



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

BRIAN SANDOVAL
Governor

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7921
Telephone (775) 684-2160
Fax (775) 684-2020

CHRISTOPHER G.
NIELSEN
Secretary

In the Matter of:

<u>Case No.</u>	<u>Petitioner</u>	<u>APN No.</u>
13 188	Windmill-91 LP	177-16-110-003)
13 189	Terrible Herbst, Inc.	137-35-812-006)
13 190	Herbst Development, LLC	162-18-201-001,)
		162-18-201-003)
13 191	Las Vegas Car Wash Invest, LLC	138-10-403-029,)
		138-10-413-001)
		138-10-413-002)
13 194	Herbst Development, LLC	139-04-602-009)
13 195	Herbst Development, LLC	177-25-810-004)
13 196	Herbst Development, LLC	163-11-504-005)
13 197	Herbst Development, LLC	138-01-712-007)
13 198	E-T-T Service Stations, LLC	161-29-415-003)
13 199	Herbst Development, LLC	138-36-516-005)
13 200	Herbst Development, LLC	139-23-203-014)
13 201	Herbst Development, LLC	177-17-110-001)
13 202	Herbst Development, LLC	179-07-811-003)
13 203	Herbst Development, LLC	138-34-501-001)
13 204	Herbst Development, LLC	162-26-101-001,)
		162-26-101-002)
13 205	Herbst Development, LLC	162-24-503-005)
13 206	Herbst Development, LLC	177-02-102-009)
13 210	Herbst Development, LLC	139-19-102-001)
13 215	Terrible Herbst, Inc.	138-11-406-011)
13 216	Herbst Development, LLC	264-13-601-008)
13 217	Herbst Development, LLC	001-18-702-003)
13 218	Herbst Development, LLC	179-05-801-004)
13 219	Herbst Development, LLC	178-03-701-005)
13 220	Herbst Grandchildren's Trust	177-11-501-029)
13 221	Jerry and Maryann Herbst	164-13-219-001)
13 222	Herbst H C, LLC	161-16-301-001)
13 223	T P Herbst #278, LLC	137-34-818-003)
13 224	Jerry E. Herbst	139-34-210-006)
13 225	Herbst Development, LLC	139-33-411-019)
13 226	Herbst Development, LLC	138-35-403-001)

<u>Case</u>	<u>Petitioner</u>	<u>APN</u>
13 227	Herbst Development, LLC	177-09-301-002)
13 228	Terrible Herbst, Inc.	138-03-612-001)
13 229	Terrible Herbst, Inc.	125-34-516-001)
13 230	Terrible Herbst, Inc.	178-13-702-017)
13 231	Herbst Development, LLC	162-29-101-006)
		162-29-101-007)
13 232	Herbst Grandchildren's Trust	162-32-101-007)
		162-32-101-008)
13 233	Henderson Car Wash Invest, LLC	161-31-802-016)
		161-31-802-017)
		161-31-802-018)
13 234	Trustee, Clark County Treasurer	176-12-312-006)
13 236	Bakolas Holdings Placid, LLC	177-04-812-009)
13 372	Rinaldi Robert & Anne Group LLC dba Terrible Herbst, Inc.	138-21-617-002)
13 373	SHB Sahara LLC dba Herbst Development LLC	162-05-402-002)
13 374	American Pacific Capital Pads Co dba Terrible Herbst, Inc.	138-22-317-004)
13 375	17th Griffith LLC dba Terrible Herbst, Inc.	162-10-502-020)
13 376	Asif Riffat Investment LLC dba Terrible Herbst, LLC	139-03-311-012)
13 377	Centennial Acquisitions LLC dba Terrible Herbst, Inc.	162-19-401-012)
13 378	Novat Hill, LLC dba Blue Diamond and Durango LLC	176-21-215-002)
13 379	E-T-T Service Stations, LLC	163-21-101-039)
13 380	Wolter Properties LTD Partnership dba Terrible Herbst, Inc.	138-10-403-009)
13 381	HH Durango Sunset, LLC dba Terrible Herbst, Inc.	163-33-401-013)
13 382	Hualapai Commons LTD, LLC	163-06-115-001)
13 383	Vezich Richard Ignac dba Terrible Herbst, Inc.	161-31-802-024)
13 384	Nevada Car Wash Properties, LLC	138-34-513-001)
13 385	Nevada Car Wash Properties, LLC	162-24-402-012,)
		162-24-402-013,)
		162-24-402-014)
13 386	Nevada Car Wash Properties, LLC	163-04-806-003)
		163-04-806-009)
13 387	Nevada Car Wash Properties, LLC	162-18-801-004)
13 388	Nevada Car Wash Properties, LLC	140-32-802-005)
		140-32-802-006)
13 389	Henderson Car Wash Invest, LLC	177-12-819-004)
		177-12-819-005)
13 390	Henderson Car Wash Invest, LLC	177-13-727-003)
		177-13-727-005)
		177-13-727-007)
13 391	Henderson Car Wash Invest, LLC	163-12-101-002)
13 392	Sparks CC, LLC dba Terrible Herbst, Inc.	139-28-304-010)
13 393	Las Vegas Car Wash Invest, LLC	162-14-404-001)

PETITIONERS

Michele Shafe)
 Clark County Assessor)
 RESPONDENT)

Appeal of the Decision of the)
 CLARK COUNTY)
 BOARD OF EQUALIZATION)

NOTICE OF DECISION***Appearances***

Anthony Hama of Macero Tax Services, Paul Bancroft, Esq., and Sean Urbanski, Assistant Controller of the Terrible Herbst Company, appeared on behalf of 17th Griffith LLC dba Terrible Herbst, Inc., American Pacific Capital Pads Co. dba Terrible Herbst, Inc., Asif Riffat Investment LLC dba Terrible Herbst, LLC, Bakolas Holdings Placid, LLC, Centennial Acquisitions, LLC dba Terrible Herbst, Inc., E-T-T Service Stations, LLC, Henderson Car Wash Invest, LLC, Herbst Development, LLC, Herbst Grandchildren's Trust, Herbst HC, LLC, HH Durango Sunset, LLC dba Terrible Herbst, Inc., Hualapai Commons LTD, LLC, Jerry and Maryann Herbst, Jerry E. Herbst, Las Vegas Car Wash Invest, LLC, Nevada Car Wash Properties, LLC, Novat Hill LLC dba Blue Diamond and Durango, LLC, Rinaldi Robert & Anne Group LLC dba Terrible Herbst, Inc., SHB Sahara LLC dba Herbst Development, LLC Sparks CC, LLD dba Terrible Herbst, Inc., TP Herbst #278, LLC, Terrible Herbst, Inc., Trustee, Clark County Treasurer, Vezich Richard Ignac dba Terrible Herbst, Inc., and Wolter Properties LTD Partnership dba Terrible Herbst, Inc. (Taxpayers).

Doug Scott, Michele Hanrahan, and Mary Ann Weidner appeared on behalf of the Clark County Assessor's Office (Assessor).

Summary

The matter of the Taxpayers' petitions for review of property valuations for the 2013-14 Secured Roll within Clark County, Nevada, came before the State Board of Equalization (State Board) for hearing in Las Vegas, Nevada, on October 2, 2013 after due notice to the Taxpayers and the Assessor.

Case No. 13-389, Henderson Car Wash Invest, LLC was called as the example case to be determined by the State Board. *See Tr., 10-2-13, p. 177, l. 20 through p. 178, l. 5.* The testimony and exhibits introduced during the hearing for Case No. 13-389 were incorporated into the record for each case in Section E, Groups 2, 3, and 4 as listed on the agenda posted on September 26, 2013. *See Tr., 10-2-13, p. 282, l. 23 through p. 283, l. 25.*

For Case No. 13-389, the Assessor offered new information consisting of a map showing the location of the subject property and comparable sales as well as information on comparable sales which occurred after the date of valuation. The Taxpayer offered a power point presentation applicable

to each case in Section E, Groups 2, 3, and 4, as listed on the agenda posted on September 26, 2013. The Assessor's map and comparable sales and the power point presentation were made part of the record. See *Tr.*, 10-2-13, p. 179, l. 5. through p. 180, l. 5. See also, *Tr.*, 10-2-13, p. 181, ll. 11 through p. 182, l. 16.

Case No. 13-389 was one of 24 appeals listed in Group 2 of the agenda, along with 18 appeals in Group 3, and 20 appeals in Group 4, for a total of 62 appeals of convenience stores and car washes owned or controlled by the Terrible Herbst Company. The central issue common to all of the appeals was the proper classification of property as real or personal property, and whether the classification by the Assessor resulted in double-taxation. See *Tr.*, 10-2-13, 183, l. 4 through p. 184, l. 13. In particular, the Taxpayers asserted that underground storage tanks, fuel canopies, and car wash equipment should be classified as trade fixtures and taken off the secured roll to avoid double- taxation. Taxpayers discussed how some of the items reported on the personal property declaration also appeared on the commercial appraisal record (CAR), thus resulting in the same property appearing on both the secured and the unsecured tax rolls. See *Tr.*, 10-2-13, p. 194, ll. 2-8; p. 194, ll. 2-8; p. 195, l. 7 through p. 201, l. 6.

The Taxpayers emphasized that the definition of real property found in NAC 361.11715 does not include trade fixtures. See *Tr.*, 10-2-13, p. 193, l. 6 through p. 194, l. 8. The Taxpayers discussed the trade fixture test in the regulation and how it applies to submerged full storage tanks and car wash equipment and asserted these items were trade fixtures because they are not installed or attached permanently. See *Tr.*, 10-2-13, p. 203, l. 6 through p. 207, l. 15; p. 209, l. 17 through p. 215, l. 16; p. 218, l. 6 through p. 220, l. 9.

The Assessor responded that in order for a true double assessment to occur, an item of property would have to be assessed on both the secured and unsecured rolls during the same fiscal year. The Assessor asserted that the Taxpayer compared the 2011-12 personal property declarations to the 2013-14 commercial real property records, and that no double taxation actually occurred. See *Tr.*, 10-2-13, p. 227, ll. 7-14; p. 249, l. 8 through p. 250, l. 15.

The Assessor made recommendations to reduce the real property values of twelve of the properties based on new research and understanding of what is included in the Marshall and Swift Costing Service cost estimates for car washes. The Assessor reported that Marshall and Swift includes in the unit cost for car washes some personal property such as brushes. As a result, the Assessor recommended reducing the value of 12 properties to exclude the value of certain personal property which would otherwise appear on the unsecured roll. See *Tr.*, 10-2-13, p. 227, ll. 19-25; p. 241, l. 17 through p. 242, l. 14.

In addition, the Assessor reviewed the 2012-13 personal property records to determine if there were any clerical errors. The Assessor did find evidence of reported items that should have been excluded from assessment as personal property since it was clearly real property, including tanks, canopies, flag poles, trash enclosure, paint, ceiling, flooring, air conditioner, and repairs. The correction was made by issuing a refund to the Taxpayers after approval by the Clark County Board of County Commissioners. The Assessor advised there was no legal authority to make corrections to years prior to 2012-13. See *Tr.*, 10-2-13, p. 228, l. 20 through p. 229, l. 16.

The Assessor discussed the regulations, case law, and Attorney General Opinions regarding the tests to determine whether property is a structure, fixture, or trade fixture. As an example, the Assessor applied the three-part fixture test and the criteria for trade fixtures to underground storage tanks and concluded that the underground storage tanks were appropriately classified as fixtures and therefore real property; car wash equipment, except tanks, pipe work, submerged pumps for fueling systems, and conveyer system, is personal property; and gasoline station canopies are structures and therefore real property. See *Tr.*, 10-2-13, p. 229, l. 17 through p. 237, ll. 24.

The State Board, having considered all evidence, documents and testimony pertaining to the valuation of the property in accordance with NRS 361.227, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

- 1) The State Board is an administrative body created pursuant to NRS 361.375.
- 2) The State Board is mandated to hear all appeals of property tax assessments pursuant to NRS 361.360 and NRS 361.400.
- 3) The Taxpayer and the Assessor were given adequate, proper and legal notice of the time and place of the hearing before the State Board, and the matter was properly noticed pursuant to the Open Meeting Law at NRS 241.020. The Taxpayer waived the ten-day notice. *See Record, Case No. 13-389, SBE page 146.*
- 4) Each subject property is described in Table A attached to this Notice of Decision. In general, the properties are neighborhood convenience stores, some with gas stations, car washes, and fast food restaurants. *See Tr., 10-2-13, p. 183, ll. 4-9.*
- 5) The Clark County Board of Equalization (County Board) ordered the total taxable values reduced in case numbers 13-376, Asif Riffat Investment LLC dba Terrible Herbst, LLC; 13-236, Bakolas Holdings Placid, LLC; 13-233, 13-389, 13-390, and 13-391, Henderson Car Wash Invest, LLC; 13-199, 13-204, 13-216, 13-217, and 13-225, Herbst Development, LLC; 13-191 and 13-393, Las Vegas Car Wash Invest, LLC; 13-384, 13-385, and 13-387, Nevada Car Wash Properties, LLC; 13-373, SHB Sahara LLC dba Herbst Development, LLC; and 13-189, 13-228, and 13-229, Terrible Herbst, Inc. for the 2013-2014 secured roll. For all other properties, the County Board upheld the taxable value established by the Assessor. *See Record, Case No. 13-389, SBE pages 4 and 136. See also Table A for the taxable values established or confirmed by the County Board.*
- 6) The State Board found that double taxation had not occurred for the 2013-2014 tax year because the personal property has not yet been assessed for that tax year. *See Tr., p. 270, l. 9-20.*
- 7) For cases listed in Group 2 of the agenda posted on September 26, 2013, the State Board found the Taxpayer did not present sufficient evidence to support a classification of property different from that established by the Assessor. The State Board affirmed the County Board's decisions for each property in Group 2, except as to the recommendations made by the Assessor regarding car wash property in case numbers 13-373, 13-380, 13-384, 13-385, 13-386, 13-387, 13-388, 13-389, 13-391, and 13-392 which the State Board considered separately *See Tr., 10-2-13, p. 270, ll. 3-8; p. 275, l. 10 through p. 277, l. 17.*
- 8) For cases listed in Groups 3 and 4 of the agenda posted on September 26, 2013, the State Board found the Taxpayer did not present sufficient evidence to support a classification of property different from that established by the Assessor. The State Board affirmed the County Board's decisions for each property in Groups 3 and 4, except as to the recommendations made by the Assessor regarding car wash property in case numbers 13-191 and 13-233 which the State Board considered separately. *See Tr., 10-2-13, p. 283, l. 4 through p. 284, l. 17.*

- 9) The Assessor recommended a reduction in the replacement cost new less depreciation (RCNLD) indicator of value to twelve properties. The reduction to RCNLD reflects the removal of property that was included in the unit value for car washes in the Marshall Swift Costing Service manual that was more properly classified as personal property. The Assessor then performed an analysis comparing the revised RCNLD to the income indicator of value. The final recommended reduction to taxable value was based on the lesser of the revised RCNLD or the income indicator of value. *See Assessor's Exhibit A; Tr., 10-2-13, p. 241, l. 13 through p. 244, l. 24.*
- 10) In case numbers 13-384, 13-385, and 13-389, the income indicator of value was lower than the revised RCNLD and had already been adopted by the County Board. *See Record, Case No. 13-384, SBE page 20; Case No. 13-385, SBE page 19; and Case No. 13-389, SBE page 20.* The State Board accepted the recommendations for reduction in value based on the revised RCNLD which was lower than the income indicator of value in case numbers 13-191, 13-233, 13-373, 13-380, 13-386, 13-387, 13-388, 13-391 and 13-392 and upheld the reductions made by the County Board in case numbers 13-384, 13-385, and 13-389. *See Assessor's Exhibit A; Tr., 10-2-13, p. 285, l. 13 through p. 286, l. 1.*
- 11) Any finding of fact above construed to constitute a conclusion of law is adopted as such to the same extent as if originally so denominated.

CONCLUSIONS OF LAW

- 1) The Taxpayer timely filed a notice of appeal, and the State Board accepted jurisdiction to determine this matter.
- 2) The Taxpayer and the Assessor are subject to the jurisdiction of the State Board.
- 3) The State Board has the authority to determine the taxable values in the State.
- 4) NRS 361.035 defines real property to include structures built or erected upon any land. The State Board found that gas station canopies were structures. *See Tr., 10-2-13, p. 270, l. 21 through p. 271, l. 13.*
- 5) NAC 361.1127 provides a three-pronged test to determine whether an item that was originally personal property has become a fixture upon installation and therefore real property. LCB File No. R068-12 provides an exception to the fixture test for trade fixtures. The State Board found the tests for fixtures and trade fixtures had been satisfied by the Assessor. *See Tr., 10-2-13, p. 272, l. 22 through p. 273, l. 14.*
- 6) The subject properties in case numbers 13-191, 13-233, 13-373, 13-380, 13-386, 13-387, 13-388, 13-391, and 13-392 are appraised, as adjusted, at the proper taxable value in accordance with NRS 361.227. *See Table A, attached.*
- 7) The subject properties in Sections 2, 3, and 4 of the agenda posted on September 26, 2013, including case numbers 13-384, 13-385, and 13-389, and excepting those enumerated in Conclusion of Law #4, are appraised at the proper taxable value without further adjustment, in accordance with NRS 361.227. *See Table A, attached.*
- 8) Any conclusion of law above construed to constitute a finding of fact is adopted as such to the same extent as if originally so denominated.

DECISION

The Petition of the Taxpayer is granted in part and denied in part based on the above Findings of Fact and Conclusions of Law. The Clark County Comptroller is instructed to correct the assessment roll by adjusting the assessed valuation of each subject property as listed in Table A, attached.

The Clark County Comptroller is instructed to certify the assessment roll of the county consistent with this decision.

BY THE STATE BOARD OF EQUALIZATION THIS 17th DAY OF JANUARY, 2014.

A handwritten signature in black ink, appearing to read 'Christopher G. Nielsen', written over a horizontal line.

Christopher G. Nielsen, Secretary
CGN/ter