Minutes of the Meeting
STATE BOARD OF EQUALIZATION
December 13, 2016
9:00 a.m.

The meeting was held at the Nevada Department of Taxation, 1550 College Parkway, Carson City, Nevada with videoconferencing to the Nevada Department of Taxation, 2550 Paseo Verde, Suite 180, Henderson, Nevada.

STATE BOARD MEMBERS PRESENT:

Henderson:
Dennis Meservy, Chairman
Keith Harper

Carson City:
Benjamin Johnson
Robert Schiffmacher

Via tele-conference
Al Plank

MEMBERS OF THE PUBLIC PRESENT:

Name	Representing
Steve Lewis ,	Case 16-142, 143
Jonathan Hale,	Case 16-142, 143
Doug Scott,	Clark County Assessor, 16-142, 143
Rob Warhola,	Clark County Assessor, 16-142, 143
Mary Ann Weidner,	Clark County Assessor, 16-142, 143

COUNSEL TO BOARD

In Henderson:
Dawn Buoncristiani, Deputy Attorney General

DEPT OF TAXATION STAFF PRESENT:

Carson City:
Terry Rubald
Christina Griffith
Jeff Mitchell

Henderson:
Anita Moore

December 13, 2016

Agenda Item A: Opening Remarks by the Chairman; introduction of State Board members

The Chairman introduced himself and Board Members Al Plank (who attended by tele-conference), Keith Harper, Benjamin Johnson, Bob Schiffmacher, and counsel for the board Deputy Attorney General Dawn Buoncristiani (who attended in Henderson). The meeting was chaired in Henderson, Nevada with members attending in Carson City. Chairman Meservy noted there was a quorum to conduct business. Terry Rubald, Deputy Executive Director of the Department of Taxation, introduced herself, Christina Griffith and Anita Moore, the State Board coordinators.

Agenda Item B: Public Comment

The Chairman called for Public Comment. There was none.

Agenda Item C: For Possible Action: Adoption of Permanent Regulations
Second Revised LCB File No. R097-15, Property Tax Appeal Petitions and Agent Authorizations

LCB File No. R097-15 was proposed to generally clarify and improve the procedures for appealing before the State Board of Equalization, including the information collected on appeal forms and agent authorization forms, what a written authorization entails, and definitions for the participants in an appeal. These regulations take into consideration the changes made to NRS 361.334 regarding ownership of property and NRS 361.362 regarding the written authorization that authorizes a person to file an appeal on behalf of an owner. NAC 361.721 regarding duplication of exhibits is also proposed for amendment.

This regulation was originally adopted on June 13, 2016 with modifications. It was later discovered the modifications needed further work. This hearing will consider the changes to the modifications and re-adopt the regulation as revised.

Ms. Rubald stated the regulation was properly noticed and posted on November 10th. In addition to the posting, the notice was also emailed to 306 persons.

This regulation was adopted by this board last July 20th. There were two changes made during that hearing. We were proposing to amend section two to say that the state board may interpret the term owner to include partners, members of LLC's and trustors of trust. The change was made as a result of a comment made by Ms. Fullstone, who felt the board should be allowed judgment in determining who an owner might or might not be.

The second change was to amend section nine, subparagraph four, to define business entity to include, without limitation, a sole proprietorship and a general partnership among others. The regulations were submitted to the Legislative Council Bureau for approval by the Legislative Commission, however, the Legislative Council disagreed with the amendment to section two, stating that the use of the word "may" left the meaning too open-ended. “May” confers a right, privilege, or power and that is not what was intended here. It is supposed to be a definition that owners can include partners, members of limited liability companies, or trustors of trust. The use of the word "may" suggests that sometimes they could be owners and sometimes they could not. We withdrew the regulation from consideration on September 9th in order to resubmit it for review by the Legislative Council and ultimately bring it back here for your further consideration.

NRS 361.334 provides a definition of owner in terms of who can appeal the property tax. Prior to the bill, there was no definition and the term owner was commonly thought to mean the person holding legal title to the parcel. Now, it also includes a person who controls a taxable property and also a person who possesses in its entirety the taxable property. Before, a tenant in possession of the parcel needed to show something that provided him or her with a right to appeal, such as a lease agreement. With the expansion of the definition of owner, such proof is no longer required.

Consistent with the change and expansion of the meaning of owner, NRS 361.362 is also amended. The written agent authorization form must be signed by the owner as that term is now more broadly defined or someone employed by the owner acting within the scope of his employment.

Chairman Meservy and Member Johnson praised Ms. Rubald for her work on this regulation.

Doug Scott from the Clark County Assessor’s Office stated they are in full support of the regulation.

Member Johnson made a motion to adopt the regulations as proposed. Member Schiffmacher seconded the motion. The motion passed unanimously.

Agenda Item D: For Possible Action: PETITIONS FOR RECONSIDERATION OF STATE BOARD DECISIONS AFFECTING THE TAX YEARS 2016-17 Secured Rolls

Ms. Rubald called the first case, Request for Reconsideration:

16 142 BCLO Trust Residential Clark County Assessor

Ms. Buoncristiani swore in witnesses and presented the standard of law found in NAC 361.7475.

Maryann Weidner with the Clark County Assessor's Office identified the property as located at 5146 Spanish Hills Drive as a two story 7,794 square foot custom home built in 2002. The current taxable value which was upheld by the state board in the last hearing is 1.7 million dollars even.

Stephen Lewis on behalf of the property owner BCLO Trust, referred to SBE 66 - the comparable sales analysis provided by the assessor in relation to this property. He said there was extensive testimony about that in the prior hearing. He pointed out one very specific issue in which he felt supported the 1.7 was erroneous and unreasonable – a quote that says most weight placed on comparable numbers 1 through 5 are located in the subject's garage.

Mr. Lewis said that taking a look at comparable sales 1 through 5 he believed that it was unreasonable and erroneous for the board to consider the argument that comparable number 4 is in fact a comparable to the property at issue. He stated the simple reason can be explained in the fact that it is a one story property. Mr Lewis stated that one story properties have values in excess of two stories if their location, construction, etc is of like kind. He considered also the sales price as reflected at approximately 40 percent higher.

Mr. Lewis stated that if the board considered 1 through 5 and the adjusted sales prices in order to come up with 1.7 million – he believes it was erroneous. He continued that taking the average of the sales prices from 1 through 5, one would come up with an average per square foot and apply that value to the square footage of the property in question, coming up with approximately 1.7.

Member Johnson then asked the question about 'average' – if that is a statutorily approved method of valuation. He asked Mr. Lewis if he had any basis for suggesting that an average should be used in a data set that has many unique attributes and requires professional judgment to make a qualitative adjustment. He was curious why Mr. Lewis was relying so heavily on an average and if he had any basis for that.

Mr. Lewis answered that he was unaware the word average is provided in any code or regulation that sets forth exactly how the assessor is supposed to do his or her job in creating a valuation. He continued by saying he understood creating a valuation necessitated opinion. In his review of the record and in his review of the documentation that was provided in support, he said it would appear as if in part of the assessor's activity in creating an opinion of value in this specific case, those averages were used and the testimony would appear to support that position, and that the documentation indicates most weight was placed on those properties. He said if there was some other mathematical computation besides averaging them that was utilized, it would appear to be an insignificant difference as opposed to taking the exact average, which again comes up to approximately 1.7. To answer Member Johnson's question, he said he did not believe there is a mandate that the average utilized.

Mr. Rob Warhola, Clark County District Attorney's Office representing the assessor's office, inserted an objection. He said Mr. Lewis was rearguing value and rearguing the whole case and that isn't proper at a reconsideration hearing.

The Chairman allowed the objection.

Mr. Lewis said that he had to offer a proof of 'why' in order to meet his standard of what is unreasonable and asked the board members if they had any comments on this.

Member Harper agreed they were getting off the standard of why they should accept it for reconsideration. Chairman Meservy said he agreed with Member Harper that they can go to the main points and don't get into the detail. Mr. Lewis said he understood, and agreed.

Mr. Lewis then continued and said it would appear as if the board in essence had taken the assessor's value at face value and given full credit to the assessor's argument. He said he believes that was erroneous in light of the fact that there are computations that could be made if you were to take a hundred

percent of their position in considering either taxable values or considering adjusted sales price; by considering those, the number would be substantially less, along the lines of 1.3 million.

Mr. Lewis then stated his second issue - it appeared from the order that the board was either hesitant or refused to lower the value based upon the board's sustaining an objection to remove the evidence of the assessor's visit to the property. Mr. Lewis said that based upon the order, it appeared as if the board took the position that access was not granted and therefore they legally were unable to reduce the value from the 1.7 number.

Ms. Rubald pointed that was on page 170 of the record. Mr. Lewis then said that the conclusions of law p.5 indicated the board may not make a reduction due to the refusal of the entry. He said that finding was clearly erroneous citing NRS 361.345.

As his last argument, Mr. Lewis stated the assessor cannot say house number A (his client's) is a better quality than multiple other houses in which they have not been inside. He said that to be able to make the argument that this specific house that the assessor has been in versus another sketch is clearly erroneous. For those three reasons – the sales price issue, the consideration of the single story, for the fact that the board made a determination that it could not reduce based upon the rejection of evidence as opposed to the procedural gatekeeping requirement and the ability to consider the value of a property against other properties of which they have no ability to render that opinion; Mr. Lewis said the use of any one of those facts was clearly erroneous and unreasonable in this case.

Member Johnson asked Mr. Lewis if he had reviewed Marshall & Swift relative to the standards. He asked Mr. Lewis if there were specific examples he wanted to cite as to how the subject property doesn't meet the 7.3 quality level that it's been assigned to or is it solely based on his opinion because the assessor didn't have access to the interior of the house so they could not have known what the quality level was. Mr. Lewis responded by saying he has a basic understanding of the requirements of a 7.3. He said the transcript of the last hearing evidenced his understanding. He believes on face value without offering any new evidence. No, he said, this property does not meet those requirements. He said that his standard is to show an unreasonable action by the board and if the board considered with absolutely no evidence that the other comparable homes were equal to or less, because there was no evidence or testimony as to any of the other comparables and it could not be because no one had been inside them, then even that action would be erroneous.

Member Johnson then asked about the single story issue which Mr. Lewis brought up; 40 percent premium for single story over two story. He asked if there were evidence he had that supports this and how he arrived at the 40 percent. Mr. Lewis answered that he had both evidence and opinion. The evidence is provided in SBE 66, the assessor's document. Looking at the sales price per square foot, the value of that single story home is approximately 40 percent more than the other four properties which were provided "mostly". That is the one pairing of evidence, he said, provided by the assessor.

Member Johnson then asked if Mr. Lewis was a licensed appraiser in the State of Nevada. Mr. Lewis replied that he is absolutely not a licensed appraiser. Member Johnson mentioned that was obviously a gatekeeping function of this board to have anyone be able to represent professional opinions when they are not the professional or the property owner.

Ms. Buoncristiani, counsel to the board, said NAC 361.729 is testimony before the state board. Authority to testify, a person who unlawfully acts as an appraiser of real estate. Any person may testify before the state board on behalf of a party. This is section one in sub two. If a person testifying before the state board represents to the state board that he or she is an appraiser of real estate that has not obtained a certificate, license, or permit required by Chapter 645C of NRS, the state board will, unless the circumstances of the case otherwise require, give the person's testimony the same weight given to the testimony of a person who is not an appraiser. Three, if a person specified in subsection two receives or expects to receive any form of compensation for an analysis, opinion, or conclusion concerning the nature, quality, value or use of property, the value of which is before the state board, the state board will inform the person that, A, it is unlawful to act or assume to act as an appraiser of real estate in this state without first obtaining the appropriate certificate, license, or permit pursuant to Chapter 645C of NRS. And, B, the state board may notify the Real Estate Division of the Department of Business and Industry of his or her conduct.

Upon informing a person pursuant to subsection three, the state board may notify the Real Estate Division of the Department of Business and Industry of the conduct specified in that subsection.

Rob Warhola, District Attorney's Office representing Clark County Assessor's Office, stated the main argument was that in original hearing before the board - the petitioner wanted the value to be based on the taxable value of comparable unsold properties. The board rejected that argument and found, as it stated in its decision that the market data of recently sold comparable properties is more reliable and a better indicator of market value than the taxable value of comparable unsold properties. He said they wanted it based on the taxable value and not the market data of sole property.

Mr. Warhola continued that comparable four, the one story, should be excluded and then comparables three and five were not an argument that was made at the lower level and it is improper for the petitioners to mention it for the first time on reconsideration. Continuing to the next argument regarding the failure to allow access to the property. Mr. Warhola said there was never a showing of good cause by the petitioner before the board as is required under NRS 361.360. He added that the assessor's office attempted to introduce the evidence which was met with an objection and motion to strike by the petitioners. The petitioner's objection and motion to strike was granted. In that case, he said, they shouldn't later complain that the evidence should be then considered.

Regarding the last argument as to quality, Mr. Warhola said that was not raised at the original hearing before the board and it is inappropriate for the petitioner to raise it again on reconsideration. The valuation that was made was based on houses of similar characteristics, including not only the location of the property but the age of the property and the views of the property.

Mr. Lewis objected and said that Mr. Warhola was mentioning evidence that had been ruled inappropriate. Chairman Meservy agreed and asked Mr. Warhola to "Keep it more general". Mr. Warhola concluded by saying for the reasons he mentioned, it is their position that the valuation of 1.7 million should be upheld and the reconsideration should be denied.

Ms. Buoncristiani spoke and asked the board to look at page 170 of the record on finding of fact number five, it says that the state board's finding was in regard to the county board. So the county board may not make a reduction form the assessment of the county assessor. She continued by saying the statutes cited relate to the County Board of Equalization so it is not a finding for the State Board of Equalization. She said it is the state board's finding, but it is in relation to the county board.

Upon rebuttal, Mr. Lewis stated his argument – he said that somehow by objecting and arguing against every one of the values set forth by the assessor in the first proceeding they somehow waived the ability to later pick on one specific item. He said the argument that they did not argue against item number four being considered is absolutely incorrect; they argued against the entire mathematical computation and opinion any way they did it. He felt he was now charged with attacking a specific unreasonable action or actions taken by the board. Mr. Lewis said to say he did not single out one is ridiculous; he then apologized for the use of the word ridiculous. He said he was not providing an opinion as to value. He was only addressing what he believed was unreasonable in the prior situation; he stated he was shocked to hear the argument that because they objected to evidence that necessitates the closure of the gatekeeping procedural requirement. Mr. Lewis said "That's day one in civil procedure. It absolutely is not the case. The statute says they have to have access. It never says they have to be able to provide evidence of it".

Mr. Lewis said the rule is very clear. He said there was access before the SBE hearing. There was access provided after the CBE hearing. Mr. Lewis continued to say the gate is open and cannot be closed by an evidentiary standard based upon the information the assessor gained or didn't gain at that visit. He argued that at no point in any of the statutes does it say they have to be allowed to provide evidence of that visit. "Because that's not how the system works at any level in any legal system in the United States of America." He said rules of evidence are different than rules of procedure. As a final comment, Mr. Lewis asked how can what is inside of one building compare to what is inside of another building when you have never been in the other; that is impossible.

The Chairman closed the hearing. Chairman Meservy stated that his concern is that often it is not as much about certain things being seen or not; it is about what evidence is presented best for the board. He asked for comments from the board members.

Member Johnson stated there were three issues as he understands them: sale number four, single story versus two story, and the 7.3 quality. He said that Mr. Lewis didn't present any substantial evidence to support that the board was unreasonable and erroneous with how they looked at any of those three factors. He did not think substantial evidence got supported to make his case or support his three main arguments. Member Johnson felt that the petitioner was asking the board to adopt the methodology which isn't statutorily approved and also probably isn't appropriate and being rendered by someone who doesn't have professional opinion to really support it. He continued by saying that the petitioner doesn't realize the assessor's office sees building permits that come in, they see valuations for individuals, and they are doing their best job to assign quality classification levels. They do site inspections. They walk through when properties are under construction after they are added to the tax roll. He said the assessor has a fairly substantial system to arrive at a quality classification for each property. Member Johnson expressed frustration indulging argument that should not be given any weight. That is not the way the process is supposed to work. There should be some type of gatekeeper function to prevent these arguments from being made and muddying the water.

Member Harper commented that he could appreciate Mr. Lewis' arguments and points, but he doesn't believe that putting any weight on sale four, the single story home, rises to the level that created an error in what the board did at the hearing. Member Harper said that he had gone back and reviewed the transcript and documents and there was not a lot of specific discussion about sale four. He questioned substantial error rising to the level of opening up and approving a reconsideration.

Member Schiffmacher added that as an appraiser it would be his tendency to consider all information that is available and give those sales that are different than the subject - less reliance; or to classify the consideration of something that is inconsistent with the subject as an error he thinks overstates the importance of one sale out of seven or eight data points.

Member Plank said that he was not hearing a strong argument that speaks to material error or procedural issues. He then made the motion to reject the request to reconsider this case. Member Johnson seconded the motion and added the comment that the board did not feel there was adequate support for a finding that there was an erroneous, unreasonable determination made or anything else in this case.

The board was unanimously in favor of the motion.

Ms. Rubald called the next case, Request for Reconsideration:

16	143	Avoneo, Inc.	Residential	Clark County Assessor

Maryann Weidner with the Clark County Assessor's Office identified the property as an improved 4.09 acre parcel located at 3675 West Robindale Road in Enterprise. It is a 3600 two-story house built in 1989.

Ms. Weidner said the arguments that were presented before the county board and before the state board had to do more with the value of the land and a wash that occurs on the property as opposed to the valuation of the home itself, a single family residence.

Since the representative for this case is the same as the previous case, the Chairman asked if the standard of law read for the previous case could be incorporated into the record for this case. Mr. Lewis agreed.

Mr. Lewis began by saying the issue on is case becomes how the valuation of the wash affects the overall value of the property. He felt there were two errors that were committed by the board in creating its valuation. He said the first situation relied upon in error was the unilateral action by the assessor to ignore the historical data related to this parcel in terms of the affected area of the wash within the parcel. The assessor had historically reviewed the parcel, reviewed the wash and considered a deduction of one acre out of the 4.09 in each of one of the prior evaluations. Mr. Lewis said it was not clear how the assessor was able to determine that a wash that transports water would necessarily at least maintain its size, if not grow, because it had not been mitigated. He said he believes reliance upon that fact in making the determination was an error and justifies a reconsideration.

Mr. Lewis continued that it appears as if the assessor attempted to qualify and quantify its limited reduction of a half acre as opposed to the pre-existing three attempts in qualifying one acre limitation by the use of what he believed is called a 'tool'. He said this 'tool' was new evidence at the last hearing. The facts related to that tool, exactly what that tool was, its use was never disclosed prior to the last hearing. Mr. Lewis said any reliance upon any evidence gained by that tool should not have been admitted, no testimony admitted or considered; because there was no prior disclosure of this – he believes the board's consideration of that tool would have been an error and should not have been considered.

Member Harper asked if Mr. Lewis was saying that the assessor had tried to use the open web measuring tool which was not discussed at the county board hearing, and because the state board allowed it that it was really new evidence and should not have been allowed? Mr. Lewis agreed with that statement. Mr. Harper said for the record that he wasn't necessarily agreeing with Mr. Lewis, he just wanted to make sure he understood the argument.

Mr. Warhola, Clark County District Attorney's Office representing the assessor's office presented their argument. He said on the petitioner's first argument about ignoring historical data the assessor's office is not forever bound by prior assessment. Each year is a different year and they reevaluate. The appraiser explained at the hearing how she came up with the 20 percent reduction. There is substantial evidence in the record of this and that is how the record reflects the 20 percent was applied to the property. Mr. Warhola stated there was substantial evidence it was a reasonable way of the appraiser arriving at her conclusion; the assessor's office is not forever bound by prior assessments.

Mr. Warhola said it is not new evidence when they are talking about the tool; the appraiser at the prior hearing was just explaining how she arrived at her conclusion; she was asked and she explained how she arrived at her conclusion – that was not new evidence because that was something that was utilized at the County Board of Equalization hearing.

Maryann Weidner, Clark County Assessor's Office, said there was no evidence provided by the taxpayer's representative showing that the assessor was incorrect. They measured. They believed it affected a half of the acre. Why it was different from the prior year she could not say, she was not the appraiser, but they do re-evaluate every year. Sometimes areas are switched around and sometimes things are missed and they need to be re-looked at. Ms. Weidner said they believe that without any other additional evidence to show they are wrong regarding the size of what they believe is the wash that is affecting the size of the property there would be no reason to reopen this case and rehear it.

Member Johnson asked Ms. Weidner if when they were valuing the property they clearly understood there was a wash encumbering a portion of the parcel. Ms. Weidner replied that she was not the one that actually valued the property but she was there when the testimony was offered. She said she read the transcript and is familiar with the appraiser; they definitely had taken the wash in consideration in valuing the property and offered a reduction on it based on their analysis which is on page SBE 39. That reduction was offered. Member Johnson then asked if it is standard practice to go reappraise every year and to take in whatever evidence exists and apply whatever methodologies they feel are appropriate for each individual year. Ms. Weidner said yes that would be correct, they have to revalue all Clark County parcels every year.

The telephone connection was temporarily lost with Member Plank and when he was re-connected he suggested it might be cleaner if he stayed off of this case to not muddy the waters due to the amount of information he was not able to hear. When asked by the Chairman, Mr. Lewis agreed that as long as there was the needed votes appearing in a vote to make a decision, he was fine with not having to repeat the previous arguments. He said the record stands for itself.

Ms. Buoncristiani clarified that Al Plank, the fifth member would abstain from voting because he was absent during the argument. Mr. Lewis had no closing statement. The Chairman closed the hearing.

Member Harper said he did not recall in looking back through the transcript and the discussions that the issue of using the measuring tool to come up with the half acre in the wash was discussed at the county board. He remembered asking Ms. Gibson, the appraiser with the assessor's office, how that half acre was determined. That is when the whole issue of the measuring tool came up on the record, pages SBE 112 and 113. Member Harper thought Mr. Lewis brought up a good point that needed to be discussed further.

Chairman Meservy then asked the question do they really go through the process and tools used when they ask about any appraisal?

Member Schiffmacher summarized there were two objections used in the request for rehearing. One is that the data or the description of the property used for the current tax year differed from the information that was used in the prior three tax years related to the physical impact of the wash, the difference between one acre in which was deducted from the total land area to result in a net land area for the prior three years versus one half acre. The valuation of the property was based on its diminished utility. He did not think it was required in appraisal methodology to use a particular method as new information. Member Schiffmacher said the second issue is the quantification of the impact of the wash. He thought it was appropriate for the assessor to use the tools that are in their tool box. Measuring tools are more available with more frequency on the internet within programs that the assessor uses. He did not think that using the equipment that is at their disposal renders their decisions invalid.

Chairman Meservy referred to SBE 84 saying one of the petitioner's reasons for appeal was originally that the methodology used to assess the subject property was flawed and the methodology used was unreliable. Member Johnson expressed he thought the assessor's office was trying to do the best job with the information they had available. They clearly had always known there is a wash.

Member Schiffmacher made the motion in case 16-143 to deny the property owner's petition for rehearing. He added that he did not believe the state board in their prior decision rendered an opinion that would be disqualified based upon the standards which Ms. Buoncristiani had provided them.

Member Johnson seconded the motion. The board voted, Member Johnson, Member Schiffmacher, and Chairman Meservy, to deny the reconsideration request. The motion passed.

Ms. Rubald called the next agenda item.

Agenda Item E: For Possible Action: Review of Rules of Practice Required by NRS 233B.05

Agenda Item F: For Possible Action: Approval of State Board of Equalization Petition Forms and Agent Authorization Form updated pursuant to amendments to NRS 361.334 and NRS 361.362 (AB 452, 2015)

1. Form 5101SBE – Taxpayer Appeal from the Decision of County Board of Equalization
2. Form 5102SBE – Taxpayer Direct Appeal
3. Form 5103SBE – Assessor Appeal from the Decision of County Board of Equalization
4. Form 5104SBE – Direct Appeal by Assessor or Department
5. Form 5105SBE – Agent Authorization
6. Form 5106SBE – Withdrawal Form

Agenda Item G: For Possible Action: Review and Approval of Minutes:

March 28, 2016
May 2, 3, 2016
June 15, 2016
June 29, 30, 2016
July 18, 19, 20, 2016
August 16, 2016

Agenda Item H: State Board of Equalization Comments

Agenda Item I: Public Comment

Agenda Item J: Adjournment

The meeting was adjourned at 11:46 a.m.