



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

BRIAN SANDOVAL
Governor

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

DEONNE CONTINE
Secretary

In the Matter of)	
)	
Richard & Masako Post	)	RESPONSE TO STIPULATION
APN 137-23-511-032	)	AND ORDER OF THE DISTRICT
State Board Case No. 10-377	)	COURT, DEPT. NO XXXI,
	)	CASE NO. A633811
Sun City Summerlin Community	)	DATED MAY 21, 2014
APN 138-17-311-001; 137-13-613-003;	)	ISSUED PURSUANT TO:
137-23-510-001; 138-17-616-001; and)	
138-18-110-064	)	THE NEVADA
State Board Case No. 10-379	)	SUPREME COURT ORDER OF
Clark County, Nevada	)	REVERSAL AND REMAND
PETITIONERS	)	CASE NO. 60776
	)	March 25, 2014
Michelle Shafe)	
Clark County Assessor)	
RESPONDENT)	

REVISED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

Appearances

Douglas S. John of Frazer Ryan Goldberg & Arnold, LLP and Jim Susa of DeConcini McDonald Yetwin & Lacy, appeared on behalf of Richard & Masako Post (Taxpayer Post); and Sun City Summerlin Community (Taxpayer Sun City Summerlin).

Paul Johnson, Deputy District Attorney, Jeff Payson, and Mary Ann Weidner appeared on behalf of the Clark County Assessor's Office (Assessor).

Summary

The matter of the Taxpayer Post and Taxpayer Sun City Summerlin petitions for review of property valuation for the 2010-11 fiscal year within Clark County, Nevada, originally came before the State Board of Equalization (State Board) for hearing in Henderson, Nevada, on September 27, 2010 after due notice to the Taxpayers and the Assessor.

Taxpayer Sun City Summerlin appealed the value of real property containing four clubhouses and a golf course maintenance facility ("Subject Properties") within a planned community to the Clark County Board of Equalization ("County Board") in January, 2010. Taxpayer Post, homeowners within

the planned community and having the use of the Subject Properties, also appealed the common element allocation they received on their residential parcel ("Subject Property II") pursuant to NRS 361.233 as a result of the taxable value placed on the Subject Properties.

The State Board issued a decision in the matter on December 29, 2010. The State Board found the Subject Properties described as common elements in Case No. 10-379 had restrictions on use. The State Board further found that the covenants, conditions, and restrictions (CCRs) limited the use of the common elements to the residents of the common-interest community. The presence of the CCRs restricting use resulted in a limited market value of the properties. Accordingly, the taxable value of the common elements established by the Assessor based on replacement cost new less depreciation of the improvements was found to exceed full cash value. *See Record, Case No. 10-379, SBE pages 59-125; Hearing recording.*

As a result of the restricted use of the common elements in Case No. 10-379, the State Board found the taxable value of the Subject Properties in Case No. 10-379 should be reduced to nominal value. The State Board further defined nominal value as \$500 taxable value per parcel, for a total of \$2,500 for the five parcels containing the common elements. *See Record, SBE page 212.*

The State Board found the taxable value of all community units within the Sun City Summerlin Community, including the Subject Property in Case No. 10-377, should be recalculated using the revised total taxable value of the common elements of \$2,500 and applying the same methodology as was previously used to calculate the proportionate share of the taxable value of the common elements to each community unit. *See Record, SBE page 212.*

The State Board's decision was appealed to District Court and subsequently to the Nevada Supreme Court by Clark County and the Clark County Assessor, and cross-appealed by Taxpayers Sun City Summerlin and Post. The Supreme Court issued an Order of Reversal and Remand to the District Court dated March 25, 2014. Among other findings, the Supreme Court found the State Board had failed to recognize that improvements may still have significant taxable value even if the land does not, and failed to give due consideration to statutory and regulatory methods of finding taxable value. The Supreme Court also found that the State Board had erred by ignoring other workable valuation methods and instead assigned a nominal value to the improvements based on the presence of restrictions on the land. The Supreme Court reversed and remanded the matter to the District Court for further proceedings. *See Record, SBE pages 240-248; also Court Remand and Litigation Documents, SBE pages 96-105.*

The District Court, Department XXXI, granted a Stipulation and Order for Judicial Review in which the State Board's previous decision was set aside and the matter remanded to the State Board for further proceedings consistent with the Order of the Nevada Supreme Court. *See Record, Court Remand and Litigation Documents, SBE pages 94-95.*

The State Board noticed the matter for hearing on October 9, 2014 in Carson City, Nevada, took testimony and created a record. A motion was made to uphold the Clark County Board of Equalization (County Board), but failed for lack of a second. *See Tr., 10-9-14, p. 96, l. 25 through p. 97, l. 6.* The matter was closed but was later rescheduled at the request of the Taxpayers. *See Record, SBE page 292.* The matter was noticed for additional hearing on December 12, 2014 in Las Vegas, Nevada. *See Record, SBE pages 293-294.* At the hearing, the State Board determined it would reopen the matter and reconsider hearing the case. *Tr. 12-12-14, p. 19, l. 16 through p. 20, l. 22.*

The State Board incorporated all transcripts from prior hearings into the record of this hearing. *See Tr., 12-12-14, p. 45, ll. 10-13.* The State Board consolidated case number 10-377 and 10-379. *See Tr., 12-12-14, p. 100, l. 8 through p. 101, l. 15.*

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 Taxpayers 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. *See Record, SBE pages 293-297.*
- 4) The Subject Properties in case 10-379 consist of real property common elements within a common-interest community, and include the following five parcels:

<u>APN</u>	<u>Size</u>
138-17-311-001	11.06 acres
137-13-613-003	12.05 acres
137-23-510-001	12.42 acres
138-17-616-001	1.93 acres
138-18-110-064	.88 acres

The parcels include land, four clubhouses, a golf course maintenance facility, arts and crafts centers, health clubs, and other improvements such as, but not limited to, pools, tennis courts, and parking, owned by Taxpayer Sun City Summerlin. *See Record, Case No. 10-379, SBE pages 30- 57; 132-133 (Maps); 136 (Minutes); 149-150 (9-27-10 Transcript); Tr. 10-9-14, p. 67, l. 17 through p. 68, l. 8.*

- 5) The Subject Property II in case 10-377 is a single family residence owned by Taxpayer Post and located in Sun City Summerlin on Suncliff Street, Clark County, Nevada. *See Record, Case No. 10-377, SBE pages 58; 133-135 (Maps).*
- 6) The Assessor's total taxable value of the land component of the Subject Properties owned by Taxpayer Sun City Summerlin in Case No.10-379 is zero. *See Record, Case No. 10-379, SBE page 57.*
- 7) The Assessor's total taxable value of the improvement component of the Subject Properties owned by Taxpayer Sun City Summerlin in Case No. 10-379 is as follows:

<u>Parcel No.</u>	<u>Description</u>	<u>Taxable Value</u>	<u>Record/Page</u>
138-17-311-001	Sun City Clubhouse	\$ 4,906,005	10-379, SBE p. 32
137-13-613-003	Rec Center	\$ 2,110,068	10-379, SBE p. 42
	Arts & Crafts Center	\$ 843,807	10-379, SBE p. 44
	Clubhouse	\$ 1,934,591	10-379, SBE p. 46
	Restroom Building	\$ 1,050,597	10-379, SBE p. 48

	Community Center	\$ 192,835	10-379, SBE p. 50
137-23-510-001	Fitness Center	\$ 1,292,801	10-379, SBE p. 35
	Pinnacle CC	\$ 3,627,280	10-379, SBE p. 38
	Arts & Crafts Center	\$ 1,151,755	10-379, SBE p. 40
138-17-616-001	Sun Shadow CC	\$ 2,179,097	10-379, SBE p. 53
138-18-110-064	Service garage	<u>\$ 265,107</u>	10-379, SBE p. 56
Total Taxable Value, all improvements:		\$19,553,943	

- 8) The Assessor established the taxable value of the improvements by using the Marshall Swift costing service required by NAC 361.128. *See Tr., 10-9-14, p. 69, ll. 10-13.*
- 9) A percentage of the taxable value of the common elements owned by Taxpayer Sun City Summerlin in Case No. 10-379 is assessed to each individual residential community unit located in the Sun City Summerlin community. *See NRS 361.233; Record, Case No. 10-379, SBE page 136.* For example, the proportionate share of the total taxable value of the common elements owned by Taxpayer Sun City Summerlin allocated to Taxpayer Post is \$2,526. *See Record, Case No. 10-377, SBE page 58.*
- 10) The Clark County Board of Equalization (County Board) ordered the total taxable value for the common elements in Case No. 10-379 (County Board case number 7285) of \$0 upheld for the 2010-2011 secured roll. *See Record, Case No. 10-379, SBE pages 4; 57; and 142.* In addition, the County Board ordered the proportionate share of the total taxable value of the common elements in Case No. 10-379 attributable to the subject property in Case No. 10-377 (County Board case number 7288) of \$2,526 be upheld for the 2010-2011 secured roll. *See Record, Case No. 10-377, SBE pages 5; 61; and 150.*
- 11) At the conclusion of the original appeal of the County Board decision heard on September 27, 2010, the State Board found the taxable value of each Subject Property in Case No. 10-379 should be reduced to nominal value as a result of the restrictions on use of the Subject Properties. The State Board further defined nominal value as \$500 taxable value per parcel, for a total of \$2,500 for the five parcels containing the common elements. In addition, the State Board found the taxable value of all community units within the Sun City Summerlin Community, including the Subject Property in Case No. 10-377, should be recalculated using the revised total taxable value of the common elements of \$2,500 and applying the same methodology as was previously used to calculate the proportionate share of the taxable value of the common elements to each community unit. *See SBE page 212.*
- 12) The State Board's decision was subsequently appealed and cross-appealed by the parties to the District Court and then the Nevada Supreme Court. Based upon the Order of Reversal and Remand of the Nevada Supreme Court in Case No. 60776 dated March 25, 2014 and the subsequent Stipulation and Order of the District Court, Department XXXI in Case No. A633811 dated May 27 2014, the State Board proceeded to re-hear the matter. *See Tr., 10-9-14, p. 62, l. 5 through p. 64, l. 11; and Tr., 12-12-14, p. 22, l. 5 through p. 23, l. 19.*
- 13) At the hearing held on October 9, 2014, a motion was made to uphold the County Board decision in Case 10-377, however, the motion died for lack of a second. The Chairman closed case 14-377. No motions were made in Case 10-379. *See Tr., 10-9-14, p. 96, l. 24 through p. 97, l. 14.*
- 14) In Case 10-379, the State Board found, during the subsequent hearing held on December 12, 2014, the Subject Properties should be reduced to \$10,000 per unit based on the taxpayer's testimony that \$10,000 represents full taxable value using the cost approach and applying all

applicable depreciation and obsolescence. *NAC 361.116. See Tr., 12-12-14, p. 33, l. 4 through p. 34, l. 25; p. p. 93, ll. 19-25.* The Taxpayer testified that the restrictions on use of the Subject Properties diminish the value of the "servient" property for the benefit of the dominant property. The Subject Properties were impaired due to the restrictions on use and were therefore obsolesced. *See also Tr., 12-12-14, p. 26, l. 16 through p. 33, l. 13; p. 69, l. 13 through p. 78, l. 14.* In addition, property values in the subdivision were going down, lending support to market obsolescence. *See Tr., 12-12-14, p. 54, l. 1 through p. 62, l. 3. NAC 361.116.*

- 15) The State Board corrected the record to reflect that the vote taken referenced in Finding of Fact #14 was for Case 10-379 and not 10-377 as stated in the original motion. *See Tr., 12-12-14, p. 96, l. 13 through p. 98, l. 12.*
- 16) The State Board consolidated Case No. 10-377 and 10-379 in order to apply the taxable value found for the subject common element parcels in Case No. 10-379 as an allocated value of the common element parcels to the individual residential parcel in Case No. 10-377. *See Tr., 12-12-14, p. 98, l. 13 through p. 101, l. 15.*
- 17) The assessed value of the subject common element parcels as adjusted by the State Board is 35% of taxable value.
- 18) 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) This matter was remanded from the District Court; therefore, the State Board had jurisdiction to determine the matter.
- 2) The Taxpayers and the Assessor are subject to the jurisdiction of the State Board.
- 3) The computed taxable value of any property must not exceed its full cash value, and the taxable value must be reduced if necessary to comply with this requirement. *See NRS 361.227(5).*
- 4) The subject properties in Case No. 10-377 and 10-379 are appraised, as adjusted, at the proper taxable value in accordance with *NRS 361.227.*
- 5) The State Board has the authority to determine the taxable values in the State and to equalize property pursuant to the requirements of *NRS 361.395.* Accordingly, all community units within the Sun City Summerlin community should be treated equitably by applying the adjusted taxable values of the common elements to each community unit. *NRS 361.395.*
- 6) The taxable value of each community unit in a common-interest community must consist of the taxable value of that community unit plus a percentage of the taxable value of all the common elements of that common-interest community. The percentage is determined by dividing 1 by the total number of community units in the common-interest community and pursuant to the requirements of regulations. *NRS 361.233; NAC 361.1336.*
- 7) 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 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 the subject property as follows:

2010-2011 Secured Roll

	Taxable Value		Assessed Value	
Parcel Number 138-17-311-001	Established by County Board of Equalization	Revised By State Board	Established by County Board of Equalization	Revised by State Board
Land	\$0	\$0	\$0	\$0
Improvements	\$4,906,005	\$10,000	\$1,717,102	\$3,500
TOTAL	\$4,906,005	\$10,000	\$1,717,102	\$3,500

	Taxable Value		Assessed Value	
Parcel Number 137-13-613-003	Established by County Board of Equalization	Revised By State Board	Established by County Board of Equalization	Revised by State Board
Land	\$0	\$0	\$0	\$0
Improvements	\$6,131,898	\$10,000	\$2,146,164	\$3,500
TOTAL	\$6,131,898	\$10,000	\$2,146,164	\$3,500

	Taxable Value		Assessed Value	
Parcel Number 137-23-510-001	Established by County Board of Equalization	Revised By State Board	Established by County Board of Equalization	Revised by State Board
Land	\$0	\$0	\$0	\$0
Improvements	\$6,071,836	\$10,000	\$2,125,143	\$3,500
TOTAL	\$6,071,836	\$10,000	\$2,125,143	\$3,500

	Taxable Value		Assessed Value	
Parcel Number 138-17-616-001	Established by County Board of Equalization	Revised By State Board	Established by County Board of Equalization	Revised by State Board
Land	\$0	\$0	\$0	\$0
Improvements	\$2,179,097	\$10,000	\$762,684	\$3,500
TOTAL	\$2,179,097	\$10,000	\$762,684	\$3,500

	Taxable Value		Assessed Value	
Parcel Number 138-18-110-064	Established by County Board of Equalization	Revised By State Board	Established by County Board of Equalization	Revised by State Board
Land	\$0	\$0	\$0	\$0
Improvements	\$265,107	\$10,000	\$92,787	\$3,500
TOTAL	\$265,107	\$10,000	\$92,787	\$3,500

The Clark County Comptroller is instructed to certify the assessment roll of the county consistent with this decision and to inform the State Board of the revised assessed value for each community unit to which this decision applies.

BY THE STATE BOARD OF EQUALIZATION THIS 2nd DAY OF MARCH, 2015.

Deonne E. Contine

Deonne Contine, Secretary
DC/ter