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In the Matter of	)	
	)	
	)	
Michele Shafe	)	**Hearing to consider settlement**
Clark County Assessor	)	**for cases appealed to the District**
State Board Case No. 11-416	)	**Courts and Remanded to the Board:**
PETITIONER	)	
	)	**First Judicial District Court,**
Howard Hughes Co. LLC	)	**Department No. 1,**
APN: 137-21-000-002, 137-22-000-015,	)	**Case No. 11 OC 00416 1B (2011);**
137-28-000-001, 137-32-000-003	)	**Case No. 15 OC 00150 1B (2015); and**
Clark County, Nevada	)	**First Judicial District Court,**
RESPONDENT	)	**Department No. 2,**
	)	**Case No. 12 OC 00418 1B (2012)**
Appeal of the Decision of the	)	
CLARK COUNTY	)	
BOARD OF EQUALIZATION	)	

NOTICE OF DECISION

Appearances

Lisa Logsdon of the Clark County District Attorney's office; Jeff Payson and Mary Ann Weidner appeared on behalf of the Clark County Assessor's Office (Assessor).

Paul Bancroft of Fennemore Craig, P.C., appeared on behalf of Howard Hughes Co. LLC (Taxpayer).

Summary

The Assessor appealed the decision of the Clark County Board of Equalization (County Board) establishing the taxable value for the 2011-2012 tax year to the State Board of Equalization (State Board). The appeal was assigned Case No. 11-416 and 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 decision of the County Board established 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.

Case No. 11-416 was heard by 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 instructed the State Board to re-examine the evidence and clarify the basis for its decision under NRS 233B.125. The Order also required (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); (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 considered the arguments of the counsel for the Assessor and Taxpayer; 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; Record, SBE page 693.*

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. The State Board found that the discounted cash flow ("DCF") method of appraisal provided by NRS 361.227(5)(c) was consistent with the Court's order and given more weight. Based on an analysis of the DCF, the State Board revised its findings and established a taxable value of $217,149,896. A notice of the revised decision was issued on May 14, 2015. The notice was subsequently filed with the Court on May 18, 2015.

The Taxpayer filed a Petition for Judicial Review seeking review of the State Board's decision of $217,149,896 in Case No. 11-416. The Taxpayer also filed a petition for judicial review for the subsequent tax year 2012-2013 in State Board Case No. 12-491. The 2012-2013 tax year appeal of the taxable value of the subject property was filed with the First Judicial District Court and was assigned Case Number 12 OC 00418 1B.

A comprehensive settlement of the taxable values in the foregoing cases was proposed by the Taxpayer and the State Board, and the matter of the consideration of the proposed settlement was heard by the State Board on November 20, 2015.

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 County 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. The Department provided evidence to show the Taxpayer and the Assessor received notice of the hearing. *See Record, SBE pages 1013-1015.*

4) The subject property in State Board Case No. 11-416 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 subject property in State Board Case No. 12-491 consists of five parcels of vacant undeveloped land containing 5,920.32 acres generally located adjacent to the western fringe of existing Las Vegas Metropolitan area development, west of Interstate 215 (Western Beltway, north of the approximate alignment of Charleston Boulevard / State Route 159, and south of the approximate alignment of Lake Mead Boulevard, Las Vegas, Clark County, Nevada. *See Record, Case No. 12-491, SBE page 25.*

6) In the decision of the State Board issued May 14, 2015, the State Board found the discounted cash flow method of appraisal provided by NRS 361.227(5)(c) was consistent with the Court's order and should be given more weight than a traditional sales comparison approach. The State Board further 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 Revised Findings of Fact, Conclusions of Law and Decision dated May 14, 2015, Finding of Fact #8, SBE pages 813-817.*

7) The State Board revised the taxable value established by the County Board from $149,700,000 to $217,149,896 using a 17 year absorption period and an overall discount rate of 15%. *See Revised Findings of Fact, Conclusions of Law and Decision dated May 14, 2015, Finding of Fact #14, SBE pages 813-817.*

8) The Taxpayer appealed the State Board's May 14, 2015 decision to the District Court. *See SBE pages 820-827.*

9) On August 19, 2015, the District Court ordered the matter in Case No. 15OC 00150-1B (State Board Case No. 11-416) be placed in abeyance and remanded to the State Board for consideration of settlement. *See Case No. 11-416, SBE pages 846-847.* Similarly, the District Court ordered the matter in Case No. 12OC 00418-1B (State Board Case No. 12-491) be placed in abeyance and remanded to the State Board for consideration of settlement. *See Case No. 12-491, SBE pages 709-710.*

10) The State Board originally scheduled a hearing on July 21, 2015 to consider a proposed settlement with the Taxpayer, but the matter was continued to August 24, 2015. *See Tr., 7-20-15, p. 236, ll. 15-21.* The Assessor submitted an objection to consideration of a proposed settlement agreement dated July 23, 2015. *See Record, Case No. 11-416, SBE pages 794-799.*

11) The State Board held a hearing on August 24, 2015 to consider a proposed settlement with the Taxpayer and the State Board in Case No. 11-146. *See Record, SBE pages 883-888.* State Board member Harper advised that he had attended settlement conferences and recommended to the State Board a taxable value of $177,298,700 based on discounted cash flow analysis and

appropriate appraisal techniques. State Board Member Harper further stated that during the settlement conferences, he realized an error had been made in the calculation of the discounted cash flow analysis with regard to the way the property tax liability was handled. In addition, he recommended a higher discount rate of 17-1/2 percent to reflect market conditions at the time, entrepreneurial profit and all of the base land values presented in the Taxpayer's appraisal. *See Tr., 8-24-15, p. 30, ll. 13-25.*

12) The State Board on a tie vote (2 yea; 2 nay) took no action on the settlement recommendation for Case No. 11-416 because it reached no majority vote. NRS 361.375(9). The two nay votes were based on concerns about whether the Assessor was afforded adequate due process during the settlement conferences, as cited in the objection of the Assessor. *See Tr., 8-24-15, pp. 31-35.*

13) At the hearing on August 24, 2015, the State Board voted to continue Case No. 12-491 until the District Court issued an order of remand. *See Tr., 8-24-15, p.36, l. 13 through p. 37, l. 18.*

14) The State Board scheduled an additional hearing to consider settlement of this matter on November 20, 2015. *See Record, Case No. 11-416, SBE page 892.* The State Board's Deputy Attorney General submitted to the State Board for its consideration a record a series of emails and letters regarding efforts by the parties to the District Court cases to settle these matters. *See Item 1, Email dated 11-24-14 expressing State Board interest in settling the matter; Item 2, letter from Paul Bancroft to Lisa Logsdon dated March 17, 2015; Item 3, Offer by Taxpayer dated May 20, 2015; Item 4, County's decline of offer dated May 29, 2015; Item 5, State Board invitation to settlement conference dated September 9, 2015; Item 6, Taxpayer agreement to attend settlement conference dated September 18, 2015; Item 7, County agreement to attend settlement conference dated September 25, 2015; Item 8, County's offer to settle dated October 8, 2015; and Item 9, State Board response to County's offer dated October 9, 2015.*

15) The Assessor submitted a second objection to consideration of the proposed settlement agreements. The Assessor asserted Clark County is a real party in interest and its consent is required for a settlement of the case; the State Board already voted not to accept the settlement offer of $177 million of taxable value and the parties do not agree on the taxable value, therefore there is no settlement to approve; the State Board did not have authority to approve a settlement without the consent of all the parties; and Member Harper should abstain from voting due to ex parte communications with the Taxpayer. *See Record, Case No. 11-416, pages 895-906.*

16) The Taxpayer submitted a response to the Assessor's second objection. The Taxpayer asserted the State Board does have authority to make final taxable value determinations; and the Court has already rejected the County's other legal objections. *See Record, Case No. 11-416, pages 909-1012.*

17) The State Board's counsel advised the State Board that the Assessor's arguments regarding ex parte communications did not apply when the State Board was a party to the litigation. Member Harper attended the settlement conferences as a party respondent to the district court cases. When the State Board met with Member Harper and State Board's counsel to hear the settlement offer, the non-meeting complied with the Open Meeting Law. NRS 241.015(3)(b)(2). *See Tr. 11-20-15, pp. 25-26.*

18) The State Board found the original August 22, 2011 decision of taxable value of $200,000,000 was not derived using a method of appraisal provided by statute. *See Tr., 11-20-15, p. 33, l. 24 through p. 34, l. 4.* In addition, although there was evidence of comparable sales in the record, the State Board found the sales were dissimilar from the subject property. The State Board

therefore relied on the evidence supporting the use of the discounted cash flow analysis, which is also a statutorily approved method of valuation. *See Tr., 11-20-15, p. 34, ll. 4-25; NRS 361.227(5)(c).*

19) At the November 20, 2015 hearing, Member Harper reiterated his comments from the August 24, 2015 hearing regarding the calculation of the discounted cash flow analysis. *See Tr., 11-20-15, p. 28, ll. 5-20.* Member Harper recommended the discounted cash flow analysis used to support the May 14, 2015 decision of taxable value of $217,149,896 be adjusted to correct the property tax liability error and to reflect additional market risk and other factors by increasing the discount rate. After adjusting the discounted cash flow analysis, the recommended taxable value was reduced to $177,298,700. *See Tr., 11-20-15, p. 30, ll. 7-14; p. 36, ll. 4-5.*

20) The State Board found at the November 20, 2015 hearing there was substantial evidence in the record for settlement purposes to support a discounted cash flow analysis using a discount rate of 17-1/2 percent and correction of the property tax liability error. *See Tr., 11-20-15, p. 34, ll. 12-25.*

21) The State Board accepted the settlement proposal of $177,298,700 in taxable value for Case No. 11-416. *See Tr., 11-20-15, p. 35, l. 17 through p. 36, l. 12.*

22) The State Board incorporated all of the comments in Case No. 11-416 into Case No. 12-491. *See Tr., 11-20-15, p. 36, ll. 16-23.*

23) The State Board found that in Case No. 12-491, the total absorption period remained the same as in Case No. 11-416 at 17 years. However, there was a decrease in the base land values between 2011 and 2012 as supported by market data. Incorporating that difference resulted in a recommended settlement proposal in Case 12-491 of $158,493,176 in taxable value. *See Tr., 11-20-15, p. 37, ll. 7-20.*

24) The State Board accepted the settlement proposal of $158,493,176 in taxable value for Case No. 12-491. *See Tr., 11-20-15, p. 37, l. 24 through p. 38, l. 11.*

25) 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 State Board has jurisdiction to determine this matter pursuant to the Order of Remand issued by the First Judicial District Court, Dept. No. I in Case No. 15OC 001501B and by the First Judicial District Court, Dept. No. II in Case No. 12OC 00418 1B. *See Record, Case No. 11-416, SBE pages 846-847; and Record, Case No. 12-491, SBE pages 709-710.*

2) The State Board has the authority to determine the taxable values in the State. *NRS 361.360; NRS 361.400; NRS 361.405(1); NRS 361.410(1).*

3) 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 Service Commission,* 84 Nev. 623, 629-630, 446 P.2d 981 (1968).

4) The discounted cash flow method of appraisal is a method provided by NRS 361.227(5)(c).

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 State Board, having considered all evidence and testimony pertaining to the matter, including the objections by the Clark County Assessor to the settlement, accepted and approved the negotiated settlement taxable value of $177,298,700 for case no. 11-416. The State Board further accepted and approved a negotiated settlement taxable value of $158,493,176 for case no. 12-491.

BY THE STATE BOARD OF EQUALIZATION THIS 6th DAY OF JANUARY, 2016.

Deonne E. Contine

Deonne Contine, Executive Director

cc: County Treasurers
Gina Session, Chief Deputy Attorney General