

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

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, ASSESSOR; BILL
BERRUM, WASHOE COUNTY TREASURER,

Respondents.

Supreme Court Case No. 43441

2nd Judicial District Court
Case No. CV03-06922

FILED

AUG 15 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

RESPONSE TO ORDER DIRECTING RESPONSE

COME NOW Respondents State of Nevada, ex rel. Department of Taxation, the Nevada State Tax Commission, and the Nevada State Board of Equalization (collectively, "State Respondents"), through their attorneys of record, Catherine Cortez Masto, Attorney General, and her deputies; and on behalf of the State Respondents reply to the Order of this Honorable Court entered on July 26, 2007, as follows:

I. State Court Action.

On November 13, 2003, a "Complaint for Declaratory and Related Relief" ("complaint") was filed with the Second Judicial District Court and assigned to Case No. CV03-06922, Department 10. The complaint contained the following described sections:

"General Allegations" concerning the various parties.

b. First Claim for Relief against all defendants claiming that the defendants used illegal assessment methods to assess certain values of land located in Washoe County (Paragraph 31 of the complaint), and that the plaintiffs in that action should be excused from exhausting their administrative remedies (Paragraph 32 of the complaint), and requested

1 injunctive relief (Paragraphs 33-4 of the complaint).

2 c. Second Claim for Relief against all defendants, alleging that the assessment
3 methods utilized by the defendants violated the Nevada Constitution's system of uniform,
4 equal, and just valuation and assessment of ad valorem taxes (Paragraph 36 of complaint)
5 and that the plaintiffs in that action are entitled "to redress from that wrongful failure and
6 denial" of equal and uniform taxation (Paragraph 41 of the complaint), i.e., refunds for the
7 alleged unequal and/or non-uniform assessment of taxes (Paragraph 42 of the complaint).

8 d. Third, Fourth, and Fifth Claims for Relief were against the Washoe County
9 defendants named in the district court action.

10 The Prayer of the complaint asked that this matter be maintained as a class action, for
11 a declaration that the assessment method was improper as unequal and/or not uniform, that
12 an injunction be entered against the State defendants to redress the alleged illegal taxation
13 scheme, and for fees and costs incurred in the litigation. For this Honorable Court's
14 convenience, a copy of the complaint is attached hereto as Exhibit "A."

15 The State defendants filed a motion to dismiss based upon the doctrine of exhaustion
16 of administrative remedies. The Second Judicial District Court granted the same on June 2,
17 2004; and a copy of the same is attached hereto as Exhibit "B" for the Court's convenience.
18 In short, the District Court did not find an exception to the exhaustion doctrine and found that
19 the plaintiffs failed to exhaust their administrative remedies, thus precluding the plaintiffs from
20 bringing that instant district court action.

21 II. Supreme Court case of *Bakst*.

22 *State ex rel. State Board of Equalization v. Bakst*, 122 Nev. ___, 148 P.3d 717 (2006)
23 (hereinafter "*Bakst*"), pertained to challenges to the taxation methodology at issue in this
24 matter; and this Court's decision in *Bakst* did resolve those issues pertaining to methodology.

25 III. State Respondents' Response to this Court's order of 7-26-07.

26 The Appellants in this matter must exhaust their administrative remedies, i.e., challenge
27 the taxation and seek refunds as the district court and this Honorable Court ruled in *Bakst*.
28 They failed to do so. If this Court is contemplating anything other than an affirmance of the

1 District Court's decision, State Respondents would concur with Washoe County's request for
2 the opportunity to brief on issues related to compliance with NRS chapter 361 procedural
3 preconditions.

4 Further, State Respondents concur with Washoe County's request for the opportunity
5 to brief this Court on standing issues of the named complainant and issues related to the
6 validity of the factors and of the valuations derived from use thereof in tax years 2004-2005
7 through 2007-2008.

8 Other issues State Respondents would request the opportunity to brief this Court for
9 further action by this Court or for directions on remand include:

10 1. Definition of the class to be certified and determination whether class certification
11 should extend to damages issues. This matter involves a class action and there was no
12 determination of whether all issues to be decided, including the damages issues, would be
13 appropriate for handling as a class action. See NRCP 23(c)(4).

14 2. Whether the District Court's determination of damages should be governed by
15 NRS 361.420(6) ("In all cases mentioned in this section where the complaint is based upon
16 any grounds mentioned in subsection 4" (e.g., discriminatorily high assessments), "the entire
17 assessment must not be declared void but is void only as to the excess in valuation.") and if
18 so, whether it is in the discretion of the District Court to determine what constitutes the
19 "excess in valuation." *State, University and Community College System v. Sutton* 120 Nev.
20 972, 984, 103 P.3d 8, 16 (2004) (trial court has discretion whether to apply issue preclusion).

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 3. Whether administrative proceedings would be appropriate to determine whether
2 there was an excessive valuation of Appellants' properties as a result of the four
3 methodologies invalidated in *Bakst* and how much, if any, that excess was under
4 NRS 361.420(6).

5 The foregoing is respectfully submitted for this Honorable Court's consideration.

6 DATED THIS 15th day of August 2007.

7 CATHERINE CORTEZ MASTO
8 Attorney General

9 By. 

10 DENNIS BELCOURT

11 Deputy Attorney General

12 State Bar No. 2658

13 100 N. Carson St.

14 Carson City, NV 89701

15 (775) 684-1100

16 (775) 684-1108 (f)

17 Attorneys for the State Respondents

CERTIFICATE OF MAILING

I hereby certify that on the 15th the day of August 2007, I served a copy of the foregoing **RESPONSE TO ORDER DIRECTING RESPONSE** upon all parties hereto by depositing a true copy thereof in the U.S. mail, addressed to them at their last known address, postage thereon prepaid, addressed as follows:

Suellen Fulstone, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511
Attorney for Appellant Village League

Terry Shea
Deputy District Attorney
Washoe County District Attorney's Office
P.O. Box 30083
Reno, Nevada 89520-3083
Attorney for Respondent Washoe County/Washoe County Assessor


An employee of the State Attorney General's Office

Exhibit A

No. \$1425
SUELLEN FULSTONE
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2003 NOV 13 PM 4:43
RONALD A. LESTER, JR.
BY D. Jaramillo
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,

Plaintiff,

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.

Case No.: CV

CV03 06922

Dept. No.

10

COMPLAINT FOR DECLARATORY
AND RELATED RELIEF

Plaintiff complains of defendants and alleges as follows:

NATURE OF THE ACTION

1. This is a class action for declaratory judgment pursuant to NRS §§30.010-

EXHIBIT A

1 30.160 for the purpose of determining questions of actual controversy between the parties and
2 for related relief, as more fully set forth below. Members of the plaintiff class are owners of
3 real property at Incline Village and Crystal Bay, in Washoe County, Nevada. In the last fiscal
4 year, while property taxes in the rest of Washoe County rose less than 2.5 % and some casinos
5 had their taxes reduced by as much as 31 %, the average increase in property taxes for Incline
6 Village and Crystal Bay property owners was 31 %, with increases of as much as 400% in
7 some individual cases. On behalf of the plaintiff class, the Village League To Save Incline
8 Assets, Inc., asks this Court to declare that the methods used by the Washoe County Assessor's
9 office to assess property at Incline Village and Crystal Bay, such as, for example, the
10 assignment of value based on a view of the Lake from a bathtub, are illegal, discriminatory and
11 unconstitutional. The Village League also seeks a determination that the State Board of
12 Equalization and the State Department of Taxation have failed to equalize assessments among
13 Douglas and Washoe Counties as required by the Nevada statutes and Constitution, such that
14 Lake Tahoe property located in Washoe County is assigned a taxable value that is 55 % higher
15 than the value assigned to property of the same or similar market value in Douglas County.
16 On behalf of its members, the Village League seeks refunds of tax payments which they have
17 made to the extent the tax amounts were based on invalid and unconstitutional assessments.

18 GENERAL ALLEGATIONS

19
20
21 2. Plaintiff, Village League To Save Incline Assets, Inc. ("Village League"), is a
22 nonprofit membership corporation organized and existing under the laws of the State of
23 Nevada, whose members own real property at Crystal Bay or Incline Village, in Washoe
24 County, Nevada, and pay taxes on that property as assessed, imposed and collected by the
25 defendant Washoe County. The Village League brings this action on behalf of its members and
26 other owners of real property at Crystal Bay and/or Incline Village who are similarly situated.

27
28 3. The defendant Nevada Tax Commission, established by the Nevada Legislature

1 in Nevada Revised Statutes §360.010, is the head of the defendant Nevada State Department of
2 Taxation, the state agency responsible for supervision and control of the revenue system of the
3 State of Nevada including real property taxes. The Commission supervises the overall
4 administration and operations of the Department of Taxation. The Commission adopts
5 regulations, establishes enforcement and audit policies, and approves forms and procedures of
6 the Department. Under its statutory authority, the Commission makes decisions to ensure that
7 the application of taxes is done consistently among taxpayers.
8

9 4. The defendant State Board of Equalization, established by the Nevada Legis-
10 lature as codified in Nevada Revised Statutes §361.375, has the statutory responsibility for the
11 equalizing of real property valuations throughout the State, including reviewing the tax rolls of
12 the various counties as equalized by the county boards of equalization and, if necessary,
13 adjusting the valuations thereon in order to equalize values with respect to taxable value.
14

15 5. The defendant Washoe County is and, at all times mentioned in this complaint,
16 was a political subdivision of the State of Nevada. The defendant Robert McGowan is and, all
17 times mentioned in this complaint, was the duly elected Assessor of Washoe County. The
18 defendant Bill Berrum is and, at all times mentioned in this complaint, was the duly elected
19 Treasurer of Washoe County. It is the duty, among others, of the County Assessor to list and
20 value all real property subject to taxation within the County. It is the duty of the County
21 Treasurer to collect all real property taxes.
22

23 6. Plaintiff represents a class of owners of real property in Incline Village or
24 Crystal Bay, in Washoe County, Nevada, who have paid real property taxes to Washoe County
25 on property valuations based on erroneous, invalid, illegal and unconstitutional assessment
26 methods and practices.

27 7. The plaintiff class consists of the owners of approximately 6713 parcels of real
28 property at Incline Village and Crystal Bay, in Washoe County, Nevada; said class is so

1 numerous that the joinder of each individual member of the class is impracticable.

2 8. The claims of class members against defendants involve common questions of
3 law and fact including, without limitation, the validity and constitutionality of valuation
4 methods and practices.

5 9. The claims of the members of the Village League are representative and typical
6 of the claims of the class. The claims of all members of the class arise from the same acts and
7 omissions of the defendants that give rise to the claims and rights of the members of the Village
8 League.

10 10. The Village League, as the representative of the class, is able to, and will, fairly
11 and adequately protect the interests of the class.

12 11. This action is properly maintained as a class action because defendants have
13 acted or refused to act, as more specifically alleged below, on grounds which are applicable to
14 the class and have by reason of such conduct made appropriate declaratory and related relief
15 with respect to the entire class as sought in this action.

17 FIRST CLAIM FOR RELIEF

18 (Against all Defendants)

19 12. Plaintiff realleges, as though fully set forth, paragraphs 1 through 11, inclusive,
20 above.

21 13. Section 1(1) of Article 10 of the Nevada Constitution requires that the Nevada
22 Legislature "provide by law for a uniform and equal rate of assessment and taxation" of real
23 and personal property throughout the state and "prescribe such regulations as shall secure a just
24 valuation for the taxation of all property. . . ."

25 14. Under the statutory scheme enacted by the Nevada Legislature, each county
26 assessor is required to determine each year the "taxable value" of all real property within the
27 respective county. NRS §361.260. To determine the "taxable value" of improved real
28

1 property, the assessor is required by law to appraise the land and the improvements separately
2 and then add them to reach a total. NRS §361.227(1).

3 15. By statute, the "taxable value" of the land portion of improved real property is
4 determined by appraising the "full cash value" of the land consistently with the use to which the
5 improvements are being put. NRS §361.227. "Full cash value" means the most probable price
6 which property would bring in a competitive and open market under all conditions requisite to
7 a fair sale. NRS §361.025. The "taxable value" of the land portion of improved real property
8 is thus the market value of vacant land to be put to the same or similar use as the improved
9 property.
10

11 16. The "taxable value" of the improvements portion of improved real property is
12 not a market value. By statute, the "taxable value" of the improvements is determined by
13 taking the cost of replacement and subtracting all applicable depreciation and obsolescence.
14 NRS §361.227.
15

16 17. The defendant Department of Taxation is required by law to "consult with and
17 assist county assessors to develop and maintain standard assessment procedures to be applied
18 and used in all of the counties of the state, to ensure that assessments of property by county
19 assessors are made equal in each of the several counties of this state." NRS §360.215 (2).
20 The Department is further required by law to "continually supervise assessment procedures" as
21 carried on in the several counties of the state and to "advise county assessors in the application
22 of such procedures." NRS §360.215(6)
23

24 18. As the head of the defendant Department of Taxation, the defendant Nevada Tax
25 Commission is required to establish and prescribe regulations for the determination of taxable
26 value to be adopted and put into practice by all county assessors in the State of Nevada for the
27 purpose of maintaining uniformity of taxation throughout the state. NRS §360.280(1). By law
28

1 in determining the taxable value of property within Washoe County, the Washoe County
2 Assessor is governed by regulations issued by the State Tax Commission. NRS §360.250(1).

3 19. In enacting the Administrative Procedure Act (NRS Chapter 233B), the Nevada
4 Legislature established minimum procedural requirements for the issuance of regulations by
5 state agencies, including the Nevada Tax Commission. In compliance with those procedural
6 requirements, the Tax Commission has adopted and issued certain regulations governing the
7 determination by county assessors of the taxable value of real property.
8

9 20. For the tax year 2003-2004 and an unknown number of prior years, if real
10 property was believed to possess a "view" of Lake Tahoe, the Washoe County Assessor used
11 an inconsistent and variable view classification system as the sole basis for determining the
12 base taxable value for the land portion of such real property. This view classification system is
13 not used anywhere else in Washoe County or in the State of Nevada. This inconsistent and
14 variable view classification system was not disclosed to members of the plaintiff class and was
15 unauthorized by the approved and published regulations adopted by the Nevada Tax
16 Commission to govern county assessors in the valuation of property for ad valorem tax
17 purposes.
18

19 21. For the tax year 2003-2004 and unknown number of prior years, the Washoe
20 County Assessor used sales of improved properties as "vacant" land sales for comparable sales
21 purposes in determining the taxable value of the land portion of improved real property owned
22 by members of the plaintiff class. The characterization of certain sales of improved properties
23 as "teardowns" and their use as vacant land sales for comparable sales purposes was not
24 disclosed to members of the plaintiff class and is directly inconsistent with the approved and
25 published regulations adopted by the Nevada Tax Commission to govern county assessors in
26 the valuation of property for ad valorem tax purposes.
27
28

1 22. For the tax year 2003-2004 and an unknown number of prior years, in
2 determining the value of the land portion of improved real property at Incline Village and
3 Crystal Bay owned by members of the plaintiff class, the Washoe County Assessor used a
4 "time-value" method, in which, if there were an insufficient number of recent comparable sales
5 on which to value certain real property, an .08 % per month increase was added to the value of
6 comparable properties that sold as long as 2 or 3 years previously. With the addition of this .08
7 % per month increase, these old sales are assigned a much higher value for comparable sales
8 purposes notwithstanding the fact that the value of real property in Incline Village and Crystal
9 Bay has not increased over the past 3 years. The use of this arbitrary "time-value" method is
10 unauthorized by the approved and published regulations adopted by the Nevada Tax
11 Commission to govern county assessors in the valuation of property for ad valorem tax
12 purposes and is, in fact, contrary to such regulations.
13

14 23. For the tax year 2003-2004 and an unknown number of prior years, the Washoe
15 County Assessor used an arbitrary and inconsistent formula to value lineal footage of lake
16 frontage in determining the value of the land portion of improved real property at Incline
17 Village and Crystal Bay located on the shoreline of Lake Tahoe and owned by members of the
18 plaintiff class. The use of an arbitrary and inconsistent formula to value footage of lake
19 frontage in determining the taxable value of improved real property was not disclosed to
20 members of the plaintiff class and was, and is, unauthorized by the approved and published
21 regulations adopted by the Nevada Tax Commission to govern county assessors in the
22 valuation of property for ad valorem tax purposes.
23

24 24. For the tax year 2003-2004 and an unknown number of prior years, the Washoe
25 County Assessor used sales of single-family residential properties in determining the taxable
26 value of the land portion of non-lakefront condominiums in Incline Village and Crystal Bay
27 owned by members of the plaintiff class. The use of sales of single-family residential
28

1 properties in determining the taxable value of condominiums was not disclosed to members of
2 the plaintiff class and was, and is, unauthorized by the approved and published regulations
3 adopted by the Nevada Tax Commission to govern county assessors in the valuation of
4 property for ad valorem tax purposes.

5 25. For the tax year 2003-2004 and an unknown number of prior years, the Washoe
6 County Assessor used an "allocation" method with adjustments and modifications not
7 authorized by the approved and published regulations of the defendant Nevada Tax
8 Commission for determining the taxable value of the land portion of lakefront condominiums
9 owned by members of the plaintiff class, such that condominiums of same or similar size in the
10 same building were assigned different land values.

11 26. The defendant Nevada State Department of Taxation has the statutory duty to
12 consult with and assist county assessors to develop standard assessment procedures, to
13 supervise these assessment procedures in the various counties, and to advise county assessors in
14 the application of such procedures. Under Nevada law, the defendant Nevada Tax Commission
15 has the obligation to establish and prescribe general and uniform regulations for the assessment
16 of property by the county assessors of the various counties and the county assessors have the
17 duty to adopt and put in practice the regulations established by the Tax Commission for the
18 assessment of property.

19 27. The defendant State Department of Taxation and the defendant Nevada Tax
20 Commission have allowed the use by the Washoe County Assessor's office in determining the
21 taxable value of real property owned by members of the plaintiff class of an inconsistent and
22 varying view classification system applicable only to properties at Lake Tahoe, of "teardowns"
23 as comparable vacant land sales, of arbitrary increases in the value of comparable sales as
24 "time" adjustments, of an arbitrary lakefront formula, and of the use of sales of single-family
25 residences as comparable sales and of unauthorized adjustments and modifications to the
26
27
28

1 "allocation" method in the valuation of condominiums (collectively, the "illegal assessment
2 method").

3 28. By allowing the use of the illegal assessment methods by the Washoe County
4 Assessor's office, the defendant State Department of Taxation and the defendant Nevada Tax
5 Commission have failed to meet their statutory duties and obligations.

6 29. By allowing the use of the illegal assessment methods by the Washoe County
7 Assessor's office to determine the taxable value of real property, the Department of Taxation
8 and the Nevada Tax Commission have effectively made these illegal assessment methods, for
9 all practical purposes, de facto "regulations" of the Commission. As de facto "regulations," the
10 above illegal assessment methods are invalid because they were not adopted by the
11 Commission in compliance with the notice and hearing requirements of NRS Chapter 233B.

12 30. For the tax year 2003-2004 and an unknown number of prior years, the use of
13 these illegal and invalid assessment methods by the Washoe County Assessor has resulted in
14 the excessive, improper, invalid and illegal valuation of real properties at Incline Village and
15 Crystal Bay, in Washoe County, owned by members of the plaintiff class and the imposition of
16 excessive, improper, invalid and illegal taxes based on such valuations, all in violation of the
17 provision of the Nevada Constitution guaranteeing uniform and equal taxation and a just
18 valuation of all property.

19 31. Plaintiff is informed and believes that defendants consider the use by the
20 Washoe County Assessor's office of these illegal assessments methods to be valid and lawful;
21 an actual controversy thus exists between the plaintiff class and defendants considering the
22 validity of those methods under the Constitution and laws of the State of Nevada.

23 32. The requirement, if any, that members of the plaintiff class exhaust their
24 administrative remedies is excused on numerous grounds, including, but not limited to, the
25 constitutional and other defects in the administrative process, the failure of the Washoe County
26
27
28

1 Assessor's office to disclose its use of these illegal assessment methods, futility, and the lack of
2 administrative remedies.

3 33. Members of the plaintiff class have no adequate remedy at law to prevent the
4 defendant Washoe County through its Assessor's office from using these illegal assessment
5 methods of determining the taxable value of improved real property for purpose of assessing
6 property taxes on such property and through its Treasurer's office from collecting on the
7 resulting illegal and unconstitutional assessments. Members of the plaintiff class will continue
8 to suffer irreparable harm and damage unless the defendant Washoe County is enjoined and
9 restrained from the use of these illegal assessment methods of determining taxable value.
10

11 34. In addition to declaratory and injunctive relief, the individual members of the
12 plaintiff class are entitled to receive refunds from Washoe County for their overassessment and
13 over-payment of taxes for the tax year 2003-2004 and prior years as proven together with
14 interest at a rate determined pursuant to NRS §17.130.
15

16 SECOND CLAIM FOR RELIEF

17 (Against all Defendants)

18 35. Plaintiff realleges, as though fully set forth, paragraphs 1 through 11, and 13
19 through 34, inclusive, above.

20 36. The illegal assessment methods used by the office of the defendant Washoe
21 County Assessor resulted in a disparity in valuation for ad valorem tax purposes between
22 similarly situated property at Lake Tahoe in Douglas and Washoe Counties for the tax year
23 2003/2004 and prior tax years, in violation of the guarantees of the Nevada Constitution of a
24 system of uniform, equal and just valuation and assessment of ad valorem taxes.
25

26 37. The defendant State Board of Equalization has the duty to review the tax rolls of
27 the various counties and equalize the taxable value of the properties reflected on such rolls.
28 The defendant State Department of Taxation has the statutory duty under NRS §360.215(2) to

1 assist county assessors to develop and maintain standard assessment procedures and to ensure
2 that assessment of property are made equal in each of the counties of the state.

3 38. The disparity in taxable value between similarly situated property at Lake Tahoe
4 in Douglas and Washoe Counties for the tax year 2003/2004 and prior tax years is a proximate
5 result of the failure of the defendant State Department of Taxation to perform its statutory duty
6 to ensure equal and uniform assessments.

7
8 39. Notwithstanding the disparity in taxable value between similarly situated
9 property at Lake Tahoe in Douglas and Washoe Counties for the tax year 2003/2004 and prior
10 tax years, the defendant State Board of Equalization has failed to equalize assessments between
11 Douglas and Washoe County as required by the Nevada Constitution and statutes.

12 40. The failure of the defendant State Board of Equalization to equalize the taxable
13 value of similarly situated property at Lake Tahoe in Douglas and Washoe Counties for the tax
14 year 2003/2004 and prior tax years is a denial of relief to members of the plaintiff class and
15 said members are entitled to redress from that wrongful failure and denial.

16
17 41. Plaintiff is informed and believes that defendants consider the disparity in
18 valuation for ad valorem tax purposes between similarly situated property at Lake Tahoe in
19 Douglas and Washoe Counties for the tax year 2003/2004 and prior tax years not to violate the
20 guarantees of the Nevada Constitution of a system of uniform, equal and just valuation and
21 assessment of ad valorem taxes; an actual controversy thus exists between the plaintiff class
22 and defendants.

23
24 42. In addition to declaratory relief, the individual members of the plaintiff class are
25 entitled to receive refunds from Washoe County for the unequal, non-uniform and
26 unconstitutional assessment of taxes for the tax year 2003-2004 and prior years as proven,
27 together with interest at a rate to be determined pursuant to NRS § 17.130.
28

THIRD CLAIM FOR RELIEF

(Against Washoe County Defendants)

43. Plaintiff realleges as though fully set forth paragraphs 1 through 11, 13 through 34, and 36 through 42, inclusive, above.

44. The Washoe County Assessor's office uses a 13 increment view classification system at Incline Village and Crystal Bay which places view values on land parcels ranging from zero to \$800,000 dollars. This view classification system is not used anywhere else in Washoe County except at Lake Tahoe and is not used anywhere else in the State of Nevada.

45. The view classification system described above is arbitrary and capricious in that it is not based on any written standards or guidelines such that, in practice and depending on the deputy assessor, views have been determined from locations throughout the home including bathtubs and corners of exterior decks, as well as from locations outside the home. The view classification system described above is also arbitrary and capricious in that, rather than determine the view on an individual property by property basis, the same view classification was assigned to a number of properties on a mass appraisal basis.

46. The arbitrary and capricious nature of the view classification system is further demonstrated by the fact that approximately 70% of view classifications reviewed after being questioned by property owners were changed by one or more increments. Each increment represents approximately \$65,000 of assessed value.

47. The use by the Washoe County Assessor's office of an inconsistent and variable view classification system as described above violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution as well as the due process guarantees of both the U.S. and Nevada Constitutions.

48. Plaintiff is informed and believes that defendants consider the use by the Washoe County Assessor's office of an inconsistent and varying view classification system

1 applicable only to properties at Lake Tahoe to be valid and lawful; an actual controversy thus
2 exists between the plaintiff class and defendants considering the validity of those methods
3 under the Constitutions of the U.S. and the State of Nevada.

4 49. Members of the plaintiff class have no adequate remedy at law to prevent the
5 defendant Washoe County through its Assessor's office from using an inconsistent and varying
6 view classification system applicable only to properties at Lake Tahoe and through its
7 Treasurer's office from collecting on invalid and unconstitutional assessments made as a result
8 of said use. Members of the plaintiff class will continue to suffer irreparable harm and damage
9 unless the defendant Washoe County is enjoined and restrained from the use of an invalid and
10 unconstitutional view classification system.
11

12 50. In addition to declaratory and injunctive relief, the individual members of the
13 plaintiff class are entitled to receive refunds from Washoe County for their overassessment and
14 over-payment of taxes for the tax year 2003-2004 and prior years as a result of the use of an
15 invalid and unconstitutional view classification system together with interest at a rate
16 determined pursuant to NRS §17.130.
17

18 FOURTH CLAIM FOR RELIEF

19 (Against Washoe County Defendants)

20 51. Plaintiff realleges as though fully set forth paragraphs 1 through 11, 13 through
21 34, 36 through 42, and 44 through 50, inclusive, above.

22 52. When property is taxed, property owners are entitled by the guarantees of due
23 process in the Nevada and U.S. Constitutions to meaningful notice and an opportunity to be
24 heard as to the amount of the assessment and the nature and validity of the assessment
25 methods.
26

27 53. Under the procedure established by the Washoe County Assessor's office, for
28 the 2003-2004 tax year, notices of taxable value were to be mailed to property owners on or

1 before December 1, 2002. Those notices were not mailed to property owners in the plaintiff
2 class until on or after December 6, 2002, and were not received by members of the plaintiff
3 class until as much as a week or more later, significantly reducing the amount of time property
4 owners had to consider the notice and investigate their rights.

5 54. The notice sent to property owners in the plaintiff class for the 2003-2004 tax
6 year contained, on its front side, the proposed "taxable value" of the parcel or parcels. The
7 notice does not explain what "taxable value" is nor how it is to be calculated. The notice states
8 that a property owner can call the Assessor's Office to question or challenge an assessment.
9 However, when members of the plaintiff class called the Assessor's Office, they were told
10 incorrectly that their assessment was not subject to challenge because the taxable value was less
11 than the fair market value of the property. In response to the property owner's concerns about
12 his or her assessment, the employee at the Assessor's Office frequently inquired whether the
13 property owner would be "willing to sell [his/her] house for the taxable value." When senior
14 citizens and others on fixed incomes expressed concerns about being forced out of their homes
15 by the increased assessments, the Assessor's Office simply suggested that they sell their homes
16 and move. In these ways, the Office of the Washoe County Assessor misled inquiring property
17 owners about the standards governing taxable value and suggested, contrary to law, that taxable
18 value is determined by market value. The result, if not the intent, was that property owners
19 were discouraged from pursuing an appeal of their assessments and were thus denied a
20 meaningful opportunity to be heard.

21 55. The language of the notice, including, but not limited to, its emphasis on the fact
22 that it is not a tax bill and its failure to state the amount of taxes that will be due, suggests
23 improperly that it is informational and misleads the property owner recipient into the false
24 belief that a challenge to the tax bill cannot be made until it has been received.

25 56. In response to inquiries from members of the plaintiff class with respect to the
26

1 assessed valuation of their properties, the Washoe County Assessor's office was neither
2 informative nor consistent nor honest but rather attempted to discourage and deter the property
3 owner from pursuing an appeal of that valuation.

4 57. As established and as applied, the procedure followed by the office of the
5 Washoe County Assessor in notifying property owners in Washoe County of the assessed
6 valuation of their real property and their right to challenge that valuation violates the due
7 process provisions of the Nevada and U.S. Constitutions in that it fails to provide property
8 owners, including members of the plaintiff class, with meaningful notice and the opportunity
9 to be heard as to the accuracy of the assessed valuation and the validity of the assessment method
10 used to determine that valuation.
11

12 58. An actual controversy now exists between the members of plaintiff and persons
13 similarly situated and defendants Washoe County and the Washoe County Assessor as to
14 whether the procedure established and applied by the office of the Washoe County Assessor in
15 notifying property owners in Washoe County of the assessed valuation of their real property
16 and their right to challenge that valuation violates the due process provisions of the Nevada and
17 U.S. Constitutions.
18

19 59. Unless this Court issues an appropriate declaration of rights, the parties will not
20 know whether the procedure followed by the office of the Washoe County Assessor as
21 described above violates the due process provisions of the Nevada and U.S. Constitutions and
22 there will continue to be disputes surrounding that procedure.
23

24 FIFTH CLAIM FOR RELIEF

25 (Against Washoe County Defendants)

26 60. Plaintiff realleges as though fully set forth paragraphs 1 through 11, 13 through
27 34, 36 through 42, 43 through 50 and 52 through 59, inclusive, above.

28 61. As a direct and proximate result of the wrongful and unconstitutional procedure

1 as established and as applied, of the Washoe County Assessor's Office in notifying property
2 owners in Washoe County of the assessed valuation of their real property and their right to
3 challenge that valuation, the individual members of the plaintiff class have been damaged in the
4 overassessment of their property and are entitled to recover those damages and receive refunds
5 of the overassessed amount as proved

6 WHEREFORE PLAINTIFF PRAYS AS FOLLOWS:

7 1. That the Court order that this action may be maintained as a class action.

8 2. That the Court declare that the use by the Washoe County Assessor's Office of
9 an inconsistent and varying view classification system applicable only to properties at Lake
10 Tahoe, of "teardowns" as comparable vacant land sales, of arbitrary increases in the value of
11 comparable sales as "time" adjustments, of an arbitrary lakefront formula, and of sales of
12 single-family residences as comparable sales and of unauthorized adjustments and modifica-
13 tions to the allocation method in the valuation of condominiums is invalid because such
14 methods of determining the taxable value for ad valorem tax purposes of improved real
15 property have not been properly adopted as regulations of the Nevada Tax Commission under
16 the Administrative Procedure Act.

17 3. That the Court declare that the Constitution and laws of the State of Nevada
18 establish the guaranty of uniformity of taxation and require standard assessment methods
19 within and between counties in the State of Nevada

20 4. That the Court declare that the disparity in valuation between property at Lake
21 Tahoe in Douglas and Washoe Counties for the tax year 2003/2004 violates the guarantee in
22 the Nevada State Constitution of a uniform, equal and just system of property taxation
23 throughout the State.

24 5. That the Court enter a mandatory injunction requiring the State Board of
25 Equalization to redress the disparity in valuation between property at Lake Tahoe in Douglas
26

1 and Washoe Counties and to equalize those property valuations as required by the Nevada
2 Constitution and statutes.

3 6. That the Court enter a mandatory injunction requiring the State Department of
4 Taxation to carry out its statutory duty under NRS §360.215(2) to assist county assessors in
5 developing standard assessment procedures and to ensure that assessments of property are
6 made equal in each of the counties of the state.

7 7. That the Court declare that the view classification system as utilized by the
8 Washoe County Assessor's office only for properties at Lake Tahoe violates the Equal
9 Protection guarantee of the U.S. Constitution.

10 8. That the Court declare that the procedure followed by the Washoe County
11 Assessor to notify property owners of the determination of the taxable value of their property
12 and the rights and consequences related thereto violates due process of law as guaranteed by
13 the U.S. and Nevada Constitutions.

14 9. That the Court set aside the invalid and unconstitutional valuations by Washoe
15 County of real property of members of the plaintiff class, direct the defendant Washoe County
16 Assessor to make new valuations in accordance with the existing and properly adopted
17 regulations of the Nevada Tax Commission, and determine the amounts to be refunded to
18 members of the plaintiff class.

19 10. That the Court enjoin defendant Washoe County and its duly authorized agents
20 and representatives from the further use of discriminatory and illegal valuation methods to
21 determine, for ad valorem tax purposes, the taxable value of improved real property in Washoe
22 County;

23 11. That the Court enjoin defendant Washoe County and its duly authorized agents
24 and representatives from using methods to determine for ad valorem tax purposes the taxable
25 value of improved real property in Washoe County;

1 value of improved real property at Incline Village and Crystal Bay that are not used elsewhere
2 in Washoe County or in surrounding counties.

3 12. That plaintiff recovers its costs of suit as provided by law and such other and
4 further relief as the members of the plaintiff class may be adjudged entitled to in the premises.

5 DATED this 30 day of November, 2003.

6 WOODBURN AND WEDGE

7
8 by Wells Fulstone

9 Attorneys for plaintiff

10 Village League To Save Incline Assets, Inc.

Exhibit B

RECEIVED

JUN - 7 2004

ATTORNEY GENERAL C.C.
CIVIL - TAX

FILED

JUN - 2 2004

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

1 CODE NO. 3060

2
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4
5
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 ORDER GRANTING MOTIONS TO DISMISS

21 Plaintiff is a nonprofit membership organization that claims its members
22 consist of the owners of approximately 6,700 parcels of real property located in Incline
23 Village and Crystal Bay, Nevada. Plaintiff claims that property taxes assessed on the
24 members' real property in 2003 far exceed the property taxes assessed on other real
25 property within the County. Specifically, Plaintiff claims that while property taxes have risen
26 by approximately 2.5% on average in Washoe County, real property taxes at Incline and
27 Crystal Bay have risen by an average of 31%, and in some individual cases as high as
28 400%. 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
27
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
4 The Court having considered the pleadings and oral argument of counsel,
5 finds as follows. A motion to dismiss for failure to state a claim for relief will only be granted
6 if it appears to a certainty that plaintiff is entitled to no relief under any set of facts which
7 could be proved in support of the claim. NRCP 12(b)(5); Zalk-Josephs Co. v. Wells Cargo,
8 Inc., 81 Nev. 163, 170 (1965). In considering a motion to dismiss the court must accept all
9 allegations of the complaint as true. Haertel v. Sonshine Carpet Co., 102 Nev. 614, 615
10 (1986). In addition, the court must construe the pleading liberally, drawing fair inferences in
11 favor of the non-moving party. Simpson v. Mars, Inc., 113 Nev. 188, 190 (1997).

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

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

25
26 However, there are exceptions to the "exhaustion doctrine". First, the district
27 court is not be deprived of jurisdiction where issues relate solely to the interpretation or
28 constitutionality of a statute. Id. In addition, the "exhaustion doctrine" does not apply where

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

7 Thus, when a statute is attacked on its face, or in other words the claim is that the statute as
8 enacted is unconstitutional an agency determination on this point would rarely aid the court
9 in resolving the issue and accordingly exhaustion would not be required. Malecon Tobacco,

10 Inc. v. State of Nevada, 59 P. 3d 474, 476 (Nev. 2002). However, when the taxpayer does
11 not challenge that the statute is unconstitutional but rather the statute has been applied
12 unconstitutionally to them, this is a matter which is properly resolved by the agency. Id.

13 These determinations inherently require a factual context and the agency is in the best
14 position, through its experience and expertise, to make such factual findings. Id. Thus, in
15 these cases, there is not an exception to the exhaustion doctrine merely because a
16 constitutional claim is made.
17
18

19 The Court finds that Plaintiff does not challenge the constitutionality of any
20 statutory provision or administrative rule. The claims do not challenge whether Washoe
21 County has the constitutional authority to make such assessments or to levy taxes on the
22 property. Rather, Plaintiff challenges the manner, methods, and ultimate conclusions made
23 by the Washoe County Assessor in relation to the taxable value made on these properties.
24 For example, Plaintiff claims it was improper to utilize "view classifications" and the "time
25 value" and "allocation" methods to determine the valuation of these properties, thus arguing
26 these actions are inconsistent and arbitrary. Plaintiff claims these actions violate equal
27 protection and due process. However, these are the types of claims that would inherently
28

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

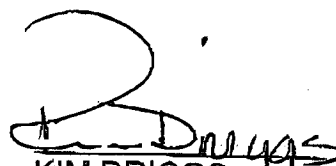
Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 2 day of June, 2004, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and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

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