



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

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In the Matter of)

Westlake City Center LLC and)
PL I Las Vegas LLC)
APN: 138-22-712-006)

Case No. 14-267

PL I Las Vegas LLC)
APN: 138-22-712-008)
Clark County, Nevada)
PETITIONER)

Case No. 14-294

Michele Shafe)
Clark County Assessor)
RESPONDENT)

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

NOTICE OF DECISION

Appearances

Jennifer Gaynor appeared on behalf of Westlake City Center LLC and PLI Las Vegas LLC (Taxpayers).

Rocky Steele and Jeff Payson 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 State Board consolidated case numbers 14-267, Westlake City Center, LLC and 14-294, PLI Las Vegas LLC based on similar issues and fact patterns.¹

¹ See Tr., 6-23-14, p. 66, ll. 4-24:

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 Taxpayer's agent failed to file the agent authorization form with the county board appeal, even though the appeal to the Clark County Board of Equalization (County Board) was dated January 15, 2014. The agent authorization form did not meet the 48 hour deadline required by NRS 361.362.³ The County Board did not accept jurisdiction to hear each 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 County Assessor asked to incorporate by reference the testimony offered in SBE 14-178 regarding the information before the County Board. The State Board agreed to the request.⁵

Mr. Payson testified about the purpose of the 48 hour time limit in NRS 361.362 as amended in 2005.⁶

The State Board, having considered all evidence, documents and testimony pertaining to the determination of the county board to not accept 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.

4 Group 2 of Section E. I'm going to call two cases 5 together. They are 14-294 which is PL 1 Las Vegas, 6 LLC, and it's commercial property. Clark County 7 Assessor is the respondent. And I'm also calling 8 Case Number 14-267, Westlake City Center, LLC doing 9 business as PL 1 Las Vegas, LLC. Again, it's 10 commercial property. 11 CHAIRMAN MESERVY: So are these the same 12 owners? Same issue? 13 MS. RUBALD: I believe it's a similar issue, 14 yes, sir. 15 CHAIRMAN MESERVY: Is this something we can 16 combine then as far as our decision? 17 MS. GAYNOR: Yes. Jennifer Gaynor, Lionel 18 Sawyer & Collins, here on behalf of the petitioner. 19 And, yes, we can combine them. 20 MR. STEELE: We would agree as well. Same 21 fact patterns. 22 CHAIRMAN MESERVY: Can we use 14-294 to be the 23 case that we use? 24 MR. STEELE: That would be our preference.

² See Record, page 1.

³ See Record, SBE pages 16 (appeal dated 1-14-14 signed by rep only); SBE page 19, agent authorization form signed 1-15-14), and taxpayer explanation, SBE page 3.

⁴ See Record, SBE pages 13 and 32, Minutes of the County Board

⁵ See Tr., 6-23-14, p. 70, ll. 1-23:

1 But I would like to direct you to 2 page SBE 11. I guess before we go further, all the 3 testimony that Mary Ann Widener had given in the 4 last hearing as far as all that noticing that goes 5 to the taxpayer is available to the taxpayers. 6 Also, went in front of the county board on all these 7 jurisdictional cases. So I would like all that 8 information and that testimony to apply to this case 9 as well. 10 MS. BUONCRISTIANI: That would be called 11 incorporated by reference. Do you have the Case 12 Number that you can tell us what it was? 13 MR. STEELE: That would be Case Number SBE 14 14-178. 15 MS. BUONCRISTIANI: Do you want to incorporate 16 it on the appeals that deal with county boards not 17 accepting jurisdiction? 18 MR. STEELE: Yes, ma'am, I would. Thank you. 19 CHAIRMAN MESERVY: So incorporated. 20 MR. STEELE: With that incorporated. 21 MEMBER JOHNSON: Can we make that all cases 22 hearing today? 23 MS. BUONCRISTIANI: Yes.

⁶ See Tr., 6-23-14, p. 71, l. 18 through p. 72, l. 25:

18 MR. PAYSON: Jeff Payson for the Clark County 19 Assessor's office. I've heard some discussion about 20 the 48 hour, and I know that the chairman expressed 21 a little bit of angst over that as in regards to 22 361.362. I just want to give a little background on 23 that and maybe fill in some of the blanks. 24 Prior to 2005, there was no 48 25 hours. It just said you have to have that by the Page 72 1 time you file your appeal. The legislation heard a 2 bill. I don't know the bill number, but it was part 3 of the assessor's omnibus bill in 2005. I testified 4 to this issue specifically that 48 hours was added 5 as a deadline to clarify the vagueness of that. You 6 have to file by then and the decision, it was 7 discussed at the legislature, was fully vetted by 8 both sides was that 48 hours was reasonable time. 9 That if those documents got separated, for whatever 10 reason they didn't get sent in right with the appeal 11 form, that two days, 48 hours, would be time enough 12 for them to get that in there. 13 And as Mr. Steele said, it wasn't 14 that we were having to contact people and say you 15 didn't file this. The incumbency isn't on us to do 16 their research for them. And so that 48 hours is 17 statute. It was added in 2005 to help clarify this, 18 and it's the deadline to allow someone to come in 19 later up to a point of a hearing would completely be 20 contrary to that legislative requirement that we and 21 that statute that we adhere the 48 hours. And it 22 would put the assessors in an awful position of not 23 knowing whether someone was going to come in right 24 up to the day of hearing and say okay, now I'm 25 authorized. That's why the 48 hours was put in.

- 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 241.020.⁷
- 4) Pursuant to NRS 361.340(11), every appeal to the county board must be filed not later than January 15th. The tax agent failed to file an agent authorization form with the County Board along with the appeal that was filed on January 14, 2014.⁸ The Taxpayer later submitted an agent authorization form on February 1, 2014. Based on the fact 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.⁹
- 5) The State Board found the County Board had a preponderance of evidence before it to make the decision it did. The State Board found the original petition form was checked by someone that the agent authorization form was attached, which indicated the agent knew the authorization form needed to be signed. The State Board further found the Taxpayer did not make an appearance before the County Board and the County Board made a reasonable decision in light of the record before it.¹⁰
- 6) The State Board affirmed the decision of the County Board to deny jurisdiction.¹¹
- 7) 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, SBE page 34.

⁸ See Record, SBE pages 3 (Taxpayer explanation) and 11 (Taxpayer petition to County Board).

⁹ See Record, SBE pages 13 (County Board decision letter) and 32 (County Board minutes)

¹⁰ Tr., 6-23-14, p. 75, l. 22 through p. 77, l. 7:

22 MEMBER HARPER: My issue is the authorization, 23 not the authorization form but the form that was 24 submitted back January or dated January 14, 2014 SBE 25 11, I mean the signature of the authorized agent Page 76 1 slash attorney is obviously signed. It's dated and 2 right below it they check no that authorization per 3 NRS 361.362 is attached. So they knew they had to 4 submit it or not submit it and they chose not to 5 submit it. And I understand the testimony that it 6 was an oversight in their office. But, again, I get 7 back to it's clear that the authorization form needs 8 to be signed, because this form is not signed by an 9 owner. It's signed by authorized agent slash 10 attorney. And I think that the statute is pretty 11 clear that they have to attach or provide, you know, 12 by the deadline, this authorization form. And it 13 just wasn't done in this case, and I'm sorry an 14 error was made, but we don't -- you know, if we 15 rewarded -- we just briefly held the assessors to a 16 standard that, you know, they made an error and 17 shouldn't have, unfortunately, this tax rep agent 18 made an error that shouldn't have been made. So 19 that's my comment. 20 MEMBER JOHNSON: The only other thing that I 21 think is important is that the assessor brought up 22 is the appellant didn't show up at the County Board 23 of Equalization. So the county board when they're 24 making their decision, they heard from the assessor. 25 They made a reasonable decision based upon that Page 77 1 whatever reason the petitioner did not show up at 2 that time, and the county board, they did what they 3 could. I think it's pretty reasonable in light of 4 the record and what Keith said, that the county 5 board would make the decision they did. 6 CHAIRMAN MESERVY: I agree. So I think we 7 ought to make a motion.

¹¹ Tr., 6-23-14, p. 77, ll. 8-19:

8 MEMBER JOHNSON: I will make a motion in Case 9 14-294 and 14-267 that we uphold the county board 10 decision to keep -- deny jurisdiction as the county 11 board based their decision on a preponderance of the 12 evidence. 13 CHAIRMAN MESERVY: Do we have a second? 14 MEMBER HARPER: Second. 15 CHAIRMAN MESERVY: Any other comments? All in 16 favor? 17 THE BOARD PANEL: Aye. 18 CHAIRMAN MESERVY: Any opposed? So it's 19 unanimous. Thank you

- 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). Based on the 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 Petitions of the Taxpayers are 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