staples is the duly elected Assessor of Pima County, Arizona
4 who has the responsibility for assessing the values of and classifying all locally assessed
5 real and personal property located in Pima County, Arizona.

6 2.2 Defendant Core Campus Tucson I LLC (“Core”), a Delaware limited
7 liability company licensed to operate in the State of Arizona, owns the Subject Property
8 involved in this lawsuit.

9 3.3 The State Board of Equalization is an administrative agency of the State of
10 Arizona.

11 **3.0 SUBJECT MATTER**

12 3.1 The Subject Property consists of land and improvements located at 1011 N.
13 Tyndall Avenue in Tucson, Arizona and identified as parcel number 115-04-520B.

14 3.2 The valuation of the Subject Property is in dispute for tax year 2016.

15 **4.0 FACTUAL HISTORY**

16 4.1 The Assessor determined the full cash value (“FCV”), limited property
17 value (LPV”), classification, and assessment ratio of the Subject Property and timely
18 mailed a Notice of Value to Defendant Core on February 27, 2015. The LPV was based
19 on a Rule B calculation because of construction of improvements to the Subject Property
20 between January 1, 2014 and January 1, 2015.

21

22

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8
9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN THE ARIZONA TAX COURT**

11 BILL STAPLES, Pima County Assessor,

12 Plaintiff,

13 vs.

14 CORE CAMPUS TUCSON I LLC, a Delaware
15 limited liability company; STATE BOARD OF
16 EQUILIZATION, an administrative agency of the
State of Arizona;

17
18 Defendants.

Case No. TX 2016-000873

**STATE BOARD OF EQUALIZATION'S
MOTION FOR SUMMARY
JUDGEMENT**

(Oral Argument Requested)

(Hon. Christopher Whitten)

19
20 Preliminary Statement

21 The Arizona State Board of Equalization ("SBOE") moves for summary judgment denying
22 the Pima County Assessor's ("Pima Assessor") request that this Court find the SBOE lacked
23 jurisdiction to hear the taxpayer's appeal from the Pima Assessor's ruling below, including
24 changing the Limited Property Value ("LPV") of the property (the "Property") without changing the
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1 Full Cash Value (“FCV”).¹ This is important because, if the Pima Assessor’s request is granted, the
2 SBOE will be prevented in many cases from serving its vital function of providing swift resolutions
3 in a neutral-but-informal forum, thereby (a) forcing taxpayers challenging alleged assessor errors to
4 go directly to formal and expensive litigation in this Court, and (b) significantly (and unnecessarily)
5 increasing this Court’s workload.²
6

7 Legal and Factual Context

8 Whether the SBOE had jurisdiction is a question of law. *Pima Assessor v. SBOE*, 195 Ariz.
9 329, 332, 987 P.2d 815, 818 (App.Div.1 1999) (“The . . . issue presented is whether the tax court
10 erred in finding the [SBOE] lacked jurisdiction to hear taxpayers’ claims. Our review of such issues
11 of law is de novo”; reversing the Tax Court and holding that SBOE had jurisdiction; citation
12 omitted). Nevertheless, some explanation of the legal and factual context is necessary in order to
13 explain the jurisdiction issue.
14

15 FCV and LPV are terms of art. FCV is defined in §42-11001(6) as “. . . the value
16 determined as prescribed by statute. If no statutory method is prescribed, [FCV] is synonymous
17 with market value which means the estimate of value that is derived annually by using standard
18 appraisal methods and techniques. . . . [FCV] shall not be greater than market value regardless of
19 the method prescribed to determine value for property tax purposes.” SBOE’s Statement of Facts
20

21 ¹ See the Pima Assessor’s Complaint, ¶5.2 (“With respect to the special action component of this
22 action, [Pima Assessor] alleges that SBOE lacks jurisdiction to accept an appeal of and/or to change
23 the LPV of property independent of a change in the FCV. [Pima Assessor] requests from the Court
a determination as to the SBOE’s jurisdiction on this issue”).

24 ² SBOE’s only interest in this action is in defending its jurisdiction; as the lower-level tribunal from
25 which this appeal has been taken, SBOE takes no position on the valuation/ classification issues in
26 dispute between the Pima Assessor and the taxpayer, Core Campus Tucson I LLC (“Core”). *Hurles*
v. Superior Court, 174 Ariz. 331, 332-34, 849 P.2d 1, 2-4 (App.Div.1 1993) (lower-level tribunal
may take a “defense-of-policy” position, such as defending its jurisdiction, without bringing its
impartiality into question).

1 (“SOF”), ¶3. FCV is used as “the basis for assessing, fixing, determining and levying primary and
2 secondary property taxes on property described in §42-13304 [which are limited to narrow classes
3 of property interests including personal property other than mobile homes; mines; standing timber;
4 and real and personal property of companies engaged in gas distribution and other businesses not
5 relevant to this action].” A.R.S. §42-11001(6); SOF, ¶3.
6

7 LPV is defined by §42-11001(7) as “the value determined pursuant to §42-13301.”³ LPV is
8 the basis for “(a) computing levy limitations for counties, cities, towns and community college
9 districts [and] (b) assessing, fixing, determining and levying primary and secondary property taxes
10 on all property except property described in §42-13304 [i.e., the narrow classes of property interests
11 described in the immediately-preceding paragraph].” A.R.S. §42-11001(7); *see* SOF, ¶4. Thus, for
12 the vast majority of taxpayers it is LPV and not FCV that is the important figure, because it is LPV
13 that determines their property taxes, while FCV has no direct bearing on their taxes and serves (as is
14 explained below) solely as a way-station in the process of determining the maximum possible LPV.
15
16 *See* SOF, ¶4.

17 In turn, there are two methods for determining LPV, “Rule A” and “Rule B”.
18 “Rule A” gets its name because it was (and is) incorporated in section “A” of §42-13301. “Rule B”
19 – so-called because it was originally incorporated in what was then section “B” of §42-13301 – is
20 now found in §42-13302(A).⁴ SOF, ¶5.
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24 ³ As noted below (*see* footnote 4 and associated text), LPV now actually is determined pursuant to
25 §42-13301 **and** §42-13302, though it formerly was determined solely under
26 §42-13301; the reference in A.R.S. §42-11001(7) needs to be updated.

⁴ *See* footnote 3 and the associated text, above.

1 Rule A applies to: (1) properties in which there has been no physical change in either the
2 land or improvements; (2) properties for which there has been no change in use; and (3) properties
3 which were not totally omitted from the tax roll in the preceding valuation year. SOF, ¶5(a). If
4 Rule A applies, then the LPV will be increased by 5% from the previous tax year's LPV, except that
5 the LPV also cannot exceed the FCV (so that if the new FCV is less than 105% of the previous
6 year's LPV, the LPV will increase by less than 5%). A.R.S. §42-13302(A) and (B). Thus, Rule A
7 serves to delay an increase in the tax liability for a property and to spread out the increase over a
8 period of years, even if the property has jumped in value by a significant amount in a short period of
9 time. *See* SOF, ¶5(a).
10

11 Rule B, in turn, applies in circumstances where the Legislature did not deem it appropriate
12 to provide Rule A relief, i.e., where: (1) property was erroneously totally or partially omitted from
13 the property tax rolls in the preceding tax year; (2) property for which a change in use has occurred
14 since the preceding tax year; (3) property modified by construction, destruction or demolition since
15 the preceding valuation year; and (4) property that has been split, subdivided or consolidated from
16 January 1 through September 30 of the valuation year (except where resulting from government
17 action). A.R.S. §42-13302(A); *see* SOF, ¶5(b). Rule B must be used when any new construction
18 equals 10% or more of the prior year's FCV. SOF, ¶5(b). If new construction is less than 10% of
19 the prior year's FCV, then either Rule A or Rule B can be applied. SOF, ¶5(b).
20
21

22 Here, the dispute between the Pima Assessor and Core centers on whether Rule A or Rule B
23 should apply in calculating LPV. *See* SOF, ¶¶12 and 13. Despite the SBOE having no interest in
24 the outcome of the substantive dispute between the real parties in interest, the SBOE will set forth
25 its understanding of the essential facts of this case, so that the Pima Assessor's claim that the SBOE
26 lacked jurisdiction to issue its ruling can be put in context:

1 As of the 2014 tax year, the Property was treated as having minimal improvements of
2 \$11,206, and was assessed by the Pima Assessor in a Regular Valuation⁵ at a FCV of \$211,928,
3 with a LPV of \$208,749. SOF, ¶2. At the time, the “Use Code” for the Property was 2803,
4 “Partially Complete Multiple Residential”. SOF, ¶2. Subsequently, the Pima Assessor picked up
5 the fact that there was ongoing construction on the Property, and for the 2015 tax year the Property
6 was assessed by the Pima Assessor in a Regular Valuation with a FCV of \$8,496,000 and a LPV of
7 \$8,088,192, with the Use Code remaining 2803. SOF, ¶6. The FCV of \$8,496,000 was made up of
8 \$5,824,160 for improvements and \$2,671,880 for the underlying land, i.e., \$5,824,160 + \$2,671,880
9 = \$8,496,000. SOF, ¶7. The LPV of \$8,088,192 apparently was determined by the Pima Assessor
10 as “a level or percentage of full cash value that is comparable to that of other properties of the same
11 or similar use or classification” for a property “modified by construction, destruction or demolition
12 since the preceding valuation year” under Rule B. SOF, ¶8.⁶ The Property is a mixed-use project
13 of over three stories, primarily a high-rise apartment tower of over four stories, with some retail and
14 business office space, and a parking garage; the apartments are 244,929 ft², the retail store space is
15 8,342 ft², and the business office space is 3,912 ft². SOF, ¶9.
16
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20 ⁵ Properties are generally assessed annually in “Regular Valuations”. *See* A.R.S. § 42-11001(6); *see*
21 *also Caldwell v. Department of Revenue*, 122 Ariz. 519, 520, 596 P.2d 45, 46 (App. 1979).
22 However, an additional “Supplemental Valuation” change in valuation and/or classification may be
23 made in the last quarter of the year, to account for changes in the property. *See* A.R.S. § 42-15105.
This case concerns a Regular Valuation.

24 ⁶ Under Rule B, the requirement that the LPV be “at a level or percentage of [FCV] value that is
25 comparable to that of other properties of the same or similar use or classification” is known as the
26 “Rule B ratio”; to determine this, each county assessor does an annual study comparing the ratio
between the FCV and LPV of properties within each classification. Here, it appears that the Rule B
ratio for “other properties of the same or similar use or classification” was approximately 95%, i.e.,
95.2% of \$8,496,000 = \$8,088,192. SOF, ¶7.

1 It appears that in approximately September, 2014 the Pima Assessor did a Supplemental
2 Valuation for the 2015 tax year, as a result of which the Pima Assessor assessed the Property a FCV
3 of \$29,487,610 and a LPV of \$28,047,140 (again, approximately 95% of FCV). SOF, ¶10.

4 However, in the subsequent Regular Valuation for the 2016 tax year, the Pima Assessor valued the
5 Property at a substantially increased FCV of \$46,803,520 and a LPV of \$43,321,338. SOF, ¶11. At
6 the same time, the Pima Assessor changed the Use Code from 2803 (“Partially Complete Multiple
7 Residential”) to 0377 (“Apartments - 100 or more units/Multiple Residential - three stories or
8 more”). SOF, ¶11.

9
10 The apparent position of Core is as follows:

11 a. As of August, 2014 the apartments were 100% occupied, and construction was nearly 100%
12 complete with only restaurant tenant improvements of about \$116,000 remaining to be done. SOF,
13 ¶12. The Pima Assessor’s website shows that for purposes of the 2015 tax year, the improvements
14 had the following values and already were in the following states of completion:

- 15 • The parking garage had a \$1,622,308 Basic Replacement Cost and was 100% complete;
- 16 • The apartments had a \$24,681,407 Basic Replacement Cost and were 100% complete;
- 17 • The business office had a \$369,743 Basic Replacement Cost and was 100% complete; and
- 18 • The retail store had a Basic Replacement Cost of \$521,888 and was 70% complete, with a
19 Completion Adjustment of \$148,738. SOF, ¶12.

20
21 b. Consequently, pursuant to the Pima Assessor’s records for the 2015 tax year, of the total
22 Basic Replacement Cost of \$25,573,038 (i.e., \$1,622,308 + \$24,681,407 + \$369,743 + \$521,888 =
23 \$25,573,038), only \$148,738 of construction (about 0.6%) remained to be completed. It apparently
24 is Core’s position that because construction on the Property was all-but-less-than-1% complete for
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1 purposes of the 2015 tax year, the Pima Assessor's 2015 Supplemental Valuation LPV should have
2 reflected the value of Property with the construction already essentially completed. SOF, ¶12.

3 c. It appears that Core is arguing that Rule A should limit any increase in the LPV from tax
4 year 2015 to tax year 2016, because only tenant improvements of approximately \$116,000 (or
5 \$148,000) were done between September, 2014 and January 1, 2015 on a \$25+ million project, so
6 that any increase in the LPV for the 2016 tax year from the 2015 tax year is limited to 5% under
7 A.R.S. §42-13301(A). SOF, ¶12.

9 The apparent position of the Pima Assessor is as follows:

10 a. Substantial work was done on improving the Property between September, 2014 and
11 January 1, 2015. SOF, ¶13.

12 b. The "Use Code" should be changed from 2803 ("Partially Complete Multiple Residential")
13 for the time through tax year 2015, to 0377 ("Apartments - 100 or more units/Multiple Residential -
14 three stories or more") beginning with tax year 2016. SOF, ¶13.

15 c. If the Pima Assessor is correct in its position that substantial work was done on the Property
16 between October 1, 2014 and December 31, 2015, then the Pima Assessor would be justified in its
17 substantial upward revision for the 2016 tax year (from the 2015 tax year) of not only the FCV, but
18 also the LPV, under the part of Rule B found in A.R.S. §42-13302(A)(3) ("In the following
19 circumstances the limited property value shall be established at a level or percentage of full cash
20 value that is comparable to that of other properties of the same or similar use or classification: . . .
21 3. Property that has been modified by construction . . . since the preceding valuation year"). SOF,
22 ¶13.

23 d. Also, if the change in the Use Code was proper, then the Pima Assessor was entitled to
24 change the LPV for the Property for the 2016 tax year under the part of Rule B found in A.R.S. §42-
25
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1 13302(A)(2)(“In the following circumstances the limited property value shall be established at a
2 level or percentage of full cash value that is comparable to that of other properties of the same or
3 similar use or classification: . . . 2. Property for which a change in use has occurred since the
4 preceding tax year”). SOF, ¶13.

5
6 The Pima Assessor made its final assessment decision on 8/7/2015. SOF, ¶14. Core then
7 appealed the Pima Assessor’s decision to the SBOE on 8/28/2015, within the 25 days allowed under
8 A.R.S. §42-16157(A).⁷ SOF, ¶15.

9 Argument

10 I. There is a general right of appeal from the Pima Assessor to the SBOE

11 The right of a taxpayer to appeal an assessor’s Regular Valuation of property to the SBOE is
12 found in A.R.S. §42-16157(A). Alternatively, a taxpayer dissatisfied with an assessor’s decision
13 has the right to skip the SBOE in order to appeal directly to this Court under §42-161201. This
14 right of a taxpayer to appeal to either the SBOE or this Court supports SBOE’s position that the
15 Legislature created the SBOE to give taxpayers swift resolutions in a neutral-but-informal forum, as
16 an alternative to more formal (and more expensive) litigation in this Court.⁸ As Core appealed from
17 the Pima Assessor’s Regular Valuation for the 2016 tax year to the SBOE, §42-16157(A) applies:
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19 Except as provided in [§42-16157(C) and (D), which do not apply here], if the county
20 assessor denies all or part of a petition under [§42-16055, granting the right to petition the
21 county assessor before petitioning the SBOE] and if a county board of equalization is not
22 established in the county where the property is located, the petitioner may appeal the
23 assessor's decision to the [SBOE] by filing with the [SBOE], within twenty-five days after

24 ⁷ A.R.S. §42-16157(C) applies to appeals from Supplemental Valuations (this is an appeal from a
25 Regular Valuation), while the 20-day limit referred to in A.R.S. §42-16157(D) applies to personal
26 property, not to real property. See A.R.S. §42-190151, and A.R.S. §42-19001 *et seq.* generally.

⁸ Any party dissatisfied with a decision of the SBOE has the right to appeal to this Court. A.R.S.
§§42-16168(A) and 42-16203.

1 the date that the assessor's decision was mailed to the petitioner, a copy of the written basis
2 of the decision according to the instructions on the petition.

3 Accordingly, there is a general right of appeal from a Regular Valuation of the Pima Assessor (such
4 as that in issue here) to the SBOE under A.R.S. §42-16157(A).

5 II. The SBOE has general jurisdiction to decide both classification and valuation issues

6 The SBOE clearly has jurisdiction to hear classification as well as valuation issues, as the
7 statutory scheme enacted by the Legislature expressly refers to the SBOE's jurisdiction over both
8 valuation and classification issues. *See* A.R.S. §42-16157(C) ("the petitioner may appeal the
9 assessor's decision [with no limitation on the scope of the decision being appealed, or on the scope
10 of issues to be decided on appeal] to the [SBOE]"); §42-16157(C) ("A property owner who receives
11 a notice of [Supplemental Valuation] . . . may appeal the valuation or legal classification to the
12 [SBOE]"); §42-16158(A) ("A property owner who is not satisfied with the valuation or legal
13 classification of the property as determined by the department may appeal to the [SBOE]"); §42-
14 16158(B)(2) ("[a taxpayer]. . . [i]s entitled to be heard at any [SBOE] hearing regarding the
15 valuation or legal classification. . ."); §42-16158(C) ("If the [SBOE] orders the valuation or legal
16 classification to be changed. . ."). The Legislature also has stated that classification and valuation
17 issues are to be appealed in the same manner. *See* §42-12055 ("A person may have the
18 classification assigned to that person's property reviewed and may appeal the decision in the same
19 manner as provided by law for a review of a valuation for property taxes and an appeal from that
20 review").
21
22

23 III. As SBOE decisions must be based on the evidence, the SBOE necessarily has jurisdiction to
24 make determinations of fact and to enter conclusions of fact

25 As the parties are expressly allowed to present evidence at a SBOE hearing, and as the
26 Legislature requires that the SBOE consider the evidence, the SBOE necessarily has the power to

1 make factual determinations. *See* A.R.S. §42-16161(E) (“The [SBOE] decision **shall** be based on
2 evidence presented by the parties attending the hearing (emphasis added)”); §42-16162(B) (“the
3 [SBOE] **shall** review and consider all competent evidence relating to [FCV]. . . (emphasis added)”);
4 and §42-16164(A) (referring to the need for the SBOE to ensure due process for all parties). Thus,
5 the SBOE necessarily has jurisdiction to make determinations of fact and to enter conclusions of
6 fact.
7

8 IV. A.R.S. §42-16157, not A.R.S. §42-16251 *et seq.*, governs this appeal
9

10 The Pima Assessor appears to presume that this is an appeal under the error correction
11 statutes, A.R.S. §42-16251 *et seq.* (the “Error Correction Statutes”) rather than under §42-16157: it
12 appears the Pima Assessor’s position is that because §42-16251(3)(e) and (e)(vi) contain the phrase
13 “objectively verifiable [without] the exercise of discretion, opinion or judgment ,” the SBOE had no
14 jurisdiction to issue its ruling here.
15

16 However, A.R.S. §42-16157, not §42-16251 *et seq.*, governs this appeal. A.R.S. §42-16157
17 creates an independent path for an appeal to the SBOE from decisions of the Pima Assessor.
18 Nothing in A.R.S. §42-16251 *et seq.* limits the ability of the SBOE to decide appeals under §42-
19 16157, which provides as follows:
20

21 A. Except as provided in subsection C or D of this section, if the county assessor denies all
22 or part of a petition under §42-16055, and if a county board of equalization is not established
23 in the county where the property is located, the petitioner may appeal the assessor's decision
24 to the state board of equalization by filing with the state board, within twenty-five days after
25 the date that the assessor's decision was mailed to the petitioner, a copy of the written basis
26 of the decision according to the instructions on the petition.

B. The department may contest any proposed valuation or classification or any proposed
change in valuation or classification before the state board. If, in the director's opinion, a
decision of an assessor is erroneous, the director may appeal the assessor's decision to the

1 state board within twenty-five days after the assessor's decision was mailed to the taxpayer
2 and the department. In such an action the taxpayer shall raise any defense the taxpayer has to
3 liability for the tax and any additional tax sought to be imposed. If issues other than
4 valuation or classification are raised by either party, the action shall be tried as if it were an
5 action pursuant to §42-11005 or 42-11052.

6 C. A property owner who receives a notice of valuation under §42-15105 may appeal the
7 valuation or legal classification to the state board as provided in subsection A of this section
8 within twenty-five days after the date of the assessor's notice.

9 D. A property owner whose petition is denied, in whole or in part, pursuant to §42-19051
10 may only appeal the valuation or legal classification to the state board as provided in
11 subsection A of this section within twenty days after the date of the assessor's notice of
12 refusal or decision.

13 E. The state board may contract with any county with a population of less than five hundred
14 thousand persons according to the most recent United States decennial census to review and
15 hold hearings and make decisions on petitions filed under §42-16105. These hearings shall
16 be conducted in the county in which the property of the subject hearings is located.

17 As stated in A.R.S. §42-16157(A), if the issue is a Regular Valuation (as it is here), so long
18 as the taxpayer appeals within 25 days of the assessor's decision (as Core did here: *see* SOF, ¶¶14
19 and 15), the taxpayer's appeal of an assessor's denial of "all or part of a petition" proceeds under
20 §42-16157. Similarly, if a taxpayer appeals from a Supplemental Valuation under A.R.S. §42-
21 16157(C), the taxpayer may appeal "valuation or legal classification" to the SBOE. And as A.R.S.
22 §42-16157(B) makes clear, the SBOE can hear a Department [of Revenue⁹] appeal "contest[ing]
23 **any** proposed valuation or classification or **any** proposed change in valuation or classification,"
24 while the taxpayer in such action shall raise "**any** defense the taxpayer has" (emphasis added)
25 Thus, whether the appeal to the SBOE is from a taxpayer unhappy with either a Regular Valuation
26 or a Supplemental Valuation, or whether it is the Department appealing to the SBOE, A.R.S. §42-
16157 makes clear that the SBOE can consider all evidence, issues, claims and defenses, including
but not limited to all evidence and issues relating to valuation or classification.

⁹ See A.R.S. §42-1001(3).

1 The SBOE's position that it had the ability to consider the dispute here under A.R.S. §42-
2 16157, and that §42-16251 *et seq.* do not limit the SBOE's ability to make decisions based on the
3 evidence presented, also is supported by the established principle that Title 42 creates alternate
4 routes of appeal that are not mutually exclusive. *Burlingame Industries v. Maricopa County*, 228
5 Ariz. 58, 59-60, 263 P.3d 66, 67-68 (App. 2011)(so holding); *Vista Verde Homeowners Assn. v.*
6 *Maricopa County*, 2015 WL 7454145, ¶26 (App. 11/24/2015) ("Even assuming the Assessor's
7 classification of the Property and its use involved the exercise of discretion, opinion or judgment,
8 thereby precluding a claim under A.R.S. §42-16251(3)(e), no such bar exists for a challenge
9 pursuant to A.R.S. §42-16251(3)(b)").¹⁰

10
11
12 Note that the proper interpretation of A.R.S. §42-16157 does not leave the Error Correction
13 Statutes, §42-16251 *et seq.*, without a role. As was held in *Pima Assessor v. SBOE*, 195 Ariz. 329,
14 987 P.2d 815 (App. 1999), the purpose of the error correction remedy is to give the taxpayer a
15 means of correcting errors even if the taxpayer has already prosecuted an administrative or judicial
16 appeal for the same property and tax year. *See id.* at 195 Ariz. 335-36, 987 P.2d 821-22; *see also*
17 *Swift Transp. Co. v. Maricopa County*, 225 Ariz. 262, 267-68, 236 P.3d 1209, 1214-15 (App.
18 2010)("the error correction statutes were designed to correct errors made in a prior valuation").

19
20 V. The SBOE had jurisdiction to change the LPV without changing the FCV

21
22 Inherent in the Pima Assessor's argument that the SBOE had no jurisdiction to change the
23 LPV independent of changing the FCV is the implication that the SBOE had no ability to determine
24

25 ¹⁰ Under Ariz. R. Sup. Ct. 111(c), a memorandum decision may be cited for persuasive value if it
26 was issued after January 1, 2015, and no opinion adequately addresses the issue before the court.
See also Vista Verde Homeowners Assn., 2015 WL 7454145, ¶18. Copies of all unreported
decisions cited herein are included with the Judge's copy of this filing.

1 the Property's stage of completion. However, as noted in Part IV of this Argument (above), A.R.S.
2 §42-16157 governs this appeal, and there is no such limitation in A.R.S. §42-16157. And as noted
3 in Part III of this Argument (above), the SBOE is required to base its decision on the evidence
4 presented, so that if the evidence presented shows that LPV is best calculated under Rule A and not
5 Rule B, and no evidence is presented to show that the FCV should be changed, then the SBOE can
6 indeed make such a ruling.
7

8 Furthermore, there was at least some evidence to support the SBOE's ruling adjusting LPV
9 under Rule A without adjusting FCV. The Pima Assessor's own records showed the Property was
10 essentially complete in 2014 (i.e., for purposes of the 2015 tax year), in that less than 1% of
11 construction remained to be completed. SOF, ¶12(a). Accordingly, the SBOE could make the
12 determination whether Rule A limited the increase in LPV for the 2016 tax year to 105% of the
13 prior-year LPV, independent of addressing any change (or lack of change) in FCV. *See* SOF, ¶15
14 (noting that if new construction is less than 10% of the prior year's FCV, then either Rule A or Rule
15 B can be applied).
16

17
18 VI. Even if Core had appealed under the error -correction statutes (which it did not), the SBOE
19 would have had jurisdiction to issue its ruling

20 As noted in Part IV of this Argument (above), it appears that the Pima Assessor's claim that
21 the SBOE lacked jurisdiction is based on A.R.S. §42-16251(3), which defines the term "error" for
22 purposes of the Error Correction Statutes; the Pima Assessor's position apparently is that because
23 A.R.S. §42-16251(3)(e) and (e)(vi) contain the phrase "objectively verifiable [without] the exercise
24 of discretion, opinion or judgment," the SBOE had no jurisdiction to issue its ruling. However, the
25 Pima Assessor's position is in error.
26

1 First, A.R.S. §42-16251(3)(b) itself expressly allowed the SBOE to determine whether or
2 not construction was substantially complete for classification purposes: “Error” means any mistake
3 in assessing or collecting property taxes resulting from . . . An incorrect designation or description
4 of the use or occupancy of property or its classification pursuant to [A.R.S. §42-12001 *et seq.*]. In
5 turn, A.R.S. §42-12051 expressly allowed the SBOE to consider whether or not the construction on
6 the Property was partially completed or not.
7

8 Second, A.R.S. §42-16251(3)(e) defines error to include:

9
10 Subject to the requirements of [§42-16255(B), relating to timing, not substance], a valuation
11 or legal classification that is based on an error that is exclusively factual in nature or due to a
12 specific legal restriction that affects the subject property and that is objectively verifiable
without the exercise of discretion, opinion or judgment and that is demonstrated by clear and
convincing evidence, such as:

- 13 (i) A mistake in the description of the size, use or ownership of land, improvements or
14 personal property.
- 15 (ii) Clerical or typographical errors in reporting or entering data that was used directly to
16 establish valuation.
- 17 (iii) A failure to timely capture on the tax roll a change in value or legal classification caused
18 by new construction, the destruction or demolition of improvements, the splitting of one
parcel of real property into two or more new parcels or the consolidating of two or more
parcels of real property into one new parcel existing on the valuation date.
- 19 (iv) The existence or nonexistence of the property on the valuation date.
- 20 (v) Property that is destroyed after the lien date.
- 21 (vi) Any other objectively verifiable error that does not require the exercise of discretion,
22 opinion or judgment.

23 Thus, §42-16251(3)(e)(i) makes “A mistake in the description of the . . . use . . . of land [or]
24 improvements” and §42-16251(3)(e)(iii) makes “a change in value or legal classification caused
25 by new construction” determinations that the SBOE **does** have jurisdiction to make in an appeal
26 under the Error Correction Statutes. Therefore, under the principle that Title 42 creates alternate

1 routes of appeal that are not mutually exclusive (*see* Part IV of this Argument [above], citing and
2 discussing *Burlingame Industries* and *Vista Verde Homeowners Assn.*), even if the Error Correction
3 Statutes were in issue here (and they are not). §42-16251(3)(e) would have given the SBOE
4 jurisdiction to issue its ruling.

5
6 Conclusion

7 For the foregoing reasons, SBOE requests an order of the Court (1) finding that SBOE had
8 jurisdiction to issue its ruling in this matter; (2) determining that all other issues in this litigation are
9 between the Assessor and the taxpayer, and do not involve SBOE as a party in interest; and (3)
10 dismissing SBOE from this action after issuing the foregoing requested rulings, with no other party
11 to take anything from SBOE.

12 Respectfully submitted this 13th day of April, 2016.

13
14 MARK BRNOVICH
15 Attorney General

16 By: s/Benjamin R. Norris
17 Benjamin R. Norris
18 Assistant Attorney General
19 Attorney for Defendant
20
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26

1 Original of the foregoing filed with the Court
2 this 13th day of April, 2016.

3 At the request of the Judge's chambers a paper
4 copy was not mailed but maybe requested later.

5 Copy of the foregoing electronically delivered
6 this 13th day of April, 2016 to:

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT**

BILL STAPLES, Pima County Assessor,
Plaintiff,

vs.

CORE CAMPUS TUCSON I LLC, a Delaware
limited liability company; STATE BOARD OF
EQUALIZATION, an administrative agency of
the State of Arizona.

Defendants.

No. TX2016-000873

**MOTION TO DISMISS
COMPLAINT**

(Hon. Christopher Whitten)

Defendant Core Campus Tucson I LLC ("Taxpayer") hereby moves to dismiss Plaintiff's Complaint for failure to state a proper claim under ARIZ. R. CIV. P. 12(b)(6) because Plaintiff filed this action too late. This Motion is supported by the accompanying Memorandum of Points and Authorities and all matters of records, which are incorporated herein by reference.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff Bill Staples as the Pima County Assessor seeks in this case to appeal the decision of Defendant State Board of Equalization ("SBOE") applying a Rule A calculation to the determination of the subject property's limited property value ("LPV"), rather than the Assessor's Rule B calculation that resulted in a much higher LPV. The statutory scheme under which the Assessor appeals requires the appeal to be filed within 60 days of the SBOE giving notice of its decision. In this case, the Assessor waited 96 days from the

1 date the SBOE gave notice of its decision changing his LPV determination before filing
2 his Complaint. The Assessor seeks to evade the applicable time period by filing his
3 Complaint 56 days after the SBOE gave notice of a corrected decision, which corrected a
4 typographical error in the notice of decision regarding the assessment ratio but did not
5 change any material part of the decision regarding the LPV determination.
6

7 This appeal presents the legal issue of whether a corrected SBOE notice of
8 decision correcting an immaterial, typographical error on the original notice of decision
9 has the effect of extending the 60-day time period to initiate an appeal of the original
10 notice of decision. A.R.S. § 42-16203(D) provides that appeals resulting from a SBOE
11 change in valuation “shall be filed within sixty days after the date of the mailing *of the state*
12 *board’s decision.*” (Emphasis added). Taxpayer contends that, because the 60-day period
13 begins to run with the mailing of the SBOE’s October 16, 2015 LPV change decision,
14 the Assessor’s appeal should have been filed no later than December 15, 2016. Thus, the
15 Assessor’s appeal—initiated on January 20, 2016—is untimely and should be dismissed
16 with prejudice.
17

18 **II. PROCEDURAL BACKGROUND.**

19 The Assessor’s Complaint presents an appeal from a decision of the SBOE. *See*
20 *Compl.* ¶¶ 2.1, 3.2, 5.1. Taxpayer owns land and improvements located at 1011 North
21 Tyndall Avenue in Tucson, Arizona, identified as parcel no. 115-04-520B. *Id.* ¶¶ 2.2,
22 3.1. The issue presented in this appeal is whether the SBOE erred in changing the
23 Assessor’s LPV determination and his application of a Rule B calculation for the subject
24 property for tax year 2016. *Id.* ¶ 3.2.
25
26

1 For tax year 2016, the Assessor determined the full cash value (“FCV”) of the
2 property, its LPV, its classification, and an assessment ratio for the property. *Id.* ¶¶ 3.2, 4.1.
3 The Assessor used a Rule B calculation in determining the LPV. *Id.* ¶ 4.1.

4 Taxpayer petitioned for review under A.R.S. § 42-16051 of the Assessor’s
5 determination. *Id.* ¶ 4.2. After a meeting between the Assessor and the Taxpayer, the
6 Assessor recommended that no change be made to his notice of valuation. *Id.* Compl. ¶ 4.3.

7 Taxpayer then appealed the Assessor’s determination to the SBOE. *Id.* ¶ 4.4. The
8 SBOE heard the appeal on September 15, 2015 and issued a Notice of Decision on October
9 16, 2015. *Id.* ¶ 4.5; *see also* October 16, 2015 Notice of Decision (attached hereto as
10 Ex. A). That SBOE Notice of Decision changed the LPV from a Rule B calculation to a
11 Rule A calculation, resulting in the property’s LPV decreasing from \$43,321,338 to
12 \$29,449,497. *Id.* The assessment ratio was never an issue in the appeal.

13 Thereafter, the SBOE issued a “corrected” Notice of Decision on November 25, 2015,
14 correcting a ministerial, typographical error. *See* November 25, 2015 Notice of Decision
15 (attached hereto as Ex. B). The error identified in the corrected Notice neither affected the
16 application of Rule A or B, nor the LPV or FCV of the property in the October 16, 2015
17 Notice of Decision. *Id.* That ministerial change was to the property’s assessment ratio. *Id.*
18 But, according to the Complaint, the Assessor’s appeal to this Court pertains only to the
19 SBOE’s decision as to the property’s LPV. *See* Compl. ¶ 5.1. The Assessor has alleged that
20 “[t]he LPV should be increased to the notice value based on Rule B” *Id.*
21

22 The SBOE’s decision to apply Rule A was announced at the SBOE hearing on
23 September 15, 2015 and then again in the October 16, 2015 SBOE Notice of Decision. Yet,
24 the Assessor waited until January 20, 2016 to file his Complaint, appealing from the SBOE’s
25 decision. *See* Compl. That is 127 days from the date of the SBOE hearing in September
26

1 2015 and 96 days from the date on which the SBOE gave notice of its rejection of the
2 Assessor's application of a Rule B calculation in favor of a Rule A calculation in its LPV
3 determination.

4 **III. ARGUMENT: THE ASSESSOR'S APPEAL IS UNTIMELY.**

5 This Court's "jurisdiction to entertain property tax appeals depends upon a strict
6 compliance with the statutory time limit in the authorizing statute." Read v. Arizona Dep't of
7 Revenue, 166 Ariz. 533, 535, 803 P.2d 944, 946 (Tax. 1991). A.R.S. § 42-16168(A)
8 provides that a party "dissatisfied with the valuation or classification of property reviewed by
9 the [SBOE] may appeal to court as provided by [§] 42-16203." Section 42-16203(D), in
10 turn, provides that appeals resulting from a change in value "shall be filed within sixty days
11 after the date of the mailing of the state board's decision." (Emphasis added). As noted
12 above, the SBOE gave notice of its change in the LPV resulting from a Rule A calculation on
13 October 16, 2015.

14
15 If the Assessor intended to appeal the SBOE's change in LPV resulting from its
16 application of a Rule A calculation, rather than a Rule B calculation, he was required to file
17 his appeal within 60 days of October 16, 2015—the date of the Notice of Decision giving
18 notice of that particular change. The Assessor may not appeal a change in value from the
19 November 25, 2015 corrected Notice of Decision because he is not challenging on appeal the
20 SBOE's ministerial correction of the assessment ratio. See Federal Trade Comm'n v.
21 Minneapolis-Honeywell Regulator Co., 344 U.S. 206, 212 (1952)(an immaterial change in a
22 prior judgment does not extend time for appeal); In re Marriage of Buck, 60 P.3d 788 (Colo.
23 App. 2002).

24
25 In Minneapolis-Honeywell Regulator, the U.S. Supreme Court addressed the
26 timeliness of a petition for certiorari. *Id.*, 344 U.S. at 207. In that case, the Federal Trade

1 Commission (“FTC”) issued a final determination on three claims against the defendant
2 Minneapolis-Honeywell Regulator Company. *Id.* at 207-08. The company then appealed
3 the FTC’s determination to the Second Circuit. *Id.* at 208. During that appeal, the company
4 abandoned its challenge to parts I and II of the FTC’s order, and the Second Circuit
5 acknowledged this in its opinion disposing of the case, stating that because the company had
6 not challenged parts I and II of the order, it would make no further reference to those parts in
7 its opinion. *Id.* On July 5, 1951, the Second Circuit entered its judgment reversing part III of
8 the FTC’s order. *Id.*

9
10 The FTC did not move for rehearing within 15 days of the judgment as required. *Id.*
11 Instead—on August 21, 1951, long after the expiration of the 15-day rehearing period—the
12 FTC filed a memorandum with the Second Circuit seeking the entry of a decree specifically
13 affirming parts I and II of the FTC’s order. *Id.* at 208-09. The Second Circuit then issued a
14 “final decree” doing so on September 18, 1951. *Id.* at 209. Finally, on December 14, 1951,
15 the FTC filed its petition for certiorari seeking review of the Second Circuit’s disposition of
16 part II of the FTC order. *Id.* at 210. “Obviously, the petition was out of time unless the
17 ninety-day filing period began to run anew from the second judgment entered on September
18 18, 1951.” *Id.*

19
20 The Supreme Court held that the petition was untimely. *Id.* at 207. It first noted that
21 the FTC’s memorandum filed on August 21, 1951 “sought no alteration of the [Second
22 Circuit’s] judgment relative to Part III; in fact, it acknowledged the entry of judgment
23 reversing Part II on July 5, 1951.” *Id.* It then rejected the FTC’s argument that its certiorari
24 petition “must be deemed to be in time because ‘when a court actually changes its judgment,
25 the time to appeal or petition begins to run anew irrespective of whether a petition for
26 rehearing has been filed.’” *Id.* at 211. The Supreme Court stated that “petitioner’s

1 interpretation ... is too liberal.” *Id.* “[T]he mere fact that a judgment previously entered has
2 been reentered or revised in an immaterial way does not toll the time within which review
3 must be sought.” *Id.* “The test is a practical one.” *Id.* at 212.

4 As to the FTC’s petition, the Supreme Court held it did not meet the test. *Id.* “Since
5 the one controversy between the parties related only to the matters which had been
6 adjudicated on July 5 [*i.e.*, the reversal of part III of the FTC’s order], we cannot ascribe any
7 significance, as far as timeliness is concerned, to the later judgment.” *Id.* The bottom line is
8 that statutory time periods “are not to be applied so as to permit a tolling of their time
9 limitations because some event occurred in the lower court after judgment was rendered
10 which is of no import to the matters to be dealt with on review.” *Id.* at 213.

11 These principles apply to the Assessor’s appeal. The Assessor’s appeal pertains
12 solely to the SBOE’s change to the LPV determined by the Assessor via the application of a
13 Rule A calculation, rather than the Rule B calculation the Assessor used. The SBOE’s
14 October 16 Notice of Decision provided confirmation of the SBOE’s September 15 hearing
15 determination with notice of the LPV change. The November 25 corrected Notice neither
16 made a change to the LPV for the subject property, nor to the SBOE’s use of a Rule A
17 calculation. Thus, the November 25 corrected Notice does not satisfy the Minneapolis-
18 Honeywell Regulator test. It did not disturb or revise any legal right or obligation in
19 connection with the property’s LPV or the use of a Rule A or B calculation. It was merely a
20 ministerial correction to the assessment ratio that “is of no import to the matters to be dealt
21 with on review.”

22 That the Assessor cannot make his appeal timely by reference to the November 25
23 “corrected” Notice is consistent with how courts address the timeliness of appeals involving
24 corrected judgments under rule of civil procedure 60(a). See In re Marriage of Buck, 60 P.3d
25
26

1 at 789-90. Rule 60(a) “provides a means for the court to avoid enforcing an honestly
2 mistaken judgment that is not in accord with the expectations and understanding of the court
3 and the parties.” But, federal courts, and state jurisdictions following the form of the Federal
4 Rules of Civil Procedure have held that Rule 60 motions do not extend the time for filing an
5 appeal. *Id.* The ARIZONA RULES OF CIVIL APPELLATE PROCEDURE modify this result
6 slightly, but only as to a motion for Rule 60 relief filed by a party during the time when a
7 motion for new trial may be filed. A Rule 60(a) motion for relief due to clerical error can be
8 filed at any time, but ARIZ. R. CIV. APP. P. 9 (e)(1)(E) only delays the time for taking an
9 appeal if a party files a Rule 60 motion within 15 days of the judgment. The 15 day time
10 limit conforms to the period during which a Rule 59 motion for new trial may be filed. Thus,
11 in the absence of an exception created by rule, a corrected judgment relates back to the
12 original judgment and does not delay the time for taking an appeal. In this tax appeal, a
13 motion for relief from a decision of the SBOE is not even authorized. And there is no
14 provision that authorizes a delay in the time to appeal.
15

16 Thus, the SBOE’s November 25 corrected Notice of Decision did not begin anew the
17 Assessor’s 60-day period to appeal. The Assessor’s appeal—initiated 96 days after the
18 SBOE gave notice on October 16 of its application of a Rule A calculation resulting in a
19 decrease in the LPV—is untimely under A.R.S. § 42-16203(D). Therefore, the Court should
20 dismiss Plaintiff’s Complaint with prejudice as untimely filed.
21

22 CONCLUSION

23 For all of the reasons stated above, Defendant Core Campus Tucson I LLC
24 respectfully requests that the Court grant its Motion to Dismiss and issue an order dismissing
25 Plaintiff’s Complaint with prejudice.
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RESPECTFULLY SUBMITTED March 14, 2016.

BOSSÉ ROLLMAN PC

By: /s/ Richard M. Rollman
Richard M. Rollman
Attorneys for Defendant Core Campus
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Original of the foregoing filed with the Court electronically
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