



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

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In the Matter of

Nevada Property 1, LLC
APN: 162-20-616-01 through 065;
APN: 162-20-617-001 through 162-20-617-232
Clark County, Nevada
PETITIONER

Case No. 14-152

Michele Shafe
Clark County Assessor
RESPONDENT

Appeal of the Decision of the
CLARK COUNTY
BOARD OF EQUALIZATION

NOTICE OF DECISION

Appearances

Jason Morris and Eric Nisbet of Ernst and Young appeared on behalf of Nevada Property 1, LLC (Taxpayer).

Brian Kelly and Mary Ann Weidner appeared on behalf of the Clark County Assessor's Office (Assessor).

Summary

The matter of the Taxpayer's petition for review of property valuations for the 2014-15 Secured Roll within Clark County, Nevada, originally came before the State Board of Equalization (State Board) for hearing in Las Vegas, Nevada, on June 23, 2014 after due notice to the Taxpayer and the Assessor.

The Assessor offered new evidence consisting of news articles about the proposed sale of the property. The State Board admitted the new evidence into the record.¹

¹ See Tr., 6-23-14, p. 127, l. 4 through p. 129, l. 18;

4 MS. WIDENER: We're providing it because it 5 was information that was not available at the time 6 of the county hearing, and we believe it is valuable 7 in helping the state make a determination in whether 8 they were going to change the evaluation or maintain 9 what the county did. 10 CHAIRMAN MESERVY: I apologize. I didn't know 11 it was the assessor. So have you reviewed the new 12 evidence. 13 MR. MORRIS: We have, sir. 14 CHAIRMAN MESERVY: And what are your thoughts 15 about it? 16 MR. MORRIS: We would object to as hearsay. 17 These are news articles about sales of the property 18 that has not closed yet. It's not a certainty at

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 241.020.²
- 4) The subject property consists of The Cosmopolitan of Las Vegas, a luxury resort casino and hotel just south of the Bellagio on the west side of the Las Vegas Strip and consists of two high-rise towers. It opened December 15, 2010. Three pools including a relaxing pool, day club pool and nightclub pool are on upper levels. It also has retail and restaurant space, fitness facility, convention space and unfinished theater, located in Clark County, Nevada.³
- 5) The Clark City Board of Equalization (County Board) ordered the total taxable value for the subject property of \$533,885,613 be reduced to \$529,790,596 for real property on the 2014-2015 secured roll.⁴
- 6) The State Board found the Taxpayer did not present sufficient evidence to support values different from that established by the County Board. The State Board found the 15 percent capitalization rate is supported in the market, and is on the high end of the range. The State Board found the \$80 million comp expense normalized by the County Board was appropriate;

19 this point, and it's not going to be closing until 20 2015. We don't feel it's a relevant source of 21 information to support any kind of relevance. 22 CHAIRMAN MESERVY: So from the assessor's 23 office is there a reason why we again didn't present 24 this? 25 MS. WIDENER: Because it's information that Page 128 1 was not available at the time of the county hearing. 2 It's information that has come out since that time, 3 and it's been published in many publications. And, 4 so I think that it is relevant and it is relevant to 5 the evaluation that we have on record which is 6 considerably lower than a published amount that it's 7 potentially a sales price on this property. And we 8 believe it's very relevant. 9 MEMBER JOHNSON: Was this presented seven days 10 prior to the commission? 11 MS. WIDENER: Yes, it was. 12 CHAIRMAN MESERVY: So do we want to -- I'll 13 entertain a motion. 14 MEMBER JOHNSON: I mean, I would like to give 15 it the weight that we feel it's due and allow it in. 16 I think the very important thing in this case will 17 be what could have reasonably been known as of the 18 date of the evaluation here, not something that 19 happened subsequently. But to the extent this 20 speaks to the fact that a property was available 21 that others expressed interest in it, maybe there is 22 some probative value to it. Maybe there isn't. But 23 I do want to admit it in. That's going to be my 24 motion in case 14-152, is that we allow it in and we 25 give it the weight we feel that it is due in our Page 129 1 discussions. 2 CHAIRMAN MESERVY: Can we get a second? 3 MEMBER HARPER: I'll second it, I guess with 4 the comment that we all know what it is. I think 5 any of us that lives in Clark County. This has been 6 big news and discussed in various places among us 7 real estate professionals. So I don't think it's 8 anything that we don't know anyway. And, believe 9 me, I'll give it the weight that it needs to. I can 10 be fair. 11 MEMBER JOHNSON: And I fully understand it's 12 hearsay. I get that comment. So that's why I'm 13 saying weight we feel it's due in our discussions. 14 CHAIRMAN MESERVY: Anymore comments? All in 15 favor. 16 THE BOARD PANEL: Aye. 17 CHAIRMAN MESERVY: Any opposed? It's 18 unanimous. We're going to accept the evidence.

² See Record, SBE page 127, Receipt of Certified Mail.

³ See Record, SBE pages 44-46, location maps; p. 58, casino capitalization summary; Tr., 6-23-14, p. 126, ll. 5-11:

5 MR. KELLY: Brian Kelly from the Clark County 6 Assessor's office. The subject is the Cosmopolitan 7 hotel/casino. It was opened December 15, 2010. It 8 includes two hotel towers, casino, bars, and 9 restaurants with day clubs and nightclubs, fitness 10 facility, convention space. And in December it just 11 opened a new theater for performing.

⁴ See Record, SBE page 107, Minutes of the County Board.

and the Assessor's projection of net income and EBITDA was appropriate for the property. The taxable value is well supported.⁵

- 7) The State Board affirmed the decision of the County Board.⁶
- 8) 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.

⁵ See Tr., 6-23-14, p. 157, l. 1 through p. 160, l. 20:

1 MEMBER HARPER: I think my comment would be 2 although I didn't fully follow with what the county 3 board did, I believe that the ratios and percentages 4 and things that they applied and used to come up 5 with the revised opinion of the taxable value is 6 appropriate. 15 percent cap rate is more than 7 supported in the market and is definitely at the 8 high end of the range. And so I tend to -- and even 9 though the property owners' representatives, you 10 know, make a case for this \$80 million comp expense, 11 that is out of line with anything I've seen in any 12 evaluations of major resorts like this. I think I 13 understand why Cosmopolitan has been doing it, just 14 to get business and get somewhat established in the 15 very difficult times just from a competition view 16 point. 17 So my bottom line is I just think 18 the value, taxable value from the county board 19 hearing is well-supported, and I would lean towards 20 upholding that value. 21 CHAIRMAN MESERVY: How do you feel about the 22 80 percent expense versus actual revenue? That is 23 the area that is bugging me the most. 24 MEMBER HARPER: Yeah. And that, you know, 25 again, it's all in this comp category. And, you Page 158 1 know, the members of the board, county board that 2 were there and heard this are all experienced gaming 3 evaluation people. And so I think that they kind of 4 seen and analyzed it the same way that I kind of 5 have, is that I just don't think that is an expense 6 that is going to continue. It just reflects the 7 fact that they opened this property probably at the 8 worst time they could in December of 2010. And, you 9 know, being a lender, that is not a licensed gaming 10 operator or even resort operator even though they 11 have, you know, they had experienced people and 12 qualified people and they are running it for them, 13 it's just been difficult for them to compete with 14 the established operations. This is a one, you 15 know, one entity operation. So they can't spread 16 some of those expenses out over some of their other 17 properties or compete with these major multiple 18 locations and operations. You know, they don't have 19 properties in Macao to support them, prop them up 20 like some of the other Las Vegas corporations and 21 operators have. So I just tend to look at it on a 22 price per room basis. It's roughly 250,000 per room 23 and, again, the 15 percent cap rate. I just think 24 that that projection of the net income and EBITDA is 25 appropriate for this property. Page 159 1 CHAIRMAN MESERVY: Mr. Johnson. 2 MEMBER JOHNSON: I concur with what Mr. Harper 3 said. When you look at it the other way, it could 4 go down and it is look at the cap rates for the 5 properties that have the expectation of increasing 6 the net income under competent -- not to say the 7 Cosmo is not a competent operator, but maybe not 8 competent but stabilized in the future. It's been a 9 bad time. What's our expectation going forward for 10 income? That's what we're going to base our 11 purchase price on. And those people are willing to 12 pay much lower cap rates on existing income because 13 they expect to increase the income greatly. When 14 you look those cap rates, when we look at cap rates 15 from 2006, we're getting very low cap rates. I 16 think you can take their 43 million and cap it to 17 something similar that the M sold at, you'll get a 18 much higher value, and that is much more consistent 19 with the sales prices that has been discussed with 20 the property as well. I just don't see it. 21 Price per room, I look at it, 22 looking at the great location this has. I also 23 thought the assessor's office did a nice job. I was 24 worried about how it's assessed relative to 25 similarly situated properties. They went through Page 160 1 some of the similarly situated properties. There's 2 no issue of equalization here based on what the 3 assessor's office presented. I think it's credible. 4 And on the other side, there was a 5 huge difference in the expenses, primarily with a 6 casino rooms. And I think that was the petitioner's 7 burden to prove to us why they're operating at such 8 higher expenses than the comparables as indicated by 9 the filings with the Nevada Gaming Commission. And 10 the only answer we got when I asked that question is 11 our unit mix is different. And I think that you 12 should -- I think that we need some solid evidence 13 or some solid reasons as to why the property's 14 income can't continue to be increased and why the 15 expenses can't be decreased, if that does exist, 16 because the market is saying that the ratios are a 17 lot different on the strip. So why are you in the 18 position you're in? And why can't it be cured? And 19 that is the petitioner's job in my view is to 20 disprove the assessors, and that didn't happen here.

⁶ See Tr., 6-23-14, p. 160, l. 23 through p. 161, l. 12:

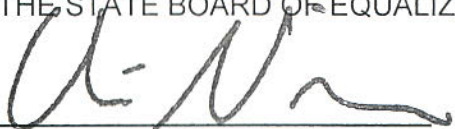
23 MEMBER JOHNSON: On Case 14-152, I make a 24 motion that we uphold the County Board of 25 Equalization's decision and evaluation as petitioner Page 161 1 did not overcome their burden to disprove the 2 assessors. 3 CHAIRMAN MESERVY: Any second? 4 MEMBER HARPER: Second. 5 CHAIRMAN MESERVY: Any comment? 6 MEMBER JOHNSON: That it's based on the 7 discussion we've had here previously today with the 8 next case. 9 CHAIRMAN MESERVY: All in favor. 10 THE BOARD PANEL: Aye. 11 CHAIRMAN MESERVY: Any opposed? It's 12 unanimous.

- 4) The subject property is appraised at the property taxable value without further adjustment, in accordance with NRS 361.227.
- 5) 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 denied based on the above Findings of Fact and Conclusions of Law. 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 30th DAY OF SEPTEMBER, 2014.

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

Christopher G. Nielsen, Secretary
CGN/ter