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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
# ARIZONA COURT OF APPEALS
**DIVISION ONE**

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ARIZONA CATTLE GROWERS ASSOCIATION, et al., *Plaintiffs/Appellants*,

*v.*

YAVAPAI COUNTY, a political subdivision of the State of Arizona, et al., *Defendants/Appellees*.

No. 1 CA-TX 15-0003
FILED 3-29-16

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Appeal from the Superior Court in Maricopa County
No. ST2011-000405; TX2011-000619
(Consolidated)
The Honorable Dean M. Fink, Judge

**AFFIRMED**

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COUNSEL

Mooney, Wright & Moore, PLLC, Mesa
By Paul J. Mooney
*Counsel for Plaintiffs/Appellants*

Helm, Livesay & Worthington, Ltd., Tempe
By Roberta S. Livesay
*Counsel for Defendants/Appellees Yavapai County*

Arizona Attorney General's Office, Phoenix
By Jerry A. Fries
*Counsel for Defendant/Appellee ADOR*

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**MEMORANDUM DECISION**

Presiding Judge Diane M. Johnsen delivered the decision of the Court, in which Judge Patricia A. Orozco and Judge Randall M. Howe joined.

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**J O H N S E N**, Judge:

**¶1** The Arizona Cattle Growers Association and owners of several cattle ranches in Yavapai County (collectively, "Cattlemen") sued Yavapai County; its County Assessor, Pamela Pearsall (the "Assessor"); and the Arizona Department of Revenue (the "Department"), alleging the Assessor failed to properly value grazing land for tax years 2012 and 2013. The Cattlemen appeal the tax court's orders revaluing the grazing land and denying their request for mandamus relief. For the reasons that follow, we affirm.

## FACTS AND PROCEDURAL BACKGROUND

**¶2** For the 2012 tax year, the Assessor increased the full cash value of all grazing land in Yavapai County to $25 per acre from $7.56 per acre. The Cattlemen challenged the valuation by filing a complaint in the tax court; they later amended their complaint to include the 2013 tax year. The Cattlemen alleged the Assessor overvalued their grazing land and sought refunds of excess taxes they alleged they paid as a result. The Cattlemen also sought a declaratory judgment "relating to the methods used by the Assessor to determine the full cash values" of the property and asked the court to grant a writ of mandamus compelling the Assessor to follow the statutory valuation methods. In due course, the tax court entered summary judgment against the Cattlemen on their claims for declaratory judgment and mandamus. After a four-day trial on valuation, the court found the Assessor had abused her discretion in valuing grazing land. Based on evidence offered by the Cattlemen, the court valued the land at

$9.19 per acre for the 2012 tax year and at $10.10 per acre for the 2013 tax year.

**¶3** The Cattlemen timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") §§ 12-170 (2016), -120.21(A)(1) (2016) and -2101(A)(1) (2016).[1]

## DISCUSSION

### A. Tax Court's Valuation of the Grazing Land.

**¶4** Pursuant to A.R.S. § 42-13101(A) (2016), county assessors must value agricultural property for tax purposes "using only the income approach to value without any allowance for urban or market influences." Under that approach, a specified capitalization rate is applied to the "average annual net cash rental of the property." A.R.S. § 42-13101(B). The statute further provides:

> For purposes of this subsection the average annual net cash rental of the property:
>
> 1. Is the average of the annual net cash rental, excluding real estate and sales taxes, determined through an analysis of typical arm's length rental agreements collected for a five year period before the year for which the valuation is being determined for comparable agricultural land used for agricultural purposes and located in the vicinity, if practicable, of the property being valued.

A.R.S. § 42-13101(B)(1). On appeal, the parties agree that the Department's Agricultural Property Manual ("Manual") provides authoritative agency guidance about how assessors should value grazing land.

**¶5** Evidence at trial showed the Assessor based her valuation of the Cattlemen's property on a study by the Department of grazing land leases in Yavapai County (the "Land Rent Study"). The Land Rent Study calculated a weighted average annual gross rent of $2.10 per acre for natural grazing leases during 2005-2009. To derive an annual net cash rent for purposes of § 42-13101(B), the Assessor reduced the weighted average gross rent that the Department calculated by ten percent to account for property taxes and other expenses. Applying the statutory capitalization rate, the

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[1] Absent material revision after the relevant date, we cite a statute's current version.

Assessor then determined the full cash value of Yavapai County grazing land to be $25 per acre.

**¶6** The tax court concluded the Assessor abused her discretion in valuing the property by "simply adopting and adjusting certain figures" from the Land Rent Study. That conclusion is not challenged on appeal. The tax court then turned to determining a proper valuation. In the absence of evidence of value offered by the Assessor or the Department, the court primarily based its valuation on data in a report by the Cattlemen's expert witness, Tom Rolston, a real estate appraiser and broker.

**¶7** Rolston's report separately summarized the terms of (1) a dozen private grazing leases covering a total of 534,803 acres and (2) state and federal grazing leases covering a total of 4,352,638 acres, all entered into during the five years preceding the 2012 tax year for land qualifying as agricultural property in Yavapai County. *See* A.R.S. § 42-12151(3) (2016) (Agricultural property includes "[g]razing land with a minimum carrying capacity of forty animal units and containing an economically feasible number of animal units."). For the private leases, after subtracting property taxes from the total gross rent, Rolston calculated an average net cash rent of $0.73 per acre. Government grazing leases are not subject to taxation, so for those leases Rolston used the gross rent amounts to derive an average net cash rent of $0.31 per acre for state leases and $0.15 per acre for federal leases.

**¶8** In valuing the property, the tax court did not spell out its reasoning in great detail. The court did, however, express the view that the Department's Manual, on which both sides relied, "clearly does not advocate for [the] wholesale inclusion" of public grazing leases when calculating average net cash rental. The court stated that it based its average net cash rental of $0.70 per acre on Rolston's testimony, his report and "other evidence received at trial."[2]

**¶9** The Cattlemen argue the tax court erroneously excluded government leases in calculating the average annual net cash rental of Yavapai County grazing land. We review the tax court's construction of

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[2] Rolston included four pasturage agreements in his report. At oral argument, counsel for Yavapai County and the Assessor argued that evidence at trial showed that pasturage agreements differed from private leases. Because pasturage agreements convey different rights than private leases, the court could have properly excluded them from its calculation of the average annual net cash rental under § 42-13101.

statutes and findings combining law and facts *de novo* and we review its findings of fact for clear error. *Ariz. Dep't of Revenue v. Ormond Builders, Inc.*, 216 Ariz. 379, 383, ¶ 15 (App. 2007).

**¶10** "The primary rule of statutory construction is to find and give effect to legislative intent." *Mail Boxes, Etc. v. Indus. Comm'n of Ariz.*, 181 Ariz. 119, 121 (1995). To ascertain intent, we look to the language of the statute and give words their ordinary meaning. *Davis v. Ariz. Dep't of Revenue*, 197 Ariz. 527, 529, ¶ 9 (App. 2000). In construing an ambiguous statute, we examine the statute as a whole and "attempt to give it a fair and sensible meaning while avoiding a construction that produces an absurd result." *Ariz. Dep't of Revenue v. Raby*, 204 Ariz. 509, 511, ¶ 15 (App. 2003). Additionally, we give great weight to an agency's interpretation of a statute that it implements. *Walgreen Ariz. Drug Co. v. Ariz. Dep't of Revenue*, 209 Ariz. 71, 73, ¶ 12 (App. 2004).

**¶11** Although the tax court did not state it was disregarding the public grazing leases when it calculated the value of the Cattlemen's property, the court plainly did not accord those leases the weight it accorded private leases summarized in Rolston's report. We conclude the court did not err because it properly followed the guidance of the Department's Manual in its treatment of the public leases.

**¶12** In calculating agricultural property's "annual net cash rental" for purposes of § 42-13101, the Manual explains that assessors may exclude leases that contain "nontypical rents . . . and those leases that are not arm's-length." Arizona Department of Revenue, Property Tax Division, Agricultural Property Manual 4.4 (Aug. 2, 2012), https://www.azdor.gov/Portals/0/Brochure/AZ-Agricultural-Property-Manual.pdf. The Manual also cautions that an assessor should be wary of using leases of public grazing land "because public land grazing fees may not be reflective of what are true 'arm's-length' contractual agreements and rental amounts for the leasing of private land." Manual at 4.5. It explains:

> [A] common ranching practice is to obtain a lease on public land at a rate based on various federal government formulas which result in a reduced lease rate. That lease might be excluded from analysis. However, the lessee may then sublease all or part of that land at a market rate for private leased land. In so doing, the sublease becomes a market lease, and a representative example for the district.

> It is very important when analyzing the reported land lease agreements of comparable ranching operations to determine if the leases or subleases utilized include any public land grazing leases, which agency the land is leased from, and if the terms and conditions are significantly different from any local area private land leases. The County Assessor should determine whether or not the terms of the public land grazing leases in effect in the area (or any subleases) are applicable to all ranching operations equally.
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> If public land lease terms can be considered essentially equal in the area, no value adjustments for public land leases may be necessary. However, if the lease terms for State Trust land versus BLM land versus U.S. Forest Service land in the same area, zone or district differ significantly, and if the local ranching operations being analyzed use the public land of different agencies in conjunction with their privately owned or leased holdings, adjustments for those value differences should be made, as appropriate. If any such adjustments appear necessary, but cannot be effectively determined, the County Assessor should exclude such public land leases from the comparable lease analysis for the valuation of the privately owned rangeland.

Manual at 4.5-4.6.

**¶13** Contrary to the Cattlemen's contention, neither the statute nor the Manual requires inclusion of all public leases in calculating average net rent. The Manual states that government leases may be considered but only if the lease terms are comparable to private land leases in the area. Additionally, an assessor may make adjustments for public leases if their terms are not equal to private lease terms. As the tax court concluded, nothing in the statute or in the Manual requires "wholesale inclusion" of government leases.

**¶14** The Cattlemen also argue the tax court erred when it rejected Rolston's expert opinion. But Rolston offered no opinion of the proper calculation of the average annual net cash rental of the property at issue. His expert report merely presented the data described above, without opining on the proper "annual net cash rental" of the Cattlemen's property for purposes of § 42-13101.

**¶15** At trial, Rolston testified that each of the 12 private leases he reviewed encompassed some property subleased from the state or federal government. The data in his report show that the sublease rents ranged from $0.21 per acre to $3.11 per acre, with an average far above the average $0.31 and $0.15 per-acre rents charged under the public leases for the same property. According to the Manual, when agricultural property subject to public lease is subleased, the sublease rent becomes a "market lease, and a representative example for the district." Manual at 4.5. Accordingly, it was within the tax court's discretion to rely on the value of the subleases of government land in reaching its valuation.

**¶16** The Cattlemen, however, argue the public lease rents themselves constitute "market" evidence because the state and federal governments consider market factors when setting the lease rates. As the Manual explains, however, the relevant inquiry in a situation like this is the extent to which the terms of a government lease are comparable to the terms of private leases for the same or similar property. Manual at 4.6.

**¶17** Although the tax court did not detail its methodology in valuing the grazing land, the data in the Rolston report support the court's decision to discount the significance of the government leases in calculating the average annual net rent per acre. Because the Rolston report showed an average net rent per acre from $0.21 to $2.28 for private grazing leases and the court's finding of $0.70 per acre fell well within that range, the court did not err in valuing the land. *See Maricopa County v. N. Cent. Dev. Co.*, 27 Ariz. App. 561, 563 (1976) (tax court may impose its valuation opinion when the evidence supports it).

**B. The Mandamus Claim.**

**¶18** The Cattlemen also appeal the tax court's entry of summary judgment against them on their claim for mandamus, pursuant to A.R.S. § 12-2021 (2016). The Cattlemen argue that because the tax court found the Assessor abused her discretion in valuing the grazing land, it erred by dismissing their mandamus claim against her.

**¶19** We review the grant of summary judgment *de novo*. *Hohokam Irrigation & Drainage Dist. v. Ariz. Pub. Serv. Co.*, 204 Ariz. 394, 396, ¶ 5 (2003). Summary judgment is proper when "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a).

**¶20** "Mandamus is an extraordinary remedy issued by a court to compel a public officer to perform an act which the law specifically imposes

as a duty." *Sensing v. Harris*, 217 Ariz. 261, 263, ¶ 6 (App. 2007) (quoting *Sears v. Hull*, 192 Ariz. 65, 68, ¶ 11 (1998)). Mandamus may issue only "when there is not a plain, adequate and speedy remedy at law[.]" A.R.S. § 12-2021 (2016). The Cattlemen had another adequate remedy at law, one they sought and obtained, namely, the recalculation of an excessive valuation. *See* A.R.S. § 42-16213(A) (2016) ("If the court finds that the valuation is excessive or insufficient, it shall find the property's full cash value."). Accordingly, we affirm the tax court's grant of summary judgment on the mandamus claim.

## CONCLUSION

**¶21** For the foregoing reasons, we affirm the summary judgment and the tax court's valuation of grazing land at $9.19 per acre for the 2012 tax year and at $10.10 per acre for the 2013 tax year.


Ruth A. Willingham · Clerk of the Court
FILED: jt