



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

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CHRISTOPHER G.
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Secretary

In the Matters of

Ali Davari dba D2765, LLC
APN: 162-09-201-001

Consolidated
Case No. 14-172

Ali Davari dba D 3355 Procyon, LLC
APN: 162-17-101-028

Case No. 14-173

D 2801 Westwood, Inc.
APN: 162-08-604-001

Case No. 14-174

D 2801 Westwood, Inc.
APN: 190-08-316-003

Case No. 14-175

D 2753, LLC
APN: 162-09-102-004

Case No. 14-176

D 2753, LLC
APN: 162-09-102-003
Clark County, Nevada
PETITIONERS

Case No. 14-269

Michele Shafe
Clark County Assessor
RESPONDENT

Appeal of the Decision of the
CLARK COUNTY
BOARD OF EQUALIZATION

REVISED NOTICE OF DECISION

Appearances

Terry English of Flagship Property Tax Consulting appeared on behalf of Ali Davari dba D2765, LLC, Ali Davari dba D 3355 Procyon, LLC, D 2801 Westwood, Inc., and D2753, LLC (Taxpayer).

Rocky Steele 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 2014-15 Secured Roll within Clark County, Nevada, came before the State Board of Equalization (State Board) for hearing in Las Vegas, Nevada, on June 23, 2014 after due notice to the Taxpayers and the Assessor.

The State Board consolidated case numbers 14-172, 14-173, 14-174, 14-175, 14-176, and 14-269. The Assessor testified that the fact patterns in each case were similar and a decision in the first case would apply to the remaining cases. The State Board used case number 14-172 as the base case.¹

The Taxpayers offered new evidence consisting of a letter explaining why the agent authorization form was not filed timely. The Assessor objected to the new evidence. The State Board did not admit the new evidence into the record.²

Pursuant to NAC 361.7014, the Secretary to the State Board examined the petition of the Taxpayer and found the Taxpayer's appeal was for the tax year 2014-2015.³ Although the appeal was filed timely to the State Board, the Taxpayer's agent did not file the agent authorization form with the County Board until February 12, 2014, which did not meet the 48 hour deadline required by NRS 361.362. The County Board did not accept jurisdiction to hear the case. The question before the State Board is whether the County Board had a preponderance of evidence before it to support its decision to not accept jurisdiction.

The State Board, having considered all evidence, documents and testimony pertaining to the decision of the County Board to deny jurisdiction, 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.

¹ See Tr., 6-23-14, p. 10, l 7 through p. 11, l. 13: MS. RUBALD: With that, Mr. Chairman, I would like to call Case Number 14-172. The petitioner is 9 D2765, LLC. Commercial property. And the Clark 10 County Assessor is the respondent. 11 If I may, I think I will also call 12 the balance of these cases, because I believe they 13 are similar issues. The cases are 14-173. The 14 petitioner is D3355 Procyon, LLC; 14-174, D2801 15 Westwood, Incorporated; 14-175, Ali Davari; 14-176, 16 D2753, LLC; and 14-269, D2753, LLC. 17 CHAIRMAN MESERVY: So, I'm sorry. Is 176 -- 18 what was the last two that you mentioned again? 19 MS. RUBALD: 14-176 is D2753, LLC, and 14-269 20 which is also D2753, LLC. 21 CHAIRMAN MESERVY: Are these all the same 22 owners? 23 MS. RUBALD: I believe so, yes. 24 CHAIRMAN MESERVY: Is this something we might 25 want to consolidate?

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1 MR. STEELE: Rocky Steele with the Clark 2 County Assessor's office. We believe as Ms. Rubald 3 indicated, that the fact patterns are similar. If 4 you made a decision on the first one, it would apply 5 to the remaining. 6 CHAIRMAN MESERVY: Do both sides feel that 7 way? What is your name? State your name. 8 MR. ENGLISH: My name is Terry English for 9 Property Tax Consultants. 10 CHAIRMAN MESERVY: Okay. So do we have one of 11 the cases that -- should we use the first one, 172, 12 as our example?

² See Tr., 6-23-14, p. 15, ll. 2-25: 2 MEMBER JOHNSON: No. I just, I think we'll 3 get to the issue of if we uphold the county board 4 decision right now, it's limited to the new 5 evidence. And I think based on the fact the county 6 objects to it, it didn't follow statute, we didn't 7 get it seven days before, I don't think we can admit 8 new evidence into the record here today. 9 CHAIRMAN MESERVY: So do we have a second? 10 MEMBER HARPER: Second. 11 MS. BUONCRISTIANI: At this point in time, if 12 I may say something in regard to the vote of the 13 board today. It would be in regard to every vote on 14 every matter. The statute requires that there be a 15 majority vote of the members of the board in order 16 for something to pass, and that would have to be a 17 three vote no matter whether there are five members, 18 four members or three members present. There needs 19 to be a vote of three in order to pass an action. 20 CHAIRMAN MESERVY: Any more comments? Okay. 21 We have a vote on the floor. All in favor. 22 THE BOARD PANEL: Aye. 23 CHAIRMAN MESERVY: Any opposed? So it's 24 unanimous we don't accept that new evidence, but 25 we'll let you go forward. ; NAC 361.739.

³ See Record, SBE Case No. 14-172, page 1, "Petition for Appeal from the Decision of the County Board of Equalization"

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- 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 241.020.⁴
- 4) Pursuant to NRS 361.340(11), every appeal to the county board must be filed not later than January 15th. The appeal was filed on January 14, 2014 by someone purporting to be the agent of the Taxpayers.⁵ The Taxpayers did not file agent authorization forms with the Clark County Board of Equalization (County Board) until February 10, 2014 which did not meet the 48 hour deadline imposed by NRS 361.362.⁶
- 5) The County Board did not accept jurisdiction to hear the Taxpayer's appeal because the owner had not provided authority to file an appeal by the agent within 48 hours of the time of filing.^{7 8}
- 6) The State Board found the County Board's decision was not made in error and was based on a preponderance of the evidence.⁹
- 7) The State Board affirmed the decision of the County Board.¹⁰
- 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) A preponderance of the evidence is defined as whether "the fact sought to be proved is more probable than not." *Kent K. v. Bobby M., 110 P.3rd 1013, 1018 (Ariz., 1995)*. Based on the

⁴ See Record, of Certified Mail Receipt, Case No. 14-172, SBE page 35, Case No. 14-173, SBE page 34; Case No. 14-174, SBE page 34; Case No. 14-175, SBE page 35; Case No. 14-176, SBE page 35; and Case No. 14-269, SBE page 34.

⁵ See Record, Case No. 14-172, SBE page 11

⁶ See Record, SBE page 16, appeal petition to CBE dated 1-14-14; and SBE page 20, agent authorization dated 2-10-14.

⁷ See Record, pages 32-33, Minutes of County Board Hearing.

⁸ Tr., 6-23-14, p. 20, l. 22 through p. 23, l. 20:

22 MR. STEELE: Rocky Steele with the Clark 23 County Assessor's office. First, I would just like 24 to read into the record the statute that directs the 25 assessor regarding the timely filing of an appeal by 1 somebody other than the owner of the property. It's 2 very straightforward, and this is what the county 3 board uses as their test. 4 And it just says, "Except as 5 otherwise provided in this section at the time that 6 a person files an appeal pursuant to NRS 361.356, 7 357, and 360 on behalf of the owner of a property, 8 the person shall provide to the County Board of 9 Equalization or the State Board of Equalization, as 10 appropriate, written authorization from the owner of 11 the property that authorizes a person to file the 12 appeal concerning the assessment that was made. If 13 the person files the appeal in a timely manner 14 without written authorization required in this 15 section, the person may provide the written 16 authorization within 48 hours after the last day 17 allowed for filing the appeal." So that's the 18 statute that we look to and are advised by the 19 district attorney to the county board, and we treat 20 all other filings in the same manner.

⁹ Tr., 6-23-14, p.25, ll. 3-15:

3 MEMBER JOHNSON: I think before us today we 4 can't substitute our judgment from the county. They 5 determined that they shouldn't take jurisdiction 6 here. I have not heard anything that causes me to 7 believe that the county erred in making their 8 decision. I think the level of uncertain 9 circumstances or unforeseen circumstances that is 10 out of our control to judge here. We can't 11 substitute our judgment for the county's here, and 12 they clearly made a decision. I don't see anything 13 that caused me to believe that the county erred. 14 CHAIRMAN MESERVY: Keith.

15 MEMBER HARPER: I concur with Mr. Johnson

¹⁰ Tr., 6-23-14, p. 25, l. 18 through p. 26, l. 4:

18 MEMBER JOHNSON: I make a motion in Cases 19 14-172, 14-173, 14-174, 14-175, 14-176, and 14-269 20 that we uphold the county board's decision to deny 21 jurisdiction due to the fact that the county board 22 decision appears to be based on preponderance of 23 evidence. 24 MEMBER HARPER:

Second. 25 CHAIRMAN MESERVY: Any other comments? All in

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1 favor? 2 THE BOARD PANEL: Aye. 3 CHAIRMAN MESERVY: Any opposed? It's 4 unanimous

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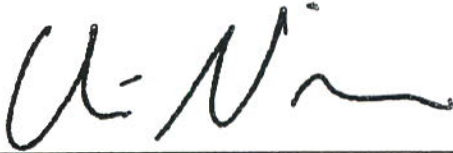
State Board's finding that the County Board's decision to not take jurisdiction was supported by a preponderance of the evidence, and the Taxpayer did not overcome the burden to show the County Board's decision was not supported by a preponderance of the evidence, the State Board upheld the decision of the County Board.

- 4) NRS 361.362 states that at the time a person files an appeal pursuant to NRS 361.356, 361.357 or 361.360 on behalf of the owner of a property, the person shall provide to the county board of equalization or the State Board of Equalization, as appropriate, written authorization from the owner of the property that authorizes the person to file the appeal concerning the assessment that was made. If the person files the appeal in a timely manner without the written authorization required by this section, the person may provide that written authorization within 48 hours after the last day allowed for filing the appeal.
- 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 6th DAY OF NOVEMBER, 2014.



Christopher G. Nielsen, Secretary
CGN/ter