

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: GARY ESTEP, Assessor/Recorder
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: Yosemite Concession Services Corp. Re
Request to Shift Tax Assessments from
Unsecured to Secured Roll
Resolution Number 94-369

By: JB.

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on August 23, 1994

ACTION AND VOTE:

12:14 p.m. Richard Ayooob, Esq. ;
Request for Yosemite Concession Services Corporation to
Shift Tax Assessments from Unsecured to Secured Roll (County
Administrative Officer)

BOARD ACTION: There was no one present concerning the
request, based on the Board's previous discussion this date.
(M) Erickson, (S) Balmain, Res. 94-369 adopted/Ayes:
Unanimous.

cc: Mike Coffield, County Administrative Officer
Jeffrey G. Green, County Counsel
Don Z. Phillips, Treasurer/Tax Collector
Ken Hawkins, Auditor
File

OFFICE OF



JEFFREY G. GREEN
County Counsel
(209) 966-3222

(10)
11:25 a.m.
P. O. Box 189
Mariposa, CA 95338
FAX (209) 966-5147

The County Counsel
MARIPOSA COUNTY

August 15, 1994

Paul W. Baker, Esquire
FLAVIN & BAKER, INC.
P. O. Box 2229
Monterey, CA 93942

~~VIA FACSIMILE~~ Unable to fax -
Original then mailed destination fax
not working.

Re: Yosemite Concessionaire Services Tax Assessment

Dear Paul:

I am enclosing herewith a copy of a letter dated August 12, 1994 which I received from Richard Ayoob regarding the Yosemite property tax assessment. Mr. Ayoob in his letter makes the same argument that he made to me over the telephone and that is it is his opinion that if there is adequate security, the Board of Supervisors is obligated to place the possessory interest taxes on the secured roll. As you and I discussed, in my research I could find no obligation of the Board of Supervisors to do so. I believe that the statutes are clear that this is a discretionary act for the Board of Supervisors to determine based upon all of the facts, including the need for the funds. In that regard, I would appreciate it if you would contact Mr. Ayoob and ask him to provide legal authority other than his own interpretation of the statutes for his position.

I would also request that you notify Mr. Ayoob that on all matters regarding the Yosemite property tax assessment that he deal with your office as you are Mariposa County's attorney of record. I look forward to hearing from you in this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jeff Green", is written over a horizontal line.

Jeffrey G. Green
County Counsel

sa

encl/as stated

cc: Mike Coffield, County Administrative Officer
Gary Estep, Assessor/Recorder

LAW OFFICES

AJALAT, POLLEY & AYOOB

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

AREA CODE 213

TELEPHONE 622-7400

CHARLES R. AJALAT*

TERRY L. POLLEY*

RICHARD J. AYOOB

*PROFESSIONAL CORPORATION

SUITE 200

643 SOUTH OLIVE STREET

LOS ANGELES, CA 90014-1685

TELECOPIER (213) 622-4738

August 12, 1994

BY TELECOPIER AND MAIL

Mr. Michael Coffield
County Administrator
Mariposa County
4982 10th Street
Mariposa, CA 95338

Re: Yosemite Property Tax Assessment

Dear Mr. Coffield:

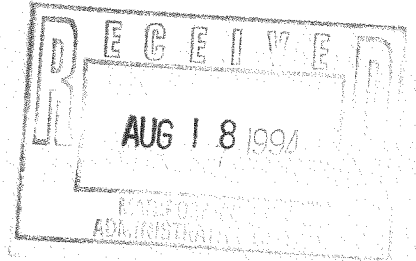
Thank you for discussing the Yosemite property tax situation with me. This letter, pursuant to our discussion, will constitute our formal request to be placed on the Board of Supervisors' agenda for August 23, 1994. At that time, we will ask that the Board of Supervisors find that the possessory interest of Yosemite Concession Services ("YCSC") at Yosemite National Park is sufficient security for the payment of any property taxes, and that the tax assessments should be placed on the secured roll.

This letter will outline the basis for placing taxable possessory interests on the secured portion of the assessment roll.

Generally, real property is placed on the secured roll because the realty is deemed to be sufficient security for the payment of the taxes due. However, California Revenue & Taxation Code, §109¹, clearly defines the secured roll as all property the taxes on which are liens on real property sufficient to secure payment of the taxes. Thus, under Section 109 even personal property can be placed on the secured roll.

Case law clearly defines possessory interests as realty (Delaney v. Lowery, 25 Cal.2d 561 (1944)). Recognizing this fact, the Legislature amended Section 107 fifteen years ago, to allow the county Board of Supervisors to consider possessory

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1. All section references are to the California Revenue & Taxation Code, unless otherwise indicated.



Mr. Michael Coffield

August 12, 1994

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interests as sufficient security for the payment of taxes and, thus, place them on the secured roll. In consideration of their special nature, possessory interests are subject to collection procedures applicable to the unsecured roll if their taxes are not timely paid.

Although I believe it is the Assessor's duty to place the assessment on the secured roll, I recognize the fact that guidance might be sought from the Board of Supervisors on this issue. The major policy objection voiced by the Tax Collector apparently is based on treating all of the possessory interests on the roll the same.

First of all, I am not sure that the Tax Collector has any basis for objection, in that his area of collection responsibility is not impaired. All collection remedies that were available to him on the unsecured roll are still available to him now. The decision to place the assessment on the secured roll must be made on the basis of security for the taxes, and nothing else.

Further, it appears that the County has failed in its duty with respect to the mandatory placement of some possessory interests on the secured roll. Section 2190 requires that possessory interests which are subject to the homeowner's exemption "shall be entered on the secured roll." Thus, the situation is precisely the opposite of that suspected by the Tax Collector and the Assessor. Rather than receiving preferential treatment, Yosemite is seeking only to be treated like the vast majority of the possessory interests in the county.

The Assessor has a constitutional duty to assess all taxable property in the county. This duty is underscored by Sections 401 and 402.3. State Board of Equalization Assessor's Handbook 271 clearly includes the classification of property as secured or unsecured within this duty to assess. (Assessor's Handbook 271, at page 3.) Thus, any error occurring by placing the property on the incorrect roll must be cured for the Assessor to fulfill his mandatory duty. The proper vehicle for implementing a correction is set forth in Section 4831. Section 4831(a) provides "Any error resulting in incorrect entries on the roll may be corrected under this article. The correction may be made at any time after the roll is delivered to the auditor . . ." The current version of the statute expanded the former version which allowed for corrections for "defects in description or form."

Therefore, inasmuch as the collection remedies available to the County will not change by transfer to the secured roll, and the fact that the substantial value of the assets has been acknowledged by all the parties, make a compelling case for placing YCSC's possessory interest assessment on the secured roll. Inasmuch as almost every other possessory interest must be put on the secured roll, notions of equity as raised by the Tax

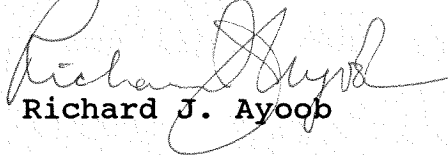
Mr. Michael Coffield
August 12, 1994
Page 3

Collector would further seem to support YCSC's position.

It is important that the Board act on this matter on its August 23rd agenda, inasmuch as the payments on the unsecured roll taxes are due August 31st. We anticipate that, even if objections are raised, that our estimated time for the presentation of this issue should be no more than 30 minutes. If, of course, there is no opposition, the time would be considerably shorter.

If you should need anything in the interim, please let me know.

Very truly yours,



Richard J. Ayoub

RJA:aej

cc: Jeffrey G. Green, Esq., by telecopier and mail
Mr. Gary Estep, by telecopier and mail
Mr. Clifford Kaeser, by telecopier and mail
Mr. Michael F. Welch, by telecopier and mail

Mariposa County Board of Supervisors

District 1 ARTHUR G. BAGGETT, JR.
District 2 DOUG BALMAIN
District 3 ERIC J. ERICKSON
District 4 GARRY R. PARKER
District 5 GERTRUDE R. TABER



MIKE COFFIELD
County Administrative Officer


MARGIE WILLIAMS
Clerk of the Board

P.O. Box 784
MARIPOSA, CALIFORNIA 95338
(209) 966-3222
1-800-736-1252

FAX (209) 966-5147

August 23, 1994

To: Board of Supervisors

From: Mike Coffield 
County Administrative Officer

Folder #10 - Request to shift from unsecured to secured tax roll

The subject item is a request from the Yosemite Concession Services Company (YCS) to shift their taxes from the unsecured tax roll, payable as of August 31, to the secured tax roll, payable in two installments in December and April. The letter from the YCS attorney, Mr. Richard Ayoub, Esq., intimates that the Assessor may have erred in placing the taxes on the unsecured roll, however, in subsequent discussions with Mr. Ayoub he has agreed that no error has been made and that this matter is fully discretionary with the Board of Supervisors pursuant to Section 107 of the Revenue and Taxation Code.

The two principal issues to be considered by the Board are the security for the taxes and the cash flow implications of agreeing to the delay in receipt of taxes. Clearly the security for the taxes is adequate; YCS will not be taking their business anywhere. As to the cash flow issues, Ken Hawkins, Don Phillips and I have met with representatives of Sutro and Co., and it appears that it will be cost effective for the County to proceed with a Tax Revenue Anticipation Note (TRANS) program this year which will completely ameliorate the cash flow effect of the delay.

The reassessment of YCS has resulted in a significant increase in the unsecured roll. Negotiations are continuing with the company on a great many complicated issues related to the new assessment, and if we fail to come to agreement with the company, an assessment appeal is probable. Delaying the payment date from August 31 to December 30 will allow these negotiations to continue without the time pressure of an imminent payment date. The Board will recall the expense attendant to last year's successful defense of our assessment. Staff recommends that the Board authorize the shift to the secured roll as a "good neighbor" gesture while these negotiations are continuing.

