

Monday, June 25, 2018
2:00 p.m.

Newkirk, OK

The Kay County Equalization Board met in Special session at 11:30 a.m. on Monday, June 25, 2018, in the Commissioners Court of the Kay County Courthouse in Newkirk, OK. Notice of the meeting was posted on the 20th day of June, 2018 at the Courthouse front door, Commissioners Court, and basement handicapped entrance of the Kay County Courthouse in Newkirk, OK.

Chairman J.C. Estes called the meeting to order. Those present were as follows: John G. Krider, Vice-Chairman; Joe R. Cary, Member; Brian Hermanson, Kay County District Attorney; Janell Leaming, First Deputy Kay County Assessor; Will Presson, Merit Advisors Representative for Rock Falls Wind; Mike Mordy and Jennifer Miller, Rock Falls Wind Farm & BEDA; Carson Creed, Blackwell; Claude Williams, Taxpayers for Transparency; Tammy Reese, Secretary/Kay County Clerk (See sign in sheet).

Motion was made by Cary and seconded by Krider approving the special session meeting minutes of June 5, 2018. Motion carried. Cary, aye; Estes, aye; Krider, aye.

Determining Appeal Decisions from hearings held on June 5, 2018 on the following Formal Appeals to the County Board of Equalization: Rock Falls Wind Farm and DCP Operating Co., LP.

Mr. Mike Mordy stood and introduced himself and told he was an attorney from Ardmore, OK here on behalf of Rock Falls Wind Farm and Blackwell Economic Development Authority (BEDA). He then introduced Jennifer Miller an attorney from Oklahoma City and Mr. Will Presson a representative for the taxpayer. Mr. Mordy said we are here to grovel and seek forgiveness because this was originally filed incorrectly. He told that Rock Falls and BEDA entered into an agreement last year pursuant to BEDA acquiring leases, service leases and wind mills that were originally constructed by Rock Falls Wind Farm. BEDA acquired at the end of last year the leases and all the personal property; Mordy said they gave notice to the County Assessor that there was a BEDA agreement that had been entered into and were sent copies at the end of December of last year. Mordy told under the terms and conditions of this agreement there is a sub-lease agreement pursuant to BEDA leases all the services state lease agreements and all the personal property, the wind mills, BEDA leases those to Rock Falls Wind Farm, LLC. In pursuant to that agreement there is an Oklahoma Statute whereby Rock Falls pays to BEDA an annual sum in lieu of ad valorem taxes all of this is entered into between BEDA and Rock Falls. Pursuant to that agreement Rock Falls pays to BEDA in lieu of ad valorem taxes \$409,000 and BEDA allots to a local school system. Mordy stated the issue arises because we fouled up on our filing and the filing should have been made on behalf of BEDA because BEDA is actually the interceder pursuant to this lease agreement of all these leases and all the wind mills. Mordy said what should have been filed originally on behalf of BEDA seeking an exemption under the Oklahoma Statute and I filed and have given DA Hermanson a copy that was filed last week a First Amended Appeal where it is filed on behalf of BEDA. BEDA seeks an exemption pursuant to the Oklahoma Statute Title 60 Section 178.7 and it says pursuant to an Economic Development Agreement, BEDA and Rock Falls, they pay for this \$410,000, that this is a payment in lieu of that on the virtue that the property is owned by BEDA and it is exempt from taxation. Mordy told that is the way these wind mill agreements are set up throughout the State of Oklahoma and throughout the United States. He told there is an issue because the Oklahoma Supreme Court has said in certain situations where these entities are trying to circumvent the Oklahoma Law that the statute is unconstitutional if its applicable to an Executory Contract. Mordy explained that an Executory Contract is where at the end of the agreement the property reverts back to an instrument where the ultimate lessee being Rock Falls would be able to buy back. He stated that is not the case here, this is strictly a lease agreement, sublease that I have provided to DA Hermanson where BEDA leases this, leases the service leases and leases the personal property back to Rock Falls. Mordy said the lease agreement provides certain things that evidence the fact that this isn't an Executory Contract it's just actually a lease. Mordy reiterated the lease is made pursuant to the statute that while the lease is in force and affect the property, wind mills and leases, those are actually the property of BEDA. Mordy said there are certain things through the contract that recognizes the property is not to be taxed because they are paying this fee in lieu of ad valorem taxes because the property is owned by BEDA, which is in essence a municipality and municipality property is exempt from taxation. Mordy said other evidence that this is a lease agreement is the insurance provision stating the property is to be insured that the lessee which is Rock Falls Wind Farm is to keep it insured but it provides that both BEDA and Rock Falls is to be the name insured because they both own ownership interest. Mordy stated these are documents done throughout the nation in accordance with the Oklahoma Statutes to encourage the development of the way these trusts that are a part of these municipalities enter into agreement; he said Blackwell has done this with other property they own in their Industrial Development Authority in their area stating they have buildings, etc. that are leased out and exempt from taxation. Mordy stated that is the exact same thing that is happening here, it's is not that someone is trying to cheat someone out of ad valorem taxes. He reiterated they are paying \$410,000 annually in lieu of taxation that the Oklahoma Legislatures has provided to encourage development and goes toward the schools and at the end of the ten years, in accordance with the Oklahoma Statutes, all these will be subject to ad valorem taxes like any other

property. Mordy again stated we fouled up on our original filing and we have tried to straighten out and have now filed a First Amended Appeal that shows BEDA is actually the owner that is exempt from taxation because it is owned by a municipality.

Mr. Cary asked how the amount of \$410,000 was decided. Mordy said it was some type of remuneration, that is paid annually and it was part of the negotiation.

Mr. Estes stated it was in lieu of payment but how is it determined where it goes. Mordy said the determination is made by the BEDA and the Assessor. Janell Leaming, First Deputy Assessor stated her office has no knowledge of this. DA Hermanson said he has been told by the lawyers of Rock Falls Wind Farm that BEDA makes the decision of where the money goes. Estes asked if the money just goes to one district. DA Hermanson said they can put the money anywhere they want to. Estes said the \$409,000 can go anywhere they want to put it and DA Hermanson answered that is correct. Mordy told Leaming he was told they negotiated with the Assessor's office about where the monies would go. Leaming stated absolutely not and she told all the referenced wind mills are located in the Newkirk School District.

DA Hermanson said there is one issue that you need to deal with first and that is whether or not this is a new appeal or an amended appeal. He said if you will recall originally Rock Falls filed a protest to the appraisal made by the Assessor and the Assessor modified her valuation from approximately \$90 million to \$70 million. DA Hermanson said during the formal appeal time Rock Falls filed a formal protest stating they believed the correct value to be \$43,921,981 instead of the \$74,313,966 that the Assessor modified. DA Hermanson stated each time these were filed Rock Falls stated they were indeed the owner of these 19 wind turbines, the building and the transmission lines. Again, DA Hermanson said, at the hearing on June 5th they claimed ownership; he said the document filed Thursday is not really an amended request for an appeal it's almost like filing a new protest that is way too late. Therefore, DA Hermanson said they are out of time, Rock Falls have filed acknowledging they are the owner, acknowledging that the value should be in the \$40 million range and you have that before you as it has gone through the appeal process and them coming back after the fact and now trying to change it all is not appropriate. DA Hermanson said regarding the statute Mr. Mordy is relying on, DA Hermanson said under Crawford vs. Dunbar that statute was found to be unconstitutional, they say the property is owned by BEDA there are provisions that provide the property to go back to Rock Falls upon certain circumstances and certainly at the end of the lease it goes back to Rock Falls and therefore it would fall back to the ruling of Crawford vs. Dunbar that what they are trying to do is inappropriate. DA Hermanson said also part of the Rock Falls Wind Farm is in Grant County and the District Attorney in Grant County has made similar rulings consistent with Kay County.

Chairman Estes said the first hearing we heard was basically their appeal to us and then the Assessor made an adjustment. Leaming and DA Hermanson clarified that the adjustment was made during the informal protest. DA Hermanson said on the informal appeal the Assessor evaluated and reduced the valuation and then you were given the formal appeal with adjustments for you to determine decisions and now Rock Falls is coming back wanting to change ownership.

Mr. Mordy stated we have admitted there was an error made, it's owned by the BEDA, the protest was filed incorrectly originally, and it was made like that because the Assessor sent it to Rock Falls Wind Farm and upon receiving it they wanted to make sure it was sent back in a timely manner. Mordy reiterated it was a mistake and it should have been filed on behalf of BEDA which is a municipality that is exempt from paying taxes. DA Hermanson said when they first sent the papers to his office in December it was not agreed upon that the transfer was valid and legal; he said his position has always been consistent. Mr. Cary said we have already been through the complete process with Rock Falls and if there is to be change it would need to be filed next year because their time is lapsed for this year's filings. Cary said next year it will need to be determined if it is legal or not. Chairman Estes noted we are dealing with the first appeal filed under Rock Falls and it will be the BOE determination on whether or not an adjustment is made. Mr. Estes questioned the Amended Appeal and DA Hermanson stated they titled it an Amended Appeal but not certain it is technically amended even though they titled it that way. Mr. Krider stated it is filed too late. Mr. Mordy said it relates back to the original filing, we just amended the original filing. DA Hermanson said you have changed the owner and the value so basically it is a new filing by a new person. Mr. Cary said the issue is the valuation by Assessor vs. valuation by owner, that is the issue and the BOE will need to determine, there is no issue determining whether or not you are tax exempt. Estes said that it has not been determined if it is tax exempt and Mr. Mordy stated the Supreme Court has made that determination because it is owned by the BEDA a municipality that is considered to be tax exempt. Estes said that determination is out of BOE hands.

Estes and board briefly reviewed DCP Operating Co., LP.

No action was taken on Formal Appeal hearings with Rock Falls Wind, LLC and DCP Operating Co., LP.

Motion was made by Cary and seconded by Krider to adjourn (12:14 p.m.) Motion carried. Cary, aye; Estes, aye; Krider, aye.

Approved this 29th day of June, 2018.

J.C. ESTES, CHAIRMAN

JOHN G. KRIDER, VICE CHAIRMAN

JOE R. CARY, MEMBER

ATTEST:

TAMMY REESE, COUNTY CLERK
COUNTY OF KAY, STATE OF OKLAHOMA
SECRETARY, COUNTY EQUALIZATION BOARD
(SEAL)
