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August 10, 2000

Honorable George Misner
Kings County Assessor/Clerk/Recorder
1400 West Lacey Blvd.
Hanford, CA 93230

Subject: *Valuation of California Land Conservation Act Properties*

Dear Mr. Misner:

This is in reply to questions that you addressed to Assistant Chief Counsel Larry Augusta and other members of the Board legal staff concerning valuation of agricultural land which is subject to the enforceable restrictions of the California Land Conservation Act (CLCA) and a homesite on that land not so restricted. As you informed me over the telephone on May 31, 2000, the subject property is dairy farm with a 10,000 square foot home valued at about \$1.2 million. The taxpayer filed an application appealing the value of the home based on a decline in value. Based on the foregoing facts you have posed the following questions:

1. Are homesites on CLCA lands valued under Revenue and Taxation Code section 428 treated as "separate appraisal units" for purposes of filing Proposition 8 appeals?

As set forth in the AH 521 (Part II) pp 48-50, such homesites should be treated as separate appraisal units for valuation purposes because, unlike the lands under contracts, section 428 provides that the restricted value provisions are not applicable to residences and residential sites of a reasonable size. In our view, if the homesite is valued as a separate appraisal unit the property owner should be able to appeal its value just as he can appeal the value of any other appraisal unit for purposes of a decline in value.

- a) Is there a contradiction between page 43 in the Assessment Appeals Manual and pages 48-50 in AH 521 (Part II)?

No, the two cited references address two different issues as follows. Page 43 of Assessment Appeals Manual concerns assessment appeals of value allocations within a correct total assessment. The manual advises that only base year value allocations may be appealed. Pages 48-50 of AH 521 (Part II) discuss valuation of residences and residential sites located on lands under CLCA contracts, which sites are not subject to the valuation restrictions applied to the lands. The discussion advises that such residences and their sites are to be valued as appraisal units separate from the lands under contract. Thus, the residence and residential site are valued as a separate appraisal unit and do not involve a value allocation. Therefore, the Assessment Appeals Manual reference to the appeal of a value allocation is inapplicable.

- b) How is R& T Code section 51(d) [definition of the “appraisal unit”] to be applied consistently with Section 428?

Section 51 interprets Article XIII A, section 2, subdivision (b) by prescribing the value standard by which locally assessed real property shall be assessed and taxed. Subdivision (d) of section 51 defines “real property”, for purposes of that section, as “that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately.” With respect to section 428, its purpose is to exclude “residences and a reasonable amount of land used for the site of such residences” from the method of real property valuation prescribed by the CLCA. Thus, the two sections can be applied consistently because section 428 provides, by implication, that the value standard prescribed by Section 51 is applicable to residences and residential sites, the appraisal unit that persons in the marketplace commonly buy and sell as a unit.

- c) Didn't Section 428 precede Section 51 (d) and wasn't it intended merely to prevent the “restricted value” from applying to non-agricultural uses on CLCA land – not to allow such uses to be treated as “separate appraisal units” for appeal purposes? Doesn't the legislative history support such conclusion?

Section 428 was enacted by AB 1177 (Stats. 1969, p. 1705), prior to section 51, subdivision (d) which was enacted in 1981 (Stats. 1981, Ch. 377). As stated above, section 51 interprets Article XIII A, section 2, subdivision (b) by prescribing the value standard by which locally assessed real property shall be assessed and taxed. Again, subdivision (d) of section 51 defines “real property” for purposes of that section as “that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately.”

According to the Legislative Analyst's analysis of AB 1177, the purpose of section 428 was to exclude “residences and a reasonable amount of land used for the site of such residences” from the method of real property valuation prescribed by the CLCA. Thus, as you note, the legislative history indicates that the statute was not intended to affect treatment of the property as a “separate appraisal unit” for assessment appeal purposes.

As the preceding discussion indicates, however, neither section precludes the valuation of a residence and its residential site as a separate appraisal unit or the appeal of an assessment on a residence and its residential site valued as a separate appraisal unit. Therefore, for purposes of valuation in accordance with section 428, the Board has advised that such properties must be valued as separate appraisal units because the restricted valuation standard is not applicable to residences and residential sites. Also, as stated above, if the homesite is valued as a separate appraisal unit the property owner should be able to appeal a decline in its value just as he can appeal the value of any other appraisal unit.

2. If homesites on CLCA lands are subject to Prop 8 appeals, what is the Board's advice on valuing them? Since value declines require evidence of comparable properties – what is comparable? These homesites cannot be separately sold or traded in the market place.

The property tax appraisal rules demonstrate that the lack of comparable sales due to the absence of an actual market for the homesites does not preclude their valuation for property tax assessment purposes. Rule 4 provides that “[w]hen reliable market data are available with respect to a given property, the preferred method of valuation is by reference to sales prices.” Rule 8 provides for the income valuation approach. When neither reliable sales data nor reliable income data are available, Rule 6 provides that the reproduction or replacement cost approach is the preferred valuation approach.

In *De Luz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546, 563, the Supreme Court reaffirmed the foregoing valuation principles wherein the court held that

It is well settled that "the absence of an 'actual market' for a particular type of property does not mean that it has no value or that it may escape from the constitutional mandate that 'all property ... shall be taxed in proportion to its value' (Art. XIII, §1) but only that the assessor must then use such pertinent factors as replacement costs and income analyses for determining 'valuation.' " (Kaiser Co. v. Reid, 30 Cal.2d 610, 623 [184 P.2d 879].)

Therefore, we disagree with your assumption that value declines require evidence of comparable properties. As you know, for purposes of a Proposition 8 appeal, it must be demonstrated that the current fair market value of the subject property is less than the adjusted base year value. As stated above, although the comparable sales method of valuation is the preferred method of determining fair market value, when neither comparable sales nor reliable income data are available, then the replacement or reproduction cost approach should be used. Under those circumstances, the fair market value based on replacement or reproduction cost should be used to determine whether there has been a decline in value.

- a) If the assessor uses the cost approach as the taxpayer advocates, is this reasonable, given the fact that the value is far less than fair market value due to depreciation and the absence of market comparables?

As explained above, if the circumstances require use of the cost approach, then that approach will determine current fair market value.

- b) Does it make a difference whether the value of the total property is not being challenged? Isn't the taxpayer, in effect, merely contesting the allocation of the value - which the Board has stated is NOT a proper basis for an appeal?

The property that is the subject of the appeal is the residence and its residential site and not the entire dairy farm. As stated above, the residence and its residential site were valued as a separate appraisal unit; the farm and the residence and residential site were not valued as a single unit with separate values allocated to each. Thus, the taxpayer is not contesting an allocation of value to the residence and its residential site but rather, the value of the residence and its residential site, a separate appraisal unit. See answer to question 1.(a), above.

Honorable George Misner

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The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

LA:tr

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cc: Mr. Dick Johnson, MIC:63
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