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August 3, 2004

Honorable Stephen L Vagnini,
Monterey County Assessor
P.O. Box 570 Courthouse
Salinas, CA 93902

Attn: _____, Assistant Assessor – Valuation

***Re: Revenue and Taxation Code section 439.2 – Enforceably
Restricted Historical Property***

Dear Mr. Vagnini:

This is in reply to your letter of June 9, 2004 addressed to Acting Chief Counsel Jean Ogrod in which you request a legal opinion concerning the proper valuation of a newly constructed garage/storage building on a parcel consisting of land and an existing structure. The owner of the parcel has entered into a restricted historical property contract pursuant to Revenue and Taxation Code section 439.1 with the City of Monterey. In your view, the new garage/storage building is not an historical property within the meaning of section 439 and, therefore, the completed new construction may not be valued as enforceably restricted historical property pursuant to section 439.2. For the reasons set forth below, we agree that the new garage/storage building does not qualify as enforceably restricted historical property subject to valuation under section 439.2.

Factual Background

The subject parcel is a qualified historical property as defined in Government Code section 50280.1. The owner of the parcel entered into a contract dated October 18, 2001 with the City of Monterey (“contract”) to restrict the property as a qualified historical property. The contract recites that it was entered into pursuant Government Code section 50280 which authorizes cities to contract with owners of qualified historical properties in order to provide for the “appropriate use, maintenance and restoration” of such properties. The stated purpose of the contract is “to protect and preserve the characteristics of historical significance of the Historic Property.” The “Historic Property” is identified as “real property, together with associated structures and improvements thereon . . .” of the subject parcel. Under the contract, the owner covenants “to preserve and maintain the characteristics of historical significance of the Historic Property” and “, where necessary, [to] restore and rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, U.S. Secretary of the Interior’s Standards for Rehabilitation, State Historical Building Code, and City of Monterey, all as amended.”

Subsequently, the owner constructed a garage/storage building (“garage”) on the parcel which was completed in December 2003. The Assessor believes that the new construction is not considered “Historic Property” subject to the contract. Therefore, the Assessor made a supplemental assessment for the current fair market value of the newly constructed garage as of the date of completion and established a base year value.

Law and Analysis

Article XIII, section 8 of the California Constitution provides, in relevant part, that

To promote the preservation of property of historical significance, the Legislature may define such property and shall provide that when it is enforceably restricted, in a manner specified by the Legislature, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

The Legislature implemented article XIII, section 8 by adopting Government Code section 50280 and following sections which authorize local governments to contract with owners of historical properties to place use restrictions on such properties, in part, to carry out the purposes of the Revenue and Taxation Code section 439 and following sections which govern the assessment of restricted historical property. Section 439.1 specifies that “restricted historical property” means

qualified historical property, as defined in Section 50280.1 of the Government Code, that is subject to a historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. For purposes of this section, “qualified historical property” includes qualified historical improvements and any land on which the qualified historical improvements are situated, as specified in the historical property contract. If the historical property contract does not specify the land that is to be included, "qualified historical property" includes only that area of reasonable size that is used as a site for the historical improvements.

Thus, an historical property is considered to be enforceably restricted only if it satisfies two conditions: It must be a qualified historical property as defined in Government Code section 50280.1, and it must be subject to an historical property contract.

Government Code section 50280.1 defines a “qualified historical property” as privately owned property which is not exempt from property taxation and which meets either of the following:

- (a) Listed in the National Register of Historic Places or located in a registered historic district, as defined in Section 1.191-2(b) of Title 26 of the Code of Federal Regulations.
- (b) Listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks.

In this case, the contract recites that “the property is identified as a historic resource on the City of Monterey Zoning Map” and, thus, subdivision (b) is met.

Under Chapter 38, Article 15 of the City of Monterey City Code, section 38-73, “historic resource” is defined as “a building, structure, object, site or district as defined in National Register Bulletin 15.” According to the definitions set forth in the National Register Bulletin 15, the subject property, in its status as a “historic resource”, is properly categorized as a “building”. Section IV of the National Register Bulletin 15 defines a “building” as follows:

A building, such as a house, barn, church, hotel or similar construction, is created principally to shelter any form of human activity. “Building” may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or house and barn.

Section IV further specifies that “[b]uildings eligible for the National Register must include all of their basic structural elements. Parts of buildings, such as interiors, facades, or wings, are not eligible independent of the rest of the existing building. The whole building must be considered, and its significant features must be identified.”

We infer from the National Register definition of “building” that a newly constructed building, such as the garage, is not a historic resource as defined by section 38-76 and, thus, is not a qualified historical property within the meaning of Government Code section 50280.1. Eligibility for the National Register is determined by the extent to which the basic structural elements of *an existing building* are intact. We conclude from this criterion that a newly constructed building would not be eligible because it is not an existing building with basic structural elements.

Moreover, the National Register Criteria for Evaluation set forth in National Register Bulletin 15 supports our conclusion that a newly constructed building, such as the garage, is not eligible for the National Register. In applying the Criteria for Evaluation, a building would be judged based, in relevant part, on the quality of its significance in American history or architecture and its association with significant historical events or significant historical persons, or the extent to which it embodies distinctive characteristics of specific types or yields or is likely to yield information important about history. In the explanation of the criteria considerations, the Bulletin lists only one type of newly constructed property that may be eligible. In this regard, a “reconstructed historic building” is eligible for the National Register if “accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived circumstances.” In our view, the garage clearly is not eligible because it has no significance in American history or architecture nor does it meet any of the other criteria. Thus, the garage is not a reconstructed historic building but, rather, is a newly constructed building with no historical significance.

Additionally, correspondence from a historical property expert to the city planning office submitted with your request letter suggests that the “historic resource” includes the Finch House and the land, but not the garage. In that letter, dated February 18, 2002, from Kent L. Seavey, a historian who reviewed the project plan, to Ms. Kim Cole, Associate Planner, Planning and Community Development Department of the City of Monterey, Mr. Seavey makes a finding that the plans for the garage are in keeping with the relevant Secretary of the Interior’s Standards for the Treatment of Historic Properties. The City of Monterey Code section 38-76, subpart G.2.a.(3) requires such a finding as a condition of issuing a historic permit for alteration of the property. In the analysis, Mr. Seavey distinguishes the “historic building” and “historic property” from the new construction which he describes as the “proposed garage and its access drive.” He also concludes that removal of the garage in the future would not impair “the essential form and integrity of the historic property.” We infer from the separate references to historic building and historical property and the garage a purposeful distinction denoting that the existing house and land are the historic resource while the newly constructed improvement is not.

In view of our finding that the garage is not a historic resource as defined by the City of Monterey Code section 38-73, we conclude that the garage is not a Historical Property subject to the contract and, thus, is not a qualified historical property under Government Code section 50280.1. Therefore, the garage is not a restricted historical property subject to the valuation provisions of Revenue and Taxation Code section 439.1.

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/ Lou Ambrose

Lou Ambrose
Supervising Tax Counsel

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cc: Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
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