

**BEFORE THE BERNALILLO COUNTY
VALUATION PROTESTS BOARD**

In the Matter of the Protest of Robert Linda Fox

Parcel Codes: 1-014-060-265171-3-10-27, 615 Candelaria NW, Abq
 1-014-060-270165-4-07-23, 612 Candelaria NW, Abq
 1-014-060-233143-3-06-41, 3615 7th St NW, Abq
 1-014-060-235153-3-06-42, 700 Candelaria NW, Abq
 1-014-060-278136-4-07-21, 600 Candelaria NW, Abq
 1-014-060-268156-4-07-26, 614 Candelaria, NW, Abq.

DECISION AND ORDER

THIS MATTER came for hearing before the Bernalillo County Valuation Protests Board on September 18, 2014. All applicable statutes, regulations, argument, and all evidence admitted at the Hearing were fully considered by the Board, and the Board, being fully informed in the premises, finds as follows:

1. The Board has jurisdiction of the subject matter and parties.
2. The Bernalillo County Assessor was represented by Marcus Rael, Veronica Herrera and Fabian Montoya
3. Protestant property owners were represented Todd Clark and Gene Vance, appearing on behalf of the Apartment Association of New Mexico.
4. Proper and timely notice of the hearing was provided to all parties.
5. The six subject properties are all four-unit, multifamily residential properties; they are located at 3615 7th Street, NW, 700 Candelaria NW, 600 Candelaria, NW, 614 Candelaria NW, 612 Candelaria NW, and 615 Candelaria NW, in Albuquerque, New Mexico.

6. The Properties were valued by the assessor for the 2014 tax year at current and correct value, without regard to, and in an amount greater than, the valuation limitation provided in NMSA 1978 §7-36-21.2. The owner contends that the 3% limitation in §7-36-21.2 applies.
7. The framework of a valuation protest hearing is controlled by statutes (the Property Tax Code) and regulations issued by the Taxation and Revenue Department.
8. The sole dispute between the parties centers on the Assessor's action in raising the value of the subject property to "current and correct" market value (Section 7-36-16), which thus removed the property from the annual valuation increase protection of Section 7-38-21.2.
9. The properties in question were owned equally by Robert and Linda Fox, through several different trusts and LLCs for the purpose of estate planning.
10. In 2013, the properties were transferred from the various LLCs into the names of Robert and Linda Fox solely for the purpose of refinancing the mortgages pursuant to the requirements of the lender institutions that these four-unit residential properties be held in the name of the individual owners.
11. Upon completing the refinancing, the properties were then transferred back to the LLCs that previously held them.

12. The Assessor's position is that filing the deeds reflecting the transfers from the LLCs to the Foxes and back to the LLCs constituted a "change of ownership" for purposes of Section 7-36-21.2(E), requiring the valuation increase from the previously limited value to the current and correct market value.
13. The owners contend that the Legislature intended the "change of ownership" provision to reflect an actual change in the ownership, not merely a change in the form of ownership by the same parties in the same proportion.
14. The 2013 warranty deeds clearly and indisputably transferred fee ownership from the LLCs to the Foxes and back to the LLCs/Trusts.
15. There is no question that under the Limited Liability Company Act, an LLC exists as an incorporated entity separate from its owners.
16. The Limited Liability Company Act states, "A limited liability company formed pursuant to the Limited Liability Company Act is a separate legal entity." 53-19-10(A).
17. "A corporation and a shareholder— even a sole shareholder—are separate entities." *Marchman v. NCNB Texas National Bank*, 120 N.M 74 (1995).
18. "It is a basic tenet of corporate law that a corporation is a legal entity, separate from its shareholders, directors, and officers." *Stinson v. Berry*, 123 N.M. 482 (Ct. App. 1997).

19. Thus, the LLC, as a limited liability company, is separate and distinct from its owner the Foxes' Revocable Trust.
20. The question is whether the transfers from one of these separate and distinct legal entities to another separate and distinct legal entity is the kind of change of ownership the Legislature intended as the exemption in §7-36-21.2 when all entities are owned in the same proportion by the same two people, Robert and Linda Fox.
21. Section 7-36-21.2 defines "change of ownership" to mean "a transfer to a transferee by a transferor of all or any part of the transferor's legal or equitable ownership interest in residential property." A literal interpretation would trigger the loss of the valuation cap anytime an owner mortgages a property, grants an easement over a property, has a judgment or lien filed against a property. It is unreasonable to conclude that the Legislature intended those transfers of equitable interest to void the cap.
22. There is no New Mexico case law on this issue.
23. A number of other states have similar provisions limiting annual increases in valuation assessment, limits that are similarly voided by a change of ownership. In virtually all of those jurisdictions, either the tax agency has regulated or the courts have ruled that a mere change in the form of ownership without a change in the identity or proportional ownership interest of the actual ultimate owners of the property does not

constitute a change of ownership to eliminate the limit on valuation increase.

24. California BOE Rule 462.180(b) states that “The following transfers do not constitute a change of ownership of the real property: * * * (2) Transfers of real property between separate legal entities or by an individual to a legal entity (or vice versa) which results solely in a change in the method of holding title and in which the proportional ownership interest in each and every piece of real property transferred remains the same after transfer.”

25. In *Askins Props., LLC v. Oklahoma County Assessor*, 151 P.3d 303, 311 (Okla. 2007), the Oklahoma Supreme Court ruled that the transfer of property from a trust to an LLC did not lose the cap on valuation increase. “When only legal title is transferred but the equitable ownership is in the same two persons both before and after a deed is executed concerning the property we do not believe the intent of the constitutional provision had in mind the lifting of the five percent (5%) fair cash value cap.”

26. The transfers from limited liability companies owned by Fox’s revocable trusts to the Foxes themselves and back again to the limited liability companies owned by their revocable trust do not constitute a “change in ownership” for purposes of Section 7-36-21.2(E) because in each case the property had the same ultimate owners owning the same proportion of each property.

WHEREFORE, the Board orders that the assessor to grant the protest and limit the valuation increase on each of the properties to the statutorily cap of 3% for the 2014 tax year.

IT IS SO ORDERED this 16th day of October, 2014.



RICK JENKINS, Chairman,
Bernalillo County Valuation Protests Board

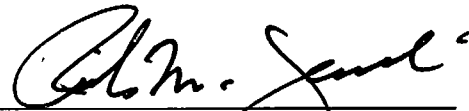
CERTIFICATE OF SERVICE

I, Rick Jenkins, Chairman of the Board, certify that I sent one each copy of this order to the Assessor, the Property Tax Division Director and, by certified mail to the following on this 16th day of October, 2014.

Richard L. Fox
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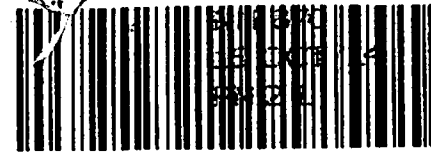
RICK JENKINS

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