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HOWARD W. CONYERS

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Chief Deputy District Attorney
Nevada State Bar Number 4580
P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700
ATTORNEYS FOR WASHOE COUNTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

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

Case No. CV03-06922

Plaintiffs,

Dept. No. 7

vs.

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

Defendants.

NOTICE OF ENTRY OF ORDER

TO: Plaintiffs and their attorney of record, Suellen
Fulstone, Esq.

Please take notice that an Order was filed on April 13,
2010. A copy of that Order is attached hereto.

//

//

1 AFFIRMATION PURSUANT TO NRS 239B.030

2 The undersigned does hereby affirm that the preceding
3 document does not contain the social security number of any
4 person.

5 Dated this 13th day of April, 2010.

6 RICHARD A. GAMMICK
7 District Attorney

8 By: David C. Creekman
9 DAVID C. CREEKMAN
10 Chief Deputy District Attorney
11 P. O. Box 30083
12 Reno, NV 89520-3083
13 (775) 337-5700

14 ATTORNEYS FOR WASHOE COUNTY
15 WASHOE COUNTY ASSESSOR AND
16 WASHOE COUNTY TREASURER
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Howard W. Conyers

Clerk of the Court

Transaction # 1428093

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 their members and
others similarly situated; MARYANNE
INGEMANSON, Trustee of the Larry D.
and Maryanne B. Ingemanson Trust; DEAN
R. INGEMANSON, individually and as
Trustee of the Dean R. Ingemanson Trust; J.
ROBERT ANDERSON; and LES BARTA;
on behalf of themselves and others similarly
situated;

Case No.: CV03-06922

Dept. No.: 7

Petitioners,

vs.

STATE OF NEVADA on relation of the
State Board of Equalization; WASHOE
COUNTY; BILL BERRUM, Washoe
County Treasurer,

Respondents.

ORDER

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." Marbury v. Madison, 1 Cranch 137, 163, 5 U.S. 137 (1803)(directing a writ of mandamus to compel Secretary of State James Madison to deliver judicial commissions to which a party in former President John Adams' administration was entitled to receive).

1 Factual Background

2 On November 13, 2003, the Village League to Save Incline Assets filed a district court
3 complaint against the Nevada Department of Taxation, the Nevada Tax Commission, the State
4 Board of Equalization, the Washoe County Assessor and Washoe County Treasurer. On behalf
5 of their members, the complaint sought declaratory and injunctive relief concerning the property
6 tax assessment methods of respondents Washoe County Assessor, the Nevada Tax Commission
7 and the State Board of Equalization. Plaintiffs contended that the property assessment methods
8 and procedures used by the Washoe County Assessor were constitutionally invalid and that the
9 State Board of Equalization had failed to carry out its constitutional obligation to equalize
10 property valuations statewide. In addition to declaratory and injunctive relief, Village League
11 sought property tax refunds. Defendants moved for dismissal of all causes of action because
12 Village League failed to exhaust its administrative remedies prior to bringing suit. The district
13 court agreed and on June 2, 2004, dismissed Village League's complaint in its entirety. Village
14 League appealed the case to the Nevada Supreme Court.

15
16 Procedural History (Nevada Supreme Court)

17 On March 23, 2009, the Nevada Supreme Court issued an order affirming in part and
18 reversing in part the district court's order. While agreeing with the district court's determination
19 that the Village League was required to exhaust administrative remedies prior to bringing suit,
20 the Court noted that, "it is not clear, however, that Village League had available any means to
21 administratively challenge the State Board of Equalization's alleged failures to carry out its
22 equalization duties." Order, p. 6. Regarding the equalization claim, the court stated, "[t]he
23 district court should have proceeded to determine whether Village League's claim for injunctive
24 relief was viable." Thus, this matter is before this district court for the limited purpose of
25 determining the viability of Petitioners' claim for injunctive relief against the State Board of
26 Equalization and Washoe County entities as to its claim for equalization and related relief.

27 ///

28 ///

1 Procedural History (District Court)

2 On April 21, 2009, this court granted Petitioners' request to file an amended complaint in
3 conformity with the Supreme Court order. On June 19, 2009, Petitioners filed an *Amended*
4 *Complaint* solely seeking injunctive relief in the form of a writ of mandamus directed to the State
5 Board of Equalization, Washoe County and the Washoe County Treasurer. On October 15,
6 2009, Respondent Washoe County filed a *Motion to Dismiss* pursuant to NRCP 12 (b)(5) and
7 NRCP 12 (b)(6) and a *Motion to Strike Amended Complaint* pursuant to NRCP 15. Petitioners
8 collectively filed an *Opposition to the Motion to Strike* on November 2, 2009 and an *Opposition*
9 *to the Motion to Dismiss* on November 3, 2009. On November 12, 2009, Washoe County filed a
10 *Reply* and submitted the matter. On October 15, 2009, Respondent State of Nevada ex rel. State
11 Board of Equalization (hereinafter the State), filed a *Motion to Dismiss*. On November 2, 2009,
12 Petitioners collectively filed an *Opposition* to the State's *Motion*. The State filed a *Reply* on
13 November 13, 2009. This matter was submitted on December 3, 2009.

14 On January 8, 2010, this Court ordered the parties to present oral argument on all the
15 motions filed in this matter. On March 25, 2010, a hearing was held wherein the parties
16 presented three (3) hours of oral arguments. This Court has reviewed all the pleadings and has
17 read and considered the caselaw and exhibits submitted by all parties. This Order follows.

18
19 The Parties

20 Petitioner, Village League to Save Incline Assets, Inc., ("Village League") is a Nevada
21 non-profit membership corporation whose members are residential real property owners at
22 Incline Village and Crystal Bay in Washoe County, Nevada, and who owned such properties in
23 the 2003-2004 and 2004-2005 tax years.¹ Respondent State Board of Equalization is a Nevada
24 state agency created by the Nevada Legislature as set forth in NRS 361.375. The State Board of
25

26
27 ¹ Washoe County argues that Village League lacks to raise the equalization claims. This court rejects
28 Washoe County's efforts. Petitioners include the Association and its individual members. See, *I.C. Deal v.*
999 Lakeshore Association, et al, 94 Nev. 301, 579 P.2d 775 (1978). Additionally, Petitioners are not
seeking NRCP 23 class action certification at this time. Petitioner's *Opposition*, p.3. In light of this order,
standing and class action certification need not be reached at this time.

1 Equalization's duties include the annual statewide equalization under NRS 361.395 and the duty
2 to determine all appeals from the County Boards of Equalization under NRS 361.400.
3 Respondent Washoe County is a political subdivision of the State of Nevada which has the
4 power to levy taxes on the assessed value of real property. NRS 244.150. Respondent Bill
5 Berrum was the Washoe County Treasurer at the time of this suit's initiation. He has since
6 retired. Tammi Davis is presently the Washoe County Treasurer and is sued only in her official
7 capacity. The Washoe County Treasurer is the ex officio tax receiver for Washoe County and
8 receives all taxes assessed upon real property in the County.

9
10 Legal Arguments

11 In its Amended Complaint, Village League argues that "the similar treatment of similarly
12 situated taxpayers which is the state's standard of equalization requires the State Board of
13 Equalization, pursuant to its duty of statewide equalization under NRS §361.395, to equalize the
14 land valuation of all residential properties at Incline Village and Crystal Bay for the 2003 – 2004
15 tax year to 2002 – 2003 values. The State Board of Equalization has failed that duty to the loss
16 and damage of the members of the plaintiff class. A writ of mandamus must issue directing the
17 State Board of Equalization to declare those 2003 – 2004 Incline Village/Crystal Bay
18 assessments void and direct the payment of refunds with interest for the excess over the prior
19 constitutional valuation, pursuant to the Supreme Court's Bakst and Barta decisions." *Amended*
20 *Complaint*, p.6.

21 In its prayer for relief, Village League requests that "the court issue a preemptory writ of
22 mandamus requiring the State Board of Equalization to equalize the land portion of residential
23 real property at Incline Village and Crystal Bay to 2002 – 2003 values to reflect the area-wide
24 use by the Assessor of unlawful and unauthorized valuation methodologies resulting in
25 unconstitutional valuations and assessments, to certify those changes to Washoe County and to
26 direct the payment of refunds pursuant to NRS §361.405." Further, that "the court issue a
27 preemptory writ of mandamus requiring the State Board of Equalization further to equalize
28 property at Lake Tahoe in Douglas and Washoe Counties for the 2003 – 2004 tax year and

1 subsequent years as required by the Nevada Constitution and statutes, to certify those changes to
2 Washoe County and to direct the payment of refunds pursuant to NRS §361.405."

3 In its *Motion to Dismiss*, Washoe County raises a plethora of grounds for dismissal,
4 including: (1) that Mandamus relief is not available to Village League under the facts of this
5 case; (2) that Village League must exhaust administrative remedies pursuant to NRS §§ 361.355-
6 60 and §361.405(4) before seeking any refund for disparate property valuations; and (3) that
7 Village League's petitioners failure to pay their taxes "under protest" pursuant to NRS §361.420
8 precludes any right to seek any refund. In its *Motion to Dismiss*, the State argues that a Writ of
9 Mandamus is not available because Village League cannot show that it has a clear right to the
10 relief requested and they have an adequate, plain and speedy right to the relief requested under
11 the newly established rules and procedures of the State Board of Equalization.

12
13 Writ of Mandamus

14 The Writ of Mandamus is an ancient process going back to the reign of Edward II. (1284-
15 1327). "A writ of mandamus is available to compel the performance of an act that the law
16 requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of
17 discretion or an arbitrary or capricious exercise of discretion." *Sims v. Eighth Judicial District*
18 *Court*, ___ Nev. ___, 206 P.3d 980, 982 (2009)(citing NRS 34.160). Writs of mandamus are
19 extraordinary remedies and are available only when the petitioner has no "plain, speedy and
20 adequate remedy in the ordinary course of law." *D.R. Horton v. Eighth Jud. Dist. Ct.*, 123 Nev.
21 468,474, 168 P.3d 731 (2007)(citations omitted). This extraordinary writ will issue when the
22 right to the relief is clear and the petitioners have no other remedy in the ordinary course of the
23 law. *Gumm v. Nevada Dep't of Education*, 121 Nev. 371, 375, 113 P.3d 853 (2005). The writ of
24 mandamus "ought to be used upon all occasions where the law has established no specific
25 remedy, and where in justice and good government there ought be one." *Marbury v. Madison*, 1
26 Cranch 137, 169 (1803)(internal citations omitted). It is axiomatic that a writ of mandamus
27 should not issue in a case in which a party has a plain, speedy and adequate remedy at law.

1 "Taxable Value" Property Tax System

2 Nevada is the only State in the Nation that employs a "taxable value" property tax system
3 where land is valued at market price and improvements at replacement cost new, less 1.5 percent
4 depreciation per year based upon age of the structure. In this system, residential property is
5 valued by valuing the land and improvements separately with the sum of the two values
6 constituting the property as "taxable" value. While the improvements are valued by formula
7 which is fairly simple and direct, the land is valued at the market value for vacant land. The
8 market analysis for vacant land is workable as long as there are sufficient comparable vacant
9 land sales. The problem with Nevada's taxable-value system (as opposed to a "market value"
10 system) is that without sufficient comparable vacant land sales, the "taxable value" assessment
11 system fails.
12

13 Market Value Property Tax System

14 In a "market value" property tax system, whether it is comparable sales, allocation
15 between land and improvements, or income, the resulting determination comes up against the
16 actual market value which is the standard against which property valuation is assessed. In
17 Nevada's "taxable value" property tax system, there is no "taxable value" standard. Although
18 regulations identified alternative valuation methodologies, these provide no model for their
19 uniform application.

20 Perhaps the only thing all parties agree upon is that there is no objective, external
21 standard either for taxable value as a whole or for the land portion of the taxable value of
22 residential real property because the "taxable value" of residential property bears no relationship
23 to the market value of that property. There are simply no underlying studies or evidence to
24 assure uniformity with a comparable sales analysis estimate of value. In the absence of an
25 external, objective market standard, the only way to achieve uniformity of taxable value is to
26 assure that the Assessors use uniform methods of determining taxable value. Only if similar
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1 properties are valued using the same methodology can the constitutional requirement of
2 uniformity be satisfied. This can only be done on a case-by-case individual appraisal basis.²

3
4 Ratio Study

5 A "Ratio Study" means an evaluation of the quality and level of assessment of a class or
6 group of properties in a county which prepares the assessed valuations established by the county
7 assessor for a sampling of those properties to an estimate of the taxable value of the property by
8 the Department of Taxation or an independent appraiser or the sales price of the property as
9 appropriate. A ratio study is designed to evaluate the appraisal performance or determine taxable
10 value through comparison of appraised or assessed values estimated for tax purposes with
11 independent estimates of value based upon either sale prices or independent appraisals. A
12 comparison of the estimated value produced by the Assessor on each parcel to the estimate of
13 taxable value produced by the Department of Taxation is called a "ratio."

14 The "ratio study" involves the determination of assessment levels by computing the
15 central tendencies (mean, median and aggregate ratios) of assessment ratios. Nevada specifies
16 the use of the median ratio, the aggregate ratio, and the coefficient of dispersion of the median to
17 evaluate both the total property assessment and the assessment of each major property class. The
18 "median" is the most widely used measure because it is less affected by extreme ratios and is the
19 preferred measure for monitoring appraisal performance or the need for reappraisal.

20
21 The District Court Mandate

22 The Nevada Supreme Court remanded this case for the sole issue of determining whether
23 Village League is entitled to injunctive relief on its equalization claim against the Respondents.
24 Village League seeks a writ of mandamus directing the State Board of Equalization to "declare
25 those 2003-2004 Incline Village/Crystal Bay assessments void and direct the payment of refunds

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28 ² While there are only a few landowners in this lawsuit, all parties agree that the remaining 8700 property
owners in Incline Village and Crystal Bay would be entitled to seek identical relief from this court.

1 for those excess over the prior constitutional valuation, pursuant to the Supreme Court Bakst³
2 and Barta⁴ decisions." *Amended Complaint*, p. 6. If Village League has no "plain, just and
3 speedy remedy at law," the writ of mandamus should issue.

4
5 Legal Analysis

6 Village League argues that the State Board of Equalization must be directed to equalize
7 all of Incline Village and Crystal Bay for the 2003-2004 tax year by returning the land values to
8 their 2002-2003 levels. Village League asks "[t]hat the Court issue a peremptory writ of
9 mandamus requiring the State Board of Equalization to equalize the land portion of residential
10 real property at Incline Village and Crystal Bay to 2002-2003 values..." and to "direct the
11 payment of refunds ..." *Amended Complaint*, p. 7.

12 Village League seeks injunctive relief directing the State Board of Equalization to
13 employ a specific statistical method which will equalize property values statewide and
14 (hopefully) lower its members' property taxes resulting in a refund to its members. Village
15 League argues that only a writ of mandamus directing the State Board to employ a specific
16 statistical method can avoid the application of the methods found to be unconstitutional in Barta
17 and Bakst. However, Village League's own expert admits there is no statistical method that
18 Nevada regulators can adopt that would effectively measure whether state-wide equalization is
19 occurring given state's "taxable-value" property assessment system. See, Plaintiff Response to
20 Statement of New Authority, Ex. 2.⁵

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23 ³ State ex rel State Bd of Equalization v. Bakst, 122 Nev. 1403 (2006)

24 ⁴ State ex rel State Bd of Equalization v. Barta, 124 Nev. 58 (2008)

25 ⁵ In an interview with Plaintiff expert Richard Almy, he was asked whether there was "any statistical
26 method that Nevada regulators can adopt to effectively measure whether statewide equalization is
27 occurring in the state's taxable-value system, Almy said "I don't know." Nevada Policy Research
28 Institute, (February 26, 2010), p. 2. Clearly, if Plaintiff's expert cannot identify any statistical method which
would achieve state-wide equalization under Nevada's taxable-value system, this Court cannot be
expected to be any more discerning. This Court can no more order the State Board of Equalization to
employ a statistical method that does not exist than it can order it to solve the Hodge Conjecture of
algebraic topology.

1 Nor is this district court the appropriate forum to argue for an adjustment of taxable
2 property valuation. That proper forum is before the State Board of Equalization. While such a
3 procedure did not exist in 2003, it does now.
4

5 Adoption and Amendment of Permanent Regulations of State Board

6 On March 1, 2010, the State Board of Equalizations held hearings on a proposal to adopt
7 and amend NAC Chapter 361 with respect to the process of equalization of property values for
8 property tax purposes by the State Board of Equalizations. The purpose of these hearings were to
9 address the Nevada Supreme Court's decisions in Bakst and Barta and to determine whether
10 property in Nevada has been assessed uniformly in accordance with the methods of appraisal and
11 at the assessment level required by law. (Respondents *Statement of New Authority* Ex. 3 (Notice
12 of Public Hearing for the Adoption and Amendment of Permanent Regulations of the State
13 Board of Equalization, Jan. 28, 2010). Specifically, the hearing was held to determine whether
14 the taxable values specified in the tax roll of any county must be increased or decreased to
15 equalize property valuations in Nevada. Further, the new regulations will provide the criteria to
16 determine whether property has been assessed uniformly, including a review of relevant ratio
17 studies, performance audits and any other relevant evidence including a systematic investigation
18 and evaluation by the State Board of Equalization of the procedures and operations of the county
19 assessors. These rules, regulations and procedures are in response to the Nevada Supreme
20 Court's decisions in Barta and Bakst. (Petitioners' *Response to Statement of New Authority* Ex. 1
21 at 25-26 (Transcript of Proceedings, Dept. of Taxation, State Board of Equalization, Mar. 1,
22 2010).

23 While there appears to have been no regulations or procedures pertaining to the process
24 of equalization of property values for property tax purposes in 2003, that procedural deficit has
25 been remedied by the recent promulgation of rules, procedures and regulations by the State
26 Board of Equalization. These procedures provide aggrieved citizens like Incline Village and
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1 Crystal Bay residents a forum to vet the tax valuation of their property before the State Board of
2 Equalization.⁶ This is precisely the relief sought by Village League in its *Amended Complaint*.

3 These rules allow the State Board of Equalization to equalize property tax valuations by
4 requiring reappraisal, or in the alternative, requiring the increase or decrease of the taxable value
5 of these properties. As such, even if mandamus relief would have been available to compel the
6 State Board of Equalization to fulfill its general equalization duty in 2003, mandamus relief is
7 inappropriate now because the State Board is complying with its statutory duty under NRS
8 361.395. The issuance of a writ of mandamus to compel the State Board of Equalization to
9 perform a function it is already performing is an inappropriate exercise of this court's discretion
10 under the law.

11 The Nevada Supreme Court has directed district courts to "refrain from exercising
12 jurisdiction so that technical issues can first be determined by an administrative agency." *Sports*
13 *Form, Inc. v. Leroy's Horse and Sports Place*, 108 Nev. 37, 823 P.2d 901 (1992). This is to
14 promote "(1) the desire for uniformity of regulation and, (2) the need for an initial consideration
15 by a tribunal with specialized knowledge." *Id.* (citing *Kappler v. Delta Air Lines*, 539 F.2d
16 165, 168-169 (C.App. D.C. 1976). These laudable policies are better served by allowing the State
17 Board of Equalization to apply its new equalization regulations without district court
18 interference. In this manner, each member of Village League may achieve the result they seek
19 without the problems attendant to lengthy, expensive and inconsistent litigation results. "The
20 exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and
21 conserves judicial resources, so its purposes are valuable; requiring exhaustion of administrative
22 remedies often resolves disputes without the need for judicial involvement." *Allstate Ins. Co. v.*
23 *Thorpe*, 123 Nev. 565, 170 P.3d 989, 993-94 (2007).

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27 ⁶ "[W]hat these regulations provide is a process, an orderly process to gather information, to make sure all
28 the parties, including the taxpayers, are included, and the counties who have to implement any
equalization order you may come up with. So, the whole purpose here is to ensure that you have looked
at a broad range of information and that you have conducted your equalization duties in an open setting
with input from taxpayers." (Transcript of Proceedings, March 1, 2010, p.46).

1 Conclusion

2 A writ of mandamus is an extraordinary remedy which should issue only where the right
3 to relief is clear and the petitioner has no plain, speedy or adequate remedy in the ordinary course
4 of the law. In this case, Petitioners are seeking a judicial remedy that does not exist under
5 Nevada's present taxable-value system. Additionally, Petitioners ask this Court to direct the State
6 Board of Equalization to exercise its regulatory discretion to achieve a predetermined result
7 which is an impermissible exercise of this court's lawful authority. Finally, Petitioners have a
8 plain, speedy and adequate remedy at law through the newly promulgated procedures of the State
9 Board of Equalization. The issuance writ of mandamus is not appropriate in this case. Therefore,

10
11 **IT IS HEREBY ORDERED**

12 Defendant Washoe County's *Motion to Dismiss* is **GRANTED**;

13 Defendant State of Nevada's *Motion to Dismiss* is **GRANTED**;

14
15 Petitioner VILLAGE LEAGUE's *Amended Complaint* is **DISMISSED**.

16
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19 DATED this 13th day of April, 2010.

20
21 Patrick Flanagan
22 PATRICK FLANAGAN
23 District Judge
24
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2
3 **CERTIFICATE OF SERVICE**
4

5 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
6 Judicial District Court of the State of Nevada, County of Washoe; that on the 13th day of
7 April, 2010, I electronically filed the foregoing with the Clerk of the Court by using the ECF
8 system which will send a notice of electronic filing to the following:

9 Dennis Belcourt, Esq. and Deonne Contine, Esq. for State Board of Equalization;
10 Suellen Fulstone, Esq. for Village League to Save Incline Assets, Inc; and

11 I deposited in the Washoe County mailing system for postage and mailing with the
12 United States Postal Service in Reno, Nevada, a true copy of the attached document,
13 addressed to:

14 David Creekman, Esq.
15 Deputy District Attorney
16 Washoe county District Attorney's Office
17 [via interoffice mail]

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Maureen Conway

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Suellen Fulstone, Esq.
Morris Peterson
6100 Neil Road, Suite 555
Reno, NV 89511

Dennis Belcourt
Deputy Attorney General
Deonne Contine
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701-4717

Dated this 13th day of April, 2010.

Tina Bledsoe
Tina Bledsoe

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2010 APR 20 PM 3:48

HOWARD W. CONYERS.

BY: *[Signature]*
DEPUTY

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DAVID C. CREEKMAN

Chief Deputy District Attorney

Nevada State Bar Number 4580

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20

Defendants.

21

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23

NOTICE OF ENTRY OF AMENDED ORDER

24

TO: Plaintiffs and their attorney of record,
Suellen Fulstone, Esq.

25

26

Please take notice that an Amended Order was filed on April

CV03-06922
VILLAGE LEAGUE TO SAVE INCLINE
DISTRICT COURT
WASHOE COUNTY
NOTICE
DC-9900016529-026
ETAL VS DEP 15 Pages
04/20/2010 03:48 PM
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1 13, 2010. A copy of that order is attached hereto.

2 AFFIRMATION PURSUANT TO NRS 239B.030

3 The undersigned does hereby affirm that the preceding
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6 Dated this 19th day of April, 2010.

7 RICHARD A. GAMMICK
8 District Attorney

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Dated this 19th day of April, 2010.

MICHELLE FOSTER

FILED

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Howard W. Conyers

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Transaction # 1429203

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AMENDED ORDER

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no remedy for the violation of a vested legal right." Marbury v. Madison, 1 Cranch 137, 163, 5
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9 State Board of Equalization had failed to carry out its constitutional obligation to equalize
10 property valuations statewide. In addition to declaratory and injunctive relief, Village League
11 sought property tax refunds. Defendants moved for dismissal of all causes of action because
12 Village League failed to exhaust its administrative remedies prior to bringing suit. The district
13 court agreed and on June 2, 2004, dismissed Village League's complaint in its entirety. Village
14 League appealed the case to the Nevada Supreme Court.

15
16 Procedural History (Nevada Supreme Court)

17 On March 23, 2009, the Nevada Supreme Court issued an order affirming in part and
18 reversing in part the district court's order. While agreeing with the district court's determination
19 that the Village League was required to exhaust administrative remedies prior to bringing suit,
20 the Court noted that, "it is not clear, however, that Village League had available any means to
21 administratively challenge the State Board of Equalization's alleged failures to carry out its
22 equalization duties." Order, p. 6. Regarding the equalization claim, the court stated, "[t]he
23 district court should have proceeded to determine whether Village League's claim for injunctive
24 relief was viable." Thus, this matter is before this district court for the limited purpose of
25 determining the viability of Petitioners' claim for injunctive relief against the State Board of
26 Equalization and Washoe County entities as to its claim for equalization and related relief.

27 ///

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1 Procedural History (District Court)

2 On April 21, 2009, this court granted Petitioners' request to file an amended complaint in
3 conformity with the Supreme Court order. On June 19, 2009, Petitioners filed an *Amended*
4 *Complaint* solely seeking injunctive relief in the form of a writ of mandamus directed to the State
5 Board of Equalization, Washoe County and the Washoe County Treasurer. On October 15,
6 2009, Respondent Washoe County filed a *Motion to Dismiss* pursuant to NRCP 12 (b)(5) and
7 NRCP 12 (b)(6) and a *Motion to Strike Amended Complaint* pursuant to NRCP 15. Petitioners
8 collectively filed an *Opposition to the Motion to Strike* on November 2, 2009 and an *Opposition*
9 *to the Motion to Dismiss* on November 3, 2009. On November 12, 2009, Washoe County filed a
10 *Reply* and submitted the matter. On October 15, 2009, Respondent State of Nevada ex rel. State
11 Board of Equalization (hereinafter the State), filed a *Motion to Dismiss*. On November 2, 2009,
12 Petitioners collectively filed an *Opposition* to the State's *Motion*. The State filed a *Reply* on
13 November 13, 2009. This matter was submitted on December 3, 2009.

14 On January 8, 2010, this Court ordered the parties to present oral argument on all the
15 motions filed in this matter. On March 25, 2010, a hearing was held wherein the parties
16 presented three (3) hours of oral arguments. This Court has reviewed all the pleadings and has
17 read and considered the caselaw and exhibits submitted by all parties. This Order follows.

18
19 The Parties

20 Petitioner, Village League to Save Incline Assets, Inc., ("Village League") is a Nevada
21 non-profit membership corporation whose members are residential real property owners at
22 Incline Village and Crystal Bay in Washoe County, Nevada, and who owned such properties in
23 the 2003-2004 and 2004-2005 tax years.¹ Respondent State Board of Equalization is a Nevada
24 state agency created by the Nevada Legislature as set forth in NRS 361.375. The State Board of

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27 ¹ Washoe County argues that Village League lacks to raise the equalization claims. This court rejects
28 Washoe County's efforts. Petitioners include the Association and its individual members. See, *I.C. Deal v.*
999 Lakeshore Association, et al., 94 Nev. 301, 579 P.2d 775 (1978). Additionally, Petitioners are not
seeking NRCP 23 class action certification at this time. Petitioner's *Opposition*, p.3. In light of this order,
standing and class action certification need not be reached at this time.

1 Equalization's duties include the annual statewide equalization under NRS 361.395 and the duty
2 to determine all appeals from the County Boards of Equalization under NRS 361.400.
3 Respondent Washoe County is a political subdivision of the State of Nevada which has the
4 power to levy taxes on the assessed value of real property. NRS 244.150. Respondent Bill
5 Berrum was the Washoe County Treasurer at the time of this suit's initiation. He has since
6 retired. Tammi Davis is presently the Washoe County Treasurer and is sued only in her official
7 capacity. The Washoe County Treasurer is the ex officio tax receiver for Washoe County and
8 receives all taxes assessed upon real property in the County.

9
10 Legal Arguments

11 In its Amended Complaint, Village League argues that "the similar treatment of similarly
12 situated taxpayers which is the state's standard of equalization requires the State Board of
13 Equalization, pursuant to its duty of statewide equalization under NRS §361.395, to equalize the
14 land valuation of all residential properties at Incline Village and Crystal Bay for the 2003 -2004
15 tax year to 2002 - 2003 values. The State Board of Equalization has failed that duty to the loss
16 and damage of the members of the plaintiff class. A writ of mandamus must issue directing the
17 State Board of Equalization to declare those 2003 - 2004 Incline Village/Crystal Bay
18 assessments void and direct the payment of refunds with interest for the excess over the prior
19 constitutional valuation, pursuant to the Supreme Court's Bakst and Barta decisions." *Amended*
20 *Complaint*, p.6.

21 In its prayer for relief, Village League requests that "the court issue a preemptory writ of
22 mandamus requiring the State Board of Equalization to equalize the land portion of residential
23 real property at Incline Village and Crystal Bay to 2002 - 2003 values to reflect the area-wide
24 use by the Assessor of unlawful and unauthorized valuation methodologies resulting in
25 unconstitutional valuations and assessments, to certify those changes to Washoe County and to
26 direct the payment of refunds pursuant to NRS §361.405." Further, that "the court issue a
27 peremptory writ of mandamus requiring the State Board of Equalization further to equalize
28 property at Lake Tahoe in Douglas and Washoe Counties for the 2003 - 2004 tax year and

1 subsequent years as required by the Nevada Constitution and statutes, to certify those changes to
2 Washoe County and to direct the payment of refunds pursuant to NRS §361.405."

3 In its *Motion to Dismiss*, Washoe County raises a plethora of grounds for dismissal,
4 including: (1) that Mandamus relief is not available to Village League under the facts of this
5 case; (2) that Village League must exhaust administrative remedies pursuant to NRS §§ 361.355-
6 60 and §361.405(4) before seeking any refund for disparate property valuations; and (3) that
7 Village League's petitioners failure to pay their taxes "under protest" pursuant to NRS §361.420
8 precludes any right to seek any refund. In its *Motion to Dismiss*, the State argues that a Writ of
9 Mandamus is not available because Village League cannot show that it has a clear right to the
10 relief requested and they have an adequate, plain and speedy right to the relief requested under
11 the newly established rules and procedures of the State Board of Equalization.

12 13 Writ of Mandamus

14 The Writ of Mandamus is an ancient process going back to the reign of Edward II. (1284-
15 1327). "A writ of mandamus is available to compel the performance of an act that the law
16 requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of
17 discretion or an arbitrary or capricious exercise of discretion." *Sims v. Eighth Judicial District*
18 *Court*, ___ Nev. ___, 206 P.3d 980, 982 (2009)(citing NRS 34.160). Writs of mandamus are
19 extraordinary remedies and are available only when the petitioner has no "plain, speedy and
20 adequate remedy in the ordinary course of law." *D.R. Horton v. Eighth Jud. Dist. Ct.*, 123 Nev.
21 468,474, 168 P.3d 731 (2007)(citations omitted). This extraordinary writ will issue when the
22 right to the relief is clear and the petitioners have no other remedy in the ordinary course of the
23 law. *Gumm v. Nevada Dep't of Education*, 121 Nev. 371, 375, 113 P.3d 853 (2005). The writ of
24 mandamus "ought to be used upon all occasions where the law has established no specific
25 remedy, and where in justice and good government there ought be one." *Marbury v. Madison*, 1
26 Cranch 137, 169 (1803)(internal citations omitted). It is axiomatic that a writ of mandamus
27 should not issue in a case in which a party has a plain, speedy and adequate remedy at law.

1 "Taxable Value" Property Tax System

2 Nevada is the only State in the Nation that employs a "taxable value" property tax system
3 where land is valued at market price and improvements at replacement cost new, less 1.5 percent
4 depreciation per year based upon age of the structure. In this system, residential property is
5 valued by valuing the land and improvements separately with the sum of the two values
6 constituting the property as "taxable" value. While the improvements are valued by formula
7 which is fairly simple and direct, the land is valued at the market value for vacant land. The
8 market analysis for vacant land is workable as long as there are sufficient comparable vacant
9 land sales. The problem with Nevada's taxable-value system (as opposed to a "market value"
10 system) is that without sufficient comparable vacant land sales, the "taxable value" assessment
11 system fails.

12
13 Market Value Property Tax System

14 In a "market value" property tax system, whether it is comparable sales, allocation
15 between land and improvements, or income, the resulting determination comes up against the
16 actual market value which is the standard against which property valuation is assessed. In
17 Nevada's "taxable value" property tax system, there is no "taxable value" standard. Although
18 regulations identified alternative valuation methodologies, these provide no model for their
19 uniform application.

20 Perhaps the only thing all parties agree upon is that there is no objective, external
21 standard either for taxable value as a whole or for the land portion of the taxable value of
22 residential real property because the "taxable value" of residential property bears no relationship
23 to the market value of that property. There are simply no underlying studies or evidence to
24 assure uniformity with a comparable sales analysis estimate of value. In the absence of an
25 external, objective market standard, the only way to achieve uniformity of taxable value is to
26 assure that the Assessors use uniform methods of determining taxable value. Only if similar
27
28

1 properties are valued using the same methodology can the constitutional requirement of
2 uniformity be satisfied. This can only be done on a case-by-case individual appraisal basis.²

3
4 Ratio Study

5 A "Ratio Study" means an evaluation of the quality and level of assessment of a class or
6 group of properties in a county which prepares the assessed valuations established by the county
7 assessor for a sampling of those properties to an estimate of the taxable value of the property by
8 the Department of Taxation or an independent appraiser or the sales price of the property as
9 appropriate. A ratio study is designed to evaluate the appraisal performance or determine taxable
10 value through comparison of appraised or assessed values estimated for tax purposes with
11 independent estimates of value based upon either sale prices or independent appraisals. A
12 comparison of the estimated value produced by the Assessor on each parcel to the estimate of
13 taxable value produced by the Department of Taxation is called a "ratio."

14 The "ratio study" involves the determination of assessment levels by computing the
15 central tendencies (mean, median and aggregate ratios) of assessment ratios. Nevada specifies
16 the use of the median ratio, the aggregate ratio, and the coefficient of dispersion of the median to
17 evaluate both the total property assessment and the assessment of each major property class. The
18 "median" is the most widely used measure because it is less affected by extreme ratios and is the
19 preferred measure for monitoring appraisal performance or the need for reappraisal.

20
21 The District Court Mandate

22 The Nevada Supreme Court remanded this case for the sole issue of determining whether
23 Village League is entitled to injunctive relief on its equalization claim against the Respondents.
24 Village League seeks a writ of mandamus directing the State Board of Equalization to "declare
25 those 2003-2004 Incline Village/Crystal Bay assessments void and direct the payment of refunds

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28 ² While there are only a few landowners in this lawsuit, all parties agree that the remaining 8700 property
owners in Incline Village and Crystal Bay would be entitled to seek identical relief from this court.

1 for those excess over the prior constitutional valuation, pursuant to the Supreme Court Bakst³
2 and Barta⁴ decisions." *Amended Complaint*, p. 6. If Village League has no "plain, just and
3 speedy remedy at law," the writ of mandamus should issue.

4
5 Legal Analysis

6 Village League argues that the State Board of Equalization must be directed to equalize
7 all of Incline Village and Crystal Bay for the 2003-2004 tax year by returning the land values to
8 their 2002-2003 levels. Village League asks "[t]hat the Court issue a peremptory writ of
9 mandamus requiring the State Board of Equalization to equalize the land portion of residential
10 real property at Incline Village and Crystal Bay to 2002-2003 values..." and to "direct the
11 payment of refunds ..." *Amended Complaint*, p. 7.

12 Village League seeks injunctive relief directing the State Board of Equalization to
13 employ a specific statistical method which will equalize property values statewide and
14 (hopefully) lower its members' property taxes resulting in a refund to its members. Village
15 League argues that only a writ of mandamus directing the State Board to employ a specific
16 statistical method can avoid the application of the methods found to be unconstitutional in Barta
17 and Bakst. However, Village League's own expert admits there is no statistical method that
18 Nevada regulators can adopt that would effectively measure whether state-wide equalization is
19 occurring given state's "taxable-value" property assessment system. *See, Plaintiff Response to*
20 *Statement of New Authority*, Ex. 2.⁵ Nor is this district court the appropriate forum to argue for
21 an adjustment of taxable property valuation. That proper forum is before the State Board of
22 Equalization. While such a procedure did not exist in 2003, it does now.

23
24 ³ State ex rel State Bd of Equalization v. Bakst, 122 Nev. 1403 (2006)

25 ⁴ State ex rel State Bd of Equalization v. Barta, 124 Nev. 58 (2008)

26 ⁵ In an interview with Petitioners' expert Richard Almy, he was asked whether there was "any statistical
27 method that Nevada regulators can adopt to effectively measure whether statewide equalization is
28 occurring in the state's taxable-value system, Almy said "I don't know." Nevada Policy Research
Institute, (February 26, 2010), p. 2. Clearly, if Petitioners' expert cannot identify *any* statistical method
which would achieve state-wide equalization under Nevada's taxable-value system, this Court cannot be
expected to be any more discerning.

1
2 Adoption and Amendment of Permanent Regulations of State Board

3 On March 1, 2010, the State Board of Equalizations held hearings on a proposal to adopt
4 and amend NAC Chapter 361 with respect to the process of equalization of property values for
5 property tax purposes by the State Board of Equalizations. The purpose of these hearings were to
6 address the Nevada Supreme Court's decisions in Bakst and Barta and to determine whether
7 property in Nevada has been assessed uniformly in accordance with the methods of appraisal and
8 at the assessment level required by law. (Respondents *Statement of New Authority* Ex. 3 (Notice
9 of Public Hearing for the Adoption and Amendment of Permanent Regulations of the State
10 Board of Equalization, Jan. 28, 2010). Specifically, the hearing was held to determine whether
11 the taxable values specified in the tax roll of any county must be increased or decreased to
12 equalize property valuations in Nevada. Further, the new regulations will provide the criteria to
13 determine whether property has been assessed uniformly, including a review of relevant ratio
14 studies, performance audits and any other relevant evidence including a systematic investigation
15 and evaluation by the State Board of Equalization of the procedures and operations of the county
16 assessors. These rules, regulations and procedures are in response to the Nevada Supreme
17 Court's decisions in Barta and Bakst. (Petitioners' *Response to Statement of New Authority* Ex. 1
18 at 25-26 (Transcript of Proceedings, Dept. of Taxation, State Board of Equalization, Mar. 1,
19 2010).

20 While there appears to have been no regulations or procedures pertaining to the process
21 of equalization of property values for property tax purposes in 2003, that procedural deficit has
22 been remedied by the recent promulgation of rules, procedures and regulations by the State
23 Board of Equalization. These procedures provide aggrieved citizens like Incline Village and
24 Crystal Bay residents a forum to vet the tax valuation of their property before the State Board of
25 Equalization.⁶ This is precisely the relief sought by Village League in its *Amended Complaint*.

26
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28 ⁶ "[W]hat these regulations provide is a process, an orderly process to gather information, to make sure all
the parties, including the taxpayers, are included, and the counties who have to implement any
equalization order you may come up with. So, the whole purpose here is to ensure that you have looked

1 These rules allow the State Board of Equalization to equalize property tax valuations by
2 requiring reappraisal, or in the alternative, requiring the increase or decrease of the taxable value
3 of these properties. As such, even if mandamus relief would have been available to compel the
4 State Board of Equalization to fulfill its general equalization duty in 2003, mandamus relief is
5 inappropriate now because the State Board is complying with its statutory duty under NRS
6 361.395. The issuance of a writ of mandamus to compel the State Board of Equalization to
7 perform a function it is already performing is an inappropriate exercise of this court's discretion
8 under the law.

9 The Nevada Supreme Court has directed district courts to "refrain from exercising
10 jurisdiction so that technical issues can first be determined by an administrative agency." Sports
11 Form, Inc. v. Leroy's Horse and Sports Place, 108 Nev. 37, 823 P.2d 901 (1992). This is to
12 promote "(1) the desire for uniformity of regulation and, (2) the need for an initial consideration
13 by a tribunal with specialized knowledge." Id. (citing Kappler v. Delta Air Lines, 539 F.2d
14 165, 168-169 (C.App. D.C. 1976). These laudable policies are better served by allowing the State
15 Board of Equalization to apply its new equalization regulations without district court
16 interference. In this manner, each member of Village League may achieve the result they seek
17 without the problems attendant to lengthy, expensive and inconsistent litigation results. "The
18 exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and
19 conserves judicial resources, so its purposes are valuable; requiring exhaustion of administrative
20 remedies often resolves disputes without the need for judicial involvement." Allstate Ins. Co. v.
21 Thorpe, 123 Nev. 565, 170 P.3d 989, 993-94 (2007).

22 23 Conclusion

24 A writ of mandamus is an extraordinary remedy which should issue only where the right
25 to relief is clear and the petitioner has no plain, speedy or adequate remedy in the ordinary course
26 of the law. In this case, Petitioners are seeking a judicial remedy that does not exist under
27

28 at a broad range of information and that you have conducted your equalization duties in an open setting
with input from taxpayers." (Transcript of Proceedings, March 1, 2010, p.46).

1 Nevada's present taxable-value system. Additionally, Petitioners ask this Court to direct the State
2 Board of Equalization to exercise its regulatory discretion to achieve a predetermined result
3 which is an impermissible exercise of this court's lawful authority. Finally, Petitioners have a
4 plain, speedy and adequate remedy at law through the newly promulgated procedures of the State
5 Board of Equalization. The issuance writ of mandamus is not appropriate in this case. Therefore,
6

7 **IT IS HEREBY ORDERED**

8 Defendant Washoe County's *Motion to Dismiss* is **GRANTED**;

9 Defendant State of Nevada's *Motion to Dismiss* is **GRANTED**;

10
11 Petitioner VILLAGE LEAGUE's *Amended Complaint* is **DISMISSED**.
12
13
14

15 **DATED** this 13th day of April, 2010.

16 
17 **PATRICK FLANAGAN**
18 District Judge
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Dennis Belcourt, Esq. and Deonne Contine, Esq. for State Board of Equalization;
Suellen Fulstone, Esq. for Village League to Save Incline Assets, Inc; and

David Creekman, Esq.
Deputy District Attorney
Washoe county District Attorney's Office
[via Interoffice mail]

Maureen Conway

CV03-06922
VILLAGE LEAGUE: ETAL VS DEP 14 Pages
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DAVID C. CREEKMAN
Chief Deputy District Attorney
Nevada State Bar Number 4580
P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700
ATTORNEYS FOR WASHOE COUNTY

FILED

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HOWARD W. CONYERS

BY DEPUTY

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

* * *

VILLAGE LEAGUE TO SAVE INCLINE
ASSETS, INC., a Nevada non-
profit corporation, on behalf of
its members, and others
similarly situated; MARYANNE
INGEMANSON, Trustee of The Larry
D. and Maryanne B. Ingemanson
Trust; DEAN R. INGEMANSON,
individually and as Trustee of
the Dean R. Ingemanson Trust; J.
ROBERT ANDERSON; and LES BARTA;
on behalf of themselves and
others similarly situated;

Case No. CV03-06922

Dept. No. 7

Plaintiffs,

vs.

STATE OF NEVADA, on relation of
the State Board of Equalization;
WASHOE COUNTY; BILL BERRUM,
Washoe County Treasurer,

Defendants.

NOTICE OF ENTRY OF SECOND AMENDED ORDER

TO: Plaintiffs and their attorney of record,
Suellen Fulstone, Esq.

Please take notice that a Second Amended Order was filed on

1 April 20, 2010. A copy of that order is attached hereto.

2 AFFIRMATION PURSUANT TO NRS 239B.030

3 The undersigned does hereby affirm that the preceding
4 document does not contain the social security number of any
5 person.

6 Dated this 21st day of April, 2010.

7 RICHARD A. GAMMICK
8 District Attorney

9 By David C. Creekman
10 DAVID C. CREEKMAN
11 Chief Deputy District Attorney
12 P. O. Box 30083
13 Reno, NV 89520-3083
14 (775) 337-5700

15 ATTORNEYS FOR WASHOE COUNTY
16 AND WASHOE COUNTY TREASURER
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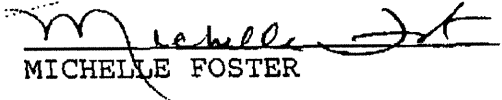
1 CERTIFICATE OF SERVICE

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

9 Suellen Fulstone, Esq.
Morris Peterson
10 6100 Neil Road, Suite 555
Reno, NV 89511

11
12 Dennis Belcourt
Deputy Attorney General
Deonne Contine
13 Deputy Attorney General
100 North Carson Street
14 Carson City, NV 89701-4717

15 Dated this 21st day of April, 2010.

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18 MICHELLE FOSTER
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FILED

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Howard W. Conyers
Clerk of the Court
Transaction # 1438633

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

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Petitioners,

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STATE OF NEVADA on relation of the
State Board of Equalization; WASHOE
COUNTY; BILL BERRUM, Washoe
County Treasurer,

Respondents.

SECOND AMENDED ORDER

"The government of the United States has been emphatically termed a government of
laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish
no remedy for the violation of a vested legal right." Marbury v. Madison, 1 Cranch 137, 163, 5
U.S. 137 (1803)(directing a writ of mandamus to compel Secretary of State James Madison to
deliver judicial commissions to which a party in former President John Adams' administration
was entitled to receive).

///

1 **Factual Background**

2 On November 13, 2003, the Village League to Save Incline Assets filed a district court
3 complaint against the Nevada Department of Taxation, the Nevada Tax Commission, the State
4 Board of Equalization, the Washoe County Assessor and Washoe County Treasurer. On behalf
5 of their members, the complaint sought declaratory and injunctive relief concerning the property
6 tax assessment methods of respondents Washoe County Assessor, the Nevada Tax Commission
7 and the State Board of Equalization. Plaintiffs contended that the property assessment methods
8 and procedures used by the Washoe County Assessor were constitutionally invalid and that the
9 State Board of Equalization had failed to carry out its constitutional obligation to equalize
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11 sought property tax refunds. Defendants moved for dismissal of all causes of action because
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15 **Procedural History (Nevada Supreme Court)**

16 On March 23, 2009, the Nevada Supreme Court issued an order affirming in part and
17 reversing in part the district court's order. While agreeing with the district court's determination
18 that the Village League was required to exhaust administrative remedies prior to bringing suit,
19 the Court noted that, "it is not clear, however, that Village League had available any means to
20 administratively challenge the State Board of Equalization's alleged failures to carry out its
21 equalization duties." Order, p. 6. Regarding the equalization claim, the court stated, "[t]he
22 district court should have proceeded to determine whether Village League's claim for injunctive
23 relief was viable." Thus, this matter is before this district court for the limited purpose of
24 determining the viability of Petitioners' claim for injunctive relief against the State Board of
25 Equalization and Washoe County entities as to its claim for equalization and related relief.

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1 **Procedural History (District Court)**

2 On April 21, 2009, this court granted Petitioners' request to file an amended complaint in
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4 *Complaint* solely seeking injunctive relief in the form of a writ of mandamus directed to the State
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16 presented three (3) hours of oral arguments. This Court has reviewed all the pleadings and has
17 read and considered the case law and exhibits submitted by all parties. This Order follows.

18 **The Parties**

19 Petitioner, Village League to Save Incline Assets, Inc., ("Village League") is a Nevada
20 non-profit membership corporation whose members are residential real property owners at
21 Incline Village and Crystal Bay in Washoe County, Nevada, and who owned such properties in
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23 state agency created by the Nevada Legislature as set forth in NRS 361.375. The State Board of
24 Equalization's duties include the annual statewide equalization under NRS 361.395 and the duty

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standing and class action certification need not be reached at this time.

1 to determine all appeals from the County Boards of Equalization under NRS 361.400.
2 Respondent Washoe County is a political subdivision of the State of Nevada which has the
3 power to levy taxes on the assessed value of real property. NRS 244.150. Respondent Bill
4 Berrum was the Washoe County Treasurer at the time of this suit's initiation. He has since
5 retired. Tammi Davis is presently the Washoe County Treasurer and is sued only in her official
6 capacity. The Washoe County Treasurer is the ex officio tax receiver for Washoe County and
7 receives all taxes assessed upon real property in the County.

8 **Legal Arguments**

9 In its Amended Complaint, Village League argues that "the similar treatment of similarly
10 situated taxpayers which is the state's standard of equalization requires the State Board of
11 Equalization, pursuant to its duty of statewide equalization under NRS §361.395, to equalize the
12 land valuation of all residential properties at Incline Village and Crystal Bay for the 2003 – 2004
13 tax year to 2002 – 2003 values. The State Board of Equalization has failed that duty to the loss
14 and damage of the members of the plaintiff class. A writ of mandamus must issue directing the
15 State Board of Equalization to declare those 2003 – 2004 Incline Village/Crystal Bay
16 assessments void and direct the payment of refunds with interest for the excess over the prior
17 constitutional valuation, pursuant to the Supreme Court's Bakst and Barta decisions." *Amended*
18 *Complaint*, p.6.

19 In its prayer for relief, Village League requests that "the court issue a preemptory writ of
20 mandamus requiring the State Board of Equalization to equalize the land portion of residential
21 real property at Incline Village and Crystal Bay to 2002 – 2003 values to reflect the area-wide
22 use by the Assessor of unlawful and unauthorized valuation methodologies resulting in
23 unconstitutional valuations and assessments, to certify those changes to Washoe County and to
24 direct the payment of refunds pursuant to NRS §361.405." Further, that "the court issue a
25 preemptory writ of mandamus requiring the State Board of Equalization further to equalize
26 property at Lake Tahoe in Douglas and Washoe Counties for the 2003 – 2004 tax year and
27 subsequent years as required by the Nevada Constitution and statutes, to certify those changes to
28 Washoe County and to direct the payment of refunds pursuant to NRS §361.405."

1 In its *Motion to Dismiss*, Washoe County raises a plethora of grounds for dismissal,
2 including: (1) that Mandamus relief is not available to Village League under the facts of this
3 case; (2) that Village League must exhaust administrative remedies pursuant to NRS §§ 361.355-
4 60 and §361.405(4) before seeking any refund for disparate property valuations; and (3) that
5 Village League's petitioners failure to pay their taxes "under protest" pursuant to NRS §361.420
6 precludes any right to seek any refund. In its *Motion to Dismiss*, the State argues that a Writ of
7 Mandamus is not available because Village League cannot show that it has a clear right to the
8 relief requested and they have an adequate, plain and speedy right to the relief requested under
9 the newly established rules and procedures of the State Board of Equalization.

10 Writ of Mandamus

11 The Writ of Mandamus is an ancient process going back to the reign of Edward II. (1284-
12 1327). "A writ of mandamus is available to compel the performance of an act that the law
13 requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of
14 discretion or an arbitrary or capricious exercise of discretion." *Sims v. Eighth Judicial District*
15 *Court*, ___ Nev. ___, 206 P.3d 980, 982 (2009)(citing NRS 34.160). Writs of mandamus are
16 extraordinary remedies and are available only when the petitioner has no "plain, speedy and
17 adequate remedy in the ordinary course of law." *D.R. Horton v. Eighth Jud. Dist. Ct.*, 123 Nev.
18 468,474, 168 P.3d 731 (2007)(citations omitted). This extraordinary writ will issue when the
19 right to the relief is clear and the petitioners have no other remedy in the ordinary course of the
20 law. *Gumm v. Nevada Dep't of Education*, 121 Nev. 371, 375, 113 P.3d 853 (2005). The writ of
21 mandamus "ought to be used upon all occasions where the law has established no specific
22 remedy, and where in justice and good government there ought be one." *Marbury v. Madison*, 1
23 Cranch 137, 169 (1803)(internal citations omitted). It is axiomatic that a writ of mandamus
24 should not issue in a case in which a party has a plain, speedy and adequate remedy at law.

25 "Taxable Value" Property Tax System

26 Nevada is the only State in the Nation that employs a "taxable value" property tax system
27 where land is valued at market price and improvements at replacement cost new, less 1.5 percent
28 depreciation per year based upon age of the structure. In this system, residential property is

1 valued by valuing the land and improvements separately with the sum of the two values
2 constituting the property as "taxable" value. While the improvements are valued by formula
3 which is fairly simple and direct, the land is valued at the market value for vacant land. The
4 market analysis for vacant land is workable as long as there are sufficient comparable vacant
5 land sales. The problem with Nevada's taxable-value system (as opposed to a "market value"
6 system) is that without sufficient comparable vacant land sales, the "taxable value" assessment
7 system fails.

8 Market Value Property Tax System

9 In a "market value" property tax system, whether it is comparable sales, allocation
10 between land and improvements, or income, the resulting determination comes up against the
11 actual market value which is the standard against which property valuation is assessed. In
12 Nevada's "taxable value" property tax system, there is no "taxable value" standard. Although
13 regulations identified alternative valuation methodologies, these provide no model for their
14 uniform application.

15 Perhaps the only thing all parties agree upon is that there is no objective, external
16 standard either for taxable value as a whole or for the land portion of the taxable value of
17 residential real property because the "taxable value" of residential property bears no relationship
18 to the market value of that property. There are simply no underlying studies or evidence to
19 assure uniformity with a comparable sales analysis estimate of value. In the absence of an
20 external, objective market standard, the only way to achieve uniformity of taxable value is to
21 assure that the Assessors use uniform methods of determining taxable value. Only if similar
22 properties are valued using the same methodology can the constitutional requirement of
23 uniformity be satisfied. This can only be done on a case-by-case individual appraisal basis.²

24 Ratio Study

25 A "Ratio Study" means an evaluation of the quality and level of assessment of a class or
26 group of properties in a county which prepares the assessed valuations established by the county
27

28 ² While there are only a few landowners in this lawsuit, all parties agree that the remaining 8700 property owners in Incline Village and Crystal Bay would be entitled to seek identical relief from this court.

1 assessor for a sampling of those properties to an estimate of the taxable value of the property by
2 the Department of Taxation or an independent appraiser or the sales price of the property as
3 appropriate. A ratio study is designed to evaluate the appraisal performance or determine taxable
4 value through comparison of appraised or assessed values estimated for tax purposes with
5 independent estimates of value based upon either sale prices or independent appraisals. A
6 comparison of the estimated value produced by the Assessor on each parcel to the estimate of
7 taxable value produced by the Department of Taxation is called a "ratio."

8 The "ratio study" involves the determination of assessment levels by computing the
9 central tendencies (mean, median and aggregate ratios) of assessment ratios. Nevada specifies
10 the use of the median ratio, the aggregate ratio, and the coefficient of dispersion of the median to
11 evaluate both the total property assessment and the assessment of each major property class. The
12 "median" is the most widely used measure because it is less affected by extreme ratios and is the
13 preferred measure for monitoring appraisal performance or the need for reappraisal.

14 The District Court Mandate

15 The Nevada Supreme Court remanded this case for the sole issue of determining whether
16 Village League is entitled to injunctive relief on its equalization claim against the Respondents.
17 Village League seeks a writ of mandamus directing the State Board of Equalization to "declare
18 those 2003-2004 Incline Village/Crystal Bay assessments void and direct the payment of refunds
19 for those excess over the prior constitutional valuation, pursuant to the Supreme Court Bakst³
20 and Barta⁴ decisions." *Amended Complaint*, p. 6. If Village League has no "plain, just and
21 speedy remedy at law," the writ of mandamus should issue.

22 Legal Analysis

23 Village League argues that the State Board of Equalization must be directed to equalize
24 all of Incline Village and Crystal Bay for the 2003-2004 tax year by returning the land values to
25 their 2002-2003 levels. Village League asks "[t]hat the Court issue a peremptory writ of
26

27 ³ State ex rel State Bd of Equalization v. Bakst, 122 Nev. 1403 (2006)

28 ⁴ State ex rel State Bd of Equalization v. Barta, 124 Nev. 58 (2008)

1 mandamus requiring the State Board of Equalization to equalize the land portion of residential
2 real property at Incline Village and Crystal Bay to 2002-2003 values..." and to "direct the
3 payment of refunds ..." *Amended Complaint*, p. 7.

4 Village League seeks injunctive relief directing the State Board of Equalization to
5 employ a specific statistical method which will equalize property values statewide and
6 (hopefully) lower its members' property taxes resulting in a refund to its members. Village
7 League argues that only a writ of mandamus directing the State Board to employ a specific
8 statistical method can avoid the application of the methods found to be unconstitutional in Barta
9 and Bakst. However, Village League's own expert admits there is no statistical method that
10 Nevada regulators can adopt that would effectively measure whether state-wide equalization is
11 occurring given state's "taxable-value" property assessment system. *See, Plaintiff Response to*
12 *Statement of New Authority*, Ex. 2.⁵ Nor is this district court the appropriate forum to argue for
13 an adjustment of taxable property valuation. That proper forum is before the State Board of
14 Equalization. While such a procedure did not exist in 2003, it does now.

15 **Adoption and Amendment of Permanent Regulations of State Board**

16 On March 1, 2010, the State Board of Equalizations held hearings on a proposal to adopt
17 and amend NAC Chapter 361 with respect to the process of equalization of property values for
18 property tax purposes by the State Board of Equalizations. The purpose of these hearings were to
19 address the Nevada Supreme Court's decisions in Bakst and Barta and to determine whether
20 property in Nevada has been assessed uniformly in accordance with the methods of appraisal and
21 at the assessment level required by law. (Respondents *Statement of New Authority* Ex. 3 (Notice
22 of Public Hearing for the Adoption and Amendment of Permanent Regulations of the State
23 Board of Equalization, Jan. 28, 2010). Specifically, the hearing was held to determine whether
24 the taxable values specified in the tax roll of any county must be increased or decreased to
25

26 ⁵ In an interview with Petitioners' expert Richard Almy, he was asked whether there was "any statistical
27 method that Nevada regulators can adopt to effectively measure whether statewide equalization is
28 occurring in the state's taxable-value system, Almy said "I don't know." Nevada Policy Research
Institute, (February 26, 2010), p. 2. Clearly, if Petitioners' expert cannot identify *any* statistical method
which would achieve state-wide equalization under Nevada's taxable-value system, this Court cannot be
expected to be any more discerning.

1 equalize property valuations in Nevada. Further, the new regulations will provide the criteria to
2 determine whether property has been assessed uniformly, including a review of relevant ratio
3 studies, performance audits and any other relevant evidence including a systematic investigation
4 and evaluation by the State Board of Equalization of the procedures and operations of the county
5 assessors. These rules, regulations and procedures are in response to the Nevada Supreme
6 Court's decisions in Barta and Bakst. (Petitioners' *Response to Statement of New Authority* Ex. 1
7 at 25-26 (Transcript of Proceedings, Dept. of Taxation, State Board of Equalization, Mar. 1,
8 2010).

9 While there appears to have been no regulations or procedures pertaining to the process
10 of equalization of property values for property tax purposes in 2003, that procedural deficit has
11 been remedied by the recent promulgation of rules, procedures and regulations by the State
12 Board of Equalization. These procedures provide aggrieved citizens like Incline Village and
13 Crystal Bay residents a forum to vet the tax valuation of their property before the State Board of
14 Equalization.⁶ This is precisely the relief sought by Village League in its *Amended Complaint*.

15 These rules allow the State Board of Equalization to equalize property tax valuations by
16 requiring reappraisal, or in the alternative, requiring the increase or decrease of the taxable value
17 of these properties. As such, even if mandamus relief would have been available to compel the
18 State Board of Equalization to fulfill its general equalization duty in 2003, mandamus relief is
19 inappropriate now because the State Board is complying with its statutory duty under NRS
20 361.395. The issuance of a writ of mandamus to compel the State Board of Equalization to
21 perform a function it is already performing is an inappropriate exercise of this court's discretion
22 under the law.

23 The Nevada Supreme Court has directed district courts to "refrain from exercising
24 jurisdiction so that technical issues can first be determined by an administrative agency." Sports

25
26
27 ⁶ "[W]hat these regulations provide is a process, an orderly process to gather information, to make sure all
28 the parties, including the taxpayers, are included, and the counties who have to implement any
equalization order you may come up with. So, the whole purpose here is to ensure that you have looked
at a broad range of information and that you have conducted your equalization duties in an open setting
with input from taxpayers." (Transcript of Proceedings, March 1, 2010, p.46).

1 Form, Inc. v. Leroy's Horse and Sports Place, 108 Nev. 37, 823 P.2d 901 (1992). This is to
2 promote "(1) the desire for uniformity of regulation and, (2) the need for an initial consideration
3 by a tribunal with specialized knowledge." Id. (citing Kaplemann v. Delta Air Lines, 539 F.2d
4 165, 168-169 (C.App. D.C. 1976). These laudable policies are better served by allowing the State
5 Board of Equalization to apply its new equalization regulations without district court
6 interference. In this manner, each member of Village League may achieve the result they seek
7 without the problems attendant to lengthy, expensive and inconsistent litigation results. "The
8 exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and
9 conserves judicial resources, so its purposes are valuable; requiring exhaustion of administrative
10 remedies often resolves disputes without the need for judicial involvement." Allstate Ins. Co. v.
11 Thorpe, 123 Nev. 565, 170 P.3d 989, 993-94 (2007).

12 **Conclusion**

13 A writ of mandamus is an extraordinary remedy which should issue only where the right
14 to relief is clear and the petitioner has no plain, speedy or adequate remedy in the ordinary course
15 of the law. In this case, Petitioners are seeking a judicial remedy that does not exist under
16 Nevada's present taxable-value system. Additionally, Petitioners ask this Court to direct the State
17 Board of Equalization to exercise its regulatory discretion to achieve a predetermined result
18 which is an impermissible exercise of this court's lawful authority. Finally, Petitioners have a
19 plain, speedy and adequate remedy at law through the newly promulgated procedures of the State
20 Board of Equalization. The issuance writ of mandamus is not appropriate in this case. Therefore,


21 **IT IS HEREBY ORDERED**

22 Defendant Washoe County's *Motion to Dismiss* is **GRANTED**;

23 Defendant State of Nevada's *Motion to Dismiss* is **GRANTED**;

24 Petitioner VILLAGE LEAGUE's *Amended Complaint* is **DISMISSED**.

25 **DATED** this 20TH day of April, 2010.

26 
27 PATRICK FLANAGAN
28 District Judge

Tab #23

1090
Suellen Fulstone
Nevada State Bar #1615
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Attorneys for Petitioners

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 their members and others similarly
situated; MARYANNE INGEMANSON, Trustee
of the Larry D. and Maryanne B. Ingemanson
Trust; DEAN R. INGEMANSON, individually and
as Trustee of the Dean R. Ingemanson Individual
Trust; J. ROBERT ANDERSON; and LES
BARTA; on behalf of themselves and others
similarly situated;

Petitioners,

vs.

STATE OF NEVADA on relation of the State
Board of Equalization; WASHOE COUNTY
COUNTY; BILL BERRUM, Washoe County
Treasurer;

Respondents

Case No.: CV 03-06922

Dept. No. 7

**AMENDED
COMPLAINT/PETITION FOR
WRIT OF MANDAMUS**

Pursuant to the Supreme Court's Order Affirming in Part, Reversing in Part and
Remanding and Supreme Court decisions in State ex rel. State Bd. of Equalization v. Bakst
(Bakst), 122 Nev. 1403, 148 P.3d 717 (2006), and State ex rel. State Bd. of Equalization v.
Barta (Barta), 124 Nev. 58, 188 P.3d 1092 (2008), petitioners state as follows:

GENERAL ALLEGATIONS

1. Petitioner Village League To Save Incline Assets, Inc. ("Village League") is a
nonprofit membership corporation organized and existing under the laws of the State of

1 Nevada, whose members own residential real property at Crystal Bay and/or Incline Village, in
2 Washoe County, Nevada, and pay taxes on that property as assessed, imposed and collected by
3 the defendant Washoe County. The Village League brings this action on behalf of its members
4 and other owners of residential real property at Crystal Bay and/or Incline Village who are
5 similarly situated.

6 2. Petitioner Maryanne Ingemanson is and was at the time of the filing of the initial
7 complaint in this action a citizen and resident of Washoe County, Nevada, and the trustee of the
8 Larry D. and Maryanne B. Ingemanson Trust which at the time of the filing of the initial
9 complaint and until 2007 owned residential real property located in Washoe County, Nevada,
10 identified as APN 130-241-21 and paid taxes on that property as assessed, imposed and
11 collected by Washoe County. Maryanne Ingemanson is a member and the President of the
12 petitioner Village League.

13 3. Since 2007, petitioner Dean R. Ingemanson individually and/or as trustee of the
14 Dean R. Ingemanson Individual Trust has owned and has been assessed for property tax
15 purposes on residential real property at Incline Village, Washoe County, Nevada, identified as
16 APN 130-241-21.

17 4. Petitioner J. Robert Anderson is and was at the time of the filing of the initial
18 complaint in this action a citizen and resident of Washoe County, Nevada, who owns and is
19 assessed for property tax purposes two parcels of residential real property at Incline
20 Village/Crystal Bay identified as Washoe County APN 123-260-11 and APN 122-181-29.

21 5. Petitioner Les Barta is and was at the time of the filing of the initial complaint in
22 this action a citizen and resident of Washoe County, Nevada, who owns and is assessed for
23 property tax purposes a parcel of residential real property at Incline Village/Crystal Bay
24 identified as Washoe County APN 125-232-24.

25 6. Respondent State Board of Equalization, established by the Nevada Legislature
26 as codified in Nevada Revised Statutes §361.375, is an agency of the State of Nevada vested
27 with the statutory responsibility and mandate under NRS 361.395 annually to equalize real
28 property valuations throughout the State, including reviewing the tax rolls of the various

1 counties and, if necessary, adjusting the valuations in order to equalize values between and
2 within counties with respect to taxable value.

3 7. Respondent Washoe County is and was at the time of the filing of the initial
4 complaint in this action a political subdivision of the State of Nevada. Respondent Bill Berrum
5 is and was at the time of the filing of the initial complaint in this action the duly elected
6 Treasurer of Washoe County. It is the duty of the County Treasurer to collect all real property
7 taxes and to refund excess taxes paid. Washoe County and Washoe County Treasurer are
8 named in this action as parties necessary to afford complete relief.

9 8. Petitioners represent a class of residential real property taxpayers in Incline
10 Village or Crystal Bay, in Washoe County, Nevada, who have paid real property taxes to
11 Washoe County based on erroneous and non-equalized property valuations.

12 9. The petitioner class consists of the owners of approximately 9,000 parcels of
13 real property at Incline Village and Crystal Bay, in Washoe County, Nevada; said class is so
14 numerous that the joinder of each individual member of the class is impracticable.

15 10. The claims of class members against respondents involve common questions of
16 law and fact including, without limitation, the affirmative and mandatory duty of the State
17 Board of Equalization pursuant to NRS 361.395 to effect statewide equalization on an annual
18 basis, specifically including the equalization of the taxable value of comparable residential real
19 property in Douglas and Washoe Counties at Lake Tahoe.

20 11. The claims of the individual petitioners and the members of the Village League
21 are representative and typical of the claims of the class. The claims of all members of the class
22 arise from the same acts and omissions of the respondents that give rise to the claims and rights
23 of the members of the Village League.

24 12. The individual petitioners as representatives of the class, are able to, and will,
25 fairly and adequately protect the interests of the class.

26 13. This action is properly maintained as a class action because respondents have
27 acted or refused or failed to act on grounds which are applicable to the class and have by reason
28 of such conduct made appropriate and necessary relief with respect to the entire class as sought

1 in this action.

2 14. Section 1(1) of Article 10 of the Nevada Constitution requires that the Nevada
3 Legislature "provide by law for a uniform and equal rate of assessment and taxation" of real
4 and personal property throughout the state.

5 15. Prior to 1981, residential real property in Nevada was valued at its full cash
6 value or market value and assessed accordingly. In 1981, responding to complaints of
7 increasing property taxes as a result of increasing property values, the unfair impact of those
8 tax increases on longtime homeowners, and the potential of a tax movement in Nevada
9 analogous to California's Proposition 13, the Nevada Legislature adopted a "taxable value"
10 system of property taxation unique to Nevada.

11 16. Under the statutory scheme adopted by the Nevada Legislature in 1981, the land
12 and the improvements of residential real property are valued separately. The two numbers are
13 added together to determine the "taxable value" of the property. "Improved land" is valued at
14 its "full cash value" consistently "with the use to which the improvements are being put." NRS
15 361.227(1). The improvements are valued under a formula for replacement cost less
16 depreciation. NRS 361.227. Since the total "taxable value" is less than the full cash value of
17 the property that was the previous basis of assessment, the assessed value and the taxes based
18 on that value are proportionately less as well, providing the property tax relief intended by the
19 Legislature.

20 17. The Nevada Legislature enacted a statutory scheme to achieve and maintain the
21 Constitutionally-mandated equality and uniformity of taxation throughout the State. Each
22 county assessor in Nevada is required to determine each year the "taxable value" of all real
23 property within the respective county. NRS 361.260. The Nevada Tax Commission must
24 establish and prescribe regulations for the determination of taxable value which all of the
25 county assessors must adopt and put into practice. NRS 360.250(1); NRS 360.280(1). The
26 Department of Taxation must "consult with and assist county assessors to develop and maintain
27 standard assessment procedures to be applied and used in all of the counties of the state, to
28 ensure that assessments of property by county assessors are made equal in each of the several

1 counties of this state." NRS 360.215(2). The Department must also "continually supervise
2 assessment procedures" as carried on in the several counties of the state for the purpose of
3 maintaining uniformity of assessment and taxation. NRS 360.215(6). The County and State
4 Boards of Equalization correct improperly determined values and bring property into
5 equalization within their respective jurisdictions. In valuing real property, the Department of
6 Taxation and State Board of Equalization must also comply with Tax Commission regulations
7 as required pursuant to NRS 360.250(1) and NRS 361.375(10).

8 18. In a "taxable value" system, equalization requires uniform assessment methods
9 applied to similar properties resulting in the same measure of taxable value for like properties.
10 If varying methods are used to determine the taxable value of like properties, there can be no
11 guarantee that the same measure of taxable value would be assigned to the properties, a
12 violation of the Constitutional mandate of "a uniform and equal rate of assessment and
13 taxation."

14 19. For the tax year 2003-2004 and subsequent years, the Washoe County Assessor
15 has determined the taxable value of residential real property at Incline Village and Crystal Bay
16 using valuation methodologies in ways that have not been approved or promulgated by Tax
17 Commission regulation, that have not been used elsewhere in the State of Nevada, including for
18 similarly situated residential properties at Lake Tahoe in Douglas County, Nevada, and that
19 have been adjudicated by the Nevada Supreme Court as resulting in unconstitutional and void
20 property valuations at Incline Village and Crystal Bay in Bakst and Barta, supra.

21 20. In Bakst and Barta, supra, the Nevada Supreme Court determined that the
22 Assessor's use of valuation methodologies that are not expressly approved and promulgated by
23 the Tax Commission for uniform use throughout the State results in unconstitutional and void
24 valuations and assessments. In both cases, the Court set aside the Assessor's valuations for
25 residential real property at Incline Village/Crystal Bay and rolled back the land valuation to
26 2002-2003 levels.

27 21. The State Board of Equalization's duty of statewide equalization under NRS
28 §361.395 includes the duty to equalize within as well as between the various counties of the

1 State of Nevada. As defined by the Nevada Attorney General, equalization "means making
2 sure that similarly situated taxpayers are treated the same." Nev. Atty. Gen. Opn. No. 99-32.
3 All residential real properties at Incline Village and Crystal Bay were reappraised and valued
4 for the 2003-2004 tax year using the specific methodologies found unauthorized in Bakst and
5 Barta, supra, or other methodologies equally unauthorized by express regulation and equally
6 unlawful. In equalizing within the Incline Village and Crystal Bay area of Washoe County, the
7 State Board must look at the use of non-uniform and unauthorized methodologies as their
8 "**predominant concern**" in equalizing to the Constitutional mandate of equal and uniform
9 taxation as directed by the Supreme Court in Barta, supra.

10 22. The similar treatment of similarly situated taxpayers which is the State's
11 standard of equalization requires the State Board of Equalization, pursuant to its duty of
12 statewide equalization under NRS §361.395, to equalize the land valuation of all residential
13 properties at Incline Village and Crystal Bay for the 2003-2004 tax year to 2002-2003 values.
14 The State Board of Equalization has failed that duty to the loss and damage of the members of
15 the plaintiff class. A writ of mandamus must issue directing the State Board of Equalization to
16 declare those 2003-2004 Incline Village/Crystal Bay assessments void and direct the payment
17 of refunds with interest for the excess over the prior constitutional valuation, pursuant to the
18 Supreme Court Bakst and Barta decisions.

19 23. The illegal and unauthorized valuation methodologies used by the Washoe
20 County Assessor's Office also resulted in a disparity in valuation for ad valorem tax purposes
21 between similarly situated property at Lake Tahoe in Douglas and Washoe Counties for the tax
22 year 2003/2004 and prior and subsequent tax years, in violation of the guarantees of the Nevada
23 Constitution of a system of uniform, equal and just valuation and assessment of ad valorem
24 taxes, all to the damage and loss to individual petitioners and the members of the petitioner
25 class.

26 24. Notwithstanding the disparity in taxable value between similarly situated
27 property at Lake Tahoe in Douglas and Washoe Counties for the tax year 2003/2004 and prior
28 and subsequent tax years, the defendant State Board of Equalization failed to equalize

1 assessments between Douglas and Washoe County for any of those years as required by the
2 Nevada Constitution and statutes to the resulting damage and loss to individual petitioners and
3 the members of the petitioner class.

4 25. Petitioners and the members of the petitioner class have no plain, speedy or
5 adequate remedy in the ordinary course of law to remedy the violations of the Nevada law and
6 Constitution by the State Board of Equalization's failure of its statutorily mandated duty of
7 statewide equalization.

8 26. The failure of the respondent State Board of Equalization to perform its
9 mandatory duty to equalize the taxable value of residential real property at Incline Village and
10 Crystal Bay which was similarly wrongfully and unconstitutionally valued and assessed
11 through the Washoe County Assessor's use of unlawful and unauthorized valuation
12 methodologies and further to equalize similarly situated property at Lake Tahoe in Douglas and
13 Washoe Counties for the tax year 2003/2004 and prior and subsequent tax years has caused and
14 resulted in the over-assessment of the property of the individual petitioners and the members of
15 the petitioner class and the payment by individual petitioners and the members of the petitioner
16 class of excessive taxes to Washoe County as to which petitioners and the members of the
17 petitioner class are entitled to refunds with interest as provided by law.

18 WHEREFORE PETITIONERS PRAY AS FOLLOWS:

19 1. That the Court certify that this action may be maintained as a class action.
20 2. That the Court issue a peremptory writ of mandamus requiring the State Board
21 of Equalization to equalize the land portion of residential real property at Incline Village and
22 Crystal Bay to 2002-2003 values to reflect the area wide use by the Assessor of unlawful and
23 unauthorized valuation methodologies resulting in unconstitutional valuations and assessments,
24 to certify those changes to Washoe County and to direct the payment of refunds pursuant to
25 NRS 361.405.

26 3. That the Court issue a peremptory writ of mandamus requiring the State Board
27 of Equalization further to equalize property at Lake Tahoe in Douglas and Washoe Counties for
28 the 2003-2004 tax year and subsequent years as required by the Nevada Constitution and

1 statutes, to certify those changes to Washoe County and to direct the payment of refunds
2 pursuant to NRS 361.405.

3 4. That the Washoe County defendants be ordered to adjust the taxable value of
4 property and refund excessive taxes to members of the petitioner class as directed by the State
5 Board of Equalization or pay the equivalent of such refunds in damages with interest as
6 provided by law.

7 5. That petitioners recover their attorneys' fees and costs of suit and such other and
8 further relief as the individual plaintiffs and the members of the plaintiff class may be adjudged
9 entitled to in the premises.

10 DATED this 19th day of June, 2009.

11 MORRIS PETERSON

12
13 By /s/ Suellen Fulstone
14 Suellen Fulstone
15 Attorneys for Petitioners

16 **AFFIRMATION**

17 **Pursuant to NRS 239B.030**

18 The undersigned does hereby affirm that the preceding document does not contain the
19 social security number of any person.

20 DATED this 19th day of June, 2009.


21 MORRIS PETERSON

22
23 By /s/ Suellen Fulstone
24 Suellen Fulstone
25 Attorneys for Petitioners

VERIFICATION

Under penalties of perjury, the undersigned declares that she is a Petitioner in her capacity as Trustee of the Larry D. and Maryanne B. Ingemanson Trust, named in the foregoing Amended Complaint/Petition for Writ of Mandamus and knows the contents thereof; that the pleading is true of her own knowledge, except as to those matters stated on information and belief, and that as to such matters she believes it to be true. The undersigned further declares that she also makes this verification as the President of Petitioner Village League to Save Incline Assets, Inc., and as the attorney-in-fact for Petitioner Dean R. Ingemanson, individually and as Trustee of the Dean R. Ingemanson Individual Trust.

Dated this 19th day of June, 2009.


~~Maryanne Ingemanson~~

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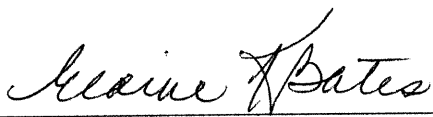
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of MORRIS PETERSON and that I served via the Court's electronic filing system a true copy of the foregoing upon the following:

Gina Session/Dennis L. Belcourt
Office of the Attorney General
100 North Carson St.
Carson City, NV 89701

David Creekman
Washoe County District Attorney's Office
Civil Division
P.O. Box 30083
Reno, NV 89520

DATED this 19th day of June, 2009.

By 
Employee of Morris Peterson

SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 01 2010 09:38 a.m.

Supreme Court ~~Trade~~ Clerk Lindeman

District Court No. CV03-06922

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., a Nevada non-profit corporation, on behalf of its members and others similarly situated; MARYANNE INGEMANSON, Trustee of the Larry D. and Maryanne B. Ingemanson Trust; DEAN R. INGEMANSON, individual and as Trustee of the Dean R. Ingemanson Trust; J. ROBERT ANDERSON; and LES BARTA; on behalf of themselves and others similarly situated;

Appellants,

vs.

**DOCKETING STATEMENT
CIVIL APPEALS**

STATE OF NEVADA, *ex rel.* State Board of Equalization; WASHOE COUNTY; and BILL BERRUM, Washoe County Treasurer;

Respondents.

_____ /

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal or the appeal.

The court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 989 (2001); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department 7 County Washoe
Judge Hon. N. Patrick Flanagan District Ct. Docket No. CV03-06922

2. **Attorney filing this docket statement:**

Attorney Suellen Fulstone Telephone (775) 829-6009

Firm Morris Peterson

Address 6100 Neil Road, Suite 555

Reno, NV 89511

Clients Village League to Save Incline Assets, Inc.; Maryanne Ingemanson Trustee of the Larry D. and Maryanne B. Ingemanson Trust; Dean R. Ingemanson, individual and as Trustee of the Dean R. Ingemanson Trust; J. Robert Anderson and Les Barta

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their client on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing respondent(s):**

Attorney Dennis Belcourt Telephone (775) 684-1206

Firm Office of the Attorney General

Address 100 North Carson Street

Carson City, NV 89701

Clients State of Nevada, ex rel. State Board of Equalization,

Attorney David Creekman Telephone (775) 337-5700

Firm Washoe County District Attorney's Office

Address 1 S. Sierra St., 4th Floor, Reno, NV 89501

P.O. Box 30083, Reno, NV 89520

Clients Washoe County and Bill Berrum (Washoe County Treasurer)

4. **Nature of disposition below (check all that apply):**

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant/Denial of injunction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Grant/Denial of declaratory relief |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Review of agency determination |
| <input checked="" type="checkbox"/> Dismissal | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Lack of jurisdiction | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Failure to state a claim | <input type="checkbox"/> Other disposition (specify) _____ |
| <input type="checkbox"/> Failure to prosecute | |
| <input checked="" type="checkbox"/> Other (specify) <u>adequate</u> | |
| <u>remedy at law</u> | |

5. **Does this appeal raise issues concerning any of the following: N/A**

- | | |
|--|--|
| <input type="checkbox"/> Child custody | <input type="checkbox"/> Termination of parental rights |
| <input type="checkbox"/> Venue | <input type="checkbox"/> Grant/Denial of injunction or TRO |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile matters |

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: **SEE TAB #6**

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: **SEE TAB #7**

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

Amended Complaint seeks writ of mandamus compelling State Board of Equalization to perform its equalization duties under NRS 361.395. Petition dismissed, April 13, 2010.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

- (1) Did the amended petition state a claim for relief in mandamus?
- (2) Did petitioners have an adequate remedy at law in the 2010 equalization regulations barring relief in mandamus?

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number identify the same or similar issues raised: **N/A**

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A _____ X _____ Yes _____ No _____

If not, explain _____

12. **Other issues.** Does this appeal involve any of the following issues? **N/A**

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first-impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain _____

13. **Trial.** If this action proceeded to trial, how many days did the trial last? _____ **N/A**
Was it a bench or jury trial? _____ **N/A**

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice? **N/A**

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from April 13 and 20, 2010.** Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.

- (a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: _____ **N/A**

16. **Date written notice of entry of judgment or order served April 13, 20 and 21, 2010. Attach a copy, including proof of service, for each order or judgment appealed from.**

(a) Was service by delivery _____ or by mail X (specify).

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

NRCP 50(b) _____ Date served _____ By delivery _____ or by mail _____ Date of filing _____

NRCP 52(b) _____ Date served _____ By delivery _____ or by mail _____ Date of filing _____

NRCP 59 _____ Date served _____ By delivery _____ or by mail _____ Date of filing _____

Attach copies of all post-trial tolling motions.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion _____. **Attach a copy.**

(c) Date written notice of entry of order resolving motion served _____. **Attach a copy, including proof of service.**

(i) Was service by delivery _____ or by mail _____ (specify).

18. **Date notice of appeal was filed May 12, 2010**

(a) If more than one party has appealed from the judgment or order, list date of each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other NRAP 4(a)**

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

NRAP 3A(b)(1) X NRS 155.190 _____ (specify subsection) _____

NRAP 3A(b)(2) _____ NRS 38.205 _____ (specify subsection) _____

NRAP 3A(b)(3) _____ NRS 703.376 _____

Other (specify) _____

Explain how each authority provides a basis for appeal from the judgment or order:

The order appealed from is a "final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered."

21. List all parties involved in the action in the district court:

State of Nevada, *ex rel.* State Board of Equalization; Washoe County; Bill Berrum, Washoe County Treasurer

- (a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the court's disposition of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.

Petitioners sought writ of mandamus compelling State Board of Equalization to perform its equalization duties under NRS 361.395. Petition was dismissed on April 13, 2010 on grounds that remedy sought by petitioners was unavailable and that petitioners had an adequate remedy at law in 2010 equalization regulations.

23. Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:

Yes _____ X _____ No _____

25. If you answered "No" to the immediately previous question, complete the following:

- (a) Specify the claims remaining pending below:
- (b) Specify the parties remaining below:
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes _____ No _____

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)): N/A

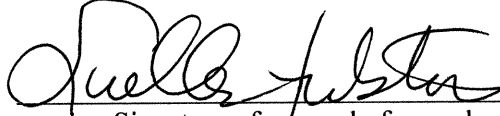
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Name of Appellant(s): Villiage League to Save Incline Assets, Inc.
Maryanne Ingemanson, Trustee of the Larry D. and Maryanne B. Ingemanson Trust
Dean R. Ingemanson, individual and as Trustee of the Dean R. Ingemanson Trust
J. Robert Anderson
Les Barta

Name of counsel of record: Suellen Fulstone

Date: May 28, 2010



Signature of counsel of record
Suellen Fulstone

Washoe County, Nevada

CERTIFICATE OF SERVICE

I certify that on the _____ day of May, 2010, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Dennis Belcourt/Deonne Contine
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

David Creekman
Washoe County District Attorney's Office
P.O. Box 30083
Reno, NV 89520

DATED this 1st day of June, 2010.



Employee of Morris Peterson

Tab #6

PENDING AND PRIOR PROCEEDINGS IN THIS COURT

- I. This case was before this court previously as *Village League to Save Incline Assets, Inc. v. State of Nevada ex rel. Department of Taxation, et al.*, Case No. 43441. Order Affirming in Part, Reversing in Part and Remanding was entered March 19, 2009.
- II. Other decisions entered by this Court in matters related to residential real property taxes at Incline Village/Crystal Bay are:
 1. *State of Nevada ex rel. State Board of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006)
 2. *State of Nevada ex rel. State Board of Equalization v. Barta*, 124 Nev. ____, 188 P.3d 1092 (2008)
 3. *Village League to Save Incline Assets, Inc., et al. v. State of Nevada ex. Rel. State Board of Equalization, et al.*, 124 Nev. ____, 194 P.3d 1254 (2008)
 4. *Marvin, et al. v. Fitch, et al.*, 126 Nev. Adv. Op. 18, entered May 27, 2010
 5. *Otto, et al. v. 1st Judicial District Court, et al.*, Case No. 55357. Unpublished Order Denying Petition for a Writ of Prohibition entered April 9, 2010.
- III. One pending matter related to residential real property taxes at Incline Village/Crystal Bay is: *Berrum v. Otto, et al.*, Case No. 54947

Tab #7

PENDING AND PRIOR PROCEEDINGS IN OTHER COURTS

Other cases relating to residential real property taxes at Incline Village and Crystal Bay, Washoe County, Nevada, include the district court cases resulting in the appellate decisions listed under Item 6 and the following:

In the First Judicial District Court of the State of Nevada:

1. *Village League to Save Incline Assets, Inc., et al., v. State of Nevada ex rel. State Board of Equalization, et al.*, Case No. CV05-01451, no final disposition
2. *Village League to Save Incline Assets, Inc., et al., v. State of Nevada ex rel. State Board of Equalization, et al.*, Case No. 07-OC-01720-1B, no final disposition (consolidated with following case)
3. *Harris, et al., v. State of Nevada ex rel. State Board of Equalization, et al.*, Case No. 08-OC-00032-1B, no final disposition
4. *Ingemanson, et al. v. State of Nevada, ex rel. State Board of Equalization, et al.*, Case No. 09-OC-00332-1B, no final disposition (consolidated with following case)
5. *Field, et al. v. State of Nevada, ex rel. State Board of Equalization, et al.*, Case No. 10-OC-00015-1B, no final disposition
6. *Washoe County v. State of Nevada, et al.*, Case No. 09-OC-00494-1B, dismissed May 24, 2010

In the Second Judicial District Court of the State of Nevada:

1. *Village League to Save Incline Assets, Inc., et al. v. State of Nevada ex rel. State Board of Equalization, et al.*, Case No. CV08-2132, no final disposition
2. *Village League to Save Incline Assets, Inc., et al. v. State of Nevada ex rel. Nevada Tax Commission and State Board of Equalization, et al.*, Case No. CV08-01894, no final disposition
3. *Otto, et al. v. Berrum*, Case No. CV08-02534, mandamus granted October 23, 2009
4. *Anderson, et al. v. State of Nevada, et al.*, Case No. CV10-00311, no final disposition

In the United States Court for the District of Nevada:

1. *Lowe, et al. v. Washoe County, et al.*, Case No. 3:08-CV-00217-KJD-RAM, dismissed March 24, 2009, appealed to Ninth Circuit

In the Ninth Circuit Court of Appeals:

1. *Lowe, et al. v. Washoe County, et al.*, Case No. 09-15759, no final disposition

Tab #15

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 their members and
others similarly situated; MARYANNE
INGEMANSON, Trustee of the Larry D.
and Maryanne B. Ingemanson Trust; DEAN
R. INGEMANSON, individually and as
Trustee of the Dean R. Ingemanson Trust; J.
ROBERT ANDERSON; and LES BARTA;
on behalf of themselves and others similarly
situated;

Case No.: CV03-06922

Dept. No.: 7

Petitioners,

vs.

STATE OF NEVADA on relation of the
State Board of Equalization; WASHOE
COUNTY; BILL BERRUM, Washoe
County Treasurer,

Respondents.

ORDER

“The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.” Marbury v. Madison, 1 Cranch 137, 163, 5 U.S. 137 (1803)(directing a writ of mandamus to compel Secretary of State James Madison to deliver judicial commissions to which a party in former President John Adams’ administration was entitled to receive).

1 Factual Background

2 On November 13, 2003, the Village League to Save Incline Assets filed a district court
3 complaint against the Nevada Department of Taxation, the Nevada Tax Commission, the State
4 Board of Equalization, the Washoe County Assessor and Washoe County Treasurer. On behalf
5 of their members, the complaint sought declaratory and injunctive relief concerning the property
6 tax assessment methods of respondents Washoe County Assessor, the Nevada Tax Commission
7 and the State Board of Equalization. Plaintiffs contended that the property assessment methods
8 and procedures used by the Washoe County Assessor were constitutionally invalid and that the
9 State Board of Equalization had failed to carry out its constitutional obligation to equalize
10 property valuations statewide. In addition to declaratory and injunctive relief, Village League
11 sought property tax refunds. Defendants moved for dismissal of all causes of action because
12 Village League failed to exhaust its administrative remedies prior to bringing suit. The district
13 court agreed and on June 2, 2004, dismissed Village League's complaint in its entirety. Village
14 League appealed the case to the Nevada Supreme Court.

15
16 Procedural History (Nevada Supreme Court)

17 On March 23, 2009, the Nevada Supreme Court issued an order affirming in part and
18 reversing in part the district court's order. While agreeing with the district court's determination
19 that the Village League was required to exhaust administrative remedies prior to bringing suit,
20 the Court noted that, "it is not clear, however, that Village League had available any means to
21 administratively challenge the State Board of Equalization's alleged failures to carry out its
22 equalization duties." Order, p. 6. Regarding the equalization claim, the court stated, "[t]he
23 district court should have proceeded to determine whether Village League's claim for injunctive
24 relief was viable." Thus, this matter is before this district court for the limited purpose of
25 determining the viability of Petitioners' claim for injunctive relief against the State Board of
26 Equalization and Washoe County entities as to its claim for equalization and related relief.

27 ///

28 ///

1 Procedural History (District Court)

2 On April 21, 2009, this court granted Petitioners' request to file an amended complaint in
3 conformity with the Supreme Court order. On June 19, 2009, Petitioners filed an *Amended*
4 *Complaint* solely seeking injunctive relief in the form of a writ of mandamus directed to the State
5 Board of Equalization, Washoe County and the Washoe County Treasurer. On October 15,
6 2009, Respondent Washoe County filed a *Motion to Dismiss* pursuant to NRCP 12 (b)(5) and
7 NRCP 12 (b)(6) and a *Motion to Strike Amended Complaint* pursuant to NRCP 15. Petitioners
8 collectively filed an *Opposition to the Motion to Strike* on November 2, 2009 and an *Opposition*
9 *to the Motion to Dismiss* on November 3, 2009. On November 12, 2009, Washoe County filed a
10 *Reply* and submitted the matter. On October 15, 2009, Respondent State of Nevada ex rel. State
11 Board of Equalization (hereinafter the State), filed a *Motion to Dismiss*. On November 2, 2009,
12 Petitioners collectively filed an *Opposition to the State's Motion*. The State filed a *Reply* on
13 November 13, 2009. This matter was submitted on December 3, 2009.

14 On January 8, 2010, this Court ordered the parties to present oral argument on all the
15 motions filed in this matter. On March 25, 2010, a hearing was held wherein the parties
16 presented three (3) hours of oral arguments. This Court has reviewed all the pleadings and has
17 read and considered the caselaw and exhibits submitted by all parties. This Order follows.

18
19 The Parties

20 Petitioner, Village League to Save Incline Assets, Inc., ("Village League") is a Nevada
21 non-profit membership corporation whose members are residential real property owners at
22 Incline Village and Crystal Bay in Washoe County, Nevada, and who owned such properties in
23 the 2003-2004 and 2004-2005 tax years.¹ Respondent State Board of Equalization is a Nevada
24 state agency created by the Nevada Legislature as set forth in NRS 361.375. The State Board of

25
26
27 ¹ Washoe County argues that Village League lacks to raise the equalization claims. This court rejects
28 Washoe County's efforts. Petitioners include the Association and its individual members. See, I.C. Deal v.
999 Lakeshore Association, et al, 94 Nev. 301, 579 P.2d 775 (1978). Additionally, Petitioners are not
seeking NRCP 23 class action certification at this time. Petitioner's Opposition, p.3. In light of this order,
standing and class action certification need not be reached at this time.

1 Equalization's duties include the annual statewide equalization under NRS 361.395 and the duty
2 to determine all appeals from the County Boards of Equalization under NRS 361.400.
3 Respondent Washoe County is a political subdivision of the State of Nevada which has the
4 power to levy taxes on the assessed value of real property. NRS 244.150. Respondent Bill
5 Berrum was the Washoe County Treasurer at the time of this suit's initiation. He has since
6 retired. Tammi Davis is presently the Washoe County Treasurer and is sued only in her official
7 capacity. The Washoe County Treasurer is the ex officio tax receiver for Washoe County and
8 receives all taxes assessed upon real property in the County.

9
10 Legal Arguments

11 In its Amended Complaint, Village League argues that "the similar treatment of similarly
12 situated taxpayers which is the state's standard of equalization requires the State Board of
13 Equalization, pursuant to its duty of statewide equalization under NRS §361.395, to equalize the
14 land valuation of all residential properties at Incline Village and Crystal Bay for the 2003 –2004
15 tax year to 2002 – 2003 values. The State Board of Equalization has failed that duty to the loss
16 and damage of the members of the plaintiff class. A writ of mandamus must issue directing the
17 State Board of Equalization to declare those 2003 – 2004 Incline Village/Crystal Bay
18 assessments void and direct the payment of refunds with interest for the excess over the prior
19 constitutional valuation, pursuant to the Supreme Court's Bakst and Barta decisions." *Amended*
20 *Complaint*, p.6.

21 In its prayer for relief, Village League requests that "the court issue a preemptory writ of
22 mandamus requiring the State Board of Equalization to equalize the land portion of residential
23 real property at Incline Village and Crystal Bay to 2002 – 2003 values to reflect the area-wide
24 use by the Assessor of unlawful and unauthorized valuation methodologies resulting in
25 unconstitutional valuations and assessments, to certify those changes to Washoe County and to
26 direct the payment of refunds pursuant to NRS §361.405." Further, that "the court issue a
27 preemptory writ of mandamus requiring the State Board of Equalization further to equalize
28 property at Lake Tahoe in Douglas and Washoe Counties for the 2003 – 2004 tax year and

1 subsequent years as required by the Nevada Constitution and statutes, to certify those changes to
2 Washoe County and to direct the payment of refunds pursuant to NRS §361.405."

3 In its *Motion to Dismiss*, Washoe County raises a plethora of grounds for dismissal,
4 including: (1) that Mandamus relief is not available to Village League under the facts of this
5 case; (2) that Village League must exhaust administrative remedies pursuant to NRS §§ 361.355-
6 60 and §361.405(4) before seeking any refund for disparate property valuations; and (3) that
7 Village League's petitioners failure to pay their taxes "under protest" pursuant to NRS §361.420
8 precludes any right to seek any refund. In its *Motion to Dismiss*, the State argues that a Writ of
9 Mandamus is not available because Village League cannot show that it has a clear right to the
10 relief requested and they have an adequate, plain and speedy right to the relief requested under
11 the newly established rules and procedures of the State Board of Equalization.

12 13 Writ of Mandamus

14 The Writ of Mandamus is an ancient process going back to the reign of Edward II. (1284-
15 1327). "A writ of mandamus is available to compel the performance of an act that the law
16 requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of
17 discretion or an arbitrary or capricious exercise of discretion." *Sims v. Eighth Judicial District*
18 *Court*, ___ Nev. ___, 206 P.3d 980, 982 (2009)(citing NRS 34.160). Writs of mandamus are
19 extraordinary remedies and are available only when the petitioner has no "plain, speedy and
20 adequate remedy in the ordinary course of law." *D.R. Horton v. Eighth Jud. Dist. Ct.*, 123 Nev.
21 468,474, 168 P.3d 731 (2007)(citations omitted). This extraordinary writ will issue when the
22 right to the relief is clear and the petitioners have no other remedy in the ordinary course of the
23 law. *Gumm v. Nevada Dep't of Education*, 121 Nev. 371, 375, 113 P.3d 853 (2005). The writ of
24 mandamus "ought to be used upon all occasions where the law has established no specific
25 remedy, and where in justice and good government there ought be one." *Marbury v. Madison*, 1
26 Cranch 137, 169 (1803)(internal citations omitted). It is axiomatic that a writ of mandamus
27 should not issue in a case in which a party has a plain, speedy and adequate remedy at law.

1 "Taxable Value" Property Tax System

2 Nevada is the only State in the Nation that employs a "taxable value" property tax system
3 where land is valued at market price and improvements at replacement cost new, less 1.5 percent
4 depreciation per year based upon age of the structure. In this system, residential property is
5 valued by valuing the land and improvements separately with the sum of the two values
6 constituting the property as "taxable" value. While the improvements are valued by formula
7 which is fairly simple and direct, the land is valued at the market value for vacant land. The
8 market analysis for vacant land is workable as long as there are sufficient comparable vacant
9 land sales. The problem with Nevada's taxable-value system (as opposed to a "market value"
10 system) is that without sufficient comparable vacant land sales, the "taxable value" assessment
11 system fails.

12
13 Market Value Property Tax System

14 In a "market value" property tax system, whether it is comparable sales, allocation
15 between land and improvements, or income, the resulting determination comes up against the
16 actual market value which is the standard against which property valuation is assessed. In
17 Nevada's "taxable value" property tax system, there is no "taxable value" standard. Although
18 regulations identified alternative valuation methodologies, these provide no model for their
19 uniform application.

20 Perhaps the only thing all parties agree upon is that there is no objective, external
21 standard either for taxable value as a whole or for the land portion of the taxable value of
22 residential real property because the "taxable value" of residential property bears no relationship
23 to the market value of that property. There are simply no underlying studies or evidence to
24 assure uniformity with a comparable sales analysis estimate of value. In the absence of an
25 external, objective market standard, the only way to achieve uniformity of taxable value is to
26 assure that the Assessors use uniform methods of determining taxable value. Only if similar
27
28

1 properties are valued using the same methodology can the constitutional requirement of
2 uniformity be satisfied. This can only be done on a case-by-case individual appraisal basis.²
3

4 Ratio Study

5 A "Ratio Study" means an evaluation of the quality and level of assessment of a class or
6 group of properties in a county which prepares the assessed valuations established by the county
7 assessor for a sampling of those properties to an estimate of the taxable value of the property by
8 the Department of Taxation or an independent appraiser or the sales price of the property as
9 appropriate. A ratio study is designed to evaluate the appraisal performance or determine taxable
10 value through comparison of appraised or assessed values estimated for tax purposes with
11 independent estimates of value based upon either sale prices or independent appraisals. A
12 comparison of the estimated value produced by the Assessor on each parcel to the estimate of
13 taxable value produced by the Department of Taxation is called a "ratio."

14 The "ratio study" involves the determination of assessment levels by computing the
15 central tendencies (mean, median and aggregate ratios) of assessment ratios. Nevada specifies
16 the use of the median ratio, the aggregate ratio, and the coefficient of dispersion of the median to
17 evaluate both the total property assessment and the assessment of each major property class. The
18 "median" is the most widely used measure because it is less affected by extreme ratios and is the
19 preferred measure for monitoring appraisal performance or the need for reappraisal.
20

21 The District Court Mandate

22 The Nevada Supreme Court remanded this case for the sole issue of determining whether
23 Village League is entitled to injunctive relief on its equalization claim against the Respondents.
24 Village League seeks a writ of mandamus directing the State Board of Equalization to "declare
25 those 2003-2004 Incline Village/Crystal Bay assessments void and direct the payment of refunds
26
27

28 ² While there are only a few landowners in this lawsuit, all parties agree that the remaining 8700 property owners in Incline Village and Crystal Bay would be entitled to seek identical relief from this court.

1 for those excess over the prior constitutional valuation, pursuant to the Supreme Court Bakst³
2 and Barta⁴ decisions.” *Amended Complaint*, p. 6. If Village League has no “plain, just and
3 speedy remedy at law,” the writ of mandamus should issue.

4
5 Legal Analysis

6 Village League argues that the State Board of Equalization must be directed to equalize
7 all of Incline Village and Crystal Bay for the 2003-2004 tax year by returning the land values to
8 their 2002-2003 levels. Village League asks “[t]hat the Court issue a peremptory writ of
9 mandamus requiring the State Board of Equalization to equalize the land portion of residential
10 real property at Incline Village and Crystal Bay to 2002-2003 values...” and to “direct the
11 payment of refunds ...” *Amended Complaint*, p. 7.

12 Village League seeks injunctive relief directing the State Board of Equalization to
13 employ a specific statistical method which will equalize property values statewide and
14 (hopefully) lower its members’ property taxes resulting in a refund to its members. Village
15 League argues that only a writ of mandamus directing the State Board to employ a specific
16 statistical method can avoid the application of the methods found to be unconstitutional in Barta
17 and Bakst. However, Village League’s own expert admits there is no statistical method that
18 Nevada regulators can adopt that would effectively measure whether state-wide equalization is
19 occurring given state’s “taxable-value” property assessment system. *See*, Plaintiff Response to
20 Statement of New Authority, Ex. 2.⁵

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23 ³ State ex rel State Bd of Equalization v. Bakst, 122 Nev. 1403 (2006)

24 ⁴ State ex rel State Bd of Equalization v. Barta, 124 Nev. 58 (2008)

25 ⁵ In an interview with Plaintiff expert Richard Almy, he was asked whether there was “any statistical
26 method that Nevada regulators can adopt to effectively measure whether statewide equalization is
27 occurring in the state’s taxable-value system, Almy said “I don’t know.”” Nevada Policy Research
28 Institute, (February 26, 2010), p. 2. Clearly, if Plaintiff’s expert cannot identify *any* statistical method which
would achieve state-wide equalization under Nevada’s taxable-value system, this Court cannot be
expected to be any more discerning. This Court can no more order the State Board of Equalization to
employ a statistical method that does not exist than it can order it to solve the Hodge Conjecture of
algebraic topology.

1 Nor is this district court the appropriate forum to argue for an adjustment of taxable
2 property valuation. That proper forum is before the State Board of Equalization. While such a
3 procedure did not exist in 2003, it does now.

4
5 Adoption and Amendment of Permanent Regulations of State Board

6 On March 1, 2010, the State Board of Equalizations held hearings on a proposal to adopt
7 and amend NAC Chapter 361 with respect to the process of equalization of property values for
8 property tax purposes by the State Board of Equalizations. The purpose of these hearings were to
9 address the Nevada Supreme Court's decisions in Bakst and Barta and to determine whether
10 property in Nevada has been assessed uniformly in accordance with the methods of appraisal and
11 at the assessment level required by law. (Respondents *Statement of New Authority* Ex. 3 (Notice
12 of Public Hearing for the Adoption and Amendment of Permanent Regulations of the State
13 Board of Equalization, Jan. 28, 2010). Specifically, the hearing was held to determine whether
14 the taxable values specified in the tax roll of any county must be increased or decreased to
15 equalize property valuations in Nevada. Further, the new regulations will provide the criteria to
16 determine whether property has been assessed uniformly, including a review of relevant ratio
17 studies, performance audits and any other relevant evidence including a systematic investigation
18 and evaluation by the State Board of Equalization of the procedures and operations of the county
19 assessors. These rules, regulations and procedures are in response to the Nevada Supreme
20 Court's decisions in Barta and Bakst. (Petitioners' *Response to Statement of New Authority* Ex. 1
21 at 25-26 (Transcript of Proceedings, Dept. of Taxation, State Board of Equalization, Mar. 1,
22 2010).

23 While there appears to have been no regulations or procedures pertaining to the process
24 of equalization of property values for property tax purposes in 2003, that procedural deficit has
25 been remedied by the recent promulgation of rules, procedures and regulations by the State
26 Board of Equalization. These procedures provide aggrieved citizens like Incline Village and
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1 Crystal Bay residents a forum to vet the tax valuation of their property before the State Board of
2 Equalization.⁶ This is precisely the relief sought by Village League in its *Amended Complaint*.

3 These rules allow the State Board of Equalization to equalize property tax valuations by
4 requiring reappraisal, or in the alternative, requiring the increase or decrease of the taxable value
5 of these properties. As such, even if mandamus relief would have been available to compel the
6 State Board of Equalization to fulfill its general equalization duty in 2003, mandamus relief is
7 inappropriate now because the State Board is complying with its statutory duty under NRS
8 361.395. The issuance of a writ of mandamus to compel the State Board of Equalization to
9 perform a function it is already performing is an inappropriate exercise of this court's discretion
10 under the law.

11 The Nevada Supreme Court has directed district courts to "refrain from exercising
12 jurisdiction so that technical issues can first be determined by an administrative agency." *Sports*
13 *Form, Inc. v. Leroy's Horse and Sports Place*, 108 Nev. 37, 823 P.2d 901 (1992). This is to
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15 by a tribunal with specialized knowledge." *Id.* (citing *Kappler v. Delta Air Lines*, 539 F.2d
16 165, 168-169 (C.App. D.C. 1976). These laudable policies are better served by allowing the State
17 Board of Equalization to apply its new equalization regulations without district court
18 interference. In this manner, each member of Village League may achieve the result they seek
19 without the problems attendant to lengthy, expensive and inconsistent litigation results. "The
20 exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and
21 conserves judicial resources, so its purposes are valuable; requiring exhaustion of administrative
22 remedies often resolves disputes without the need for judicial involvement." *Allstate Ins. Co. v.*
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⁶ "[W]hat these regulations provide is a process, an orderly process to gather information, to make sure all
the parties, including the taxpayers, are included, and the counties who have to implement any
equalization order you may come up with. So, the whole purpose here is to ensure that you have looked
at a broad range of information and that you have conducted your equalization duties in an open setting
with input from taxpayers." (Transcript of Proceedings, March 1, 2010, p.46).

1 Conclusion

2 A writ of mandamus is an extraordinary remedy which should issue only where the right
3 to relief is clear and the petitioner has no plain, speedy or adequate remedy in the ordinary course
4 of the law. In this case, Petitioners are seeking a judicial remedy that does not exist under
5 Nevada's present taxable-value system. Additionally, Petitioners ask this Court to direct the State
6 Board of Equalization to exercise its regulatory discretion to achieve a predetermined result
7 which is an impermissible exercise of this court's lawful authority. Finally, Petitioners have a
8 plain, speedy and adequate remedy at law through the newly promulgated procedures of the State
9 Board of Equalization. The issuance writ of mandamus is not appropriate in this case. Therefore,

10

11 **IT IS HEREBY ORDERED**

12 Defendant Washoe County's *Motion to Dismiss* is **GRANTED**;

13 Defendant State of Nevada's *Motion to Dismiss* is **GRANTED**;

14

15 Petitioner VILLAGE LEAGUE's *Amended Complaint* is **DISMISSED**.

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19 DATED this 13th day of April, 2010.

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Patrick Flanagan
PATRICK FLANAGAN
District Judge

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Dennis Belcourt, Esq. and Deonne Contine, Esq. for State Board of Equalization;
Suellen Fulstone, Esq. for Village League to Save Incline Assets, Inc; and

David Creekman, Esq.
Deputy District Attorney
Washoe county District Attorney's Office
[via interoffice mail]

Maureen Conway
Maureen Conway

FILED

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Howard W. Conyers

Clerk of the Court

Transaction # 1429203

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 their members and
others similarly situated; MARYANNE
INGEMANSON, Trustee of the Larry D.
and Maryanne B. Ingemanson Trust; DEAN
R. INGEMANSON, individually and as
Trustee of the Dean R. Ingemanson Trust; J.
ROBERT ANDERSON; and LES BARTA;
on behalf of themselves and others similarly
situated;

Case No.: CV03-06922

Dept. No.: 7

Petitioners,

vs.

STATE OF NEVADA on relation of the
State Board of Equalization; WASHOE
COUNTY; BILL BERRUM, Washoe
County Treasurer,

Respondents.

AMENDED ORDER

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." Marbury v. Madison, 1 Cranch 137, 163, 5 U.S. 137 (1803)(directing a writ of mandamus to compel Secretary of State James Madison to deliver judicial commissions to which a party in former President John Adams' administration was entitled to receive).

1 Factual Background

2 On November 13, 2003, the Village League to Save Incline Assets filed a district court
3 complaint against the Nevada Department of Taxation, the Nevada Tax Commission, the State
4 Board of Equalization, the Washoe County Assessor and Washoe County Treasurer. On behalf
5 of their members, the complaint sought declaratory and injunctive relief concerning the property
6 tax assessment methods of respondents Washoe County Assessor, the Nevada Tax Commission
7 and the State Board of Equalization. Plaintiffs contended that the property assessment methods
8 and procedures used by the Washoe County Assessor were constitutionally invalid and that the
9 State Board of Equalization had failed to carry out its constitutional obligation to equalize
10 property valuations statewide. In addition to declaratory and injunctive relief, Village League
11 sought property tax refunds. Defendants moved for dismissal of all causes of action because
12 Village League failed to exhaust its administrative remedies prior to bringing suit. The district
13 court agreed and on June 2, 2004, dismissed Village League's complaint in its entirety. Village
14 League appealed the case to the Nevada Supreme Court.

15
16 Procedural History (Nevada Supreme Court)

17 On March 23, 2009, the Nevada Supreme Court issued an order affirming in part and
18 reversing in part the district court's order. While agreeing with the district court's determination
19 that the Village League was required to exhaust administrative remedies prior to bringing suit,
20 the Court noted that, "it is not clear, however, that Village League had available any means to
21 administratively challenge the State Board of Equalization's alleged failures to carry out its
22 equalization duties." Order, p. 6. Regarding the equalization claim, the court stated, "[t]he
23 district court should have proceeded to determine whether Village League's claim for injunctive
24 relief was viable." Thus, this matter is before this district court for the limited purpose of
25 determining the viability of Petitioners' claim for injunctive relief against the State Board of
26 Equalization and Washoe County entities as to its claim for equalization and related relief.

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1 Procedural History (District Court)

2 On April 21, 2009, this court granted Petitioners' request to file an amended complaint in
3 conformity with the Supreme Court order. On June 19, 2009, Petitioners filed an *Amended*
4 *Complaint* solely seeking injunctive relief in the form of a writ of mandamus directed to the State
5 Board of Equalization, Washoe County and the Washoe County Treasurer. On October 15,
6 2009, Respondent Washoe County filed a *Motion to Dismiss* pursuant to NRCP 12 (b)(5) and
7 NRCP 12 (b)(6) and a *Motion to Strike Amended Complaint* pursuant to NRCP 15. Petitioners
8 collectively filed an *Opposition to the Motion to Strike* on November 2, 2009 and an *Opposition*
9 *to the Motion to Dismiss* on November 3, 2009. On November 12, 2009, Washoe County filed a
10 *Reply* and submitted the matter. On October 15, 2009, Respondent State of Nevada ex rel. State
11 Board of Equalization (hereinafter the State), filed a *Motion to Dismiss*. On November 2, 2009,
12 Petitioners collectively filed an *Opposition* to the State's *Motion*. The State filed a *Reply* on
13 November 13, 2009. This matter was submitted on December 3, 2009.

14 On January 8, 2010, this Court ordered the parties to present oral argument on all the
15 motions filed in this matter. On March 25, 2010, a hearing was held wherein the parties
16 presented three (3) hours of oral arguments. This Court has reviewed all the pleadings and has
17 read and considered the caselaw and exhibits submitted by all parties. This Order follows.

18
19 The Parties

20 Petitioner, Village League to Save Incline Assets, Inc., ("Village League") is a Nevada
21 non-profit membership corporation whose members are residential real property owners at
22 Incline Village and Crystal Bay in Washoe County, Nevada, and who owned such properties in
23 the 2003-2004 and 2004-2005 tax years.¹ Respondent State Board of Equalization is a Nevada
24 state agency created by the Nevada Legislature as set forth in NRS 361.375. The State Board of

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27 ¹ Washoe County argues that Village League lacks to raise the equalization claims. This court rejects
28 Washoe County's efforts. Petitioners include the Association and its individual members. See, I.C. Deal v.
999 Lakeshore Association, et al, 94 Nev. 301, 579 P.2d 775 (1978). Additionally, Petitioners are not
seeking NRCP 23 class action certification at this time. Petitioner's Opposition, p.3. In light of this order,
standing and class action certification need not be reached at this time.

1 Equalization's duties include the annual statewide equalization under NRS 361.395 and the duty
2 to determine all appeals from the County Boards of Equalization under NRS 361.400.
3 Respondent Washoe County is a political subdivision of the State of Nevada which has the
4 power to levy taxes on the assessed value of real property. NRS 244.150. Respondent Bill
5 Berrum was the Washoe County Treasurer at the time of this suit's initiation. He has since
6 retired. Tammi Davis is presently the Washoe County Treasurer and is sued only in her official
7 capacity. The Washoe County Treasurer is the ex officio tax receiver for Washoe County and
8 receives all taxes assessed upon real property in the County.

9
10 Legal Arguments

11 In its Amended Complaint, Village League argues that "the similar treatment of similarly
12 situated taxpayers which is the state's standard of equalization requires the State Board of
13 Equalization, pursuant to its duty of statewide equalization under NRS §361.395, to equalize the
14 land valuation of all residential properties at Incline Village and Crystal Bay for the 2003 – 2004
15 tax year to 2002 – 2003 values. The State Board of Equalization has failed that duty to the loss
16 and damage of the members of the plaintiff class. A writ of mandamus must issue directing the
17 State Board of Equalization to declare those 2003 – 2004 Incline Village/Crystal Bay
18 assessments void and direct the payment of refunds with interest for the excess over the prior
19 constitutional valuation, pursuant to the Supreme Court's Bakst and Barta decisions." *Amended*
20 *Complaint*, p.6.

21 In its prayer for relief, Village League requests that "the court issue a preemptory writ of
22 mandamus requiring the State Board of Equalization to equalize the land portion of residential
23 real property at Incline Village and Crystal Bay to 2002 – 2003 values to reflect the area-wide
24 use by the Assessor of unlawful and unauthorized valuation methodologies resulting in
25 unconstitutional valuations and assessments, to certify those changes to Washoe County and to
26 direct the payment of refunds pursuant to NRS §361.405." Further, that "the court issue a
27 preemptory writ of mandamus requiring the State Board of Equalization further to equalize
28 property at Lake Tahoe in Douglas and Washoe Counties for the 2003 – 2004 tax year and

1 subsequent years as required by the Nevada Constitution and statutes, to certify those changes to
2 Washoe County and to direct the payment of refunds pursuant to NRS §361.405."

3 In its *Motion to Dismiss*, Washoe County raises a plethora of grounds for dismissal,
4 including: (1) that Mandamus relief is not available to Village League under the facts of this
5 case; (2) that Village League must exhaust administrative remedies pursuant to NRS §§ 361.355-
6 60 and §361.405(4) before seeking any refund for disparate property valuations; and (3) that
7 Village League's petitioners failure to pay their taxes "under protest" pursuant to NRS §361.420
8 precludes any right to seek any refund. In its *Motion to Dismiss*, the State argues that a Writ of
9 Mandamus is not available because Village League cannot show that it has a clear right to the
10 relief requested and they have an adequate, plain and speedy right to the relief requested under
11 the newly established rules and procedures of the State Board of Equalization.

12 13 Writ of Mandamus

14 The Writ of Mandamus is an ancient process going back to the reign of Edward II. (1284-
15 1327). "A writ of mandamus is available to compel the performance of an act that the law
16 requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of
17 discretion or an arbitrary or capricious exercise of discretion." *Sims v. Eighth Judicial District*
18 *Court*, ___ Nev. ___, 206 P.3d 980, 982 (2009)(citing NRS 34.160). Writs of mandamus are
19 extraordinary remedies and are available only when the petitioner has no "plain, speedy and
20 adequate remedy in the ordinary course of law." *D.R. Horton v. Eighth Jud. Dist. Ct.*, 123 Nev.
21 468,474, 168 P.3d 731 (2007)(citations omitted). This extraordinary writ will issue when the
22 right to the relief is clear and the petitioners have no other remedy in the ordinary course of the
23 law. *Gumm v. Nevada Dep't of Education*, 121 Nev. 371, 375, 113 P.3d 853 (2005). The writ of
24 mandamus "ought to be used upon all occasions where the law has established no specific
25 remedy, and where in justice and good government there ought be one." *Marbury v. Madison*, 1
26 Cranch 137, 169 (1803)(internal citations omitted). It is axiomatic that a writ of mandamus
27 should not issue in a case in which a party has a plain, speedy and adequate remedy at law.

1 "Taxable Value" Property Tax System

2 Nevada is the only State in the Nation that employs a "taxable value" property tax system
3 where land is valued at market price and improvements at replacement cost new, less 1.5 percent
4 depreciation per year based upon age of the structure. In this system, residential property is
5 valued by valuing the land and improvements separately with the sum of the two values
6 constituting the property as "taxable" value. While the improvements are valued by formula
7 which is fairly simple and direct, the land is valued at the market value for vacant land. The
8 market analysis for vacant land is workable as long as there are sufficient comparable vacant
9 land sales. The problem with Nevada's taxable-value system (as opposed to a "market value"
10 system) is that without sufficient comparable vacant land sales, the "taxable value" assessment
11 system fails.

12
13 Market Value Property Tax System

14 In a "market value" property tax system, whether it is comparable sales, allocation
15 between land and improvements, or income, the resulting determination comes up against the
16 actual market value which is the standard against which property valuation is assessed. In
17 Nevada's "taxable value" property tax system, there is no "taxable value" standard. Although
18 regulations identified alternative valuation methodologies, these provide no model for their
19 uniform application.

20 Perhaps the only thing all parties agree upon is that there is no objective, external
21 standard either for taxable value as a whole or for the land portion of the taxable value of
22 residential real property because the "taxable value" of residential property bears no relationship
23 to the market value of that property. There are simply no underlying studies or evidence to
24 assure uniformity with a comparable sales analysis estimate of value. In the absence of an
25 external, objective market standard, the only way to achieve uniformity of taxable value is to
26 assure that the Assessors use uniform methods of determining taxable value. Only if similar
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1 properties are valued using the same methodology can the constitutional requirement of
2 uniformity be satisfied. This can only be done on a case-by-case individual appraisal basis.²
3

4 Ratio Study

5 A "Ratio Study" means an evaluation of the quality and level of assessment of a class or
6 group of properties in a county which prepares the assessed valuations established by the county
7 assessor for a sampling of those properties to an estimate of the taxable value of the property by
8 the Department of Taxation or an independent appraiser or the sales price of the property as
9 appropriate. A ratio study is designed to evaluate the appraisal performance or determine taxable
10 value through comparison of appraised or assessed values estimated for tax purposes with
11 independent estimates of value based upon either sale prices or independent appraisals. A
12 comparison of the estimated value produced by the Assessor on each parcel to the estimate of
13 taxable value produced by the Department of Taxation is called a "ratio."

14 The "ratio study" involves the determination of assessment levels by computing the
15 central tendencies (mean, median and aggregate ratios) of assessment ratios. Nevada specifies
16 the use of the median ratio, the aggregate ratio, and the coefficient of dispersion of the median to
17 evaluate both the total property assessment and the assessment of each major property class. The
18 "median" is the most widely used measure because it is less affected by extreme ratios and is the
19 preferred measure for monitoring appraisal performance or the need for reappraisal.
20

21 The District Court Mandate

22 The Nevada Supreme Court remanded this case for the sole issue of determining whether
23 Village League is entitled to injunctive relief on its equalization claim against the Respondents.
24 Village League seeks a writ of mandamus directing the State Board of Equalization to "declare
25 those 2003-2004 Incline Village/Crystal Bay assessments void and direct the payment of refunds
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28 ² While there are only a few landowners in this lawsuit, all parties agree that the remaining 8700 property
owners in Incline Village and Crystal Bay would be entitled to seek identical relief from this court.

1 for those excess over the prior constitutional valuation, pursuant to the Supreme Court Bakst³
2 and Barta⁴ decisions.” *Amended Complaint*, p. 6. If Village League has no “plain, just and
3 speedy remedy at law,” the writ of mandamus should issue.

4
5 Legal Analysis

6 Village League argues that the State Board of Equalization must be directed to equalize
7 all of Incline Village and Crystal Bay for the 2003-2004 tax year by returning the land values to
8 their 2002-2003 levels. Village League asks “[t]hat the Court issue a peremptory writ of
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1 Nevada's present taxable-value system. Additionally, Petitioners ask this Court to direct the State
2 Board of Equalization to exercise its regulatory discretion to achieve a predetermined result
3 which is an impermissible exercise of this court's lawful authority. Finally, Petitioners have a
4 plain, speedy and adequate remedy at law through the newly promulgated procedures of the State
5 Board of Equalization. The issuance writ of mandamus is not appropriate in this case. Therefore,
6

7 **IT IS HEREBY ORDERED**

8 Defendant Washoe County's *Motion to Dismiss* is **GRANTED**;

9 Defendant State of Nevada's *Motion to Dismiss* is **GRANTED**;

10
11 Petitioner VILLAGE LEAGUE's *Amended Complaint* is **DISMISSED**.
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15 **DATED** this 13th day of April, 2010.

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17 PATRICK FLANAGAN
18 District Judge
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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 their members and
others similarly situated; MARYANNE
INGEMANSON, Trustee of the Larry D.
and Maryanne B. Ingemanson Trust; DEAN
R. INGEMANSON, individually and as
Trustee of the Dean R. Ingemanson Trust; J.
ROBERT ANDERSON; and LES BARTA;
on behalf of themselves and others similarly
situated;

Case No.: CV03-06922

Dept. No.: 7

Petitioners,

vs.

STATE OF NEVADA on relation of the
State Board of Equalization; WASHOE
COUNTY; BILL BERRUM, Washoe
County Treasurer,

Respondents.

SECOND AMENDED ORDER

“The government of the United States has been emphatically termed a government of
laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish
no remedy for the violation of a vested legal right.” Marbury v. Madison, 1 Cranch 137, 163, 5
U.S. 137 (1803)(directing a writ of mandamus to compel Secretary of State James Madison to
deliver judicial commissions to which a party in former President John Adams’ administration
was entitled to receive).

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1 **Factual Background**

2 On November 13, 2003, the Village League to Save Incline Assets filed a district court
3 complaint against the Nevada Department of Taxation, the Nevada Tax Commission, the State
4 Board of Equalization, the Washoe County Assessor and Washoe County Treasurer. On behalf
5 of their members, the complaint sought declaratory and injunctive relief concerning the property
6 tax assessment methods of respondents Washoe County Assessor, the Nevada Tax Commission
7 and the State Board of Equalization. Plaintiffs contended that the property assessment methods
8 and procedures used by the Washoe County Assessor were constitutionally invalid and that the
9 State Board of Equalization had failed to carry out its constitutional obligation to equalize
10 property valuations statewide. In addition to declaratory and injunctive relief, Village League
11 sought property tax refunds. Defendants moved for dismissal of all causes of action because
12 Village League failed to exhaust its administrative remedies prior to bringing suit. The district
13 court agreed and on June 2, 2004, dismissed Village League's complaint in its entirety. Village
14 League appealed the case to the Nevada Supreme Court.

15 **Procedural History (Nevada Supreme Court)**

16 On March 23, 2009, the Nevada Supreme Court issued an order affirming in part and
17 reversing in part the district court's order. While agreeing with the district court's determination
18 that the Village League was required to exhaust administrative remedies prior to bringing suit,
19 the Court noted that, "it is not clear, however, that Village League had available any means to
20 administratively challenge the State Board of Equalization's alleged failures to carry out its
21 equalization duties." Order, p. 6. Regarding the equalization claim, the court stated, "[t]he
22 district court should have proceeded to determine whether Village League's claim for injunctive
23 relief was viable." Thus, this matter is before this district court for the limited purpose of
24 determining the viability of Petitioners' claim for injunctive relief against the State Board of
25 Equalization and Washoe County entities as to its claim for equalization and related relief.

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1 **Procedural History (District Court)**

2 On April 21, 2009, this court granted Petitioners' request to file an amended complaint in
3 conformity with the Supreme Court order. On June 19, 2009, Petitioners filed an *Amended*
4 *Complaint* solely seeking injunctive relief in the form of a writ of mandamus directed to the State
5 Board of Equalization, Washoe County and the Washoe County Treasurer. On October 15,
6 2009, Respondent Washoe County filed a *Motion to Dismiss* pursuant to NRCP 12 (b)(5) and
7 NRCP 12 (b)(6) and a *Motion to Strike Amended Complaint* pursuant to NRCP 15. Petitioners
8 collectively filed an *Opposition to the Motion to Strike* on November 2, 2009 and an *Opposition*
9 *to the Motion to Dismiss* on November 3, 2009. On November 12, 2009, Washoe County filed a
10 *Reply* and submitted the matter. On October 15, 2009, Respondent State of Nevada ex rel. State
11 Board of Equalization (hereinafter the State), filed a *Motion to Dismiss*. On November 2, 2009,
12 Petitioners collectively filed an *Opposition to the State's Motion*. The State filed a *Reply* on
13 November 13, 2009. This matter was submitted on December 3, 2009.

14 On January 8, 2010, this Court ordered the parties to present oral argument on all the
15 motions filed in this matter. On March 25, 2010, a hearing was held wherein the parties
16 presented three (3) hours of oral arguments. This Court has reviewed all the pleadings and has
17 read and considered the case law and exhibits submitted by all parties. This Order follows.

18 **The Parties**

19 Petitioner, Village League to Save Incline Assets, Inc., ("Village League") is a Nevada
20 non-profit membership corporation whose members are residential real property owners at
21 Incline Village and Crystal Bay in Washoe County, Nevada, and who owned such properties in
22 the 2003-2004 and 2004-2005 tax years.¹ Respondent State Board of Equalization is a Nevada
23 state agency created by the Nevada Legislature as set forth in NRS 361.375. The State Board of
24 Equalization's duties include the annual statewide equalization under NRS 361.395 and the duty

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27 ¹ Washoe County argues that Village League lacks to raise the equalization claims. This court rejects
28 Washoe County's efforts. Petitioners include the Association and its individual members. See, *I.C. Deal v.*
999 Lakeshore Association, et al, 94 Nev. 301, 579 P.2d 775 (1978). Additionally, Petitioners are not
seeking NRCP 23 class action certification at this time. Petitioner's *Opposition*, p.3. In light of this order,
standing and class action certification need not be reached at this time.

1 to determine all appeals from the County Boards of Equalization under NRS 361.400.
2 Respondent Washoe County is a political subdivision of the State of Nevada which has the
3 power to levy taxes on the assessed value of real property. NRS 244.150. Respondent Bill
4 Berrum was the Washoe County Treasurer at the time of this suit's initiation. He has since
5 retired. Tammi Davis is presently the Washoe County Treasurer and is sued only in her official
6 capacity. The Washoe County Treasurer is the ex officio tax receiver for Washoe County and
7 receives all taxes assessed upon real property in the County.

8 **Legal Arguments**

9 In its Amended Complaint, Village League argues that "the similar treatment of similarly
10 situated taxpayers which is the state's standard of equalization requires the State Board of
11 Equalization, pursuant to its duty of statewide equalization under NRS §361.395, to equalize the
12 land valuation of all residential properties at Incline Village and Crystal Bay for the 2003 – 2004
13 tax year to 2002 – 2003 values. The State Board of Equalization has failed that duty to the loss
14 and damage of the members of the plaintiff class. A writ of mandamus must issue directing the
15 State Board of Equalization to declare those 2003 – 2004 Incline Village/Crystal Bay
16 assessments void and direct the payment of refunds with interest for the excess over the prior
17 constitutional valuation, pursuant to the Supreme Court's Bakst and Barta decisions." *Amended*
18 *Complaint*, p.6.

19 In its prayer for relief, Village League requests that "the court issue a preemptory writ of
20 mandamus requiring the State Board of Equalization to equalize the land portion of residential
21 real property at Incline Village and Crystal Bay to 2002 – 2003 values to reflect the area-wide
22 use by the Assessor of unlawful and unauthorized valuation methodologies resulting in
23 unconstitutional valuations and assessments, to certify those changes to Washoe County and to
24 direct the payment of refunds pursuant to NRS §361.405." Further, that "the court issue a
25 preemptory writ of mandamus requiring the State Board of Equalization further to equalize
26 property at Lake Tahoe in Douglas and Washoe Counties for the 2003 – 2004 tax year and
27 subsequent years as required by the Nevada Constitution and statutes, to certify those changes to
28 Washoe County and to direct the payment of refunds pursuant to NRS §361.405."

1 In its *Motion to Dismiss*, Washoe County raises a plethora of grounds for dismissal,
2 including: (1) that Mandamus relief is not available to Village League under the facts of this
3 case; (2) that Village League must exhaust administrative remedies pursuant to NRS §§ 361.355-
4 60 and §361.405(4) before seeking any refund for disparate property valuations; and (3) that
5 Village League's petitioners failure to pay their taxes "under protest" pursuant to NRS §361.420
6 precludes any right to seek any refund. In its *Motion to Dismiss*, the State argues that a Writ of
7 Mandamus is not available because Village League cannot show that it has a clear right to the
8 relief requested and they have an adequate, plain and speedy right to the relief requested under
9 the newly established rules and procedures of the State Board of Equalization.

10 **Writ of Mandamus**

11 The Writ of Mandamus is an ancient process going back to the reign of Edward II. (1284-
12 1327). "A writ of mandamus is available to compel the performance of an act that the law
13 requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of
14 discretion or an arbitrary or capricious exercise of discretion." *Sims v. Eighth Judicial District*
15 *Court*, ___ Nev. ___, 206 P.3d 980, 982 (2009)(citing NRS 34.160). Writs of mandamus are
16 extraordinary remedies and are available only when the petitioner has no "plain, speedy and
17 adequate remedy in the ordinary course of law." *D.R. Horton v. Eighth Jud. Dist. Ct.*, 123 Nev.
18 468,474, 168 P.3d 731 (2007)(citations omitted). This extraordinary writ will issue when the
19 right to the relief is clear and the petitioners have no other remedy in the ordinary course of the
20 law. *Gumm v. Nevada Dep't of Education*, 121 Nev. 371, 375, 113 P.3d 853 (2005). The writ of
21 mandamus "ought to be used upon all occasions where the law has established no specific
22 remedy, and where in justice and good government there ought be one." *Marbury v. Madison*, 1
23 Cranch 137, 169 (1803)(internal citations omitted). It is axiomatic that a writ of mandamus
24 should not issue in a case in which a party has a plain, speedy and adequate remedy at law.

25 **"Taxable Value" Property Tax System**

26 Nevada is the only State in the Nation that employs a "taxable value" property tax system
27 where land is valued at market price and improvements at replacement cost new, less 1.5 percent
28 depreciation per year based upon age of the structure. In this system, residential property is

1 valued by valuing the land and improvements separately with the sum of the two values
2 constituting the property as "taxable" value. While the improvements are valued by formula
3 which is fairly simple and direct, the land is valued at the market value for vacant land. The
4 market analysis for vacant land is workable as long as there are sufficient comparable vacant
5 land sales. The problem with Nevada's taxable-value system (as opposed to a "market value"
6 system) is that without sufficient comparable vacant land sales, the "taxable value" assessment
7 system fails.

8 **Market Value Property Tax System**

9 In a "market value" property tax system, whether it is comparable sales, allocation
10 between land and improvements, or income, the resulting determination comes up against the
11 actual market value which is the standard against which property valuation is assessed. In
12 Nevada's "taxable value" property tax system, there is no "taxable value" standard. Although
13 regulations identified alternative valuation methodologies, these provide no model for their
14 uniform application.

15 Perhaps the only thing all parties agree upon is that there is no objective, external
16 standard either for taxable value as a whole or for the land portion of the taxable value of
17 residential real property because the "taxable value" of residential property bears no relationship
18 to the market value of that property. There are simply no underlying studies or evidence to
19 assure uniformity with a comparable sales analysis estimate of value. In the absence of an
20 external, objective market standard, the only way to achieve uniformity of taxable value is to
21 assure that the Assessors use uniform methods of determining taxable value. Only if similar
22 properties are valued using the same methodology can the constitutional requirement of
23 uniformity be satisfied. This can only be done on a case-by-case individual appraisal basis.²

24 **Ratio Study**

25 A "Ratio Study" means an evaluation of the quality and level of assessment of a class or
26 group of properties in a county which prepares the assessed valuations established by the county
27

28 ² While there are only a few landowners in this lawsuit, all parties agree that the remaining 8700 property owners in Incline Village and Crystal Bay would be entitled to seek identical relief from this court.

1 assessor for a sampling of those properties to an estimate of the taxable value of the property by
2 the Department of Taxation or an independent appraiser or the sales price of the property as
3 appropriate. A ratio study is designed to evaluate the appraisal performance or determine taxable
4 value through comparison of appraised or assessed values estimated for tax purposes with
5 independent estimates of value based upon either sale prices or independent appraisals. A
6 comparison of the estimated value produced by the Assessor on each parcel to the estimate of
7 taxable value produced by the Department of Taxation is called a "ratio."

8 The "ratio study" involves the determination of assessment levels by computing the
9 central tendencies (mean, median and aggregate ratios) of assessment ratios. Nevada specifies
10 the use of the median ratio, the aggregate ratio, and the coefficient of dispersion of the median to
11 evaluate both the total property assessment and the assessment of each major property class. The
12 "median" is the most widely used measure because it is less affected by extreme ratios and is the
13 preferred measure for monitoring appraisal performance or the need for reappraisal.

14 **The District Court Mandate**

15 The Nevada Supreme Court remanded this case for the sole issue of determining whether
16 Village League is entitled to injunctive relief on its equalization claim against the Respondents.
17 Village League seeks a writ of mandamus directing the State Board of Equalization to "declare
18 those 2003-2004 Incline Village/Crystal Bay assessments void and direct the payment of refunds
19 for those excess over the prior constitutional valuation, pursuant to the Supreme Court Bakst³
20 and Barta⁴ decisions." *Amended Complaint*, p. 6. If Village League has no "plain, just and
21 speedy remedy at law," the writ of mandamus should issue.

22 **Legal Analysis**

23 Village League argues that the State Board of Equalization must be directed to equalize
24 all of Incline Village and Crystal Bay for the 2003-2004 tax year by returning the land values to
25 their 2002-2003 levels. Village League asks "[t]hat the Court issue a peremptory writ of
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27 ³ State ex rel State Bd of Equalization v. Bakst, 122 Nev. 1403 (2006)

28 ⁴ State ex rel State Bd of Equalization v. Barta, 124 Nev. 58 (2008)

1 mandamus requiring the State Board of Equalization to equalize the land portion of residential
2 real property at Incline Village and Crystal Bay to 2002-2003 values..." and to "direct the
3 payment of refunds ..." *Amended Complaint*, p. 7.

4 Village League seeks injunctive relief directing the State Board of Equalization to
5 employ a specific statistical method which will equalize property values statewide and
6 (hopefully) lower its members' property taxes resulting in a refund to its members. Village
7 League argues that only a writ of mandamus directing the State Board to employ a specific
8 statistical method can avoid the application of the methods found to be unconstitutional in Barta
9 and Bakst. However, Village League's own expert admits there is no statistical method that
10 Nevada regulators can adopt that would effectively measure whether state-wide equalization is
11 occurring given state's "taxable-value" property assessment system. *See, Plaintiff Response to*
12 *Statement of New Authority*, Ex. 2.⁵ Nor is this district court the appropriate forum to argue for
13 an adjustment of taxable property valuation. That proper forum is before the State Board of
14 Equalization. While such a procedure did not exist in 2003, it does now.

15 **Adoption and Amendment of Permanent Regulations of State Board**

16 On March 1, 2010, the State Board of Equalizations held hearings on a proposal to adopt
17 and amend NAC Chapter 361 with respect to the process of equalization of property values for
18 property tax purposes by the State Board of Equalizations. The purpose of these hearings were to
19 address the Nevada Supreme Court's decisions in Bakst and Barta and to determine whether
20 property in Nevada has been assessed uniformly in accordance with the methods of appraisal and
21 at the assessment level required by law. (Respondents *Statement of New Authority* Ex. 3 (Notice
22 of Public Hearing for the Adoption and Amendment of Permanent Regulations of the State
23 Board of Equalization, Jan. 28, 2010). Specifically, the hearing was held to determine whether
24 the taxable values specified in the tax roll of any county must be increased or decreased to
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26 ⁵ In an interview with Petitioners' expert Richard Almy, he was asked whether there was "any statistical
27 method that Nevada regulators can adopt to effectively measure whether statewide equalization is
28 occurring in the state's taxable-value system, Almy said "I don't know." Nevada Policy Research
Institute, (February 26, 2010), p. 2. Clearly, if Petitioners' expert cannot identify *any* statistical method
which would achieve state-wide equalization under Nevada's taxable-value system, this Court cannot be
expected to be any more discerning.

1 equalize property valuations in Nevada. Further, the new regulations will provide the criteria to
2 determine whether property has been assessed uniformly, including a review of relevant ratio
3 studies, performance audits and any other relevant evidence including a systematic investigation
4 and evaluation by the State Board of Equalization of the procedures and operations of the county
5 assessors. These rules, regulations and procedures are in response to the Nevada Supreme
6 Court's decisions in Barta and Bakst. (Petitioners' *Response to Statement of New Authority* Ex. 1
7 at 25-26 (Transcript of Proceedings, Dept. of Taxation, State Board of Equalization, Mar. 1,
8 2010).

9 While there appears to have been no regulations or procedures pertaining to the process
10 of equalization of property values for property tax purposes in 2003, that procedural deficit has
11 been remedied by the recent promulgation of rules, procedures and regulations by the State
12 Board of Equalization. These procedures provide aggrieved citizens like Incline Village and
13 Crystal Bay residents a forum to vet the tax valuation of their property before the State Board of
14 Equalization.⁶ This is precisely the relief sought by Village League in its *Amended Complaint*.

15 These rules allow the State Board of Equalization to equalize property tax valuations by
16 requiring reappraisal, or in the alternative, requiring the increase or decrease of the taxable value
17 of these properties. As such, even if mandamus relief would have been available to compel the
18 State Board of Equalization to fulfill its general equalization duty in 2003, mandamus relief is
19 inappropriate now because the State Board is complying with its statutory duty under NRS
20 361.395. The issuance of a writ of mandamus to compel the State Board of Equalization to
21 perform a function it is already performing is an inappropriate exercise of this court's discretion
22 under the law.

23 The Nevada Supreme Court has directed district courts to "refrain from exercising
24 jurisdiction so that technical issues can first be determined by an administrative agency." Sports

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27 ⁶ "[W]hat these regulations provide is a process, an orderly process to gather information, to make sure all
28 the parties, including the taxpayers, are included, and the counties who have to implement any
equalization order you may come up with. So, the whole purpose here is to ensure that you have looked
at a broad range of information and that you have conducted your equalization duties in an open setting
with input from taxpayers." (Transcript of Proceedings, March 1, 2010, p.46).

1 Form, Inc. v. Leroy's Horse and Sports Place, 108 Nev. 37, 823 P.2d 901 (1992). This is to
2 promote "(1) the desire for uniformity of regulation and, (2) the need for an initial consideration
3 by a tribunal with specialized knowledge." Id. (citing Kappleman v. Delta Air Lines, 539 F.2d
4 165, 168-169 (C.App. D.C. 1976). These laudable policies are better served by allowing the State
5 Board of Equalization to apply its new equalization regulations without district court
6 interference. In this manner, each member of Village League may achieve the result they seek
7 without the problems attendant to lengthy, expensive and inconsistent litigation results. "The
8 exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and
9 conserves judicial resources, so its purposes are valuable; requiring exhaustion of administrative
10 remedies often resolves disputes without the need for judicial involvement." Allstate Ins. Co. v.
11 Thorpe, 123 Nev. 565, 170 P.3d 989, 993-94 (2007).

12 **Conclusion**

13 A writ of mandamus is an extraordinary remedy which should issue only where the right
14 to relief is clear and the petitioner has no plain, speedy or adequate remedy in the ordinary course
15 of the law. In this case, Petitioners are seeking a judicial remedy that does not exist under
16 Nevada's present taxable-value system. Additionally, Petitioners ask this Court to direct the State
17 Board of Equalization to exercise its regulatory discretion to achieve a predetermined result
18 which is an impermissible exercise of this court's lawful authority. Finally, Petitioners have a
19 plain, speedy and adequate remedy at law through the newly promulgated procedures of the State
20 Board of Equalization. The issuance writ of mandamus is not appropriate in this case. Therefore,

21 **IT IS HEREBY ORDERED**

22 Defendant Washoe County's *Motion to Dismiss* is **GRANTED**;

23 Defendant State of Nevada's *Motion to Dismiss* is **GRANTED**;

24 Petitioner VILLAGE LEAGUE's *Amended Complaint* is **DISMISSED**.

25 **DATED** this 20TH day of April, 2010.

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28 PATRICK FLANAGAN
District Judge

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Dennis Belcourt, Esq. for State Board of Equalization;
Suellen Fulstone, Esq. for Village League to Save Incline Assets, Inc.; and
I deposited in the Washoe County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true copy of the attached document addressed
to:

Suellen Fulstone, Esq. for Village League to Save Incline Assets, Inc.; and

I deposited in the Washoe County mailing system for postage and mailing with the

United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Kathryn Denis
Judicial Assistant