

**NEVADA COUNTY ASSESSMENT APPEALS BOARD MEETING
MINUTES
JANUARY 27, 2020**

SPECIAL MEETING: 9:00 a.m.

Call to Order:

ACTION TAKEN: Chair Bushore called the meeting to order at 9:00 a.m.

The following Board Members present:

Gerald Bushore (Chair)
James Rees
David Guerland

Pledge of Allegiance:

ACTION TAKEN: Pledge of allegiance held.

Corrections and/or deletions to the agenda.

ACTION TAKEN: Ms. Lelia Loomis, Deputy Clerk, reported that there were no corrections.

Public Comment:

ACTION TAKEN: None.

CONSENT CALENDAR

These items are expected to be routine and noncontroversial. They will be acted upon by the Board at one time without discussion. Any Board member, staff member or interested party may request that an item be removed from the consent calendar for discussion.

1. 18/19 Regular Assessment #18-005: Truckee Meadows Water Authority, Applicant. Boutin Jones Inc., Agent. APN 017-540-001. Property located at Donner Lake. Applicant's opinion of value: \$20,342,321. Assessor's value: \$24,405,875. Communication between Assessor and Applicant to delay scheduling at least four months so they can do an appraisal. Request to approve Waiver to Extend Hearing on Application for Changed Assessment. Findings of Fact are requested.

Requested Action: Approval of the Two-Year Waiver to Extend Hearing on application for Changed Assessment. (Approved.)

2. 17/18 Escape Assessment #ESC-008: Truckee Meadows Water Authority, Applicant. Boutin Jones Inc., Agent. APN 017-540-001. Property located at Donner Lake. Applicant's opinion of value: \$20,308,278. Assessor's value: \$23,814,916. Communication between Assessor and Applicant to delay scheduling at least four months so they can do an appraisal. Request to approve Waiver to Extend Hearing on Application for Changed Assessment. Findings of Fact are requested.

Requested Action: Approval of the Two-Year Waiver to Extend Hearing on application for Changed Assessment. (Approved.)

3. Acceptance of minutes for December 16, 2019. (Accepted.)

ACTION TAKEN: Chair Bushore introduced the consent calendar.

MOTION: Motion made by Mr. Rees, seconded by Mr. Guerland, to approve the consent calendar. On a roll call vote, the motion passed unanimously.

ASSESSMENT HEARINGS:

4. 18/19 Regular Assessment #18-019: Richard Oberleitner, Applicant. APN 035-221-017. Property located on Nevada City Highway, Grass Valley. Applicant's opinion of value: \$51,000. Assessor's value: \$154,631. Findings of Fact was not marked. Hearing postponed from the August 19, 2019 meeting at the Applicant's request. Second postponement request has been made by Applicant.

Requested Action: Hold hearing and make determination regarding the second postponement request.

ACTION TAKEN: Chair Bushore introduced the item and stated that the request for a second postponement is based on a medical reason.

Mr. Rees requested to move the hearing to the April meeting. He also wanted to be sure that 2-year waivers were in place and did not cause any issues.

Ms. Lelia Loomis, Deputy Clerk, reported that if the hearing is moved to April it would be within the required time and a 2-year waiver is not required.

MOTION: Motion made by Mr. Rees, seconded by Mr. Guerland, to approve second postponement request and move the hearing to the meeting in April 2020. On a roll call vote, the motion passed unanimously.

5. 18/19 Regular Assessment #18-009: Susan J. Mackley, Applicant. APN 022-140-051. Property located on Amsel Way, Grass Valley. Applicant's opinion of value: \$0. Assessor's value: \$140,833. All parties stipulated to continue the hearing from October 21, 2019 to December 16, 2019 at 9:00 a.m. All parties stipulated to continue the hearing from December 16, 2019 to January 27, 2020 at 9:00 a.m. Findings of Fact not requested.

Requested Action: Reconvene hearing and make determination regarding the appeal.

ACTION TAKEN: Chair Bushore introduced the item and asked the Assessor for an update regarding communication with the current lease holder.

Ms. Lelia Loomis, Deputy Clerk to the Board, took a moment to ask Ms. Mackley if she could hear with the hearing device provided. Ms. Mackley responded that she was hearing a buzz. Ms. Loomis turned the hearing aid all the way up. Ms. Mackley could hear over the buzz in the equipment. She was provided a different hearing aid and she said it was better.

Chair Bushore asked Ms. Mackley to raise her hand whenever she was having trouble hearing.

Chair Bushore repeated the question regarding whether Ms. Mackley or any of the County staff had been able to contact the lease holder and if there had been any changes to the information the Board had initially been provided.

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Ms. Mackley responded that she had not been in contact with anyone.

The following people were sworn in by Ms. Lelia Loomis, Deputy Clerk to the Board: Ms. Susan Mackley, Applicant; Mr. Ernie Thompson, Chief Appraiser.

Mr. Ernie Thompson, Chief Appraiser, reported that he had made several attempts to contact Crown Castle, the current lease holder, and last week he received a response. It is Crown Castle's opinion that the ground lease is still in effect until 2048. They further notified the Assessor that they believe Ms. Mackley should be receiving the tax bills.

Chair Bushore wanted to confirm that Crown Castle had paid some of the back taxes. Mr. Thompson responded that Crown Castle did make payments on some of the assessments. However, he did not believe that the outstanding tax bills have been paid by Crown Castle.

Ms. Mackley stated that she was having a hard time hearing. Chair Bushore asked if she wanted to move her chair closer. Chair Bushore requested all parties be sure to speak up so that Ms. Mackley could hear. Ms. Mackley stated that she could hear at this time.

Mr. Thompson confirmed that Crown Castle referred to the lease and stated that Ms. Mackley is responsible for paying the taxes.

Mr. Scott McLeran, Assistant County Counsel, responded to Chair Bushore's request for a legal opinion regarding how the Board needed to proceed. Mr. McLeran suggested that if the Assessor has documentation proving that contractual relationship, that would be helpful for the Board to review based on the Assessor's comments that it is Ms. Mackley who is under contract to pay the property taxes absent evidence to the contrary.

Ms. Vicki Wills, Senior Administrative Analyst, stated that she has been in contact with Crown Castle and with Ms. Mackley. Ms. Mackley's first contact with Ms. Wills was in 2015. Ms. Wills then contacted Crown Castle who said they were the responsible party for the taxes. In the last month she spoke to the same representative from Crown Castle that she talked to in 2015, and that representative stated that she had misspoke and that in the entire lease it shows that Ms. Mackley is responsible. The Crown Castle representative also stated that they would only release a complete copy of the lease to Ms. Mackley and would release only a memorandum of the lease to the Assessor. They did tell Ms. Wills that the lease was in effect until 2048.

Mr. Rees asked if there is an income stream being paid to anybody with regard to this current lease. Mr. Thompson responded that it is his understanding that there are no payments being paid at this time, but that Ms. Mackley received a lump sum payment up front.

Chair Bushore felt that there could be something between the succession of the lease since there seem to have been a number of sub-lease holders. It is unfortunate that we don't have all of the information.

Ms. Wills stated that Ms. Mackley is the property owner. She stated that is what Crown Castle specified to her. When the Assessor's department changed the mailing address to Crown Castle in 2015 that was incorrect. Crown Castle is asking the Assessor to reverse that information without going back in time, just going forward. She reported that Crown Castle has paid the taxes for a few years, but they have ceased making those payments.

Chair Bushore asked how the Board can make a decision if they don't have all the facts. Mr. McLeran responded that was correct and that the Board is limited to making a factual finding on value based on the evidence presented to the Board. If the Board believes there is insufficient evidence it has options including: issuing its own subpoena on its own motion.

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Chair Bushore asked if the Assessor's office has faced something like this before. Ms. Wills responded that she had not encountered this before. She believed that Ms. Mackley could obtain a copy of the entire lease as the property owner.

Chair Bushore felt Ms. Mackley may not know what to ask for. Ms. Wills responded that there is a site lease number and when she has contacted Crown Castle they have been able to find the lease in their records. She also reported that Crown Castle has a property owner help line that Ms. Mackley could call to gain assistance.

Ms. Mackley stated that she is not contesting that the terms of the lease go until 2048. What she is responding to is the basis of the assessment which is based on what other cell towers are generating. Chair Bushore responded that what other cell towers are generating is irrelevant.

Ms. Mackley felt that the cell tower was not producing revenue. Chair Bushore responded that the property was still owned by Ms. Mackley.

Ms. Mackley does not understand how a 50 x 100 foot piece of ground that is not generating any income could be assessed for such a high value. She stated that the small cell tower piece is being assessed for more than the entire piece of property she owns.

Ms. Mackley stated that, if Crown Castle will not be paying the taxes going forward, she is protesting the amount of the assessment.

Chair Bushore asked Ms. Mackley approximately how many years did she pay property taxes since she received the lump sum payment? Ms. Mackley responded that she has never paid the taxes on the cell tower property.

Mr. Rees felt that the owner of the property was not Ms. Mackley but the holder of the long term lease which transferred ownership and changed the value of the cell tower piece. Also that the obligation under the contract, assuming it is a valid obligation of Ms. Mackley's to pay the property tax, is really contractual between the lease holder and Ms. Mackley. He felt, as far as the County is concerned, that it did not have much bearing regarding who actually pays the taxes. He had a question whether the lease-hold property itself was currently in use. Mr. Thompson responded that he believed the property had been abandoned.

Chair Bushore confirmed there is nothing on the piece of property at this time. He asked if it would not be in the County's best interest, because there are tax dollars involved, if it were to go into default, then go to sale, who would buy that small piece of vacant lease-hold property or pay the back taxes to redeem it?

Mr. Guerland stated that he thought it was not a separate lot. Mr. Rees responded that it is not a legal separate parcel.

Chair Bushore responded that it is in the middle of her entire property based on a long term ground lease, which causes the initial reassessment. The County was the creator of the separate assessment parcel. Now, there is a piece of property that generates no income, there will be back taxes due, and there is a long-term lease the owners of which have confirmed it is still active. Chair Bushore asked if there has been an easement filed to get to the lease hold parcel.

Ms. Mackley said that she did not think there had ever been an easement filed. When the cell tower was built they brought the materials in through her property.

Ms. Wills stated that the Assessor's office can only do what the agreement states. She has been trying for months to obtain a full copy of the lease and has been unable to do so. She agrees that it would be best to obtain a complete copy of the lease itself in order to see the details of the responsibilities. The memorandum of the lease does not state who is responsible.

Ms. Mackley stated that she has never been able to get information from Crown Castle.

Mr. Rees stated that the Assessor's office can issue a subpoena and so can the Board.

Mr. Guerland commented that at the last hearing Ms. Mackley had reported that she had initially had an attorney. Ms. Mackley responded that the attorney had retired and told her he had destroyed all of his client paperwork after the legal retention period.

Mr. Guerland felt that Crown Castle was under an obligation to provide a copy of the lease to Ms. Mackley. She responded that she does not know where Crown Castle is. Mr. Guerland let her know that the Assessor can give her the phone number they have used to contact Crown Castle. He suggested that would be a great help to solve this issue. He added that even if the lease names Crown Castle as responsible to pay the taxes, if they don't pay them, Ms. Mackley is ultimately responsible since she is the owner. Mr. Guerland felt the Assessor should not be put in the position of managing Ms. Mackley's lease with Crown Castle.

Ms. Mackley asked about returning the assessed value to what it was when it was part of the original property.

Mr. Guerland wanted to confirm that Ms. Mackley had received a lump sum payment. She confirmed that she did. Mr. Guerland stated that the fact that it no longer generates monthly income is overshadowed by the fact that she received the lump sum.

Ms. Mackley stated that she no longer has the money. She stated that she used it to pay for a new water system. Also, the lease holder was paying the taxes. She stated that she did not understand why the assessment amount has to be so high.

Discussion ensued regarding the possibility of the property going into foreclosure and the possibility whether Ms. Mackley could buy the piece back.

Mr. Rees asked if the site would be attractive to another cell company to come in and use? Mr. Thompson responded that he would assume it could be used in the future by another company. Mr. Rees asked if there was any way to determine if there is a market for this particular site. Mr. Thompson responded that since there was a tower there before and there are other towers in the County they can use as comparables, any assumptions would have to be based on that, without doing a study.

Discussion ensued regarding the wording in the memorandum to the lease that the lump sum was structured as a loan. Ms. Mackley stated that she never understood this provision, she thought it was a simple buy-out.

Mr. Guerland asked since this was a parcel created specifically for the lease, would the Assessor reassess the value if the lease was vacated? Mr. Thompson affirmed that at that point the parcel would go back to Ms. Mackley and become part of the original piece of property again.

The Board decided to go into Closed Session until approximately 10:00.

The Board reconvened at 9:43 in order to ask the Assessor for a copy of the memorandum to the lease then went back into Closed Session.

Chair Bushore reconvened the hearing at 10:10 a.m. The Assessor submitted the documents and Ms. Loomis marked them as Exhibit 1. Ms. Mackley received a copy of the Exhibit. Chair Bushore asked Ms. Mackley if she accepted the memorandum to be introduced as evidence. She responded that she would accept it.

Mr. Rees felt that a lot of time had been spent on the issue of which party pays the taxes, but the critical issue has to do with the value of the parcel. We have discussed what documents have been submitted and he would like have both sides present any additional evidence and then the Board could reconvene closed session to discuss determination of a value and then inform the parties of the Board's decision in writing through the Clerk within 45 days, if both parties are agreeable to that. He asked if either side had an objection to proceeding that way. Mr. Thompson stated he had no objection. Ms. Mackley stated that she had no objection to the proposal. Mr. Rees asked Ms. Mackley if she wanted to proceed with any other evidence.

Ms. Mackley had no evidence as to what the parcel would be worth. She stated that her opinion was that the fair thing to do would be to assess it at the same rate that the rest of the property is assessed.

Chair Bushore asked Ms. Mackley if she would stipulate to that opinion. Ms. Mackley stated that she would.

Mr. Rees asked Ms. Mackley if that concludes her presentation. He noted that after the Assessor concludes their presentation, she would be able to comment or ask questions.

Mr. Thompson stated that the burden of proof on a non-owner occupied property is on the applicant to overcome the preponderance of evidence. He guessed that the Board had decided Ms. Mackley has met that level.

Chair Bushore stated that they were taking into submission Ms. Mackley's opinion of value.

Mr. Rees stated that the Board understands the motion that the Assessor is making is that the Assessor value should prevail because there hasn't been a prima facia case made by the applicant. Mr. Thompson agreed.

Mr. Thompson referred back to the first meeting in October 21, 2019 where they presented evidence on this appeal. He stated that they had an update to that information. He stated that they would be presenting an income approach that takes into consideration the term that is left on the lease, it would basically be a discounted cash flow.

Ms. Mackley confirmed that she was hearing approximately every other word since the microphones had been turned up.

Chair Bushore asked what the value of the surrounding property is.

Discussion ensued.

Assessor submitted further evidence, Ms. Loomis marked it Exhibit 2.

Chair Bushore stated that Ms. Mackley said she would stipulate to the value based on the square foot value of the surrounding property that she owns. He felt in order to do that the Board needed to know what the assessment on the other property was to establish that value.

Mr. Thompson said the Assessor is calculating the value based on what the best use of the property would be which is a cell tower site.

Chair Bushore stated that even though the lease is still in place, that doesn't necessarily mean the parcel is still available for a tower.

Mr. Thompson stated that because the lease is still open, they assume Crown Castle wants it to be open for the possibility of another company coming in who wants to build a new tower and leasing the parcel from them.

Mr. Rees felt that another issue with Ms. Mackley's approach is that the surrounding property is a factor base year value and doesn't necessarily bear any relationship to the fair market value on the valuation date.

Mr. Thompson said the Assessor would present their case. Ms. Taylor Jackson presented the initial case presented at the October 21st hearing, including updates that have been made since then. One update was that the supplemental evidence presented today takes into account the remaining term of the lease, rather than in perpetuity, which brings the value down from \$176,000 presented in October to \$160,000 which is still above the current assessed value of \$140,833.

Mr. Rees confirmed that the Assessor's highest opinion of value is \$140,833.

Chair Bushore asked if there were any more comments or questions.

Chair Bushore adjourned the meeting and the Board entered closed session at 10:25 a.m. He asked Ms. Mackley if she would like findings of fact for the meeting. She asked if that would change the Board decision. Chair Bushore let her know that it would not change the Board decision.

Chair Bushore reconvened for discussion of findings of fact.

Mr. McLeran explained what findings of fact were and let Ms. Mackley know what the minimum cost would be. Ms. Mackley asked if she could get information from the meeting in the future. Mr. McLeran responded that the proceedings are recorded and she can request a copy of the recording. Ms. Loomis provided the information regarding costs of different types of recordings.

Ms. Mackley wanted to be sure she was not giving up any of her legal rights. Mr. McLeran confirmed that there were other options outside of the Assessment Appeals Board that Ms. Mackley could pursue.

Chair Bushore stated that the Board could not give her legal advice.

Mr. McLeran wanted to clarify that if Ms. Mackley wanted written findings of fact she would have to request those today and now is the time and in order to make that request she would need to pay for that today, otherwise you would be able to obtain a copy of the transcripts, either the recording or an actual transcription of the meeting and there would be costs associated with those options, but they could be requested at a later date.

Ms. Mackley stated she would just wait for the minutes to be approved.

Mr. Rees confirmed that the minutes are published for the public.

Chair Bushore confirmed for Ms. Mackley that she has the right to seek legal counsel.

ADJOURNMENT:

ACTION TAKEN: Chair Bushore adjourned the meeting at 10:39 a.m., and the Board adjourned to closed session.

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MOTION: Motion made by Mr. Rees, seconded by Mr. Guerland, in closed session to sustain the Assessor's value of \$140,833. On a roll call vote, the motion passed unanimously.

Mr. McLeran will write the decision and submit it to the Board members for approval and for the Chair's signature. The Clerk of the Board will then send the decision to Ms. Mackley within 45 days of the hearing.

Deirda R. Bushore

Chair of the Assessment Appeals Board

ATTEST:

By: _____
Lelia Loomis, Deputy Clerk to the Board