



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

Sunset Boulevard, LLC
APN: 163-34-801-015
Clark County, Nevada
PETITIONER

Michele Shafe
Clark County Assessor
RESPONDENT

Appeal of the Decision of the
CLARK COUNTY
BOARD OF EQUALIZATION

Case No. 14-178

NOTICE OF DECISION

Appearances

Stephany Paleczny appeared on behalf of Sunset Boulevard, LLC (Taxpayer).

Rocky Steele 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, 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 Taxpayer offered new evidence consisting of an operating agreement. The County Assessor objected to the new evidence based on the date of the operating agreement. The State Board did not admit the new evidence into the record based on NRS 361.362.¹

¹ See Tr., 6-23-14, p. 46, l. 14 through p. 48, l. 12. See also NAC 361.739.

14 MEMBER JOHNSON: My understanding and from 15 reading through these cases this time is you guys 16 include the statement, and I'm guessing as part of 17 the appeal form that says ownership entities such as 18 trust, partnerships, LLC, or subsidiaries must 19 submit evidence to demonstrate a clear line of 20 authority, that authorizing the individual appealing 21 to do so. Where is that paragraph located? Isn't 22 that something that's part of the appeal form? Is 23 it somewhere in your web site? 24 MR. STEELE: It's on the letter of 25 authorization form and it's also in the insert. I Page 47 I can reference to you again this case. 2 MEMBER JOHNSON: That's fine. What I was 3 trying to establish and what is that the property 4 owner should have reasonably known they needed to 5 provide a clear line of

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 2014-2015.² Although the appeal was filed timely to the State Board, the first agent authorization form filed on January 14, 2014 could not be substantiated as an owner of Sunset Boulevard, LLC by the Assessor by consulting the Secretary of State website. Subsequently, the Taxpayer's agent filed a second agent authorization form with the County Board on February 13, 2014, and was signed by someone who could be verified as an owner of the Taxpayer, however the second agent authorization form did not meet the 48 hour deadline required by NRS 361.362.³ The Clark County Board of Equalization (County Board) did not accept jurisdiction to hear the case.⁴ 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 jurisdiction of the County Board, 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 241.020.⁵
- 4) Pursuant to NRS 361.340(11), every appeal to the county board must be filed not later than January 15th. The tax agent filed an agent authorization form with the Clark County Board of Equalization (County Board) on January 14, 2014 but the signer could not be verified as an owner by reference to the Secretary of State's website.⁶ A second agent authorization form was

ownership. And it's not 6 that the county board, the property owner learns. I 7 needed to do more. They should have reasonably 8 known before the county board. It's not like this 9 information couldn't have been introduced prior to 10 the county board. It existed in the state in 2007. 11 They should have reasonably known they needed it. 12 So that's why I lean towards not allowing it in. 13 CHAIRMAN MESERVY: Mr. Harper. 14 MEMBER HARPER: I agree with Mr. Johnson. 15 CHAIRMAN MESERVY: Any motion? 16 MEMBER JOHNSON: I will make a motion in case 17 14-178 that we do not allow the new evidence in 18 based on our discussion. 19 CHAIRMAN MESERVY: Second? 20 MEMBER HARPER: Second. 21 MS. BUONCRISTIANI: Excuse me. Since they 22 haven't mentioned 361.362 which is what you're 23 basing your motion on, could we include that? 24 CHAIRMAN MESERVY: Sure. 25 MS. BUONCRISTIANI: Thank you. Page 48 1 MEMBER JOHNSON: I amend my motion to include 2 reference to that statute. 3 CHAIRMAN MESERVY: Okay. Any other comment? 4 MEMBER HARPER: I revise my second. 5 CHAIRMAN MESERVY: To the new motion? 6 MEMBER HARPER: To the new motion. 7 CHAIRMAN MESERVY: Any other comments? All 8 right. All in favor. 9 THE BOARD PANEL: Aye. 10 CHAIRMAN MESERVY: Any opposed? Looks like 11 unanimous. We are not going to accept the new 12 evidence. But now you can present your case.

² See Record, page 1.

³ See Record, SBE pages 13 (appeal dated 1-15-14 signed by rep only); 16, first agent authorization form signed by Kurtz, and 14, signed by Candela who could be verified as an owner on 2-13-14), 10 and 30-32 (minutes).

⁴ See Record, SBE pages 10 and 32.

⁵ See Record, SBE page 34.

⁶ See Record, SBE page 16, Agent Authorization; SBE pages 30-31, Minutes of the County Board; Tr., 6-23-14, p. 50, ll. 7-21:

7 MR. STEELE: Thank you, Mr. Chair. Rocky 8 Steele with the assessor's office. SB 16, that was 9 the initial letter of authorization that we received 10 and our main point of research is the Secretary of 11 State web site for LLC's. And this individual was 12 not on the secretary of state's web site. If you 13 turn to page SBE 27, the other individuals who 14 signed off on the other letters of authorization 15 that have been provided by the petitioner are in 16 fact on the secretary of state's web site. There is 17 no record of the individual who signed off on the 18 letter of authorization. So with consistent 19 treatment and with no other information provided 20 within that 48 hours, that's the reason that we 21 believe that the county denied the petition.

filed on February 13, 2014 by Candela, who could be verified as an owner, however, the authorization did not meet the 48 hour deadline imposed by NRS 361.362. The County Board did not accept jurisdiction to hear the Taxpayer's appeal because the appeal was filed by a person having no apparent authority to do so.⁷

- 5) The State Board made no change to the decision of the County Board because the motion to uphold the County Board failed due to lack of a majority vote.⁸
- 6) 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.

⁷ See Record, pages 10 and 30-32; Tr., 6-23-14, p. 50, ll. 7-21:

7 MR. STEELE: Thank you, Mr. Chair. Rocky 8 Steele with the assessor's office. SB 16, that was 9 the initial letter of authorization that we received 10 and our main point of research is the Secretary of 11 State web site for LLC's. And this individual was 12 not on the secretary of state's web site. If you 13 turn to page SBE 27, the other individuals who 14 signed off on the other letters of authorization 15 that have been provided by the petitioner are in 16 fact on the secretary of state's web site. There is 17 no record of the individual who signed off on the 18 letter of authorization. So with consistent 19 treatment and with no other information provided 20 within that 48 hours, that's the reason that we 21 believe that the county denied the petition.

⁸ See Tr., 6-23-14, p. 62, l. 5 through p. 65, l.23:

5 MEMBER JOHNSON: Here I have no doubt that the 6 property owner that signed the original probably was 7 an owner, but I have -- I think that we have 8 property right here and what the assessors office is 9 trying to do and they are making very clear through 10 their process is have it signed by someone that we 11 can verify is the legal owner or provide us proof at 12 the time of filing they are in fact a legal owner. 13 Their supplement that goes in the appeal form 14 clearly spells that out. And I think that a 15 property owner could be materially damaged by having 16 someone that they don't authorize appeal their 17 property taxes. I think that that is something that 18 wastes the assessor's time too. And I think this 19 all goes away if we're very clear in our position 20 that if you're not listed on the Secretary of 21 State's web site then prove up at the time of filing 22 your agent authorization form. If not, then it's 23 going to be get denied. And I think that the county 24 board in this case our burden is way -- is very much 25 lower and as the county board has the preponderance Page 63 1 of evidence, they based their decision on, I think 2 this case it's very clear they did. 3 CHAIRMAN MESERVY: Mr. Harper. 4 MEMBER HARPER: I totally concur with those 5 statements and feel like it's crystal clear to the 6 property owners. You know, what Ms. Wagner read 7 into the record and I apologize. I just realized I 8 called you the wrong name. It's been a long 9 morning. Thank you for pointing that out. So I 10 agree with what Mr. Johnson said that it's just the 11 preponderance of evidence is clear here that the 12 county board met that standard and is just going by 13 the statute and what is required with an agent 14 authorization form. 15 CHAIRMAN MESERVY: So do we have a motion? 16 MEMBER JOHNSON: Sure. In case 14-178, I make 17 a motion that we uphold the County Board of 18 Equalization's decision to deny jurisdiction as the 19 county board decision appears to be based on a 20 preponderance of evidence. 21 CHAIRMAN MESERVY: Second? 22 MEMBER HARPER: Second. 23 CHAIRMAN MESERVY: Okay. Any comments? Let 24 me just make a comment that I think sometimes we are 25 in error on this, because I know there are owners Page 64 1 that won't ever be on the Secretary of State site 2 and that have authority, and that's where I'm a 3 little concerned. 4 MEMBER JOHNSON: Last year I went through this 5 process. It did bother me a lot when we first 6 started getting these cases last year, and I didn't 7 feel like I fully understood why we were getting 8 them. But what the county is saying here and I 9 think it's completely reasonable, if you're not 10 listed we have no way to verify you're an owner on 11 this property, prove up on this. It would be the 12 same if I'm going to go to escrow and sign over 13 property and I'm going to say, hey, I'm majority 14 owner, I know I'm not listed on Secretary of State 15 web site, title isn't going to allow me to convey 16 ownership on transact on behalf of a property where 17 they can't understand that I'm in fact the owner. 18 That's all we're asking the property owner to do is 19 to be listed on the Secretary of State's web site, 20 prove up some way you do have in fact have the 21 ability to bind the corporation any trust, whatever 22 it is. I think that is a very reasonable thing for 23 the county to have. They are making it very, very 24 clear in their appeal forms that they are sending 25 out, they are making supplement notice to that Page 65 1 effect that makes it crystal clear. I think that 2 gets rid of a big issue. 3 The counsel county is having now 4 in spending tremendous resources on if we're very 5 clear and uphold what I think is a very reasonable 6 policy on their part. 7 CHAIRMAN MESERVY: So, again, my only comment 8 and I'll make it now is that we have had some cases 9 I think they proved up when they came all the way to 10 the State Board of Equalization that they proved 11 that they were. And that's what I believe that I'm 12 having a hard time saying that the standard has to 13 be met by that timeframe as long as they are filed 14 timely, but that is my understanding. Again, that 15 is an interpretation. With that, any other comment? 16 We have a motion. And all in favor? 17 MEMBER HARPER: Aye. 18 MEMBER JOHNSON: Aye. 19 CHAIRMAN MESERVY: All opposed? Nay. So it 20 wins. Basically it goes back to no change back to 21 what we were. 22 MS. BUONCRISTIANI: Taxpayer loses. 23 MEMBER JOHNSON: That was a two to one vote. Case No. 14-178 Sunset Boulevard, LLC

- 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.3d 1013, 1018 (Ariz., 1995).
- 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) NRS 361.375(9) requires a majority of the State Board to determine any action.
- 6) 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.



Christopher G. Nielsen, Secretary
CGN/ter