PETITIONER REPLY BRIEF

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STATE OF NEVADA
DEPARTMENT OF TAXATION

Before the Nevada State Board of Equalization
Case No. 26-124

Reply Brief of the Taxpayer
Fort Apache Townhomes, LLC
On Appeal from the
Clark County Board of Equalization
Case No. 1129 (02.23.2026)

I. **Introduction**

The Petitioner Fort Apache Townhomes, LLC ("FORT") hereby submits its Reply to the "Assessor's Response to Petitioner's Hearing Brief" (hereafter "Answer"). To aid the Nevada State Board of Equalization ("Board" or "NSBE") this Reply shall parallel the format of the Answer and rebut each erroneous Assessor argument on the Answer in turn. To the extent that the Answer also misstates the Petitioner's arguments for rhetorical advantage, this misleading practice by the Answer will also be called out.

II. **Assessor's Answer Response and Petitioner's Reply**

1. **Mapping Does Not Drive Valuation in All Cases**: The Assessor's Answer insists that mapping drives valuation. The Assessor's analysis starts and stops with the phrase "[u]nder NRS 361.227(2) the unit of appraisal is a single parcel.[1]" The Answer further asserts that "[t]he Assessors must value the property as it physically and legally exists on the lien date" and "[h]ypothetical assumptions about combining parcels or retroactive zoning rules are irrelevant.[2]" The Answer asserts that "since the parcels are individually parceled the most accurate measure to determine full cash value is comparable sales method."[3]

The old trope "close enough for government work" jumps out of the pages of the Assessor's Answer. The Answer actually says the required mapping by the Clark County Code for a for-rent

[1] Answer at page 1. Curiously, the Assessor's asserted argument absolutely ignores NRS 361.227(2), which provides specific ***exceptions*** to this general standard. *See* discussion below.

[2] *Id*. at pages 1-2.

[3] *Id*. at page 2.

accumulation of townhomes is "irrelevant."[4] As a result, the Assessor valuation never proceeded beyond simply valuing individual parcels as if they were for-sale properties and then adding up the total. The suggestion that if it looks like a duck it will be treated like a duck is a nice easy way to approach valuation, but this "looks like a duck" approach is constitutionally and statutorily wrong.

This "looks like a duck" approach was deemed "close enough", so the Assessor never proceeded to undertake the next step of the analysis as required ***by statute***.

Specifically, NRS 361.227 states:

> 1. Any person determining the taxable value of real property shall appraise:
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> (a) The full cash value[5] of:
>
> (1) Vacant land by considering the uses to which it may lawfully be put, any legal or physical restrictions upon those uses, the character of the terrain, and the uses of other land in the vicinity.
>
> (2) Improved land consistently with the use to which the improvements are being put.
>
> (b) Any improvements made on the land by subtracting from the cost of replacement of the improvements all applicable depreciation and obsolescence. Depreciation of an improvement made on real property must be calculated at 1.5 percent of the cost of replacement for each year of adjusted actual age of the improvement, up to a maximum of 50 years.
>
> 2. The unit of appraisal must be a single parcel unless:
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> (a) The location of the improvements causes two or more parcels to function as a single parcel;
>
> (b) The parcel is one of a group of contiguous parcels which qualifies for valuation as a subdivision pursuant to the regulations of the Nevada Tax Commission; or
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> (c) In the professional judgment of the person determining the taxable value, the parcel is one of a group of parcels which should be valued as a collective unit.

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[4] *Id*. at page 2.

[5] Please also note that NRS 361.025 provides that "full cash value" means the most probable price which "property would bring in a competitive and open market under all conditions requisite to a fair sale."

NRS 361.227 (emphasis added).

The statutory text of NRS 361.227 is dispositive. The legislature has told the Assessor to determine the full cash value "***consistently with the use***". It does not state "appearance", "physical characteristics" or "mapping", it directs that the determination be based upon "use".

Subsection (2) of NRS 361.227 anticipates the exact situation in this property which excepts it from the Assessors "looks like a duck" analysis. There are, indeed, multiple parcels but with the clear expression of intent to use the property as multifamily rental project. This intent is reinforced by the actual use of the property as a single income-generating unit similar to an apartment complex, and the owner's election not to take any of statutory and/or legal steps required to be a for sale development. The Nevada Supreme Court has specifically indicated that apartments should be valued using the income approach to the assembled economic enterprise, rather than by the comparable sales method for individual units. *See* Canyon Villas Apartments Corp. v. State, 124 Nev. 832, 843, 192 P3d 746 (2008)("When, as in this case, the [multiple unit rental] property produces an income, the income capitalization approach is usually the best [appraisal] method."). The Supreme Court in Canyon Villas Apts. Corp. and the Nevada Legislature in NRS 361.227(2) are consistent in requiring the County Assessor to look at ***the use*** of the property(s), rather than the simple comparable sales (i.e. it looks like a duck, they look like they would be "for sale") method used in this case.

Note that the Assessor does not dispute that at the time FORT developed its project Clark County had not yet amended its code to accommodate the ***intended for-sale use*** of this project as the City of Las Vegas and North Las Vegas would have allowed, and that the Petitioner actually sought to map its townhome project as a single parcel to accommodate ***this intended use***. Nor is it disputed by the Assessor that the use throughout the life of the project ***has actually been used as a seventy-nine unit rental project***.

The Assessor does not dispute that if this project were developed today, and mapped as a single parcel as now permitted by the Clark County Title 30[6], the Assessor would concede that the *use* of the property would drive a valuation based upon an income capitalization method. Indeed the absence of any assertion to the contrary suggests that an identical project ***use*** developed as a single parcel in 2026 in Las Vegas, North Las Vegas, or Clark County would all be valued using the income capitalization method because of ***the use of the property*** as a for-profit townhome rental business. The use has never changed; the only factor that stops the Assessor from doing this for the FORT project is the way it is mapped due to the now-corrected anomaly in the 2022 version of the County development code.

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[6] Or as permitted by the Cities of Las Vegas or North Las Vegas development codes at all relevant times.

At no time does the Assessor's entire Answer even concede or acknowledge that individual dwelling units in the FORT project were never actually offered for sale, as was the case in Montage Marketing[7], nor could[8] the FORT units ***even be*** offered for individual sale without its owner taking several steps to comply with Nevada law, including without limitation NRS 116. This fact alone distinguished Montage Marketing from the project herein. Indeed, the various homes built for Montage Marketing were entitled, mapped and made compliant with NRS 116's common interest community requirements to be able to sell the individual units. The owners had been selling individual units and were only intermittently offering a portion of the same for rent when sales slowed down. During this economic downturn, the Montage Marketing developer rented some limited number of units from for sale inventory but sought "rental status" for the entire project including active for-sale inventory. In stark contrast to Montage Marketing, no individual dwelling units in FORT's project have ever been offered for sale, nor can/could they legally be sold without the developer taking several additional legal steps[9] to comply with Nevada law; and FORT has not taken any such steps. The project was built, entitled and **used** (historically, currently, and for the foreseeable future) as a multifamily rental project.

Since individual FORT units were not a "for sale" use, comparable sales would not demonstrate full cash value in an arm's length marketplace. These units were "for rent" as a multifamily rental project and only the capitalized income approach would have reflected full cash value, and is the appropriate means for equalizing the assessed value[10] as was used in the submitted Broker's Opinion of Value.[11] NRS 361.227(2) grants this Board the discretion to conclude that these parcels are a group of parcels which should be valued as a collective unit.

Under the Board's statutory powers to render a decision based upon "fairness and equity", this Board must recognize that the comparable value method of determining full cash value would never be used by a buyer in the marketplace to determine valuation for the FORT project,

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[7] The County Assessor relies almost exclusively on a few lines from the case Montage Marketing, LLC v. Washoe County, 134 Nev. 294, 419 P.3d 129 (2018) that discusses valuation of for sale products, and ignores the guidance of Canyon Villas Apts. Corp, *supra*, and NRS 361.226 on income producing enterprises.

[8] Indeed, the FORT project individual units ***still cannot be offered for individual sale***, continuing the distinction of the project from the condominium units in Montage Marketing, *supra*.

[9] *See* discussion at page 7, *infra*.

[10] *See* Canyon Villas Apartments Corp. v. State, 124 Nev. 832, 843, 192 P3d 746 (2008)("When, as in this case, the [multiple unit rental] property produces an income, the income capitalization approach is usually the best [appraisal] method" to determine full cash value for equalization purposes).

[11] *See* Broker's Opinion of Value (BOV), Appellate Appendix at Tab 3.

and that any arm's length buyer would instead use income capitalization to determine the appropriate value/price. In all instances, the comparable sales method would result in a valuation exceeding the full cash value determined by the actual marketplace.

2. **Marshal and Swift Definitions Do Not Overrule Applicable Nevada law:** Without citing *any* legal authority, the Assessor's Answer simply asserts that since the FORT project consists of Townhouses, each Townhouse should be evaluated as if each actually were for sale. The Answer asserts that "valuing them as apartments would violate appraisal and statutory practices" without identifying any supporting statute or uniform standard of appraisal.[12]

Curiously, the Answer does not actually ***cite*** any statute in asserting that valuing an accumulation of for sale townhomes violates "statutory" standards. Indeed, the Answer's assertion conveniently ***ignores*** the previously cited and discussed NRS 361.227 and the construction of NRS Chapter 361 by the Nevada Supreme Court in Canyon Villas Apts. Corp. It also ignores the Assessor's prior and continuing concessions that if FORT was a single parcel townhome project, as was (and is) permitted in the cites of North Las Vegs and Las Vegas at the time FORT was entitled, or if done so under the County's current revised code, it would treat the same "townhome" development as a single economic unit.

Similarly, the Answer ignores a plethora of appraisal standards[13] in relying ***exclusively*** on the Marshal and Swift (M&S) ***definitions*** of "apartment" and "town house" to support its questionable premise. Among the noteworthy USPAP Standards the Answer ignores are USPAP Standard 1-4(e)(an "appraiser must refrain from valuing the whole [of the components parts of an assemblage project] simply by adding together the individual values of the various estates or component parts") and the comments to that standard ("[a]lthough the value of the whole may be

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[12] Answer at page 2.

[13] For example, among the USPAP Standards the Answer ignores are USPAP Standard 1-4(e)(an "appaiser must refrain from valuing the whole [of the components parts of an assemblage project] simply by adding together the individual values of the various estates or component parts.").

equal to the sum of the separate estates or parts, it may also be greater or less than the sum of such estates or parts").

Its is quite telling that on this point, the Answer simply quotes M&S definitions and fails to cite any actual M&S valuation guideline or supporting USPAP standard. A bare, unsupported assertion cannot refute actually controlling legal authority and uniform appraisal standards.

3. **Basing Valuation Based Upon Mapping Alone Does Not Follow Applicable Statutes and the Nevada Constitution:** The Answer invites this Board to abandon NRS 361.227 and asserts that basing values upon the actual use of the land "would establish a preferential, unconstitutional "dual-class" assessment system where corporate owners of rental properties are valued lower than individual homeowners for the exact same real estate. Numerous other taxpayers own multiple single-family rental properties on individual parcels across Clark County; all are valued uniformly based on their physical characteristics[14]." The Assessor has conceded that if FORT was a single parcel townhome project, as was (and is) permitted in the cites of North Las Vegs and Las Vegas at the time FORT was entitled, or if done so under the County's revised code, it would treat the same "townhome" development as a single economic unit. This mapping anomaly that the County has now revised, is being used as the ***sole*** determinative factor by the Assessor to treat this for-rent multifamily development differently than a single parcel townhome development that could have been built in several municipalities in Clark County.

While the statute calls for the "use"[15] as the basis of the determination process, it is the "just valuation[16]" that must be the result. Correspondingly, the method of valuation most likely to represent what a willing buyer would pay a willing seller in an open market sale--full cash

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[14] Answer at Page 3. FORT can imagine no better distillation of the Assessor's "looks like a duck" valuation philosophy than its statement that "all are valued uniformly based on their physical characteristics" rather than their actual use. *Id.*

[15] *See* NRS 361.227(1)(a)(2)(appraisal value of improved land must be consistent "with the ***use*** to which the improvements are being put.")(emphasis added); NRS 361.227(2)(multiple parcels used as a single unit should be appraised as a single unit). *Accord,* Canyon Villas Apartments Corp., *supra*.

[16] *See* Nevada Constitution Article 10, Section 1(1).

value[17]-- will more likely depend on "use". These differences are well identified in the Montage Marketing[18] and Canyon Villas Apartments[19] cases.

For example, Montage Marketing involved a 21-story building in Reno that had been originally built, used, and assessed a hotel. This Hotel was later subdivided into 276 residential units with differing floor plans, made compliant with Nevada law for for-sale individual units within a common interest community, and were marketing as for-sale luxury condominiums. As of May 2009, thirty of the 376 units had actually been sold, and only three more sold by the spring of 2010, due to the economic downturn occasioned by the 2007 financial crisis. The remainder of the units remained in the for-sale inventory and continued to be marketed as individual residential units for sale. [20] The Washoe County Assessor valued the project as a subdivision rather than a hotel or apartment complex to determine taxable value, "then to ensure the taxable value of each condominium did not exceed its full cash value, the Assessor utilized the sales comparison method permitted by NRS 361.227(5) and reduced the taxable value of each condominium to 90 percent of its list price."[21] The Nevada Supreme Court determined that because the 21 story property was used as a for-sale product of various individual units, this sales comparison approach to determine full cash value was just and equitable and complied with statues.

The FORT project is therefore factually distinguishable from Montage Marketing, as FORT has never taken any of the steps required by Nevada law to legally make the project available as for-sale individual units within a common interest community, simply because it has never planned, acted, used, or sought to make the FORT project a for-sale development.

In contrast with Montage Marketing, in Canyon Villas Apartments the Assessor first determined the value of rental apartments complex by first determining the taxable value of the land and improvements and then determined whether the taxable value exceeded full cash value using an income capitalization approach permitted by NRS 361.227(5). The Nevada Supreme Court stated that when the property as a whole "produces an income, the income capitalization

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[17] *See* "full cash value" defined at NRS 361.025.

[18] Montage Marketing, LLC v. Washoe County, 134 Nev. 294, 419 .3d 129 (2018)

[19] Canyon Villas Apartments Corp.,124 Nev. at 843 ("When, as in this case, the [multiple unit rental] property produces an income, the income capitalization approach is usually the best [appraisal] method.").

[20] Montage Marketing, 134 Nev. at 295. This valuation method was only used for the condo units that were not sold or leased, and were unoccupied. *Id.* at 298.

[21] Montage Marketing, 134 Nev. at 296.

approach is usually the best method" of determining full cash value.[22] As a result, the Nevada Supreme Court stated that the income capitalization approach was the most appropriate method in determining full cash value for an income producing project.

In its summation of the issue, the Nevada Supreme Court in Montage Marketing and Canyon Villas Apartments Corp. has clearly stated that full cash value for sale of an individual or an amalgamation of for-sale units should be based upon comparable sales, as that's what a willing buyer in an arm's length transaction would use to determine value; conversely, an income approach is most appropriate for determining full cash value of an income producing collection of units[23], as income capitalization is the most likely method to determine what a buyer would pay for that property: "[c]ounty assessors must use the valuation approach that most accurately measures the full cash value of property…. "[24] In so doing, the Nevada Supreme Court has provided clear guidance to this Board.

As an additional matter, the Assessor's Answer states that to determine valuation of the FORT project it must rely on how the property "legally exists" on the lien date.[25] Thus, the Assessor invites this board to determine if the 79 townhomes ***can*** be sold on the open market; the only evidence before this board established that they ***cannot*** currently be sold as individual units and could not at the time of the Assessor's valuation. FORT has not completed any of the requirements of filing under NRS 116 for the right to sell individual units. FORT has never even initiated the measures required by NRS Chapter 116 to create a common interest community and be to legally be able to sell any of the units. FORT is required to do all of the following: (1) create a Homeowner's Association (which further requires NRED approval, Ombudsman approval, Filing of Articles of incorporation and preparing and approving Bylaws); (2) create an HOA budget; (3) hire an NRS 116 approved licensed property management company; and (4) prepare CC&Rs that benefit and burden each of the parcels within the development. None of

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[22] Canyon Villas Apartments Corp. 124 Nev. at 843-844 ("The price that a buyer is willing to pay for the income-producing real property, or the property's full cash value, is determined based upon the net operating income that the property will likely yield in a year's time and the property's capitalization rate."). *Concur* Montage Marketing, 134 Nev. at 303 ("The property at issues in Canyon Villas [Appt.s Corp], an apartment complex, is clearly distinguishable from the property here, individual condominium units").

[23] Montage Marketing, 134 Nev. at 303 (holding that an income producing enterprise held as a whole is clearly distinguishable from a collection of for-sale properties, thus making the income capitalization approach more appropriate than the comparable sales method for valuing an income producing collection of units).

[24] Montage Marketing, 134 Nev. at 303.

[25] Answer at pages 1-2. Perhaps this is just another way of restating the Assessor's "looks like a duck" argument that mapping is the sole factor for any valuation analysis.

these tasks have been undertaken. These facts are matters of public record for which the Board can take official notice.

Further, the entirety of the 79 units and common areas are all held under a single deed and financed under singular financing treating all units indivisibly as security for the project as a whole. All these units –-due to statutory and contractual constraints—could not currently and likely for this tax year legally be sold as individual units. This fact alone, along with the project's unchallenged use of the 79 units as a single income-producing enterprise, compels a determination by this Board that the only appropriate valuation mythology is the income capitalization method. The Assessor's insistence that FORT be treated differently due to an anomaly in the County's entitlement code does not produce a just or equitable result for FORT.

The County is critical of the use by the taxpayer of a Broker's Opinion of Value ("BOV") instead of an appraisal to evidence the value of the FORT project for assessment. However, the County failed to provide any evidence of its own as a counter value using the income approach. Thus, the ***only*** value using the income approach in the record is the valid and widely recognized use of the BOV from the largest real estate company in America using an an income approach. Thus, the Board is left with an Assessor's appraisal for the project that fails to evaluate the value using the appropriate income capitalization approach and is left with an official appraisal that inappropriately uses a comparable sales approach despite the fac that the individual parcels in the FORT project could not (and still cannot) be sold as single units in the tax year for which they are being valued.

The only evidence of value before the Clark County Assessor, the Clark County Board of Equalization, and this Board that is based upon an income capitalization method is the valuation set forth in the BOV[26], which realistically set the full cash value of the FORT project at $24,000,000. To reach a just and equitable valuation, the assessed valuation should be equalized to this amount per NRS 361.227

[26] *See* Appellate Appendix of the Taxpayer at Tab 3.

III. Conclusion

While an assessment that exceeds full cash value is the predicate for this appeal, the issues of justice and equity herein are derived more from statute and case law than appraisal methodology.

Does a now-corrected anomaly in the County's entitlement code requiring FORT to individually parcel each of its for-rent townhome units justify disparate property tax treatment from identical single parcel townhome developments built elsewhere within the Clark County assessment area or within the County since the code anomaly was corrected? We believe the answer to this question is "no".

Does the Constitution and NRS 361 prohibit taxation based upon assessments that exceed full cash value? Does the legislative mandate require that the basis of the approach to valuation be consistent with the use of the property? The answer to both questions is "yes" and therefore the value should be reduced to the only relevant "market information" in the record from the County Board. The only relevant market information in the record sets the value at $24,000,000. This Board simply needs to recognize and affirm that valuation.

Dated this 20th day of July, 2026

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