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### Montage Marketing, LLC v. Washoe County, 134 Nev. Adv. Op. 3 (May 31, 2018)

Jocelyn Murphy

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PROPERTY LAW: TAXABLE VALUE OF SUBDIVISIONS

**Summary**

The Court held the district court’s order denying a petition for judicial review in a property tax matter concerning unsold condominium units was proper under NRS 361.227(2)(b) and NRS 351.227(5)(c) because neither statutory provision requires a county assessor to value unsold condominiums as a single unit or to apply the discounted cash flow method to determine full cash value.

**Background**

In February 2010, the Montage—a condominium development in Reno, Nevada, had 33 of its 376 individual residential units sold. Any unsold units were under common ownership of Montage Marketing, LLC, however marketed as individual residential units for sale. To determine the taxable value of the unsold condominiums the Washoe County Assessor used two methods. First, under NRS § 361.227(2)(b) the full cash value of the land of each condominium was calculated. Because Montage is considered a subdivision a discount to the value of the land was applied based on the anticipated number of years for the units to be sold or absorbed. Improvements to each condominium were also calculated in the taxable value. Next, under NRS § 361.227(5) the Assessor applied the sales comparison method and reduced the taxable value of each unsold unit to 90 percent of its list price. The sales comparison method is applied to ensure that taxable value does not exceed full cash value. The assessor concluded that the taxable value of the unsold units was \$86,804,500 (2009-2010 tax year) and \$71,120,370 (2010-2011 tax year).

Montage argued that the assessed taxable value of the unsold units exceeded their full cash value. It sought review with the Washoe County Board of Equalization which upheld the Assessor’s valuations. Montage appealed the County Board’s decision to the State Board of Equalization. During those proceedings, Montage contended that the Assessor should have valued the units in the condominium altogether to determine a wholesale value, which is what their true value would be if sold collectively. Montage’s appraiser calculated the wholesale value of the condominiums to be \$40,350,000 for the 2009-2010 tax year and \$24,000,000 for the 2010-2011 tax year. Montage argued that, under NRS § 361.227(2)(b) the condominium was a subdivision and thus the Assessor should have considered them a single unit and discount the value of land *and* improvements made on the whole property to decide the full cash value.

The State Board affirmed the County Board’s decision and upheld the Assessor’s valuations. The State Board contended that NRS § 361.227(2)(b) required a subdivision discount methodology be used to determine taxable value of parcels that qualify as a subdivision. The State Board held that the Assessor properly applied a 50 percent subdivision discount to the land and that the land and improvements were both appraised at the proper taxable value for all tax years. After the State Board’s decision Montage filed a petition for judicial review in district court. The district court upheld the State Board’s decision.

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<sup>1</sup> By Jocelyn Murphy.

## **Discussion**

### *Nevada's tax assessment scheme and the Assessor's appraisal*

County assessors are required to separately appraise: 1) the land and 2) improvements made on the land.<sup>2</sup> Although most parcels of land are required to be considered a single unit for tax purposes, Nevada provides many exceptions to this, including an exception for parcels of land that qualify as subdivisions.<sup>3</sup> The condominiums are undisputedly a subdivision. When a county assessor is valuing a qualified subdivision for taxable purposes the Nevada Administrative Code requires them to calculate “the estimated retail selling price of all parcels in the subdivision which are not sold, rented or occupied, reduced by the percentage specified for the expected absorption of the parcel” and allot the taxable value to each parcel.<sup>4</sup> All taxable value of improvements made to a subdivision are to be determined under NRS § 361.227. The appraisal for Montage's unsold condominiums were in compliance with all requirements under NRS § 361.227 and NAC § 361.1295. Additionally, the Assessor's reduction of the taxable value of each unsold condominium was proper.

### *The subdivision exception in NRS § 361.227(2)(b)*

The plain language of NRS § 361.227(2)(b) does not mandate that the unsold condominium units be appraised as a single unit based solely on their status as a qualified subdivision. *NRS § 361.227(2)(b)* States that “[t]he unit of appraisal must be a single parcel unless: . . . [t]he 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.”<sup>5</sup> The subdivision exception unlike other exceptions in the statute does not expressly require a qualified subdivision to be appraised altogether as a single unit. The Nevada Tax Commission with granted authority determined that qualified subdivisions are allowed discounts to the value of the land and not the improvements of each individual unit that comprises the subdivision.

Additionally, the legislative history of NRS § 361.227(2)(b) shows no unequivocal intent for subdivisions to be appraised as a single unit. The intent was only to create an exception that took into consideration the costs acquired by developers during the property's absorption period and afforded them a discount for it. Further, it is also not clear that the intent was to apply the discount to both land and improvements made because the discount was intended by the Legislature to only apply to undeveloped divisions.

### *The discounted cash flow analysis under NRS § 361.227(5)(c)*

The State Board's refusal to consider the discounted cash flow method to determine the full cash value of the unsold units was not improper. Although the discounted cash flow analysis has similarities to the subdivision discount nothing in *NRS § 361.227(5)(c)* or the legislative history

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<sup>2</sup> NEV. REV. STAT. § 361.227 (2001).

<sup>3</sup> NEV. REV. STAT. § 361.227(2)(b).

<sup>4</sup> NEV. ADMIN CODE § 361.1295(1)(c)(2).

<sup>5</sup> NEV. REV. STAT. § 361.227(2)(b).

mandate that it is the required or appropriate method for assessing full cash value of fully developed subdivisions. The discounted cash flow analysis was intended to only apply to non-subdivided vacant parcels. Additionally, the discounted cash flow analysis was added to the statute over ten years after the subdivision rule was promulgated.

### **Conclusion**

Under NRS § 361.227(2)(b) a parcel that is determined to be a qualified subdivision is not required to be appraised as a single unit or afforded discounts of improvements to each individual unit that form the subdivision. Additionally, under *NRS § 361.227(5)(c)* the discounted cash flow analysis is not required to be utilized to determine the full cash value of fully developed subdivisions.