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ARIZONA TAX RESEARCH ASSOCIATION

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PROP 117 Stabilizes Property Tax System

In 2012, ATRA advocated for the reforms passed by the voters under Prop 117. At that time, ATRA predicted that the limits prescribed by Prop 117 would simplify and stabilize Arizona's property tax system and would protect taxpayers from future dramatic tax increases. In the three years Prop 117 has been in effect, the statewide average annual increase in taxes has amounted to 3.8%— a significant improvement compared to the 9.1% average annual increase in taxes during the years leading up to the Recession.

In effect since tax year 2015, Prop 117 limits the annual growth in the Limited Property Value (LPV) of locally assessed property to 5%. More importantly, the LPV is now the only taxable value, and therefore, taxpayers are no longer exposed to dramatic increases in their tax bills just because their home values jump. As such, the growth in total property taxes have increased by just 10% over the last three years despite the 29% increase in market values over that same time.

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State Farm Deal Has a GPLET Safety Valve

Signed Agreement Guaranteed Tax Abatement

The controversy surrounding public universities using their property tax exempt status to host corporations tax-free came to the forefront with the Marina Heights/State Farm deal at the Arizona State University Tempe campus. ASU leadership has publicly insisted the only way they would structure the deal was if they were to own the land and the building, improving the net position of the University and providing long-term lease revenue. The signed development agreements paint a very different picture.

Knowing the legal foundation of the deal rests on unproven grounds, a fallback provision was written into the development agreement (DA) and lease documentation. Should the state determine this deal is not legal or within the rights of the Arizona Board of Regents, the property is immediately conveyed to the City of Tempe under

See STATE FARM DEAL, Page 3

INSIDE:

Pinal Proceeds with Transportation Sales Tax Increase

Despite Pending Lawsuit…

The ongoing dispute over the legality of Pinal County's new half-cent sales tax for transportation became more complicated on April 1. Despite the unresolved lawsuit filed in Maricopa County Superior Court by the Goldwater Institute regarding Prop 417, the County decided to proceed with levying the additional tax anyway.

The Goldwater lawsuit questions the legality of the conflicting language stated in the official county resolution for the call of the election and the information pamphlet mailed to the voters of Pinal County. The official resolution adopted by the county stated that the additional tax would only apply to tangible personal property sold at retail, which is in direct conflict with the information provided in the voter pamphlet that stated the tax would apply to all sales tax classes. Furthermore, the lawsuit also questions the legality of the county's resolution to exempt the additional tax on retail transactions exceeding $10,000 (See ATRA January 2018 newsletter).

In the January 24, 2018 Arizona Attorney General's (AG) answer to the complaint, the AG concurred with the Department of Revenue's opinion that the new tax may only be imposed on the retail sale of tangible personal property.

In late February, Goldwater asked the court to issue an order barring the county from collecting the additional tax, which was scheduled to go into effect on April 1. This motion was in response to a Pinal County request to the Department of Revenue that the tax be levied on all sales tax classifications, not just retail.

With no action from the court, the Department provided notice on March 12 that it would proceed in collecting the additional tax as directed by the county and included a disclaimer referencing the pending lawsuit.

Put simply, taxpayers are living in a procedural nightmare by adhering to a tax that the court may ultimately rule to be illegal, only to be forced to seek refund claims to refund the tax to customers.

For more information, visit the Department of Revenue's website at https://www.azdor.gov/ClassActionNotices.aspx.

-Jennifer Stielow

ATRA regularly updates statewide sales tax rates for all major classes in every city and county in Arizona. They can be found the ATRA website http://www.arizonatax.org/publications/sales_tax_rates

STATE FARM DEAL, *Continued from Page 1*

an agreement with the city that it becomes a Government Property Lease Excise Tax (GPLET), maintaining all the benefits of a pre-2010 GPLET lease (which they claim because the original development agreement was in 2007). City Mayor Mark Mitchell signed the 2013 DA. Former Mayor Hallman signed the original 2007 agreement.

> *(3.1.d)* ***City as Government Lessor.*** *If legal counsel for any Owner or Lessee provides a formal written legal opinion to such Owner or Lessee, and to the City and the University, that assurance cannot be given that the provisions of Sections (a) or (b) above, as applicable, are legally valid, enforceable and effective for the intended purposes, then the City will provide such Owner or Lessee with the benefits sought to be obtained under Sections (a) or (b), as applicable, by providing the statutorily-authorized eight (8) year tax abatement and excise tax rates currently available pursuant to the provisions of A.R.S. § 42-6201 through § 42-6210. (From Resolution 2013.13 ASU- Tempe Rio Salado Property)*

It was a smart provision: there is nothing in state law imagining the university has the legal justification to enter into these deals and decades of history suggesting the University needs statutory authority to use its land for uses other than traditional university purposes, such as the Athletic Facilities District and the Research Park.

Under a GPLET, the city would own both the land and the building for a period of time to shield the private lessor from property tax while paying a lesser amount of "excise tax" in lieu of the property tax with an eight year abatement of that excise tax at the beginning.

Though ASU officials have publicly maintained the Marina Heights deal is not an "abatement" of tax or a "real estate deal," their documentation suggests otherwise. The opening section of the DA assures a property tax abatement to the developer and even provides a mild justification for it. The DA justifies property tax abatement (called "benefits") because it will be subject to paying the Rio Salado Community Facilities District (CFD) tax, a special district designed to pay for costs associated with Tempe Town Lake much like an HOA. Curiously, Tempe Town Lake is sold as an economic driver, not a hindrance that necessitates a tax incentive due to its burdensome costs. Either way, helping pay for the lake is a curious justification for shielding the property from paying its normal property taxes.

> 3. TAX ABATEMENT; SCHOOL DISTRICT PAYMENTS; GOVERNMENT PROPERTY IN-LIEU TAX PAYMENTS; LESSEE IN-LIEU TAX PAYMENTS.
>
> 3.1 Tax Abatement for Owners. The University believes that, because of the additional costs associated with the inclusion of the Property within the CFD, the obligations of Owners to pay District Assessments, and the increased costs of the development of off-site and on-site infrastructure improvements resulting from the physical constraints of the Property, the development of the Property for office, hotel, retail and other commercial uses is economically feasible only if the Owners of Parcels receive the tax abatement described in this **Section 3.1**. Accordingly, the University has agreed to provide the tax abatement described in Subparagraph (a) below, subject to Subparagraph (b) below, as to any Parcel developed by an Owner for office, hotel, retail or other commercial improvements in accordance with the following terms:

This provision admits this "benefit" was an option, not a *fait accompli*. The developer could own the improvements and pay a ground lease to ABOR to use the land, something which occurs with regularity on state owned land. The private lessee then pays normal property taxes via the Improvement on a Possessory Right (IPR) tax. The University makes money on the ground lease. It's a win-win-win. But it's not near as sweet of a deal as harvesting money that would have gone to the K-12 schools, the county and community college.

ASU officials have repeatedly insisted the Marina Heights deal is not a "lease-back" deal akin to a GPLET insofar as they owned the parcel before the deal and intend to own it forever: it's simply a long-term lease. In the House Ways and Means Committee in January, the attorney representing ASU clearly stated "This [Marina Heights] is not a lease back… this is not a situation where anything is being transferred back and forth." They left out any mention of the signed DA guaranteeing a tax incentive. The deal was simply described as a ground lease where the University owns all buildings constructed on it. "The land was owned by the state. The buildings are now owned by the state, they will never be transferred…. That's different than a GPLET lease. "

(a) **Re-conveyance and Lease of Owned Parcels**. Within one (1) year after issuance of the first final certificate of occupancy with respect to any office, hotel, retail or other commercial improvements constructed on a Parcel, the Owner may transfer ownership of the Parcel and the improvements thereon to the University, and the University shall lease such improvements back to the Owner for a term of not less than fifteen (15) years, commencing with the date such Parcel and improvements are conveyed by the Owner to the University. Each such lease shall be a Land and Improvements Lease, as defined above.

Left out of the testimony was the fact that ABOR only owned the 15 acre parcel on the east side of the property when the agreement was finalized. The University had already sold the adjacent parcel to the west and under the terms agreed to execute a lease-back on those 11 acres so the entire property would avoid property taxes.

RECITALS:

A. RPHFL owns one (1) parcel of real property, which consists of 11 contiguous acres of land area, which real property is legally described in **Exhibit "A-1"** attached hereto and incorporated herein by this reference (the **"11-Acre Parcel"**). The University owns one (1) parcel of real property located in the City of Tempe, Arizona, which consists of approximately 15 contiguous acres of land area, which real property is legally described in **Exhibit "A-2"** attached hereto and incorporated herein by this reference (the **"15-Acre Parcel"**). The 11-Acre Parcel and 15-Acre Parcel are hereinafter sometimes collectively referred to in this Agreement as the "Property."

Despite claims that Marina Heights only made sense to ASU if they could own all the assets, the signed DA in this case immediately gives up 15 acres of university land if the deal is found to be in violation of state law. It becomes a city-owned GPLET and enjoys whatever remains of an eight year abatement from the original certificate of occupancy. The GPLET deal lasts in total for 15 years, at which point the property is conveyed back to the lessee and it becomes private property (per Section 3.2 of DA).

If defending the university's land asset was of the highest priority, the deal would be structured to fall back to a traditional lease where the lessee simply pays IPR (property) taxes like any other private lessee on state land. That would preclude the harvested property tax monies going to the University but at least keeps the land and the revenue derived from a ground lease. The underlying tax jurisdictions would begin to see the revenue they would normally receive.

The GPLET fall back provision proves Marina Heights/State Farm was an economic development deal intended to provide a major tax break which benefitted both the developer and the University. The idea that there is a material difference between a GPLET and a public university leveraging its tax-exempt land to create long-term leases with a private entity unravels on page six of their signed development agreement. The owner of the Marina Heights lease-hold interest has all the rights and privileges of a typical building owner afforded to an owner because of the 99 year lease.

Lawmakers regrettably balked at an effort to address this issue in statute during the 2018 legislative session in HB2280 sponsored by Representative Vince Leach. Arizona State University strongly opposed the prospective law, limiting their ability to evade the IPR, arguing this has become a necessary funding stream in the light of state cuts to public universities reinforcing that this major public finance issue is not going away.

-Sean McCarthy

PROP 117 UPDATE, *Continued from Page 1*

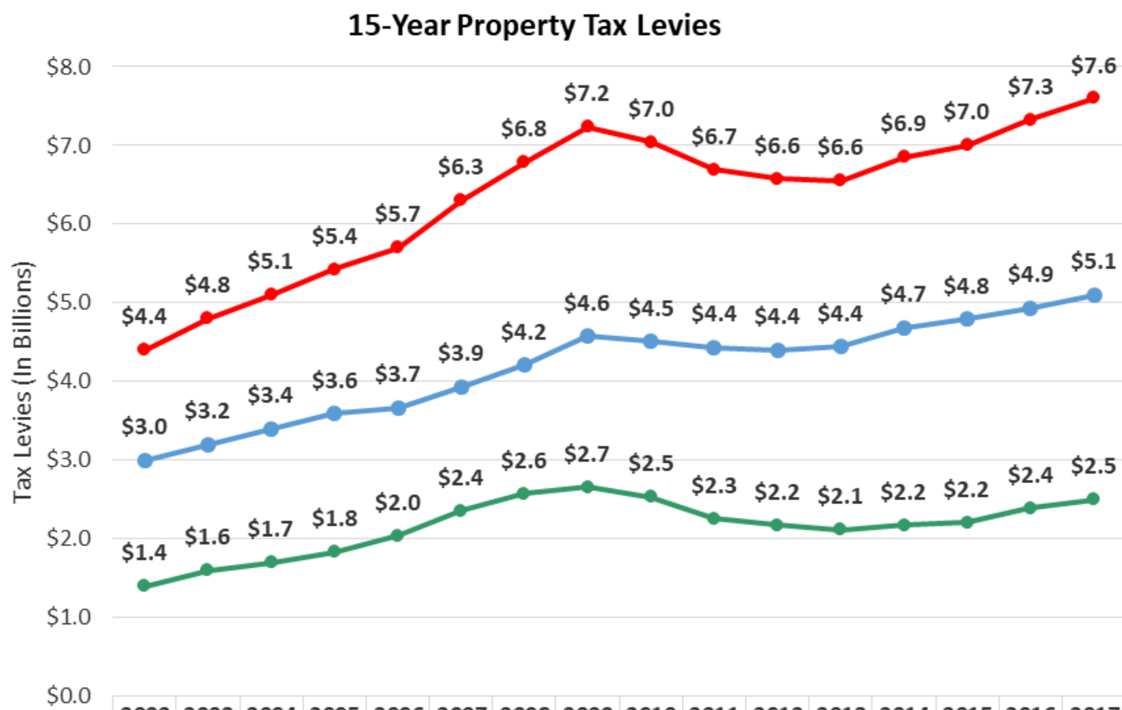
Between tax years 2002 and 2009, market values grew at an annual average rate of 19.3%, and as a result, taxes grew at an annual clip of 9.1% on average. It shouldn't follow that just because market values increase that taxes should increase at or near the same rate, but that's exactly what happened. What many tax-governing bodies did during that time was kept tax rates the same despite the dramatic growth in values, knowing full well their inaction to reduce tax rates would cause significant tax increases. The unlimited taxable value growth provided elected officials every opportunity to play shell games with taxpayers. With Prop 117 now in place, the only way taxing entities can increase taxes as dramatically as they've done in the past is to actively and transparently adjust tax rates to cause such a result.

As its largest county, Maricopa continues to drive the real estate market for the entire state. Based on preliminary valuation reports produced from Maricopa County Assessor's office, the market is trending upward. In fact, the growth in market values for vacant land, condominiums, and apartments each experienced double-digit growth over the last year, ranging from 10.47% to 13.28%. Residential and commercial properties also experienced healthy growth, with 7.16% and 8.18% increases, respectively. The good news for taxpayers is that Arizona's strong real estate market won't automatically translate into higher taxes, unless of course their local taxing governing boards make a deliberate and public decision to do so. [see charts for levy and value history on next page]

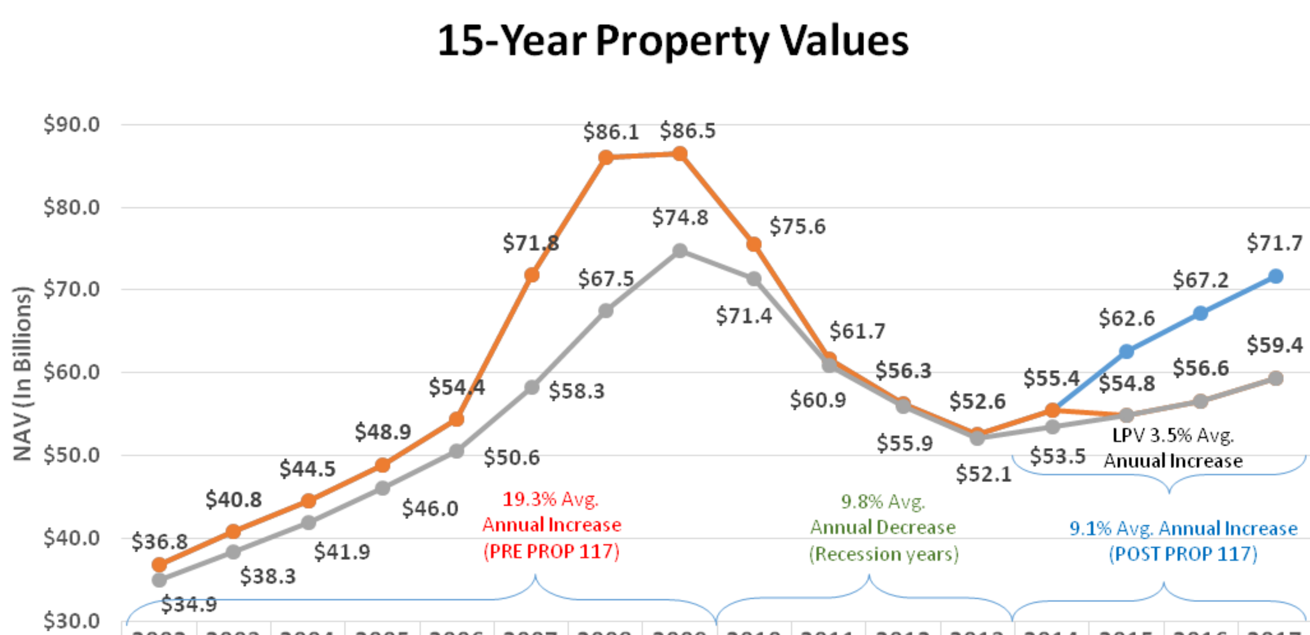
-Jennifer Stielow

MARICOPA COUNTY PRELIMINARY FULL CASH VALUE ANALYSIS
Tax Year 2018 & 2019 Comparison

PROPERTY TYPE	MEDIAN VALUES				FCV % Change	LPV % Change
	FCV 2018	FCV 2019	LPV 2018	LPV 2019		
VACANT LAND	32,100	35,500	16,623	17,310	10.59%	4.13%
SINGLE FAMILY RESIDENCE	199,700	214,000	151,889	159,483	7.16%	5.00%
CONDOMINIUM	121,300	134,000	82,230	86,342	10.47%	5.00%
APARTMENTS	188,300	213,300	99,003	103,953	13.28%	5.00%
COMMERCIAL	504,800	546,100	391,097	409,018	8.18%	4.58%
MANUFACTURED HOUSING	67,100	69,900	56,643	59,220	4.17%	4.55%



	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Primary	$3.0	$3.2	$3.4	$3.6	$3.7	$3.9	$4.2	$4.6	$4.5	$4.4	$4.4	$4.4	$4.7	$4.8	$4.9	$5.1
Secondary	$1.4	$1.6	$1.7	$1.8	$2.0	$2.4	$2.6	$2.7	$2.5	$2.3	$2.2	$2.1	$2.2	$2.2	$2.4	$2.5
Total	$4.4	$4.8	$5.1	$5.4	$5.7	$6.3	$6.8	$7.2	$7.0	$6.7	$6.6	$6.6	$6.9	$7.0	$7.3	$7.6

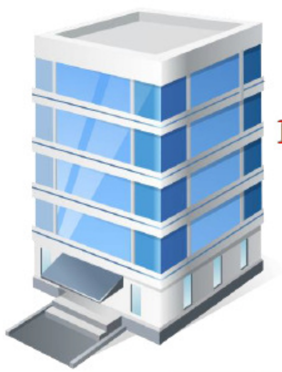


	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
FCV	$36.8	$40.8	$44.5	$48.9	$54.4	$71.8	$86.1	$86.5	$75.6	$61.7	$56.3	$52.6	$55.4	$62.6	$67.2	$71.7
NAV	$36.8	$40.8	$44.5	$48.9	$54.4	$71.8	$86.1	$86.5	$75.6	$61.7	$56.3	$52.6	$55.4	$54.8	$56.6	$59.4
LPV	$34.9	$38.3	$41.9	$46.0	$50.6	$58.3	$67.5	$74.8	$71.4	$60.9	$55.9	$52.1	$53.5	$54.8	$56.6	$59.4

Legislature Unanimously Passes HB2126 GPLET Reform Bill

GPLET Reform History:

Pre 2010



Deal length:
Unlimited
Rate Structure:
Decreasing 20% every 10 years
GPLET Tax Paid:
Far below property tax
Zero after 50 years

2010 Reform

Deal length:
25 years
Rate Structure:
20% deflator removed
Inflation adjusted
GPLET Tax Paid:
Rates doubled; near property tax rates
8 year abatement retained

Central Business District
(Where abatement may be offered):
Must be contiguous & geographically compact;
No larger than 5% of city size or 640 acres

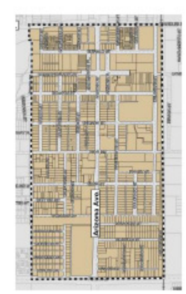
2017 Reform

Deal length:
Up to 8 year abatement only
OR up to 25 years paying GPLET then property returns to tax rolls
Efficacy & Oversight:
Gov Lessor responsible for calculating GPLET tax; Database of deals reported on city & DOR websites

2018 Reform

Renewal:
Slum & Blight designations updated every 10 years

Central Business District Size:
NOW 2.5% of city size or 960 acres



Shape:
Gerrymandering limited by defining "geographically compact" in law

*GPLET: building + land is held by Gov so property tax is not owed