

COMMISSION MEETING MINUTES
September 15, 2009

The Board of Davis County Commissioners met in room 236 of the Davis County Courthouse, Farmington, Utah on September 15, 2009 at 10:00 a.m. Members present were Chairman P. Bret Millburn, Commissioner John Petroff Jr., Commissioner Louenda H. Downs, Clerk/Auditor Steve S. Rawlings, Chief Deputy Civil Attorney Gerald E. Hess, and Deputy Clerk/Auditor Linda May.

Commissioner Louenda Downs led the Pledge of Allegiance. All were invited to stand and join in. Commissioner Downs said, "We live in a great country and are privileged to have the ability to vote today in the primary elections."

Plaque
Presented to
Commission
for Funding a
Portion of
Summer
Literacy
Program

Ruth Payne, Woods Cross Community of Promise, spoke about the Summer Literacy Program held in their city. She introduced Jean Bower who also helps with the program. The program began nine years ago when the Colin Powell's Program for Communities of Promise made grants available. The community decided the biggest impact would be literacy. As those grant funds declined about five years ago, Commissioner Carol Page encouraged the group to apply for funds to the Davis Commission Cup. The current program encourages children 12 and under to bring a parent once a week during the summer months to one of two parks. There is reading, crafts, refreshments and each child is given a book. There have been 125 to 275 participants this summer. Ruth presented the Commissioners will a plaque to recognize the Davis County Commissioners for their kindness and support of the Woods Cross Literacy Program.

Constitution
Day Activities

Chairman Millburn announced that Northridge High School will hold a Constitution Day activity on Thursday, September 17 at 7:00 p.m. at the school. Commissioner Downs stated there have been county wide events. She reminded everyone to get a copy of the Constitution and read it.

Amendment
#2009-170A
ESI
Engineering
Inc. for
Engineering for
DSB Channel
Reconstruction

Kirk Schmalz, Davis County Public Works Director, presented amendment #2009-170A with ESI Engineering, Inc. ESI Engineering is providing the engineering services for the DSB channel reconstruction. The increase is to add geotechnical/ground water hydraulics investigation to design of the channel re-lining project. It is a payable of \$5,500.00. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Certification of
Substantial
Completion for
Kilgore Paving
for 3600 So.
Project

Kirk Schmalz requested approval of the Certificate of Substantial Completion for Kilgore Paving (#2009-82) for the 3600 South Improvement Project. The items have all been completed. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Discussion of
Bond Sale for
Flood Control
Projects

Kirk Schmalz, Davis County Public Works Director; Steve Rawlings, Davis County Clerk/Auditor; and Jonathan Ward, Zions Bank Public Finance talked briefly about the bond sale that took place at the commission meeting held on September 10. Chairman Millburn stated the bonding for \$27,000,000 for flood control projects was accomplished also and refinancing of some existing bonds. The stars aligned for Davis County. Steve Rawlings said, "The bonds sale went extremely well. We were planning it would take perhaps two days but within four hours the bonds sold. The Triple A Rating was a major factor. There were approximately 120 eager offers." Jonathan Ward said, "The fund balance policy adopted by Davis County some time ago demonstrates the commitment to a sound financial rating. Steps today do affect tomorrow. Davis County has shown their commitment to sound financial practices. Credit analysis is key to bonding."

Commissioner Downs said, "Not only did numbers come out well but there were 120 eager offers." Jonathan Ward said, "Triple A is a rarity. The State of Utah is doing a General Obligation bond of over a billion dollars and they also carry the Triple A rating." Commissioner Petroff asked if it was for transportation and Jonathan said, "Yes." Steve Rawlings said, "There is no tax increase. Leverage of current revenue stream for the amount being taken in for Public Works will be the bond debt service payment. Projects will be able to be done in three years rather than 30 years. We were able to refinance on current bonds for a savings of \$136,000." Commissioner Downs said, "No more cost to taxpayers. Prices have dropped and we are using this economy for saving money." Chairman Millburn said, "It is great work of the financial teams and the stars lined up." Commissioner Petroff said, "Ok there is more, efforts are being combined with cities for flood control projects where possible and it is saving even more taxpayer dollars."

Agreement
#2009-287
Everest College
for Students to
Learning
Clinical Skills

Lewis Garrett, Davis County Health Director, presented agreement #2009-287 with Everest College. The Health Department will provide a suitable clinical learning environment and supervision for participating University students from Everest College. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-288
Midtown
Community
Health Center,
Inc. for Lease

Lewis Garrett presented agreement #2009-288 with Midtown Community Health Center, Inc. This is a lease agreement for space in the Health Department Building. The initial term is a receivable of \$399,000.60 with an option of \$199,999.80 for an optional term. Midtown Clinic is a federally funded program that had its start-up in Ogden. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-289
Clearfield City
for Property
Purchase for
Davis County
Health Admin
Bldg.

Tony Thompson, Davis County Planning Office, presented agreement #2009-289 with Clearfield City. Davis County is offering to purchase approximately 4.07 acres of property for the Davis County Health Department Administration Building and related facilities located at approximately 22 South Depot Street in Clearfield, Utah. It is part of sections 1 and 2, T4N, R2W, SLB&M. It is a payable of \$251,612.00 plus closing costs. The Davis County Property Committee and the Capital Planning Committee have reviewed this purchase agreement and have approved. The request at this time is a motion for the Davis County Commission to authorize the Chair to execute a purchase and sale agreement as described and to accept the property as described in the agreement and to authorize staff (Jerry Hess, Deputy Davis County Attorney, and Tony Thompson, Davis County Property Manager) to attend the closing and act as agents of Davis County to exchange and deliver the executed agreement, the purchase money and related closing costs funds for the executed Warranty Deed, and record the Warranty Deed with the Davis County Recorder's Office. Commissioner Petroff stated so moved. Commissioner Downs seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor. Chairman Millburn stated that a lot of hard work has gone into this agreement and he appreciates the partnership with Clearfield City. It is anticipated there will be a bid opening for the building of the facility on next week's commission agenda.

Agreement
#2009-290 US
Marshal
Service
Funding for a
Vehicle

Steve Rawlings, Davis County Clerk/Auditor, presented agreement #2009-290 with the US Marshal Service. It is a memorandum of understanding between the US Marshal Service, District Fugitive Task Force, and the Davis County Sheriff's Office. The appropriation will be \$25,000.00. Payment will be made directly to a commercial vehicle dealership upon receipt of a proper invoice. A budget change is necessary to receive and spend the federal seizure funds. It is to increase line item 10-3322-000 Block Grant Award by \$36,000; increase line item 10-4210-745 Vehicle by \$25,000; increase line item 10-4210-253 Vehicle Service by \$6,000; and increase line item 10-4210-000 Cap Related Equip by \$5,000. The Auditor's Office will book the

new asset but it will be paid directly to the dealership. The \$11,000 remainder will be received or reimbursed to DCSO from the USM. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document is on file in the office of the Davis County Clerk/Auditor.

Convene as
Municipal
Building
Authority for a
Public Hearing

Commissioner Downs made a motion to convene as the Municipal Building Authority.

Commissioner Petroff seconded the motion. All voted aye.

Commissioner Petroff made a motion to convene a public hearing. Commissioner Downs seconded the motion. Chairman Millburn stated the purpose of the hearing is to receive comments with regard to (i) the issuance by the Municipal Building Authority of Davis County, Utah of its Lease Revenue Bonds and (ii) any potential economic impact that the improvements, facility or property financed in whole or in part with the proceeds of said Bonds may have on the private section. The funds would be used for the building of the Senior Center attached to the new Davis County Health Department Building. No public comments were given. This will not require a tax increase.

Commissioner Petroff made a motion to reconvene the regular commission Meeting. Commissioner Downs seconded the motion. All voted aye.

Commissioner Downs made a motion to convene as the Board of Equalization. Commissioner Petroff seconded the motion. All voted aye.

Property Tax
Register
Approved

Ross Bartholomew, Davis County Tax Administration Director, presented the property tax register. There are 99 approvals for property tax appeals, 7 denials, 15 Assessor Corrections and Auditor's Correction for two veteran abatements. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye.

Commissioner Petroff made a motion to reconvene the regular commission meeting. Commissioner Downs seconded the motion. All voted aye.

Commission
Minutes
Approved

Commission meeting minutes for August 18, August 15, and September 1, 2009 were presented. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye.

Check
Registers
Approved

Check registers as prepared by the Davis County Clerk/Auditor's Office were presented. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Documents are on file in the office of the Davis County Clerk/Auditor.

Commission Comments:

Commissioner Downs stated the Leadership Symposium with the Administrative Officers was a great get together. There was great entertainment by one of the employee's granddaughter.

Commissioner Millburn stated the Gala on Thursday evening was successful. Many volunteers helped make this happen. Dinner was served and the entertainment was enjoyable.

Commissioner Petroff stated the Leadership Symposium provided a forum for dialogue and education with the other Elected Officials and Administrative Officers.

Steve Rawlings, Davis County Clerk/Auditor, stated he serves on the South Davis Recreation Board. He attended a special event with several residents and their pets. Before the outside pool closed, the South Davis Recreation Center sponsored a Doggie Palazzo. People were allowed to let their dogs go in the outdoor pool and have fun swimming. Commissioner Millburn said there is something for everybody in Davis County.

Commissioner Downs made a motion to convene as the Board of Equalization. Commissioner Petroff seconded the motion. All voted aye.

Chairman Millburn stated the Commission received a letter dated July 28, 2009 from Robert B. Lochhead, Parr Brown Gee & Loveless, the law firm representing Boyer Hill Military Housing, L.C. On June 9, 2009, the Board of Equalization held a hearing on Boyer Hill's request to exempt the improvements on the real property from local property tax. The Board of Equalization voted 2 – 1 at the hearing to deny the exemption. By this letter, Boyer Hill requests the Board of Equalization to reconsider its denial of the request for exemption. On August 13, 2009 a letter from Steve S. Rawlings, Clerk of the Board of Equalization, sent a letter of notice that the Davis County Board of Equalization would convene a hearing on Tuesday, September 15, 2009, at 11:00 a.m. It was indicated the firm would be given 30 minutes to present any testimony or information and the Davis County Assessor or his representative would also be given 30 minutes for presentation whereupon the hearing would be concluded.

By agreement of both parties the hearing began at 10:55 a.m.

Robert Lochhead, Parr Brown Gee & Loveless presented the following powerpoint for the reconsideration of motion for Boyer Hill Military Housing request for property tax exemption:

*Utah Code 59-2-1102(1)(a) "The county board of equalization may...determine whether certain property within the county is exempt from taxation."

*MHPI 10 U.S.C. §§ 2871-2855 BHMH is building and managing housing at Hill Air Force Base pursuant to the Military Housing Privatization Initiative. 1. Under MHPI the developer is brought in and used as a financing vehicle to help avoid capital costs for the Air Force and leverage capital markets to speed construction. 2. Nominal title is conferred to the developer to make the financing feasible from the Lender's point of view. 3. Property reverts to Air Force ownership at the end of the Lease Term.

*Reasons for Tax Exemption: Federal Law: Military Housing Privatization Initiative (MHPI) Utah State Law: Most significant incidents of ownership.

*Opinion No. 04-057 Attorney General of Virginia "Consistent with the governmental nature and purposes of the project, Congress specifically has provided that the government's conveyance or lease of property or facilities under the Initiative shall not be subject to the federal government's waiver of sovereign immunity to allow state and local taxation..."

"Moreover, even in the absence of such exclusive jurisdiction by the United States government, the operation of these local taxing provision to the project's Ground Lease interests is specifically precluded by §2878(d)(1) of the Military Housing Privatization Initiative."

*Interwest Aviation Utah Supreme Court "The determination of whether improvements on government-owned land leased and used by a private party to conduct a for-profit business qualify for tax exemption depends upon whether the private party or the governmental unit has the most significant incidents of ownership, and not necessarily upon who has formal legal title..."

*Incidents of Ownership: US Air Force v. BHMH:

<u>Item</u>	<u>US Air Force</u>	<u>BHMH</u>
Record Title	X	X
Access	X	
Design/Construction	X	
Occupancy	X	
Cash Flow	X	X
Operations	X	
Residual Ownership	X	

*Summary of additional evidence and authority for tax exemption: 1. Sale and refinancing provisions of the "Deed of Trust and/or Deed to Secure Debt, Security Agreement and Agreement to Share Proceeds". 2. Lack of transferability (Lease Agreement). 3. Compliance checklist. 4. Federal Law and the Supremacy Clause: Opinion of Virginia's Attorney General

*Sale and Refinancing Provision of Agreements between BHMH and the Air Force: *"Deed of Trust and/or Deed to Secure Debt, Security agreement and Agreement to Share Proceeds" is a document recorded against the property lease by Boyer-Hill *Boyer-Hill must pay the Air Force 50% of "Capital Event Gross Proceeds" * These events are defined to include any sale or refinancing of the property.

*Lack of Transferability of Ownership – Condition 21 of the Lease Agreement prohibits any transfer

of the housing project without the prior written consent of the Air Force.

*Compliance Checklist – Boyer Hill is required to comply with a detailed compliance checklist of over 200 items ranging from financial management to property management of the project. This list is continually audited for compliance through a multi-layered process that includes rigorous oversight via third-part consultants hired directly by the Air Force.

*Response to arguments presented in previous hearing: Assessor’s argument – property under concurrent jurisdiction is subject to taxation. Response – concurrent jurisdiction does not override federal law (MHPI). Under concurrent jurisdiction, the property may be subject to tax only if the private entity has the most significant incidents of ownership.

*Response to arguments presented in previous hearing: Assessor’s argument – lease between Boyer Hill and the Air Force makes Boyer Hill responsible for property taxes. Response - *Air Force pays 50% of any property tax imposed on the project. *The lease specifically provides for a challenge to any tax imposed. *A similar lease provision ruled to be precautionary; provision NOT a consent to tax (Atlantic Marine Corps Communities LLC v. Onslow County)

*Response to arguments presented in previous hearing: Assessor’s argument – the improvements are held by Boyer Hill in fee simple. Response - *Boyer Hill has record title solely for obtaining financing (collateral to the lender); beneficial owners is the Air Force. *The principal incidents of ownership typically associated with “Fee Simple” remain with the Air Force.

*Response to arguments presented in previous hearing: Assessor’s argument – Boyer Hill is private entity and is subject to tax pursuant to the Utah Constitution and statutes. Response: The relevant question is the tax status of the property and who holds the most significant incidents of ownership.

*Response to arguments presented in previous hearing: Assessor’s Argument – no federal money will be expended to pay the property taxes. Response: *Project costs are shared equally between the Air Force and Boyer Hill. *The Air Force pays 50% of any property tax burden.

*Response to arguments presented in previous hearing: Assessor’s Argument – personnel at Hill Air Force Base benefit from Davis County Services, and therefore the property should be subject to taxes. Response: *Hill AFB facility housing contracts separately for county and other services received. *The Air Force pays School Impact Aid at the 100% rate for school children living on base, not the reduced rate paid for the children living off base in taxed housing. *Legal test is not about benefits conferred; it is about incidents of ownership and supremacy of Federal Law.

*Summary: The Hill Air Force Base military family housing is exempt from property taxes: Federal Law – Military Housing Privatization Initiative (MHPI). State Law – The Air Force holds the most significant incidents of ownership.

(11:20 a.m.) - Craig Bott, Deputy Davis County Attorney, presented the position in opposition to Boyer Hill Military Housing’s request for property tax exemption as the following powerpoint:

*Key to Issue Resolution: Is it legal? Is it practical? Is it Moral?

*Article 13, Section 2 Utah State Constitution (1) So that each person and corporation pays a tax in proportion to the fair market value of his, her, or it tangible property, all tangible property in the State that is not exempt under the laws of the United States or under Constitution shall be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and (b) taxed at a uniform and equal rate. (2) Each corporation and person in the State or doing business in the State is subject to taxation on the tangible property owned or used by the corporation or person within the boundaries of the State or local authority levying the tax.

*Property Tax §59-2-103 Utah Code – All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

*Property taxes are a creature of state law.

*California vs. Utah Law – The board of equalization opinion (adopted by Ms. Burton) focused on the “Independence Analysis,” first applying California Revenue and Taxation Code §107.4, and an analysis under the “Asilomar Factors” pursuant to Pacific Grove-Asilomar Operating Corp. v. County of Monterey 43 Cal. App. 3d 675, 683-684.”

Section 107.4 of the California Revenue and Taxation Code provides that a private contractor's interest in rental military *family* housing is not subject to property taxation as possessory interest, provided certain requirements and conditions are met.

Utah has NO such statutory provision.

*In Utah Property Taxation is not prohibited by law for military Privatized family housing owned by a private entity and located on concurrent jurisdiction land.

*Jurisdiction and ownership the fundamental factors of this issue.

*Jurisdiction – The location of private military housing within a federal installation will determine whether a particular project is exempt from County property taxes. The two types of Jurisdiction we are dealing with in this matter are: Exclusive and Concurrent.

*Jurisdiction on Hill Air Force Base was established through the ceding process.

*March 24, 1943 – Formal Deed of Cession for “Hill Field §63-8-1 U.C.A. (Renumbered as §63L-1-201). Jurisdiction over land acquired by United States Reservations by state – duration of jurisdiction.

Jurisdiction is hereby ceded to the United States in, to and over any and all lands or territory within this state which have heretofore been acquired by the United States by purchase, condemnation or otherwise for military or naval purposes and for forts, magazines, arsenals, dockyards and other needful buildings of every kind whenever authorized by Act of Congress, and in, to and over any and all lands or territory with this state now held by the United States under lease, use permit, or reserved from the public domain for any of the purposes aforesaid; this state, however, reserving the right to execute its process, both criminal and civil, within such territory. The jurisdiction so ceded shall continue so long as the United States shall own, hold or reserve land for any of the aforesaid purposes, or in connection therewith, and no longer.

*August 8, 1997 @63-8-4 U.C.A. (renumbered as 63 L-1-204) Air Force accepted concurrent jurisdiction over four additional areas of the” base”: *The golf course; *The D and E housing areas; *Tract 121; and, *Sunset housing area.

63L-1-204. Concurrent jurisdiction with United States – taxation of businesses on federal lands. (1) The state of Utah retains concurrent jurisdiction, both civil and criminal, with the United States over all lands

affected by this act. (2) The state and all of its political subdivisions also reserve the right to impose taxes on individuals, partnerships, corporations, associations, and all other business entities doing business on the lands affected by this chapter in respect to such business or on any property of these entities situated on these lands.

*State of Virginia Attorney General Opinion 04-057 –

“You ask whether the federal government has exclusive jurisdiction over the portion of the Exterior Post (a concurrent jurisdiction area) where military housing will be constructed.”

“The property on which these units are to be located must...comply with the provision of the 1940 Act that the Commonwealth and the federal government exercise concurrent jurisdiction over crimes and offenses committed on lands acquire by the United States and used for military purposes.”

UTAH – “The state and all of its political subdivisions also reserve the right to impose taxes on individuals, partnerships, corporations, associations, and all other business entities doing business on the lands affected by this chapter in respect to such business or on any property of these entities situated on these lands.”

VIRGINIA – “The property on which these units are to be located must...comply with the provision of the 1940 Act that the Commonwealth and the federal government exercise concurrent jurisdiction over crimes and offenses committed on lands acquired by the United States and used for military purposes.”

*It should Also be noted: The United State Supreme Court has determined that “a tax imposed upon a private citizen’s use or possession of government property is not a tax on the government or its property and is therefore constitutional. United States v. Allegheny County, Pa 322 U.S. 174, 186 (1944).

“Thus a locality may constitutionally impose a use tax on a private citizen utilizing or possessing government property in connection with the private citizen’s or corporation’s own commercial activities, regardless of whether those commercial activities arise out of contractual relationship with the government. United States v. New Mexico, 455 U.S. 720, 733 (1982).

*Office of the Deputy Under Secretary of Defense Installations and Environment Military Housing Privatization Overview: Business/Developer FAQ’s - Are property taxes considered in these deals?

Although DoD will not negotiate with the local jurisdiction on any tax abatements, the developer is free to negotiate to achieve any tax abatements.

*Utah State Tax Commission Standards of Practice Section II.I - It is the obligation of the party requesting the exemption to prove that the property meets the exemption requirements.

“...Statutes granting tax exemptions must be strictly construed in favor of taxation.” Cole Hospital,

Inc. v. Champaign County Board of Review, 446 N.E. 2d (Ill. App. 1983)

“...Statutes creating tax exemptions must be construed strictly in favor of taxation.” Wheaton College v. Department of Revenue, 508 N.E. 2d 1136 (Ill. App. 1987)

*Incidents of Ownership: “Interwest Aviation v. County Board of Equalization of Salt Lake County” 743 P.2d 1222 (Utah 1987)

The determination of whether improvements on government-owned land leased and used by a private party to conduct a for-profit business qualify for tax exemptions depends upon who has the most significant incidents of ownership, and not necessarily upon who has legal title . . . The approach we adopt allows the taxation of property which is used exclusively by a private person even though legal title is clearly in the governmental agency, as long as the most significant incidents of ownership to the property are in the private user. Thus the status of the formal legal title, which relevant is not controlling.

*Incidents of Ownership:

- Title
- Who built the improvements
- Whose plans were used to build the improvements
- Who has full use and enjoyment of the improvements
- Who profits from the improvements
- Who bears the risk of loss from the improvements
- Who maintains improvements at their own cost
- Who takes a depreciation on the improvements for federal income tax purposes
- Who provides and maintains insurance on improvements
- Who has agreed to pay possession or use taxes on the improvements
- Who maintains control of the improvements if other party defaults on the agreement
- Who is required under the lease to pay taxes, utilities and insurance on and for improvements
- Who has the right to change or improve the property
- Who bears the risk of loss to the property

*What Does Boyer Hill Own?

- DEPARTMENT OF THE AIR FORCE LEASE OF PROPERTY ON HILL AIR FORCE BASE, UTAH, CONDITION 1, 1.3 “Concurrently with the execution of this Lease, the Government has executed a Quitclaim Deed conveying to the Lessee title to certain improvements and personal property located on the Leased Premises. Those improvements and personal property, together with such improvements and personal property as may be constructed or placed on the Leased Premises by the Lessee, shall be owned in fee simple by the Lessee . . . “
- Fee Simple is Private Ownership of real estate in which the owner has absolute ownership of the real property and the right to control, use, and transfer the property at will, but subject to the four basic government powers of taxation, eminent domain, police power, and escheat.

*Who Designs Builds and Manages the Improvements: “The Boyer Hill Military Housing understands the need to bring military families together to create a whole community and give the families a sense of belonging and community. Our team’s extensive experience in development, design, construction and property management and maintenance will provide a veteran, yet innovative approach to quality housing that Air Force Families will enjoy for years to come.

*Department of Air Force Lease of Property Condition 17.1

- “This Lease is subject to and conditioned on Lessees . . . demolition, design, construction, renovation, operation and maintenance of the Lased Premises Improvements . . . [that it] is a private undertaking [and] title to the Leased Premises Improvements shall be vested in the Lessee . . . The Lessee shall not be entitled to receive from the Government and the Government shall not be obligated to pay to the Lessee any monetary consideration for demolition, design, construction, renovation, operation and management of the Leased Premises Improvements . . .”
- “. . . the Government’s sole and exclusive interest in and liability under this Lease are limited to that of Lessor of the Leased Premises.”
- Boyer argues that although the Air Force “technically conveyed title of the Leases Premises Improvement to Boyer Hill, the Agreement strictly restricts Boyer Hill’s use of the Leased Premise Improvements to . . . provide housing for Hill Air Force Base Personnel [and] . . . Any other use of the property is strictly prohibited by the Lease.

- The Assessor’s Office concedes that there are covenants associated with the lease of the land and sale in fee simple of the lease premises improvements that limits the use of that property for certain uses.

However, covenants and restrictions associated with land transfers neither bar the full use and enjoyment of the property, nor its taxation.

***Control of Cash Flow:**

- Boyer asserts that the “flow of funds is tightly regulated by the Lockbox Agreement among the Air Force, Boyer and Zions Bank . . . all cash receipts from the Project go into the main Lockbox revenue account and are disbursed according to specific priorities found in the Lockbox Agreement.
- Construction Loan Agreements between Developers, Banks, and Buyers are maintained in a construction accounts, they are tightly regulated and funds are disbursed according to specific priorities and regulations found in the Loan Agreement.

***Shopping Mall Lock Box Agreement:**

- Existing “Lockbox” Agreement
- Under the current loan documents, a “lockbox” agreement exists between the Developer and its two lenders (Finova and Lehman Brothers), which dictates how revenues generated from the mall are collected and utilized. Under the existing lockbox agreement, all revenues generated by the mall are placed into a “lockbox” account that is maintained by an independent servicer. The existing lockbox agreement stipulates that all lockbox revenues must be utilized first to pay for any property or special taxes before any other payments are made.
- New “Lockbox” Agreement
- As a condition of the loan, the largest potential investor has requested that there be a mechanism to require that a similar arrangement be in place with respect to any subsequent loans that refinance the Finova and Lehman loans, or any loans entered into by a subsequent owner of the mall while the Loans are outstanding.
 - All gross rental and other operating income generated from the mall will be paid by mall tenants into a lockbox account maintained by an independent third party servicer;
 - Every month, funds deposited in the lockbox account will be set aside to pay for a least 1/12th of the special tax payment due in the next year;
 - These provisions will not apply so long as the existing loans with Finova and Lehman Brothers remain in effect;
- By recording the Agreement as a deed restriction on the Developer’s property, terms of the Agreement will serve as a covenant that runs with the mall property and shall be binding on the Developer’s successors and assigns;

***Who Pays:**

- DEPARTMENT OF THE AIR FORCE LEASE OF PROPERTY ON HILL AIR FORCE BASE, UTAH, CONDITION 8, 8.1 “The Lessee shall pay to the proper authority, when and as the same becomes due and payable, all taxes, assessments and similar charges which, at any time during the term of this Lease may be imposed on the Lessee or the Project.

***For Profit:**

- “The Boyer Company, formed in 1972, is one of the largest developers of commercial real estate in the Intermountain West . . . building, owning and managing residential and commercial real estate projects. The Boyer Company is a full-service real estate development firm with holding over \$380 million in Utah.”
- How much will Boyer Hill make in profit over the 50 year lease which insures that Boyer will obtain all useful life of the improvements?

***Income Tax Benefits:**

- Does Boyer Hill take a depreciation on the Leased Premises Improvements for federal income tax purposes?
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***Who Bears the Risk of Loss from the Improvements?**

- Condition 15 – Dept. of Air Force Lease of Property – “The Lessee shall in any event . . . bear all risk

or loss or damage or destruction of the Leased Premises, and any building(s), improvements, fixtures or other property thereon arising from any causes whatsoever . . .”

*Who provides and maintains insurance on improvements?

- Condition 15.2 Dept of Air Force Lease of Property – During the Term, the Lessee, at no expense to the Government, shall carry and maintain the following insurance: All-risk property insurance, including loss of the rents for actual loss sustained with an extended period of indemnity of 180 days, on a replacement basis, with no coinsurance, for full replacement value of the Leased Premises Improvements.
- Commercial general liability insurance, on an occurrence basis, insuring against claims for bodily injury, death and property damage occurring upon, in or about the Leased Premises including any buildings thereon and adjoin sidewalks, streets and passageways.
- Fire and other applicable insurance provided for under Condition 15 which, if not then covered under the provisions of existing policies, shall be covered by special endorsements thereto in respect to any improvements, structures, alterations or additions to or installations, including all materials and equipment therefore, incorporated in on or about the Leased Premises (including excavations, foundations and footings) under a broad from all-risks builder’s risk completed value form or equivalent thereof.
- Workers Compensation or similar insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted.

*Can Boyer Hill Divest Itself of the Property?

- Section 21, Dept. of Air Force Lease of Property – The Lessee shall neither transfer nor assign the Lease or any interest therein or a property on the Leased Premises, nor sublet the Leased Premises or any part thereof or any property thereon . . . nor grant any interest, privilege, or license whatsoever in connection with this Lease without the prior written consent of the Government . . . Such consent shall not be unreasonably withheld or delayed.
- The rest of Section 21 details the procedures for transferring the Lease of Property.

*What if Hill Air Force Base is Closed:

- Condition 34.1, Dept. Air Force Lease of Property – If Congress approves the closure of Hill AFB (a “Base Closure”) under the Base Closure and Realignment Act . . . Or any other base closure or realignment law . . . The lessee shall have the right to purchase the Leased Premises on the terms and conditions set forth in this Condition 34 (the “Purchase Option”).
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*Privilege Tax

Section 2.7, Property Tax Exemptions, Standards of Practice – Privilege tax is a tax which is imposes on the possession or use of any real or personal property which for any reason is exempt from taxation, if that property is used in connection with a business conducted for profit.

Section 59-4-101, Utah Code – The tax imposed is the same amount that the ad valorem property tax would be if the possessor or user were the owner of the property.

*Who Can Appeal the Decision of the Board of Equalization to the Utah State Tax Commission?

- Section II.I Determination of Exempt Status, Property Tax Exemptions, Standards of Practice, Utah State Tax Commission – Determinations made by the assessor may be appeals to the county board of equalization . . . [the] BOE decision may be appealed by the property owner or the assessor to the State Tax Commission.

If, as Boyer Hill asserts, the Federal Government is in fact the owner of the Leased Premises Improvements for property tax purposes, then only the Federal Government could appeal the BOE decision to the State Tax Commission.

Rebuttal time was allowed for Robert Lochhead and Craig Bott to summarize statements previously presented.

Retired U.S. Major General Pat Condon utilized rebuttal time allotted to those representing Boyer Hill. He spoke to the nature of base closures and the role disagreements can play. It is important to be mindful of the long term best interest. Another round of closures will be in 2015. Impressions, facts, or other reasons may be part of future. Mark Pace, President of Boyer Hill, stated that \$.50 of every dollar go into the reinvestment account for improvement to homes. The intent is to provide good housing. Depreciation on new construction is our own equity loan.

Commissioner Downs stated that ownership of her own home is different. This is a unique kind of ownership. It is not clear. The presentations are much appreciated. Boyer Hill has record title. Air Force has ultimate control. Rending of opinion from Virginia indicates ultimately the Air Force has control. The motion is we should not tax and should grant exemption.

Commissioner Petroff stated that he thought it would be more cut and dry. He would like to know more about the Virginia decision. He seconded the motion.

Commissioner Millburn offered a substitute motion to table the decision and review the documents and return at a later date.

Commissioner Petroff questioned, "Are we jeopardizing the base?"

Chairman Millburn asked why not continue with an appeal at the State? Why the urgency to resolve at the County level?

Robert Lochhead stated this is an appeal from an earlier decision and why resolve at this level? He indicated that statutorily the Board is to make the decision and the earlier action is felt to be incorrect and was ill advised based on the earlier information.

Chairman Millburn stated that he has no desire to negatively impact the base. It is a jewel in the State of Utah. It is not a BRAC issue. Chairman Millburn called for the voted. Commissioner Downs and Commissioner Petroff voted in favor. Commissioner Millburn voted nay.

Commissioner Petroff made a motion to reconvene the regular commission meeting. Commissioner Downs seconded the motion. All voted aye.

Meeting adjourned.