

CARSON CITY BOARD OF EQUALIZATION

Minutes of the February 19, 2008 Meeting

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A regular meeting of the Carson City Board of Equalization was scheduled for 10:00 a.m. on Tuesday, February 19, 2008 in the Community Center Sierra Room, 851 East William Street, Carson City, Nevada.

PRESENT: Chairperson Ron Allen
Vice Chairperson Roy Semmens
Marilyn Koschella
William Lewis
Mary Sanada

STAFF: Dave Dawley, Assessor
Steve Walker, Chief Property Appraiser
Kimberly Adams, Appraiser
Tim Clark, Appraiser
Melanie Bruketta, Chief Deputy District Attorney
Kathleen King, Recording Secretary

NOTE: A recording of these proceedings, the board's agenda materials, and any written comments or documentation provided to the recording secretary during the meeting are public record, on file in the Clerk-Recorder's Office. These materials are available for review during regular business hours.

A. CALL TO ORDER AND DETERMINATION OF QUORUM (10:01:10) - Chairperson Allen called the meeting to order at 10:01 a.m. Roll was called; a quorum was present. Member Lewis was absent.

B. MODIFICATION OF AGENDA (10:01:44) - None.

C. ACTION ON APPROVAL OF MINUTES - February 5, 2008 (10:01:58) - Vice Chairperson Semmens moved to approve the minutes. Member Sanada seconded the motion. Motion carried 4-0.

D. DISCUSSION AND POSSIBLE ACTION ON ASSESSOR'S RECOMMENDED CORRECTIONS TO THE CARSON CITY ASSESSMENT ROLL

D-1. CARSON CITY AIRPORT AUTHORITY, c/o LOCKHEED WAY LLC, 2451 LOCKHEED WAY, APN 008-406-22 (10:02:25) - Chairperson Allen introduced this item, and Ms. Adams reviewed the staff report.

(10:04:33) Attorney Jim Cavilia, of the Allison, MacKenzie law firm representing Ted Barben and Lockheed Way LLC, introduced himself for the record. Mr. Cavilia advised that Mr. Barben is the principal and sole manager of Lockheed Way LLC. On behalf of Mr. Barben, Mr. Cavilia objected to the assertions of the Assessor's Office in that "we don't believe the lease changed the property or caused the property to enter into a taxable status." He advised that the airport authority is tax exempt. "The issue is obviously whether or not this is airport property."

Mr. Cavilia acknowledged that Mr. Barben entered into a lease with the airport authority. "The airport has always treated this property as though it were its property and part of the property. Apparently, it's now been discovered that this property was not specifically identified in the airport authority's ... agreement with

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Carson City” which describes the airport property. Mr. Cavilia read a portion of NRS 361.157(2)(a) into the record. He stated, “... the question is ... whether or not that property is upon a public airport.” He advised that the airport authority has always taken the position that the property is part of the airport. He further advised of several conversations with Airport Authority Counsel Steve Tackes “about how they’ve always understood this to be part of the airport.” Prior to entering into the lease, Mr. Barben attempted to purchase the property. Airport Authority representatives “looked into it,” but were informed the property could not be sold as it is “part of the airport” and “can’t be purchased.” Mr. Cavilia distributed, to the board members and City staff, copies of Mr. Barben’s lease agreement, and read portions of the same into the record. He speculated that the “clerical error or this issue of this property not specifically being included in the agreement between the Airport Authority and the City is being fixed, or ... at least there’s an effort being made to repair that.” He noted an Airport Authority agenda item, scheduled for their February 20, 2008 meeting, to specifically include this property in the agreement. He advised that Mr. Barben had no objection to paying taxes on the property improvements. He acknowledged that Mr. Barben has the obligation to pay property taxes, if assessed by the term of the lease. He reiterated the opinion that the City doesn’t have the authority, “because it’s part of the airport,” to assess taxes on the real property.

Mr. Clark distributed to the board members and City staff page 11 of the lease agreement, which highlighted paragraph 14, Tax Obligation. In response to a question, Mr. Cavilia advised of Mr. Barben’s understanding that there would not be real property taxes assessed. He reiterated Mr. Barben’s understanding of the requirement to pay taxes on any property improvements. He advised that Mr. Barben thought he had been paying taxes on the property improvements “until this arose.” He reiterated Mr. Barben had no objection to paying the taxes on the property improvements. He further reiterated Mr. Barben’s understanding “that there were not real property taxes because it was part of the airport.” He referred again to the statute which “talks about property located upon a public airport.”

Chairperson Allen referred to paragraph 14 of the lease agreement, and noted the words “real property taxes.” He expressed confusion that the language of the lease agreement wouldn’t have conveyed to Mr. Barben the possibility of taxes being assessed on the real property as well as the improvements. Mr. Cavilia advised of not having been involved in negotiation of the lease agreement. He read a portion of paragraph 14 into the record, and reiterated the understanding that there would be no real property taxes imposed because “it was part of the airport.” He acknowledged that “if the law changed, that would be Mr. Barben’s obligation.”

Ms. Adams acknowledged that the subject parcel is a “private parcel ... leased for business purposes.” She advised “it was supposed to be included as the airport.” She distributed to the board members and staff copies of the Cooperative Agreement for the Airport Authority to Manage Carson City’s Airport and NRS 844. She read NRS 844, Section 9.5 into the record. She clarified that the previous lease of the subject parcel by the Civil Air Patrol, a tax exempt entity, was the reason real property taxes were not assessed. She reviewed pertinent portions of the Cooperative Agreement. She advised of a previous intent to include the subject parcel as part of the airport, and explained the Assessor’s Office recommendation for the Airport Authority to add the parcel to the Cooperative Agreement. She noted that, pursuant to NRS 361.769, the Assessor’s Office has the authority to assess a ten percent penalty, but that this is being waived “because we understand that ... Mr. Barben didn’t know that this was going to happen. We feel that’s the least that we can do is waive that ten percent penalty on those taxes that should have been paid.”

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In response to a question, Mr. Cavilia explained that “the language of the agreement and including the property as ... airport property is different than the language of the statute that talks about property located on or upon a public airport.” Mr. Barben’s lease requires him to provide access. “There’s an easement across the corner of this property ... that he must reserve and maintain for the airport to get access through there. It’s a part of the airport. It’s upon the airport.” Mr. Cavilia acknowledged the Assessor’s Office statement that the parcel is not described in the airport agreement as one of the parcels that is “the airport.” He expressed the opinion that the statute is a broader definition that talks about “located upon a public airport, and I think that’s what this is.” He suggested keeping in mind that, from Mr. Barben’s perspective, “the airport and the Carson City Board of Supervisors and the Carson City Assessor’s Office are all the same people to him.” He expressed the opinion that Carson City should not be able to take advantage of the fact that they didn’t describe the property correctly “in their agreement with themselves. ... The fact that wasn’t included in there wasn’t Mr. Barben’s fault. The airport authority understood that that was part of the airport. Mr. Barben thought that was part of the airport and now Carson City, who was a party to that agreement, is going to get the advantage of the taxes from it out of Mr. Barben’s pocket.” He requested the board members to keep this in mind. In response to a further question, Mr. Cavilia expressed the opinion the parcel is located upon the public airport because it’s been treated as such by the airport authority. “It’s not described in the airport’s agreement with the City, correct? It’s not part of the legal properties that are listed in that agreement.”

Chairperson Allen pointed out that the parcel is described as being a portion of the Carson City Industrial Airpark which was recorded and accepted as a subdivision and, therefore, not inside the boundaries of the airport’s main property. Mr. Cavilia acknowledged the accuracy of the statement, but advised “this is the one parcel that’s different in the air industrial park. ... The lease that Mr. Barben entered into is with the Carson City Airport Authority so it was always his understanding that the Airport Authority is the one that owned that property, that had the control of that property, and had the right to lease it to him. Otherwise, I don’t think he would have gone and spent upwards of a million dollars to improve it.” Mr. Cavilia acknowledged the parcel is unique. “It is the only portion of the airport that is accessed from somewhere other than the airport internally. It is a different parcel because it ... was previously part of the air industrial park.” Mr. Cavilia acknowledged that the parcel is contiguous to the airport, accessed both from the airport and the industrial park.

(10:22:33) Lockheed Way, LLC Manager Ted Barben advised that at the time he was a member of the Airport Commission, the Airport Authority was seeking funding and considered selling the parcel because of its unique location. He further advised that the FAA would not allow it, designating the parcel as a part of the airport. He expressed a continued interest in purchasing the parcel, but questioned whether the FAA would allow it to be sold. In response to a question, he advised that documentation of the FAA’s position would have to be researched. He expressed certainty that documentation could be “resurrected.”

Mr. Dawley advised of having conducted research on the parcel through the Carson City Recorder’s Office. He advised, “... we understand what the intent was; however, the boundaries were never changed and we’ve pulled every single document that we have to try and find that, but the boundaries just were never changed and so that’s why we talked to the Airport Authority and that’s why they put it on their agenda for tomorrow so they can start getting it to where this parcel is included within the boundary of that airport. This parcel, once that boundary is changed, ... the land portion will become tax exempt because at that point it will be considered as part of the airport. But, until the actual boundaries are changed and recorded then it’s our position that it’s adjacent to the airport and not part of it.”

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Ms. Adams acknowledged that the parcels adjacent to the subject parcel are taxable. She reiterated that the original agreement with the Airport Authority specifically describes the leases the City had at that time directly adjacent to the Carson City Airport. "Those involved with this agreement, ... it was an oversight on their part, we agree with that, but ... we have to go by what is recorded. We have to go by the description of the boundaries of that airport. As far back of the research that I did, that parcel was for airplane parking." Ms. Adams agreed with Mr. Cavilia that it's always been intended to be part of that airport. "It was created with that subdivision in 1971." Ms. Adams provided an overview of her research results "on the parcels adjacent to the subject parcel, when the parcels were deeded to the Airport Authority, but again this was not included in that agreement. It was specifically set aside for the Airport Authority to maintain that lease. Carson City is still the owner of that land along with the airport. The authority just maintains the lease."

In response to a question, Mr. Cavilia advised that the real property tax for the past four years is \$3,751.91. In response to a further question, Ms. Adams advised that the assessed value of the land is \$24,698 for 2007 / 08. The assessed value of the land would change to \$29,637 in 2008 / 09. Ms. Adams advised that the total amount of taxes for 2007 / 08, "as far as the value is \$130,299" for both land and improvements." Ms. Adams acknowledged the assessed valuation at \$130,299 is "way under market ... for Mr. Barben's property." At her request, Mr. Walker distributed and reviewed Sales Data Sheets for the subject and adjacent parcels. He acknowledged that the subject parcel is equal in value to adjacent parcels along the frontage of Lockheed Way.

Chairperson Allen noted the board's purview to ensure equalization of land values. Mr. Walker acknowledged that "the properties that basically have the same exposure to the airport on one side and the street on the opposite side" are all equalized. He clarified "they are all equalized, but they are all ... extremely under market value at this time."

Chairperson Allen entertained a motion. **Member Sanada moved to approve the recommendation of the Assessor and place APN 008-406-22 on the taxable roll based on the fact that's where the boundaries are now. Member Koschella seconded the motion.** Chairperson Allen called for additional questions or comments and, when none were forthcoming, a vote on the pending motion. **Motion carried 3-1.** Chairperson Allen advised Mr. Barben and Mr. Cavilia of the right to appeal the board's action to the State Board of Equalization. He explained the reason for his vote in support of the motion "was strictly just because of the fact that it is part of the subdivision. We don't show anything in the documentation that was presented to us today to indicate that it's actually a part of the airport. And, therefore, in order to keep equalization throughout ... we must ... treat this parcel the same as the adjoining parcels that have the same amenities ... They all have the same access to the airport on one side and the road to the other." He reiterated the charge of the Board of Equalization to ensure property owners and property values are "equalized and treated in an equal manner." He reiterated the right of Mr. Barben to appeal this board's decision to the State Board of Equalization. He expressed the hope that the issue will be "more defined" following the Airport Authority meeting.

Vice Chairperson Semmens agreed with Chairperson Allen's comments, but expressed the belief that the property "as it sits with the hangar on it, the way it is built and the surrounding property, ... you're tremendously undervalued." He expressed the opinion the "whole thing needs to be reassessed." He expressed the belief that Mr. Barben is "getting a heck of a tax break right now ... even though you had to pay back taxes and you're not being charged the penalty fee that comes along with the years of taxes."

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Chairperson Allen called for additional comments. (10:39:35) Mr. Barben reiterated an interest in purchasing the property. Ms. Adams suggested that Mr. Barben attend the Airport Authority meeting and request them to refrain from adding the parcel to the airport boundaries.

E. PUBLIC COMMENTS (10:40:55) - None.

F. DISCUSSION AND POSSIBLE ACTION REGARDING NEXT MEETING DATE (10:41:07)
- Mr. Dawley advised there would be no further hearings, and thanked the board members for their service.

G. ACTION ON ADJOURNMENT (10:41:33) - Vice Chairperson Semmens moved to adjourn the meeting at 10:41 a.m. Member Koschella seconded the motion. Motion carried 4-0.

The Minutes of the February 19, 2008 Carson City Board of Equalization meeting are respectfully submitted this 22nd day of February, 2008.

ALAN GLOVER, Clerk-Recorder

By:

Kathleen M. King, Deputy Clerk / Recording Secretary