



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

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Secretary

In the Matter of)

Michele Shafe)
Clark County Assessor)
State Board Case No. 11-416)
PETITIONER)

Howard Hughes Co. LLC)
APN: 137-21-000-002, 137-22-000-015,)
137-28-000-001, 137-32-000-003)
Clark County, Nevada)
RESPONDENT)

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

Hearing on Remand ordered by:
First Judicial District Court
Order Granting Petition
for Judicial Review,
Case No. 11 OC 00416 1B

REVISED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

Appearances

Lisa Logsdon of the Clark County District Attorney's office and Gary Relyea and Jeff Payson appeared on behalf of the Clark County Assessor's Office (Assessor).

Paul Bancroft of Lionel, Sawyer, and Collins appeared on behalf of Howard Hughes Co. LLC (Taxpayer).

Summary

Case 11-416 was originally heard by the State Board on August 22, 2011 in Las Vegas, Nevada after due notice to the Taxpayer and the Assessor. The County Assessor had appealed to the State Board, the decision of the County Board establishing the taxable value of the subject property at \$149,700,000. After considering the evidence presented, the State Board found the taxable value of the subject property should be based on a per acre value of \$36,095.81 for 5,540.81 acres, for a total taxable value of \$200,000,000. See *State Board Decision Letter dated November 9, 2011; Tr., 3-23-15, p. 8, ll. 1-15*. The Taxpayer subsequently appealed the decision of the State Board to the First Judicial District Court.

This matter is before the State Board on remand from Department No. 1 of the First Judicial District Court pursuant to an Order Granting Petition for Judicial Review entered by Judge T. Russell on March 31, 2014 in Case No. 11OC 00416 1B. The order instructs the State Board to re-examine the evidence and clarify the basis for its decision under NRS 233B.125. The Order also requires (1) that there be a determination of the value of the property using one or more of the prescribed approaches found in NRS 361.227(5); and (ii) that the value be supported by substantial evidence in the record; and (iii) the decision be written in sufficient detail to allow meaningful judicial review. *See Tr., 3-23-15, p. 8, l. 16 through p. 10, l. 20.*

The response to the Court's order by the State Board was originally scheduled on July 29, 2014. The State Board reviewed the record at that time and determined that its analysis fulfilled the order of the Court. *See Tr., 7-29-14, p. 340, l. 24 through p. 342, l. 2 (see also Record, SBE pages 613-615).* At a hearing held on August 25, 2014, the State Board considered whether to reopen the matter. The State Board voted to re-open the matter. *See Tr., 8-25-14, p. 13, l. 14 through p. 15, l. 14.* The matter was scheduled for further hearing on October 9, 2014. At the hearing, the State Board determined it would re-hear the entire case, but without new evidence. *See Tr., 10-9-14, p. 172, l. 21 through p. 173, l. 9.* The matter was heard by the State Board on March 23, 2015 in Reno, Nevada, after due notice to the Taxpayer and the Assessor.

The District Court issued a second order dated March 13, 2015 to enforce the remand order and clarified there should be no witness testimony or new evidentiary exhibits at the hearing on remand. The Court further ordered that counsel must be afforded an adequate opportunity to explain how the existing evidence in the administrative record applies to the issues before the State Board. *See Tr., 3-23-15, p. 10, l. 21 through p. 11, l. 25.*

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 Revised 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 Taxpayers 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. *See Record, SBE pages 687-691.*
- 4) The subject property consists of four parcels of vacant undeveloped land containing 5,540.81 acres situated in the western Las Vegas valley, adjacent to the Red Rock Canyon National Conservation Area in Clark County, Nevada. This land comprises 90 percent of the area commonly referred to as Summerlin West, which will be the last part to be developed of the 22,500 acre Summerlin master-planned community. *See Record, SBE pages 16, 19; Tr., 8-22-11, p. 296, ll. 4-15; Tr. 3-23-15, p. 12, ll. 7-13.*
- 5) The Clark County Board of Equalization (County Board) ordered that the total taxable value for the subject property of \$249,336,454 be reduced to \$149,700,000 for the 2011-2012 secured roll. *See Record, SBE pages 9 and 321.*

- 6) At a hearing held on August 22, 2011, the State Board found the Assessor presented sufficient evidence to support values different from that established by the County Board. See *Tr.*, 8-22-11, p. 327, l. 5 through p. 328, l. 1; p. 331, l. 3 through p. 332, l. 4. The State Board originally found the taxable value of the subject property should be based on a per acre value of \$36,095.81 for 5,540.81 acres, for a total taxable value of \$200,000,000. See *Tr.*, 8-22-11, p. 331, l. 18 through p. 334, l. 19.
- 7) At the hearing on March 23, 2015, the State Board reviewed the record and found the subject property was difficult to value using a traditional sales comparison approach, which generated significant variances on a price per acre, ranging from \$47,553 per acre to \$334,869 per acre according to the Assessor. The State Board referenced the specific testimony of the Assessor at page 517 of the State Board record to support the difficulty in relying on the results of the sales comparison approach. See *Tr.*, 3-23-15, p. 67, l. 15 through p. 68, l. 3. The State Board found that comparable sales did not exist. See *Tr.*, 3-23-15, p. 70, l. 14-21.
- 8) The State Board found that the discounted cash flow method of appraisal allowed by NRS 361.227(5)(c) is consistent with the Court's order and should be given more weight than a traditional sales comparison approach because of the significant variance in sales prices per acre. See *Tr.*, 3-23-15, p. 68, ll. 4-8; p. 70, ll. 13-21. The State Board found substantial evidence for using the discounted cash flow method in both the testimony of the Assessor and in the appraisal submitted by the Taxpayer. See *Tr.*, 3-23-15, p. 68, ll. 9-20.
- 9) The State Board found that the Taxpayer's appraisal referenced a range of discount rates that could be used in the discounted cash flow method, from 15 to 30 percent on page 72 of the Record. The appraisal referenced a real estate investor survey completed by Korpacz and Associates in the Second Quarter, 2010. See *Tr.*, 3-23-15, p. 68, ll. 15-20.
- 10) The Taxpayer's appraisal concluded that a 20% overall discount rate appeared reasonable. See *SBE page 72*. The State Board, however, found the Assessor made a good case for using the lower discount rate of 15% in the discounted cash flow method. The State Board also specifically referenced the Assessor's testimony at the County Board hearing: "That's based on the issue of the entrepreneurial profit and the inconsistencies between the Morris 2005 appraisal and the current one that's -- Both of them are in the record." See *Record, SBE pages 315-319; Tr. 3-23-15, p. 22, ll. 21-24; p. 68, l. 21 through p. 69, l. 3*.
- 11) The State Board found that the absorption period of 17 years used in the Taxpayer's appraisal was appropriate and was more supported than the Assessor's opinion of 11 years for an absorption period. See *Tr.*, 3-23-15, p. 69, ll. 4-11.
- 12) The State Board found that all of the other assumptions and variables in the discounted cash flow analysis in the Taxpayer's appraisal were well supported in the market and the market conditions of the appraisal, with the exception of the discount rate. See *Tr.*, 3-23-15, p. 69, ll. 12-15; p. 70, ll. 22-25.
- 13) The State Board found that a discount rate of 15 percent should be used in the discounted cash flow analysis, based on the testimony of the Assessor at the County Board as noted in Finding of Fact No. 10 and that the Taxpayer's appraisal also referenced a discount rate of 15 percent at the low end of the range, as noted in Finding of Fact No. 9. See *Tr.*, 3-23-15, p. 69, ll. 15-21. Furthermore, the State Board found that a discount rate is a function of risk. If the absorption period is longer, there is less risk. If the absorption period is shorter, there is more risk in achieving financial goals. The State Board found that if the Assessor's absorption period of 11 years were to be used, the 20% overall discount rate might be appropriate, however, using a 17

year absorption period means that there would likely be several economic cycles, and the 15% overall discount rate was an appropriate reflection of risk considering the length of the absorption period. The State Board noted that the subject property was a well-known, highly successful master-planned community and that there was little entitlement risk thus reducing the overall risk. In addition, the absorption period applied by Taxpayer was more than double that in Taxpayer's study by Korpacz. Therefore, a 15% discount rate was reasonable and reflected lower risk. *See Tr., 3-23-15, p. 70, l. 22 through p. 72, l.12. See also NRS 361.227(5)(c).*

- 14) Based on the use of the discounted cash flow method using a 17 year absorption period and an overall discount rate of 15 percent, the State Board found that the taxable value of the subject property as of January 1, 2011 should be set at \$217,149,896, which equates to \$39,191 per acre. *See Tr., 3-23-15, p. 75, l. 2 through p. 76, l. 17.* In doing so, the State Board relied on the Taxpayer's appraisal, but adjusted the discount rate to 15 percent with reference to the Korpacz survey and other evidence as the appropriate rate for use with the stated absorption period. *See Tr., 3-23-15, p. 76, ll. 1-8.*
- 15) The State Board found the per acre value of \$39,191 resulting from the overall value of \$217,149,896 divided by 5,540.81 acres, did not exceed full cash value based on the Assessor's information on page 112 of the Record. *See Tr., 3-23-15, p. 69, ll.12-21.*
- 16) The assessed value as adjusted by the State Board is 35% of taxable value.
- 17) 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 timely filed a notice of appeal, and the State Board has jurisdiction to determine this matter based on the remand from the first Judicial District Court.
- 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.
- 4) The subject property is appraised, as adjusted, at the proper taxable value 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 Assessor is granted, based on the above Findings of Fact and Conclusions of Law. The Clark County Comptroller is instructed to correct the assessment roll by adjusting the assessed valuation of the subject property as follows:

2011-2012 Secured Roll

Parcel Number	Taxable Value		Assessed Value	
	Established by County Board of Equalization	Revised By State Board	Established by County Board of Equalization	Revised by State Board
137-21-000-002, 137-22-000-015, 137-28-000-001, 137-32-000-003.				
Land	\$149,700,000	\$217,149,896	\$52,395,000	\$76,002,464
TOTAL	\$149,700,000	\$217,149,896	\$52,395,000	\$76,002,464

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 14th DAY OF MAY, 2015



Deonne Contine, Secretary
DC/ter