

**Round Hill General Improvement District  
Board of Trustees Meeting  
August 19, 2014**

Tuesday

6:00pm

**1. Meeting Called to Order. (Side A/c#1)**

Chairman Smith addressed the audience and explained the process by which the meeting would be held. Meeting was called to order by Chairman Glen Smith.

**2. Pledge of Allegiance. (Side A/c#2)**

Pledge of Allegiance was led by Chairman Glen Smith.

**3. Roll Call. (Side A/c#6)**

Chairman Glen Smith, Vice Chairman Steve Teshara, Trustees Wes Rice, Chuck Fagen and Steve Seibel were present. The District Manager, Administrative Assistant and District Counselors Pat Fagan and Justin Townsend were present. Please see the attached list of Round Hill residents in attendance.

**4. Public Comment. (Side A/c#10)**

None

**5. Approval of Agenda. (Side A/c#13)**

Motion to approve the agenda as presented. Teshara/Rice 5-0 approved.

**6. Discussion and possible action on the newly created Round Hill Ad Valorem Tax. (Side A/c#15)**

Manager Reed stated that the paperwork provided to the residents was the exact paperwork that was provided to the Board of Trustees. An agenda, his cover sheet report, the memorandum written and provided by District Counsel Justin Townsend and a copy of this meeting notice that was mailed to all residents. These reports are attached.

Manager Reed reported that for the 2014 / 2015 budget year, RHGID implemented an Ad Valorem Tax to augment the District's General Fund. Revenues raised from the AV Tax would be used for maintaining our reserves and to allow us to increase revenues for future paving projects.

RHGID paved McFaul Way in 2010 and Elks Point Rd. in 2013. The next paving project is scheduled for 2016 when Paiute Drive and Ute Way are to be rebuilt and repaved.

RHGID implemented the AV Tax with the understanding that the new tax would be subject to the provisions of NRS 361.4723(1), which states that the annual property tax increase cannot be more than 3% per year however, when the tax bills were received by Round Hill residents, the bills had increased between 17 and 19%, clearly in excess of what was expected by the Board and what was communicated to Round Hill residents.

RHGID determined that the difference in the tax bills was caused because the newly created tax was classified as an annexation. An annexation is not subject to the 3% cap threshold. It falls outside the cap. Discussions with Douglas County and the State Department of Taxation indicated that the initial tax revenue projections created by the County determined that Round Hill would receive a total of \$5,200 in the 2014 / 2015 budget cycle if the tax was implemented under the 3% cap.

Understanding that the District intended to use the AV Tax revenues for future road paving projects, the State reclassified the tax as an annexation, thus increasing the revenue raised and putting the new tax outside the 3% cap. This was the first time the District had heard the term “annexation”.

RHGID’s attorneys have researched the annexation statutes and it appears that the District is not entitled to the taxes as enacted as we do not meet the definition of an annexation. An annexation is for annexation of territory or services. Our road paving projects do not qualify as an annexation of either territory or services.

In initial discussions with the County, the County’s District Attorney agrees that the annexation classification is probably not appropriate. The County has agreed to work with Round Hill to correct the misapplication of the AV Tax.

Based on those initial discussions with the County, the District Manager should move forward with both the State and the County and determine a mechanism to correct the AV Tax as implemented. RHGID counsel has been involved with those initial discussions with the County.

Chairman Smith asked for public comment and there were several questions asked by residents. Manager Reed and members of the board answered them to the best of their knowledge at this point in the process.

Vice Chairman Steve Teshara stated that because the “annexation tax” is not a legal tax for the District, it was the hope of the Board to have the State remove the tax completely and have all revenues refunded to our residents as soon as possible. Residents requested that none of the “annexation” funds received by the District be spent on legal fees associated with the resolution.

The District has already received the first payment from Douglas County for the Ad Valorem Tax. Per the District auditor, the funds do not need to be in a separate checking account so long as the funds are kept in a separate general ledger line item.

After discussions, a motion was made directing District Manager Reed with District Counsel’s assistance, to develop an approach with the State of Nevada and / or Douglas County to resolve the misapplication of the annexation statute to RHGID’s newly created Ad Valorem Tax and that the resolution occurs in a timely manner. Teshara/Fagen 5-0 approved.

**7. Discussion and possible action on the Cost Recovery Agreement with the U.S.F.S. for the permit renewal at the District’s Water Treatment Facility. (Side B/c#456)**

Manager Reed reported that the District’s permit with the U.S.F.S. expires in December, 2014. RHGID had submitted an application for renewal of that permit. The U.S.F.S. has a cost recovery process for permit applications. In order to review and assess the permit application, the Forest Service will charge the District to recover its costs during that process. The Cost Recovery Agreement requests the District to reimburse the Forest Service for up to \$15,417.91 for their review of our permit.

The reason for some of the costs is that the District is asking for the following modifications to the permit:

1. Additional space to allow for a second contact chamber
2. Additional space to allow for fencing around the property and
3. Additional space to add a restroom facility for the District’s staff use.

Motion to authorize the District Manager to execute the Cost Recovery Agreement with the U.S.F.S. for the review of the water treatment facility’s permit renewal at a cost not to exceed \$16,000. Seibel/Rice 5-0 approved.

**8. Consent Calendar. (Side B/c#642)**

Motion to approve the consent calendar as amended. Rice/Teshara 5-0 approved.

**9. Staff Reports. (Side B/c#680)**

Manager Reed reported that the Pinewild permit had been acknowledged by TRPA. RHGID has created an accounting of the shared cost for the Pinewild Homeowners' Association for their portion (11,698.23) of the project expenses and had discussed this with Chuck Neff from the Pinewild HOA. Pinewild expects to commence construction of the new roof during the 2015 construction season.

Manager Reed met with representatives of TJC Associates to discuss creation of a proposal to evaluate the structural integrity of the concrete office tank. As TJC looked at the tank, they presented that they could prepare a proposal, but that the cost of the engineering to examine the tank was likely to exceed any benefit that could be derived from an inspection. The current tank is likely to fail any structural analysis with more than 13 feet of water in the tank. Likewise, it is likely to fail any seismic analysis with more than 13 feet of water in the tank. Since the tank is routinely filled with more than 13 feet of water, the structural analysis would likely be engineering money that is un-necessary to spend at this time.

The new upper 500,000 gallon tank project is proceeding on schedule and under budget. Welding on the entire tank should be completed by August 15, 2014. The welds were inspected using x-rays and all 14 random locations passed inspection. Interior and exterior painting is scheduled to begin on August 18, 2014.

Manager Reed purchased a new 2014 Chevrolet Traverse to replace the Chevy Colorado for \$28,231.84. The process used was as follows: a list of comparable all wheel or four wheel drive vehicles was identified; each one was evaluated for their overall crash rating, and only five star crash rated vehicles were selected; only six cylinder or more vehicles were selected, narrowing the field to seven; initial pricing on the vehicles was conducted and the highest and lowest priced were eliminated, leaving five vehicles; five vehicles were taken for test drives, and quotes were requested of the five vehicles listed below; the lowest bid was then accepted.

Bid Requests		White	Quote
Chevy	Traverse	Y	\$28,231.84
Toyota	Highlander	N	\$31,528.25
Jeep	Grand Cherokee	N	\$32,445.25
GMC	Acadia	Y	\$33,759.71
Hyundai	Santa Fe	Y	\$35,398.25

The Douglas County area managers met to discuss road paving projects, building permit acquisitions, the County Manager hiring process, ramifications of the recent flooding throughout the County and other matters of mutual concern.

The District's workers compensation experience rating for 2015 dropped from 0.89 to 0.87. Once workers compensation insurance premiums are established for the year, they are multiplied by the experience rating, thus reducing the premiums in our case. RHGID workers continue to work safely and conscientiously, thereby keeping workers compensation insurance premiums low.

Manager Reed felt that since he and the Board all agree that the resolution to the annexation of the District's Ad Valorem Tax be done at the lowest cost possible and do not want to go to court. Because all

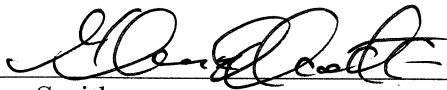
the research has already been conducted by the District's Counsel, he suggested that the information be shared with Douglas County so they can move quickly toward a resolution expeditiously.

Justin Townsend stated that a copy of the cases and statutes had already been provided to Douglas County at their last meeting. The Board of Trustees felt that any help the District could give Douglas County would help the process move forward more quickly.

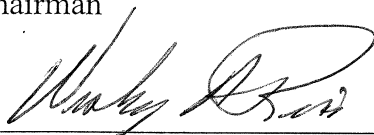
**12. Adjournment. (Side C/c#50)**

Move to adjourn. Rice/Seibel 5-0 approved.

Attest:



Glen Smith  
Chairman



Wesley Rice  
Secretary

## Board of Trustees Meeting August 19, 2014

## 37 Round Hill residents in attendance

1	Julia Spur
2	Judy White
3	Dan Wilkinson
4	Alice Wilkinson
5	Barbara Smith
6	Pat Andrew
7	H.R. Mortensen
8	M.E. Mortensen
9	Les Spear
10	Fritz Eriksen
11	Karl Backfisch
12	Lotte Backfisch
13	Richard Hoadley
14	Bill Laughlin
15	Bruce Steger
16	Bob Loding
17	Linda Loding
18	Keith Fertala
19	Nancy Marez
20	Marlin Herschman
21	Dan Pincus
22	Shelly Pincus
23	Janis Brand
24	Bob Jester
25	Melissa Jester
26	Donald Tweten
27	Mary Tweten
28	Pat Benson
29	Debbie Benson
30	Samuel McMullen
31	Herb Wheeler
32	Donna Wheeler
33	Tom Lawell
34	Bonnie Lawell
35	Kathleen Barnett
36	Matthew Pichon
37	Darin Smith
38	Sherry Ryan

**ITEM # 6 Discussion and possible action to consider alternatives to the newly created Ad Valorem Tax.**

**PRESENTED BY:** Greg Reed

**BACKGROUND:**

The District's General Fund is the sole source of revenue for road maintenance, storm drain maintenance and erosion control within RHGID. The General Fund can receive income from two sources; the consolidated tax and ad valorem tax. Prior to this year, the District relied solely on consolidated tax revenue for the General Fund.

In 2009, RHGID enlisted the services of R.O. Anderson Engineering to develop a Comprehensive Pavement Management Plan. The Plan incorporated a phased approach to road reconstruction and repaving over a 20 year period. The first phase of that Plan was conducted in 2010 at a total cost of \$717,450 on McFaul Way and the second phase was completed in 2013 on Elks Point Rd for \$539,482. RHGID expects the next paving cycle, which includes Paiute Dr. and Ute Way, scheduled for 2016, to cost \$600,000 to \$700,000.

The District utilized existing reserves to conduct the first two phases of the Plan. Upon completion of the 2013 paving project, the District evaluated its reserves and its anticipated revenue from consolidated taxes and created a 2014 / 2015 budget. Given the steady decline in consolidated tax revenue and given that the District did not have sufficient reserves to conduct the 2016 paving project without additional resources, the 2014 / 2015 budget was created with the addition of an Ad Valorem Tax.

Year	Consolidated Tax Revenue	Change from 2006
2005	\$431,762	
2006	448,307	
2007	443,180	\$(5,127)
2008	440,559	(7,748)
2009	430,970	(17,337)
2010	411,326	(36,981)
2011	371,852	(76,455)
2012	346,731	(101,576)
2013	365,078	(83,229)
		\$(328,453)

Consolidated tax revenues peaked in 2006. Since then, RHGID has received \$328,453 less than we would have based on receiving 2006 revenue in subsequent years.

Nevada has a 3% cap on annual increases to property taxes. RHGID knew this and relied on this information during the development of the AV Tax. In all of the discussions with the State, the County, legal counsel, rate consultants, the fact that we would not be subject to the 3% cap was never determined.

We based the creation of the AV Tax on the understanding that the AV Tax would only increase the overall tax rate of Round Hill residents by 3%, in accordance with NRS 361.4723. The District's communication that a taxable assessed value of \$104,011 with a 2013 / 2014 tax bill of \$1,651.82 would increase by \$49.55 was based on the belief that the newly created Ad Valorem Tax would be subject to the 3% cap.

The State and Douglas County assessed the impact of the creation of our AV Tax and determined that the District would generate only \$5,198 in new revenue if the new AV Tax was subject to the 3% cap. The State then classified our AV Tax as an "annexation". The 3% cap does not apply to annexation taxes. Therefore, Round Hill residents saw increases in the 17% - 19% range. Instead of the \$49.55 estimated above, this resident saw a newly created Round Hill Ad Valorem Tax of \$327.39, clearly not what the Board intended.

This was not the intent of the Board when it created the Ad Valorem Tax.

Legal counsel has conducted research into the implementation of our Ad Valorem Tax as an "annexation". See attached Legal Memorandum.

The implementation of the Ad Valorem Tax within the 3% cap will only generate \$5,198 for the District in 2014 / 2015. \$5,198 is not enough to continue paving in 2016. However, implementation of the Ad Valorem Tax as an "annexation" does not appear to be a proper application of the annexation statutes.

District staff and counsel have approached the Douglas County Attorney General's office regarding the annexation classification and their initial feedback is that they agree with the District's assessment. Additional discussions are warranted with the State and Douglas County.

**RECOMMENDED ACTION:** Direct the District Manager to develop an approach with the State of Nevada and / or Douglas County to resolve the misapplication of the annexation statute to RHGID's newly created Ad Valorem Tax.

## MEMORANDUM

TO: Round Hill GID Board of Trustees

FROM: Allison, MacKenzie, Pavlakis, Wright & Fagan, Ltd.

SUBJECT: Ad Valorem Tax

DATE: August 1, 2014

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### Issues

Is the State's determination that RHGID's newly-implemented ad valorem tax falls outside of the 3% cap on property tax increases on the basis of annexation subject to potentially successful legal challenges? Is the newly-implemented ad valorem tax exempt from the 3% cap subject to any other exemption?

### Discussion

NRS 361.4723(1) provides, generally, that the owner of a single-family residence that is the primary residence of the owner is entitled to a property tax abatement equal to the amount that exceeds the sum of (1) the prior year's property tax bill and (2) 3% of the prior year's property tax bill. NRS 361.4725 through NRS 361.4729 provide exemptions to the foregoing provisions for certain situations. A brief discussion of the aforementioned exemptions will come at the end of this memo.

First, however, there is a separate calculation that is mandated in the statute when annexation of real property to the taxing entity<sup>1</sup> (i.e. Round Hill GID) is concerned. It is this mandate on which the State and/or Douglas County apparently relied in taking Round Hills's ad valorem tax outside of the tax abatement scheme. You get to that mandate first by looking to the statute that governs how the abatement is applied to the various taxing entities within the county that is collecting the ad valorem taxes. That statute is NRS 361.4723(3), which reads as follows:

Except as otherwise required to carry out the provisions of NRS 361.4732 and any regulations adopted pursuant to NRS 361.4733, the amount of any reduction in the ad valorem taxes levied in a county for a fiscal year as a result of the application of the provisions of subsection 1 must be deducted from the amount of ad valorem taxes each taxing entity would otherwise be entitled to receive for that fiscal year in the same proportion as the rate of ad valorem taxes levied in the county on the property by or on behalf of that taxing entity for that fiscal year bears to the combined rate

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<sup>1</sup> NRS 361.4721 defines "taxing entity" as "the State and any political subdivision or other legal entity in this State which has the right to receive money from ad valorem taxes." NRS 318.225 et. al. authorizes general improvement districts to levy and collect money from ad valorem taxes.



of all ad valorem taxes levied in the county on the property by or on behalf of all taxing entities for that fiscal year.

That is a long-winded way of noting that the abatement set forth in NRS 361.4723(1) will be deducted on a pro-rata basis from the funds due to each taxing entity within the county. Without having the numbers to verify the math, this is presumably how Douglas County and/or the State determined that Round Hill would only receive \$5,200 during the current fiscal year.

You will have noted that the above-quoted language of NRS 361.4723(3) contains a couple of exceptions, including the carrying out of the provisions of NRS 361.4732. NRS 361.4732 is entitled "Effect of annexation of real property to taxing entity." Ostensibly, this is the provision relied upon by Douglas County and/or the State to conclude that Round Hill's ad valorem tax would not be subject to the abatement calculation of NRS 361.4723. However, a fair reading of NRS 361.4732 and related regulations indicates that the facts surrounding the implementation of the Round Hill ad valorem tax do not fit within the meaning and purpose of said statute.

NRS 361.4732 provides in pertinent part:

[a]fter a parcel or other taxable unit of real property is annexed to a taxing entity, (1) The amount otherwise required to be determined pursuant to paragraph ... (a) of subsection 1 of NRS 361.4723 ... with respect to that [annexed] property for the first fiscal year in which that taxing entity is entitled to levy or require the levy on its behalf of any ad valorem taxes on the property as a result of that annexation of the property, shall be deemed to be the amount of ad valorem taxes which would have been levied on the property for the immediately preceding fiscal year if the annexation had occurred 1 year earlier, based upon the tax rates that would have applied to the property for the immediately preceding fiscal year if the annexation had occurred 1 year earlier and without regard to any exemptions from taxation that applied to the property for the immediately preceding fiscal year but do not apply to the property for the current fiscal year...

Thus, this provision allows that when real property is annexed to a taxing entity such as Round Hill, the first time that the annexed property is assessed with Round Hill's ad valorem tax, the 3% cap will apply after calculating what that property's tax bill would have been the previous year had it been a part of Round Hill during that year. The tax bill for the year in which the annexed property is actually taxed cannot be more than 3% above what it would have been the year prior if the property had been a part of Round Hill during that year.

Regulations enacted to enforce and interpret this provision are found in Nevada Administrative Code ("NAC") 361.6115 et. al. NAC 361.613 provides a list of events that constitute "the annexation of a parcel or other taxable unit of real property" for purposes of

carrying out the provisions of NRS 361.4732 above. These are the only events that would qualify as an annexation thereunder:

1. The inclusion of the property within the boundaries of an existing taxing entity as a result of a change in the boundaries of that taxing entity;
2. The inclusion of the property within the boundaries of a new taxing entity; and
3. The assumption by a taxing entity of the functions of another taxing entity that:
  - a. Was entitled to levy or require the levy on its behalf of any ad valorem taxes on the property during the immediately preceding fiscal year; and
  - b. Has been dissolved.

In our opinion, there is no way to fit the Round Hill situation into any of the defined events constituting an annexation of real property. Moreover, contrary to what the State and/or Douglas County informed Greg Reed, annexation does not apparently include the creation of a new service payment for which the ad valorem tax is being implemented.

A search of Nevada case law on this issue failed to reveal any case that addresses this issue. Therefore, we cannot say for sure how a court would come down on the determination to characterize this tax as one on annexed property. However, it is our opinion based on a fair reading of the above-referenced statutes and regulations that a court is more likely than not to strike down such a characterization were a taxpayer to challenge Round Hill's ad valorem tax and Douglas County's implementation thereof.

The recognized exemptions to the 3% cap on property tax increases are:

1. NRS 361.4725 – Where the assessed value of a taxed parcel fluctuates by more than 15%.
2. NRS 361.4726 – Where new taxes are imposed as a result of a duty imposed by the legislature.<sup>2</sup>
3. NRS 361.4727 – A temporary increase in ad valorem taxes to secure the payment of obligations of the taxing entity.
4. NRS 361.4728 – A levy of taxes that is approved by a majority of the voters residing within the boundaries of the taxing entity and is specifically designated by the voters as one that is not subject to the 3% cap.
5. NRS 361.4729 – Where the assessed value decreases as a result of the destruction, removal, or over assessment of improvements on the property.

At the current time, it does not appear that any of the foregoing exemptions would have applied to take the Round Hill ad valorem tax out of the tax abatement scheme of NRS 361.4723.

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<sup>2</sup> This exemption does not apply because Round Hill was not under a duty to levy a new tax.

Round Hill General Improvement District

Board of Trustees' Meeting

Tuesday, August 19, 2014

Round Hill Fire Station

Elks Point Road

6:00 p.m.

Dear Round Hill Resident:

The Round Hill General Improvement District (RHGID) recently enacted an Ad Valorem (AV) Tax for residents within Round Hill's service territory. That implementation did not go as envisioned by the Board of Trustees or the District's Manager. Therefore, the RHGID's Board of Trustees will take this issue up at their next regularly scheduled Board meeting on August 19, 2014 at the Round Hill Fire Station on Elks Point Road at 6:00 p.m. As always, Round Hill residents are encouraged to attend that meeting to offer input to the Board so the Board can make a decision going forward that best incorporates residents' wishes.

The Board created the AV Tax to raise revenues that will allow the District to continue paving District roads as detailed in the District's Comprehensive Pavement Maintenance Plan and to maintain adequate General Fund reserves. Without additional funding, RHGID will not be able to continue paving roads on the timeline established in the Pavement Maintenance Plan.

Nevada has a 3% cap on annual increases to property taxes. RHGID knew this and relied on this information during the development of the AV Tax. In all of the discussions with the State, the County, legal counsel, rate consultants, the fact that we would not be subject to the 3% cap was never determined.

The Board based the creation of the AV Tax on the understanding that the AV Tax would only increase the overall tax rate of Round Hill residents by 3%, in accordance with NRS 361.4723. However, when the AV Tax was implemented by the State and County, it was classified as an "annexation". Annexations fall outside the 3% cap; the 3% cap does not apply to annexation taxes. This classification was never discussed prior to implementation. However, if RHGID had understood that we were going to be classified as an annexation in the beginning of this process, we may have been able to adjust our process to minimize the impact to residents. Therefore, the Board will consider alternatives to remedy this discrepancy.

## Patti Acri

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**From:** Beth Farley <bethf@kohncpas.com>  
**Sent:** Tuesday, August 12, 2014 1:44 PM  
**To:** Patti Acri  
**Subject:** RE: AV Tax

Hi Patti,

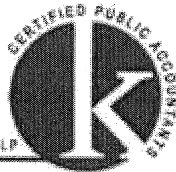
There is no statutory requirement for a separate account, other than that it is an internal decision. Regardless you need to code it separate.

Thanks,  
Beth



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**Kohn & Company** LLP



*Solutions For Today, Strategies for Tomorrow*®

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*If you need to send anything in a secured format please use our secure website at <https://kohncpas.leapfile.net>*

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**From:** Patti Acri [<mailto:pacri@rhgid.org>]  
**Sent:** Tuesday, August 12, 2014 9:06 AM  
**To:** Beth Farley  
**Subject:** AV Tax

Good morning:

We received our first installment for Ad Valorem Taxes. Greg thought we should open a new (separate) checking account for these funds to go into.

We have a separate line item on the Budget for this tax. So, if I code it properly and deposit the check all by itself – wouldn't that be transparent enough?

Let me know when you have a moment please.

Thanks

patti