

CV03-06922  
DC-9900015932-005  
VILLAGE LEAGUE, ETAL VS DEPT 3 Pages  
District Court 05/12/2010 12 11 PM  
Washoe County \$2515  
DOC TPRINCF

Suellen Fulstone  
Nevada State Bar #1615  
MORRIS PETERSON  
6100 Neil Rd., Suite 555  
Reno, NV 89511  
(775) 829-6009 telephone  
(775) 829-6001 facsimile  
Attorneys for Petitioners

FILED

2010 MAY 12 PM 12:12

HOWARD W. CONYERS  
Electronically Filed  
May 13 2010 02:43 p.m.  
Tracie K. Lindeman

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,  
et al,

Case No. CV03-06922

Dept. No. 7

Petitioners,

vs.

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

Respondents.

**NOTICE OF APPEAL**

Petitioners, Village League to Save Incline Assets, Inc., Maryanne Ingemanson, Dean R. Ingemanson, J. Robert Anderson and Les Barta, appeal to the Supreme Court of Nevada from the decision and Order of this Court entered on April 13, 2010, dismissing this action, as amended by Amended Order dated April 13, 2010, and as further amended by the Second Amended Order dated April 20, 2010. Notice of entry of the original Order was served on April 13, 2010; notice of entry of the Amended Order was served on April 19, 2010; and notice of entry of the Second Amended Order was served on April 21, 2010.

Respectfully submitted this 12th day of May, 2010.

MORRIS PETERSON

B.

Suellen Fulstone

Attorneys for Petitioners

MORRIS PETERSON  
ATTORNEYS AT LAW  
6100 NEIL ROAD, SUITE 555  
RENO, NEVADA 89511  
775/829-6000  
FAX 775/829-6001


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**AFFIRMATION**

(Pursuant to NRS 239B.030)

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

DATED this 12th day of May, 2010.

  
Suellen Fulstone

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of MORRIS PETERSON  
3 and that I deposited in the U.S. Postal Service, a true copy of the foregoing addressed to:

4 Dennis Belcourt  
5 Deonne Contine  
6 Office of the Attorney General  
7 100 N. Carson St.  
8 Carson City, NV 89701


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

14 DATED this 12<sup>th</sup> day of May, 2010.

15   
16 Employee of Morris Peterson  
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1 Suellen Fulstone  
2 Nevada State Bar #1615  
3 MORRIS PETERSON  
4 6100 Neil Rd., Suite 555  
5 Reno, NV 89511  
6 (775) 829-6009 telephone  
7 (775) 829-6001 facsimile  
8 Attorneys for Petitioners

FILED  
2010 MAY 12 PM 12:12

HOWARD W. CONYERS  
BY   
CLERK

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10  
11 IN AND FOR THE COUNTY OF WASHOE  
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14 VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., )  
15 a Nevada non-profit corporation, on behalf of their )  
16 members and other similarly situated; MARYANNE )  
17 INGEMANSON, Trustee of the Larry D. and Maryanne )  
18 B. Ingemanson Trust; DEAN R. INGEMANSON, )  
19 individual and as Trustee of the Dean R. Ingemanson )  
20 Trust; J. ROBERT ANDERSON; and LES BARTA; on )  
21 behalf of themselves and others similarly situated )

Case No. CV03-06922

Dept. No. 7

22 Petitioners,

23 vs.

24 STATE OF NEVADA *ex rel* State Board of Equalization; )  
25 WASHOE COUNTY; BILL BERRUM, Washoe County )  
26 Treasurer; )

27 Respondents.  
28

**CASE APPEAL STATEMENT**

29 Pursuant to NRAP 3, Petitioners, Village League to Save Incline Assets, Inc., Maryanne  
30 Ingemanson, Dean R. Ingemanson, J. Robert Anderson and Les Barta, by and through their  
31 attorney, Suellen Fulstone, of Morris Peterson, hereby submit the following Case Appeal  
32 Statement:  
33

34 1. Name of Appellants filing this Case Appeal Statement:

- 35 a. Village League to Save Incline Assets, Inc.  
36 b. Maryanne Ingemanson  
37 c. Dean R. Ingemanson  
38 d. J. Robert Anderson  
e. Les Barta

2. Judge issuing the decision, judgment or order appealed from:

Honorable N. Patrick Flanagan

3. Parties to the proceedings in the District Court:

Petitioners: 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

Respondents: State of Nevada, *ex rel.* State Board of Equalization;

Washoe County; and

Bill Berrum, Washoe County Treasurer

4. Parties Involved in this Appeal:

a. Appellants: Village League to Save Incline Assets, Inc.  
Maryanne Ingemanson  
Dean R. Ingemanson  
J. Robert Anderson  
Les Barta

b. Respondents: State of Nevada, *ex rel.* State Board of Equalization  
Washoe County  
Bill Berrum, Washoe County Treasurer

5. Counsel on Appeal:

a. Appellants: Suellen Fulstone  
Morris Peterson  
6100 Neil Rd., Suite 555  
Reno, NV 89511  
(775) 829-6000 telephone  
(775) 829-6001 facsimile

b. Respondents:

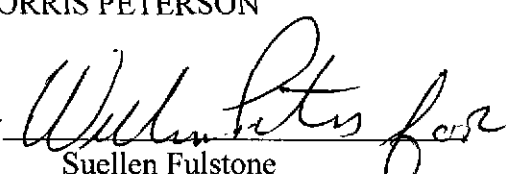
State of Nevada: Catherine Cortez Masto, Nevada Attorney General  
Dennis Belcourt, Office of the Attorney General  
100 North Carson St.  
Carson City, NV 89701  
(775) 684-1206 telephone  
(775) 684-1156 facsimile

Washoe County  
and Bill Berrum: Richard Gammick, Washoe County District Attorney  
David Creekman, Chief Deputy District Attorney  
P.O. Box 30083  
Reno, NV 89520  
(775) 337-5700 telephone  
(775) 337-5732 facsimile

6. Appellants were represented by retained counsel in district court.
7. Appellants are represented by retained counsel on appeal.
8. Appellants are not proceeding on appeal in forma pauperis.
9. The original Complaint in this action was filed on November 13, 2003. The matter was dismissed on June 2, 2004. On June 10, 2004 the dismissal was appealed to the Nevada Supreme Court. On March 19, 2009, the Nevada Supreme Court entered its Order affirming in part, reversing in part and remanding the matter to the district court. The Amended Complaint/Petition for Writ of Mandamus was filed in district court on June 19, 2009.

Respectfully submitted this 12<sup>th</sup> day of May, 2010.

MORRIS PETERSON

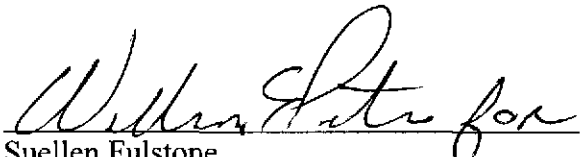
By   
Suellen Fulstone  
Attorneys for Petitioners/Appellants

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**AFFIRMATION**  
(Pursuant to NRS 239B.030)

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

DATED this 12<sup>th</sup> day of May, 2010.

  
Suellen Fulstone

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3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(b), I hereby certify that I am an employee of MORRIS PETERSON  
5 and that I deposited in the U.S. Postal Service, a true copy of the foregoing addressed to:

6 Dennis Belcourt  
7 Office of the Attorney General  
8 100 North Carson St.  
9 Carson City, NV 89701

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

15 DATED this 12<sup>th</sup> day of May, 2010.

16   
17 Employee of Morris Peterson  
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**SECOND JUDICIAL DISTRICT COURT  
STATE OF NEVADA  
COUNTY OF WASHOE**

**Case History - CV03-06922**

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

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**Case Number: CV03-06922 Case Type: GENERAL CIVIL - Initially Filed On: 11/13/2003**

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**Parties**

<u>Party Type &amp; Name</u>	<u>Party Status</u>
JUDG - PATRICK FLANAGAN - D7	Active
JUDG - STEVEN P. ELLIOTT - D10	Party ended on: 2/17/2004 12:00:00AM
PLTF - VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC. - @159144	Active
PATY - Dale E. Ferguson, Esq. - 4986	Active
PATY - Suellen E. Fulstone, Esq. - 1615	Active
PATY - Suellen E. Fulstone, Esq. - 1615	Party ended on: 2/3/2006 12:00:00AM
PATY - Dale E. Ferguson, Esq. - 4986	Party ended on: 2/3/2006 12:00:00AM
DEFT - NEVADA DEPARTMENT OF TAXATION - @29929	Active
DEFT - ROBERT MCGOWAN - @159145	Active
DEFT - STATE BOARD OF EQUALIZATION - @35892	Active
DEFT - WASHOE COUNTY - @828	Active
DEFT - NEVADA TAX COMMISSION - @29936	Active
DEFT - BILL BERRUM - @13787	Active
DATY - Gregory R. Shannon, Esq. - 612	Party ended on: 4/23/2009 12:00:00AM
DATY - Joshua J. Hicks - 6679	Active
DATY - Gregory Louis Zunino, Esq. - 4805	Party ended on: 4/16/2009 12:00:00AM
AG - Dennis L. Belcourt, Esq. - 2658	Active
APPE - VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC. - @159144	Active
ATTY - David C. Creekman, Esq. - 4580	Active
RESP - NEVADA TAX COMMISSION - @29936	Active
RESP - STATE BOARD OF EQUALIZATION - @35892	Active
RESP - NEVADA DEPARTMENT OF TAXATION - @29929	Active
RESP - BILL BERRUM - @13787	Active
RESP - ROBERT MCGOWAN - @159145	Active
RESP - WASHOE COUNTY - @828	Active

**Disposed Hearings**

- 1 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 2/3/2004 at 07:36:00  
Extra Event Text: MOTION TO DISMISS  
Event Disposition: S200 - 2/17/2004
- 2 Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 2/27/2004 at 10:45:00  
Extra Event Text: WASHOE COUNTY'S MOTION TO DISMISS  
Event Disposition: S200 - 3/30/2004
- 3 Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 3/4/2004 at 08:00:00  
Extra Event Text: PLAINTIFF'S REQUEST FOR ORAL ARGUMENT  
Event Disposition: S200 - 3/30/2004
- 4 Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 3/5/2004 at 09:35:00  
Extra Event Text: MOTION TO DISMISS  
Event Disposition: S200 - 3/30/2004

**Report Does Not Contain Sealed Cases or Confidential Information**

- 5 Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 3/22/2004 at 11:10:00  
Extra Event Text: MOTION TO DISMISS OF STATE BOARD OF EQUALIZATION  
Event Disposition: S200 - 3/30/2004
- 6 Department: D7 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 5/11/2004 at 10:00:00  
  
Event Disposition: D845 - 5/10/2004
- 7 Department: D7 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 5/18/2004 at 10:00:00  
Extra Event Text: alternate set  
Event Disposition: D840 - 5/18/2004
- 8 Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 5/18/2004 at 10:00:00  
Extra Event Text: MOTION TO DISMISS  
Event Disposition: S200 - 6/4/2004
- 9 Department: D7 -- Event: STATUS HEARING -- Scheduled Date & Time: 4/21/2009 at 11:30:00  
Extra Event Text: Status Hearing pursuant to request by Judge Flanagan as a result of Remand by Nevada Supreme Court filed 03.19.09  
Event Disposition: D425 - 6/29/2009
- 10 Department: D7 -- Event: HEARING... -- Scheduled Date & Time: 9/25/2009 at 14:30:00  
  
Event Disposition: D435 - 9/25/2009
- 11 Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 11/12/2009 at 16:10:00  
Extra Event Text: WASHOE COUNTY'S MOTION TO DISMISS AND MOTION TO STRIKE AMENDED COMPLAIN  
Event Disposition: S200 - 1/8/2010
- 12 Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 12/3/2009 at 16:45:00  
Extra Event Text: MOTION TO DISMISS  
Event Disposition: S200 - 1/8/2010
- 13 Department: D7 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 3/12/2010 at 15:30:00  
Extra Event Text: RE STATE & CTY'S MTNS TO DISMISS  
Event Disposition: D844 - 3/11/2010
- 14 Department: D7 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 3/25/2010 at 14:30:00  
Extra Event Text: HEARING RESET FROM 03.12.10  
Event Disposition: D840 - 3/25/2010

### Actions

- |   | <u>Filing Date</u> | <u>-</u> | <u>Docket Code &amp; Description</u>   |
|---|--------------------|----------|--|
| 1 | 11/13/2003         | -        | \$1425 - \$Complaint - Civil<br>Additional Text: VILLIAGE LEAGUE TO SAVE INCLINE ASSETS, INC                                     |
| 2 | 11/14/2003         | -        | PAYRC - **Payment Receipted<br>Additional Text: A Payment of -\$150.00 was made on receipt DCDC113412.                           |
| 3 | 12/19/2003         | -        | 2290 - Mtn to Dismiss Case<br><i>No additional text exists for this entry.</i>   |
| 4 | 12/29/2003         | -        | 2315 - Mtn to Dismiss ...<br>Additional Text: STATE BOARD OF EQUALIZATION'S MOTION TO DISMISS FIRST AND SECOND CLAIMS FOR RELIEF |

- 5 12/29/2003 - 2315 - Mtn to Dismiss ...  
Additional Text: MOTION TO DISMISS AND JOINDER IN STATE BOARD OF EQUALIZATION'S MOTION TO DISMISS FIRST AND SECOND CLAIMS FOR RELIEF
- 6 1/12/2004 - 3655 - Points&Authorities Opp...  
Additional Text: POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS
- 7 1/30/2004 - 3795 - Reply...  
*No additional text exists for this entry.*
- 8 1/30/2004 - 3860 - Request for Submission  
Additional Text: DOCUMENT TITLE: MOTION TO DISMISS  
PARTY SUBMITTING: GREGORY SHANNON  
DATE SUBMITTED: 2-3-04  
SUBMITTED BY: MA  
DATE RECEIVED JUDGE'S OFFICE:
- 9 2/3/2004 - 3870 - Request  
Additional Text: REQUEST FOR ORAL ARGUMENT
- 10 2/17/2004 - \$3375 - \$Peremptory Challenge  
Additional Text: PLTF VILLAGE LEAGUE TO SAVE INCLINE ASSETS INC
- 11 2/17/2004 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of -\$300.00 was made on receipt DCDC118165.
- 12 2/17/2004 - S200 - Request for Submission Complet  
Additional Text: PEREMPTORY CHALLENGE OF JUDGE FILED (OF JUDGE ELLIOTT)
- 13 2/17/2004 - 2610 - Notice ...  
Additional Text: NOTICE OF PEREMPTORY CHALLENGE OF JUDGE
- 14 2/17/2004 - 1312 - Case Assignment Notification  
Additional Text: CASE SUBMITTED TO DEPT 7 FOR CONSIDERATION OF ACCEPTANCE
- 15 2/20/2004 - 2665 - Ord Accepting Reassignment  
Additional Text: FROM DEPT 10 TO DEPT 7
- 16 2/23/2004 - 3655 - Points&Authorities Opp...  
Additional Text: POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS OF NEVADA STATE TAX COMMISSION AND DEPARTMENT OF TAXATION
- 17 2/25/2004 - 3860 - Request for Submission  
Additional Text: DOCUMENT TITLE: WASHOE COUNTY'S MOTION TO DISMISS  
PARTY SUBMITTING: GREG SHANNON  
DATE SUBMITTED: 2/27/04  
SUBMITTED BY: JB  
DATE RECEIVED JUDGE'S OFFICE:
- 18 2/27/2004 - 3655 - Points&Authorities Opp...  
Additional Text: POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS OF STATE BOARD OF EQUALIZATION
- 19 3/1/2004 - 3860 - Request for Submission  
Additional Text: DOCUMENT TITLE: PLAINTIFF'S REQUEST FOR ORAL ARGUMENT  
PARTY SUBMITTING: SUELLEN FULSTONE  
DATE SUBMITTED: 3/4/04  
SUBMITTED BY: JB  
DATE RECEIVED JUDGE'S OFFICE:
- 20 3/4/2004 - 3795 - Reply...  
Additional Text: REPLY IN SUPPORT OF MOTION TO DISMISS

- 21 3/4/2004 - 3860 - Request for Submission  
Additional Text: DOCUMENT TITLE: MOTION TO DISMISS  
PARTY SUBMITTING: JOSHUA HICKS  
DATE SUBMITTED: 3/5/04  
SUBMITTED BY: JB  
DATE RECEIVED JUDGE'S OFFICE:
- 22 3/10/2004 - 3870 - Request  
Additional Text: REQUEST FOR ORAL ARGUMENT
- 23 3/17/2004 - 3795 - Reply...  
Additional Text: REPLY IN SUPPORT OF MOTION TO DISMISS OF STATE BOARD OF EQUALIZATION
- 24 3/19/2004 - 3860 - Request for Submission  
Additional Text: DOCUMENT TITLE: MOTION TO DISMISS OF STATE BOARD OF EQUALIZATION  
PARTY SUBMITTING: GREGORY ZUNINO  
DATE SUBMITTED: 3/22/04  
SUBMITTED BY: JB  
DATE RECEIVED JUDGE'S OFFICE:
- 25 3/29/2004 - 3105 - Ord Granting ...  
Additional Text: ORDER GRANTING REQUEST FOR ORAL ARGUMENT
- 26 3/30/2004 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 27 3/30/2004 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 28 3/30/2004 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 29 3/30/2004 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 30 4/7/2004 - 1250 - Application for Setting  
Additional Text: TRIAL 5/11/04 10:00 A.M. OR  
#2 TRIAL 5/18/04 10:00 A.M.
- 31 6/2/2004 - 3060 - Ord Granting Mtn ...  
Additional Text: ORDER GRANTING MOTIONS TO DISMISS  
DEFENDANTS' MOTIONS TO DISMISS SHOULD BE GRANTED IN THEIR ENTIRETY AS TO ALL DEFENDANTS.
- 32 6/4/2004 - 2540 - Notice of Entry of Ord  
*No additional text exists for this entry.*
- 33 6/4/2004 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 34 6/4/2004 - F220 - Decision With Hearing  
*No additional text exists for this entry.*
- 35 6/10/2004 - \$2515 - \$Notice/Appeal Supreme Court  
*No additional text exists for this entry.*
- 36 6/10/2004 - 1310 - Case Appeal Statement  
*No additional text exists for this entry.*
- 37 6/10/2004 - 2547 - Notice of Filing Costs/Appeal  
Additional Text: NOTICE OF DEPOSIT OF CASH IN LIEU OF BOND FOR COSTS ON APPEAL

- 38 6/11/2004 - 1350 - Certificate of Clerk  
*No additional text exists for this entry.*
- 39 6/11/2004 - 1365 - Certificate of Transmittal  
*No additional text exists for this entry.*
- 40 6/11/2004 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of -\$33.00 was made on receipt DCDC124321.
- 41 6/11/2004 - SAB - \*\*Supreme Court Appeal Bond  
*No additional text exists for this entry.*
- 42 6/16/2004 - 1188 - Supreme Court Receipt for Doc  
Additional Text: SUPREME COURT CASE NO. 43441
- 43 6/16/2004 - 1187 - \*\*Supreme Court Case No. ...  
Additional Text: SUPREME COURT CASE NO. 43441
- 44 7/12/2004 - 1188 - Supreme Court Receipt for Doc  
Additional Text: SUPREME COURT CASE NO. 43441
- 45 7/12/2004 - 1187 - \*\*Supreme Court Case No. ...  
Additional Text: SUPREME COURT CASE NO. 43441  
VOLUNTARY RECUSAL OF JUSTICE SHEARING FROM PARTICIPATION IN THIS MATTER
- 46 2/3/2006 - 4075 - Substitution of Counsel  
*No additional text exists for this entry.*
- 47 5/1/2007 - 1188 - Supreme Court Receipt for Doc  
Additional Text: SUPREME COURT CASE NO. 49358  
FOR WRIT OF CERTIORARI OR MANDAMUS
- 48 5/1/2007 - 1187 - \*\*Supreme Court Case No. ...  
Additional Text: SUPREME COURT CASE NO. 49358
- 49 7/31/2007 - 4126 - Supreme Ct Order Directing...  
Additional Text: SUPREME COURT CASE NO. 43441  
ORDER DIRECTING ANSWER
- 50 2/14/2008 - REF - \*\*Refund Issued 7/1/03-6/30/05  
*No additional text exists for this entry.*
- 51 6/5/2008 - 2610 - Notice ...  
Additional Text: of Change of Representation for Defendants, State of Nevada Tax Commission and Department of Taxation - to Gina C. Session
- 52 12/1/2008 - 4133 - Supreme Court Notice  
Additional Text: SUPREME COURT CASE NO. 49358  
NOTICE IN LIEU OF REMITTITUR
- 53 3/23/2009 - 4134 - Supreme Court Order Affirming  
Additional Text: SUPREME COURT CASE NO. 43441  
ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING
- 54 3/23/2009 - 3863 - \*\*Submit regarding Appeals  
Additional Text: DOCUMENT TITLE: SUPREME COURT ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING  
PARTY SUBMITTING: NEVADA SUPREME COURT  
DATE SUBMITTED: 3/23/09  
SUBMITTED BY: CKEPLER  
DATE RECEIVED JUDGE OFFICE:

- 55 4/8/2009 - 3242 - Ord Setting Hearing  
Additional Text: Transaction 699329 - Approved By: NOREVIEW : 04-08-2009:14:35:02
- 56 4/8/2009 - 1105 - Amended Ord and/or Judgment  
Additional Text: Setting Status Hearing - Transaction 700079 - Approved By: NOREVIEW : 04-08-2009:16:22:20
- 57 4/16/2009 - 2526 - Notice of Change of Attorney  
Additional Text: DENNIS L. BELCOURT FROM A.G.'S OFFICE REPLACING GREG ZUNINO - Transaction 713871 - Approved By: MPURDY : 04-16-2009:08:24:24
- 58 4/16/2009 - 4145 - Supreme Court Remittitur  
Additional Text: SUPREME COURT CASE NO.
- 59 4/16/2009 - 4111 - Supreme Ct Clk's Cert & Judg  
Additional Text: SUPREME COURT CASE NO.
- 60 4/16/2009 - 4134 - Supreme Court Order Affirming  
Additional Text: SUPREME COURT CASE NO. 43441  
ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING
- 61 4/22/2009 - MIN - \*\*\*Minutes  
Additional Text: STATUS HEARING - Transaction 726707 - Approved By: NOREVIEW : 04-22-2009:16:47:12
- 62 4/23/2009 - 2610 - Notice ...  
Additional Text: NOTICE OF CHANGE OF RESPONSIBLE ATTORNEY
- 63 5/4/2009 - 4185 - Transcript ...  
Additional Text: 04-21-2009 - STATUS HEARING - Transaction 747897 - Approved By: ASMITH : 05-04-2009:08:10:49
- 64 6/1/2009 - 3975 - Statement ...  
Additional Text: STATE BOARD OF EQUALIZATION'S STATEMENT OF ISSUES AND REQUEST FOR DISMISSAL - Transaction 805078 - Approved By: MPURDY : 06-01-2009:14:37:10
- 65 6/1/2009 - 3975 - Statement ...  
Additional Text: OF ISSUES BEFORE THIS COURT, ANS POSITIONS OF WASHOE COUNTY DEFENDANTS
- 66 6/1/2009 - 3975 - Statement ...  
Additional Text: STATEMENT OF PLAINTIFFS/PETITIONERS ON THE SCOPE OF THE ISSUES - Transaction 806343 - Approved By: MPURDY : 06-02-2009:07:44:30
- 67 6/2/2009 - 1360 - Certificate of Service  
*No additional text exists for this entry.*
- 68 6/3/2009 - 1360 - Certificate of Service  
Additional Text: Transaction 811316 - Approved By: MPURDY : 06-03-2009:14:29:47
- 69 6/15/2009 - 3980 - Stip and Order...  
Additional Text: REGARDING REPLY TO STATE OF ISSUES BRIEFS - Transaction 834928 - Approved By: NOREVIEW : 06-15-2009:10:40:52
- 70 6/19/2009 - 3880 - Response...  
Additional Text: STATE BOARD OF EQUALIZATION'S RESPONSE TO VILLAGE LEAGUE'S STATEMENT OF ISSUES - Transaction 848301 - Approved By: TPRINCE : 06-19-2009:16:28:28
- 71 6/19/2009 - \$ADDL - \$Addl Pltff/Amended Complaint  
Additional Text: LARRY D & MARYANNE B. INGEMANSON TRUST - Transaction 848618 - Approved By: ASMITH : 06-22-2009:08:53:13
- 72 6/19/2009 - \$ADDL - \$Addl Pltff/Amended Complaint  
Additional Text: DEAN R. INGEMANSON - Transaction 848618 - Approved By: ASMITH : 06-22-2009:08:53:13

- 73 6/19/2009 - \$ADDL - \$Addl Pltff/Amended Complaint  
Additional Text: DEAN R INGEMANSON INDIVIDUAL TRUST - Transaction 848618 - Approved By: ASMITH : 06-22-2009:08:53:13
- 74 6/19/2009 - \$ADDL - \$Addl Pltff/Amended Complaint  
Additional Text: J. ROBERT ANDERSON - Transaction 848618 - Approved By: ASMITH : 06-22-2009:08:53:13
- 75 6/19/2009 - \$ADDL - \$Addl Pltff/Amended Complaint  
Additional Text: LES BARTA - Transaction 848618 - Approved By: ASMITH : 06-22-2009:08:53:13
- 76 6/19/2009 - 1090 - Amended Complaint  
Additional Text: AMENDED COMPLAINT/PETITION FOR WRIT OF MANDAMUS - Transaction 848618 - Approved By: ASMITH : 06-22-2009:08:53:13
- 77 6/19/2009 - 3795 - Reply...  
Additional Text: REPLY TO PLAINTIFFS' / PETITIONERS' STATEMENT ON SCOPE OF THE ISSUES BEFORE THE COURT
- 78 6/22/2009 - PAYRC - \*\*Payment Receipted  
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- 79 6/22/2009 - 3795 - Reply...  
Additional Text: REPLY BRIEF OF PETITIONS RE SCOPE OF ISSUES - Transaction 849777 - Approved By: ASMITH : 06-22-2009:09:59:34
- 80 6/24/2009 - 1360 - Certificate of Service  
*No additional text exists for this entry.*
- 81 10/1/2009 - MIN - \*\*\*Minutes  
Additional Text: HEARING 9-25-09 - Transaction 1078085 - Approved By: NOREVIEW : 10-01-2009:15:18:54
- 82 10/1/2009 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1078115 - Approved By: NOREVIEW : 10-01-2009:15:23:30
- 83 10/9/2009 - FIE - \*\*Doument Filed in Error  
Additional Text: HEARING - 09/25/09 - Transaction 1092163 - Approved By: MPURDY : 10-09-2009:16:05:13
- 84 10/9/2009 - 4185 - Transcript ...  
Additional Text: HEARING - SEPTEMBER 25, 2009 - Transaction 1092274 - Approved By: TPRINCE : 10-09-2009:16:27:22
- 85 10/9/2009 - NEF - Proof of Electronic Service  
Additional Text: 10/09/2009 - tprince
- 86 10/9/2009 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1092474 - Approved By: NOREVIEW : 10-09-2009:16:39:03
- 87 10/15/2009 - 2305 - Mtn Dismiss with Prejudice  
Additional Text: STATE BOARD OF EQUALIZATION'S MOTION TO DISMISS COMPLAINT/PETITION FOR WRIT OF MANDAMUS - Transaction 1101906 - Approved By: ASMITH : 10-15-2009:11:21:03
- 88 10/15/2009 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1101939 - Approved By: NOREVIEW : 10-15-2009:11:24:43
- 89 10/15/2009 - 2290 - Mtn to Dismiss Case  
Additional Text: MOTION TO DISMISS (NRCP 12(b) AND NRCP 12(b)(6)) AND MOTION TO STRIKE AMENDED COMPLAINT (NRCP 15)
- 90 11/2/2009 - 3655 - Points&Authorities Opp...  
Additional Text: POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO STRIKE AMENDED COMPLAINT - Transaction 1130477 - Approved By: MPURDY : 11-02-2009:15:08:23

- 91 11/2/2009 - 3650 - Points and Authorities  
Additional Text: POINTS AND AUTHORITIES IN OPPOSITION TO STATE BOARD OF EQUALIZATIONS MOTION TO DISMISS - Transaction 1130498 - Approved By: AZION : 11-02-2009:15:15:06
- 92 11/2/2009 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1130569 - Approved By: NOREVIEW : 11-02-2009:15:11:30
- 93 11/2/2009 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1130586 - Approved By: NOREVIEW : 11-02-2009:15:17:08
- 94 11/3/2009 - 3650 - Points and Authorities  
Additional Text: POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS (NRCP 12(b)(5) AND NRCP 12(b)(6)) - Transaction 1131704 - Approved By: AZION : 11-03-2009:09:20:50
- 95 11/3/2009 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1131745 - Approved By: NOREVIEW : 11-03-2009:09:27:30
- 96 11/10/2009 - 3790 - Reply to/in Opposition  
Additional Text: REPLY TO OPPOSITON TO STRIKE AMENDED COMPLAINT AND OPPOSITION TO MOTION TO DISMISS
- 97 11/12/2009 - 1325 - \*\* Case Reopened  
*No additional text exists for this entry.*
- 98 11/12/2009 - 3860 - Request for Submission  
Additional Text: DOCUMENT TITLE: WASHOE COUNTY'S MOTION TO DISMISS AND MOTION TO STRIKE AMENDED COMPLAINT  
PARTY SUBMITTING: DAVID C. CREEKMAN  
DATE SUBMITTED: 11-12-09  
SUBMITTED BY: S STINCHFIELD  
DATE RECEIVED JUDGE OFFICE:
- 99 11/13/2009 - 3790 - Reply to/in Opposition  
Additional Text: STATE BOARD OF EQUALIZATION'S REPLY TO VILLAGE LEAGUE'S OPPOSITION TO MOTION TO DISMISS - Transaction 1151176 - Approved By: AZION : 11-13-2009:15:00:26
- 100 11/13/2009 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1151257 - Approved By: NOREVIEW : 11-13-2009:15:04:16
- 101 12/3/2009 - 3860 - Request for Submission  
Additional Text: MOTION TO DISMISS - Transaction 1186492 - Approved By: AZION : 12-03-2009:16:33:15  
DOCUMENT TITLE: MOTION TO DISMISS  
PARTY SUBMITTING: DENNIS L. BELCOURT ESQ  
DATE SUBMITTED: 12-03-09  
SUBMITTED BY: AZION  
DATE RECEIVED JUDGE OFFICE:
- 102 12/3/2009 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1186583 - Approved By: NOREVIEW : 12-03-2009:16:39:24
- 103 1/8/2010 - 3370 - Order ...  
Additional Text: Transaction 1251352 - Approved By: NOREVIEW : 01-08-2010:14:38:15
- 104 1/8/2010 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1251389 - Approved By: NOREVIEW : 01-08-2010:14:42:56
- 105 1/8/2010 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 106 1/8/2010 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*



- 107 3/3/2010 - 3975 - Statement ...  
Additional Text: STATEMENT OF NEW AUTHORITY
- 108 3/10/2010 - 3880 - Response...  
Additional Text: RESPONSE TO STATEMENT OF NEW AUTHORITY - Transaction 1368088 - Approved By: AZION : 03-10-2010:15:53:07
- 109 3/10/2010 - 3880 - Response...  
Additional Text: RESPONSE TO STATEMENT OF NEW AUTHORITY - Transaction 1368147 - Approved By: AZION : 03-10-2010:16:09:26
- 110 3/10/2010 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1368156 - Approved By: NOREVIEW : 03-10-2010:15:54:40
- 111 3/10/2010 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1368301 - Approved By: NOREVIEW : 03-10-2010:16:23:06
- 112 3/10/2010 - 1360 - Certificate of Service  
Additional Text: Transaction 1368463 - Approved By: AZION : 03-10-2010:16:57:55
- 113 3/10/2010 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1368474 - Approved By: NOREVIEW : 03-10-2010:16:58:50
- 114 3/12/2010 - 3790 - Reply to/in Opposition  
Additional Text: WASHOE COUNTY DEFENDANTS' REPLY TO PETITIONERS' RESPONSE TO STATEMENT OF NEW AUTHORITY
- 115 4/6/2010 - 3870 - Request  
Additional Text: REQUEST FOR JUDICIAL NOTICE - Transaction 1416136 - Approved By: AZION : 04-07-2010:08:07:31
- 116 4/7/2010 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1416450 - Approved By: NOREVIEW : 04-07-2010:08:08:33
- 117 4/13/2010 - 2700 - Ord After Hearing...  
Additional Text: Transaction 1428093 - Approved By: NOREVIEW : 04-13-2010:12:56:49  
PETITIONER VILLAGE LEAGUE'S AMENDED COMPLAINT IS DISMISSED  
DEFENDANT WASHOE COUNTY'S MOTION TO DISMISS IS GRANTED  
DEFENDANT STATE OF NEVADA'S MOTION TO DISMISS IS GRANTED
- 118 4/13/2010 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1428096 - Approved By: NOREVIEW : 04-13-2010:12:57:24
- 119 4/13/2010 - 2540 - Notice of Entry of Ord  
*No additional text exists for this entry.*
- 120 4/13/2010 - 2700 - Ord After Hearing...  
Additional Text: AMENDED ORDER - Transaction 1429203 - Approved By: NOREVIEW : 04-13-2010:16:28:32
- 121 4/13/2010 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1429246 - Approved By: NOREVIEW : 04-13-2010:16:31:59
- 122 4/20/2010 - 1105 - Amended Ord and/or Judgment  
Additional Text: SECOND AMENDED ORDER - Transaction 1438633 - Approved By: NOREVIEW : 04-20-2010:10:12:40
- 123 4/20/2010 - NEF - Proof of Electronic Service  
Additional Text: Transaction 1438864 - Approved By: NOREVIEW : 04-20-2010:10:18:38
- 124 4/20/2010 - 2540 - Notice of Entry of Ord  
Additional Text: NOTICE OF ENTRY OF AMENDED ORDER

- 125 4/21/2010 - 2540 - Notice of Entry of Ord  
Additional Text: NOTICE OF ENTRY OF SECOND AMENDED ORDER
- 126 5/12/2010 - \$2515 - \$Notice/Appeal Supreme Court  
*No additional text exists for this entry.*
- 127 5/12/2010 - 1310 - Case Appeal Statement  
*No additional text exists for this entry.*
- 128 5/12/2010 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of -\$34.00 was made on receipt DCDC273662.
- 129 5/12/2010 - SAB - \*\*Supreme Court Appeal Bond  
*No additional text exists for this entry.*
- 130 5/12/2010 - 1350 - Certificate of Clerk  
Additional Text: Transaction 1484160 - Approved By: NOREVIEW : 05-12-2010:16:47:50
- 131 5/12/2010 - 1365 - Certificate of Transmittal  
Additional Text: Transaction 1484160 - Approved By: NOREVIEW : 05-12-2010:16:47:50

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.<sup>1</sup> 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 <sup>1</sup> 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.<sup>2</sup>

#### 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 <sup>2</sup> 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 Bakst<sup>3</sup>  
2 and Barta<sup>4</sup> 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.<sup>5</sup>

21  
22  
23 <sup>3</sup> State ex rel State Bd of Equalization v. Bakst, 122 Nev. 1403 (2006)

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

25 <sup>5</sup> 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  
27  
28

1 Crystal Bay residents a forum to vet the tax valuation of their property before the State Board of  
2 Equalization.<sup>6</sup> 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 Kappleman 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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26  
27 <sup>6</sup> "[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  
17  
18  
19 **DATED** this 13<sup>th</sup> day of April, 2010.

20 Patrick Flanagan  
21 PATRICK FLANAGAN  
22 District Judge  
23  
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28



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.

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.<sup>1</sup> 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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26  
27 <sup>1</sup> 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.<sup>2</sup>

#### 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 <sup>2</sup> 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 Bakst<sup>3</sup>  
2 and Barta<sup>4</sup> 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.<sup>5</sup> 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.

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25 <sup>3</sup> State ex rel State Bd of Equalization v. Bakst, 122 Nev. 1403 (2006)

26 <sup>4</sup> State ex rel State Bd of Equalization v. Barta, 124 Nev. 58 (2008)

27 <sup>5</sup> In an interview with Petitioners’ expert Richard Almy, he was asked whether there was “any statistical  
28 method that Nevada regulators can adopt to effectively measure whether statewide equalization is  
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.<sup>6</sup> This is precisely the relief sought by Village League in its *Amended Complaint*.

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28       <sup>6</sup> "[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  
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15 Board of Equalization to apply its new equalization regulations without district court  
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## 22 23 Conclusion

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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  
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6

7 **IT IS HEREBY ORDERED**

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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 13<sup>th</sup> day of April, 2010.

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18 PATRICK FLANAGAN  
19 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

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

9 VILLAGE LEAGUE TO SAVE INCLINE  
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Case No.: CV03-06922  
Dept. No.: 7

15 Petitioners,

16 vs.

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19 COUNTY; BILL BERRUM, Washoe  
County Treasurer,

20 Respondents.  
21 \_\_\_\_\_/

**SECOND AMENDED ORDER**

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

28 ///

1           **Factual Background**

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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  
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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  
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24 determining the viability of Petitioners' claim for injunctive relief against the State Board of  
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26       ///

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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  
22 the 2003-2004 and 2004-2005 tax years.<sup>1</sup> 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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26  
27           <sup>1</sup> 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*  
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19 In its prayer for relief, Village League requests that "the court issue a preemptory writ of  
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27 subsequent years as required by the Nevada Constitution and statutes, to certify those changes to  
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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.<sup>2</sup>

### 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

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28 <sup>2</sup> 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 Bakst<sup>3</sup>  
20 and Barta<sup>4</sup> 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 <sup>3</sup> State ex rel State Bd of Equalization v. Bakst, 122 Nev. 1403 (2006)

28 <sup>4</sup> 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.<sup>5</sup> 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 <sup>5</sup> 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.<sup>6</sup> 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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26  
27 <sup>6</sup> "[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 Kappler 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 20<sup>TH</sup> day of April, 2010.

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28 **PATRICK FLANAGAN**  
District Judge

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**CERTIFICATE OF SERVICE**


Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 20<sup>TH</sup> day of April, 2010, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

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:

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

  
Judicial Assistant

ORIGINAL

FILED

2010 APR 13 PM 3:44

HOWARD W. CONYERS

BY DEPUTY

2540  
3790  
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

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 13<sup>th</sup> 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  
17  
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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.

**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  
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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.

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19           The Parties

20           Petitioner, Village League to Save Incline Assets, Inc., ("Village League") is a Nevada  
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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*  
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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.<sup>2</sup>  
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 <sup>2</sup> 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 Bakst<sup>3</sup>  
2 and Barta<sup>4</sup> 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.<sup>5</sup>

21  
22  
23 <sup>3</sup> State ex rel State Bd of Equalization v. Bakst, 122 Nev. 1403 (2006)

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

25 <sup>5</sup> 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  
27  
28



1 Crystal Bay residents a forum to vet the tax valuation of their property before the State Board of  
2 Equalization.<sup>6</sup> 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).

24  
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26  
27 <sup>6</sup> "[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  
17  
18  
19 DATED this 13<sup>th</sup> day of April, 2010.

20  
21 Patrick Flanagan  
22 PATRICK FLANAGAN  
23 District Judge  
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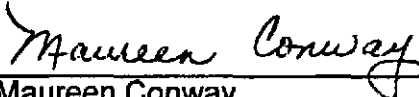
**CERTIFICATE OF SERVICE**

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

Dennis Belcourt, Esq. and Deonne Contine, 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:

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

  
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

Tina Bledsoe

CV03-06922  
VILLAGE LEAGUE,  
DISTRICT COURT  
Washoe County  
DC-9900016529-026  
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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

2010 APR 20 PM 3:48

HOWARD W. CONYERS.

BY: *[Signature]*  
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

\* \* \*

8  
9 VILLAGE LEAGUE TO SAVE INCLINE  
10 ASSETS, INC., a Nevada non-  
11 profit corporation, on behalf of  
12 its members, and others  
13 similarly situated; MARYANNE  
14 INGEMANSON, Trustee of The Larry  
15 D. and Maryanne B. Ingemanson  
16 Trust; DEAN R. INGEMANSON,  
17 individually and as Trustee of  
18 the Dean R. Ingemanson Trust; J.  
19 ROBERT ANDERSON; and LES BARTA;  
20 on behalf of themselves and  
21 others similarly situated;

Case No. CV03-06922

Dept. No. 7

Plaintiffs,

vs.

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

Defendants.

NOTICE OF ENTRY OF AMENDED ORDER

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

26 Please take notice that an Amended Order was filed on April

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  
4 document does not contain the social security number of any  
5 person.

6 Dated this 19<sup>th</sup> 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  
17  
18  
19  
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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 Amended Order in an  
8 envelope addressed to the following:

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

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

15 Dated this 19<sup>th</sup> day of April, 2010.

16  
17   
18 MICHELLE FOSTER  
19  
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26

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.

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.<sup>1</sup> 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 <sup>1</sup> 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.

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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.<sup>2</sup>

#### 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 <sup>2</sup> 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 Bakst<sup>3</sup>  
2 and Barta<sup>4</sup> 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.<sup>5</sup> 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.

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25 <sup>3</sup> State ex rel State Bd of Equalization v. Bakst, 122 Nev. 1403 (2006)

26 <sup>4</sup> State ex rel State Bd of Equalization v. Barta, 124 Nev. 58 (2008)

27 <sup>5</sup> In an interview with Petitioners' expert Richard Almy, he was asked whether there was "any statistical  
28 method that Nevada regulators can adopt to effectively measure whether statewide equalization is  
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.<sup>6</sup> This is precisely the relief sought by Village League in its *Amended Complaint*.

26  
27  
28       <sup>6</sup> "[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 13<sup>th</sup> day of April, 2010.

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18 PATRICK FLANAGAN  
19 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

CV03-06922  
VILLAGE LEAGUE TO  
DISTRICT COURT  
WASHOE COUNTY  
NVC  
2540  
DC-9500016570-045  
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Reno, NV 89520-3083  
(775) 337-5700  
ATTORNEYS FOR WASHOE COUNTY

FILED

2010 APR 21 PM 3:51

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  
17  
18  
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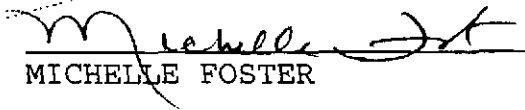
1 CERTIFICATE OF SERVICE

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.  
10 Morris Peterson  
6100 Neil Road, Suite 555  
Reno, NV 89511

11 Dennis Belcourt  
12 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.

16  
17   
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

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).

///

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.

26       ///

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 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.<sup>1</sup> 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

25  
26  
27 <sup>1</sup> 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 peremptory 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  
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28 <sup>2</sup> 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.

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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 Bakst<sup>3</sup>  
20 and Barta<sup>4</sup> 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

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

28 <sup>4</sup> 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.<sup>5</sup> 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 <sup>5</sup> 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.<sup>6</sup> 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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26  
27 <sup>6</sup> "[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 20<sup>TH</sup> day of April, 2010.

26

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28

  
PATRICK FLANAGAN  
District Judge



1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial  
3 District Court of the State of Nevada, County of Washoe; that on this 20<sup>TH</sup> day of April, 2010,  
4 I electronically filed the following with the Clerk of the Court by using the ECF system which  
5 will send a notice of electronic filing to the following:

6 Dennis Belcourt, Esq. for State Board of Equalization;

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

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

11 David Creekman, Esq.  
12 Deputy District Attorney  
13 Washoe County District Attorney's Office  
[via interoffice mail]

14   
15 Judicial Assistant  
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CASE NO. CV03-06922

VILLAGE LEAGUE ET AL  
VS  
DEPARTMENT OF TAXATION ET AL

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

4/21/09  
HONORABLE  
PATRICK  
FLANAGAN  
DEPT. NO. 7  
M. Conway  
(Clerk)  
S. Koetting  
(Reporter)

STATUS HEARING AFTER REMAND BY NEVADA SUPREME COURT

Suellen Fulstone, Esq. was present in Court on behalf of the Plaintiff who was not present.

Gina Session, Esq. was present in Court on behalf of Nevada Department of Taxation who was not present.

David Creekman, Esq. was present in Court on behalf of Washoe County who was not present.

**11:35 a.m.** – Court convened with Court and counsel present.

Counsel for the Plaintiff addressed the Court and moved to file an Amended Complaint. Counsel further argued that this case should proceed along normal lines with an answer filed, a 16.1 conference held and discovery exchanged.

Counsel Creekman addressed the Court and present argument in support of filing briefs before launching into full litigation mode.

Counsel Session addressed the Court and concurred with the argument present by Counsel Creekman, feels clarification on the issues is needed and feels there is only one (1) cause of action.

Counsel Fulstone replied, arguing discovery is necessary and feels that Washoe and Douglas County assessors need to be deposed.

Counsel Creekman responded, Counsel Session responded.

**COURT ORDERED:** Plaintiff's Motion to file an Amended Complaint: **GRANTED.**

Counsel Fulstone requested two (2) weeks in which to file the Amended Complaint; **SO ORDERED.** The Defendants are not required to file an answer. Simultaneous briefs, addressing scope of issues are to be filed by June 1, 2009. Response will be due within two weeks.

**11:57 p.m.** – Court stood in recess.

CASE NO. CV03-06922

VILLAGE LEAGUE, et al  
vs  
DEPARTMENT OF TAXATION et al

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

---

9/25/09  
HONORABLE  
PATRICK  
FLANAGAN  
DEPT. NO. 7  
M. Conway  
(Clerk)  
Lynn Stubbs  
(Reporter)

HEARING

Suellen E. Fulstone, Esq. was present in Court on behalf of the Plaintiff Village League.  
David Creekman, Esq. was present in Court on behalf of the Defendant Washoe County.  
Deputy Attorney General Dennis L. Belcourt, Esq. was present in Court on behalf of the State of Nevada, State Board of Equalization.  
Joshua Wilson, Washoe County Assessor was also present.  
2:33 p.m. – Court convened with Court, counsel and respective parties present.  
Counsel Fulstone argued in support of an Answer being filed with parties conducting limited discovery focusing on the valuation methodologies used by Washoe County. The Court responded that limited discovery may be of benefit to all parties.  
Counsel Creekman addressed the Court and argued that this Court does not have jurisdiction and further argued that Douglas County needs to be brought into this litigation.  
Counsel Fulstone gave a brief outline to the Court of all pending cases.  
Counsel Belcourt addressed the Court and feels that discovery is not necessary; if this Court feels that all parties have been brought in that are necessary this matter should go to the Board of Equalization.  
Counsel Fulstone responded, arguing that Douglas County should not be part of this litigation.  
Counsel Creekman responded, arguing that the Plaintiff should serve Douglas County and further argued in opposition of discovery. Counsel Belcourt responded.  
COURT ORDERED: The Court will allow this case to proceed on the normal path of civil procedure, and will allow an answer(s) to be filed. Counsel may also file a Motion to Dismiss.  
Counsel Fulstone renewed her argument that an answer should be filed, not just the Motion to Dismiss.  
COURT ORDERED: Counsel to file any responsive Motions on or before October 15, 2009. Local rules will apply, and further the Court will hear Oral Arguments.  
3:30 p.m. – Court stood in recess.

**FILED**

Electronically

05-12-2010:04:47:29 PM

Howard W. Conyers

Clerk of the Court

Transaction # 1484160

**Code 1350**

**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**

**Appellants,**

**vs.**

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

**Respondents.**

**/**

**CERTIFICATE OF CLERK**

I hereby certify that the attached documents submitted electronically are  
certified copies of the original pleadings on file with the Second Judicial District Court, in  
accordance with the Nevada Rules of Appellate Procedure, NRAP 3(e).

Dated this 12th day of May, 2010.

**HOWARD W. CONYERS  
CLERK OF THE COURT**

By: /s/ Teresa Prince  
Deputy Clerk

**FILED**

Electronically  
05-12-2010:04:47:29 PM  
Howard W. Conyers  
Clerk of the Court  
Transaction # 1484160

**Code 1365**

**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  
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**Case No. CV03-06922**

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**Appellants,**

**vs.**

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

**Respondents.**

**CERTIFICATE OF TRANSMITTAL**

I hereby certify that this Notice of Appeal and other required documents  
(certified copies pursuant to NRAP 3(e)), were electronically filed from the Second Judicial  
District Court to the Nevada Supreme Court.

Dated this 12th day of May, 2010.

HOWARD W. CONYERS  
CLERK OF THE COURT

By: /s/ Teresa Prince  
Deputy Clerk