

ORIGINAL

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,

No. 43441

FILED

AUG 16 2007

Appellants,
vs.

THE 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; AND BILL
BERRUM, WASHOE COUNTY TREASURER,

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY Alwasado
DEPUTY CLERK

Respondents.

**WASHOE COUNTY ASSESSOR, WASHOE COUNTY TREASURER AND
WASHOE COUNTY'S RESPONSE TO THE SUPREME COURT'S
"ORDER DIRECTING A RESPONSE" DATED JULY 26, 2007**

On July 26, 2007, this honorable court issued its "Order Directing A Response" in this matter making certain findings relevant to the Appellant's declaratory relief action in the trial court. (See Exhibit 1 attached hereto) In addition, this court directed as follows:

"However, if any of the parties believe that there are issues remaining to be resolved in this appeal that are distinct from those resolved in Bakst, that party may file a response to this order within 20 days informing this court of those remaining issues and requesting supplemental briefing if appropriate"

In accordance with that directive, the Respondents, the Washoe County Assessor, the Washoe County Treasurer and Washoe County, believe that the following issues remain to be resolved that are distinct from the issues in the Bakst¹ case:

1. The remedy ordered in the Bakst case does not apply to each individual property owner in the Incline Village/Crystal Bay area unless each have exhausted

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CLERK OF SUPREME COURT
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State vs. Bakst, 122 Nev. Adv.Op 116, 148 P3rd 717

07-18131

1 his administrative remedies in tax year 2003/2004 in front of the Washoe County
2 Board of Equalization and then the Nevada State Board of Equalization in
3 accordance to NRS Chapter 361;

4 2. A non-profit corporation, such as the Village League To Save Incline Assets,
5 does not have standing to represent the members of that organization in a tax case
6 even though the organization itself does not own any property at Incline
7 Village/Crystal Bay;

8 3. It violates concepts of equal protection to excuse the putative members of the
9 class alleged in the complaint and the members of the Village League from
10 following the administrative procedures set forth in NRS Chapter 361 before
11 seeking a judicial remedy when challenging their assessed valuations and seeking
12 a tax refund. NRS 361.420;

13 4. It is not permissible for a taxpayer seeking a tax refund to bring an action for
14 declaratory relief under NRS Chapter 30 directly to district court instead of going
15 through the administrative process of NRS Chapter 361. A taxpayer seeking a
16 refund of taxes is required to precede under the process in NRS Charter 361; and

17 5. If this Court allows the Bakst remedy to each of the residential property owners
18 at Incline Village/Crystal Bay for the 2003-2004 tax year, the assessed values for
19 subsequent tax years, 2004-2005, 2005-2006, 2006-2007 and 2007-2008, should be
20 arrived at by applying the land factors approved by Nevada Tax Commission.

21 These Respondents request the Court set a supplemental briefing schedule for these issues
22 because it has long been the law in this State that "Taxpayers must exhaust their administrative
23 remedies before seeking judicial relief." County of Washoe v. Golden Road Motor Inn., 105
24 Nev. 402, 403, 777 P.2d 358 (1989). These appellants argue this Court not to change this long
25 standing doctrine.

26 The Bakst case involved 17 taxpayers each of whom challenged their assessed values in
front of the Washoe County Board of Equalization and then the Nevada State Board of
Equalization. Each taxpayer in Bakst followed the administrative process set forth in NRS
Chapter 361 and the case law of this Court. In the instant case, the Village League alleges it
represents "...its members and other owners of real property at Crystal Bay and/or Incline Village
who are similarly situated." (See para. 2 of the plaintiff's complaint attached as Exhibit 2).
Village League alleges it represents 6713 putative class members (See para. 7 of Exhibit 2) and it
is seeking tax refunds for each of the individuals class members "for tax year 2003-2004 and

1 prior years as proven...”(See para. 42 Village League complaint, Exhibit 2 attached) (emphasis
2 added). None of these alleged plaintiffs appealed their assessed values in accordance with NRS
3 Chapter 361.

4 These Respondents also wish to inform this Court that the resolution of this case and
5 these issues will have a significant impact on the arguments presented and the ultimate resolution
6 in the consolidated appeals for the 2004-2005 tax year in Nevada Supreme Court case nos.
7 47397, 47398, 47399, 47400, and 47401. If the Village League Court decides that these alleged
8 plaintiffs are somehow excused from exhausting their administrative remedies, then it may
9 follow that every residential property owner at Incline Village/ Crystal Bay can now claim the
10 same remedy granted the seventeen taxpayers in the Bakst case for tax year 2003-2004 without
11 resort to the procedures required by NRS Chapter 361. In addition, the Village League Court
12 will have to decide if this is also true for tax years prior to 2003-2004.

13 In the supplemental briefing of this case, these Respondents will argue that this should
14 not be the decision of this Court. Taxpayers who are seeking a refund of taxes should be required
15 to follow the process set forth by the Legislature in NRS Chapter 361, i.e., file a petition at the
16 county board of equalization, followed by an appeal to the state board of equalization and only
17 then seek a judicial review and/or a tax refund in district court.

18 A taxpayer should not be allowed to circumvent this process by filing a complaint for
19 declaratory relief under NRS Chapter 30 and thereby avoiding the administrative process and the
20 specific requirements of that process such as the requirement to pay property taxes under protest
21 and the 90 day statute of limitations imbedded in NRS 361.420. There are good reasons for these
22 requirements and safeguards. The issue for the Village League Court will be, how far, if at all, is
23 the Court willing to allow a taxpayer to go back in time to challenge taxes?

24 It will also be argued by these respondents that to excuse any taxpayers from the NRS
25 361 process when seeking a tax refund will result in these taxpayers being treated differently than
26 all other taxpayers, even in the case of issues of constitutional dimension. NRS 361.420(g)

1 provides a procedural vehicle and requirement for taxpayers who wish to raise constitutional
2 issues in the context of tax appeal cases. Accordingly, this Court should not allow any plaintiff
3 to skirt this specific appeal process and its requirements and safeguards by artful drafting of a
4 complaint for declaratory judgement under the more general provisions of NRS Chapter 30.

5 If the Court in this case allows the plaintiffs to proceed outside of the NRS 361 process, it
6 will arguably create a procedural avenue to challenge assessed valuation that does not now and
7 has not existed to date. Even the seventeen Bakst plaintiffs adhered to the Chapter 361 process.
8 There is be no reason to treat the Village League plaintiffs differently.

9 The Village League does not have standing to represent the putative class members it
10 alleges to represent. In the United States Supreme Court case of Singleton v. Wulff, 428 U.S.
11 106, 96 S.Ct. 2868 U.S.Mo.,1976 that Court addressed the issue of standing to raise the
12 constitutional rights of third parties that were not appearing in court as follows:

13 "Ordinarily, one may not claim standing in this Court to vindicate the constitutional rights
14 of some third party." Barrows v. Jackson, 346 U.S. at 255, 73 S.Ct. at 1034. See also
15 Flast v. Cohen, 392 U.S., at 99 n. 20, 88 S.Ct. at 1952; McGowan v. Maryland, 366 U.S.
420, 429, 81 S.Ct. 1101, 1106, 6 L.Ed.2d 393 (1961).

16 "[3] Like any general rule, however, this one should not be applied where its underlying
17 justifications are absent. With this in mind, the Court has looked primarily to two factual
elements to determine whether the rule should apply in a particular case. The first is the
relationship of the litigant to the person whose right he seeks to assert....

18 "The other factual element to which the Court has looked is the ability of the third party
19 to assert his own *116 right. Even where the relationship is close, the reasons for
20 requiring persons to assert their own rights will generally still apply. If there is some
21 genuine obstacle to such assertion, however, the third party's absence from court loses its
tendency to suggest that his right is not truly at stake, or truly important to him, and the
party who is in court becomes by default the right's best available proponent."

22 Applying these general guidelines to this tax refund case, the Village League should not
23 be allowed to represent the members of the League or the putative members of the alleged class.
24 This Court should require further briefing from the parties on this issue because there are no
25 allegations contained in the complaint in the record that explains what obstacle, if any, existed
26 that prevented the individuals from pursuing their own rights in this tax refund matter. If there is

1 no genuine issue that prevented the individuals from pursuing their own rights, then the Village
2 League should be denied standing to assert those claims on behalf of the individuals.

3
4 Assuming only for purposes of argument, that this honorable Court holds that the remedy
5 given in the Bakst case is available to the alleged plaintiffs, the Court needs to instruct the
6 assessors as to how to bring the resulting assessed values forward into subsequent tax years. This
7 Court should not freeze the assessed values of the Incline Village/Crystal Bay area at the
8 artificially low values of the 2002-2003 tax year. Instead, if the starting point is going to be the
9 2002-2003 tax year, then this Court should instruct that the land factors adopted by the Assessor
10 and approved by the Nevada Tax Commission in accordance with NRS 361.260, should be
11 applied from year to year. To do otherwise will create an assessment situation that is neither
12 uniform or equal in violation of the Nevada Constitution, Art. 1 sec. 10. Such a result would
13 itself violate the holding of Bakst.

14 It must be kept in mind that Nevada law requires the county assessors to redetermine the
15 assessed value of land each year. In order to perform this duty, the Legislature has authorized
16 two different methods. At least once every five years, the assessor must reappraise all real
17 property in the county. NRS 361.260(6). For any property not being reappraised in the current
18 tax year, NRS 361.260(5) requires the county assessor to redetermine a parcel's assessed value by
19 applying a factor for land that is developed by the assessor and adopted by the Tax Commission.
20 The factor process is separate and distinct from the reappraisal process. In Washoe County, the
21 Assessor has divided the County into five separate reappraisal districts; Incline Village/Crystal
22 Bay area is contained in District 1. Each year the Assessor's Office reappraises the real property
23 in one of the five districts so that after five years, all of the real property in Washoe County has
24 been reappraised. The four districts that each year are not reappraised, the Assessor, in
25 accordance with statute, determines the assessed value in those districts by applying the factor
26 process in NRS 361.260(5).

1 The Supreme Court in Bakst (supra) recognized that the factor method of valuation is a
2 "...statutorily approved method of adjusting the value of land since it was last reappraised under a
3 regulation adopted by the Nevada Tax Commission." [Bakst decision page 3-4] citing with
4 approval NRS 361.260(5); NAC 361.118. Because the factor method of valuation was statutorily
5 approved and adopted in regulation by the Tax Commission, it does not suffer from the
6 constitutional infirmity of the reappraisal techniques of Bakst.

7 The factoring method, mandated by the Legislature, provides the assessor with a separate
8 and distinct method of validating assessed values for the 2004-2005 tax years and all subsequent
9 years to the present. Tax years 2004/2005, 2005/2006, 2006/2007 and 2007/2008 are all factor
10 years for the Incline Village/Crystal Bay area of Washoe County.

11 Dated this 15th day of August, 2007.

12 RICHARD A. GAMMICK
13 DISTRICT ATTORNEY

14 By: 

TERRANCE SHEA

15 Deputy District Attorney
16 Nevada State Bar No. 29
17 P.O. Box 30083
18 Reno, NV 89520-3083

19 ATTORNEYS FOR WASHOE COUNTY
20 WASHOE COUNTY ASSESSOR AND
21 WASHOE COUNTY TREASURER
22
23
24
25
26

1 CERTIFICATE OF SERVICE

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

7 Suellen Fulstone, Esq.
8 Little Mendelson
50 West Liberty Street, Suite 400
Reno, NV 89501

9 Karen Dickerson
10 Sr. Deputy Attorney General
100 N. Carson Street
11 Carson City, NV 89701-4717

12 Dennis Belcourt
13 Deputy Attorney General
100 N. Carson Street
Carson City, NV 89701-4717

14
15 Dated this 15 day of August, 2007.

16
17 
18 MICHELLE FOSTER
19
20
21
22
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25
26

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.

THE 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; AND
BILL BERRUM, WASHOE COUNTY
TREASURER,
Respondents.

No. 43441

FILED

JUL 26 2007

JAMETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Alvarado
DEPUTY CLERK

ORDER DIRECTING A RESPONSE

This appeal appears to involve issues identical to those resolved in our opinion in State, Board of Equalization v. Bakst.¹ In Bakst, seventeen taxpayers and owners of real property located near Lake Tahoe and Incline Village contested exactly the same methods utilized by the Assessor in this appeal.² The seventeen taxpayers argued, and this court agreed, that Nevada statutes do not permit the Assessor to adopt methods of property valuation not authorized by the Nevada Tax

¹122 Nev. ___, 148 P.3d 717 (2006).

²Id. at ___, 148 P.3d at 719.

Commission.³ Accordingly, this court held in Bakst that the methodologies were invalid and unconstitutional because they violated the Nevada Constitutional requirement that property be taxed according to a uniform and equal rate of assessment.⁴

Thus, it appears that the holding in Bakst satisfies the declaratory relief sought by Village League in its underlying case. However, if any of the parties believe that there are issues remaining to be resolved in this appeal that are distinct from those resolved in Bakst, that party may file a response to this order within 20 days informing this court of those remaining issues and requesting supplemental briefing if appropriate.

It is so ORDERED.

Maurin, C.J.

cc: Second Judicial District Court Dept. 7, District Judge
Littler Mendelson/Reno
Attorney General Catherine Cortez Masto/Carson City
Attorney General Catherine Cortez Masto/Las Vegas
Washoe County District Attorney Richard A. Gammick/Civil
Division
Washoe District Court Clerk

³Id. at ___, 148 P.3d at 725.

⁴Id. at ___, 148 P.3d at 726; see also Nev. Const. art. 10, § 1.

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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 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-

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.

20 GENERAL ALLEGATIONS

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

28 7. The plaintiff class consists of the owners of approximately 6713 parcels of real
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.
9

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.
16

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

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

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
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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

23 52. When property is taxed, property owners are entitled by the guarantees of due
24 process in the Nevada and U.S. Constitutions to meaningful notice and an opportunity to be
25 heard as to the amount of the assessment and the nature and validity of the assessment
26 methods.
27

28 53. Under the procedure established by the Washoe County Assessor's office, for
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
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24 55. The language of the notice, including, but not limited to, its emphasis on the fact
25 that it is not a tax bill and its failure to state the amount of taxes that will be due, suggests
26 improperly that it is informational and misleads the property owner recipient into the false
27 belief that a challenge to the tax bill cannot be made until it has been received.
28

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

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 to
9 be heard as to the accuracy of the assessed valuation and the validity of the assessment methods
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
7 WHEREFORE PLAINTIFF PRAYS AS FOLLOWS:

- 8 1. That the Court order that this action may be maintained as a class action.
- 9 2. That the Court declare that the use by the Washoe County Assessor's Office of
10 an inconsistent and varying view classification system applicable only to properties at Lake
11 Tahoe, of "teardowns" as comparable vacant land sales, of arbitrary increases in the value of
12 comparable sales as "time" adjustments, of an arbitrary lakefront formula, and of sales of
13 single-family residences as comparable sales and of unauthorized adjustments and modifica-
14 tions to the allocation method in the valuation of condominiums is invalid because such
15 methods of determining the taxable value for ad valorem tax purposes of improved real
16 property have not been properly adopted as regulations of the Nevada Tax Commission under
17 the Administrative Procedure Act.
- 18 3. That the Court declare that the Constitution and laws of the State of Nevada
19 establish the guaranty of uniformity of taxation and require standard assessment methods
20 within and between counties in the State of Nevada
- 21 4. That the Court declare that the disparity in valuation between property at Lake
22 Tahoe in Douglas and Washoe Counties for the tax year 2003/2004 violates the guarantee in
23 the Nevada State Constitution of a uniform, equal and just system of property taxation
24 throughout the State.
- 25 5. That the Court enter a mandatory injunction requiring the State Board of
26 Equalization to redress the disparity in valuation between property at Lake Tahoe in Douglas
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28

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

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

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

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

26 11. That the Court enjoin defendant Washoe County and its duly authorized agents
27 and representatives from using methods to determine for ad valorem tax purposes the taxable
28

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 13th day of November, 2003.

6 WOODBURN AND WEDGE

7
8 by Shelle Fulstone

9 Attorneys for plaintiff

10 Village League To Save Incline Assets, Inc.