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RONALD A. LONGTIN, JR.

BY [Signature]  
DEPUTY

FILED

JUN 14 2004

BY [Signature]  
JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

No. \$2515  
SUELLEN FULSTONE  
Nevada State Bar 1615  
DALE FERGUSON  
Nevada State Bar 4986  
WOODBURN AND WEDGE  
6100 Neil Road, Suite 500  
Reno, Nevada 89511  
Telephone: (775) 688-3000

Attorneys for plaintiff  
Village League To Save Incline Assets, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

No. 43441

VILLAGE LEAGUE TO SAVE  
INCLINE ASSETS, INC., a Nevada  
non-profit corporation, on behalf of its  
members, and others similarly situated,

Plaintiff,

vs.

STATE OF NEVADA on relation of  
its DEPARTMENT OF TAXATION,  
the NEVADA STATE TAX  
COMMISSION, and the STATE BOARD  
OF EQUALIZATION; WASHOE  
COUNTY; ROBERT MCGOWAN,  
WASHOE COUNTY ASSESSOR;  
BILL BERRUM, WASHOE COUNTY  
TREASURER,

Defendants.

Case No.: CV03-06922

Dept. No. 7

NOTICE OF APPEAL

Notice is hereby given that the Village League To Save Incline Assets, Inc., plaintiff  
above named, appeals to the Supreme Court of the State of Nevada from the Order Granting

RECEIVED

JUN 14 2004

CLERK OF SUPREME COURT

By

DEPUTY CLERK

04-10948

1 Motions To Dismiss entered in this action on the 2<sup>nd</sup> day of June, 2004.

2 DATED this 10<sup>th</sup> day of June, 2004.

3 WOODBURN AND WEDGE  
4 6100 Neil Road, Suite 500  
5 Reno, NV 89511  
6 (775) 688-3000

7 by Suellen Fulstone

8 Suellen Fulstone  
9 Nevada Bar No. 1615  
10 Attorneys for plaintiff  
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**CERTIFICATE OF MAILING**

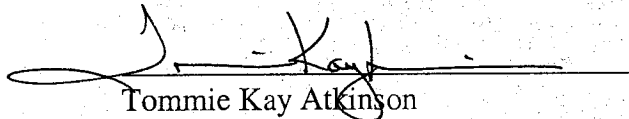
Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Woodburn and Wedge and that on this date I deposited in the U.S. Mail with postage paid a true copy of the attached Notice Of Appeal addressed to:

Gregory R. Shannon, Esq.  
Deputy District Attorney  
P. O. Box 30083  
Reno, NV 89520-3083

Joshua J. Hicks, Esq.  
Deputy Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

Gregory L. Zunino, Esq.  
Senior Deputy Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

DATED this 10<sup>th</sup> day of June, 2004.

  
Tommie Kay Atkinson

ORIGINAL

FILED

No. 1310  
SUELLEN FULSTONE  
Nevada State Bar 1615  
DALE FERGUSON  
Nevada State Bar 4986  
WOODBURN AND WEDGE  
6100 Neil Road, Suite 500  
Reno, Nevada 89511  
Telephone: (775) 688-3000

2004 JUN 10 PM 4:37

RONALD A. LONGTIN, JR.

BY   
DEPUTY

Attorneys for plaintiff  
Village League To Save Incline Assets, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

VILLAGE LEAGUE TO SAVE  
INCLINE ASSETS, INC., a Nevada  
non-profit corporation, on behalf of its  
members, and others similarly situated,

Plaintiff,

vs.

STATE OF NEVADA on relation of  
its DEPARTMENT OF TAXATION,  
the NEVADA STATE TAX  
COMMISSION, and the STATE BOARD  
OF EQUALIZATION; WASHOE  
COUNTY; ROBERT MCGOWAN,  
WASHOE COUNTY ASSESSOR;  
BILL BERRUM, WASHOE COUNTY  
TREASURER,

Defendants.

Case No.: CV03-06922

Dept. No. 7

CASE APPEAL STATEMENT

1. The name of the appellant filing this case appeal statement is Village League To  
Save Incline Assets, Inc.

1 2. The judge issuing the order appealed from is the Honorable Peter J. Breen, Second  
2 Judicial District Court, Washoe County, Nevada.

3 3. The parties to the proceedings in the district court were as follows:

4 Village League To Save Incline Assets, Inc., plaintiff; and

5 State of Nevada, on relation of its Department of Taxation, the Nevada Tax

6 Commission, and the State Board of Equalization; Washoe County;

7 Robert McGowan, Washoe County Assessor; Bill Berrum, Washoe

8 County Treasurer, defendants.  
9

10 4. The parties involved in this appeal are as follows:

11 Village League To Save Incline Assets, Inc., appellant;

12 State of Nevada, on relation of its Department of Taxation, the Nevada Tax

13 Commission, and the State Board of Equalization; Washoe County;

14 Robert McGowan, Washoe County Assessor; Bill Berrum, Washoe

15 County Treasurer, respondents.  
16

17 5. The names, law firms, addresses and telephone numbers of all counsel on appeal  
18 and the party or parties whom they represent are as follows:

19 Suellen Fulstone

Telephone: (775) 688-3000

20 Dale E. Ferguson

Woodburn and Wedge

21 6100 Neil Road, Suite 500

22 Reno, Nevada 89511

23 Attorneys for Appellant, Village League To Save Incline Assets, Inc.

24 Gregory L. Zunino

Telephone: (775) 684-1223

25 Senior Deputy Attorney General

100 N. Carson Street

26 Carson City, Nevada 89701-4717

27 Attorneys for Respondent State of Nevada, ex. rel. State Board of Equalization  
28

1 Joshua J. Hicks  
2 Deputy Attorney General  
3 100 N. Carson Street  
4 Carson City, Nevada 89701-4717

Telephone: (775) 684-1233

5  
6 Attorneys for Respondent State of Nevada, ex. rel. Nevada Tax Commission  
7 and Nevada Department of Taxation

8 Gregory R. Shannon  
9 Washoe County District Attorney's Office  
10 Civil Division  
11 50 West Liberty Street, Third Floor  
12 Reno, Nevada 89501

Telephone: (775) 337-5700

13 Attorneys for Respondent Washoe County, Robert McGowan, Washoe County  
14 Assessor, and Bill Berrum, Washoe County Treasurer

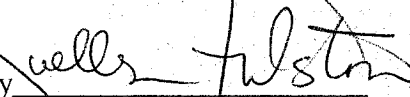
- 15 6. Appellant was represented by retained counsel in the district court.  
16 7. Appellant is represented by retained counsel on appeal.  
17 8. Appellant did not seek and was not granted leave to proceed in forma pauperis.  
18 9. The complaint was filed and the proceedings commenced in Case No. CV03-06922

19 on November 13, 2003.

20 DATED this 10th day of June, 2004.

21 WOODBURN AND WEDGE  
22 6100 Neil Road, Suite 500  
23 Reno, NV 89511  
24 (775) 688-3000

25 by



26 Suellen Fulstone  
27 Nevada Bar No. 1615  
28 Attorneys for plaintiff

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**CERTIFICATE OF MAILING**

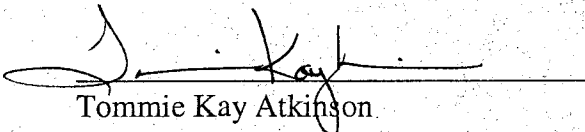
Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Woodburn and Wedge and that on this date I deposited in the U.S. Mail with postage paid a true copy of the attached Case Appeal Statement addressed to:

Gregory R. Shannon, Esq.  
Deputy District Attorney  
P. O. Box 30083  
Reno, NV 89520-3083

Joshua J. Hicks, Esq.  
Deputy Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

Gregory L. Zunino, Esq.  
Senior Deputy Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

DATED this 10<sup>th</sup> day of June, 2004.

  
Tommie Kay Atkinson

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE

Full Case History

DEPT. D7

HON. PETER I. BREEN

Case Description: VILLAGE LEAGUE; ETAL VS DEPT OF TAX; ETAL

Case ID: CV03-06922

Case Type: GENERAL CIVIL

Initial Filing Date: 11/13/2003

Parties

PATY	Dale E. Ferguson, Esq. - 4986
DATY	Gregory Louis Zunino, Esq. - 4805
DATY	Gregory R. Shannon, Esq. - 612
PATY	Suellen E. Fulstone, Esq. - 1615
DEFT	WASHOE COUNTY - @828
RESP	WASHOE COUNTY - @828
DEFT	BILL BERRUM - @13787
RESP	BILL BERRUM - @13787
DEFT	NEVADA DEPARTMENT OF TAXATION - @29929
RESP	NEVADA DEPARTMENT OF TAXATION - @29929
DEFT	NEVADA TAX COMMISSION - @29936
RESP	NEVADA TAX COMMISSION - @29936
DEFT	STATE BOARD OF EQUALIZATION - @35892
RESP	STATE BOARD OF EQUALIZATION - @35892
DATY	Joshua J. Hicks - 6679
APPE	VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC. - @159144
PLTF	VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC. - @159144
DEFT	ROBERT MCGOWAN - @159145
RESP	ROBERT MCGOWAN - @159145



Case ID: CV03-06922

Case Type: GENERAL CIVIL

Initial Filing Date: 11/13/2003

**Hearings**

<i>Department</i>	<i>Sched. Date &amp; Time</i>	<i>Disposed Date</i>	<i>Event Description</i>
1 D10 Extra Text: MOTION TO DISMISS	2/3/2004 07:36:00	2/17/2004	Request for Submission
2 D7 Extra Text: WASHOE COUNTY'S MOTION TO DISMISS	2/27/2004 10:45:00	3/30/2004	Request for Submission
3 D7 Extra Text: PLAINTIFF'S REQUEST FOR ORAL ARGUMENT	3/4/2004 08:00:00	3/30/2004	Request for Submission
4 D7 Extra Text: MOTION TO DISMISS	3/5/2004 09:35:00	3/30/2004	Request for Submission
5 D7 Extra Text: MOTION TO DISMISS OF STATE BOARD OF EQUALIZATION	3/22/2004 11:10:00	3/30/2004	Request for Submission
6 D7 Extra Text:	5/11/2004 10:00:00	5/10/2004	ORAL ARGUMENTS
7 D7 Extra Text: alternate set	5/18/2004 10:00:00	5/18/2004	ORAL ARGUMENTS
8 D7 Extra Text: MOTION TO DISMISS	5/18/2004 10:00:00	6/4/2004	Request for Submission

Case ID: CV03-06922

Case Type: GENERAL CIVIL

Initial Filing Date: 11/13/2003

## Docket

<i>Docket Entry Date</i>	<i>Code</i>	<i>Code Description</i>	<i>Docket Text</i>
11/13/2003	\$1425	\$Complaint - Civil	VILLIAGE LEAGUE TO SAVE INCLINE ASSETS, INC
11/14/2003	PAYRC	**Payment Receipted	A Payment of -\$150.00 was made on receipt DCDC113412.
12/19/2003	2290	Mtn to Dismiss Case	
12/29/2003	2315	Mtn to Dismiss ...	STATE BOARD OF EQUALIZATION'S MOTION TO DISMISS FIRST AND SECOND CLAIMS FOR RELIEF
12/29/2003	2315	Mtn to Dismiss ...	MOTION TO DISMISS AND JOINDER IN STATE BOARD OF EQUALIZATION'S MOTION TO DISMISS FIRST AND SECOND CLAIMS FOR RELIEF
1/12/2004	3655	Points&Authorities Opp...	POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS
1/30/2004	3795	Reply...	
1/30/2004	3860	Request for Submission	DOCUMENT TITLE: MOTION TO DISMISS PARTY SUBMITTING: GREGORY SHANNON DATE SUBMITTED: 2-3-04 SUBMITTED BY: MA DATE RECEIVED JUDGE'S OFFICE: REQUEST FOR ORAL ARGUMENT
2/3/2004	3870	Request...	
2/17/2004	\$3375	\$Peremptory Challenge	PLTF VILLAGE LEAGUE TO SAVE INCLINE ASSETS INC
2/17/2004	PAYRC	**Payment Receipted	A Payment of -\$300.00 was made on receipt DCDC118165.
2/17/2004	S200	Request for Submission Comp	PEREMPTORY CHALLENGE OF JUDGE FILED (OF JUDGE ELLIOTT)
2/17/2004	2610	Notice ...	NOTICE OF PEREMPTORY CHALLENGE OF JUDGE
2/17/2004	1312	Case Assignment Notification	CASE SUBMITTED TO DEPT 7 FOR CONSIDERATION OF ACCEPTANCE
2/20/2004	2665	Ord Accepting Reassignment	FROM DEPT 10 TO DEPT 7
2/23/2004	3655	Points&Authorities Opp...	POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS OF NEVADA STATE TAX COMMISSION AND DEPARTMENT OF TAXATION
2/25/2004	3860	Request for Submission	DOCUMENT TITLE: WASHOE COUNTY'S MOTION TO DISMISS PARTY SUBMITTING: GREG SHANNON DATE SUBMITTED: 2/27/04 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:
2/27/2004	3655	Points&Authorities Opp...	POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS OF STATE BOARD OF EQUALIZATION
3/1/2004	3860	Request for Submission	DOCUMENT TITLE: PLAINTIFF'S REQUEST FOR ORAL ARGUMENT PARTY SUBMITTING: SUELLEN FULSTONE DATE SUBMITTED: 3/4/04 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:
3/4/2004	3795	Reply...	REPLY IN SUPPORT OF MOTION TO DISMISS
3/4/2004	3860	Request for Submission	DOCUMENT TITLE: MOTION TO DISMISS PARTY SUBMITTING: JOSHUA HICKS DATE SUBMITTED: 3/5/04 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:
3/10/2004	3870	Request...	REQUEST FOR ORAL ARGUMENT

Case ID: CV03-06922

Case Type: GENERAL CIVIL

Initial Filing Date: 11/13/2003

3/17/2004	3795	Reply...	REPLY IN SUPPORT OF MOTION TO DISMISS OF STATE BOARD OF EQUALIZATION
3/19/2004	3860	Request for Submission	DOCUMENT TITLE: MOTION TO DISMISS OF STATE BOARD OF EQUALIZATION PARTY SUBMITTING: GREGORY ZUNINO DATE SUBMITTED: 3/22/04 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE: ORDER GRANTING REQUEST FOR ORAL ARGUMENT
3/29/2004	3105	Ord Granting ...	
3/30/2004	S200	Request for Submission Comp	
3/30/2004	S200	Request for Submission Comp	
3/30/2004	S200	Request for Submission Comp	
3/30/2004	S200	Request for Submission Comp	
4/7/2004	1250	Application for Setting	TRIAL 5/11/04 10:00 A.M. OR #2 TRIAL 5/18/04 10:00 A.M.
5/10/2004	D845	Vacated	
5/18/2004	D840	Under Advisement	MOTION TO DISMISS
6/2/2004	3060	Ord Granting Mtn ...	ORDER GRANTING MOTIONS TO DISMISS DEFENDANTS' MOTIONS TO DISMISS SHOULD BE GRANTED IN THEIR ENTIRETY AS TO ALL DEFENDANTS.
6/4/2004	2540	Notice of Entry of Ord	
6/4/2004	S200	Request for Submission Comp	
6/4/2004	F220	Decision With Hearing	
6/10/2004	\$2515	\$Notice/Appeal Supreme Cour	
6/10/2004	1310	Case Appeal Statement	
6/10/2004	2547	Notice of Filing Costs/Appeal	NOTICE OF DEPOSIT OF CASH IN LIEU OF BOND FOR COSTS ON APPEAL
6/11/2004	1350	Certificate of Clerk	
6/11/2004	1365	Certificate of Transmittal	

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1 CODE NO. 3060

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RONALD A. LONGTIN, JR., CLERK  
By EDWARDS  
DEPUTY

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 VILLAGE LEAGUE TO SAVE INCLINE  
10 VILLAGE, INC., a Nevada non-profit  
11 corporation, on behalf of its members, and  
12 others similarly situated,

Plaintiff,

Case No. CV03-06922

Dept. No. 7

12 vs.

13 STATE OF NEVADA on relation of its  
14 DEPARTMENT OF TAXATION, the NEVADA  
15 STATE TAX COMMISSION, and the STATE  
16 BOARD OF EQUALIZATION; WASHOE  
17 COUNTY; ROBERT MCGOWAN, WASHOE  
18 COUNTY ASSESSOR; BILL BERRUM,  
19 WASHOE COUNTY TREASURER,

Defendants,  
20 \_\_\_\_\_

21 ORDER GRANTING MOTIONS TO DISMISS

22 Plaintiff is a nonprofit membership organization that claims its members  
23 consist of the owners of approximately 6,700 parcels of real property located in Incline  
24 Village and Crystal Bay, Nevada. Plaintiff claims that property taxes assessed on the  
25 members' real property in 2003 far exceed the property taxes assessed on other real  
26 property within the County. Specifically, Plaintiff claims that while property taxes have risen  
27 by approximately 2.5% on average in Washoe County, real property taxes at Incline and  
28 Crystal Bay have risen by an average of 31%, and in some individual cases as high as  
400%. In addition, these amounts are far out of proportion to real property taxes paid by

1 Douglas County residents of property that is the same or similar to those situated in Washoe  
2 County.

3 Plaintiff brought this class action for relief requesting a declaration from the  
4 court that the specific methods used by the Washoe County Assessor's Office to assess  
5 real property in Incline Village and Crystal Bay are illegal, discriminatory, and  
6 unconstitutional. Thus, as a result of this improper methodology, Plaintiff alleges the  
7 property values in these areas were overvalued in comparison to other properties in  
8 Washoe County. Further, Plaintiff asks the Court to declare that Defendant State Board of  
9 Equalization and the State Department of Taxation failed to equalize the assessments made  
10 on property located in Douglas County and Washoe County as constitutionally required and  
11 have thus failed in their statutory and constitutionally mandated duties. Additionally, Plaintiff  
12 alleges that the notice of the property tax assessments given by Washoe County do not  
13 meet the Due Process requirements of both the Nevada and United States Constitutions.  
14 Finally, on behalf of its members, Plaintiff seeks tax refunds in the amounts equal to the  
15 over assessed amounts paid and damages based on the invalid and unconstitutional taxes  
16 assessed.  
17

18  
19 Defendants Washoe County, the State Board of Equalization, the Nevada Tax  
20 Commission and Nevada State Board of Taxation (collectively "Defendants") have each  
21 separately moved for dismissal of the entire action pursuant to NRCP 12(b)(5) arguing that  
22 Plaintiff has failed to state a claim upon which relief can be granted. Defendants argue that  
23 this case should be dismissed because the Plaintiff's members failed to exhaust all  
24 administrative remedies provided in the Nevada Revised Statutes for the challenging of  
25 property assessments and taxes and are therefore precluded from bringing this action in  
26 District Court. Plaintiff opposes each motion to dismiss. While Plaintiff admits that the  
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28

1 administrative remedies were not exhausted, Plaintiff argues that it is excused from  
2 exhausting the administrative remedies based on recognized exceptions to that rule of law.

3         The Court having considered the pleadings and oral argument of counsel,  
4 finds as follows. A motion to dismiss for failure to state a claim for relief will only be granted  
5 if it appears to a certainty that plaintiff is entitled to no relief under any set of facts which  
6 could be proved in support of the claim. NRCP 12(b)(5); Zalk-Josephs Co. v. Wells Cargo,  
7 Inc., 81 Nev. 163, 170 (1965). In considering a motion to dismiss the court must accept all  
8 allegations of the complaint as true. Haertel v. Sonshine Carpet Co., 102 Nev. 614, 615  
9 (1986). In addition, the court must construe the pleading liberally, drawing fair inferences in  
10 favor of the non-moving party. Simpson v. Mars, Inc., 113 Nev. 188, 190 (1997).

11         Plaintiff's claims are based on allegations of overvaluation of the property  
12 owned by Incline Village and Crystal Bay property owners in relation to other property  
13 owners in Washoe and Douglas counties. Based on these claims, the Nevada Revised  
14 statutes provide a detailed means for challenging the over assessment of taxes through  
15 administrative remedies. See NRS 361.355; NRS 361.356; NRS 361.360; NRS 361.420.

16         Ordinarily, a taxpayer must exhaust administrative remedies before seeking  
17 judicial relief. County of Washoe v. Golden Road Motor Inn, Inc., 105 Nev. 402, 403 (1989).  
18 Failure to do so deprives the district court of subject matter jurisdiction. Id. at 403-404. In  
19 addition, if a statutory scheme exists for the overpayment of taxes erroneously collected,  
20 that procedure must ordinarily be followed before commencing suit. State of Nevada v.  
21 Scotsman, 109 Nev. 252, 255 (1993).

22         However, there are exceptions to the "exhaustion doctrine". First, the district  
23 court is not be deprived of jurisdiction where issues relate solely to the interpretation or  
24 constitutionality of a statute. Id. In addition, the "exhaustion doctrine" does not apply where  
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1 the initiation of administrative proceedings would be futile. Id.

2           As to the first exception, a district court would not be deprived of jurisdiction for  
3 the failure to exhaust administrative remedies when the issues presented relate solely to the  
4 interpretation or constitutionality of a statute. Id. However, simply providing a constitutional  
5 challenge to a statute or provision is not sufficient to avoid the requirement of exhaustion.  
6 Thus, when a statute is attacked on its face, or in other words the claim is that the statute as  
7 enacted is unconstitutional an agency determination on this point would rarely aid the court  
8 in resolving the issue and accordingly exhaustion would not be required. Malecon Tobacco,  
9 Inc. v. State of Nevada, 59 P. 3d 474, 476 (Nev. 2002). However, when the taxpayer does  
10 not challenge that the statute is unconstitutional but rather the statute has been applied  
11 unconstitutionally to them, this is a matter which is properly resolved by the agency. Id.  
12 These determinations inherently require a factual context and the agency is in the best  
13 position, through its experience and expertise, to make such factual findings. Id. Thus, in  
14 these cases, there is not an exception to the exhaustion doctrine merely because a  
15 constitutional claim is made.  
16

17           The Court finds that Plaintiff does not challenge the constitutionality of any  
18 statutory provision or administrative rule. The claims do not challenge whether Washoe  
19 County has the constitutional authority to make such assessments or to levy taxes on the  
20 property. Rather, Plaintiff challenges the manner, methods, and ultimate conclusions made  
21 by the Washoe County Assessor in relation to the taxable value made on these properties.  
22 For example, Plaintiff claims it was improper to utilize "view classifications" and the "time  
23 value" and "allocation" methods to determine the valuation of these properties, thus arguing  
24 these actions are inconsistent and arbitrary. Plaintiff claims these actions violate equal  
25 protection and due process. However, these are the types of claims that would inherently  
26  
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1 require factual determinations and context to determine if in fact the use of these methods  
2 and other valuation classifications are improper as guidelines and provisions available to  
3 county assessors for the valuation of property, and thus being unconstitutionally applied.  
4 Accordingly, this exception to the exhaustion requirement does not apply to the instant  
5 case.  
6

7 Furthermore, the Court does not agree that the utilization of the administrative  
8 remedies would be futile under the circumstances. The local and state entities that would be  
9 required to hear any such challenge to these assessments are particularly able to make  
10 these determinations due to their expertise and knowledge of the subject matter involved.  
11 Furthermore, the mere fact that there may be many claimants with similar claims of  
12 overvaluation does not excuse the use of the administrative process, as one successful  
13 challenge to these methods would arguably correct the alleged impermissible valuation  
14 methods. Accordingly, the exhaustion of administrative remedies would not be futile under  
15 this exception.  
16

17  
18 Plaintiff has failed to exhaust the administrative remedies as required under  
19 NRS 361.355 *et. seq.* Therefore, this failure precludes Plaintiff from bringing any action  
20 based on the overvaluation of the properties involved as to all named Defendants. NRS  
21 361.410(1). Accordingly, Defendants' Motions to Dismiss should be GRANTED in their  
22 entirety as to all Defendants.  
23

24 IT IS SO ORDERED.

25 DATED: This 2 day of June, 2004.

26  
27   
28 \_\_\_\_\_  
DISTRICT JUDGE



CERTIFICATE OF SERVICE BY MAILING

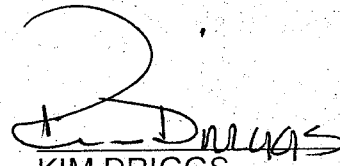
Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 2 day of June, 2004, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Suellen Fulstone, Esq.  
Woodburn and Wedge  
6100 Neil Rd., Suite 500  
Reno, NV 89511

Gregory L. Zunino  
Senior Deputy Attorney General  
100 N. Carson St.  
Carson City, NV 89701-4717

Joshua J. Hicks  
Deputy Attorney General  
100 N. Carson St.  
Carson City, NV 89701-4717

Gregory R. Shannon  
Deputy District Attorney  
Civil Division



KIM DRIGGS  
Administrative Assistant

ORIGINAL FILED

2540  
GREGORY R. SHANNON  
Deputy District Attorney  
Nevada State Bar Number 612  
P. O. Box 30083  
Reno, NV 89520-3083  
(775) 337-5700  
ATTORNEY FOR WASHOE COUNTY

2004 JUN -4 PM 3:48

RONALD L. LONGTIN, JR.

BY

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

\* \* \*

VILLAGE LEAGUE TO SAVE INCLINE  
ASSETS, INC., a Nevada non-profit  
corporation, on behalf of its  
members, and others similarly  
situated,

Case No. CV03-06922

Dept. No. 7

Plaintiffs,

vs.

STATE OF NEVADA, on relation of its  
DEPARTMENT OF TAXATION, the NEVADA  
TAX COMMISSION, and the STATE BOARD  
OF EQUALIZATION; WASHOE COUNTY;  
ROBERT MCGOWAN, WASHOE COUNTY  
ASSESSOR; BILL BERRUM, WASHOE  
COUNTY TREASURER,

Defendants.

NOTICE OF ENTRY OF ORDER

To: VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC. and its  
attorney of record

Please take notice that an Order in the above-entitled

//

//

1 matter was entered on June 2, 2004. A copy of that order is  
2 attached.

3 Dated this 4<sup>th</sup> day of June, 2004.

4  
5 RICHARD A. GAMMICK  
6 District Attorney

7 By 

8 GREGORY R. SHANNON  
9 Deputy District Attorney  
10 P. O. Box 30083  
11 Reno, NV 89520-3083  
12 (775) 337-5700

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14 ATTORNEYS FOR WASHOE COUNTY  
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FILED

JUN - 2 2004

RONALD A. LONGSTIN, JR., CLERK  
By: K. Driggs  
DEPUTY

CODE NO. 3060

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\* \* \*

VILLAGE LEAGUE TO SAVE INCLINE  
VILLAGE, INC., a Nevada non-profit  
corporation, on behalf of its members, and  
others similarly situated,

Plaintiff,

Case No. CV03-06922

Dept. No. 7

vs.

STATE OF NEVADA on relation of its  
DEPARTMENT OF TAXATION, the NEVADA  
STATE TAX COMMISSION, and the STATE  
BOARD OF EQUALIZATION; WASHOE  
COUNTY; ROBERT MCGOWAN, WASHOE  
COUNTY ASSESSOR; BILL BERRUM,  
WASHOE COUNTY TREASURER,

Defendants,

ORDER GRANTING MOTIONS TO DISMISS

Plaintiff is a nonprofit membership organization that claims its members consist of the owners of approximately 6,700 parcels of real property located in Incline Village and Crystal Bay, Nevada. Plaintiff claims that property taxes assessed on the members' real property in 2003 far exceed the property taxes assessed on other real property within the County. Specifically, Plaintiff claims that while property taxes have risen by approximately 2.5% on average in Washoe County, real property taxes at Incline and Crystal Bay have risen by an average of 31%, and in some individual cases as high as 400%. In addition, these amounts are far out of proportion to real property taxes paid by

1 Douglas County residents of property that is the same or similar to those situated in Washoe  
2 County.

3 Plaintiff brought this class action for relief requesting a declaration from the  
4 court that the specific methods used by the Washoe County Assessor's Office to assess  
5 real property in Incline Village and Crystal Bay are illegal, discriminatory, and  
6 unconstitutional. Thus, as a result of this improper methodology, Plaintiff alleges the  
7 property values in these areas were overvalued in comparison to other properties in  
8 Washoe County. Further, Plaintiff asks the Court to declare that Defendant State Board of  
9 Equalization and the State Department of Taxation failed to equalize the assessments made  
10 on property located in Douglas County and Washoe County as constitutionally required and  
11 have thus failed in their statutory and constitutionally mandated duties. Additionally, Plaintiff  
12 alleges that the notice of the property tax assessments given by Washoe County do not  
13 meet the Due Process requirements of both the Nevada and United States Constitutions.  
14 Finally, on behalf of its members, Plaintiff seeks tax refunds in the amounts equal to the  
15 over assessed amounts paid and damages based on the invalid and unconstitutional taxes  
16 assessed.  
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20 Defendants Washoe County, the State Board of Equalization, the Nevada Tax  
21 Commission and Nevada State Board of Taxation (collectively "Defendants") have each  
22 separately moved for dismissal of the entire action pursuant to NRCP 12(b)(5) arguing that  
23 Plaintiff has failed to state a claim upon which relief can be granted. Defendants argue that  
24 this case should be dismissed because the Plaintiff's members failed to exhaust all  
25 administrative remedies provided in the Nevada Revised Statutes for the challenging of  
26 property assessments and taxes and are therefore precluded from bringing this action in  
27 District Court. Plaintiff opposes each motion to dismiss. While Plaintiff admits that the  
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1 administrative remedies were not exhausted, Plaintiff argues that it is excused from  
2 exhausting the administrative remedies based on recognized exceptions to that rule of law.

3         The Court having considered the pleadings and oral argument of counsel,  
4 finds as follows. A motion to dismiss for failure to state a claim for relief will only be granted  
5 if it appears to a certainty that plaintiff is entitled to no relief under any set of facts which  
6 could be proved in support of the claim. NRCP 12(b)(5); Zalk-Josephs Co. v. Wells Cargo,  
7 Inc., 81 Nev. 163, 170 (1965). In considering a motion to dismiss the court must accept all  
8 allegations of the complaint as true. Haertel v. Sonshine Carpet Co., 102 Nev. 614, 615  
9 (1986). In addition, the court must construe the pleading liberally, drawing fair inferences in  
10 favor of the non-moving party. Simpson v. Mars, Inc., 113 Nev. 188, 190 (1997).

11         Plaintiff's claims are based on allegations of overvaluation of the property  
12 owned by Incline Village and Crystal Bay property owners in relation to other property  
13 owners in Washoe and Douglas counties. Based on these claims, the Nevada Revised  
14 statutes provide a detailed means for challenging the over assessment of taxes through  
15 administrative remedies. See NRS 361.355; NRS 361.356; NRS 361.360; NRS 361.420.

16         Ordinarily, a taxpayer must exhaust administrative remedies before seeking  
17 judicial relief. County of Washoe v. Golden Road Motor Inn, Inc., 105 Nev. 402, 403 (1989).  
18 Failure to do so deprives the district court of subject matter jurisdiction. Id. at 403-404. In  
19 addition, if a statutory scheme exists for the overpayment of taxes erroneously collected,  
20 that procedure must ordinarily be followed before commencing suit. State of Nevada v.  
21 Scotsman, 109 Nev. 252, 255 (1993).

22         However, there are exceptions to the "exhaustion doctrine". First, the district  
23 court is not be deprived of jurisdiction where issues relate solely to the interpretation or  
24 constitutionality of a statute. Id. In addition, the "exhaustion doctrine" does not apply where  
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1 the initiation of administrative proceedings would be futile. Id.

2 As to the first exception, a district court would not be deprived of jurisdiction for  
3 the failure to exhaust administrative remedies when the issues presented relate solely to the  
4 interpretation or constitutionality of a statute. Id. However, simply providing a constitutional  
5 challenge to a statute or provision is not sufficient to avoid the requirement of exhaustion.  
6 Thus, when a statute is attacked on its face, or in other words the claim is that the statute as  
7 enacted is unconstitutional an agency determination on this point would rarely aid the court  
8 in resolving the issue and accordingly exhaustion would not be required. Malecon Tobacco,  
9 Inc. v. State of Nevada, 59 P. 3d 474, 476 (Nev. 2002). However, when the taxpayer does  
10 not challenge that the statute is unconstitutional but rather the statute has been applied  
11 unconstitutionally to them, this is a matter which is properly resolved by the agency. Id.  
12 These determinations inherently require a factual context and the agency is in the best  
13 position, through its experience and expertise, to make such factual findings. Id. Thus, in  
14 these cases, there is not an exception to the exhaustion doctrine merely because a  
15 constitutional claim is made.

16 The Court finds that Plaintiff does not challenge the constitutionality of any  
17 statutory provision or administrative rule. The claims do not challenge whether Washoe  
18 County has the constitutional authority to make such assessments or to levy taxes on the  
19 property. Rather, Plaintiff challenges the manner, methods, and ultimate conclusions made  
20 by the Washoe County Assessor in relation to the taxable value made on these properties.  
21 For example, Plaintiff claims it was improper to utilize "view classifications" and the "time  
22 value" and "allocation" methods to determine the valuation of these properties, thus arguing  
23 these actions are inconsistent and arbitrary. Plaintiff claims these actions violate equal  
24 protection and due process. However, these are the types of claims that would inherently

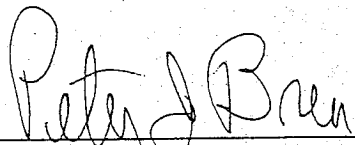
1 require factual determinations and context to determine if in fact the use of these methods  
2 and other valuation classifications are improper as guidelines and provisions available to  
3 county assessors for the valuation of property, and thus being unconstitutionally applied.  
4 Accordingly, this exception to the exhaustion requirement does not apply to the instant  
5 case.  
6

7 Furthermore, the Court does not agree that the utilization of the administrative  
8 remedies would be futile under the circumstances. The local and state entities that would be  
9 required to hear any such challenge to these assessments are particularly able to make  
10 these determinations due to their expertise and knowledge of the subject matter involved.  
11 Furthermore, the mere fact that there may be many claimants with similar claims of  
12 overvaluation does not excuse the use of the administrative process, as one successful  
13 challenge to these methods would arguably correct the alleged impermissible valuation  
14 methods. Accordingly, the exhaustion of administrative remedies would not be futile under  
15 this exception.  
16

17 Plaintiff has failed to exhaust the administrative remedies as required under  
18 NRS 361.355 *et. seq.* Therefore, this failure precludes Plaintiff from bringing any action  
19 based on the overvaluation of the properties involved as to all named Defendants. NRS  
20 361.410(1). Accordingly, Defendants' Motions to Dismiss should be GRANTED in their  
21 entirety as to all Defendants.  
22

23 IT IS SO ORDERED.

24 DATED: This 2 day of June, 2004.  
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27 \_\_\_\_\_  
28 DISTRICT JUDGE



1                                    CERTIFICATE OF SERVICE BY MAILING

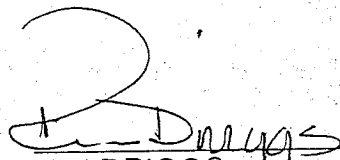
2            Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial  
3 District Court, in and for the County of Washoe; and that on this 2 day of June,  
4 2004, I deposited in the County mailing system for postage and mailing with the United  
5 States Postal Service in Reno, Nevada, a true and correct copy of the attached document  
6 addressed as follows:

7 Suellen Fulstone, Esq.  
8 Woodburn and Wedge  
9 6100 Neil Rd., Suite 500  
10 Reno, NV 89511

11 Gregory L. Zunino  
12 Senior Deputy Attorney General  
13 100 N. Carson St.  
14 Carson City, NV 89701-4717

15 Joshua J. Hicks  
16 Deputy Attorney General  
17 100 N. Carson St.  
18 Carson City, NV 89701-4717

19 Gregory R. Shannon  
20 Deputy District Attorney  
21 Civil Division

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KIM DRIGGS  
Administrative Assistant

1                                    CERTIFICATE OF SERVICE BY MAIL

2                    Pursuant to NRCP 5(b), I certify that I am an  
3 employee of the Office of the District Attorney of Washoe  
4 County, over the age of 21 years and not a party to nor  
5 interested in the within action. I certify that on this date,  
6 I deposited for mailing in the U. S. Mails, with postage fully  
7 prepaid, a true and correct copy of the foregoing Notice of  
8 Entry of Order in an envelope addressed to the following:

9                    Suellen Fulstone, Esq.  
10                   Dale Ferguson, Esq.  
11                   Woodburn and Wedge  
12                   6100 Neil Road, Suite 500  
13                   Reno, NV 89511

14                   Gregory L. Zunino  
15                   Senior Deputy Attorney General  
16                   100 N. Carson Street  
17                   Carson City, NV 89701-4717

18                   Joshua J. Hicks  
19                   Deputy Attorney General  
20                   100 N. Carson Street  
21                   Carson City, NV 89701-4717

22                   Dated this 4th day of June, 2004.

23                   Debbie Rossi  
24  
25  
26

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

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05/18/04  
HONORABLE  
PETER I.  
BREEN  
DEPT. NO. 7  
K. Oates  
(Clerk)  
C. Brown  
(Reporter)

ORAL ARGUMENTS  
Greg Shannon, Esq., was present in Court on behalf of Defendant Washoe County.  
Greg Zunino, Esq., was present in Court on behalf of Defendant State Board of Equalization.  
Josh Hicks, Esq., was present in Court on behalf of Defendants Nevada Department of Taxation and Nevada Tax Commission.  
Suellen Fulstone, Esq. and Dale Ferguson, Esq. were present in Court on behalf of Plaintiff Village League et al. MaryAnne Ingemanson, on behalf of Plaintiff, was also present in Court.  
10:08 a.m. – Court convened with Court and counsel present.  
Counsel for Defendant Washoe County addressed the Court and argued in support of the Motion to Dismiss.  
Counsel for Defendant State Board of Equalization addressed the Court and argued in support of the Motion to Dismiss.  
Counsel for Defendants Nevada Department of Taxation and Nevada Tax Commission addressed the Court and argued in support of the Motion to Dismiss.  
Counsel for the Plaintiff addressed the Court and argued in opposition to the Motion to Dismiss, and further moved to amend Plaintiff's Complaint.  
The Court inquired of counsel for Defendant Washoe County, who in turn responded and presented his final argument in support of the Motion.  
Counsel for Defendant State Board of Equalization presented his final reply in support of the Motion.  
Counsel for Defendant Nevada Department of Taxation and Nevada Tax Commission added nothing further.  
COURT ORDERED: Motion to Dismiss TAKEN UNDER ADVISEMENT.  
11:12 a.m. – Court stood in recess.

1 **CODE 1350**

**FILED**

2004 JUN 11 AM 10:03

RONALD A. LONGTIN, JR.

BY

DEPUTY

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5  
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**  
8

9  
10 **VILLAGE LEAGUE TO SAVE INCLINE**  
11 **VILLAGE ASSETS, INC.,**

12 **Appellant,**  
13 **vs.**

**Case No. CV03-06922**

**Dept. No. 7**

14 **THE DEPARTMENT OF TAXATION, THE**  
15 **NEVADA STATE TAX COMMISSION, THE**  
16 **STATE BOARD OF EQUALIZATION, WASHOE**  
17 **COUNTY, ROBERT MCGOWAN, WASHOE**  
18 **COUNTY ASSESSOR, and BILL BERRUM,**  
19 **WASHOE COUNTY TREASURER,**  
20 **Respondents,**

21 **CERTIFICATE OF CLERK**

22 **I hereby certify that the enclosed documents are certified copies of the original**  
23 **pleadings on file with the Second Judicial District Court, in accordance with the**  
24 **Revised Rules of Appellant Procedure Rule D(1).**

25 **Dated: June 11, 2004**

**Ronald Longtin, Jr., Court Clerk**

26  
27 By:

**Cathy Kepler, Appeals Clerk**

**(775) 328-3114**

1 **CODE 1365**

**FILED**

2004 JUN 11 AM 10:03

RONALD A. LONGTIN, JR.

BY

DEPUTY

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**  
8

9 **VILLAGE LEAGUE TO SAVE INCLINE**  
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16 **COUNTY, ROBERT MCGOWAN, WASHOE**  
17 **COUNTY ASSESSOR, and BILL BERRUM,**  
18 **WASHOE COUNTY TREASURER,**

19 **Respondents,**  
20 \_\_\_\_\_/

21 **CERTIFICATE OF TRANSMITTAL**

22 **I hereby certify that the enclosed Notice of Appeal and other required documents**  
23 **(certified copies), were delivered to the Second Judicial District Court mailroom**  
24 **system for transmittal to the Nevada Supreme Court.**

25 **Dated: June 11, 2004**

**Ronald Longtin, Jr., Court Clerk**

26 **By:**

27 **Cathy Kepler, Appeals Clerk**

28 **(775) 328-3114**