



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

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DEONNE CONTINE
Secretary

In the Matter of)
)
Richard & Masako Post)
APN 137-23-511-032)
State Board Case No. 10-377)
State Board Case No. 11-446)
State Board Case No. 12-424)
)
Sun City Summerlin Community)
APN 138-17-311-001; 137-13-613-003;)
137-23-510-001; 138-17-616-001; and)
138-18-110-064)
State Board Case No. 10-379)
State Board Case No. 11-454)
State Board Case No. 12-423)
Clark County, Nevada)
PETITIONERS)
)
Michelle Shafe)
Clark County Assessor)
RESPONDENT)

Request for Reconsideration

NOTICE OF DECISION-REQUEST FOR RECONSIDERATION

Appearances

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).

Jeff Payson appeared on behalf of the Clark County Assessor's Office (Assessor).

Summary

Respondent's Petition for Reconsideration came before the State Board of Equalization (State Board) on May 5, 2015. This case originally came before the State Board on an appeal by Taxpayer Post and Taxpayer Sun City Summerlin for review of property valuation for the 2010-11 fiscal year within Clark County, Nevada, on September 27, 2010. The State Board's decision was subsequently

appealed to the District Court and Nevada Supreme Court, remanded and heard again by the State Board on December 12, 2014 in Las Vegas, Nevada. A decision letter was issued on March 3, 2015. The Assessor requested reconsideration of the decision on March 25, 2015.

Taxpayer Sun City Summerlin originally 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.

As a result of the hearings held on October 9 and subsequently on December 12, 2014, in Case 10-379 and related cases, the State Board found 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.*

At the hearing on December 12, 2014, the State Board concluded it had authority to determine the taxable values in the State and to equalize property pursuant to the requirements of NRS 361.395. Accordingly, the State Board concluded 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.* Further, the State Board concluded 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. *NRS 361.233; NAC 361.1336.*

The State Board, having considered all evidence, documents and testimony pertaining to the request for reconsideration pursuant to NAC 361.7475, 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. *Record, SBE pages 573-575.*
- 4) Petitions for reconsideration must be filed with the State Board and served on all parties within 15 days after the date of service of the decision. The State Board's notice of decision was issued on March 3, 2015. The decision letter was received by the Assessor on March 6, 2015. The Assessor requested reconsideration of the decision on March 25, 2015.

- 5) As noted in the decision letter, the State Board found 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. See Decision Letter, Record, pages 298-305.*
- 6) The Assessor sought reconsideration of the State Board's decision on the basis that the State Board's decision was unlawful and misapplied and failed to consider controlling authority based on the Nevada Supreme Court decision in case number 60776, *Clark County vs. Sun City Summerlin Community*. *See Record, SBE pages 540-545.*
- 7) The State Board found the Assessor's request for reconsideration was filed more than 15 days after the date of service of the decision as provided in NAC 361.7475 and was therefore late. *See Tr., 5-5-15, p. 201, l. 2 through p. 202, l. 25.*
- 8) The State Board did not reconsider the matter based on the late-filing of the request. *See Tr., 5-5-15, p. 200, l. 13 through p. 202, l. 25.*
- 9) 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 Assessor did not timely file a Petition for Reconsideration pursuant to NAC 361.7475. *See Finding of Fact #7.*
- 2) The State Board has authority to determine whether it has jurisdiction to hear a matter. The State Board has the authority to determine matters necessary to carry out the power conferred on the State Board by statute. *Checker, Inc. et al. v. Public Serv. Comm'n, 84 Nev. 623, 629-630, 446 P.2d 981 (1968).*
- 3) 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 Assessor's Petition for Reconsideration is denied based on the above Findings of Fact and Conclusions of Law.

BY THE STATE BOARD OF EQUALIZATION THIS 16th DAY OF JULY, 2015.



 Deonne Contine, Secretary
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