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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N Street, MIC: 64, Sacramento, California
(P. O. Box 942879, Sacramento, CA 94279-0001)

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Controller, Sacramento

May 13, 1994

BURTON W. OLIVER
Executive Director

Dear Mr. . . .

This is in response to your letter of August 15, 1992, regarding the transfer of the base year value from a property taken by eminent domain to two replacement properties. I apologize for the delay in responding; other matters requiring our attention have resulted in an unfortunate backlog of correspondence.

The facts provided by your letter and from a conversation with the City of Santa Ana Redevelopment Agency are summarized as follows:

In 1986 the City of Santa Ana Redevelopment Agency began condemnation proceedings of your property. The City took physical possession of the property on January 5, 1987. At that time, the condemned property (a 22-acre parcel) was being used as a drive-in theater. The condemnation was contested in court and settled in 1990. It was your understanding that research and development facilities were a permitted use for this property. As such, in 1991 your client purchased two industrial buildings as replacement properties.

You asked for our opinion on whether the base year value of the condemned property can be transferred to the two replacement properties as provided by Revenue and Taxation Code Section 68. (All statutory references are to the Revenue and Taxation Code unless otherwise indicated.) For the reasons stated below, it is our opinion that the replacement properties do not qualify as comparable properties as provided by Section 68.

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Section 68 implements subdivision (d) of Section 2, Article XIII A of the California Constitution and provides an exclusion from change in ownership of real property acquired as a replacement for property taken by government action, e.g., eminent domain. This section reads in part:

"For purposes of Section 2 of Article XIII A of the Constitution, the term 'change in ownership' shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from property in this state by eminent domain proceedings, by acquisition by a public entity, or by governmental action which has resulted in a judgment of inverse condemnation." (Emphasis added.)

This section is interpreted by Property Tax Rule 462.5 (Title 18, California Code of Regulations, Section 462.5) and reads in pertinent part:

"The term 'change in ownership' shall not include the acquisition of comparable real property as replacement for property taken if the person acquiring the replacement real property has been displaced from property in this state by:

"(1) Eminent domain proceedings instituted by any entity authorized by statute to exercise the power of eminent domain, or

"(2) Acquisition by a public entity, or

"(3) Governmental action which has resulted in a judgment of inverse condemnation.

In addition, Rule 462.5 subdivision (c) states, in pertinent part, that replacement property "shall be deemed comparable to the replaced property if it is similar in size, utility, and function." Property is similar in function if the replacement property is subject to "similar governmental restrictions, such as zoning." Further, property is similar in size and utility "only to the extent that the replacement property is, or is intended to be, used in the same manner as the property taken" Example categories of use given include vacant, commercial, single-family residential and duplex, multi-family residential other than duplexes. Rule 462.5(c)(2)(A) further specifies that:

"A replacement property or any portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced property, shall to the extent of the dissimilar use be considered not similar in utility."

Your letter states that research and development was an approved use for the condemned property prior to the actual condemnation. According to the

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Redevelopment Agency, the property is zoned for commercial use. A research and development facility could not have been built unless a zoning variance was granted. The intent of the redevelopment agency was to develop a retail center. Even though the land is now vacant, the intent is still to develop a retail center.

Based on this information, we are of the opinion that the industrial properties your client purchased are not "comparable" to the commercial usage of the condemned property within the meaning of Rule 462.5 and Section 68. They are not comparable in function because the replacement properties are zoned as industrial, not commercial. They are not comparable in size and utility because the replacement properties are not, or intended to be used in the same manner as the replaced property, e.g., commercial use.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate county assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

A copy of Property Tax Rule 462.5 is enclosed for your information. If you have any further questions, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:sk
Enclosures

cc: Honorable Bradley L. Jacobs
Orange County Assessor

bc: Mr. Richard Ochsner

(Prepared by: Glenna Rohrke Schultz)



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Controller, Sacramento

BURTON W. OLIVER
Executive Director

May 17, 1994

Attention:

Dear Mr.

This is in response to your letter of November 10, 1992, and a telephone conversation Mr. Arnold Fong, a member of my staff, had with your mother, Ms. , on May 27, 1993, regarding the transfer of the base year value from a property taken by eminent domain to a replacement property. I apologize for the delay in responding; other matters requiring our attention have resulted in an unfortunate backlog of correspondence.

The facts provided by your letter are summarized as follows: Your mother's property, a commercially-zoned vacant lot, was taken by eminent domain. Your mother purchased a vacant, residentially-zoned lot as a replacement property. You asked for our opinion on whether the base-year value of the taken property can be transferred to the replacement property as provided by Property Tax Rule 462.5. For the reasons stated below, it is our opinion that the replacement property does not qualify for the base year value transfer.

Proposition 3, approved by the voters of California on June 8, 1982, added subdivision (d) to Section 2 of Article XIII A of the California Constitution. This subdivision reads as follows:

"For purposes of this section, the term, 'change in ownership' shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or

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governmental action which has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocations displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property which occur after the provisions of this subdivision take effect."
(Emphasis added.)

Revenue and Taxation Code Section 68 (all statutory references are to the Revenue and Taxation Code unless otherwise indicated) implements this constitutional provision and reads in part:

"For purposes of Section 2 of Article XIII A of the Constitution, the term 'change in ownership' shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from property in this state by eminent domain proceedings, by acquisition by a public entity, or by governmental action which has resulted in a judgment of inverse condemnation." (Emphasis added.)

These constitutional and statutory provisions are interpreted by Property Tax Rule 462.5 (Title 18, California Code of Regulations, Section 462.5) and reads in pertinent part:

"The term 'change in ownership' shall not include the acquisition of comparable real property as replacement for property taken if the person acquiring the replacement real property has been displaced from property in this state by:

"(1) Eminent domain proceedings instituted by any entity authorized by statute to exercise the power of eminent domain, or

"(2) Acquisition by a public entity, or

"(3) Governmental action which has resulted in a judgment of inverse condemnation.

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In addition, Rule 462.5 subdivision (c) states; in pertinent part, that replacement property "shall be deemed comparable to the replaced property if it is similar in size, utility, and function" (emphasis added). To qualify as a replacement property, a property must meet all these requirements, not just one or two.

Property is similar in function if the replacement property is subject to "similar governmental restrictions, such as zoning." Further, property is similar in size and utility "only to the extent that the replacement property is, or is intended to be, used in the same manner as the property taken" Example categories of use given include vacant, commercial, single-family residential and duplex, multi-family residential other than duplexes. This subdivision goes on to state that "[t]o the extent that replacement property, or any portion thereof, is not similar in function, size and utility, the property, or portion thereof, shall be considered to have undergone a change in ownership."

As stated in your letter, your mother's replacement property is zoned residential while the taken property is zoned commercial. Based on this information, we are of the opinion that the vacant residential property your mother purchased is not "comparable" to the taken property within the meaning of Rule 462.5 and Section 68. The replacement property is not comparable because it is not similar in function to the taken property. Because the replacement property is zoned residential, it is not subject to similar governmental restrictions as the taken property.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. A copy of Property Tax Rule 462.5 is enclosed for your information. If you have any further questions, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:kmc

Enclosure

cc: Honorable Arnold R. Fontes
San Benito County Assessor