

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

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

Appellant,

vs.

STATE OF NEVADA, on relation of
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,

Respondents.

No. 43441

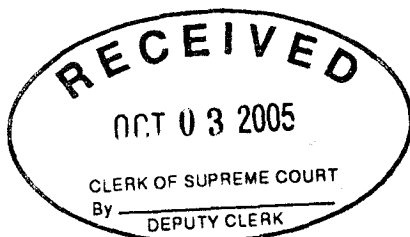
APPEAL

CV03-06922

SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF WASHOE
OF THE STATE OF NEVADA
HONORABLE PETER J. BREEN
DISTRICT JUDGE

APPELLANT'S OPENING BRIEF

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STATEMENT OF THE ISSUES

On behalf of its members, the Village League to Save Incline Assets, Inc. ("Village League") brought a complaint asking for declaratory relief that:

(1) The methods used by the Washoe County Assessor's Office are "de facto" regulations under NRS §360.280(1) which are invalid because they have not been adopted in compliance with the requirements of the Administrative Procedure Act;

(2) The State Department of Taxation and the Nevada Tax Commission have failed to meet their statutory duties and obligations to standardize assessment methods throughout the State;

(3) The State Board of Equalization and the State Department of Taxation have failed to meet their statutory duties to prevent a disparity in assessed valuation between similarly situated property at Lake Tahoe in Douglas and Washoe Counties that violates the Constitutional guarantee of uniformity;

(4) The "view classification" system adopted and used by the Washoe County Assessors' Office in the valuation of property at Crystal Bay and Incline Village violates the constitutional guarantees of equal protection and due process;

(5) The procedure adopted and used by the Washoe County Assessor's Office for notifying property owners of the assessed valuation of their real property and their rights to challenge that valuation violates due process.

The trial court dismissed all of the claims for relief based on the ground that the Village League had failed to exhaust its administrative remedies. The issues on appeal are as follows:

1. Whether claims can be barred by the failure to exhaust administrative remedies

1 when no administrative remedies exist?

2
3 2. Whether claims are barred by the failure to exhaust administrative remedies
4 where resort to such remedies would be inadequate and futile?

5 3. Whether the trial court should have exercised its discretion to excuse the
6 Village League from any requirement to exhaust administrative remedies where the League's
7 claims only involve issues of statutory interpretation or Constitutional law?

8
9 STATEMENT OF THE CASE

10 A. The Nature of the Case, the Course of
11 the Proceedings, and the Disposition Below.

12 This action seeks declaratory and related relief. The Village League is a non-
13 profit membership corporation created under the laws of the State of Nevada. Members of the
14 Village League own real property at Crystal Bay and Incline Village, in Washoe County,
15 Nevada, and have paid real property taxes to Washoe County. The system of real property
16 taxation in the State of Nevada is controlled by the defendant State Department of Taxation
17 ("Department"). The Department is headed by the defendant Tax Commission
18 ("Commission") which is responsible for the adoption of regulations to assure and maintain
19 fair and uniform real property taxation throughout the State as required by the Nevada State
20 Constitution. The defendant Washoe County, through defendant County Assessor and
21 defendant County Treasurer (collectively "Washoe County"), is responsible for the assessment
22 of real property within the County and for the collection of real property taxes based on those
23 assessments. The defendant State Board of Equalization ("State Board") is responsible for the
24 equalizing of real property valuations throughout all the counties of the State of Nevada.

25
26
27 The Village League filed its complaint on November 13, 2003. Appendix

1 (Apx.), pp. 1-18. Separate motions to dismiss were brought on behalf of Washoe County, the
2 State Board, and the Department/Commission. Id., pp. 19-56. After briefing and oral
3 argument, the trial court granted the motions on the basis that the members of the Village
4 League had failed to exhaust their administrative remedies. Id., pp. 114-119. This appeal
5 followed. Id., pp. 129-131.
6

7 B. Statement of Facts.
8

9 Section 1(1) of Article 10 of the Nevada Constitution requires that the Nevada
10 Legislature "provide by law for a uniform and equal rate of assessment and taxation" of real
11 and personal property throughout the state and "prescribe such regulations as shall secure a
12 just valuation for the taxation of all property. . . ." Under the system prescribed by the Nevada
13 Legislature, each county assessor is required to make an annual determination of the "taxable
14 value" of all real property, improved and unimproved, within that assessor's county. NRS
15 §361.260. The Department has the statutory duty to consult with and assist county assessors
16 to develop standard assessment procedures, to supervise these assessment procedures in the
17 various counties, and to advise county assessors in the application of such procedures. NRS
18 §360.215 (2); NRS §360.215(6). The Commission has the statutory obligation to establish
19 uniform regulations for the assessment of property by the county assessors of the various
20 counties and the county assessors have the duty to adopt and put into practice the regulations
21 established by the Commission for the purpose of maintaining uniformity of taxation
22 throughout the state. NRS §360.280(1). The State Board has the statutory responsibility of
23 equalizing of real property valuations throughout the State, including reviewing the tax rolls
24 of the various counties as equalized by the county boards of equalization and, if necessary,
25 adjusting the valuations in order to equalize values. NRS §361.395(1).
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1 Prior to 1981, improved real property was assessed at its "full cash value,"
2 which is defined as market value. See NRS §361.025. In 1981, however, in response to
3 rapidly increasing market values and California's Proposition 13, the Nevada Legislature
4 adopted a different approach to the valuation for assessment purposes of improved real
5 property. In what became known as the Tax Shift of 1981, the Nevada Legislature reduced
6 property taxes substantially, with the lost tax revenues to be made up by increases in sales
7 taxes, a significant part of which would be paid by tourists.
8

9 Accordingly, after 1981, the "taxable value" of improved real property for
10 property tax purposes was no longer its market value. Under the 1981 legislation, the "taxable
11 value" of improved real property is determined by valuing the land and the improvements
12 separately and then adding the two values. NRS §361.227(1). The "taxable value" of the land
13 portion is its market value as unimproved, vacant land with its highest and best use deemed to
14 be the actual use to which the improvements are being put. NRS §361.227(1)(a)(2). The
15 improvements themselves are valued as the cost of replacement less applicable depreciation
16 and obsolescence. NRS §361.227(1)(b). The total "taxable value" is the sum of the two
17 values.
18

19 The Commission adopted regulations under the revised statute to govern
20 county appraisers in the assessment of real property for tax purposes, including the following
21 regulation with respect to the valuation of land:
22

23 In making a physical appraisal, each county assessor shall
24 determine the full cash value of land by using market data
25 or a comparative approach to valuation. If sufficient market
26 data is not available, the county assessor may use one of the
27 following procedures:

28 1. Allocation (abstraction) procedure: An allocation of
the appraised total value of the property between the land and any
improvements added to the land.

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3 2. Anticipated use or development procedure: An estimate
4 of the value of undeveloped land which has the potential for
5 development, determined by deducting from the value of the parcel
6 as fully developed the cost of the development of the site, overhead,
7 the expenses of sales and any profit. The remaining portion is
8 attributable to undeveloped land.

9
10 3. Land residual technique: The income from a property is split
11 between the land and any improvements so that the portion allocated to
12 land can be capitalized into value. NAC 361.118 [Tax Comm'n, Property
13 Tax Reg. part No. 2, eff. 1-14-82]¹

14 County assessors are required by statute to certify, under penalty of perjury, that they have
15 complied with Commission regulations in assessing property. NRS §360.250(2).

16 This case arises out of the failure of Washoe County to comply with
17 Commission regulations for the assessment of property and the use by Washoe County of
18 unauthorized and invalid methods to increase the value of the land portion of improved real
19 property at Lake Tahoe contrary to the legislative intent of NRS §361.227. This case also
20 arises out of the failure of the Department and the Commission to adopt and enforce
21 standardized methods of assessment throughout the state and the failure of the State Board,
22 the Department and the Commission to equalize assessments in Washoe County and
23 assessments made in other counties including similarly situated property at Lake Tahoe in
24 Douglas County.

25 For example, for improved real property that, according to the assessor, has a
26 "view" of Lake Tahoe, Washoe County has adopted and used a view classification system,
27 that is both inconsistent and variable, to determine the base taxable value of the land portion
28 of that property. Apx., p. 6, lns. 9-12. This view classification system is not authorized by
Commission regulation and is not used anywhere else in Washoe County or in the State of

¹ This regulation has since been revised.

1 Nevada. Id., lns. 13-14. In valuing the land portion of improved real property at Lake Tahoe,
2 Washoe County also used sales of improved properties as "vacant" land sales for comparable
3 sales purposes. Apx., p. 6, lns. 19-23. The use of sales of improved properties rather than
4 sales of vacant property for comparable sales purposes is not done anywhere else in Washoe
5 County and is not authorized by the regulations adopted by the Commission to govern the
6 assessment of improved real property. Id., lns. 24-28. In valuing the land portion of improved
7 real property at Lake Tahoe, Washoe County also used a "time-value" method, in which an
8 increase of .08% per month was added to the value of comparable properties that had sold as
9 many as two or three years previously. Apx., p. 7, lns. 1-7. With the addition of this .08% per
10 month increase, these old sales were assigned a much higher value for comparable sales
11 purposes notwithstanding the fact that the actual value of real property in Incline Village and
12 Crystal Bay had not increased. Id., lns. 7-10. Again, the use of this arbitrary "time-value"
13 method violates the regulations adopted by the Commission to govern the assessment of
14 improved real property. Id., lns. 10-13. In yet another example, to determine the value of the
15 land portion of lakefront condominiums, Washoe County adopted and used an "allocation"
16 method such that condominiums of the same size in the very same building were assigned
17 different land values. Apx., p. 8, lns. 5-11. This "allocation" method also violates the
18 regulations adopted by the Commission for the assessment of improved real property. Id.

19 In this action, the Village League claims that the use of the above and other
20 unauthorized and unlawful assessment methods by Washoe County has resulted in the
21 excessive and unlawful valuation of real properties at Incline Village and Crystal Bay and the
22 imposition of excessive and unlawful taxes based on such valuations, all in violation of the
23 provision of the Nevada Constitution guaranteeing uniform and equal taxation and a just
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1 valuation of all property. Apx., p. 9, lns. 14-21. In fiscal year 2003-2004, while property
2 taxes in the rest of Washoe County rose less than 2.5% and some casinos had their taxes
3 reduced by as much as 31%, the average increase in property taxes for Incline Village and
4 Crystal Bay property owners was 31%, with increases of as much as 400% in some individual
5 cases. Id., p. 2, lns. 3-8.
6

7 The Village League claims that, by knowingly allowing these unlawful
8 assessment methods, the Department and the Commission have failed in their statutory duty to
9 establish and enforce standard assessment methods and to assure that assessments made in the
10 various counties are equal. By knowingly allowing these unlawful assessment methods, the
11 Commission has also tacitly adopted them as assessment regulations without satisfying the
12 requirements of the Administrative Procedure Act. In addition to its claims against Washoe
13 County, the Department and the Commission, the Village League claims that the State Board
14 of Equalization has failed to meet its statutory duties and obligations by both (1) affirming
15 property valuations based on illegal assessment methods used by the Washoe County
16 Assessor's Office and (2) failing to equalize the disparity in valuation for real property tax
17 purposes between similarly situated property at Lake Tahoe in Douglas and Washoe Counties.
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20 This case raises classic separation of powers issues. Washoe County has
21 implemented, and the State Board, the Department and the Commission have allowed,
22 assessment methods applicable only to Lake Tahoe that are designed to increase
23 disproportionately the value for assessment purposes of improved real property. This scheme
24 is contrary to both the Nevada Constitution and the intent of the Nevada Legislature in
25 providing property tax relief through the provisions of NRS §361.227. The members of the
26 Village League seek judicial intervention to enforce the legislative and Constitutional mandate
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1 of a fair, just and uniform system of real property taxation.
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3 ARGUMENT

4 I. INTRODUCTION.

5 This case involves discrete claims against different entities based on their statutory and
6 Constitutional duties and obligations. The trial court made no attempt to analyze the separate
7 claims or distinguish the parties. That court simply invoked the exhaustion of administrative
8 remedies doctrine as though it were an absolute bar that ended all discussion. The law is
9 otherwise. In the first place, the exhaustion of administrative remedies is not and cannot be
10 required where no administrative remedies even exist. See, e.g., Ambassador Insurance Corp.
11 v. Feldman, 95 Nev. 538, 539, 598 P.2d 630, 631 (1979). No administrative process exists for
12 the claims that the Village League asserts against the Department or the Commission. No
13 administrative process exists for any claims that do not fall within the relatively narrow
14 parameters of appeals to the county board of equalization from individual property valuations.
15

16 Furthermore, even where there is an administrative process, the application of the
17 exhaustion requirement is a matter of judicial discretion, depending on the particular
18 administrative process involved and on the nature of the issues raised. See, e.g., State v.
19 Glusman, 98 Nev. 412, 419, 651 P.2d 639, 644 (1982). The requirement of exhausting
20 administrative remedies has its origin and its justification in the effective and proper
21 administration of justice. The requirement is not imposed where those public policy purposes
22 are not served. See, e.g., TDM, Inc. v. Tax Commission, 103 P.3d 190, 191 (Utah App. 2004)
23 ("where purely legal question are raised that cannot be finally determined in an administrative
24 proceeding, the pursuit of the administrative proceeding may serve no purpose"). The role of
25 the court differs, for example, when the administrative decision is made by an administrative
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1 law judge as opposed to a board of non-lawyer citizen volunteers.

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3 The exhaustion requirement is also subject to specific exceptions. As this Court has
4 written, the exhaustion of administrative remedies doctrine

5 will not deprive the court of jurisdiction 'where the issues relate
6 solely to the interpretation or constitutionality of a statute.' [Citation
7 omitted.] Neither will the exhaustion doctrine deprive the court
8 of jurisdiction where initiation of administrative proceedings
9 would be futile. [Citation omitted.] State, Nevada Department
10 of Taxation v. Scotsman Manufacturing Company, 109 Nev. 252,
254-255, 849 P.2d 317, 319 (1993); see also, Metropolitan Water
District of Southern California v. State, Nevada Department of
Taxation, 96 Nev. 506, 665 P.2d 262 (1983).

11 The Village League's complaint does not challenge any individual valuation. Instead,
12 it challenges, on statutory and constitutional grounds, the assessment methods used by
13 Washoe County, the acquiescence of the State Board, the Department and the Commission in
14 those unlawful and unconstitutional assessment methods, and the failure of those state
15 agencies to meet their statutory duties to provide a uniform, fair and just system of real
16 property taxation throughout the State of Nevada. The Village League's complaint raises
17 issues of statutory and constitutional interpretation impacting thousands of real property
18 owners. These are not issues which must first be filtered through a board of citizen volunteers
19 who, although they may be intelligent, civic-minded and hard-working, have no legal training.
20 Just as courts do not sit in deferential review of a jury's determination of legal issues, the law
21 imposes no requirement that the legal and constitutional issues involved in real property
22 assessment and taxation be first heard and decided by a lay board of equalization. The
23 judgment of the trial court should be reversed and this action allowed to proceed to a
24 resolution on the merits.
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1 II. THE RULE 12(B)(5) DISMISSAL OF ALL THE VILLAGE LEAGUE'S
2 CLAIMS FOR RELIEF ON THE GROUNDS OF THE FAILURE TO EXHAUST
3 ADMINISTRATIVE REMEDIES WAS ERROR AND MUST BE REVERSED.

4 A. Standard of Review.

5 The dismissal of a complaint under NRCP 12(b)(5) for failure to state a claim
6 is reviewed under a rigorous standard. This Court "must construe the pleading liberally and
7 draw every fair intendment in favor of the [non-moving party]." Merluzzi v. Larson, 96 Nev.
8 409, 411, 610 P.2d 739, 741 (1980); see also, Squires v. Sierra Nevada Educational
9 Foundation, 107 Nev. 902, 905, 823 P.2d 256, 257 (1991). The Court must accept all factual
10 allegations of the complaint as true and cannot affirm a dismissal for failure to state a claim
11 "unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if
12 accepted by the trier of fact, would entitle him [or her] to relief." Edgar v. Wagner, 101 Nev.
13 226, 228, 699 P.2d 110, 112 (1985); see also, Vacation Village v. Hitachi America, 110 Nev.
14 481, 484, 874 P.2d 744, 746 (1994); Bratcher v. City of Las Vegas, 113 Nev. 502, 937 P.2d
15 485 (1997); Nevada Power Co. v. Haggerty, 115 Nev. 353, 358, 989 P.2d 870, 873 (1999);
16 Lubin v. Kunin, 117 Nev. 107, 116, fn. 1, 17 P.3d 422, 428, fn. 1 (2001). Under that standard
17 and the allegations of the Village League's complaint, the dismissal of this case for failure to
18 exhaust administrative remedies was reversible error.
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21 B. The Village League's Claims Are Not Legally Barred
22 By The Failure To Exhaust Administrative Remedies
23 Where No Administrative Remedies Exist In The Law.

24 It is axiomatic that the doctrine of exhaustion of administrative remedies
25 operates as a bar only where administrative remedies, in fact, exist and are available. As this
26 Court has recognized, the exhaustion of administrative remedies requirement applies only
27 when an administrative agency has original jurisdiction. Nevada Power Company v. Eighth
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1 Judicial District Court, 120 Nev. Adv. Opn. No. 97, 102 P.3d 578, 586 (Dec. 23, 2004).

2
3 Furthermore, as in Falcke v. Douglas County, 116 Nev. 583, 590 fn. 2, 3 P.3d 661, 665 fn.2
4 (2000), no statute requires the Village League or its members to pursue their claims against
5 the State Board, the Department or the Commission administratively. See also, Ambassador
6 Insurance Corp. v. Feldman, 95 Nev. 538, 539, 598 P.2d 630, 631 (1979) (where insurance
7 commissioner was powerless to award damages caused by defamation, "the doctrine of
8 exhaustion of administrative remedies is not applicable"); Engelmann v. Westergard, 98 Nev.
9 348, 353, 647 P.2d 385, 389 (1982) ("doctrine of exhaustion of remedies does not require
10 one to initiate and participate in proceedings where an administrative agency clearly
11 lacks jurisdiction . . .").
12

13 In the present case, for example, the only available administrative process is
14 created under NRS §361.345, which authorizes the county board of equalization to "determine
15 the valuation of any property assessed by the country assessor" and "change and correct any
16 valuation found to be incorrect." Among other claims, the Village League seeks a judicial
17 declaration that the assessment methodologies used by Washoe County are "de facto"
18 regulations under NRS §360.280(1) which are invalid because they have not been adopted in
19 compliance with the requirements of the Administrative Procedure Act, NRS Chapter 233B.
20
21 See, e.g., State Board of Equalization v. Sierra Pacific Power Company, 97 Nev. 461, 634
22 P.2d 461 (1981); Southern Nevada Operating Engineers Contract Compliance Trust v. Labor
23 Commissioner, State of Nevada, 121 Nev. Adv. Op. No. 54, ____ P.3d ____, 2005 WL
24 2233575 (Sept. 15, 2005). There is no "requirement" that this claim be brought first before
25 the county board of equalization. Any such requirement would make no sense. This claim
26 raises issues that only a court can decide.
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1 Another of the Village League's claims alleges that the State Board and the
2 Department have failed to meet their statutory obligations to equalize assessments throughout
3 the State and particularly, in this instance, between property at Lake Tahoe in Douglas and
4 Washoe Counties. No administrative process exists for the assertion of this claim. Although
5 it arises from the illegal assessment methods used by the Washoe County Assessor's Office, a
6 claim of unconstitutional, unequal assessment throughout the State is not a claim that can be
7 made to any county board of equalization. No county board of equalization has the statewide
8 or even bi-county power to equalize. Nor is there any available administrative process for
9 presenting that claim to the State Board or the Department itself.
10

11
12 The county board of equalization likewise has no jurisdiction over the Village
13 League's claims that the Department and Commission have failed to meet their statutory
14 obligations to standardize assessment methods and procedures throughout the state. A claim
15 that is undeniably outside the jurisdiction of the administrative agency cannot lawfully be
16 barred on the grounds that it was never presented to that body. The Department and the
17 Commission cannot avoid taking responsibility for their failures by claiming that taxpayers
18 are limited to the administrative process. The Department and the Commission are not part of
19 the administrative process for reviewing assessments of locally assessed properties and their
20 failures cannot be remedied through that process.
21

22
23 With respect to these and all the claims brought by the Village League as to
24 which no administrative remedy exists, the dismissal of the complaint for failure to exhaust
25 such non-existent remedies must be reversed.
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1 C. The Village League's Claims Are Not Barred By The
2 Failure To Exhaust Administrative Remedies When
3 Any Attempt To Exhaust Such Remedies Would Be Futile.

4 It is well established that the exhaustion of administrative remedies is not
5 required where the "resort to administrative remedies would be futile." Malecon Tobacco,
6 LLC v. State, Department of Taxation, 118 Nev. 837, 839, 59 P.3d 474, 476 (2002); State,
7 Nevada Dep't of Taxation v. Scotsman Mfg., 109 Nev. 252, 255, 849 P.2d 317, 319 (1993);
8 Engelmann v. Westergard, 98 Nev. 348, 353, 647 P.2d 385, 389 (1982). The trial court here
9 wrote that it "[did] not agree that the utilization of the administrative remedies would be futile
10 under the circumstances." Apx., p. 126, lns. 7-8. The court explained itself as follows:

12 The local and state entities that would be required to hear
13 any such challenge to these assessments are particularly
14 able to make these determinations due to their expertise and
15 knowledge of the subject matter involved. Furthermore, the
16 mere fact that there may be many claimants with similar claims
17 of overvaluation does not excuse the use of the administrative
18 process, as one successful challenge to these methods would
19 arguably correct the alleged impermissible valuation methods.
20 Apx., p. 126, lns. 8-15.

21 The trial court's findings and conclusions on this point simply find no support whatsoever
22 either in the record or the reality of this administrative process. That court's rejection of the
23 futility argument must be reversed.

24 The "local and state entities" that provide the available administrative process
25 here are the Washoe County Board of Equalization and the State Board of Equalization, both
26 composed of non-lawyers who may or may not have any background and experience with
27 business or real property. The trial court wholly fails to identify the actual "knowledge and
28 expertise" that purportedly makes these lay entities "particularly able" to decide the solely
legal issues presented in the complaint. Nor does the court explain how "one successful

1 challenge" at the administrative level could do more than correct one invalid assessment.

2
3 In truth, resort to the administrative process here is futile as a matter of both
4 procedure and practicality. The county and state boards of equalization are set up to decide
5 factual issues such as whether the assessor used the right square footage for the basement or
6 whether a certain comparable sale was at arms length. There are no such factual
7 determinations to be made here. Although cases can be consolidated where similar issues are
8 presented, county and state boards of equalization essentially just review the correctness of
9 individual property valuations. No individual valuation is being challenged here.
10

11 The Village League claims that the assessment methods and procedures
12 followed by Washoe County not only violate Nevada statutes and the regulations promulgated
13 by the Commission but also State and Federal Constitutional guarantees of equal protection
14 and due process. This lawsuit also alleges the failure of the various State agencies to perform
15 their statutory duties and obligations to implement a fair, just and uniform system of real
16 property taxation. The county and state boards of equalization are not created to decide
17 whether the assessment methods being used constitute invalid "de facto" regulations, whether
18 those methods violate the legislative intent of the enabling statute, Commission regulation, or
19 Constitutional provisions, whether State agencies have failed to meet their statutory
20 obligations or any other legal issue.
21
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23 Furthermore, even if the legal issues were before the County Board of
24 Equalization or the State Board of Equalization, neither board could do anything other than
25 seek the advice of its counsel. The County Board's legal counsel is the District Attorney's
26 Office, the same counsel who advises the Assessor's Office. The State Board's legal counsel
27 is the Attorney General, the same counsel who advises both the Department and the
28

1 Commission. Under those circumstances, resort to the administrative process is undeniably
2 futile. The Assistant District Attorney advising the County Board of Equalization could not
3 give an opinion that the methods used by the Assessor's Office were invalid or
4 unconstitutional while the Assistant District Attorney advising the Assessor's Office was
5 taking the opposite view. Similarly, the Deputy Attorney General advising the State Board
6 would not offer the opinion that the Department or Commission, advised by another Deputy
7 Attorney General, has failed or omitted to perform some duty or obligation under the statutes.
8
9

10 To the extent any of the Village League's claims could be brought before the
11 county or state boards of equalization, there could be no clearer instance of futility.
12 Accordingly, the exhaustion of administrative remedies doctrine is inapplicable and the trial
13 court's dismissal of those claims must be reversed.
14

15 D. The Court Should Exercise Its Discretion To Excuse Any
16 Requirement To Exhaust Administrative Remedies In This Case.

17 It is well established, as this Court has recognized, that the court has discretion
18 to excuse the requirement to exhaust administrative remedies under appropriate
19 circumstances. See, e.g., State v. Glusman, 98 Nev. 412, 419, 651 P.2d 639, 644 (1982); see
20 also, Malecon Tobacco, LLC v. State, Department of Taxation, 118 Nev. 837, 839, 59 P.3d
21 474, 476 (2002); see also, 73 C.J.S. *Public Administrative Law and Procedure*, §89, pp. 287-
22 290, and cases cited therein. The trial court here looked at the exercise of its discretion only
23 in the context of whether any of the statutes involved were directly challenged as
24 unconstitutional. Since the Village League does not make the claim that any of the statutes
25 involved are unconstitutional, the trial court ended its analysis and dismissed the complaint.
26 The trial court, however, both misunderstood the gravamen of the League's claims and the law
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28

1 governing the exercise of the court's discretion.

2
3 The Village League's complaint alleges that "view classification," "teardowns,"
4 and other methods used by Washoe County specifically to value improved real property at
5 Lake Tahoe violate not only Commission regulations but the Constitutional guarantees of
6 equal protection and due process. The Village League does not challenge the application of
7 these methods to particular properties. It challenges those methods as invalid on their face.
8 That brings this case squarely within the "facial invalidity" discretionary exception to the
9 requirement of exhaustion of administrative remedies expressly recognized in Glusman and
10 Malecon, supra.

11
12 Even if the issues presented by this case did not fall squarely within an already
13 recognized exception to the exhaustion requirement, more than a superficial analysis of those
14 issues is required before the doctrine is invoked and the case is dismissed. Whether
15 exhaustion is required or excused must ultimately be a function of what policy purposes are
16 served by that decision. Where the policies that underlie the exhaustion requirement are not
17 furthered by its imposition, where administrative expertise is unnecessary, or where the
18 imposition of the requirement serves no useful purpose, the parties should be excused from
19 any such requirement. See 73 C.J.S. *Public Administrative Law and Procedure*, §89; see also,
20 TDM, Inc. v. Tax Commission, 103 P.3d 190, 191 (Utah App., 2004); Brumley v. Tax
21 Commission, 868 P.2d 796, 799 (Utah 1993) (exhaustion of administrative remedies is not
22 required when the "determination [of legal questions] could not [be] avoided by any turn the
23 case might have taken in [an administrative proceeding]). The claims of the Village League
24 as alleged in this case raise issues of law only. Those merely legal issues are unrelated to any
25 purpose associated with the doctrine of exhaustion of administrative remedies. Requiring
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27
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1 exhaustion on the allegations of the Village League's complaint only serves to delay a
2
3 resolution of those legal issues and to shield state and local agencies from accountability. The
4 dismissal of the Village League's complaint must be reversed so that the League's claims may
5 be heard and adjudicated on their merits.

6 III. CONCLUSION -- THE RELIEF SOUGHT

7 The Village League respectfully requests this Court reverse the decision of the trial
8 court and remand this matter for a determination on the merits.
9

10 Dated this 30th day of September, 2005.

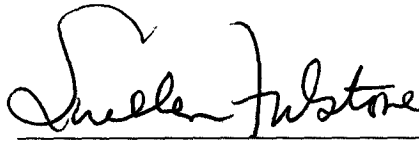
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2 **CERTIFICATE OF COMPLIANCE TO APPELLANT'S OPENING BRIEF**

3 I hereby certify that I have read this appellate brief, and to the best of my knowledge,
4 information, and belief, it is not frivolous or interposed for any improper purpose. I further certify
5 that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular
6 NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be
7 supported by a reference to the page of the transcript or appendix where the matter relied on is to
8 be found. I understand that I may be subject to sanctions in the event that the accompanying brief
9 is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

10 Dated this 30th day of September, 2005.

11
12 By: 
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CERTIFICATE OF SERVICE

Pursuant to NRAP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Road, Suite 500, Reno, NV 89511, and that on the 30th day of September, 2005, I served the foregoing document(s) described as follows:

APPELLANT'S OPENING BRIEF; JOINT APPENDIX

On the parties set forth below by:

 X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

 Personal delivery.

 Facsimile (FAX).

 Federal Express or other overnight delivery.

addressed as follows:

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Dated this 30th day of September, 2005.



Jill Nichol

