IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondents.

_____/

Case No. 56030

# JOINT APPENDIX

## VOLUME I


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## APPENDIX INDEX

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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 its members, and others similarly situated,

Plaintiff,

vs.

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

Defendants.

Case No.: CV CV03 06922

Dept. No. 10

COMPLAINT FOR DECLARATORY AND RELATED RELIEF

Plaintiff complains of defendants and alleges as follows:

NATURE OF THE ACTION

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Against all Defendants)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

(Against all Defendants)

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

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

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

(Against Washoe County Defendants)

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

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

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

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

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

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

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

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

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

FOURTH CLAIM FOR RELIEF

(Against Washoe County Defendants)

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

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

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

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

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

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

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

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

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

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

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

FIFTH CLAIM FOR RELIEF

(Against Washoe County Defendants)

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

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

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

WHEREFORE PLAINTIFF PRAYS AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 13th day of November, 2003.

WOODBURN AND WEDGE

by _____
Attorneys for plaintiff
Village League To Save Incline Assets, Inc.

JUN - 8 2004

FILED

JUN - 2 2004

RONALD A. LONGTIN, JR., CLERK

By K. Drum
DEPUTY

CODE NO. 3060

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

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

Plaintiff,

vs.

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

Defendants,

Case No. CV03-06922

Dept. No. 7

ORDER GRANTING MOTIONS TO DISMISS

Plaintiff is a nonprofit membership organization that claims its members consist of the owners of approximately 6,700 parcels of real property located in Incline Village and Crystal Bay, Nevada. Plaintiff claims that property taxes assessed on the members' real property in 2003 far exceed the property taxes assessed on other real property within the County. Specifically, Plaintiff claims that while property taxes have risen by approximately 2.5% on average in Washoe County, real property taxes at Incline and Crystal Bay have risen by an average of 31%, and in some individual cases as high as 400%. In addition, these amounts are far out of proportion to real property taxes paid by

Douglas County residents of property that is the same or similar to those situated in Washoe County.

Plaintiff brought this class action for relief requesting a declaration from the court that the specific methods used by the Washoe County Assessor's Office to assess real property in Incline Village and Crystal Bay are illegal, discriminatory, and unconstitutional. Thus, as a result of this improper methodology, Plaintiff alleges the property values in these areas were overvalued in comparison to other properties in Washoe County. Further, Plaintiff asks the Court to declare that Defendant State Board of Equalization and the State Department of Taxation failed to equalize the assessments made on property located in Douglas County and Washoe County as constitutionally required and have thus failed in their statutory and constitutionally mandated duties. Additionally, Plaintiff alleges that the notice of the property tax assessments given by Washoe County do not meet the Due Process requirements of both the Nevada and United States Constitutions. Finally, on behalf of its members, Plaintiff seeks tax refunds in the amounts equal to the over assessed amounts paid and damages based on the invalid and unconstitutional taxes assessed.

Defendants Washoe County, the State Board of Equalization, the Nevada Tax Commission and Nevada State Board of Taxation (collectively "Defendants") have each separately moved for dismissal of the entire action pursuant to NRCP 12(b)(5) arguing that Plaintiff has failed to state a claim upon which relief can be granted. Defendants argue that this case should be dismissed because the Plaintiff's members failed to exhaust all administrative remedies provided in the Nevada Revised Statutes for the challenging of property assessments and taxes and are therefore precluded from bringing this action in District Court. Plaintiff opposes each motion to dismiss. While Plaintiff admits that the

administrative remedies were not exhausted, Plaintiff argues that it is excused from exhausting the administrative remedies based on recognized exceptions to that rule of law.

The Court having considered the pleadings and oral argument of counsel, finds as follows. A motion to dismiss for failure to state a claim for relief will only be granted if it appears to a certainty that plaintiff is entitled to no relief under any set of facts which could be proved in support of the claim. NRCP 12(b)(5); Zalk-Josephs Co. v. Wells Cargo, Inc., 81 Nev. 163, 170 (1965). In considering a motion to dismiss the court must accept all allegations of the complaint as true. Haertel v. Sonshine Carpet Co., 102 Nev. 614, 615 (1986). In addition, the court must construe the pleading liberally, drawing fair inferences in favor of the non-moving party. Simpson v. Mars, Inc., 113 Nev. 188, 190 (1997).

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

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

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

the initiation of administrative proceedings would be futile. Id.

As to the first exception, a district court would not be deprived of jurisdiction for the failure to exhaust administrative remedies when the issues presented relate solely to the interpretation or constitutionality of a statute. Id. However, simply providing a constitutional challenge to a statute or provision is not sufficient to avoid the requirement of exhaustion. Thus, when a statute is attacked on its face, or in other words the claim is that the statute as enacted is unconstitutional an agency determination on this point would rarely aid the court in resolving the issue and accordingly exhaustion would not be required. Malecon Tobacco, Inc. v. State of Nevada, 59 P. 3d 474, 476 (Nev. 2002). However, when the taxpayer does not challenge that the statute is unconstitutional but rather the statute has been applied unconstitutionally to them, this is a matter which is properly resolved by the agency. Id. These determinations inherently require a factual context and the agency is in the best position, through its experience and expertise, to make such factual findings. Id. Thus, in these cases, there is not an exception to the exhaustion doctrine merely because a constitutional claim is made.

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

require factual determinations and context to determine if in fact the use of these methods and other valuation classifications are improper as guidelines and provisions available to county assessors for the valuation of property, and thus being unconstitutionally applied. Accordingly, this exception to the exhaustion requirement does not apply to the instant case.

Furthermore, the Court does not agree that the utilization of the administrative remedies would be futile under the circumstances. The local and state entities that would be required to hear any such challenge to these assessments are particularly able to make these determinations due to their expertise and knowledge of the subject matter involved. Furthermore, the mere fact that there may be many claimants with similar claims of overvaluation does not excuse the use of the administrative process, as one successful challenge to these methods would arguably correct the alleged impermissible valuation methods. Accordingly, the exhaustion of administrative remedies would not be futile under this exception.

Plaintiff has failed to exhaust the administrative remedies as required under NRS 361.355 *et. seq.* Therefore, this failure precludes Plaintiff from bringing any action based on the overvaluation of the properties involved as to all named Defendants. NRS 361.410(1). Accordingly, Defendants' Motions to Dismiss should be GRANTED in their entirety as to all Defendants.

IT IS SO ORDERED.

DATED: This 2 day of June, 2004.

Peter J Breen

DISTRICT JUDGE

Jt.App.23

CERTIFICATE OF SERVICE BY MAILING

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

Suellen Fulstone, Esq.
Woodburn and Wedge
6100 Neil Rd., Suite 500
Reno, NV 89511

Gregory L. Zunino
Senior Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701-4717

Joshua J. Hicks
Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701-4717

Gregory R. Shannon
Deputy District Attorney
Civil Division

KIM DRIGGS
Administrative Assistant

No. $2515
SUELLEN FULSTONE
Nevada State Bar 1615
DALE FERGUSON
Nevada State Bar 4986
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511
Telephone: (775) 688-3000

Attorneys for plaintiff
Village League To Save Incline Assets, Inc.



IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

| | |
|---|---|
| VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., a Nevada non-profit corporation, on behalf of its members, and others similarly situated,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No.: CV03-06922<br><br>Dept. No. 7<br><br>**NOTICE OF APPEAL** |

Notice is hereby given that the Village League To Save Incline Assets, Inc., plaintiff above named, appeals to the Supreme Court of the State of Nevada from the Order Granting

Motions To Dismiss entered in this action on the 2nd day of June, 2004.

DATED this 10th day of June, 2004.

WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, NV 89511
(775) 688-3000

by _____
Suellen Fulstone
Nevada Bar No. 1615
Attorneys for plaintiff

## CERTIFICATE OF MAILING

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Woodburn and Wedge and that on this date I deposited in the U.S. Mail with postage paid a true copy of the attached Notice Of Appeal addressed to:

Gregory R. Shannon, Esq.
Deputy District Attorney
P. O. Box 30083
Reno, NV 89520-3083

Joshua J. Hicks, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701-4717

Gregory L. Zunino, Esq.
Senior Deputy Attorney General
100 North Carson Street
Carson City, NV 89701-4717

DATED this 10th day of June, 2004.

Tommie Kay Atkinson

IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., A NEVADA NON-PROFIT CORPORATION, ON BEHALF OF ITS MEMBERS AND OTHERS SIMILARLY SITUATED,
Appellant,
vs.
THE STATE OF NEVADA ON RELATION OF ITS DEPARTMENT OF TAXATION, THE NEVADA STATE TAX COMMISSION, AND THE STATE BOARD OF EQUALIZATION; WASHOE COUNTY; ROBERT MCGOWAN, WASHOE COUNTY ASSESSOR; AND BILL BERRUM, WASHOE COUNTY TREASURER,
Respondents.

No. 43441

CV03-06922



ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order dismissing a declaratory and injunctive relief action in a real property tax assessment dispute.[1] Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

FACTS

On behalf of its members, appellant Village League to Save Incline Assets, Inc., filed a district court complaint concerning property

[1]The Honorable Kristina Pickering, Justice, voluntarily recused herself from participation in the decision of this matter.

tax assessments against respondents—namely, the State of Nevada, on relation of its Department of Taxation, Tax Commission, and State Board of Equalization; the Washoe County Assessor; and the Washoe County Treasurer. In its complaint, Village League contended that the property assessment methods and tax-related notice procedures used by the Washoe County Assessor were constitutionally invalid and that the State Board of Equalization had failed to carry out its constitutional obligation to equalize property valuations. In addition to declaratory and injunctive relief, Village League sought property tax refunds. Because neither Village League nor its members had first exhausted their administrative remedies, however, the district court dismissed the complaint. Village League timely appealed.

## DISCUSSION

Failure to exhaust available administrative remedies renders the matter unripe for district court review and, thus, nonjusticiable. Allstate Ins. Co. v. Thorpe, 123 Nev. ___, ___, 170 P.3d 989, 993-94 (2007); see also Baldonado v. Wynn Las Vegas, 124 Nev. ___, ___, 194 P.3d 96, 105 (2008) (noting that declaratory relief actions generally are inappropriate when an administrative remedy exists). As we have noted before, "[t]he exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and conserves judicial resources, so its purpose is valuable; requiring exhaustion of administrative remedies often resolves disputes without the need for judicial involvement." Allstate, 123 Nev. at ___, 170 P.3d at 993-94. District court orders dismissing an action for failure to exhaust administrative remedies typically are reviewed de novo. See id. at ___, 170 P.3d at 993 (noting that this court reviews de novo whether the statutory scheme requires exhaustion of administrative

remedies); Wyatt v. Terhune, 315 F.3d 1108, 1117 (9th Cir. 2003) (explaining that courts generally review de novo orders dismissing complaints for failure to exhaust administrative remedies, unless the court makes factual determinations, which are reviewed for clear error).

Regarding exhaustion, NRS 361.410(1) provides, in relevant part,

> No taxpayer may be deprived of any remedy or redress in a court of law relating to the payment of taxes, but all such actions must be for redress from the findings of the State Board of Equalization, and no action may be instituted upon the act of a county assessor or of a county board of equalization or the Nevada Tax Commission until the State Board of Equalization has denied complainant relief.[2]

Because the majority of Village League's complaint "related to" the payment of property taxes—as exemplified by its requests for refunds—its failure to first seek redress from the State Board of Equalization rendered those issues nonjudiciable. First Am. Title Co. v. State of Nevada, 91 Nev. 804, 543 P.2d 1344 (1975).

Exceptions to the exhaustion doctrine

Nevertheless, Village League asserts that exceptions to the exhaustion doctrine apply here, such that despite NRS 361.410(1)'s clear terms, it was not required to first exhaust administrative remedies. We

---

[2]Correspondingly, NRS 361.420(2) provides in relevant part that "[t]he property owner, having protested the payment of taxes . . . and having been denied relief by the State Board of Equalization, may commence a suit in any court of competent jurisdiction in the State of Nevada against the State and county in which the taxes were paid."

have recognized that exhaustion is not required when the issues "'relate solely to the interpretation or [facial] constitutionality of a statute.'" Malecon Tobacco v. State, Dep't of Taxation, 118 Nev. 837, 839, 59 P.3d 474, 476 (2002) (quoting State of Nevada v. Glusman, 98 Nev. 412, 419, 651 P.2d 639, 644 (1982)). Additionally, exhaustion is excepted when resort to administrative remedies would serve no useful purpose or is futile. Id.; Engelmann v. Westergard, 98 Nev. 348, 353, 647 P.2d 385, 388-89 (1982) (explaining that requiring exhaustion would be futile when administrative remedies are not viable, when no fair opportunity to exhaust administrative remedies exists, or when the agency clearly lacks jurisdiction).

Here, Village League contends that its challenge to the County Assessor's methods is analogous to a constitutional challenge to a statute's or ordinance's facial validity and, thus, not subject to the exhaustion requirement. Further, while Village League acknowledges that NRS 361.345 allows the county board of equalization to determine property values and modify an assessor's incorrect valuation, it nonetheless argues that no administrative process exists to review several of its assertions. In particular, Village League insists that no administrative body can properly review its assertions that (1) the assessment methodologies used were invalid de facto regulations, (2) the Department of Taxation and Tax Commission failed to standardize assessment methods and procedures statewide, and (3) the State Board of Equalization and Department of Taxation failed to carry out their equalization duties. Although we conclude that Village League was required to exhaust administrative remedies with respect to its assertions regarding the Assessor's methods and the state agencies' failures to standardize those methodologies, we

agree with Village League that no administrative process exists by which it could challenge the State Board's compliance with its equalization duties.

In Malecon Tobacco v. State, Department of Taxation, we recognized that, while an administrative agency has no authority to determine whether a statute, on its face, is unconstitutional, when resolving the constitutional challenge involves a factual evaluation, that evaluation is best left to the administrative agency, which can use "its specialized skill and knowledge to inquire into the facts of the case." 118 Nev. 837, 841, 59 P.3d 474, 477 (2002). Accordingly, exhaustion is required for "as applied" constitutional challenges. Similarly addressing the constitutional challenge exception to the exhaustion doctrine, the Tennessee Supreme Court has explained that, like with "as applied" challenges, the administrative agency can use its skill to determine constitutional challenges to an agency rule or procedure, including reviewing due process concerns. Richardson v. Tennessee Bd. of Dentistry, 913 S.W.2d 446, 455, 457 (Tenn. 1995). Presenting such issues to the agency helps create a complete record, allows the agency to correct any errors, and promotes judicial efficiency. Id.[3]

---

[3]While the Tennessee court determined that parties must follow the administrative process before seeking judicial review, it also determined that, under Tennessee's legal system, failure to raise constitutional challenges during the administrative process does not necessarily preclude judicial review of those issues. Richardson, 913 S.W.2d at 457-58. We need not determine whether failure to raise constitutional challenges during the administrative process in Nevada precludes judicial review of those issues here because Village League failed to exhaust administrative remedies in the first instance.

In this matter, any challenges to tax assessments based on improper property valuations should have been raised before the county board. In the context of challenging those assessments, the parties could have raised their constitutional challenges to the County Assessor's methods, including whether those methods were properly applied to the properties at issue despite their alleged nonstandardization statewide. Accordingly, the district court properly dismissed the complaint with respect to those claims for failure to exhaust administrative remedies.

It is not clear, however, that Village League had available any means to administratively challenge the State Board of Equalization's alleged failures to carry out its equalization duties. While NRS 361.356 allows a property owner to raise equalization issues regarding properties with comparable locations before the county board, and while NRS 361.360 allows taxpayers to challenge the county board's failure to equalize, those statutes do not address statewide, county-by-county equalization issues. And in State, Board of Equalization v. Barta, 124 Nev. ___, ___, 188 P.3d 1092, 1102 (2008), we recognized that a property taxpayer suffers injury when properties are not valued in accordance with the constitutional right to a uniform and equal rate of assessment, which the equalization processes are intended to ensure.

Village League's complaint alleged that, despite taxable valuation disparities between Washoe and Douglas Counties in the 2003/04 tax year and prior tax years, the State Board failed to equalize those valuations. As a remedy therefore, Village League sought a declaration that the property valuation disparity between Washoe and Douglas Counties violated the Nevada Constitution and a mandatory

injunction directing the State Board to redress that disparity by equalizing property valuations.

As no statute provides for an administrative process to remedy the State Board's failure to equalize county valuations, insofar as Village League alleged that the State Board failed to perform an act required by law and sought an order directing that act's performance, such was appropriately raised in its district court complaint.[4] See, e.g., NRS 34.160; Idaho State Tax Com'n v. Staker, 663 P.2d 270 (Idaho 1982); Fondren v. State Tax Commission, 350 So. 2d 1329 (Miss. 1977), reaffirmed in State Tax Commission v. Fondren, 387 So. 2d 712, 723-24 (Miss. 1980), abrogated on other grounds by Marx v. Truck Renting & Leasing Ass'n, 520 So. 2d 1333, 1346 (Miss. 1987); 84 C.J.S. Taxation § 654 (2001). Accordingly, we reverse the portion of the district court's order dismissing the equalization claim, and we remand this matter for further proceedings on that claim.[5]

---

[4]Village League has not pointed to any authority for requesting the court to "declare" a disparity in property valuations, and nothing in Nevada's declaratory relief statues, NRS Chapter 30, appears to so authorize. Accordingly, the district court properly dismissed the declaratory relief portion of the equalization claim.

[5]Having considered respondents' argument that Village League lacks standing to raise the equalization claim, we conclude that it is without merit; in light of this order, standing with respect to the remainder of Village League's claims need not be reached.

## CONCLUSION

The district court properly dismissed the action below, except for the equalization claim, because Village League failed to exhaust its administrative remedies prior to seeking judicial review. Regarding the equalization claim, the district court should have proceeded to determine whether Village League's claim for injunctive relief was viable. Therefore, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.

_____, C.J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: Second Judicial District Court Dept. 7, District Judge
Cathy Valenta Weise, Settlement Judge
Morris Peterson/Reno
Attorney General Catherine Cortez Masto/Carson City

Attorney General Catherine Cortez Masto/Las Vegas
Washoe County District Attorney Richard A. Gammick/Civil Division
Washoe District Court Clerk

CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.
DATE: April 14 2009
Supreme Court Clerk, State of Nevada
A. Ingersoll Deputy

**FILED**
Electronically
04-08-2009:02:34:35 PM
Howard W. Conyers
Clerk of the Court
Transaction # 699329

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR WASHOE COUNTY

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

Plaintiff,

vs.

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

Defendants.
_____/

CASE NO. CV03-06922

DEPT. NO. 7

**ORDER SETTING STATUS HEARING**

IT IS HEREBY ORDERED that plaintiff, VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC , represented by Suellen Fulstone, Esq. of Morris & Peterson; and defendants, STATE OF NEVADA, on relation of its DEPT. OF TAXATION, the NEVADA STATE TAX COMMISSION, and the STATE BOARD OF EQUALIZATION, represented by Catherine Cortez Masto, Attorney General for the State of Nevada, and Gregory L. Zunino, Esq., and Gina C. Session, Esq. Nevada Attorney General's Office; and WASHOE COUNTY; ROBERT MCGOWAN, WASHOE COUNTY

ACCESSOR; BILL BERRUM, WASHOE COUNTY TREASURER, represented by Richard A. Gammick, Washoe County District Attorney, and Gregory R. Shannon, Deputy District Attorney; appear in Washoe County District Court, Department Seven, for a Status Hearing on Thursday, April 21, 2009, set to commence at 11:30 a.m.

DATED this 8th day of April, 2009.

Patrick Flanagan

PATRICK FLANAGAN
District Judge

**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 8th day of April, 2009, I sent via facsimile and deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

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

Facsimile No.: 775.829.6001

and

Gregory L. Zunino, Esq.
Gina Session, Esq.
Office of the Attorney General
100 North Carson St.
Carson City, Nevada 89701-4717

Facsimile No.: 775.684.1156

and

Gregory R. Shannon, Esq.
Washoe County District Attorney's Office
Civil Division
[via interoffice mail]

Facsimile No.: 775.337.5732

Judicial Assistant

**FILED**
Electronically
04-08-2009:04:00:09 PM
Howard W. Conyers
Clerk of the Court
Transaction # 700079

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR WASHOE COUNTY

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

Plaintiff,

vs.

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

Defendants.
_____/

CASE NO. CV03-06922

DEPT. NO. 7

**AMENDED ORDER SETTING STATUS HEARING**

IT IS HEREBY ORDERED that plaintiff, VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC , represented by Suellen Fulstone, Esq. of Morris & Peterson; and defendants, STATE OF NEVADA, on relation of its DEPT. OF TAXATION, the NEVADA STATE TAX COMMISSION, and the STATE BOARD OF EQUALIZATION, represented by Catherine Cortez Masto, Attorney General for the State of Nevada, and Gregory L. Zunino, Esq., and Gina C. Session, Esq. Nevada Attorney General's Office; and WASHOE COUNTY; ROBERT MCGOWAN, WASHOE COUNTY

ACCESSOR; BILL BERRUM, WASHOE COUNTY TREASURER, represented by Richard A. Gammick, Washoe County District Attorney, and Gregory R. Shannon, Deputy District Attorney; appear in Washoe County District Court, Department Seven, for a Status Hearing on Tuesday, April 21, 2009, set to commence at 11:30 a.m.

DATED this 8th day of April, 2009.

Patrick Flanagan

PATRICK FLANAGAN
District Judge

## 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 9th day of April, 2009, I sent via facsimile and deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

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

Facsimile No.: 775.829.6001

and

Gregory L. Zunino, Esq.
Gina Session, Esq.
Office of the Attorney General
100 North Carson St.
Carson City, Nevada 89701-4717

Facsimile No.: 775.684.1156

and

Gregory R. Shannon, Esq.
Washoe County District Attorney's Office
Civil Division
[via interoffice mail]

Facsimile No.: 775.337.5732

Judicial Assistant

**FILED**
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Howard W. Conyers
Clerk of the Court
Transaction # 726707

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<br>HONORABLE<br>PATRICK<br>FLANAGAN<br>DEPT. NO. 7<br>M. Conway<br>(Clerk)<br>S. Koetting<br>(Reporter) | STATUS HEARING AFTER REMAND BY NEVADA SUPREME COURT<br>Suellen Fulstone, Esq. was present in Court on behalf of the Plaintiff who was not present.<br>Gina Session, Esq. was present in Court on behalf of Nevada Department of Taxation who was not present.<br>David Creekman, Esq. was present in Court on behalf of Washoe County who was not present.<br>**11:35 a.m.** – Court convened with Court and counsel present.<br>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.<br>Counsel Creekman addressed the Court and present argument in support of filing briefs before launching into full litigation mode.<br>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.<br>Counsel Fulstone replied, arguing discovery is necessary and feels that Washoe and Douglas County assessors need to be deposed.<br>Counsel Creekman responded, Counsel Session responded.<br>**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.<br>**11:57 p.m.** – Court stood in recess. |

4185

STEPHANIE KOETTING

CCR #207

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

--oOo--

| | | |
|---|---|---|
| VILLAGE LEAGUE, et al., Plaintiffs, | ) | |
| vs. | ) | Case No. CV03-06922 |
| DEPARTMENT OF TAXATION, et al., Defendants. | ) | Department 7 |

TRANSCRIPT OF PROCEEDINGS

STATUS HEARING

April 21st, 2009

11:30 a.m.

Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

APPEARANCES:

For the Plaintiff:

MORRIS, PETERSON
By: SUELLEN FULSTONE, ESQ.
6100 Neil Rd.
Reno, Nevada

For the Defendant:

GINA SESSION, ESQ.
Nevada Attorney General's Office
100 N. Carson
Carson City, Nevada

DAVID CREEKMAN, ESQ.
Chief Deputy District Attorney
One South Sierra
Reno, Nevada

RENO, NEVADA, April 21st, 2009, 11:30 a.m.

--oOo--

THE CLERK: Case number CV03-06922, Village League, et al., versus the Department of Taxation, et al.. This matter set for a status hearing. Counsel, please state your appearance for the record.

MS. FULSTONE: Suellen Fulstone of Morris, Peterson on behalf of the Village League. With me Mrs. Marion Eagleman the President of the Village League.

THE COURT: Good morning, ma'am.

MR. CREEKMAN: David Creekman on behalf of Washoe County, your Honor.

MS. SESSION: Gina Session appearing on behalf of the Department of Taxation.

THE COURT: Good morning, counsel. On June 2nd of 2004, Judge Breen entered an order granting defendant's motions to dismiss the claims filed by the plaintiff Village League to Save Lake Tahoe.

Last week, April 16th, the Nevada Supreme Court issued its order reversing in part Judge Breen's order. When this Court received the order, I contacted counsel, and I wanted to get this case back on track at least with respect to the claim that was remanded back to the District Court.

I've a chance to look at the file and I'm familiar with the issues. But let me ask you, Ms. Fulstone, do you think we should wait until the other matter goes through the state administrative hearings or should we go ahead and set a briefing schedule here on the injunctive relief claim?

MS. FULSTONE: I'm not sure if the Court is referring to the Young matter?

THE COURT: No. Let me just say this, how do you recommend we proceed?

MS. FULSTONE: I think we proceed on this case directly, whether it's -- but I don't know if it's a briefing schedule that we would be looking at. Before I go there, Ms. Session said she represents the Department of Taxation. The primary department in this case is the State Board of Equalization in terms of the injunctive relief. It is the claim against the state board, as well as other state defendants, I guess, was that it was remanded with respect to the equalization issue. So I'm not sure whether she's here on behalf of the state board or whether we can proceed without someone here on behalf of the state board.

MS. SESSION: I'm here on behalf of the state and I represent the state board as well.

THE COURT: Okay.

MS. FULSTONE: I think we proceed to treat this as

any other claim. There's discovery that we would like to do with respect to the differences between Douglas County and Washoe County at the Lake. I would like to file an amended complaint. There's a lot of law that has been created since I filed this initial complaint in November, I think, of 2003. And even though, you know, I looked and read this complaint again before we had this conference this morning, there's an allegation in there about the duty of the State Board of Equalization to review the county rolls and equalize within the county, as well as between counties. I would like to make it clear that that's the scope of this equalization inquiry.

THE COURT: Within Washoe County.

MS. FULSTONE: Within Washoe County, as well as between the two. So that, one, the issue of equalization can be as vetted as fully as possible in this case so that the relief that is granted or not granted can be as complete as possible. And then, you know, the inevitable review at the Supreme Court can be as meaningful as possible rather than the piecemeal kind of thing we would do if we were going to file another claim now with respect to the state board's duty within the county. So that's kind of where I see this going is having it proceed with an answer to the complaint -- actually --

THE COURT: Filing an amended complaint.

MS. FULSTONE: -- an answer to that complaint, a 16.1 conference, proceed with discovery, set the case for a hearing and so on.

THE COURT: All right. Mr. Creekman, how does that sound?

MR. CREEKMAN: Your Honor, I want to make it clear that from the county perspective, there's just one remaining cause of action in this particular case and that involves or centers upon questions of equalization as between similarly situated property up at Lake Tahoe, which happens to be in some cases located in Douglas County and in other cases happens to be located in Washoe County. That's the extent of the issue involved in this case.

I believe, actually, it can be resolved or at least the issues substantially narrowed from that point based on legal briefs at least initially. I'm not at this point categorically rejecting Ms. Fulstone's suggestion that we move into -- that we move into a discovery phase and the like, but I would like to give the Court and the attorneys the opportunity to espouse their legal positions in writing, supported by affidavits and any documentary evidence that may be or without a doubt is available through the public domain as public records before we launch into a full-scale litigation mode in this case.

THE COURT: Won't some of those documents necessarily have to come from discovery?

MR. CREEKMAN: Not necessarily. The public records law to the extent they're records of the State of Nevada or the records of Washoe County are all readily obtainable under Nevada's public records law.

THE COURT: You're talking mostly about the tax, the assessor's, the records.

MS. SESSION: There would be records before the county board, state board, tax commission.

MR. CREEKMAN: It's all out there. I believe it to all be out there in the public domain. And I will also remind the Court that these particular parties have been involved in these or related issues for a substantial amount of time and it would surprise me if much of what would otherwise be discoverable hasn't already been discovered.

THE COURT: As Ms. Fulstone pointed out, some time has passed and, you know, we've got the Basque decision. The law has developed. There's been some water under the bridge to so speak. Let me hear from Ms. Session.

MS. SESSION: I would agree with Mr. Creekman that perhaps it might be educational to begin with a briefing schedule rather than to launch into discovery. One of the problems that I see that Village League has a number of

actions in numerous forums, some of which are at least addressing parts of what would be considered by this Court on this issue. And so I think we could clarify that in a brief that might help us determine whether it's best to let it go forward in another forum.

There's an action in the First JD, Judge Russell, that is dealing with equalization issues. And that we might have more clarity on those issues if we were allowed to do a briefing schedule before going into discovery on this.

I agree that all of these records are available through the public records law. And at this juncture, I would also agree that there's really the one remaining cause of action in that we should keep it to that narrow issue.

THE COURT: Well, Ms. Fulstone, how much discovery do you think you'll need? I mean, I certainly hope you're not going to send interrogatories out to 1600 landowners here.

MS. FULSTONE: No, but it is misleading and incorrect to say all of these records are available as public records. One, I mean, generally speaking, it's not incumbent upon the parties to use the public records law to get discovery. But even if it were, what happens, I mean, for instance, this case involves equalization between at least, you know, as it stands, at a minimal level, equalization between Washoe County and Douglas County.

THE COURT: Correct.

MS. FULSTONE: We don't have anything, essentially, from Douglas County. In a recent case in department six here, I deposed the assessor in Douglas County with regards to validity of the revisions to the regulations involving the land valuation. But that's as much as we've ever gotten from Douglas County in the way of documentation.

THE COURT: Is there a parallel proceeding?

MS. FULSTONE: No, there is not. What happens and why we need to actually have discovery is that what's available in the way of public records is, to some degree, what the assessor does in response to a taxpayer's complaint about valuation. At that point, it's at that point that the Washoe County assessor puts together a packet for the county board.

Up to that point, the Washoe County Assessor doesn't have a specific appraisal as to a particular property. So what we will need to do is to depose the Washoe County Assessor on, you know, the equalization, on how we went about doing it, depose the Douglas County Assessor on how they reached their values and determine and discover these similarly situated properties that we could then compare. And I don't see how the Court can proceed without the facts to consider when you're looking at the law.

You know, every case, including this one, is essentially fact driven and we don't have all of those facts yet. I mean, we have some and we've certainly done some work on our own as the Village League and as individual members of the Village League, but we're not in a position where we can, you know, try the case today. And we know there's a lot more information out there.

THE COURT: If I understand your argument, I'll get you to, Mr. Creekman, if I understand, the discovery limited to the assessors and their methodology is rather discreet, but you're focusing on properties for which no landowner has taken an appeal, which I would have to hazard a guess is the vast majority.

MS. FULSTONE: It is the vast majority.

THE COURT: That's thousands of --

MS. FULSTONE: It is. We have to get at those records, I mean, and we haven't had access to those records in any of the cases. And when Ms. Session says there's a parallel proceeding in the First Judicial, that's -- you know, that's not exactly accurate.

THE COURT: What is exactly accurate?

MS. FULSTONE: We have, as the Village League and as members of the Village League pursued this equalization issue since we filed the claim in November of 2003. We have pursued

a equalization through the county board, through taking an appeal from the county board's failure to equalize to the State Board of Equalization. We now have an appeal from the state board's refusal to hear that appeal. And that's what is before the First Judicial on that.

We have also, because of what had been to this point a ruling from this Court that we could not pursue directly a claim for equalization against the State board, we have a claim under 1983, a federal civil rights claim, against the members of the state board who refused or failed to equalize. That's in the Supreme Court on an immunity issue at the moment. And then we also have a federal court filing under 1983 as well.

So, you know, we have tried to pursue this equalization issue, but this case is, what's the word suite generous, something like that, that's probably badly pronounced. This case isn't duplicated anywhere else.

THE COURT: All right. Mr. Creekman.

MR. CREEKMAN: In response, your Honor, to Ms. Fulstone's comments, she's correct, the case does involve questions of equalization as between Douglas and Washoe County. But the case does not involve questions of the -- as to how each assessor values property in those counties. What the case involves is the question of whether the legislature

fulfilled its constitution duty to establish a uniform and equal system of taxation and whether the State Department of Taxation and the board of equalization performed their statutory duties as they're set forth in the Nevada Revised Statutes by the legislature, as a result of the legislature performing its constitutional obligations and responsibilities. That's what it's all about.

The question or the focus of the Court from my perspective is going to be on the State Board of Equalization and whether they did or did not equalize -- first of all, whether their jurisdiction was properly invoked, and if so, whether the state board did or did not equalize, and moving a step forward, possibly whether the tax commission did or did not equalize using the methodologies or the procedures, if you will, set forth by the legislature in NRS Chapter 361.

This does not deal with how Mr. Wilson or Mr. Wilson's counterpart down there in Douglas County valued individual properties.

THE COURT: All right. Ms. Session.

MS. SESSION: You know, there is an NRS 361.356, which was not addressed by the Supreme Court's decision that does give a remedy for equalization between the counties. And basically what the remedy is that a landowner goes to the county where they think there's some difference in

equalization or difference in value and they present their case to that board of equalization, that county board of equalization, in this case it would be Douglas County, to ask that those property values be raised to their level. And that's the remedy in 361.356, and the Supreme Court didn't address it and that hasn't occurred in this case.

There's also in terms of equalization, as Mr. Creekman referred to, there's ratio studies done by the tax commission to determine whether the ratios are the same intercounty, which is what we're talking about in this case is intercounty equalization.

So, you know, in order to not go on kind of a hunting expedition, I think it would be useful to narrow the issue and understand what the issue is before we allow complaints to be amended or go into discovery on this issue.

THE COURT: This is what I'm inclined to do. I think the plaintiff can file an amended complaint. It's been remanded back here for this Court's consideration. And I certainly will give both parties an opportunity to put forth their claims and defenses.

But I also agree with the defendants here in respect to trying to narrow the scope of this hearing initially without incurring a lot of money, time and expense in discovery on behalf of the plaintiffs.

Now, it may be after I look at the briefing, I agree with you, Ms. Fulstone, that discovery is appropriate and we can then go to that next level. But what I'd like to do is I'd like you to essentially set the stage, file an amended complaint. And then if we could get briefing, and it doesn't have to be -- it can be simultaneous within 30 days as to what the parties believe the scope should be going forward.

You've lived with this case for years and have more knowledge than this Court would ever presume to know. And so it would be of assistance for me to see your perspective as to where you want to see this case go. By the same token, I think that the defendants raise issues of law that certainly have to be considered. And as both sides said, it's tough to decide the law without the facts. I can tell you that this Court needs them both.

So I'll let you go ahead and file the amended complaint. I will not require an answer be filed by the defendants. And then within 30 days, Ms. Clerk, we can file an opening brief.

THE CLERK: 30 days from today, your Honor?

THE COURT: Yes.

THE CLERK: May 21st.

THE COURT: And then two weeks after that, if we can get a response. I don't need a reply.

MS. FULSTONE: Could I ask for more than the 30 days, I just want like 35 days. My daughter is graduating from college, there's a week in there, and I don't want to --

THE COURT: Granted.

MS. FULSTONE: Thank you.

THE CLERK: 35 days from today's date?

THE COURT: 40 days.

THE CLERK: June 1st.

THE COURT: Give you over the weekend.

MS. FULSTONE: Thank you.

THE COURT: And then two weeks after that for a responsive pleading and I don't need a reply. And then what we'll do is I'll issue an order. And it may be that, as I sit here now, without knowing much more than what I've heard, I may allow some limited discovery, if it would assist the Court. But certainly I don't think it's in anybody's -- that's all I'm going to say.

MS. FULSTONE: Your Honor, in terms of filing the amended complaint, can I have two weeks on that? I only ask that, because we have 1300 cases that are starting to be heard next Monday before the state board. And I have a full-time job between now and then.

THE COURT: Well, if you want to file it -- file it whenever you want to. As I said, I'm not going to require the

defendants to answer the complaint, but I'd like to see the issues as it's framed by the plaintiffs in this case. It would be of assistance going forward.

MS. SESSION: Your Honor, if I understand this right, our briefing is on what has been remanded to the Court, not necessarily on what is in the amended complaint.

THE COURT: Correct. Correct. What the parties feel would be the appropriate scope of this matter going forward until light of the Supreme Court's order as well as in light of the recent Supreme Court cases Astra, Basque and this case. That would be of assistance. It's an important issue for both sides. I want to give both sides an opportunity to state their case and we'll take it from there and do the best we can. All right. Ms. Fulstone, anything further?

MS. FULSTONE: No, your Honor, thank you.

THE COURT: Mr. Creekman.

MR. CREEKMAN: Nothing further from the county.

THE COURT: Ms. Session?

MS. SESSION: Thank you, your Honor.

THE COURT: Thank you very much.

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STATE OF NEVADA )
) ss.
County of Washoe )

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 7 of the above-entitled Court on April 21st, 2009, at the hour of 11:30 a.m., and took verbatim stenotype notes of the proceedings had upon the status hearing in the matter of VILLAGE LEAGUE, et al. Plaintiffs, vs. DEPARTMENT OF TAXATION, et al., Defendants, Case No. CV03-06922, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 17, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

DATED: At Reno, Nevada, this 4th day of May, 2009.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF WASHOE**

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| VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC.; a Nevada non-profit corp., on behalf of its members, and others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>STATE OF NEVADA, on relation of its DEPT. OF TAXATION, the NEVADA STATE TAX COMMISSION, and the STATE BOARD OF EQUALIZATION; WASHOE COUNTY, ROBERT McGOWAN, WASHOE COUNTY ACCESORY; BILL BERRUM, WASHOE COUNTY TREASURER,<br><br>Defendants. | Case No. CV03-06922<br><br>Department No. 7 |

**STATE BOARD OF EQUALIZATION'S STATEMENT OF ISSUES AND REQUEST FOR DISMISSAL**

Defendant STATE OF NEVADA ex rel. STATE BOARD OF EQUALIZATION ("State Board"), through counsel CATHERINE CORTEZ MASTO, Attorney General, by DEONNE E. CONTINE, Deputy Attorney General, pursuant to the Status Hearing before this Honorable Court on April 21, 2009, hereby submits its Statement of Issues on Remand and its Motion to Dismiss.

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## I. Background, Procedural History and Scope of Remand

In November of 2003, The Village League to Save Incline Assets, Inc. (Village League), filed its Complaint for Declaratory and Related Relief against the Department of Taxation, the Nevada Tax Commission, the State Board of Equalization, the Washoe County Assessor and Washoe County Treasurer (Complaint). Village League's Complaint sought declaratory and injunctive relief regarding the property tax assessment methods of the Washoe County Assessor and alleged that the Nevada Tax Commission and State Board of Equalization failed to carry out their duties under the Nevada Constitution and NRS Chapter 361. Defendants moved for dismissal of all causes of action because Village League failed to exhaust its administrative remedies prior to bringing suit. On June, 2, 2004, the District Court Granted Defendants' Motion to Dismiss in its entirety. Village League appealed the case to the Nevada Supreme Court.

On March 19, 2009, the Nevada Supreme Court issued an Order Affirming in Part, Reversing In Part and Remanding (Remand Order) for further proceedings on the equalization claim. While agreeing with the District Court's determination that the Village League was required to exhaust administrative remedies prior to bringing suit, in its Remand Order, the Court noted that, "It is not clear, however, that Village League had available any means to administratively challenge the State Board of Equalization's alleged failures to carry out its equalization duties." Remand Order, page 6.

Based on the perceived lack of an administrative remedy by the Supreme Court, this case was remanded as the Court's order states that, "insofar as Village League alleged that the State Board failed to perform an act required by law and sought an order directing that act's performance, such was appropriately raised in its district court complaint." Regarding equalization, the court stated, "the district court should have proceeded to determine whether Village League's claim for injunctive relief was viable." Although no specific cause of action

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for injunctive relief is alleged by the Village League, its Complaint contains the following general allegations with respect to the State Board[1]:

> The defendant State Board of Equalization, . . ., has the statutory responsibility for the equalizing of real property valuations throughout the State, including reviewing the tax rolls of the various counties as equalized by the county boards of equalization, and if necessary adjusting the valuations thereon in order to equalize values with respect to taxable value.

Complaint ¶ 4.

The Complaint further provides:

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

Complaint ¶ 39.

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

Complaint ¶ 40.

Finally, the Complaint contains a prayer for relief, "That the Court enter a mandatory injunction requiring the State Board of Equalization to redress the disparity in valuation between property at Lake Tahoe in Douglas and Washoe Counties and to equalize those property valuations as required by the Nevada Constitution and statutes." Complaint page 16-17, ¶ 11.

Accordingly, the sole issue for determination by this Court is whether injunctive relief was a viable remedy for Village League at the time it filed its Complaint in November of 2003

[1] It appears from the minutes of the of the April 21, 2009, Status Hearing, that Village League would amend its Complaint within two weeks; however, this office has not been served with any such Amended Complaint. Accordingly, the paragraphs contained herein are from the original Complaint.

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for any alleged failure to equalize by the State Board related to properties in Douglas and Washoe Counties.

This Court may base its decision on facts of which judicial notice shall or may be taken. 138 A.L.R. Fed. 393 (1997). *See also* NRS 47.130 and 47.140. The State board requests that this Court take notice of the fact that that there are in excess of one million parcels and nearly 300,000 personal property assessments in the State of Nevada. Additionally, the State Board request that this Court take notice of the fact that Village League and its members have availed themselves of numerous legal remedies with respect to the issues complained of in its Complaint.[2] Finally, this Court should take notice of the laws concerning the structure, function, makeup and procedures of the State Board as described as follows.

**II. Overview Of Nevada's Property Tax System**

County assessors are required to appraise "all real property at least once every five years." NRS 361.260(6). "The computed taxable value [of land and improvements] must not exceed its full cash value." NRS 361.227(5). "Full cash value" is defined as "the most probable price which property would bring in a competitive and open market under all conditions requisite to a fair sale." NRS 361.025. In determining whether the taxable value of a property exceeds its full cash value, an assessor may use, as applicable, one or more of the following: (1) an analysis of comparative sales; (2) a summation of land and improvement values; and (3) a capitalization of the income generated by the use of the property. NRS 361.227(5). If the taxable value of a property exceeds its full cash value, the taxable value must be reduced accordingly. Id. If the land is properly valued, then the reduction must be applied to the improvements. NAC 361.131.

Pursuant to NRS 361.345(1), the County Board of Equalization "may change and correct any valuation found to be incorrect either by adding thereto or by deducting therefrom such sum as is necessary to make it conform to the taxable value of the property assessed . . . ."

[2] *See State ex rel. State Bd. of Equalization v. Bakst*, 112 Nev. 1403, 148 P.3d 717 (2006); *State ex rel. State Bd. of Equalization v. Barta* 124 Nev. 58, 188 P.3d 1092 (2008); *Village League to Save Incline Assets, Inc. v. State ex rel. State Bd. of Equalization*, 194 P.3d 1254 (2008).

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A taxpayer who disagrees with the County Assessor's valuation may appeal to the County Board of Equalization, which is required to "make an independent determination of the valuation of the property assessed." NAC 361.627. See also NRS 361.355, a property owner "claiming overvaluation or excessive valuation of its real or secured property . . . shall appear before the county board of equalization . . . ." If the taxpayer is aggrieved by the decision rendered by the County Board of Equalization, the taxpayer may appeal to the State Board of Equalization. See NRS 361.356 concerning appeals to the County Board of Equalization. Pursuant to NRS 361.360, should a taxpayer be aggrieved by a decision of the County Board, he can appeal to the State Board of Equalization. NRS 361.400 mandates that the State Board of Equalization "hear and determine all appeals from the action of each county board of equalization . . . ." NRS 361.410(1) states, in part, as follows:

> No taxpayer may be deprived of any remedy or redress in a court of law relating to the payment of taxes, but all such actions must be for redress from the findings of the State Board of Equalization, and no action may be instituted upon the act of a county assessor or of a county board of equalization or the Nevada Tax Commission until the State Board of Equalization has denied complainant relief. . .

Pursuant to NRS 361.420, a property owner may seek an appeal to a District Court after "having protested the payment of taxes . . . and having been denied relief by the State Board of Equalization. . . ." The District Court must confine its review to the record before the State Board of Equalization; and the taxpayer has the burden of proof that "any valuation established by the Nevada Tax Commission or the county assessor or equalized by the county board of equalization or the State Board of Equalization is unjust and inequitable." NRS 361.430.

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## III. Legal Argument

### A. Standard for Injunctive Relief Would Not Have Been Viable On The Village League's Equalization Claim in 2003

Issuance of the extraordinary remedy of injunctive relief is appropriate only when: the moving party shows a reasonable likelihood of success on the merits; and irreparable harm will be sustained by the moving party if the requested injunction is not issued. *Pickett v. Camanghe Constr., Inc* 108 Nev. 422, 426 (1992); *Number One Rent-A-Car v. Ramanda Inns, Inc.*, 94 Nev. 779, 780-781, 587 P.2d 1329, 1330 (1978); see also NRS 33.010. The Village League must also demonstrate that money damages are an inadequate remedy for its irreparable injury. *See Czipott v. Fleigh*, 87 Nev. 496, 498, 489 P.2d 681, 682-683 (1973) (stating that where an adequate remedy at law exists, the harsh remedy of injunction will not lie). Finally, the Village League must establish that the alleged harm it will suffer is "neither remote nor speculative, but actual and imminent." *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 332 (2d Cir. 1995 (citation omitted).

Therefore, before the Village League can obtain any equitable relief on its equalization claim, it must clearly establish that it enjoys a reasonable likelihood of success on the merits of its underlying action and that it will suffer irreparable harm that is specific and actual and for which legal damages are not adequate. In this case, it does not remotely appear that the plaintiff is entitled to injunctive relief because it cannot meet the requirements for such relief. Indeed, the Complaint contains only general conclusory statements regarding alleged violations of no specific statutes or other provisions and Village League cannot show irreparable harm.

#### 1. Village League Could Not Have Shown Reasonable Likelihood of Success on the Merits.

First, it should be noted that, other than the question of whether injunctive relief would have been appropriate on the Village League's equalization claim, no other claims on the merits remain before this Court as the Supreme Court upheld the dismissal of the Declaratory Relief claims against all the Defendants. Notwithstanding that there appears to be no

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underlying claims (and therefore no reasonable likelihood of success on those claims), when the Village League filed its Complaint in November of 2003 those claims were included. Then, as now, the State Board (along with the other Defendants) strongly opposed the Village League's Complaint and has consistently maintained that its Complaint is wholly without merit.

**a. Village League Was Not Reasonably Likely To Have Been Successful on the Merits of Its 2003 Claim Because NRS 361.395 Was Historically Interpreted by the State Board to Require Only Equalization By Appeal.**

Prior to and leading up to the Court's decision in *State ex rel. State Bd. of Equalization v. Barta* 124 Nev. 58, 188 P.3d 1092 (2008), equalization under NRS 361.395 was interpreted to require aggrieved taxpayers to bring issues with their property tax assessments to the State Board. See NRS 361.360. Additionally, NRS 361.395(1) provides as follows:

> **NRS 361.395** Equalization of property values and review of tax rolls by State Board of Equalization; notice of proposed increase in valuation.
>
> 1. During the annual session of the State Board of Equalization beginning on the fourth Monday in March of each year, the State Board of Equalization shall:
>
> (a) Equalize property valuations in the State.
>
> (b) Review the tax rolls of the various counties as corrected by the county boards of equalization thereof and raise or lower, equalizing and establishing the taxable value of the property, for the purpose of the valuations therein established by all the county assessors and county boards of equalization and the Nevada Tax Commission, of any class or piece of property in whole or in part in any county, including those classes of property enumerated in NRS 361.320.

Prior to codification in NRS 361.395, the provision in paragraph (a) was found in section 4 of the 1917 revenue act ("1917 Act"), as amended. Section 4 of the 1917 Act dealt with equalization by appeal, including from challenges based on undervaluation or non-assessment of parcels. Paragraph (b) was found in section 6 of the Act and section 6 dealt with equalization by review of the completed roll. See Act of March 28, 1953, Ch. 336, §§ 1 and 3, 1953 Nev. Stat. 576-579.

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NRS 361.395(1), read with its legislative genesis, the 1917 Act,[3] therefore provides that there are two triggers for equalization by the State Board: (a) by appeals and (b) by review of the rolls as corrected by the county boards. While county boards can correct rolls on its own, generally the impedance for such a correction is a claim by the taxpayer that a particular parcel is out of equalization.[4]

The Nevada Supreme Court has interpreted the provisions in NRS 361.395 to provide two essential, separate functions for the State Board: equalization by appeal function and a more general equalization function. *State ex rel. State Bd. of Equalization v. Barta* 124 Nev. 58, 188 P.3d 1092, 1102 (2008). Prior to the Supreme Court's decision in *Barta*,[5] the State Board interpreted its function under NRS 361.395 as equalizing either by taxpayer appeal or in response to an appeal after a correction by the county board. Indeed, a requirement to conduct general equalization statewide would necessitate review of over one million parcels of developed and undeveloped land and nearly three hundred thousand personal property assessments.

Furthermore, NRS 361.395 does not provide procedures or processes for equalization under sub (1)(a) or sub (1)(b).[6] Additionally, while the completed tax roles may have, at some point provided relevant information necessary for the State Board to equalize, it would likely not be disputed by the parties herein that review of the rolls today provides little information on which the State Board may base an equalization decision.

Nevada Revised Statutes contain no definition of equalization. It has been addressed by the Attorney General as follows:

> Equalizing property means making sure that similarly situated taxpayers are treated the same, that a uniform and equal rate of assessment and taxation, and a just valuation for taxation of all property, real, personal and possessory, is provided. NEV. CONST. art.

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[3] *See* NRS 220.170(3)(codification doesn't change intent of law).

[4] A correction of the rolls by a county board would generally come after review of a specific taxpayer appeal of the County assessor's valuation and subsequent raising or lowering of that parcel's value. That raising or lowering could create equalization issues that the county board could address.

[5] Obviously, the present action was filed years before the Supreme Court's decision in *Barta*. Although it does not specifically address equalization duties, *Barta* seems to suggest that there is a more general duty to equalize in NRS 361.395.

[6] *Compare* NRS 361.333 which provides specific detailed requirements.

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> 10, § 1. Just principles of valuation are those which, in their application, will result in distributing the burden of taxation in due proportion among owners of all different kinds of property.

Op. Nev. Att'y Gen. No. 99-32 (September 13, 1999).

Black's Law Dictionary defines Equalization as 1. The raising or lowering of assessed values to achieve conformity. 2. *Tax*. The adjustment of an assessment or tax to create a rate uniform with another. BLACK'S LAW DICTIONARY (2d. Pocket Ed. 2001).

As explained above, prior to the Court's ruling in *Barta*, and at the time Village League filed its Complaint in 2003, the State Board had historically interpreted its duties under NRS 361.395 to determine taxpayer appeals for equalization. Indeed, it was not clear from such provision that a more generalized equalization must occur because review of the rolls provides no information from which to equalize and there is little guidance within said provision as to what specific actions are required in order for equalization to occur. Accordingly, in 2003, the State Board would have had a strong argument that Village League would not have been likely to succeed on its equalization claim and injunctive relief would not have been proper.

**b. NRS 361.355 Provides An Adequate Legal Remedy to Address Disparity in Valuations Between Counties**

The Supreme Court noted in its Remand Order that it was not clear whether Village League had available any means to administratively challenge the State Board's alleged failures to equalize between counties. Although not mentioned or analyzed in the Remand Order, NRS 361.355 provides a remedy whereby a property owner may complain about the lack of statewide equalization. Specifically, it provides:

> **NRS 361.355 Complaints of overvaluation or excessive valuation by reason of undervaluation or nonassessment of other property.**
> 1. Any person, firm, company, association or corporation, claiming overvaluation or excessive valuation of its real or secured personal property in the State, whether assessed by the Nevada Tax Commission or by the county assessor or assessors, by reason of undervaluation for taxation purposes of the property of any other person, firm, company, association or corporation within any county of the State or by reason of any such property not being so assessed, shall appear before the county board of equalization of the county or counties

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where the undervalued or nonassessed property is located and make complaint concerning it and submit proof thereon. The complaint and proof must show the name of the owner or owners, the location, the description, and the taxable value of the property claimed to be undervalued or nonassessed.

2. Any person, firm, company, association or corporation wishing to protest the valuation of real or personal property placed on the unsecured tax roll which is assessed between May 1 and December 15 may appeal the assessment on or before the following January 15, or the first business day following January 15 if it falls on a Saturday, Sunday or holiday, to the county board of equalization.

3. The county board of equalization forthwith shall examine the proof and all data and evidence submitted by the complainant, together with any evidence submitted thereon by the county assessor or any other person. If the county board of equalization determines that the complainant has just cause for making the complaint it shall immediately make such increase in valuation of the property complained of as conforms to its taxable value, or cause the property to be placed on the assessment roll at its taxable value, as the case may be, and make proper equalization thereof.

4. Except as provided in subsection 5 and NRS 361.403, any such person, firm, company, association or corporation who fails to make a complaint and submit proof to the county board of equalization of each county wherein it is claimed property is undervalued or nonassessed as provided in this section, is not entitled to file a complaint with, or offer proof concerning that undervalued or nonassessed property to, the State Board of Equalization.

5. If the fact that there is such undervalued or nonassessed property in any county has become known to the complainant after the final adjournment of the county board of equalization of that county for that year, the complainant may file his complaint on or before March 10 with the State Board of Equalization and submit his proof as provided in this section at a session of the State Board of Equalization, upon complainant proving to the satisfaction of the State Board of Equalization he had no knowledge of the undervalued or nonassessed property before the final adjournment of the county board of equalization. If March 10 falls on a Saturday, Sunday or legal holiday, the complaint may be filed on the next business day. The State Board of Equalization shall proceed in the matter in the same manner as provided in this section for a county board of equalization in such a case, and cause its order thereon to be certified to the county auditor with direction therein to change the assessment roll accordingly.

While NRS 361.355 does not provide the relief envisioned by Village League when it filed its Declaratory Relief Action in 2003, it is a legal remedy to address overvaluation of land in one county based on the undervaluation of land in another county. Indeed, if the Village League would have brought such a claim to the attention of the Douglas County Assessor, the County Board, and ultimately the State Board, would have been made aware of the perceived lack of equalization and could have attempted to redress Village Leagues concerns prior to it requesting the extraordinary relief it did in its Complaint.

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### c. Other Adequate Legal Remedies Exist to Challenge Any Perceived Failure By The State Board to Comply with NRS 361.395

If the Village League believes that the State Board has violated any subsection in NRS 361.395, it could have filed a lawsuit alleging violations of such provision. Accordingly, injunctive relief would not be necessary to redress any alleged failures by the State Board to perform the duties required of it under NRS 361.395.

In fact, prior to and since the filing of its Complaint in the present action, the Village League or related taxpayers have availed themselves of numerous legal remedies regarding their property tax assessments for multiple years and in various courts in this state. Since 2003, three other cases involving Village League members or the Village League itself have been heard and decided by the Nevada Supreme Court in which Village League and the individual members requested monetary damages for injuries related to their property tax assessments. *See* footnote 2. In fact, in *Barta*, the Supreme Court characterized taxpayers' lack of equalization argument as a request for alternative relief and declined to address such arguments because the Court had ordered a legal remedy, namely, tax refunds to the taxpayers. *Barta*, at 1103. Because Village League had adequate legal remedies and has availed themselves of numerous legal remedies in which it has raised equalization issues, injunctive relief is not appropriate.

### 2. Village League Could Not Have Shown Irreparable Harm

Although the Court recognized in *Barta* that a taxpayer suffers injury when properties are not valued using uniform and equal rates of assessment, there is nothing irreparable about that injury. Indeed, taxpayers, including those who are members of Village League received a monetary remedy when their tax assessments were rolled back to the rate they were assessed in 2002. *See Bakst*, 112 Nev. 1403, 1478, 148 P.3d 717, 726. Additionally, as five and a half years have passed since the Village League filed its Complaint in the instant case, if any irreparable harm was to have occurred it would have occurred by now.

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Accordingly, Village League cannot prove the irreparable harm to entitle it to the extraordinary relief it seeks.

### B. Because Injunctive Relief Is Not a Viable Remedy, Village League's Complaint Should Be Dismissed

In making a determination on a motion to dismiss, the facts of the complaint are assumed true. *Buzz v. City of Las Vegas,* 181 P.3d 670, 672. The only issue on remand to this Court is whether injunctive relief is an appropriate remedy for any alleged failure of the State Board to equalize property assessments between counties. Even assuming the facts are true in Village League's Complaint, this case should be dismissed because injunctive relief is not a viable cause of action against the State Board on Village League's equalization claim. As discussed thoroughly above, the Village League was not likely to have succeeded on its claims on the merits and could not have shown irreparable harm for which money damages were not an adequate remedy. Accordingly, this action should be dismissed.

## IV. Conclusion

The sole issue for determination by this Court on remand is whether injunctive relief was a viable remedy for Village League at the time it filed its Complaint in November of 2003 for any alleged failure to equalize by the State Board related to properties in Douglas and Washoe Counties.

As discussed above, the Village League would not have been entitled to such relief at that time because no clear duty of general equalization existed at that time, NRS 361.355 provides an adequate remedy to challenge property assessments between counties and because other adequate legal remedies exist for such challenges. Furthermore, Village League could not have shown that it would suffer irreparable harm for which legal damages are an inadequate remedy.

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Because injunctive relief would not have been a viable cause of action and because that is the sole issue on remand, the State Board respectfully requests that the instant action be dismissed.

DATED this 1st day of June, 2009.

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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 1st day of June, 2009.

CATHERINE CORTEZ MASTO
Attorney General

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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 its members, and others similarly situated,

Plaintiffs,

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.
_____/

Case No. CV03-06922

Dept. No. 7

**STATEMENT OF ISSUE BEFORE THIS COURT, AND POSITION OF WASHOE COUNTY DEFENDANTS**

Defendants Washoe County, along with the Washoe County Assessor and Treasurer, by and through their counsel of record, Richard A. Gammick, District Attorney of Washoe County, Nevada, and David Creekman, Chief Deputy District Attorney, herein provide this Court with their "Statement of Issue Before This

Court, and Position of Washoe County Defendants." This pleading is submitted in response to this Court's Order of April 21, 2009, following a status conference held on that date. This pleading is supported by the following "Statement of Points and Authorities," along with all the papers, pleadings and documents on file with this Court in this matter.

Dated this 1st day of June, 2009.

RICHARD A. GAMMICK
District Attorney

By David C. Creekman

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ATTORNEYS FOR WASHOE COUNTY

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## STATEMENT OF POINTS AND AUTHORITIES

I. The one issue remaining in this case and before this Court

Plaintiff Village League claims to be a non-profit membership corporation whose members own real property at Crystal Bay or Incline Village, Washoe County, Nevada. Village League itself, the only Plaintiff in the lawsuit, does not claim to own any real property, whether in Washoe County or elsewhere. The only remaining claim in this lawsuit seeks this Court's intervention in ascertaining whether injunctive relief is appropriate to direct the State Board of Equalization to consider the Plaintiff's claims that a disparity in valuation between property at Lake Tahoe in Douglas and Washoe Counties violates the Nevada Constitution's guarantee that the Legislature will provide for a uniform and equal rate of assessment and taxation.

II. Background

**A. The Nevada Constitution and ad valorem taxation**

Article 10, Section 1 of Nevada's Constitution establishes that "[t]he Legislature shall provide by law for a uniform and equal rate of assessment and taxation...." Early Nevada case law first established that all that is demanded of by this provision is uniformity of taxes, and not uniformity in the manner of assessing or collecting those taxes. Sawyer v. Dooley, 21 Nev. 390, 32 P. 437 (1893), cited, State v. Wells Fargo & Co., 38 Nev. 505, 150 P. 836 (1915), United States v. State ex rel. Beko, 88 Nev. 76, at 87, 493 P.2d 1324 (1972).

Meanwhile, and most recently, in the first of two significant cases implicating Article 10, section 1 of the Nevada Constitution's "uniform and equal" provision, Nevada's Supreme Court reiterated its 1972 holding in Nevada Tax Comm'n v. Southwest Gas Corp., 88 Nev. 309, 312, 497 P.2d 308, 309 - 310 (1972)(at best, valuation of property is an illusory matter upon which experts hold differences of opinion) that "[t]here exists no mathematical formula to establish market value" but that in establishing such value, it was the inconsistent application of assessment methodologies which violated Nevada's Constitution. State, State Board of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006). Under Bakst, the use of assessment methodologies not supported by regulations of the Nevada Tax Commission caused the constitutional violation. This is a situation since rectified by the Nevada Tax Commission's adoption of such regulations in 2004. See Nevada Administrative Code (NAC) chapter 361. And in State, State Board of Equalization v. Barta, 124 Nev. 58, 188 P.3d 1092 (2008), the same provision of Nevada's Constitution was at issue. In Barta, however, assessment methodology regulations were in place, but they were impermissibly applied retroactively, thus causing the constitutional violation found to exist in that case.

It is frequently recognized by the courts that absolute or perfect equality and uniformity in taxation are impossible. Puget Sound Power & Light Co. v. King County, 264 U.S. 22 (1924) (decided under the Fourteenth Amendment to the United States

Constitution); Lee v. Sturges, 46 Ohio St. 153, 19 N.E. 560 (1889)(unequal and unjust results in individual cases are, to some extent, inevitably produced by any possible system of taxation); Portland Van & Storage Co. v. Hoss, 139 Or. 434, 9 P.2d 122 (1932)(complete equality and uniformity in the imposition of the tax burden must remain an ideal until human ingenuity can perfectly appraise the myriad differences – some readily discernible, others obscure, but nonetheless real – between the vast variety of subjects of taxation). Such a conception has been variously characterized as "utopian," Le Dioyt v. County of Keith, 161 Neb. 615, 74 N.W.2d 455 (1956), "an unattainable good," Florer v. Sheridan, 137 Ind. 28, 36 N.E. 365 (1894), "a baseless dream," Edye v. Robertson, 112 U.S. 580 (1884), and "a dream unrealized." State R. Tax Cases, 92 U.S. 575 (1875).

Consequently, it has been declared that the tax or revenue system which most nearly approaches perfect equality is the best, State R. Tax Cases, 92 U.S. 575 (1875), and that the most that can be expected is an approximation to this desirable end. Stanley v. Albany County, 121 U.S. 535 (1887). Accordingly, substantial compliance with the requirements of equality and uniformity in taxation laid down by constitutional provisions similar to Nevada's is all that is required, Maxwell v. Bugbee, 250 U.S. 525 (1919), and such provisions are satisfied when they are designed and manifest departures from the rule are avoided. Stanley v. Albany County, 121 U.S. 535 (1887).

**B. Prior proceedings in this case**

Plaintiff Village League filed its Complaint in the Second Judicial District Court on November 13, 2003. Then-Washoe County Assessor Robert McGowan, and Treasurer Bill Berrum, moved to dismiss on December 19, 2003. These parties asserted the grounds of failure to exhaust administrative remedies and Village League's lack of standing to bring the lawsuit in the District Court. The State Board of Equalization and Department of Taxation also filed "Motions to Dismiss." Following the completion of briefing and oral argument, this Court, through its predecessor judge, the Honorable Peter Breen, on June 2, 2004, granted all motions to dismiss, based upon this Court's perception that the Plaintiffs had failed to exhaust their administrative remedies.[1] The Washoe County defendants filed a "Notice of Entry of Order" on June 4, 2004. Plaintiff Village League filed its "Notice of Appeal" to the Nevada Supreme Court

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[1] This Court, in granting the "Motion to Dismiss" did not address Defendants' arguments relating to this Plaintiff's lack of standing to bring this lawsuit in the first instance. The Supreme Court's March 19, 2009 Order remanding this matter to this Court addressed the question of Plaintiff's standing in footnote 5 of that opinion, stating that "[h]aving considered respondents' argument that Village League lacks standing to raise the equalization claim, we conclude that it is without merit...." The Supreme Court's Order provided no further elaboration on the issue of this Plaintiff's standing. In response, these Defendants contend that the Supreme Court's statement on this important jurisprudential doctrine applied only to the Plaintiff's standing to bring its action before the Supreme Court, in response to the District Court's dismissal of the case. These Defendants continue to hold to the belief that this Plaintiff lacks standing to maintain this case in this Court, as discussed more fully at section IV.B, *infra*, of this document.

on June 10, 2004. The appeal was from this Court's Order granting all the Defendants', from both the State of Nevada and Washoe County, "Motions to Dismiss."

On March 19, 2009, the Nevada Supreme Court issued its "Order Affirming in Part, Reversing in Part and Remanding" in this case. The Supreme Court's Order concluded that this Court properly dismissed the action below, except for the equalization claim as between Douglas and Washoe Counties, because the Plaintiff failed to exhaust its available administrative remedies before seeking judicial review. Following this conclusion, the Supreme Court directed that this Court should have proceeded to determine whether the Plaintiff's equalization claim for injunctive relief was viable and remanded this one issue back to this Court for further proceedings. It did so in likely recognition of its prior holding in State, State Board of Equalization v. Barta, 124 Nev. 58, 188 P.3d 1092 (2008), that "[u]nder NRS 361.395(1), the State Board clearly has a duty to equalize property valuations throughout the state: 'the [State Board] shall ... [e]qualize property valuations in the State'" Barta, 124 Nev. at ___, 188 P.3d at 1102, coupled with its holding, also in Barta, that:

> NRS 361.400 establishes a duty, separate from the equalization duty, that the State Board hear appeals from decisions made by the county boards of equalization. The two statutes create separate functions: equalizing property valuations throughout the state and hearing appeals from the county boards. Id.

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According to the Supreme Court, the exhaustion doctrine applies to appeals from the county boards but no such exhaustion doctrine applies to remedy the State Board's failure to equalize county valuations under authority contained in NRS 361.395(1).

III. This court must apply well-established standards for injunctive relief to the facts of this case

**A. NRS 33.010**

NRS 33.010 sets forth cases in which an injunction may be granted. That statute establishes that an injunction may be granted in the following cases:

> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
> 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual. NRS 33.010.

**B. Nevada case law of injunctive relief**

Under long-ago established, and consistently upheld, principles of law, an injunction will not issue where there is a complete and adequate remedy at law. Sherman v. Clark, 4 Nev. 138 (1868), Conley v. Chedic, 6 Nev. 222, 224 (1870), Phenix v. Frampton, 29 Nev. 306, 318, 90 P. 2 (1907). Additionally, the plaintiff seeking injunctive relief must show that he or she

enjoys a reasonable probability of success on the merits and that he or she will suffer irreparable harm for which compensation is an inadequate remedy. Number One Rent-A-Car v. Ramada Inns, Inc., 94 Nev. 779, 587 P.2d 1329 (1978), Christensen v. Chromalloy American Corp., 99 Nev. 34, 36, 656 P. 2d 844, 846 (1983); Sobol v. Capital Mgmt. Consultants, Inc., 102 Nev. 444, 446, 726 P.2d 335, 337 (1986); Dixon v. Thatcher, 103 Nev. 414, 415, 742 P.2d 1029 (1987); S.O.C., Inc. v. Mirage Casino-Hotel, 117 Nev. 403, 408, 23 P.3d 243, 246 (2001); Department of Conservation & Natural Resources v. Foley, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). An additional standard for injunctive relief also permits the Court to weigh the public interest and the relative hardships of the parties in deciding whether to grant such relief. Ellis v. McDaniel, 95 Nev. 455, 596 P.2d 222 (1979); University & Cmty. Coll. Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

## IV. This plaintiff cannot meet the standards needing to be achieved for injunctive relief

### A. This Plaintiff Enjoys No Likelihood Of Success On The Merits Of This Case

In State Board of Equalization v. Barta, 124 Nev. 58, ___, 188 P.3d 1092, 1102 (2008), the Nevada Supreme Court recognized that a property taxpayer suffers injury when properties are not valued in accordance with the constitutional right to a uniform and equal rate of assessment. Yet, in this case, the equalization processes set forth throughout NRS chapters 360 and

361[2] existed, and continue to exist, to ensure that this important constitutional right was protected here, not only for this Plaintiff, but for all Nevadans.

1. NRS 361.333

In performing its equalization function under NRS 361.395(1), the State Board of Equalization performs this significant function only after the Nevada Department of

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[2] In response to the Nevada Constitution's mandate that "[t]he Legislature shall provide by law for a uniform and equal rate of assessment and taxation...," Nevada's Legislature has, over the years, enacted an extremely complex statutory scheme, involving numerous players. Key among those players are the various County Assessors who undertake the actual on-the-ground assessment work with respect to property within their jurisdictions, the various County Boards of Equalization, the Nevada Tax Commission, the Nevada State Board of Equalization and the Nevada Department of Taxation which provides general supervision and control over the entire revenue system of the State of Nevada. Of course, the Nevada judiciary is also part of this system, as the final arbiter of disputes arising under this complicated structure. Each plays a significant role in the system of "checks and balances" designed by Nevada's Legislature to assure uniformity and equality with respect to assessment and taxation.

As stated, in the Legislature's system of "checks and balances" everyone has an important role to play. These Defendants contend that their construction of this complex statutory scheme, as set forth below, is not only plausible, it is the only workable construction in this important area of Nevada's revenue-generation system. Additionally, these Defendants' construction of the entire statutory scheme regulating the revenue system of the State is the one possible construction which is entirely consistent with the tenent of statutory construction requiring statutes to be "construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory," Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 502, 797 P.2d 946, 949 (1990), *overruled on other grounds by* Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000), and is based on the "presumption that every word, phrase and provision in the enactment has meaning." Id. at 502 - 503, 797 P.2d at 949.

Taxation assists the State Tax Commission and the State Board of Equalization by testing a variety of information using applied statistics to determine if inequity or assessment bias exists. The Department surveys and analyzes assessor work practices to ensure the uniform application of valuation and assessment methodology as provided by law and assessment standards. If inequity or bias is discovered, NRS 361.333 provides the Nevada Tax Commission with authority to correct inequitable conditions. If the Nevada Tax Commission fails to perform this function, the Nevada State Board of Equalization is free to step in and perform this function, pursuant to its authority to "equalize" under NRS 361.395(1).

Because Nevada law, at NRS 361.225, requires that "[a]ll property subject to taxation must be assessed at 35% of its taxable value," known as the assessment ratio, the Department of Taxation, acting under authority of NRS 361.333, conducts a ratio study each year designed to measure the level of appraisal accuracy of local county assessors. Generally speaking, a "ratio study" is designed to evaluate appraisal performance or determine taxable value through a comparison of appraised or assessed values estimated for tax purposes with independent estimates of value based on either sales prices or independent appraisals. The comparison of the estimate of assessed value produced by the assessor on each parcel in the sample to the estimate of taxable value produced by the Department of Taxation is called a "ratio." The ratio study involves the determination

of assessment levels by computing the central tendencies (mean, median and aggregate ratios) of assessment ratios. Nevada specifies the use of the median ratio, the aggregate ratio, and the coefficient of dispersion of the median to evaluate both the total property assessments and the assessments of each major property class.

In likely recognition of the administrative burden imposed on both the Department of Taxation and the Nevada Tax Commission of such an undertaking being performed on an annual basis, NRS 361.333(2) permits the Department of Taxation to conduct a ratio study on smaller groups of counties instead of the entire state in any one year. The 2005 - 2006 ratio study included three year statistics for all of Nevada's Counties and is attached hereto as Exhibit 1 and is incorporated herein by reference.[3] The Department of Taxation calculates the overall, or aggregate, ratio by dividing the total assessed value of all the parcels in the sample by the total taxable value of all the parcels in the sample. This produces a ratio weighted by dollar value. Because parcels with higher values exert more influence than parcels with lower values, all the ratios are arrayed in order

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[3] For the purposes of this action, the 2005 - 2006 Ratio Study is the most relevant to the 2003 - 2004 tax year at issue in this case as it included a review of Washoe County during the 2005 study year and as it summarized a review of Douglas County during the prior, or 2004, study year. Prior to the 2005 - 2006 Ratio Study, Washoe County was last reviewed in 2002 and Douglas County was last reviewed in 2001, both of which occurred before the 2003 - 2004 valuations at issue in this proceeding.

of magnitude and the median, a statistic describing the measure of central tendency of the sample, divides the sample into two equal parts. The median is the most widely used measure of central tendency by equalization agencies because it is less affected by extreme ratios and is therefore the preferred measure for monitoring appraisal performance or evaluating the need for a reappraisal.[4]

NRS 361.333(5)(c) states that under- or over- assessment may exist, under the ratio study, if the median of the ratios falls in a range of less than 32% or more than 36%. As Exhibit A indicates, the median of individual ratios for all property in Washoe County, in the 2005 - 2006 Ratio Study, fell at 34.40%. For the major classes of properties, as enumerated in NRS 361.333(5)(c)[5], Washoe County's ratios varied between 33.50% and 34.90%, all well within the permissible median ratio of assessed value to taxable value. As for Douglas County, Exhibit A establishes that the median of individual ratios for all property in Douglas County, in the 2004 - 2005 Ratio Study, fell at 34.60%, with the major classes of property falling between 33.20% and 35.00%. Once again, these ratios are well within the permissible statutory range of 32% to 36%, as established at NRS

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[4] International Association of Assessing Officers, Standard on Ratio Studies, (1999), p. 23.

[5] The statutorily-enumerated major classes of property include vacant land, single-family residential, multi-residential, commercial and industrial and rural.

361.333(5)(c).

Because the ratios fell within the permissible statutory range, it can reasonably be concluded that no over- or under-assessment existed in either Washoe or Douglas Counties, thus permitting the further conclusion that equalization occurred both within, and between, these counties. This conclusion, in turn, obviates the need for the State Board of Equalization to step in and equalize pursuant to its authority to do so under NRS 361.395(1). Had the Department of Taxation and the Tax Commission not so acted[6], however, or had the ratios fallen outside the permissible range, the State Board of Equalization could reasonably be expected to step in and correct this situation under its authority, as recognized in Barta, to equalize, pursuant to NRS 361.395(1)'s mandate.

2. NRS 361.355

Under this statute, the State Board of Equalization may become involved in equalization issues only if a taxpayer concerned with equalization issues between his property and similarly-situated property in another county, "... appear[s]

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[6] Although the Department of Taxation and the Nevada Tax Commission did act with respect to this ratio study to assure uniformity and equality, the possibility that they might not so act is entirely plausible, given the Nevada Supreme Court's recognition, in the Bakst case, of "...the Tax Commission's dereliction..." in the area of its failure to adopt administrative regulations for use by Nevada's county assessors. Such regulations would have set forth permissible assessment methodologies, to be consistently applied, not only in Washoe County, but also by assessors in other counties. See Bakst, 122 Nev. at 1416, 148 P.3d at 726.

before the county board of equalization of the county or counties where the undervalued or non-assessed property is located and make[s a] complaint concerning it and submit[s] proof thereon. The complaint and proof must show the name of the owners or owners, the location, the description, and the taxable value of the property claimed to be undervalued or non-assessed." NRS 361.355(1). Nothing in the Plaintiff's complaint establishes that any of the taxpayers alleged to be represented by the Plaintiff in this case availed themselves of this remedy. Instead, they came directly into this Court, without first exhausting this important statutory remedy once available to them.

If these taxpayers had so availed themselves, the statute goes on to provide that if the county board of equalization to which they complained determines that "just cause for making the complaint" existed, "it shall immediately make such increase in valuation of the property complained of as conforms to its taxable value, or cause the property to be placed on the assessment roll at its taxable value, as the case may be and make proper equalization thereof." NRS 361.355(3). But the most important part of NRS 361.355, from the perspective of this case, is that it clearly and unambiguously establishes the fact that the Plaintiff in this case has absolutely no possibility of success on the merits of their case before this Court – this Court cannot issue injunctive relief ordering this matter to the State Board of Equalization because of the statute's admonition

that:

> ...any such person, firm, company, association or corporation who fails to make a complaint and submit proof to the county board of equalization of each county wherein it is claimed property is undervalued or non-assessed, as provided in this section, **is not entitled to file a complaint with, or offer proof concerning that undervalued or non-assessed property to, the State Board of Equalization**. NRS 361.355(4)(emphasis added).

Nothing could be clearer. The State Board of Equalization is now statutorily-barred from hearing the Plaintiff's complaints concerning disparities in valuation between their Washoe County properties and similarly-situated properties in Douglas Counties. As the State Board cannot hear these complaints, pursuant to NRS 361.355(4), this Court, similarly, cannot grant the injunctive relief requested by Plaintiff. Due to Plaintiff's non-compliance with the statutory mandates of NRS 361.355, Plaintiff had an adequate remedy at law, their non-exercise of which now absolutely precludes any likelihood of success on the merits of their case.

3. NRS 361.356

Even if this statute provides a remedy for disparate valuations between similarly-situated properties in different counties,[7] the Plaintiffs also failed to avail themselves of its

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[7] Washoe County does not so concede. In fact, Washoe County directs the Court's attention to that portion of NRS 361.356 in which the Legislature obligates an aggrieved residential taxpayer attempting to avail himself of the protections of this section to "...cite other property within the same subdivision if possible." NRS 361.356(4). Arguably, this requirement is intended to limit the application of this section to valuation disparities between

protections and, as such, cannot now seek this Court's assistance in rectifying their mistake. Under NRS 361.356, "[a]n owner of property who believes that his property was assessed at a higher value than another property whose use is identical and whose location is comparable may appeal the assessment, on or before January 15 of the fiscal year in which the assessment was made, to the county board of equalization." NRS 361.356(1). In this case, the record is, once again, devoid of any such appeal based upon allegations of unequal assessments between similarly situated properties in Washoe and Douglas Counties. This failure to follow this once-possibly available statutory remedy, just as with the Plaintiff's failure to follow NRS 361.355's provisions, now make it impossible for these Plaintiffs to bring their claims before the State Board of Equalization, thus rendering their likelihood of success on the merits of their case before this Court totally and completely impossible.

4. NRS 361.360

Adding another important issue for the Court to consider in its determination that this Plaintiff enjoys no likelihood of success on the merits is NRS 361.360's admonition that appeals to the State Board of Equalization may only be heard as a result of an appeal filed with the State Board of Equalization by "[a]ny taxpayer aggrieved at the action of the county board of

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similarly-situated properties located in the same Nevada county, not as between different counties.

equalization in equalizing, or failing to equalize, the value of his property, or property of others, or a county assessor...." NRS 361.360(1). In this regard, the case law is clear, and long-established, that a taxpayer who believes the assessment of his property is too high may apply to the board of equalization for a reduction, and if he does not do so he has lost his remedy. He cannot later complain of the assessment in subsequent court proceedings. State v. Wright, 4 Nev. 251 (1868), *cited*, State v. Sadler, 21 Nev. 13, 17, 23 P. 799 (1880).

Thus, Plaintiff now has no access to the State Board of Equalization. Neither can this Court provide Plaintiff with such access, in the form of injunctive relief, pursuant to Nevada Supreme Court precedent, as set forth, *supra*, in State v. Wright and in State v. Sadler. This legal impossibility completely eliminates any likelihood of success for this Plaintiff.

5. NRS 361.395

This statute states that the State Board of Equalization, during its annual session, shall "[e]qualize property valuations in the State." NRS 361.395. And this is precisely the function performed by the State Board of Equalization, in cases properly brought before it, whether brought up by the State Board in a more-or-less *sua sponte* fashion as a result of the State Board's perception, real or imagined, of the Nevada Tax Commission's failure to exercise its duty to equalize between counties under

NRS 361.333 or in its appellate court-like capacity as a result of a taxpayer's feeling of aggrievement over an adverse decision of a County Board of Equalization.

In this regard, a board of equalization in Nevada is a creature of the statute. It possesses only the limited and special powers which are granted to it, and in the exercise of such powers, its action must comply with Nevada law. State v. Ernst & Esser, 26 Nev. 113, 65 P. 7 (1901). The State Board of Equalization may only act in a manner prescribed by the Legislature and only in such cases which follow the path set forth by the Legislature for access to the State Board of Equalization. Nothing in Nevada law permits this Court to "short-circuit" the process previously described and followed by the Nevada Department of Taxation and the Nevada Tax Commission with respect to the ratio studies or the once-available statutory remedies these taxpayers may have held. The Department of Taxation and the Nevada Tax Commission acted appropriately in equalizing, through the use of their ratio studies, between Nevada's counties under NRS 361.333 and the taxpayers failed to exercise their remedies under other statutory provisions. These facts combine and the State Board of Equalization is without authority to hear the matter about which these taxpayers now complain. Because of this situation, which goes to the heart of the State Board of Equalization's jurisdiction, the Plaintiff has no likelihood of success on the merits, a fact which must be recognized by this Court in its

deliberations on this matter and in reaching its ultimate conclusion that the requested injunctive relief must be denied to this Plaintiff.

**B. This Plaintiff lacks standing and, as such, can claim no irreparable injury and absolutely no probability of success on the merits of this case**

Standing represents a jurisdictional requirement, Pedro/Aspen, Ltd. v. Board of County Com'rs for Natrona County, 2004 Wy. 84, 94 P.3d 412 (Wyo. 2004), which remains open to review at all stages of the litigation. Alabama Alcoholic Beverage Control Bd. v. Henry-Duval Winery, LLC, 890 So.2d 70 (Ala. 2003). Such jurisdiction may not be waived and Nevada's Supreme Court has recognized this rule, along with the same fundamental rule in other states. Swan v. Swan, 106 Nev. 464, 469, 796 P.2d 211, 224 (1990).

The rule is well established that one cannot rightfully invoke the jurisdiction of the court to enforce private rights unless the person seeking relief can show that he has sustained or is in immediate danger of sustaining some injury to his personal or property rights as a result of the matter complained of, and can show that he will be benefitted by the relief granted. Boeing Airplane Co. v. Perry, 322 F.2d 589 (10th Cir. 1963)(when a statute or rule creates a cause of action and designates the persons who may sue, none but the persons so designated has the right to bring such action). The specific designation of a person or class of persons as the beneficiaries of certain statutory provisions respecting the performance of

certain duties by others will have the effect of limiting the right of action to the person or class of persons so described. Hunt v. State, 201 N.C. 37, 158 S.E. 703 (1931).

In this regard, the real party in interest to a challenge of an assessor's valuation is clearly identified in NRS chapter 361 as the real property owner who alleges improper assessment or valuation. NRS 361.356(1) establishes that "[a]n owner of property who believes that his property was assessed at a higher value than another property whose use is identical and whose location is comparable may appeal the assessment...." NRS 361.356(1). Plaintiff does not allege that it owns any affected property within Washoe County. Rather, the Complaint is drafted to indicate that members of the association, rather than the association itself, are property owners. The plain language of the Plaintiff's November 13, 2003 Complaint itself establishes the Plaintiff's status here:

> Plaintiff, Village League to Save Incline Assets, Inc. ('Village League'), is a nonprofit membership corporation organized and existing under the laws of the State of Nevada, whose members own real property at Crystal Bay or Incline Village, in Washoe county, Nevada, and pay taxes on that property as assessed....

Village League is not a real party in interest in this lawsuit.[8] It has suffered no injury nor is it subject to any

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[8] Plaintiff Village League could have, however, once possibly availed itself of NRS 361.361's provisions for appeals by third parties on behalf of owners of property. But that section's protections are available only "at the time that a person files an appeal pursuant to NRS 361.356, 361.357 and 361.360 on behalf of the owner of a property..." NRS 361.362. As previously

irreparable injury. It, thus, lacks standing to bring, and maintain, this action. With respect to the issue of standing, as related to construction defect litigation, in Deal v. 999 Lakeshore Ass'n., 94 Nev. 301, 304, 579 P.2d 775, 777 (1978), the Supreme Court stated:

> NRCP 17(a) provides: 'Every action shall be prosecuted in the name of the real party in interest.' In the absence of any express statutory grant to bring suit on behalf of the owners, or a direct ownership interest by the association in a condominium within the development, a condominium management association does not have standing to sue as a real party in interest.... Only the owners of condominiums have standing to sue....

Similarly, in this case, it is the property owners themselves, not the Plaintiff association, who have standing to sue since they must eventually bear the costs of the tax assessments.

Neither is associational standing available to this Plaintiff. The United States Supreme Court, in Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977), set forth the requirements for associational standing. Those requirements include that an association's members would otherwise have standing to sue in their own right, that the interests the association seeks to protect are germane to the organization's purpose and that neither the claims nor the requested relief require the participation of individual members in the lawsuit. Hunt, 432 U.S. at 343. At a minimum, the

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stated, no such appeal was filed by these taxpayers with respect to their Douglas versus Washoe County valuation and taxation equalization disputes. Therefore, this remedy to Plaintiff's lack of standing is now also foreclosed upon.

Village League fails to satisfy the last element of the Hunt requirements for associational standing because the claims and the relief being sought in this case require, under Nevada law, the participation of the individual members of the association. Simply stated, the individual participation of each property owner who wishes to challenge his or her assessment is necessary for the resolution of the issue in this case. Because those individual property owners are not before this Court, in their capacities as individual taxpayers, this Plaintiff lacks standing, can claim no irreparable injury and has no likelihood of success on the merits of this case.

**C. The Public Interest In A Stable And Reliable Ad Valorem Property Tax System Tips The Balance of Hardships in Favor Of These Washoe County Defendants**

The entire real estate assessment process, through the collective efforts of municipal, county and state officials, as set forth in Nevada law, is calculated to raising sufficient revenue to permit taxing districts and counties to provide necessary services and to equalize the burdens on the taxpaying public. The strong public policy interest in stability and certainty in this area, and its corollary, stable, predictable municipal revenues, require that tax assessments not be subject to challenge unless they are established in a manner so contrary to law as to warrant administrative or judicial intervention. For the entire system to operate equitably, or to even work at all, it is necessary that the assessment of real estate taxes be stable. A measure of permanency in real property taxation is

basic to the abilities of taxing districts to raise revenue to support local programs and to maintain their systems, and for counties to receive contributions to their budgets from the taxing districts.

This interest in stability, asserted by these Defendants on behalf of all of Washoe County's residents, is set forth in the belief that the also significant public policy goal of uniformity and equality, as contained in Nevada's Constitution, has clearly been met by the Legislature's adoption of the statutory scheme at play in this matter. Thus, the balance of hardships necessarily tips in favor of the Washoe County Defendants in this Court's analysis in deciding to deny the Plaintiff's requested injunctive relief.

V. Conclusion

In having previously performed their duties, pursuant to NRS 361.391(1), by reference to NRS 361.333's ratio study, to equalize property valuations throughout the State of Nevada, a conclusion has already been reached by the Nevada Department of Taxation, through the Nevada Tax Commission, that property valuations between Douglas and Washoe Counties fall within the permissible statutory ratio and that they are "uniform and equal." This eliminated any need for the Nevada Board of Equalization to step into this dispute to perform its duty under NRS 361.395(1) – it was performed by others and was performed in a manner apparently satisfactory to the State Board of Equalization. But even were this not the case, the fact of

these taxpayers' failure to avail themselves of self-help remedies available to them under NRS 361.355, 361.356, and 361.360 clearly establishes the State Board of Equalization's lack of jurisdiction to now hear their complaints. The fact that jurisdiction has previously been exercised by the Nevada Department of Taxation and the Tax Commission under NRS 361.333, coupled with the State Board of Equalization's current lack of jurisdiction, establishes that this Plaintiff enjoys no likelihood of success as to the merits of the request for injunctive relief. Additionally, this Court's lack of subject matter jurisdiction, due to Plaintiff's lack of standing in this matter, further establishes that this Plaintiff can claim no irreparable injury, serving to additionally eliminate any possibility that the Plaintiff enjoys any likelihood of success on the merits. Finally, the strong and undeniable public interest in tax stability and revenue predictability argues in favor of the Washoe County Defendants' position in opposition to Plaintiff's requested injunctive relief in this case.

For each of the foregoing reasons, the answer to the only issue before this Court – whether Plaintiff is entitled an injunction sending this matter to the State Board of Equalization – is resoundingly "no."

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding

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

Respectfully submitted this 1st day of June, 2009.

RICHARD A. GAMMICK
District Attorney

By David C. Creekman

DAVID C. CREEKMAN
Chief Deputy District Attorney
P. O. Box 30083
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(775) 337-5700

ATTORNEYS FOR WASHOE COUNTY

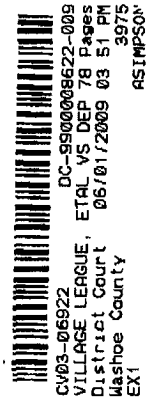
**CERTIFICATE OF SERVICE BY MAIL**

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, I deposited for mailing in the U. S. Mails, with postage fully prepaid, a true and correct copy of the foregoing STATEMENT OF ISSUE BEFORE THIS COURT, AND POSITION OF WASHOE COUNTY DEFENDANTS in an envelope addressed to the following:

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

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

Dated this 15th day of June, 2009.




# EXHIBIT "1"

# EXHIBIT "1"

# STATE OF NEVADA

# DEPARTMENT OF TAXATION

## 2005-2006

## REPORT OF ASSESSMENT RATIO STUDY

PREPARED BY THE

DIVISION OF ASSESSMENT STANDARDS

May 9, 2005

# Table of Contents

# Nevada Department of Taxation
# 2005-2006 RATIO STUDY

## *Purpose*

In order to ensure property in the state is appraised equitably by county assessors, the Department tests a variety of information using applied statistics to determine if inequity or assessment bias exists. The Department also surveys and analyzes assessor work practices to ensure the uniform application of valuation and assessment methodology as provided by law and assessment standards. If inequity or bias is discovered, NRS 360.215 and 361.333 provide the Nevada Tax Commission the authority to pursue certain procedures designed to correct inequitable conditions.

### *Part I: Ratio Study*

To facilitate the analysis of equitable appraisal, the Department of Taxation conducts a ratio study each year designed to measure the level of appraisal accuracy of local county assessors. Generally speaking, a "ratio study" is "designed to evaluate appraisal performance or determine taxable value through a comparison of appraised or assessed values estimated for tax purposes with independent estimates of value based on either sales prices or independent appraisals."[1] The comparison of the estimate of assessed value produced by the assessor on each parcel in the sample to the estimate of taxable value produced by the Department is called a "ratio."

The Department independently appraises a sample of randomly selected properties in the study areas and compares the results to the assessed values established by the county assessor. The properties comprising the sample are physically inspected by Department appraisers and valued according to statutory and regulatory requirements. The independent appraisals conducted by the Department comprise a *sample* of the *universe or population* of all properties within the jurisdiction being reviewed. From the information about the *sample*, the Department *infers* what is happening to the population as a whole.

The Department examines the ratio information for *appraisal accuracy.* Two essential elements of appraisal accuracy are *appraisal level* and *appraisal uniformity.* Appraisal level compares how close the assessor's estimate of assessed value is to the legally mandated standard of 35% of taxable value. Appraisal level is measured by a descriptive statistic called a *measure of central tendency.* A measure of central tendency, such as the mean, median, or aggregate ratio, is a single number or value that describes the center or the middle of a set of data. In the case of this ratio study, the median describes the middle of the array of all ratios comparing the assessed value to the taxable value established for each parcel.

*Assessment uniformity* refers to the degree to which different properties are assessed at equal percentages of taxable value. If taxable value could be described as the center of a "target," then assessment uniformity looks at how much variation or distance there is between each ratio and the "target." The statistical measure known as the coefficient of dispersion measures uniformity or the distance from the "target."

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[1] International Association of Assessing Officers, Standard on Ratio Studies, (1999), P. 6.

*Part II: Work Practices Survey and Analysis*

NRS 361.333 (1)(b)(2) requires the Department to make a determination about whether each county has adequate procedures to ensure that all property subject to taxation is being assessed in a correct and timely manner, and to note any deficiencies. In addition, the Department reviews assessments in those areas where land and improvement factors are applied pursuant to NRS 361.260 (5) to ensure the factors are appropriately applied.

The Department staff travel to the offices of county assessors to review the procedures used to discover, value, and assess all real and personal property within the jurisdiction of the county assessor. The Department reviews the resources of the office; reviews a sample of property files; and interviews assessors and their staffs. Departures from required or accepted appraisal practices are noted and recommendations for improvement are made in the chart entitled "Summary of Study Results" accompanied by a narrative on each indicated procedure included in this study. A rating system is used as follows:

3 - *MEETS STANDARDS*: Meets the standards established by the division and complies with the statutes and regulations. Indicates efficient and effective office management and appraisal practices.

2 - *NEEDS IMPROVEMENT*: Does not fully meet the standards established by the division or fully comply with statutes and regulations. Certain aspects of office management and appraisal practice need substantial improvement.

1 - *DEFICIENT*: Deficiencies found. Does not meet the standards established by the division or comply with statutes and regulations. Office management and appraisal practice need substantial improvement.

## *Ratio Study Design Parameters and Standards for Analysis*

NRS 361.333(2) permits the Department to conduct a ratio study on smaller groups of counties instead of the entire state in any one year. The ratio study is conducted over a three year cycle. The Division received approval from the Nevada Tax Commission in October, 2003, to expand the ratio study to include land use types in all areas of the subject counties, including both reappraisal and non-reappraisal areas. The counties reviewed for 2005-2006 are Carson City, Churchill, Elko, Lander, Pershing, Washoe and White Pine Counties.

The ratio study by law must include the overall ratio (also known as the aggregate ratio or weighted mean ratio) of the total property within each subject county and each class of property. The study must also include two comparative statistics known as the median and the coefficient of dispersion (COD) of the median, for both the total property in each subject county and for each major class of property within the county. NRS 361.333 (5) (c) defines the major classes of property as:

I. Vacant land;
II. Single-family residential;
III. Multi-residential;
IV. Commercial and industrial; and
V. Rural

In addition, the statistics are calculated specifically for improvement, land, and total property values. The classes are further defined as those within the reappraisal area.

The Department calculates the overall or aggregate ratio by dividing the total assessed value of all the observations (parcels) in the sample by the total taxable value of all the observations (parcels) in the sample. This produces a ratio weighted by dollar value. Because of the weight given to each dollar of value, parcels with higher values exert more influence than parcels with lower values. The aggregate ratio helps identify under or over assessment of higher valued property. For instance, an unusually high aggregate ratio might indicate that higher valued property is over assessed, or valued at a rate higher than other property.

The median is a statistic describing the measure of central tendency of the sample. It is the middle ratio when all the ratios are arrayed in order of magnitude, and divides the sample into two equal parts. The median is the most widely used measure of central tendency by equalization agencies because it is less affected by extreme ratios or "outliers," and is therefore the preferred measure for monitoring appraisal performance or evaluating the need for a reappraisal.[2] NRS 361.333(5)(c) states that under- or- over assessment may exist if the median of the ratios falls in a range less than 32% or more than 36%.

The COD is a measure of variability or dispersion relating to the uniformity of the ratios and is calculated for all property within the subject jurisdiction and for each class of property within the subject jurisdiction. The COD measures the deviation of the individual ratios from the median ratio as a percentage of the median and is calculated by (1) subtracting the median from each ratio; (2) taking the absolute value of the calculated differences; (3) summing the absolute differences; (4) dividing by the number of ratios to obtain the "average absolute deviation;" and (5) dividing by the median. The COD has "the desirable feature that its interpretation does not depend on the assumption that the ratios are normally distributed."[3] The COD is a relative measure and useful for comparing samples from different classes of property within counties, as well as among counties.

The IAAO also states that "the smaller the measure, the better the uniformity, although extremely low measures can signal a flawed study, non-representative appraisals, extremely homogenous properties or stable markets. As market activity changes or as the complexity of properties increase, the measures of variability usually increase, even though appraisal procedures may be equally valid."[4] The IAAO recommended ratio study performance standards are as follows:

[2] International Association of Assessing Officers, Standard on Ratio Studies, (1999), p. 23.
[3] International Association of Assessing Officers, Standard on Ratio Studies, (1999), p. 24.
[4] International Association of Assessing Officers, Standard on Ratio Studies, (1999), p. 24.

| Type of Property | COD |
|---|---|
| Single-family residential | |
| Newer, more homogenous areas | 10.0% or less |
| Older, heterogeneous areas | 15.0% or less |
| Rural residential and seasonal | 20.0% or less |

| Type of Property | COD |
|---|---|
| Income-producing properties | |
| Larger, urban jurisdictions | 15.0% or less |
| Smaller, rural jurisdictions | 20.0% or less |
| Vacant land | 20.0% or less |
| Other real and personal property | Varies with local conditions |

According to the IAAO Standard on Ratio Studies (1999), the level of appraisal uniformity for each class of property should be within 5 percent of the overall level of appraisal of the jurisdiction. For example, the median ratio for all property in Churchill County in this study is 34.4. The median ratio for each class of property should fall within 5 percent of 34.4, or between 32.68 and 36.12. In this example, each class falls within the IAAO acceptable range limits. This measure is not required by law and is not separately displayed in the study because NRS 361.333 defines the acceptable range as between 32.0 and 36.0. Examination of the median ratio table in this study, however, shows the uniformity level according to the IAAO Standard to be within the range suggested by the Standard for each class of property.

### *Ratio Study Conclusions*

The 2005-2006 Ratio Study presentation is divided into two sections. In the past, only the reappraisal areas of counties were the subject of the study. As mentioned above, the Tax Commission approved the expansion of the scope of the study to include factored areas as well. However, NRS 361.333(1)(b)(1) requires a comparison of the median and aggregate ratios and the coefficient of dispersion (COD) of all 17 counties. Section 1 contains charts for the aggregate and median ratios and the coefficient of dispersion for the past three years.

Section 2 shows the aggregate and median ratios and the coefficient of dispersion for the subject counties for all properties studied within the seven counties reviewed. The second section is used to analyze whether approved land and improvement factors have been correctly applied, pursuant to the requirements of NRS 361.333(5)(c).

In Section 1, the aggregate (overall) and median ratios for the subject county are within the range of 32% to 36% as required by statute. We can infer the appraisal level of the entire population of properties in the reappraisal area of each county is within statutory limits, based on the results of the sample taken by the Department. In other words, the ratio of the assessed value established by the assessor measured against the taxable value established by the Department is

within statutory limits. In addition, the COD for each reappraisal area is less than 15%, indicating the appraisals are relatively uniform.

In Section 2, the chart shows that Carson City has aggregate ratios for countywide vacant land and rural land that is less than 32%. One other had an aggregate ratio lower than 32% was Churchill, for rural improvements. A low aggregate ratio might indicate that high-dollar properties might be assessed at a lower level than low-dollar properties, or low-valued properties might be over assessed. Please remember the aggregate ratio is a weighted mean average that is more sensitive to the influence of outliers.

The median of the ratios in Section 2 indicates all subject counties and classes of property within the subject counties are in compliance. Ratios of assessed value to taxable value for each class of property in each reappraisal and factored area included in this study fell between 32% and 36%. This measure indicates there is no sign of over-or-undervaluation on any type of property. As noted above, for purposes of monitoring appraisal performance and for direct equalization, the median ratio is the preferred measure of central tendency.

The calculated COD in all counties examined for 2005-2006 indicate an acceptable level of uniformity of assessments when compared to the standards listed above from the IAAO. The exceptionally low CODs for improvements reflect the fact that the assessors and the Department use the same source to value improvements, and the ratios are consistent with that fact.

In some cases minor differences exists between Division valuation conclusions and assessor valuation conclusions appears to be the practice by some assessors of using a lump-sum amount for minor improvements such as fencing or sprinkler systems, rather than itemizing and costing the individual minor improvement. In general, the Division recognizes that some counties use the lump-sum approach because of the time-consuming and inefficient nature of accounting for minor improvements.

With regard to the work practices used on validating sales data, the Division recommends that counties consider adjusting all sales for unusual financing terms, if they are used in the determination of taxable value.

## *Glossary of Terms*

**Assessed value:** A value set on real and personal property by the county assessor as a basis for levying taxes. The level of appraisal or assessment, also defined as the ratio of the assessed value to taxable value, is set by NRS 361.225: "All property subject to taxation must be assessed at 35 percent of its taxable value."

**Taxable value:** A value determined pursuant to NRS 361.227. In the case of real property, taxable value is the sum of the full cash value of the land under certain enumerated conditions plus the replacement cost new of any improvements on the land, considering all applicable depreciation and obsolescence. In the case of personal property, taxable value is also based on replacement cost new less depreciation as determined by regulation of the Nevada Tax Commission.

**Central tendency**: The tendency of most kinds of data to cluster around some typical or central value, such as the mean or median.[5]

[5] International Association of Assessing Officers, Standard on Ratio Studies (1999), p. 37.

**Class:** A set of items defined by common characteristics. NRS 361.333 defines the major classes subject to the ratio study as:

I. Vacant;
II. Single-family residential;
III. Multi-residential;
IV. Commercial and industrial; and
V. Rural

**Coefficient of Dispersion (COD):** The average deviation of a group of numbers from the median expressed a percentage of the median. In ratio studies, the average percentage deviation from the median ratio.[6]

**Median:** A measure of central tendency. The value of the middle item in an uneven number of items arranged or arrayed according to size; the arithmetic average of the two central items in an even number of items similarly arranged.[7]

**Outliers:** Observations that have unusual values, that is, differ markedly from a measure of central tendency. Some outliers occur naturally; others are due to data errors.

**Representative sample:** A sample of observations from a larger population of observations, such that statistics calculated from the sample can be expected to represent the characteristics of the population being studied.[8]

[6] Ibid, p. 38.
[7] Ibid., p. 39.
[8] Ibid., p. 40.

# NEVADA DEPARTMENT OF TAXATION
## 2005-2006 RATIO STUDY
## AGGREGATE RATIOS
## SECTION 1

| SUBJECT COUNTY | STUDY YEAR | ALL PROPERTY | IMPROVEMENTS | IMPROVED LAND | VACANT LAND | SINGLE FAMILY RESIDENCE | MULTI-FAMILY RESIDENCE | COMMERCIAL INDUSTRIAL | RURAL LAND & IMPROVEMENTS |
|---|---|---|---|---|---|---|---|---|---|
| CARSON CITY | 2005 | 34.4 | 35.2 | 34.0 | 31.0 | 35.2 | 34.3 | 34.8 | 31. |
| CHURCHILL | 2005 | 34.3 | 34.3 | 33.9 | 33.9 | 34.5 | 34.7 | 34.1 | 34.0 |
| CLARK | 2003 | 34.3 | 34.3 | 34.3 | 33.0 | 34.2 | 34.6 | 34.5 | 33.6 |
| DOUGLAS | 2004 | 32.3 | 34.5 | 29.7 | 30.7 | 32.9 | 32.3 | 31.4 | 34.9 |
| ELKO | 2005 | 33.9 | 33.7 | 34.6 | 33.7 | 34.6 | 34.5 | 33.6 | 34.6 |
| ESMERALDA | 2003 | 35.2 | 34.4 | 35.2 | n/a | n/a | n/a | n/a | 35.2 |
| EUREKA | 2003 | 34.5 | 34.7 | 34.5 | 34.2 | 34.7 | n/a | n/a | 34.5 |
| HUMBOLDT | 2004 | 34.5 | 34.7 | 34.3 | 33.4 | 34.7 | 34.6 | 34.7 | 34.4 |
| LANDER | 2005 | 34.2 | 34.1 | 34.3 | 34.5 | 34.5 | 34.4 | 33.8 | 34.7 |
| LINCOLN | 2004 | 34.2 | 34.0 | 35.1 | 31.6 | 34.1 | 35.0 | 33.9 | 34.5 |
| LYON | 2004 | 33.4 | 33.7 | 32.8 | 33.5 | 34.2 | 34.6 | 31.1 | 35.5 |
| MINERAL | 2004 | 34.3 | 34.9 | 34.0 | 31.5 | 34.7 | 33.6 | 34.9 | 33. |
| NYE | 2004 | 34.3 | 34.2 | 34.4 | 34.1 | 34.2 | 34.0 | 34.5 | 35.0 |
| PERSHING | 2005 | 33.9 | 33.6 | 34.4 | 34.7 | 33.5 | 34.3 | 34.1 | 34.3 |
| STOREY | 2003 | 33.5 | 33.2 | 33.5 | 34.5 | 33.4 | n/a | n/a | n/a |
| WASHOE | 2005 | 33.9 | 33.2 | 34.7 | 33.8 | 34.4 | 33.7 | 33.7 | 34.8 |
| WHITE PINE | 2005 | 34.5 | 37.7 | 34.1 | 34.5 | 33.1 | 35.2 | 35.0 | 35.1 |
| STATEWIDE | **2005** | 34.1 | 34.4 | 33.9 | 33.1 | 34.1 | 34.3 | 34.1 | 34.7 |

- NO PARCELS IN REAPPRAISAL AREA

# NEVADA DEPARTMENT OF TAXATION
## 2005-2006 RATIO STUDY
## MEDIAN RATIOS
## SECTION 1

| SUBJECT COUNTY | STUDY YEAR | ALL PROPERTY | IMPROVEMENTS | IMPROVED LAND | VACANT LAND | SINGLE FAMILY RESIDENCE | MULTI-FAMILY RESIDENCE | COMMERCIAL INDUSTRIAL | RURAL LAND & IMPROVEMENTS |
|---|---|---|---|---|---|---|---|---|---|
| CARSON CITY | 2005 | 34.9 | 35.3 | 34.6 | 34.0 | 35.0 | 35.2 | 34.7 | 33.[redacted] |
| CHURCHILL | 2005 | 34.4 | 34.9 | 34.1 | 33.5 | 34.6 | 34.7 | 34.3 | 35.0 |
| CLARK | 2003 | 34.3 | 34.2 | 34.8 | 33.4 | 34.3 | 34.2 | 34.7 | 34.9 |
| DOUGLAS | 2004 | 34.6 | 34.8 | 35.0 | 35.0 | 34.7 | 33.9 | 33.2 | 35.0 |
| ELKO | 2005 | 34.8 | 34.3 | 34.7 | 35.0 | 34.7 | 34.4 | 33.9 | 35.0 |
| ESMERALDA | 2003 | 35.0 | 34.2 | 35.0 | n/a | n/a | n/a | n/a | 35.0 |
| EUREKA | 2003 | 34.4 | 34.6 | 34.4 | 33.7 | 34.4 | n/a | n/a | 34.9 |
| HUMBOLDT | 2004 | 34.7 | 35.0 | 35.0 | 33.6 | 34.7 | 34.6 | 34.9 | 34.8 |
| LANDER | 2005 | 35.0 | 34.0 | 35.0 | 35.0 | 34.5 | 33.3 | 33.5 | 35.0 |
| LINCOLN | 2004 | 34.5 | 34.5 | 35.1 | 33.0 | 34.5 | 35.0 | 34.7 | 34.8 |
| LYON | 2004 | 34.3 | 34.6 | 34.1 | 32.9 | 34.5 | 34.7 | 33.7 | 35.0 |
| MINERAL | 2004 | 34.6 | 34.9 | 34.7 | 34.1 | 34.7 | 34.2 | 34.9 | 34.[redacted] |
| NYE | 2004 | 34.4 | 34.5 | 34.7 | 33.9 | 34.5 | 34.1 | 34.8 | 35.0 |
| PERSHING | 2005 | 34.6 | 33.9 | 34.7 | 34.5 | 34.3 | 34.2 | 34.2 | 35.0 |
| STOREY | 2003 | 34.6 | 34.4 | 35.0 | 34.6 | 34.4 | n/a | n/a | n/a |
| WASHOE | 2005 | 34.4 | 33.9 | 34.7 | 34.7 | 34.3 | 33.5 | 34.5 | 34.9 |
| WHITE PINE | 2005 | 34.9 | 34.7 | 34.2 | 35.0 | 34.9 | 34.6 | 34.3 | 35.1 |
| STATEWIDE | 2005 | 34.5 | 34.5 | 34.8 | 34.3 | 34.4 | 34.3 | 34.5 | 35.0 |

NO PARCELS IN REAPPRAISAL AREA

# NEVADA DEPARTMENT OF TAXATION
## 2005-2006 RATIO STUDY
## COEFFICIENTS OF DISPERSION
## SECTION 1

| SUBJECT COUNTY | STUDY YEAR | ALL PROPERTY | IMPROVEMENTS | IMPROVED LAND | VACANT LAND | SINGLE FAMILY RESIDENCE | MULTI-FAMILY RESIDENCE | COMMERCIAL INDUSTRIAL | RURAL LAND & IMPROVEMENTS |
|---|---|---|---|---|---|---|---|---|---|
| CARSON CITY | 2005 | 4.1 | 3.9 | 6.0 | 8.1 | 2.3 | 2.4 | 2.8 | 6.[illegible] |
| CHURCHILL | 2005 | 1.8 | 2.4 | 3.7 | 1.4 | 1.7 | 1.7 | 1.8 | 1.0 |
| CLARK | 2003 | 3.6 | 3.8 | 4.0 | 20.7 | 2.6 | 2.5 | 3.0 | 5.0 |
| DOUGLAS | 2004 | 5.3 | 2.1 | 15.3 | 8.3 | 3.3 | 7.2 | 7.5 | 1.1 |
| ELKO | 2005 | 2.6 | 4.2 | 5.0 | 2.2 | 2.3 | 2.3 | 4.7 | 0.4 |
| ESMERALDA | 2003 | 1.2 | 1.7 | 1.6 | n/a | n/a | n/a | n/a | 1.2 |
| EUREKA | 2003 | 2.3 | 3.3 | 2.6 | 2.5 | 1.4 | n/a | n/a | 2.0 |
| HUMBOLDT | 2004 | 2.1 | 2.1 | 5.1 | 3.1 | 1.5 | 1.8 | 1.6 | 1.5 |
| LANDER | 2005 | 4.9 | 7.5 | 6.1 | 5.6 | 3.8 | 4.7 | 9.4 | 0.5 |
| LINCOLN | 2004 | 7.5 | 4.4 | 6.8 | 22.8 | 3.1 | 3.3 | 2.8 | 2.2 |
| LYON | 2004 | 3.5 | 4.1 | 6.3 | 2.7 | 3.0 | 2.6 | 4.9 | 1.5 |
| MINERAL | 2004 | 5.1 | 2.7 | 5.8 | 12.8 | 2.1 | 3.3 | 1.5 | 2.[illegible] |
| NYE | 2004 | 2.7 | 3.0 | 6.2 | 3.4 | 2.4 | 2.2 | 2.5 | 2.3 |
| PERSHING | 2005 | 2.1 | 3.5 | 3.3 | 1.3 | 3.6 | 1.5 | 1.4 | 0.3 |
| STOREY | 2003 | 2.9 | 6.0 | 3.6 | 1.1 | 3.8 | n/a | n/a | n/a |
| WASHOE | 2005 | 2.2 | 5.1 | 2.3 | 1.9 | 1.5 | 2.0 | 2.5 | 0.6 |
| WHITE PINE | 2005 | 4.5 | 7.2 | 5.7 | 1.2 | 6.4 | 3.6 | 8.1 | 0.4 |
| STATEWIDE | 2005 | 3.2 | 3.9 | 6.6 | 7.4 | 2.7 | 3.2 | 3.9 | 1.5 |

- NO PARCELS IN REAPPRAISAL AREA

# NEVADA DEPARTMENT OF TAXATION
## 2005-2006 RATIO STUDY
## MEDIAN RELATED DIFFERENTIALS
## SECTION 1

| SUBJECT COUNTY | STUDY YEAR | ALL PROPERTY | IMPROVEMENTS | IMPROVED LAND | VACANT LAND | SINGLE FAMILY RESIDENCE | MULTI-FAMILY RESIDENCE | COMMERCIAL INDUSTRIAL | RURAL LAND & IMPROVEMENTS |
|---|---|---|---|---|---|---|---|---|---|
| CARSON CITY | 2005 | 1.01 | 1.00 | 1.02 | 1.10 | 0.99 | 1.03 | 1.00 | 1.0 |
| CHURCHILL | 2005 | 1.00 | 1.02 | 1.01 | 0.99 | 1.00 | 1.00 | 1.00 | 1.03 |
| CLARK | 2003 | 1.00 | 1.00 | 1.02 | 1.01 | 1.00 | 0.99 | 1.01 | 1.04 |
| DOUGLAS | 2004 | 1.07 | 1.01 | 1.18 | 1.14 | 1.05 | 1.05 | 1.06 | 1.00 |
| ELKO | 2005 | 1.02 | 1.02 | 1.00 | 1.04 | 1.00 | 1.00 | 1.01 | 1.01 |
| ESMERALDA | 2003 | 0.99 | 0.99 | 0.99 | - | - | - | - | 0.99 |
| EUREKA | 2003 | 0.99 | 1.00 | 0.99 | 0.99 | 0.99 | - | - | 1.01 |
| HUMBOLDT | 2004 | 1.01 | 1.01 | 1.02 | 1.01 | 1.00 | 1.00 | 1.01 | 1.01 |
| LANDER | 2005 | 1.02 | 1.00 | 1.02 | 1.01 | 1.00 | 0.97 | 0.99 | 1.01 |
| LINCOLN | 2004 | 1.01 | 1.01 | 1.00 | 1.04 | 1.01 | 1.00 | 1.02 | 1.01 |
| LYON | 2004 | 1.03 | 1.03 | 1.04 | 0.98 | 1.01 | 1.00 | 1.08 | 0.99 |
| MINERAL | 2004 | 1.01 | 1.00 | 1.02 | 1.08 | 1.00 | 1.02 | 1.00 | 1.04 |
| NYE | 2004 | 1.00 | 1.01 | 1.01 | 0.99 | 1.01 | 1.00 | 1.01 | 1.00 |
| PERSHING | 2005 | 1.02 | 1.01 | 1.01 | 0.99 | 1.02 | 1.00 | 1.00 | 1.02 |
| STOREY | 2003 | 1.03 | 1.04 | 1.05 | 1.00 | 1.03 | - | - | - |
| WASHOE | 2005 | 1.02 | 1.02 | 1.00 | 1.03 | 1.00 | 1.00 | 1.02 | 1.00 |
| WHITE PINE | 2005 | 1.01 | 0.92 | 1.00 | 1.01 | 1.06 | 0.98 | 0.98 | 1.00 |
| STATEWIDE | 2005 | 1.01 | 1.00 | 1.03 | 1.04 | 1.01 | 1.00 | 1.01 | 1.01 |

- NO PARCELS IN REAPPRAISAL AREA

# NEVADA DEPARTMENT OF TAXATION
# 2005-2006 RATIO STUDY
# SECTION 2: ALL APPRAISAL AREAS

## OVERALL (AGGREGATE) RATIO

| Subject County | All Property | Class of Property | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Improvements | Improved Land | Vacant Land | Single Family Residence | Multi-Family Residence | Commercial Industrial | Rural Land & Improvements |
| CARSON CITY | 34.4 | 35.2 | 34.0 | 31.0 | 35.2 | 34.3 | 34.8 | 31.8 |
| CHURCHILL | 34.3 | 34.3 | 33.9 | 33.9 | 34.5 | 34.7 | 34.1 | 34.0 |
| ELKO | 33.9 | 33.7 | 34.6 | 33.7 | 34.6 | 34.5 | 33.6 | 34.6 |
| LANDER | 34.2 | 34.1 | 34.3 | 34.5 | 34.5 | 34.4 | 33.8 | 34.7 |
| PERSHING | 33.9 | 33.6 | 34.4 | 34.7 | 33.5 | 34.3 | 34.1 | 34.3 |
| WASHOE | 33.9 | 33.2 | 34.7 | 33.8 | 34.4 | 33.7 | 33.7 | 34.8 |
| WHITE PINE | 34.5 | 37.7 | 34.1 | 34.5 | 33.1 | 35.2 | 35.0 | 35.1 |
| ALL COUNTIES | 34.1 | 34.4 | 34.4 | 33.3 | 34.4 | 34.3 | 34.0 | 34.4 |

## MEDIAN RATIO

| Subject County | All Property | Class of Property | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Improvements | Improved Land | Vacant Land | Single Family Residence | Multi-Family Residence | Commercial Industrial | Rural Land & Improvements |
| CARSON CITY | 34.9 | 35.3 | 34.6 | 34.0 | 35.0 | 35.2 | 34.7 | 33.8 |
| CHURCHILL | 34.4 | 34.9 | 34.1 | 33.5 | 34.6 | 34.7 | 34.3 | 35.0 |
| ELKO | 34.8 | 34.3 | 34.7 | 35.0 | 34.7 | 34.4 | 33.9 | 35.0 |
| LANDER | 35.0 | 34.0 | 35.0 | 35.0 | 34.5 | 33.3 | 33.5 | 35.0 |
| PERSHING | 34.6 | 33.9 | 34.7 | 34.5 | 34.3 | 34.2 | 34.2 | 35.0 |
| WASHOE | 34.4 | 33.9 | 34.7 | 34.7 | 34.3 | 33.5 | 34.5 | 34.9 |
| WHITE PINE | 34.9 | 34.7 | 34.2 | 35.0 | 34.9 | 34.6 | 34.3 | 35.1 |
| ALL COUNTIES | 34.6 | 34.5 | 34.6 | 34.7 | 34.5 | 34.4 | 34.3 | 35.0 |

# NEVADA DEPARTMENT OF TAXATION
# 2005-2006 RATIO STUDY
# SECTION 2: ALL APPRAISAL AREAS

## COEFFICIENT OF DISPERSION (COD)

| Subject County | All Property | Class of Property | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Improvements | Improved Land | Vacant Land | Single Family Residence | Multi-Family Residence | Commercial Industrial | Rural Land & Improvements |
| CARSON CITY | 4.1 | 3.9 | 6.0 | 8.1 | 2.3 | 2.4 | 2.8 | 6.6 |
| CHURCHILL | 1.8 | 2.4 | 3.7 | 1.4 | 1.7 | 1.7 | 1.8 | 1.0 |
| ELKO | 2.6 | 4.2 | 5.0 | 2.2 | 2.3 | 2.3 | 4.7 | 0.4 |
| LANDER | 4.9 | 7.5 | 6.1 | 5.6 | 3.8 | 4.7 | 9.4 | 0.5 |
| PERSHING | 2.1 | 3.5 | 3.3 | 1.3 | 3.6 | 1.5 | 1.4 | 0.3 |
| WASHOE | 2.2 | 5.1 | 2.3 | 1.9 | 1.5 | 2.0 | 2.5 | 0.6 |
| WHITE PINE | 4.5 | 7.2 | 5.7 | 1.2 | 6.4 | 3.6 | 8.1 | 0.4 |
| ALL COUNTIES | 3.1 | 4.9 | 4.6 | 3.3 | 2.9 | 2.9 | 4.1 | 0.8 |

## MEDIAN RELATED DIFFERENTIAL

| Subject County | All Property | Class of Property | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Improvements | Improved Land | Vacant Land | Single Family Residence | Multi-Family Residence | Commercial Industrial | Rural Land & Improvements |
| CARSON CITY | 1.01 | 1.00 | 1.02 | 1.10 | 0.99 | 1.03 | 1.00 | 1.06 |
| CHURCHILL | 1.00 | 1.02 | 1.01 | 0.99 | 1.00 | 1.00 | 1.00 | 1.03 |
| ELKO | 1.02 | 1.02 | 1.00 | 1.04 | 1.00 | 1.00 | 1.01 | 1.01 |
| LANDER | 1.02 | 1.00 | 1.02 | 1.01 | 1.00 | 0.97 | 0.99 | 1.01 |
| PERSHING | 1.02 | 1.01 | 1.01 | 0.99 | 1.02 | 1.00 | 1.00 | 1.02 |
| WASHOE | 1.02 | 1.02 | 1.00 | 1.03 | 1.00 | 1.00 | 1.02 | 1.00 |
| WHITE PINE | 1.01 | 0.92 | 1.00 | 1.01 | 1.06 | 0.98 | 0.98 | 1.00 |
| ALL COUNTIES | 1.02 | 1.01 | 1.01 | 1.04 | 1.00 | 1.00 | 1.01 | 1.02 |

# CARSON CITY
# 2005-2006 RATIO STUDY
## ALL APPRAISAL AREAS

| REAL PROPERTY | AGGREGATE RATIO | MEDIAN RATIO | COD MEDIAN | SAMPLE SIZE |
|---|---|---|---|---|
| COUNTYWIDE TOTAL PROPERTY | 34.4% | 34.9% | 4.1% | 126 |
| COUNTYWIDE IMPROVEMENTS | 35.2% | 35.3% | 3.9% | 91 |
| COUNTWIDE IMPROVED LAND | 34.0% | 34.6% | 6.0% | 96 |
| COUNTYWIDE VACANT LAND | 31.0% | 34.0% | 8.1% | 30 |
| | | | | |
| SINGLE FAMILY IMPROVEMENTS | 35.8% | 35.5% | 4.0% | 30 |
| SINGLE FAMILY LAND | 34.1% | 34.6% | 5.8% | 30 |
| SINGLE FAMILY TOTAL PROPERTY | 35.2% | 35.0% | 2.3% | 30 |
| | | | | |
| MULTIPLE FAMILY IMPROVEMENTS | 34.3% | 35.5% | 3.7% | 30 |
| MULTIPLE FAMILY LAND | 34.2% | 34.8% | 3.8% | 30 |
| MULTIPLE FAMILY TOTAL PROPERTY | 34.3% | 35.2% | 2.4% | 30 |
| | | | | |
| COMMERCIAL/INDUSTRIAL IMPROVEMENTS | 35.4% | 35.0% | 3.8% | 30 |
| COMMERCIAL/INDUSTRIAL LAND | 34.0% | 34.2% | 6.6% | 30 |
| COMMERCIAL/INDUSTRIAL TOTAL PROPERTY | 34.8% | 34.7% | 2.8% | 30 |
| | | | | |
| RURAL IMPROVEMENTS | 34.6% | 34.6% | 0.0% | 1 |
| RURAL LAND | 31.4% | 33.4% | 14.4% | 6 |
| RURAL TOTAL PROPERTY | 31.8% | 33.8% | 6.6% | 6 |
| **SECURED PERSONAL PROPERTY** | | | | |
| ALL SECURED | 35.1% | 35.0% | 0.1% | 13 |
| AIRCRAFT | n/a | n/a | n/a | - |
| AGRICULTURAL | 35.1% | 35.1% | 0.0% | 1 |
| BILLBOARDS | n/a | n/a | n/a | - |
| COMMERCIAL/INDUSTRIAL | 35.1% | 35.1% | 0.2% | 5 |
| MOBILE HOMES | 35.0% | 35.0% | 0.0% | 7 |
| **UNSECURED PERSONAL PROPERTY** | | | | |
| ALL UNSECURED | 35.0% | 35.0% | 0.4% | 39 |
| AIRCRAFT | 35.0% | 35.0% | 0.0% | 9 |
| AGRICULTURAL | 33.8% | 35.0% | 2.0% | 5 |
| BILLBOARDS | 35.0% | 35.0% | 0.0% | 3 |
| COMMERCIAL/INDUSTRIAL | 35.0% | 35.0% | 0.4% | 13 |
| MOBILE HOMES | 35.0% | 35.0% | 0.0% | 9 |
| **TOTAL PERSONAL PROPERTY** | 35.0% | 35.0% | 0.3% | 52 |

# CHURCHILL COUNTY
# 2005-2006 RATIO STUDY

**ALL APPRAISAL AREAS**

| REAL PROPERTY | AGGREGATE RATIO | MEDIAN RATIO | COD MEDIAN | SAMPLE SIZE |
|---|---|---|---|---|
| COUNTYWIDE TOTAL PROPERTY | 34.3% | 34.4% | 1.8% | 165 |
| COUNTYWIDE IMPROVEMENTS | 34.3% | 34.9% | 2.4% | 102 |
| COUNTWIDE IMPROVED LAND | 33.9% | 34.1% | 3.7% | 122 |
| COUNTYWIDE VACANT LAND | 33.9% | 33.5% | 1.4% | 43 |
| | | | | |
| SINGLE FAMILY IMPROVEMENTS | 34.7% | 34.9% | 2.2% | 41 |
| SINGLE FAMILY LAND | 34.0% | 34.0% | 2.8% | 41 |
| SINGLE FAMILY TOTAL PROPERTY | 34.5% | 34.6% | 1.7% | 41 |
| | | | | |
| MULTIPLE FAMILY IMPROVEMENTS | 35.1% | 35.1% | 1.9% | 25 |
| MULTIPLE FAMILY LAND | 33.7% | 33.5% | 2.7% | 25 |
| MULTIPLE FAMILY TOTAL PROPERTY | 34.7% | 34.7% | 1.7% | 25 |
| | | | | |
| COMMERCIAL/INDUSTRIAL IMPROVEMENTS | 34.3% | 34.7% | 2.8% | 27 |
| COMMERCIAL/INDUSTRIAL LAND | 33.7% | 33.5% | 3.0% | 27 |
| COMMERCIAL/INDUSTRIAL TOTAL PROPERTY | 34.1% | 34.3% | 1.8% | 27 |
| | | | | |
| RURAL IMPROVEMENTS | 30.4% | 34.4% | 2.8% | 9 |
| RURAL LAND | 34.5% | 34.9% | 2.1% | 29 |
| RURAL TOTAL PROPERTY | 34.0% | 35.0% | 1.0% | 29 |
| **SECURED PERSONAL PROPERTY** | | | | |
| ALL SECURED | 35.3% | 35.0% | 0.3% | 36 |
| AIRCRAFT | n/a | n/a | n/a | - |
| AGRICULTURAL | 35.0% | 35.0% | 0.3% | 13 |
| BILLBOARDS | n/a | n/a | n/a | - |
| COMMERCIAL/INDUSTRIAL | 35.4% | 35.0% | 0.3% | 15 |
| MOBILE HOMES | 35.0% | 35.0% | 0.0% | 8 |
| **UNSECURED PERSONAL PROPERTY** | | | | |
| ALL UNSECURED | 35.0% | 35.0% | 0.1% | 45 |
| AIRCRAFT | 35.0% | 35.0% | 0.1% | 7 |
| AGRICULTURAL | 35.0% | 35.0% | 0.1% | 13 |
| BILLBOARDS | 35.0% | 35.0% | 0.0% | 1 |
| COMMERCIAL/INDUSTRIAL | 35.0% | 35.0% | 0.2% | 16 |
| MOBILE HOMES | 35.0% | 35.0% | 0.0% | 8 |
| **TOTAL PERSONAL PROPERTY** | 35.2% | 35.0% | 0.2% | 81 |

# ELKO COUNTY
# 2005-2006 RATIO STUDY
## ALL APPRAISAL AREAS

| REAL PROPERTY | AGGREGATE RATIO | MEDIAN RATIO | COD MEDIAN | SAMPLE SIZE |
|---|---|---|---|---|
| COUNTYWIDE TOTAL PROPERTY | 33.9% | 34.8% | 2.6% | 147 |
| COUNTYWIDE IMPROVEMENTS | 33.7% | 34.3% | 4.2% | 91 |
| COUNTWIDE IMPROVED LAND | 34.6% | 34.7% | 5.0% | 117 |
| COUNTYWIDE VACANT LAND | 33.7% | 35.0% | 2.2% | 30 |
| | | | | |
| SINGLE FAMILY IMPROVEMENTS | 34.8% | 34.9% | 2.9% | 29 |
| SINGLE FAMILY LAND | 33.5% | 33.3% | 3.5% | 29 |
| SINGLE FAMILY TOTAL PROPERTY | 34.6% | 34.7% | 2.3% | 29 |
| | | | | |
| MULTIPLE FAMILY IMPROVEMENTS | 34.5% | 34.7% | 2.8% | 29 |
| MULTIPLE FAMILY LAND | 34.6% | 34.3% | 4.1% | 29 |
| MULTIPLE FAMILY TOTAL PROPERTY | 34.5% | 34.4% | 2.3% | 29 |
| | | | | |
| COMMERCIAL/INDUSTRIAL IMPROVEMENTS | 33.2% | 33.7% | 6.3% | 30 |
| COMMERCIAL/INDUSTRIAL LAND | 34.8% | 34.7% | 6.0% | 30 |
| COMMERCIAL/INDUSTRIAL TOTAL PROPERTY | 33.6% | 33.9% | 4.7% | 30 |
| | | | | |
| RURAL IMPROVEMENTS | 33.0% | 33.7% | 2.0% | 2 |
| RURAL LAND | 35.0% | 35.0% | 0.5% | 29 |
| RURAL TOTAL PROPERTY | 34.6% | 35.0% | 0.4% | 29 |
| **SECURED PERSONAL PROPERTY** | | | | |
| ALL SECURED | 37.1% | 34.8% | 1.5% | 27 |
| AIRCRAFT | n/a | n/a | n/a | - |
| AGRICULTURAL | 34.5% | 34.6% | 1.9% | 11 |
| BILLBOARDS | n/a | n/a | n/a | - |
| COMMERCIAL/INDUSTRIAL | 43.0% | 34.9% | 1.4% | 8 |
| MOBILE HOMES | 34.7% | 34.8% | 0.9% | 8 |
| **UNSECURED PERSONAL PROPERTY** | | | | |
| ALL UNSECURED | 35.0% | 35.0% | 0.5% | 50 |
| AIRCRAFT | 34.7% | 35.0% | 1.9% | 8 |
| AGRICULTURAL | 34.8% | 35.0% | 0.4% | 14 |
| BILLBOARDS | 35.0% | 35.0% | 0.0% | 7 |
| COMMERCIAL/INDUSTRIAL | 35.0% | 35.0% | 0.1% | 12 |
| MOBILE HOMES | 35.0% | 35.0% | 0.3% | 9 |
| **TOTAL PERSONAL PROPERTY** | 35.8% | 35.0% | 0.9% | 77 |

# LANDER COUNTY
# 2005-2006 RATIO STUDY
## ALL APPRAISAL AREAS

| REAL PROPERTY | AGGREGATE RATIO | MEDIAN RATIO | COD MEDIAN | SAMPLE SIZE |
|---|---|---|---|---|
| COUNTYWIDE TOTAL PROPERTY | 34.2% | 35.0% | 4.9% | 116 |
| COUNTYWIDE IMPROVEMENTS | 34.1% | 34.0% | 7.5% | 62 |
| COUNTWIDE IMPROVED LAND | 34.3% | 35.0% | 6.1% | 82 |
| COUNTYWIDE VACANT LAND | 34.5% | 35.0% | 5.6% | 34 |
| | | | | |
| SINGLE FAMILY IMPROVEMENTS | 34.6% | 34.4% | 4.3% | 25 |
| SINGLE FAMILY LAND | 33.5% | 33.6% | 12.9% | 25 |
| SINGLE FAMILY TOTAL PROPERTY | 34.5% | 34.5% | 3.8% | 25 |
| | | | | |
| MULTIPLE FAMILY IMPROVEMENTS | 34.8% | 34.0% | 7.2% | 15 |
| MULTIPLE FAMILY LAND | 33.4% | 33.6% | 7.3% | 15 |
| MULTIPLE FAMILY TOTAL PROPERTY | 34.4% | 33.3% | 4.7% | 15 |
| | | | | |
| COMMERCIAL/INDUSTRIAL IMPROVEMENTS | 33.8% | 32.9% | 12.9% | 18 |
| COMMERCIAL/INDUSTRIAL LAND | 34.4% | 35.0% | 2.8% | 18 |
| COMMERCIAL/INDUSTRIAL TOTAL PROPERTY | 33.8% | 33.5% | 9.4% | 18 |
| | | | | |
| RURAL IMPROVEMENTS | 34.0% | 33.3% | 3.5% | 4 |
| RURAL LAND | 35.0% | 35.0% | 0.4% | 24 |
| RURAL TOTAL PROPERTY | 34.7% | 35.0% | 0.5% | 24 |
| **SECURED PERSONAL PROPERTY** | | | | |
| ALL SECURED | 35.0% | 35.0% | 0.2% | 17 |
| AIRCRAFT | n/a | n/a | n/a | - |
| AGRICULTURAL | 35.0% | 35.0% | 0.1% | 4 |
| BILLBOARDS | n/a | n/a | n/a | - |
| COMMERCIAL/INDUSTRIAL | 35.2% | 35.1% | 0.3% | 7 |
| MOBILE HOMES | 35.0% | 35.0% | 0.0% | 6 |
| **UNSECURED PERSONAL PROPERTY** | | | | |
| ALL UNSECURED | 34.7% | 35.0% | 3.7% | 33 |
| AIRCRAFT | 35.0% | 35.0% | 0.2% | 4 |
| AGRICULTURAL | 34.7% | 34.9% | 1.4% | 6 |
| BILLBOARDS | 35.0% | 35.0% | 0.1% | 5 |
| COMMERCIAL/INDUSTRIAL | 35.0% | 35.0% | 1.1% | 13 |
| MOBILE HOMES | 32.7% | 35.0% | 19.3% | 5 |
| **TOTAL PERSONAL PROPERTY** | 34.8% | 35.0% | 2.5% | 50 |

# PERSHING COUNTY
# 2005-2006 RATIO STUDY
## ALL APPRAISAL AREAS

| REAL PROPERTY | AGGREGATE RATIO | MEDIAN RATIO | COD MEDIAN | SAMPLE SIZE |
|---|---|---|---|---|
| COUNTYWIDE TOTAL PROPERTY | 33.9% | 34.6% | 2.1% | 111 |
| COUNTYWIDE IMPROVEMENTS | 33.6% | 33.9% | 3.5% | 57 |
| COUNTWIDE IMPROVED LAND | 34.4% | 34.7% | 3.3% | 79 |
| COUNTYWIDE VACANT LAND | 34.7% | 34.5% | 1.3% | 32 |
| | | | | |
| SINGLE FAMILY IMPROVEMENTS | 33.4% | 34.3% | 4.3% | 32 |
| SINGLE FAMILY LAND | 34.0% | 34.0% | 3.8% | 32 |
| SINGLE FAMILY TOTAL PROPERTY | 33.5% | 34.3% | 3.6% | 32 |
| | | | | |
| MULTIPLE FAMILY IMPROVEMENTS | 34.2% | 34.2% | 2.3% | 11 |
| MULTIPLE FAMILY LAND | 34.5% | 34.5% | 1.6% | 11 |
| MULTIPLE FAMILY TOTAL PROPERTY | 34.3% | 34.2% | 1.5% | 11 |
| | | | | |
| COMMERCIAL/INDUSTRIAL IMPROVEMENTS | 33.7% | 33.7% | 2.5% | 12 |
| COMMERCIAL/INDUSTRIAL LAND | 34.6% | 35.0% | 2.2% | 12 |
| COMMERCIAL/INDUSTRIAL TOTAL PROPERTY | 34.1% | 34.2% | 1.4% | 12 |
| | | | | |
| RURAL IMPROVEMENTS | 33.8% | 34.2% | 1.5% | 2 |
| RURAL LAND | 34.8% | 35.0% | 0.4% | 24 |
| RURAL TOTAL PROPERTY | 34.3% | 35.0% | 0.3% | 24 |
| **SECURED PERSONAL PROPERTY** | | | | |
| ALL SECURED | 38.4% | 35.0% | 0.6% | 17 |
| AIRCRAFT | n/a | n/a | n/a | - |
| AGRICULTURAL | 35.0% | 35.0% | 0.2% | 7 |
| BILLBOARDS | n/a | n/a | n/a | - |
| COMMERCIAL/INDUSTRIAL | 49.8% | 34.5% | 1.4% | 4 |
| MOBILE HOMES | 35.0% | 35.0% | 0.2% | 6 |
| **UNSECURED PERSONAL PROPERTY** | | | | |
| ALL UNSECURED | 34.5% | 35.0% | 0.7% | 33 |
| AIRCRAFT | n/a | n/a | n/a | - |
| AGRICULTURAL | 34.0% | 35.0% | 1.5% | 5 |
| BILLBOARDS | 35.0% | 35.0% | 0.0% | 2 |
| COMMERCIAL/INDUSTRIAL | 34.6% | 34.8% | 1.9% | 7 |
| MOBILE HOMES | 35.0% | 35.0% | 0.0% | 19 |
| **TOTAL PERSONAL PROPERTY** | 35.8% | 35.0% | 0.7% | 50 |

Nevada Department of Taxation
Local Government Finance

CHECKLIST FOR TENTATIVE BUDGET REVIEW
SCHOOL DISTRICT

Entity: *Washoe County School District*

Reviewed by: *WRAmbrose*

Date: *May 10, 2005*

| RATES ENTERED | |
|---|---|
| Operating Rate | 0.7500 |
| Voter Approved | 0.3885 |
| Legislative | |
| Debt Service | |
| | |
| TOTAL | 1.1385 |

| GENERAL QUESTIONS | Yes | No | N/A |
|---|---|---|---|
| Have appropriate schedules been filed? | ☑ | ☐ | ☐ |
| Have any new funds been created? (If yes, list below and . . . ) | ☐ | ☑ | ☐ |
| Were the creating resolutions submitted to Local Government Finance? | ☐ | ☐ | ☑ |
| The 2nd paragraph relates to property tax revenues. Does the dollar amount agree with the net amount in Column 4 on Schedule AA? | ☑ | ☐ | ☐ |
| The 4th paragraph relates to expenditures and proprietary expenses. Does the dollar amount agree with the amounts on Schedule AA-1? | ☑ | ☐ | ☐ |
| Is the certification letter signed? (NAC 354.140) | ☑ | ☐ | ☐ |
| Are the publication and hearing dates correct? See calendar of events. Per NRS 354.596, not less than 7 nor more than 14 days.) | ☑ | ☐ | ☐ |
| Does the budget include the Lobbying Expense Estimate (Form 30)? **This form is to be submitted only for legislative years.** | ☐ | ☐ | ☑ |
| Does the budget include an explanation for a general fund ending fund balance less than 4% of the total actual prior year expenditures (pursuant to the criteria at NAC 354.650)? | ☑ | ☐ | ☐ |

NOTES:

| SCHEDULE B-1 | Yes | No | N/A |
|---|---|---|---|
| Do Lines 14 and 20 agree with Local School Support Tax and Distributive School Fund amounts on Schedules BB? | ☑ | ☐ | ☐ |
| Does LSST compare with Department projection? | ☑ | ☐ | ☐ |
| Is the amount on Line 15 equal to 1/3 of Local Line on Schedule AA, Column 4? | ☑ | ☐ | ☐ |
| Is math correct? | ☑ | ☐ | ☐ |

NOTES:

(Skip Schedule AA and review Schedules BB first.)

| SCHEDULES BB | Yes | No | N/A |
|---|---|---|---|
| Are all funds in the audit included in the budget? | ☑ | ☐ | ☐ |
| Do actual prior year total revenues, expenditures and fund balances agree with audit for each fund? | ☑ | ☐ | ☐ |
| Do total resources equal total applications in each fund? | ☑ | ☐ | ☐ |
| Are governmental funds budgeted contingencies three percent or less of total expenditures, excluding transfers? (NRS 354.608) | ☑ | ☐ | ☐ |
| Do ending fund balances carry forward as beginning fund balances for the next year? | ☐ | ☑ | ☐ |
| If not, is there an explanation? | ☐ | ☑ | ☐ |
| Check current fiscal year column: | | | |
| Do the LSST and the Distributive School Fund amounts look reasonable? | ☑ | ☐ | ☐ |
| Does the Government Services Tax amount compare with Department estimate? | ☑ | ☐ | ☐ |
| Is there a buildings and sites fund? (NRS 387.177) | ☑ | ☐ | ☐ |
| Do revenues consist of receipts from rentals and sales of school property, gifts or federal grants for construction, interest earned and no others? | ☑ | ☐ | ☐ |
| Are there any transfers in or out? If yes, review validity. | ☐ | ☑ | ☐ |
| Is there a capital projects fund? (NRS 387.328) | ☑ | ☐ | ☐ |
| If a pay-as-you-go override is in effect, are the receipts identified? | ☐ | ☐ | ☑ |
| For enrollment over 25,000 up to .5000? | ☐ | ☐ | ☑ |
| For enrollment under 25,000 up to .7500? | ☐ | ☐ | ☑ |
| Has the food service/school lunch been budgeted as an identifiable line item in a fund? | ☑ | ☐ | ☐ |
| If budgeted as an enterprise fund, is math correct? | ☑ | ☐ | ☐ |
| Has conversion amount been lowered? | ☐ | ☐ | ☑ |
| Do any funds have a budgeted deficit ending balance? [NRS 354.598 (5)] | ☐ | ☑ | ☐ |

NOTES:

*Activity on F-2 (48) = audit for FY03-04. See letter.*

| DEBT SCHEDULES - SCHEDULES C AND C-1 | Yes | No | N/A |
|---|---|---|---|
| Was all budgeted debt incurred prior to June 25th? | ☑ | ☐ | ☐ |
| Are all issues listed on the Schedule C-1? (Check audit, last year's budget and any other information available.) | ☑ | ☐ | ☐ |
| Debt requiring ad valorem: | | | |
| Are service requirements for budget year correct? | ☑ | ☐ | ☐ |
| Are service reserves for ad valorem bonds and short-term financing for budget year established? | ☑ | ☐ | ☐ |
| Are the reserve amounts equal to one year or less of the service requirement? | ☑ | ☐ | ☐ |
| Calculate the debt tax rate. (Attach tape to the back of this page.) Does this rate equal the rate of Schedule AA? | ☐ | ☑ | ☐ |
| Are lease payments identifiable in appropriate fund? | ☑ | ☐ | ☐ |
| Do all debt issues reflected on Schedule C-1, or elsewhere in the budget, agree with approvals (if necessary) from the Department? (Watch for lease stacking.) | ☑ | ☐ | ☐ |

NOTES:

***Calculated debt rate of $.3716; less than .3885 on AA. See letter.***

| TRANSFERS - SCHEDULE T | Yes | No | N/A |
|---|---|---|---|
| Check each fund for transfers: | | | |
| Are all the transfers recorded on the Schedule T? | ☑ | ☐ | ☐ |

NOTES:

| BUDGETED RESOURCES - ALL FUNDS - SCHEDULE AA | Yes | No | N/A |
|---|---|---|---|
| Do all amounts in each column agree with all Schedules BB? | ☑ | ☐ | ☐ |
| Do Fund Balances agree with Schedule BB? | ☑ | ☐ | ☐ |
| Do the schedules foot and crossfoot? | ☑ | ☐ | ☐ |
| Verify correctness of all tax rates: | | | |
| Is assessed value correct? | ☑ | ☐ | ☐ |
| Is enrollment correct? | ☑ | ☐ | ☐ |

NOTES:

***Debt rate appears high. See letter.***

| BUDGETED APPLICATIONS - ALL FUNDS - SCHEDULE AA-1 | Yes | No | N/A |
|---|---|---|---|
| Do all amounts in each column agree with all Schedules BB-2? | ☑ | ☐ | ☐ |
| Does the schedule foot and crossfoot? | ☑ | ☐ | ☐ |
| Does Schedule AA agree with Schedule AA-1? | ☑ | ☐ | ☐ |

NOTES:

# WASHOE COUNTY
# 2005-2006 RATIO STUDY
## ALL APPRAISAL AREAS

| REAL PROPERTY | AGGREGATE RATIO | MEDIAN RATIO | COD MEDIAN | SAMPLE SIZE |
|---|---|---|---|---|
| COUNTYWIDE TOTAL PROPERTY | 33.9% | 34.4% | 2.2% | 190 |
| COUNTYWIDE IMPROVEMENTS | 33.2% | 33.9% | 5.1% | 150 |
| COUNTWIDE IMPROVED LAND | 34.7% | 34.7% | 2.3% | 157 |
| COUNTYWIDE VACANT LAND | 33.8% | 34.7% | 1.9% | 30 |
| | | | | |
| SINGLE FAMILY IMPROVEMENTS | 34.2% | 34.1% | 2.6% | 60 |
| SINGLE FAMILY LAND | 34.6% | 34.6% | 2.4% | 60 |
| SINGLE FAMILY TOTAL PROPERTY | 34.4% | 34.3% | 1.5% | 60 |
| | | | | |
| MULTIPLE FAMILY IMPROVEMENTS | 32.3% | 31.7% | 5.3% | 30 |
| MULTIPLE FAMILY LAND | 34.8% | 34.8% | 1.6% | 30 |
| MULTIPLE FAMILY TOTAL PROPERTY | 33.7% | 33.5% | 2.0% | 30 |
| | | | | |
| COMMERCIAL/INDUSTRIAL IMPROVEMENTS | 33.0% | 34.6% | 6.0% | 58 |
| COMMERCIAL/INDUSTRIAL LAND | 34.7% | 34.8% | 2.5% | 55 |
| COMMERCIAL/INDUSTRIAL TOTAL PROPERTY | 33.7% | 34.5% | 2.5% | 58 |
| | | | | |
| RURAL IMPROVEMENTS | 34.1% | 33.3% | 3.3% | 2 |
| RURAL LAND | 34.9% | 34.9% | 0.5% | 12 |
| RURAL TOTAL PROPERTY | 34.8% | 34.9% | 0.6% | 12 |
| **SECURED PERSONAL PROPERTY** | | | | |
| ALL SECURED | 34.9% | 35.0% | 0.5% | 29 |
| AIRCRAFT | n/a | n/a | n/a | - |
| AGRICULTURAL | 34.7% | 34.5% | 1.2% | 7 |
| BILLBOARDS | n/a | n/a | n/a | - |
| COMMERCIAL/INDUSTRIAL | 35.0% | 35.0% | 0.3% | 11 |
| MOBILE HOMES | 35.0% | 35.0% | 0.0% | 11 |
| **UNSECURED PERSONAL PROPERTY** | | | | |
| ALL UNSECURED | 35.0% | 35.0% | 0.1% | 48 |
| AIRCRAFT | 35.0% | 35.0% | 0.1% | 7 |
| AGRICULTURAL | 35.0% | 35.0% | 0.3% | 7 |
| BILLBOARDS | 35.0% | 35.0% | 0.0% | 3 |
| COMMERCIAL/INDUSTRIAL | 35.0% | 35.0% | 0.0% | 8 |
| MOBILE HOMES | 35.0% | 35.0% | 0.1% | 23 |
| TOTAL PERSONAL PROPERTY | 35.0% | 35.0% | 0.2% | 77 |

# WHITE PINE COUNTY
# 2005-2006 RATIO STUDY
## ALL APPRAISAL AREAS

| REAL PROPERTY | AGGREGATE RATIO | MEDIAN RATIO | COD MEDIAN | SAMPLE SIZE |
|---|---|---|---|---|
| COUNTYWIDE TOTAL PROPERTY | 34.5% | 34.9% | 4.5% | 119 |
| COUNTYWIDE IMPROVEMENTS | 37.7% | 34.7% | 7.2% | 79 |
| COUNTWIDE IMPROVED LAND | 34.1% | 34.2% | 5.7% | 87 |
| COUNTYWIDE VACANT LAND | 34.5% | 35.0% | 1.2% | 32 |
| | | | | |
| SINGLE FAMILY IMPROVEMENTS | 32.9% | 35.5% | 7.2% | 30 |
| SINGLE FAMILY LAND | 34.2% | 33.6% | 6.4% | 30 |
| SINGLE FAMILY TOTAL PROPERTY | 33.1% | 34.9% | 6.4% | 30 |
| | | | | |
| MULTIPLE FAMILY IMPROVEMENTS | 35.5% | 34.6% | 4.9% | 20 |
| MULTIPLE FAMILY LAND | 34.1% | 34.1% | 5.0% | 20 |
| MULTIPLE FAMILY TOTAL PROPERTY | 35.2% | 34.6% | 3.6% | 20 |
| | | | | |
| COMMERCIAL/INDUSTRIAL IMPROVEMENTS | 35.2% | 34.4% | 8.8% | 25 |
| COMMERCIAL/INDUSTRIAL LAND | 34.0% | 34.0% | 5.5% | 25 |
| COMMERCIAL/INDUSTRIAL TOTAL PROPERTY | 35.0% | 34.3% | 8.1% | 25 |
| | | | | |
| RURAL IMPROVEMENTS | 35.2% | 35.0% | 2.7% | 4 |
| RURAL LAND | 35.0% | 35.0% | 0.5% | 12 |
| RURAL TOTAL PROPERTY | 35.1% | 35.1% | 0.4% | 12 |
| **SECURED PERSONAL PROPERTY** | | | | |
| ALL SECURED | 36.3% | 35.0% | 0.5% | 50 |
| AIRCRAFT | n/a | n/a | n/a | - |
| AGRICULTURAL | 35.2% | 35.1% | 0.6% | 16 |
| BILLBOARDS | n/a | n/a | n/a | - |
| COMMERCIAL/INDUSTRIAL | 36.6% | 35.1% | 0.5% | 25 |
| MOBILE HOMES | 35.1% | 35.0% | 0.1% | 9 |
| **UNSECURED PERSONAL PROPERTY** | | | | |
| ALL UNSECURED | 35.0% | 35.0% | 0.5% | 48 |
| AIRCRAFT | 35.0% | 35.0% | 0.0% | 2 |
| AGRICULTURAL | 35.0% | 35.0% | 0.2% | 6 |
| BILLBOARDS | n/a | n/a | n/a | - |
| COMMERCIAL/INDUSTRIAL | 35.0% | 35.0% | 0.7% | 32 |
| MOBILE HOMES | 35.0% | 35.0% | 0.1% | 8 |
| **TOTAL PERSONAL PROPERTY** | 35.6% | 35.0% | 0.5% | 98 |

# ALL COUNTIES INCLUDED IN 2005-2006 RATIO STUDY

**ALL APPRAISAL AREAS**

| REAL PROPERTY | AGGREGATE RATIO | MEDIAN RATIO | COD MEDIAN | SAMPLE SIZE |
|---|---|---|---|---|
| ALL COUNTIES TOTAL PROPERTY | 34.1% | 34.6% | 3.1% | 974 |
| ALL COUNTIES IMPROVEMENTS | 34.4% | 34.5% | 4.9% | 632 |
| ALL COUNTIES IMPROVED LAND | 34.4% | 34.6% | 4.6% | 740 |
| ALL COUNTIES VACANT LAND | 33.3% | 34.7% | 3.3% | 231 |
| | | | | |
| SINGLE FAMILY IMPROVEMENTS | 34.4% | 34.7% | 4.0% | 247 |
| SINGLE FAMILY LAND | 34.3% | 34.2% | 5.2% | 247 |
| SINGLE FAMILY TOTAL PROPERTY | 34.4% | 34.5% | 2.9% | 247 |
| | | | | |
| MULTIPLE FAMILY IMPROVEMENTS | 34.3% | 34.6% | 4.9% | 160 |
| MULTIPLE FAMILY LAND | 34.4% | 34.4% | 4.2% | 160 |
| MULTIPLE FAMILY TOTAL PROPERTY | 34.3% | 34.4% | 2.9% | 160 |
| | | | | |
| COMMERCIAL/INDUSTRIAL IMPROVEMENTS | 33.8% | 34.4% | 6.3% | 200 |
| COMMERCIAL/INDUSTRIAL LAND | 34.5% | 34.6% | 4.8% | 197 |
| COMMERCIAL/INDUSTRIAL TOTAL PROPERTY | 34.0% | 34.3% | 4.1% | 200 |
| | | | | |
| RURAL IMPROVEMENTS | 32.5% | 34.3% | 2.9% | 24 |
| RURAL LAND | 34.8% | 35.0% | 1.4% | 136 |
| RURAL TOTAL PROPERTY | 34.4% | 35.0% | 0.8% | 136 |
| **SECURED PERSONAL PROPERTY** | | | | |
| ALL SECURED | 36.1% | 35.0% | 0.6% | 189 |
| AIRCRAFT | n/a | n/a | n/a | - |
| AGRICULTURAL | 35.0% | 35.0% | 0.9% | 59 |
| BILLBOARDS | n/a | n/a | n/a | - |
| COMMERCIAL/INDUSTRIAL | 37.7% | 35.0% | 0.6% | 75 |
| MOBILE HOMES | 35.0% | 35.0% | 0.2% | 55 |
| **UNSECURED PERSONAL PROPERTY** | | | | |
| ALL UNSECURED | 34.9% | 35.0% | 0.7% | 296 |
| AIRCRAFT | 35.0% | 35.0% | 0.5% | 37 |
| AGRICULTURAL | 34.8% | 35.0% | 0.7% | 56 |
| BILLBOARDS | 35.0% | 35.0% | 0.0% | 21 |
| COMMERCIAL/INDUSTRIAL | 35.0% | 35.0% | 0.6% | 101 |
| MOBILE HOMES | 34.9% | 35.0% | 1.3% | 81 |
| **TOTAL PERSONAL PROPERTY** | 35.4% | 35.0% | 0.7% | 485 |

NEVADA DEPARTMENT OF TAXATION

# Part II: 2005-06 Work Practices Survey

## *SUMMARY OF WORK PRACTICE RATINGS*

| Real Property Discovery and Valuation Work Practices | CC | CH | EL | LA | PE | WA | WP |
|---|---|---|---|---|---|---|---|
| Sales Collection | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Sales Verification | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Sales Data Base | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Vacant Land (excluding agricultural property) | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Subdivision Analysis | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Single-family Residential Land | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Multi-family Residential Land | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Commercial and Industrial Land | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Factors | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Single-family Residential Improvements | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Multi-family Residential Improvements | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Commercial and Industrial Improvements | 3 | 3 | 3 | [illegible] | 3 | 3 | 3 |
| Minor Improvements | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| New Construction Valuation | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Agricultural Land | [illegible] | 3 | 3 | 3 | 3 | 3 | 3 |
| Agricultural Land Records | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Agricultural Land Classification Maps | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Agricultural Bulletin Use | [illegible] | 3 | 3 | 3 | 3 | 3 | 3 |
| Residential Homesite Valuation | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Agricultural Improvements | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Deferred Taxes | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Higher Use | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Agricultural Land Conversions | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Assessment Maps | 3 | 3 | [illegible] | 3 | 3 | 3 | 3 |
| Prescribed Parceling System | 3 | 3 | [illegible] | 3 | 3 | 3 | 3 |
| **Personal Property Discovery and Valuation Work Practices** | | | | | | | |
| Discovery | 3 | 3 | 3 | 3 | 3 | [illegible] | 3 |
| Record-keeping | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Agricultural | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Business Property | 3 | 3 | 3 | 3 | 3 | [illegible] | 3 |
| Manufactured Homes | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Billboards | 3 | 3 | 3 | [illegible] | 3 | 3 | 3 |
| Aircraft | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Migratory Property | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Billing/Collection (penalties applied, seizure and sale) | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| **Other Work Practices** | | | | | | | |
| Possessory Interest Valuation - Real Property | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Possessory Interest Valuation - Personal Property | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Statutes and Regulations | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Cost Manuals and Systems | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Appraisal Records | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Filing System | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Reports | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Appeal Preparation and Presentations | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Reopened Roll Log | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Obsolescence | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| New Construction | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Land Use and Exemption Codes | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Appraisal Cycle | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Improvement Factoring | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Appraiser Certifications | 3 | 3 | 2 | 3 | 3 | 3 | 3 |
| Appraisers Training Requirements | 3 | 3 | 2 | 3 | 3 | 3 | [illegible] |

## CARSON COUNTY
## *Part II:*
## 2005-06 Work Practices Survey

## ANALYSIS AND RECOMMENDATIONS

***Real Property Discovery and Valuation Work Practices***

**Sales Collection:** Copies of deeds and declarations of value sent from the recorder's office are the Assessor's main source of sales data. The Assessor follows up with review of additional data from title companies as necessary. These documents are the basis of the sales data bank.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Verification:** The Assessor uses the declarations of value as the primary method of verification. Sales verification letters are sent to the buyer and seller for additional information. The Assessor also establishes direct contact with buyers, sellers, and real estate professionals for specific information. The procedures are consistent with NAC 361.118 (3).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Data Base:** The verified and coded sales data is entered on the primary record for each parcel book. The sales data base is used to establish land factors pursuant to NRS 361.260 (5) and to establish the value of land pursuant to NRS 361.260 (7). Although Carson City is experiencing significant growth resulting in many sales of real property, the sales database is maintained in a satisfactory manner.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Subdivision Analysis:** The Assessor has analyzed all qualified subdivisions in Carson City. The Assessor's staff calculated and applied the appropriate land values as directed by NAC 361.129. A review of the data and documentation found the Assessor's methods and conclusions were supported.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Vacant Land (excluding agricultural property):** The Assessor uses comparable vacant land sales to establish value. Thirty vacant land parcels were included in the study. Six of the observations were not within ratio parameters due to low land values. The Department advised the Assessor's staff about the six observations.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential, Multi-Family Residential, and Commercial/Industrial Land:** Carson City appraisal staff apply the comparable sales methodology authorized by NAC 361.118 when there are sufficient comparable sales for an area. In areas which did not have sufficient sales, the allocation method described in NAC 361.109 is used.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Factors:** The Assessor's large sales data bank is used in establishing land factors. The Assessor has established factor areas and has a working knowledge of the land factor program and the factoring process. The factors were correctly applied, with the exception of a factor of 1.40 applied to Book 08 Pages 07 and 77, near the Waterfall Fire area. The omission affected approximately 139 properties. The Assessor advised the Department about the affected area during the land factor review process, and the Department's chief at the time agreed the omission was appropriate.

**RECOMMENDATION:** Upon further review the Department now advises that the west portion of Book 8 may in the future be more appropriately included with other west side areas such as Book 7.

THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential Improvements:** Thirty improved single-family residential properties were included in the study. Five properties were not within ratio parameters due to minor differences in the appraisals and none of the properties were in the reappraisal area. The Assessor's staff applies the Marshall/Swift residential cost estimator pursuant to NAC 361.128.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Multi-family Residential Improvements:** Thirty improved multi-family residential properties were included in the study, including duplexes and apartment buildings. Five properties were not within ratio parameters. The discovered errors were minor in nature. The Assessor's staff applies the Marshall/Swift residential cost estimator pursuant to NAC 361.128.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Commercial and Industrial Improvements:** Thirty improved commercial/industrial properties were included in the study. Three properties were not within ratio parameters. The Assessor's staff applies the Marshall/Swift commercial cost estimator pursuant to NAC 361.128.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Minor Improvements:** The Assessor's staff values minor yard improvements based on a model developed from Marshall/Swift costs.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**New Construction Valuation:** New construction is discovered through the use of the county building permit system. Nearly all-new construction is discovered in this manner. The Assessor has one real property appraiser that discovers and values new construction throughout the year. During the past work year 2004 there were 327 new improvements valuing approximately $28,402,700. This volume of new construction would indicate that the Assessor should consider an additional property appraiser position. The additional position would improve the efficiency of the office. New construction that is discovered before the close of the roll in December is included at that time. New construction that is discovered after the close of the roll is included on the roll log. A review of several parcels with new construction shows that the improvements are valued and depreciated pursuant to NRS 361.227. The Assessor has established an informal policy to assure that all new construction that is at least 40 percent complete is valued and placed on the roll. However, if a new improvement is found to be less than 40 percent complete on the lien date, it is not valued for the current tax year.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land:** Six parcels were included in this year's ratio study. The Assessor used the prior years Agricultural Bulletin (193) in the valuation process. The values in Bulletin 194 did not differ significantly from Bulletin 193. Three parcels were not within ratio parameters because of the use of the prior manual.
THE ASSESSOR'S PROCEDURES NEEDS IMPROVEMENT (2).

**RECOMMENDATION:** Order the revaluation of agricultural parcels for the 2006-07 year using the 2006-07 Agricultural Bulletin.

**Agricultural Land Classification Maps:** Land classification maps are available for all agricultural parcels and are accurately drawn and properly updated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Bulletin Use:** The Assessor did not use the current Bulletin (194) to value agricultural property.

> **RECOMMENDATION:** The Assessor must check to insure that the current Agricultural Land Use Bulletin is being used by staff appraisers. The Assessor will update all current and factored agricultural parcels to ensure that current Bulletin values are included in this year's roll.
> THE ASSESSOR'S PROCEDURES NEEDS IMPROVEMENT (2).

**Residential Home-site Valuation:** There were no residential home-sites on the sample observations selected. (NA)

**Agricultural Improvements:** One of the sample observations selected included improvements. The improvements were valued using a combination of the Rural Building Manual and the Marshall & Swift Manual pursuant to NAC 361.128 (2).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Deferred Taxes:** There are 49 deferred agricultural properties in Carson City. The procedures utilized by the Assessor in calculating and collecting deferred taxes are consistent with the requirements of NAC 361A.110 through NAC 361A.160.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Higher Use:** Carson City has no "higher use" (multi-residential or commercial) areas on agricultural land. (NA)

**Agricultural Land Conversions:** The Assessor had one agricultural parcel consisting of one acre which was converted to residential use during the 2004 calendar year. The Assessor's calculation of deferred taxes was verified and found to be consistent with NAC 361A.240.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Assessment Maps:** The Assessor's maps are prepared by the Assessor's mapping department. They are of very good quality and easy to use.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Prescribed Parceling System:** The Assessor uses the prescribed parceling system pursuant to NRS 361.189. Summary or referral parcel numbers are not used in Carson City. However, on some parcels where an improvement is on two or more parcels the Assessor apportions the improvement value between each parcel.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

> **RECOMMENDATION**: The apportioned value is sometimes incorrect. The Department recommends the Assessor combine these parcels under one parcel number.

*Personal Property Discovery and Valuation Work Practices*

**Discovery:** Carson City discovers personal property within the county consistent with NRS 361.260(1) and NRS 361.265. Mobile homes are discovered through building permits, Dealer's Report of Sales (DRSs), moving permits and annual field inspections of mobile home parks and reappraisals. Also, mobile homes are discovered by real property appraisers during field work. Billboards are discovered during reappraisal and through building permits. Aircraft are discovered through FAA reports. The Assessor sends an inquiry letter to all aircraft hanger owners and asks for a list of tenants and tail numbers. The airport is visited several times each year to discover unreported aircraft. Businesses are tracked through business licenses. The Treasurer issues business licenses and distributes a copy to the Assessor. The Assessor also performs field inspections several times a year. The Assessor checks a list of businesses against the Treasurer's list of business licenses to ensure all businesses have been assessed and that all information is current.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Record-keeping:** Carson City's personal property files are well organized and managed. Personal property accounts are filed in individual file folders and are easy to locate. Mobile home accounts are filed by account number. The aircraft declarations are filed by tail number. Business, Agricultural and Billboard accounts are filed in alphabetical order with current and previous year's declarations contained in the file. Inactive accounts are filed separately and maintained for several years.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Business Property:** The sample observations reviewed in these categories showed some isolated rounding errors on individual line items but did not result in outliers in any account totals. All observations within the sample are being valued consistently with the Personal Property Manual authorized by NAC 361.1365(3). The county has a 90-95 percent rate of return on declarations. The high rate of return is likely due to a policy of sending multiple requests if the declarations initially sent are not returned.

THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Property:** The sample observations of agricultural use personal property accounts were reviewed and all were done consistently with the Personal Property Manual authorized by NAC 361.1365(3).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Manufactured Housing:** The Assessor values manufactured housing classified as personal property consistent with the requirements of NAC 361.1365 and the Personal Property Manual. The county maintains a separate file on every mobile home for minor improvements of real and personal property items. This study included five (5) secured mobile homes and nine (9) unsecured mobile homes. All parcels in the sample were within statutory limits. The Assessor's procedure for converting manufactured housing from personal property to real property is consistent with NRS 361.2445, NRS 361.325, and NAC 361.130.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Migratory Property:** At the present time, the Assessor has a number of migratory property accounts due to new freeway construction in the county. Mobile homes that enter the county after July 1 are assessed for the first time on the following year's tax roll in accordance with NRS 361.505.

THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billboards:** There were three (3) Billboard accounts reviewed for this study and all were being valued consistently with the requirements of NRS 361.227 (4) and NAC 361.1305.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Aircraft:** There are a substantial number of aircraft based at the Carson City airport. Nine (9) unsecured aircraft were chosen to be reviewed for this study. All observations were within acceptable ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billing/Collection (penalties applied, seizure and sale) Analysis:** Appropriate penalties and interest are being applied to accounts in accordance with statutes. The Assessor sent out 192 seizure notices this past year. Approximately 24 were seized; however none were sold because the taxpayer paid the taxes prior to the sale. The county experiences a low delinquency rate.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

***Other Work Practices***

**Possessory Interest Valuation - Real Property:** Possessory interests valued by the Assessor in Carson City are those residences that have been purchased by the state in order to build the Carson City U.S. 395 Bypass and are currently rented out to the public on a month to month lease agreement. The Assessor applied a land and improvement value to those parcels consistent with the requirements of NRS 361.227(3), NRS 361.2275 and NRS 361.157. In addition, the outpatient facility at the hospital and the privately owned aircraft hangars are valued as possessory interests. The outpatient facility at the hospital includes a land and improvement value. This procedure is in accordance with NRS 361.157.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Possessory Interest Valuation – Personal Property:** There are no personal property possessory interests in Carson City. (N/A)

**Statutes and Regulations:** The Nevada Revised Statutes and the Nevada Administrative Code are available in the Assessor's office. Both have been correctly updated. All staff members also have access to the internet and the Nevada Legislature website with addresses for pages located at http://www.leg.state.nv.us/NRS/Index.cfm and http://www.leg.state.nv.us/NAC/CHAPTERS.HTMl saved on all computers.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Cost Manuals and Systems:** The Assessor uses the module provided by Advanced Data Systems (A.D.S.) using Marshall and Swift computer cost estimator program cost data to value improvements for replacement cost value. The estimator updates are loaded into the computer once each year at the beginning of the work year as per contracted with A.D.S. The September 2003 update is used for the residential property and the October 2003 update is being used for the commercial property. The assessor has four copies of the Assessor's Handbook of Rural Building Costs, four copies of the Marshall and Swift Residential Handbook and two copies of the Marshall and Swift Commercial Handbook. All of the manuals have been updated correctly. Some local costs, which are surveyed on a yearly basis, are also used to value some minor improvements such as concrete flat work and asphalt.

THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Records:** The information in the files is maintained in a timely manner and is consistent with NAC 361.146. Each property record folder contains the most recent Marshall and Swift data entry form and computer printout as well as several older data entry forms. The files also contain a recent picture of the improvements, which are now being taken with digital cameras and a building sketch from the Apex sketch program. The files may also contain building permits, correspondence, appeal documents pertaining to the property, and a new construction breakdown sheet for those parcels having new construction. The majority of the information in the files is necessary to explain and defend the appraisals.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Filing System:** The Assessor's real property record files are organized in parcel number order. This system allows for easy retrieval and is efficient to use.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reports:** The numerous reports required of the Assessor were completed consistent with the requirements of NAC 361.150, NAC 361.151, NAC 361.152, NAC 361.058, NRS 361.079, NRS 360.250, NRS 361.260; and NRS 361.310 and delivered on time, except NRS 360.250.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appeals Preparation and Presentation:** For this tax year there were a total of six appeals to the Carson City Board of Equalization. There were no appeals to the State Board of Equalization.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reopened Roll Log:** The roll log required by NRS 361.310 to be received by the division on or before October 31, 2004 was received on August 4, 2004 and was completed in accordance with statutory requirements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Obsolescence:** The Assessor applies obsolescence to properties in Carson City in which taxable value exceeds full cash value. Obsolescence is measured pursuant to the requirements of NRS 361.227, using the various approaches to value. Obsolescence is applied for several reasons; individual properties have been reduced based on the property's income, long term vacancy or due to deferred maintenance.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Use and Exemption Codes:** A review of the assessment roll revealed that the assessor is applying land use and exemption codes consistent with the requirements of NRS 361.227(1); NRS 361.260(7); and the various statutes exempting certain real and personal property.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Improvement Factoring:** The Assessor applied the statewide improvement factor approved by the Nevada Tax Commission in all non-reappraisal areas of the county.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraiser Certifications:** The Department has certified the Assessor and two real property appraisers to appraise for ad valorem tax purposes. In addition, the Department has certified one member of the assessor's staff in the valuation of personal property.

THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisers Training Requirements:** All of the Carson City staff appraisers are presently in compliance with NRS 361.223.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Cycle:** The Carson City assessor uses a five year reappraisal cycle, as follows:

| Year of Reappraisal | Reappraisal Area | Description | % of Improved Parcels |
|---|---|---|---|
| 2000 | Books 4, 7 | NW Rural, SE Urban | 17% |
| 2001 | Book 8 | NE Rural | 22% |
| 2002 | Book 9 | SW Rural | 17% |
| 2003 | Books 1, 10 | NW City; SE Rural | 21% |
| 2004 | Books 2, 3 | NE, SW Urban | 23% |

This cycle conforms to the requirements of NRS 361.260 (6) and NAC 361.144. The cycle works well for the assessor and is manageable with the available staff.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

## CHURCHILL COUNTY
*Part II:*
*2005-06 Work Practices Survey*

## ANALYSIS AND RECOMMENDATIONS

*Real Property Discovery and Valuation Work Practices*

**Sales Collection:** The Assessor receives copies of deeds and declarations of value from the recorder's office. The pertinent information contained in these documents is verified and input into the computer sales data bank.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Verification:** The Assessor uses two primary methods of verifying the accuracy of information reported on the deed and declaration of value for the purpose of obtaining additional information. Sales verification questionnaires are mailed to the grantees of all vacant sales transactions and to the grantees of those improved sales transactions that are questionable. The Assessor reports a 40% rate of return on these documents. After questionnaires are returned, the assessor verifies any remaining questionable sales at title companies and through personal conversations with buyers, sellers and real estate professionals. The procedures are consistent with NAC 361.118 (3).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Data Base:** Verified sales are entered into the sales data bank and plotted in the land map books with taxable values, splits, adjustments, and zoning. The Assessor maintains a 18-year sales data bank in the county computer. The assessor's sales program is well organized, comprehensive and reliable. The sales data base is used to establish land factors pursuant to NRS 361.260 (5) and to establish the value of land pursuant to NRS 361.260 (7).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Vacant Land (excluding agricultural property):** The Assessor uses comparable vacant land sales to establish value. The Department found the sample of observations was all within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Subdivision Analysis:** The Assessor has analyzed all potential qualified subdivisions in the county. For the fiscal year 2005-2006, there were no subdivisions that qualified for a discount.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential, Multi-Family Residential, and Commercial/Industrial Land:**
Churchill County appraisal staff applies the comparable sales method as authorized by NAC 361.118. With an active real estate market in Churchill, sufficient sales occurred throughout the entire county.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Factors:** The Assessor's sales data bank is used extensively when factoring land. The Assessor applies one separate land factor to each of the entire remaining non-reappraisal areas, thus avoiding island factoring. The Division staff confirmed that the land factors approved by the Nevada Tax Commission were applied to land outside the reappraisal area using a sample of randomly-drawn observations.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential Improvements:** The Assessor's staff applies the Marshall/Swift residential

cost estimator pursuant to NAC 361.128. Forty-one improved single-family residential properties were included in the sample. There were four properties that were out of ratio tolerance in this year's study. Three of these outliers were the result of missed and/or differing minor improvements, while the other resulted in a difference in depreciation. These errors were discussed with the Assessor and her staff and corrections will be made where necessary.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Multi-family Residential Improvements:** The Assessor's staff applies the Marshall/Swift residential cost estimator pursuant to NAC 361.128. Twenty-five improved multi-family residential properties were sampled in this study. There were two outliers in this category. The first outlier was a result of a difference in depreciation, while the other indicated a clerical error and differing minor improvement valuation. These errors were discussed with the Assessor and her staff and corrections will be made where necessary.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Commercial and Industrial Improvements:** The Assessor's staff applies the Marshall/Swift commercial cost estimator pursuant to NAC 361.128. Twenty-seven improved commercial/industrial parcels were sampled in this study with three properties found to be outside ratio parameters. All of these properties were located in the Assessor's non-reappraisal areas. The first property had several newly added minor improvements. A staff appraiser visited the property and updated the file. The second outlier was the result of a display mezzanine being left off of the Marshall & Swift cost sheet. This was noted and will be corrected. The third outlier was the result of a steep increase in the cost of chain-link fencing since the last reappraisal. This will be corrected this year as this property falls in the current reappraisal cycle.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Minor Improvements:** The minor improvements are shown on the Assessor's drawings in great detail. For the most part, minor improvements are properly identified and/or discovered. The Assessor's staff is measuring and classifying the improvements correctly; however, several clerical errors were discovered where the indicated minor improvements were not subsequently valued on the Assessor's cost sheets. These errors were generally not significant enough to cause ratio outliers, but caution needs to be exercised in the attempt to value each property thoroughly and correctly. This was discussed with the Assessor and her staff for future reference. Also, the Assessor uses lump sum values for some yard improvements. The Department's review of these lump sums found them comparable to the Department's itemized amounts.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**New Construction Valuation:** New construction is discovered through the use of the county and city building permit system. New permits are organized by area, and then the improvements are inspected and valued throughout the year. New construction that is discovered before the close of the roll in December is included at that time. New construction that is discovered after the close of the roll is included on the roll log. A review of several parcels with new construction indicates the improvements are valued and depreciated pursuant to NRS 361.227. .
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land:** There were twenty-nine agricultural properties in this year's study. All parcels were valued consistent with the Agricultural Land Values Bulletin #194 and were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Classification Maps:** Land classification maps are available for all agricultural parcels and are accurately drawn and properly updated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Bulletin Use:** The correct Agricultural Land Value Bulletin (194) was used and values applied consistent with the Bulletin values.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Residential Home-site Valuation:** The Assessor valued all homesites in the study consistent with the requirements of NRS 361A.140, NRS 361.227 (1) and Agricultural Bulletin 194, page 3 regarding "Farmsteads." Comparable land sales in the area were used consistent with the requirements of NAC 361.118 (1).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Improvements:** The improvements were valued using a combination of the Rural Building Manual and the Marshall & Swift Manual pursuant to NAC 361.128 (2).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Deferred Taxes:** There are 1,147 deferred agricultural parcels in Churchill County. The Assessor's files include a current agricultural application for each operator. The Assessor requires a new updated application when the ownership changes. The procedures utilized by the Assessor in calculating and collecting deferred taxes are consistent with the requirements of NAC 361A.110 through NAC 361A.160.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Higher Use:** Churchill County has no "higher use" (multi-residential or commercial use) areas on agricultural land. (NA)

**Agricultural Land Conversions:** The Assessor listed 27 parcels totaling 336.83 acres which were converted from agricultural use to residential or commercial / industrial uses. The Assessor's calculation of deferred taxes was verified and found to be consistent with NAC 361A.240.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Assessment Maps:** As of June 1, 2004 the Churchill Assessing Department has taken over the duties of maintaining the tax maps. Prior to this change the county planning department did the maintenance. The major advantage of this change is it enables the Assessor to keep maps current during high growth periods such as what is now occurring. The maps are of good quality and comply with statutes.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Prescribed Parceling System:** The Assessor uses the prescribed parceling system pursuant to NRS 361.189. Summary or referral parcels are not used in Churchill County.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

## Personal Property Discovery and Valuation Work Practices

**Discovery:** Churchill County discovers personal property within the county consistent with NRS 361.260(1) and NRS 361.265. Aircraft are discovered from airport tie down reports and field inspections. Manufactured homes are found from Dealer's Report of Sales (DRSs), city and county

manufactured home setup permits, trip permits from other counties and is in contact with the state utility inspector. New businesses are found through business license reports and building permits. For convenience, the reports and licenses needed to monitor the new businesses are located on the A.D.S. program. The staff also reviews the local phone directory to locate new businesses. Farms and ranches are primarily located through deeds upon sale and field inspection.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Record-keeping:** The personal property filing system continues to remain well organized and managed. The Assessor's staff has completed the process of filing all new manufactured homes in individual file folders. This project was started during the last ratio study. The preexisting accounts are filed alphabetically on cards with DRS and other documentation attached. Secured agricultural and business accounts are filed by Assessor's Parcel Number (APN). Unsecured agricultural and business accounts are filed alphabetically. Aircraft accounts are filed in alphabetical order and maintained in hanging folders.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural:** The sample observations of agricultural use personal property accounts were reviewed and all were done consistently with the Personal Property Manual authorized by NAC 361.1365(3).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Business Property:** All properties are being valued consistently with the Personal Property Manual authorized by NAC 361.1365(3). 15 secured (with 613 subcategories) and 16 unsecured were reviewed. A few isolated line items were outliers, principally due to these items being almost completely depreciated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Manufactured Housing:** The Assessor values manufactured housing classified as personal property consistent with the requirements of NAC 361.1365 and the Personal Property Manual. There were 16 manufactured homes reviewed, 8 unsecured and 8 secured, no outliers were found. Typical office procedure requires one person inputting file data and another staff member reviewing it to ensure accuracy. This works very well as evidenced by so few errors. Separate files for all real property items are maintained. These items are valued and depreciated yearly by the appraisers then added to the manufactured home account. The Assessor's procedure for converting manufactured housing from personal property to real property is consistent with NRS 361.2445, NRS 361.325, and NAC 361.130.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billboards:** There were no secured billboard accounts. One unsecured billboard, which included three separate billboards under this account, was reviewed All were being valued consistently with the requirements of NRS 361.227 (4) and NAC 361.1305.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Aircraft:** Seven unsecured aircraft were sampled, no outliers were found. The staff is assessing this segment of personal property consistent with the requirements of the Personal Property Manual.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Migratory Property:** Churchill County Assessor and staff are aware of the correct procedure for assessing this type of property. The occurrence of migratory property is very infrequent.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billing/Collection (penalties applied, seizure and sale):** Churchill County sent out 32 seizure letters this past year but no property was actually seized. All but one centrally assessed mining account was paid prior to seizure. Appropriate penalties and interest are being applied to accounts in accordance with statutes.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

***Other Work Practices***

**Possessory Interest Valuation - Real Property:** There are three areas of Churchill County where possessory interest real properties are located. One is the area used privately at the county hospital, where both the land and improvements are valued. The second area is the Churchill County Airport, where only the privately owned improvements are valued. The last area is the Naval Air Station located south of Fallon where both the land and improvements used by the contractor are valued. The Assessor applied a land and improvement value to those parcels consistent with the requirements of NRS 361.227(3), NRS 361.2275 and NRS 361.157
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Possessory Interest Valuation – Personal Property:** There are no personal property possessory interests in Churchill County. (N/A)

**Statutes and Regulations:** The Nevada Revised Statutes and the Nevada Administrative Code are available in the Assessor's office. Both have been correctly updated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Cost Manuals and Systems:**
**Analysis:** The Assessor uses the Marshall and Swift computer cost estimator program to value the majority of the major improvements. The estimator updates are loaded into the computer once each year at the beginning of the work year. The September 2003 update is being used for the residential property and the October 2003 update is being used for the commercial property. Advance Data Systems (ADS) has incorporated the Marshall & Swift tables and is now or will be used shortly for valuation. The Assessor has one hardcopy of the Marshall and Swift Commercial Handbook and four hardcopies of the Marshall and Swift Residential valuation handbook available. The approved Rural Building Cost Handbook is used to value most minor and agricultural improvements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3)

**Appraisal Records:** The information in the files is maintained in a timely manner and is consistent with NAC 361.146. Each property record folder contains the most recent Marshall and Swift data entry form and computer printout as well as the data entry form and computer printout from the last reappraisal.

The files also contain a recent picture and drawing of the improvements. The old data entry sheets and computer printouts are used for comparison purposes.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Filing System:** The Assessor's real property files are organized in parcel number order. This system allows for easy retrieval and is efficient to use.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reports:** The numerous reports required of the Assessor were completed consistent with the requirements of NAC 361.150, NAC 361.151, NAC 361.152, NAC 361.058, NRS 361.079, NRS

360.250, NRS 361.260; and NRS 361.310 and delivered on time, including the certification required by NRS 360.250.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appeal Preparation and Presentations:** For this tax year, there were a total of 2 appeals to the Churchill County Board of Equalization. There were no appeals to the State Board of Equalization.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reopened Roll Log:** The roll log is required by NRS 361.310 to be received by the division on or before October 31, 2003. The roll log submitted by Churchill County was received on September 7, 2003 and was completed in accordance with statutory requirements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Obsolescence:** The Assessor applies obsolescence to properties in Churchill County in which taxable value exceeds full cash value. Obsolescence is measured pursuant to the requirements of NRS 361.227, using the various approaches to value. For instance, the Assessor maintains a data bank listing of sales of improved and vacant properties within the county. The taxable values for these properties are compared to their sales prices, then a ratio of taxable value to sales price is calculated for each property to determine if obsolescence is present. The Assessor is currently applying obsolescence to 45 properties in Churchill County. Most are the result of deferred maintenance, are in a flood zone, or are over built for the area. The data on each parcel is complete and the Division agrees with the Assessor's conclusions.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Use and Exemption Codes:** A review of the assessment roll revealed that the Assessor is applying the land use and exemption codes consistent with the requirements of NRS 361.227(1); NRS 361.260(7); and the various statutes exempting certain real and personal property.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Cycle:** The Churchill County Assessor uses a four year reappraisal cycle, as follows:

| Year of Reappraisal | Reappraisal Area | Description | % of Improved Parcels |
|---|---|---|---|
| 2001 | Area 3 | 376 agricultural parcels<br>3,934 non-agricultural parcels (2,230 improved)<br>LOCATED:<br>West of Lovelock Highway<br>North of the City of Fallon and Reno Highway<br>West of Sheckler Cut-Off<br>North of Powerline Road<br>North of Lahontan Reservoir | 33% |
| 2002 | Area 4 | 11 agricultural parcels<br>3,046 non-agricultural parcels (2,793 improved) | 26% |
| 2003 | Area 1 | 443 agricultural parcels<br>2,376 non-agricultural parcels (1,067 improved).<br>LOCATED:<br>East of Lovelock Highway<br>East of Schurz Highway, except Fallon<br>South of Drumm Lane | 20% |

| | | | |
|---|---|---|---|
| | | West of Pasture Road. | |
| 2004 | Area 2 | 363 agricultural parcels | 21% |
| | | 2,528 non-agricultural parcels (1,927 improved) | |
| | | LOCATED: | |
| | | West of Schurz Highway; | |
| | | South of Sheckler and Powerline Road | |
| | | East of Lahontan Reservoir | |
| | | South of Drumm Lane | |
| | | West of Pasture Road | |
| | | South of Reno Highway | |
| | | East of Sheckler Cut-Off | |
| | | West of the City of Fallon | |

This cycle conforms to the requirements of NRS 361.260 (6) and NAC 361.144. The cycle works well for the assessor and is manageable with the available staff.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Improvement Factoring:** The Assessor through the use of the A.D.S. system maintains a code on all improved properties that have qualified for statutory depreciation. The Assessor applies a composite improvement factor which incorporates statutory depreciation and the improvement factor approved by the Nevada Tax Commission to all improvements in non-reappraisal areas. When a property is in its 50th year a different code is issued. Then only the improvement factor plus any determined obsolescence is applied.

**Appraiser Certifications:** The Department has certified the Assessor and one appraiser to appraise personal property for ad valorem tax purposes. In addition, the Department has certified three appraisers to value real property.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisers Training Requirements:** All of the Churchill County appraisers are presently in compliance with NRS 361.221 and NRS 361.223. Additional training hours will be required by June 2007.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

## ELKO COUNTY
### *Part II:*
### *2005-06 Work Practices Survey*

## ANALYSIS AND RECOMMENDATIONS

***Real Property Discovery and Valuation Work Practices***

**Sales Collection:** The Assessor receives copies of deeds and declarations of value from the county recorder.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Verification:** The Assessor's office has worked out an arrangement with both title companies in town to report on each transaction they handle. Each title company fills out a report form on each sale and sends a copy of the report to the Assessor's office each month. Also, the Assessor's office sends out questionnaires to all parties of sales which did not go through a title company. Currently, the Assessor's office is receiving a 10 percent return on questionnaires sent out. The procedures are consistent with NAC 361.118 (3).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Data Base:** The Assessor's office continues to keep all sales information on a personal computer. Due to the updated procedure on storing sales information, older sales, which have been split or changed, are not lost when they receive new parcel numbers. Due to improved sales verification methods, non-market transactions in the sales data bank are infrequent.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Vacant Land (excluding agricultural property):** The Assessor uses comparable vacant land sales to establish value. The square-foot method is used for urban land, and the acreage and site value methods are used for rural land. The sales verification process allows the assessor's staff to set land values in an efficient and timely manner. The Department found the sample of observations was all within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Subdivision Analysis:** The assessor reviewed one subdivision that qualifies for analysis. The Assessor's staff calculated and applied the appropriate land values as directed by NAC 361.129. A review of the data and documentation found the Assessor's methods and conclusions were supported.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3)

**Single-family Residential Land:** Elko County appraisal staff apply the comparable sales methodology authorized by NAC 361.118 when there are sufficient comparable sales for an area. The square-foot method is used for urban land, and the acreage and site value methods are used for rural land. All observations in the sample were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Multi-family Residential Land:** Elko County appraisal staff apply the comparable sales methodology authorized by NAC 361.118 when there are sufficient comparable sales for an area. Using the square foot method. All observations in the sample are within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Commercial and Industrial Land:** Elko County appraisal staff applies the comparable sales methodology authorized by NAC 361.118 when there are sufficient comparable sales for an area. One parcel was out of ratio because the wrong value was placed on the assessment roll. All other observations in the sample were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Factors:** The Assessor uses validated, confirmed arms-length sales to establish land factors. In most areas there are sufficient sales each year to establish a factor. In some areas, and for commercial land, several years of sales must be used to establish a trend. The Division staff confirmed that the land factors approved by the Nevada Tax Commission were applied to land outside the reappraisal area.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential Improvements:** Twenty-nine improved single-family residential properties were included in this study. The assessor is correctly valuing this property type. Minor differences were found which resulted in one sample being out of ratio parameters. The Assessor's staff applies the Marshall/Swift residential cost estimator pursuant to NAC 361.128.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Multi-family Residential Improvements:** Thirty improved multi-family residential properties were included in this study. All of subject improvement ratios are within the statutory limits with only minor differences found. The Assessor's staff applies the Marshall/Swift residential cost estimator pursuant to NAC 361.128.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Commercial and Industrial Improvements:** Thirty improved commercial / industrial properties were included in this study. The assessor is correctly valuing this property type. Six parcels were not within ratio parameters. Two of these had incorrect descriptions, two had incorrect measurements, and two were out for unknown reasons. The Assessor's staff applies the Marshall/Swift commercial cost estimator pursuant to NAC 361.128.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Minor Improvements:** The Assessor discovers and costs minor improvements. All minor improvements are valued individually. The Assessor primarily uses the Rural Building Manual approved by the Tax Commission to value minor improvements in the rural areas. The Assessor's staff is identifying and exempting those items named in NAC 361.085 when valuing the minor improvements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**New Construction Valuation:** New construction is discovered through the use of the county and city building permit systems. New permits are organized by area. New improvements are inspected and valued throughout the year. New construction that is discovered before the close of the roll in December is included at that time. New construction that is discovered after the close of the roll is included on the roll log. A review of several parcels with new construction shows that the improvements are being correctly measured. The improvements are valued pursuant to NRS 361.227.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land:** Twenty-nine properties were sampled for this study. The Assessor applied the values approved by the Nevada Tax Commission in Bulletin 194. All of the sample parcels were within

ratio parameters.
THE ASSESSOR'S PROCEDURES OTHERWISE MEET STANDARDS (3).

**Agricultural Land Records:** The land records are updated and reflect the classification of all agricultural properties.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Classification Maps:** Land classification maps are available for most agricultural parcels and are updated upon reappraisal. The Assessor uses a system of scaled aerial photographs of each parcel with the various land classifications drawn on photocopies of the aerial photos.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Bulletin Use:** The assessor valued all agricultural property in the using the correct Agricultural Bulletin (194).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Residential Home-site Valuation:** The Assessor valued all home-sites in the study consistent with the requirements of NRS 361.227 (1) and Agricultural Bulletin 194, page 3 regarding "Farmsteads." Comparable land sales in the area were used consistent with the requirements of NAC 361.118 (1).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Improvements:** Two improved agricultural properties were included in the study. Both were within ratio parameters. Diverse improvements found on agricultural parcels were valued using a combination of the Rural Building Manual and the Marshall & Swift Manual pursuant to NAC 361.128 (2).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Deferred Taxes:** There are 2,741 deferred agricultural parcels in Elko County. The Assessor's files include a current agricultural application for each operator. The Assessor requires a new updated application when the ownership of the parcel changes. The procedures utilized by the Assessor in calculating and collecting deferred taxes are consistent with the requirements of NAC 361A.110 through NAC 361A.160.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Higher Use:** Elko County has no "higher use" (multi-residential or commercial) areas on agricultural land. (N/A)

**Agricultural Land Conversions:** The Assessor listed two parcels totaling 629 acres that were converted from agricultural use to residential or commercial / industrial use during the 2004 calendar year. In both of the cases reviewed, the Assessor's calculations of deferred taxes were verified and found to be consistent with NAC 361A.240.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Assessment Maps:** The assessment maps are professionally rendered but difficult to work with. The maps are poorly indexed and it is difficult to determine the location of some parcels. In many cases parcels are not contiguous, yet have the same parcel number.

This is contrary to accepted mapping standards. This situation was noted in the last four studies and has not been remedied as required by NRS 361.189. The Assessor has requested funding that would solve this deficiency.
THE ASSESSOR'S PROCEDURES NEED IMPROVEMENT (2).

> **RECOMMENDATION:** Develop a standardized map indexing method similar to that used by other counties. Assign separate parcel numbers to non-contiguous parcels under one ownership. Currently, the assessor is trying to obtain funding that would be used for a GIS system. This would do much to standardize the mapping process.

**Prescribed Parceling System:** Elko County's method of assigning parcel numbers does not meet Nevada's parceling system standards pursuant to NRS 361.189. Many of these parcels are not contiguous and are separated by highways, roads, other parcels, etc. Some are miles apart. This is especially true of many agricultural parcels and makes it very difficult to determine the location of the property; the value assigned each parcel, or the location of the improvements and various forage classifications.
THE ASSESSOR'S PROCEDURES ARE DEFICIENT (1).

> **RECOMMENDATION:** Assign an individual parcel number to <u>each</u> non-contiguous parcel. Refer to the Manual of Assessment Policies and Procedures, Section III, for correct methods. Ensure that improvements and appropriate land class are assigned to the correct parcel.

***<u>Personal Property Discovery and Valuation Work Practices</u>***

**Discovery:** The Elko County Assessor discovers personal property within the county consistent with NRS 361.260(1) and NRS 361.265. Aircraft are discovered through FAA reports and physical inspections. Manufactured homes are found in a variety of ways including monthly manufactured housing inspection lists for hookups, Dealer's Report of Sales (DRSs) sent by Nevada dealers, trip permits, field inspections by the appraisers, and inquiry letters sent to the manufactured home parks in the county on a yearly basis. New businesses are located through monthly business license lists, building permits, local newspapers and site inspections. Farms and ranches are well established. The staff reviews deed changes for new ownership information and sends out personal property declarations when a change occurs. Billboards are discovered through Department of Transportation sign permits and building permits.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Record-keeping:** The filing system utilized by the Elko County assessor's office is well organized and maintained. Manufactured homes are filed alphabetically in separate file folders, with one unit per file. The DRS and other valuation documentation are maintained in the files. Aircraft are filed alphabetically in individual file folders. Agricultural personal property declarations are alphabetical in individual file folders. Business properties are filed together in folders in alphabetical order. Secured and unsecured records are filed in separate drawers. Billboards are filed in one folder per year and are in alphabetical order.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Property:** The sample observations of agricultural use personal property accounts were reviewed and all were done consistently with the Personal Property Manual authorized by NAC 361.1365(3).

of 25 properties reviewed in the study, 11 secured and 14 unsecured, one outlier was found. The outlier was the result of an incorrect class life assignment. This was noted to the assessor and corrected.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Business Property:** All observations within the sample are being valued consistently with the Personal Property Manual authorized by NAC 361.1365(3). There are over 2,500 businesses located in Elko County. The division sampled 24 properties, 10 secured and 14 unsecured.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Manufactured Housing:** The Assessor values manufactured housing classified as personal property consistent with the requirements of NAC 361.1365 and the Personal Property Manual. The Department sampled 17 manufactured home accounts, 8 secured and 9 unsecured accounts. Of these; none were out of tolerance. The Assessor's procedure for converting manufactured housing from personal property to real property is consistent with NRS 361.2445, NRS 361.325, and NAC 361.130.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billboards:** The sample included 7 unsecured billboards, there are no secured billboards. Of the observations reviewed, none were found to be out of tolerance. The observations were valued consistently with the requirements of NRS 361.227 (4) and NAC 361.1305.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Aircraft:** Of the 8 unsecured aircraft reviewed, none were out of tolerance. There are no secured aircraft in Elko County. The Assessor is assessing this segment of personal property consistent with the requirements of the Personal Property Manual.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Migratory Property:** The county has several construction companies that move equipment and mobile homes in and out of the state annually. The staff is assessing this type of property consistent with the requirements of NRS 361.505., and tracks them through building permits. The county is valuing manufactured homes that arrive in the county after July 1 and are likely to remain more than one year pursuant to the provisions of the Personal Property Manual adopted by the Nevada Tax Commission.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billing/Collection (penalties applied, seizure and sale):** The county has a low delinquency rate indicating that there are appropriate procedures in place for collecting unsecured taxes. Appropriate penalties and interest have been applied to accounts in accordance with statutes. For the tax year 2003-04, there were 124 accounts in the amount of $25,868.55. This will be the last year that the Assessor is involved with billing and collection as the County Treasurer will take over this task All delinquent taxes were paid prior to any seizures being made. Elko County now utilizes the Internet to auction off any seized parcels that have not been made current.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

***Other Work Practices***

**Possessory Interest Valuation - Real Property:** There are two areas in Elko County where possessory interest real properties are located. These properties are the cabins on U S Forest Service land at Lamoille Canyon, where both the land and improvements are valued consistent with the requirements of NRS 361.227(3), NRS 361.2275 and NRS 361.157. The other area is the Elko County Airport, where

the privately owned improvements are valued in accordance with NRS 361.157.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Possessory Interest Valuation - Personal Property:** There are no personal property possessory interests in Elko County. (N/A)

**Statutes and Regulations:** The Nevada Revised Statutes and the Nevada Administrative Code are available in the assessor's office. Both have been correctly updated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Cost Manuals and Systems:** The Assessor uses the Marshall and Swift computer cost estimator program to value the majority of the major improvements. The estimator updates are loaded into the computer once each year at the beginning of the work year. The September 2003 update is being used for the residential property and the October 2003 update is being used for the commercial property. The Assessor has five copies each of the Marshall and Swift Commercial Handbook, the Assessor's Handbook of Rural Building Costs and the Marshall and Swift Residential Handbook. All of the manuals have been correctly updated. The Assessor's miscellaneous building program, which is based on the Marshall and Swift cost manuals and the Rural Building Cost Handbook, is used to value most minor and agricultural improvements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Records:** Appraisal record information files are maintained in a timely manner and is consistent with NAC 361.146. Each property record folder contains the most recent Marshall and Swift data entry form and computer printout as well as the data entry form and computer printout from the last appraisal. The files also contain a recent picture and drawing of the improvements. The old data entry sheets and computer printouts are used for comparison purposes. Only the information needed to identify the property and defend the appraisal is included.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Filing System:** The assessor's real property record files are organized in parcel number order. This system is very efficient and easy to use.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reports:** The numerous reports required of the Assessor were completed consistent with the requirements of NAC 361.150, NAC 361.151, NAC 361.152, NAC 361.058, NRS 361.079, NRS 360.250, NRS 361.260; and NRS 361.310 and delivered on time, except NRS 360.250.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appeal Preparation and Presentations:** For this tax year, there were a total of 13 appeals of which only were presented before the Elko County Board of Equalization.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reopened Roll Log:** The roll log required by NRS 361.310, to be received by the division on or before October 31, 2004, was received in July, 2004 and was completed in accordance with statutory requirements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Obsolescence:** The Assessor applies obsolescence to properties in Elko County in which taxable value exceeds full cash value. Obsolescence is measured pursuant to the requirements of NRS 361.227, using the various approaches to value. The Assessor maintains a list of those parcels that receive obsolescence. The Assessor applies obsolescence to predominantly multi-residential and converted mobile homes.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Use and Exemption Codes:** A review of the assessment roll revealed that the Assessor is applying the land use and exemption codes consistent with the requirements of NRS 361.227(1); NRS 361.260(7); and the various statutes exempting certain real and personal property.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Cycle:** The Assessor has completed the new reorganized appraisal cycle that was initiated prior to the last ratio study conducted in 2001. The parcel count is now more evenly and geographically distributed. This current ratio study indicates that this restructuring of the Elko appraisal cycle is working as intended.

| Year of Reappraisal | Reappraisal Area | Description | % of Improved Parcels |
|---|---|---|---|
| 2004 | | 4504 non-agricultural parcels (2460 improved) | |
| | | 816 agricultural parcels | 18% |
| | | LOCATED: | |
| | 002-210 | Elko City | |
| | 002-220 | Carlin City | |
| | 083 | Crestview Sub | |
| | 003-601-549 | Gold Circle (Midas) | |
| | 092 | Goldview Estates | |
| | 006-09J | Government Tracts | |
| | 029 | Jackcreek Subdivision | |
| | 003-401-436 | Mountain City | |
| | 036 | Meadow Valley Ranchos Unit #4 | |
| | 037 | Meadow Valley Ranchos Unit #5 | |
| | Various | Ranches N of Oasis, N of Metropolis | |
| | | Including Jarbridge, Pilot Valley | |
| | | Patented mining | |
| | 091 | Sundance Estates Unit #1 | |
| | | Sundance Estates Unit #3 | |
| | 021 | Tuscarora | |
| | 073 | Wild Horse Estates | |
| | 085 | Wild Horse Estates #1 | |
| | 090 | Wild Horse Estates #2 | |
| | 068 | Special lands; Thousand Springs Sub Unit #1 | |
| | | AG, Thousand Springs Sub Unit #2 | |

THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Improvement Factoring:** The Assessor applied the statewide improvement factor approved by the Nevada Tax Commission in all non-reappraisal areas of the county.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraiser Certifications:** The Department has certified the assessor and six real property appraisers to appraise for ad valorem tax purposes. In addition, three of those appraisers are also certified in the valuation of personal property.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisers Training Requirements:** All of the Elko County staff appraisers are presently in compliance with NRS 361.221 and NRS 361.223.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

## LANDER COUNTY
### *Part II:*
### *2005-06 Work Practices Survey*

## ANALYSIS AND RECOMMENDATIONS

***Real Property Discovery and Valuation Work Practices***

**Sales Collection:** The Assessor receives copies of recorded deeds and declarations of value from the Recorder's office and receives data sheets from all area title companies. The pertinent information contained in these documents is verified and input into the computer sales data bank.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Verification:** The Assessor uses two primary methods of verifying the accuracy of information reported on the deed and declaration of value for the purpose of obtaining information. Sales questionnaires are mailed to the grantees and grantors of all sales transactions. The assessor is receiving an 80 percent return rate on the questionnaires. A second and third mailing is required for unreturned questionnaires. The Assessor is able to verify nearly all sales using this method. The procedures are consistent with NAC 361.118 (3).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Database:** The sales data base is used to establish land factors pursuant to NRS 361.260 (5) and to establish the value of land pursuant to NRS 361.260 (7). The Assessor's data bank is continually improving in both content and accuracy. The comments portion provides more useful information for confirming sales verifications, information concerning terms of sale, motives of buyers and sellers, multi-parcel sales, and grantor/grantee relationships, any of which could affect the validity of sales.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Vacant Land (excluding agricultural property):** The Assessor uses comparable vacant land sales to establish value. Thirty-four vacant properties were sampled in this study and two were found to be out of ratio parameters. Both are in the factored area and were last appraised by a county-hired independent appraiser. Due to the area maps at the time, the parcels were incorrectly located and values were determined based on an incorrect inspection. These parcels were discussed with the Assessor and will be corrected during the next reappraisal cycle. The Assessor will also appraise all the land in the Kingston area in 2005 to ensure all parcels are properly valued. There were very few recent sales in the reappraisal area resulting in little or no change from last year's values; however, the Assessor and staff continue to diligently research and study land values in the reappraisal area.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Subdivision Analysis:** The assessor has analyzed all potential qualified subdivisions in Lander County. For the 2005-2006 fiscal year, there are 13 subdivision ownerships that qualify for a discount. The Assessor's staff calculates and applies the appropriate land values as directed by NAC 361.129. A review of the data and documentation found the Assessor's methods and conclusions were supported.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential, Multi-Family Residential, and Commercial/Industrial Land:** The Assessor applies the comparable sales methodology authorized by NAC 361.118 when there are sufficient comparable sales for an area. In areas that exhibit insufficient verified sales data the Assessor has been applying a factor of one. The Assessor has been made aware of NAC 361.118. The process of

abstraction and allocation has not proven to be viable due to extreme variation in sales. The Division developed a proposed method of land valuation based upon a numeric grading system and this was discussed with the Assessor. Twenty-five improved single-family residential land parcels, twenty-five multi family land parcels and eighteen commercial/industrial land parcels were sampled in this study. One single family residential land value was found to be outside the ratio parameters. This was discussed with the assessor and was corrected. Fifteen improved multi-family residential land parcels were sampled in this study. The Division's appraiser agreed with the land values assigned to the parcels by the Assessor for this property type. Eighteen improved commercial/industrial land parcels were sampled in this study. The Division's appraiser agreed with all land values assigned by the assessor for this property type.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Factors:** The Assessor uses the sales data bank in correlation with an Excel spreadsheet when establishing land factors. Due to the limited number of sales each year, the Assessor must use several years of sales to develop a factor trend, consistent with NAC 361.118(1)(f)(2). The Division staff confirmed that the land factors approved by the Nevada Tax Commission were applied to land outside the reappraisal area using a sample of randomly-drawn observations.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential Improvements:** The Assessor applies the Marshall/Swift residential cost estimator pursuant to NAC 361.128. Twenty-five improved single-family residential properties were studied this year. Twenty-two were within ratio parameters. Of the three that were out of tolerance, one was in the county's reappraisal area and was due to a simple clerical error of using the conversion date instead of the age-weighted date when calculating the depreciation. This will be corrected on the open roll. The next outlier was due to completed construction of the home and added improvements since the last appraisal of the property. The Assessor is aware of the changes and plans to re-appraise the new construction of the property. The third will be included in the 2005 re-appraisal year, but due to a land use code change, should have been done in 2004. There were several small improvement differences in size as well as missing items. These were discussed with the Assessor and will be corrected.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Multi-family Residential Improvements:** The Assessor applies the Marshall/Swift residential cost estimator pursuant to NAC 361.128. Fifteen improved multi-family residential properties were studied, ten were within ratio parameters. All five properties that were out of ratio tolerance will be included in the 2005 re-appraisal cycle. One was discovered to be a clerical error in the construction year of the improvements and will be corrected on the open roll. Two have improvements that were added since the last reappraisal and did not require permits. Two have description errors which affected the costing of the improvements. These outliers were discussed with the Assessor and will be corrected.
ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Commercial and Industrial Improvements:** The Assessor applies the Marshall/Swift commercial cost estimator pursuant to NAC 361.128. Eighteen improved commercial and industrial properties were included in the study. Nine were found to be within ratio parameters. Of the nine outliers, one was due to a well that was last valued using a local well survey which has since been valued using the Marshall and Swift cost manual. Five were due to occupancy and/or improvement changes that did not require permits since last reappraisal. One was due to an addition to "heating and air" options in the Marshal and Swift manual that were not available when last valued. One was due to incorrect age-weighting and improvement differences that will be corrected on the open roll. One included a number of improvement differences on an exempt property. The commercial and industrial portion of Battle Mountain will be

reappraised in 2005. The Assessor has agreed to pay particular attention to this category in order to discover any and all improvement changes since last reappraisal. All of these items have been discussed with the Assessor and will be corrected during reappraisal in 2005 unless otherwise specified.
THE ASSESSOR'S PROCEDURES NEED IMPROVEMENT (2).

**Minor Improvements:** The minor improvements attached to the home are shown on the Assessor's drawings in detail. Items such as sheds and other out-buildings do not always appear on the drawing but are reflected on the small improvements sheet (square footage and construction year). The Assessor's method is consistent and easy to follow.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**New Construction Valuation:** The Assessor discovers new construction using the county building permits that are received on a monthly basis. Nearly all new construction is discovered in this manner. New construction that is discovered before the close of the roll in December is included at that time. New construction that is discovered after the close of the roll, but before July 1st, is included on the roll log. However, because of the rural nature of the county, many improvements are put in place without the need or use of a county permit and therefore are not discovered until reappraisal. A review of several parcels with new construction shows that the improvements are valued and depreciated pursuant to NRS 361.227.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land:** Agricultural land was valued consistent with the Agricultural Land Values Bulletin #194. Twenty-four agricultural land parcels were included in this study. All samples were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Records:** The land records are accurate and reflect the new appraisals.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Classification Maps:** Lander has made great strides in this category, having undertaken a complete revision of these maps over the past five years. Many of the old land maps had been lost, were decaying from age or were not properly updated. The new maps correctly reflected the current crop and forage potential of each parcel.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Bulletin Use:** The correct Agricultural Land Value Bulletin (194) was used and values applied consistent with the Bulletin values.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Residential Home-site Valuation:** The Assessor valued all homesites in the study consistent with the requirements of NRS 361A.140, NRS 361.227 (1) and Agricultural Bulletin 194, page 3 regarding "Farmsteads." Comparable land sales in the area were used consistent with the requirements of NAC 361.118 (1).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Improvements:** Four of the twenty-four parcels in this study had improvements. Upon field inspection and valuation, all parcels were found to be inventoried and valued using a combination of the Rural Building Manual and the Marshall & Swift Manual pursuant to NAC 361.128 (2).

THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Deferred Taxes:** The procedures utilized by the Assessor in calculating and collecting deferred taxes are consistent with the requirements of NAC 361A.110 through NAC 361A.160.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Higher Use:** There were no value changes due to higher use during this past calendar year for the 2005-2006 tax cycle. (NA)

**Assessment Maps:** Geo Graphics of Nebraska prepares the Assessor's maps. They are of good quality and conform with Nevada Revised Statutes.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Prescribed Parceling System:** The Assessor uses the prescribed parceling system pursuant to NRS 361.189, except summary parcels are used on a very limited basis and only for billing purposes. The summary parcels are used for the convenience of the taxpayer so that they may receive only one tax bill. The Assessor maintains an individual value for each parcel that is associated with the summary parcel.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

***Personal Property Discovery and Valuation Work Practices***

**Discovery:** The Assessor discovers personal property within the county consistent with NRS 361.260(1) and NRS 361.265. Business licenses are required by the county for all new businesses. The FAA report is the main tool used to discover aircraft located within the county. By monitoring all new manufactured home hook-up permits issued by the county, D.R.S's from manufactured home dealers, discovering homes in the field, and trip permits from other counties, the Assessor accomplishes both timely and accurate discovery and assessment of new mobile homes. Since the county is relatively small in population, the staff is informally informed of most changes or additions in the county. The county staff did not use the Department of Transportation Highway Report on billboard location. They are planning to get a copy in the near future and incorporate this information in their discovery process. In addition, the staff is now conducting a physical search to verify the total number of billboards in the county.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Record-keeping:** This category has improved a great deal since the last ratio study. All of the records are now being filed numerically which increases speed and convenience. The manufactured home accounts have individual file folders with the Dealer's Report of Sale and other pertinent information included. The ranch and business declarations are now filed individually in separate file folders arranged in numeric order. The files have been purged of old declarations and other outdated material from the system.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural:** There were no secured agricultural parcels on the tax roll. Six unsecured agricultural parcels were reviewed and all were inventoried and all were done consistently with the Personal Property Manual authorized by NAC 361.1365(3).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Business Property:** All observations within the sample are being valued consistently with the Personal

Property Manual authorized by NAC 361.1365(3). Seven secured and thirteen unsecured business properties were reviewed. While there were no individual parcels out of compliance there were a few individual line items that were outliers. The reason for this was that these "outliers" were either entirely depreciated to the maximum limit or nearly so and mathematical rounding was the cause for these being outside of the limits.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Manufactured Housing:** The Assessor values manufactured housing classified as personal property consistent with the requirements of NAC 361.1365 and the Personal Property Manual. There were six secured and five unsecured manufactured homes reviewed in this study. The Dealer's Report of Sale information and other original value documentation is available for all mobile homes and all accounts are filed numerically. The Assessor and staff have a separate file folder for deactivated accounts in place and all files look neat and orderly. Real property improvements are kept in separate files and calculated properly. The Assessor's procedure for converting manufactured housing from personal property to real property is consistent with NRS 361.2445, NRS 361.325, and NAC 361.130.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billboards:** Five unsecured billboard accounts were reviewed and all were inventoried and valued consistently with the requirements of NRS 361.227 (4) and NAC 361.1305. When the original tax roll was sampled there appeared to be an inordinate number of billboard accounts in proportion to total parcel and land use counts. Upon office inspection it was determined that most signage from business and commercial accounts were erroneously categorized and labeled as billboards. This was brought to the Assessor's attention and is being corrected. The Department suggested the use of the Department of Transportation report that identifies signs and billboards located on Interstate 80. The Assessor intends to obtain and use this report.
THE ASSESSOR'S PROCEDURES NEEDS IMPROVEMENT (2).

**Aircraft:** There are very few unsecured and no secured aircraft located in Lander County. The county has aggressively discovered, valued, and taxed them consistent with the requirements of the Personal Property Manual. The Department reviewed four samples in this category. Of these, none were discovered to be out of tolerance.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Migratory Property:** The Assessor and her staff continue to use a system that was implemented several years ago to ensure that these types of migratory properties are discovered and assessed in accordance with NRS 361.505. Manufactured homes in Lander County are treated correctly as it pertains to migratory property. All manufactured homes entering the county after July 1st are correctly classified as non-migratory and are placed on the next succeeding tax roll. Manufactured and portable offices are correctly classified as migratory.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billing/Collection (penalties applied, seizure and sale):** The Treasurer is responsible for the collection of delinquent accounts and this has dramatically improved in Lander County from the previous study. Unsecured personal property tax uncollected prior to the 2005-2006 billing cycle, including penalties and interest, is approximately $2,000.

Appropriate penalties and interest are being applied to accounts in accordance with statutes. Although the assessor posted four seizure notices in the past year, no seizures occurred.

THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

*Other Work Practices*

**Possessory Interest Valuation - Real Property:** The only possessory interests valued by the Assessor in Lander County are the privately owned hangers at the Kingston airport. The hangars at the airport have only an improvement value which is correctly applied in accordance with NRS 361.157.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Possessory Interest Valuation - Personal Property:** There is no personal property possessory interest in Lander County. (N/A)

**Statutes and Regulations:** The Nevada Revised Statutes and the Nevada Administrative Codes are available in the assessor's office. Both have been correctly updated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Cost Manuals and Systems:** The Assessor uses the 2003 Marshall and Swift computer estimator programs to value most major improvements. The estimator updates are loaded into the computer annually at the beginning of the work year. The September 2003 update is used for the residential property. The October 2003 update is used for the commercial property and the assessor has one copy each of the Marshall and Swift Residential and Commercial Cost Manuals and two copies of the Assessor's Handbook of Rural Building Costs. The Assessor's miscellaneous building program which is based on the Marshall and Swift cost manuals and the Handbook of Rural Building Costs are used to value most minor agricultural improvements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Records:** The information in the files is maintained in a timely manner and is consistent with NAC 361.146. Each property record file contains a drawing and picture of the improvements, a Marshall and Swift data entry form and printout, and a miscellaneous building sheet. In addition, some information from the previous appraisals may be included for comparison purposes. Only the information needed to identify the property and defend the appraisal is included.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Filing System:** The assessor's real property files are well organized by parcel number.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reports:** The numerous reports required of the Assessor were completed consistent with the requirements of NAC 361.150, NAC 361.151, NAC 361.152, NAC 361.058, NRS 361.079, NRS 360.250, NRS 361.260; and NRS 361.310 and delivered on time, except NRS 360.250.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appeal Preparation and Presentation:** For this tax year there were three appeals to the Lander County Board of Equalization and none of these continued on to the State Board.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reopened Roll Log:** The roll log required by NRS 361.310 to be received on or before October 31, was received on October 26, 2004. This report was completed in accordance with statutory requirements.

THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Obsolescence:** The Assessor reviews sale prices and compares taxable value to determine whether obsolescence is necessary. Obsolescence has not been applied to any parcels in Lander County.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Use and Exemption Codes:** A review of the assessment roll revealed that the Assessor is correctly applying the land use and exemption codes
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Cycle:** The Lander County Assessor uses a five year reappraisal cycle, as follows:

| Year of Reappraisal | Reappraisal Area | Description | % of Improved Parcels |
|---|---|---|---|
| 2000 | 1 | 1063 non-agricultural parcels (968 improved)<br>LOCATED:<br>Districts 2, 5, & 7,<br>Battle Mountain Town, Multi-family<br>Residential, Commercial,<br>Antelope Reese Road<br>Battle Mountain Road<br>(Books 2 and 7) | 29% |
| 2001 | 2 | 102 agricultural;<br>1359 non-agricultural parcels (273 improved)<br>LOCATED:<br>Districts 3, 4, 6, Kingston Town,<br>Gillman Springs Ranch, Austin Road<br>(Books 3, 4, and 6) | 20% |
| 2002 | 3 | 147 agricultural;<br>463 non-agricultural parcels (297 improved)<br>LOCATED:<br>Districts 1, 5, 6, Austin Town<br>Antelope Reese Road, Austin Road<br>(Books 1 and 5) | 9% |
| 2003 | 4 | 415 agricultural parcels;<br>1506 non-agricultural parcels (572 improved)<br>LOCATED:<br>District 8, Battle Mountain Road<br>Hilltop Muleshoe (Book 10 & 11) | 27% |
| 2004 | 5 | 1064 non-agricultural parcels (975 improved)<br>LOCATED:<br>District 2, Battle Mountain SFR | 15% |

This cycle currently does not work well for the Assessor. The Assessor will be submitting a letter requesting suggested changes.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Improvement Factors:** The Assessor uses a composite improvement factor which incorporates

statutory depreciation and the improvement factor approved by the Nevada Tax Commission for all improvements under 50 years of age in non-reappraisal areas, and the trended improvement factor alone on all improvements over 50 years of age. The Assessor applies a numeric code system of 10 and 50 to track the improvements (10 being less than 50 years old and 50 for those properties 50 years old and older). When an improvement reaches 50 years, it is flagged and the numeric code changed.

**Appraiser Certification:** At this time, the Assessor is the only certified real property and personal property appraiser in the office. There is one employee with a Temporary Appraiser's Certificate pending successful completion of the Appraiser Certification Exam and one data collector. Both of these employees are new to the office.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraiser Training Requirements:** The Lander County Assessor is presently in compliance with NRS 361.221 and NRS 361.223.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

## PERSHING COUNTY
## *Part II:*
## 2005-06 Work Practices Survey

## ANALYSIS AND RECOMMENDATIONS

***Real Property Discovery and Valuation Work Practices***

**Sales Collection:** The Assessor receives copies of recorded deeds and declarations of value from the recorder's office. These documents are the basis of the sales data bank.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Verification:** The verification of sales is accomplished primarily through declarations of value and questionnaires sent to both grantor and grantee. Sales verification letters are sent to the buyer and seller for additional information. The assessor also uses direct contact with buyers, sellers, and real estate professionals for specific information. When there is a failure to respond on the part of the grantor/grantee, the assessing department attempts to further make contact to verify sales data. The procedures are consistent with NAC 361.118 (3).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Database:** The sales database is maintained in a satisfactory manner, and is improving in both content and accuracy. The comments portion of the questionnaire provides further opportunity to include additional information for confirming sales validity, the terms of the sale, motives of buyers and sellers, multi-parcel sales and grantor/grantee relationships, any of which could affect the validity of sales. The sales data base is used to establish land factors pursuant to NRS 361.260 (5) and to establish the value of land pursuant to NRS 361.260 (7).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Vacant Land (excluding agricultural property):** The Assessor uses comparable vacant land sales to establish value. Thirty-two (32) vacant properties were sampled throughout the county in this year's study and all were within ratio parameters. As in prior years, valid verified sales occur infrequently. Recent positive economic indicators show a slight positive growth since the study.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Subdivision Analysis:** For the 2005-2006 study cycle there were no subdivisions that would qualify for a subdivision discount.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential, Multi-Family Residential, and Commercial/Industrial Land:** The Assessor applies the comparable sales methodology authorized by NAC 361.118 when there are sufficient comparable sales for an area. Thirty-two (32) vacant properties were sampled throughout the county and all were within ratio parameters. Eleven (11) improved multi-family residential land parcels were sampled in this study and all were within ratio parameters. Twelve (12) improved commercial/industrial land parcels were sampled in this study and all were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Factors:** The assessor has compiled an extensive verified vacant land sales data bank. Valid sales in Pershing County for several years has been very sparse. In order to develop any trending the assessor has to use several years' worth of sales to obtain reasonable factoring values, consistent with NAC 361.118(1)(f)(2). The Division staff confirmed that the land factors approved by the Nevada Tax Commission were applied to land outside the reappraisal area using a sample of randomly-drawn observations. Of the thirty-two parcels reviewed all were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential Improvements:** Thirty-two (32) improved single-family residential properties were included in the study. One parcel was outside of the ratio parameters. This parcel was a converted manufactured home that is now on the Secured Real Property Roll. The County Board of Equalization ordered a reduction of assessed value on this parcel prior to its conversion. The Assessor applies the Marshall/Swift residential cost estimator pursuant to NAC 361.128.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Multi-family Residential Improvements:** The Assessor applies the Marshall/Swift residential cost estimator pursuant to NAC 361.128. Twelve (12) improved multi-family residential properties were selected for review. All twelve appraised parcels were within acceptable ratio standards.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Commercial and Industrial Improvements:** The Assessor applies the Marshall/Swift commercial cost estimator pursuant to NAC 361.128. Twelve (12) improved commercial/industrial properties were included in the study. There was one outlier. The reason for this one parcel being out of ratio was a result of the Division using the Marshall & Swift valuation guide software and the county appraiser using the Rural Building Manual. It was determined that the Rural Building Manual was the more accurate valuation guide, and the parcel was revalued. The results were within ratio standards.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Minor Improvements:** The Division occasionally noticed some differences in the number of minor improvements observed from those valued by the assessor's staff. This was especially true with fencing. These small errors have not resulted in values being out of ratio. The staff applies the Marshall & Swift cost handbook or the Rural Building Cost Manual for the valuation of the minor improvements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**New Construction Valuation:** New construction is discovered through the use of the county and city building permit systems. All new construction is discovered in this manner. New construction that is discovered before the close of the roll in December is included at that time. New construction discovered after the close of the roll is included on the roll log. A review of two parcels that exhibited new construction shows that the improvements are valued and depreciated pursuant to NRS 361.227
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land:** Agricultural land was valued consistent with the Agricultural Land Values Bulletin #194. There were twenty-four agricultural parcels sampled in this study. All of the parcels were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Records:** The land records are accurately updated during reappraisal and accurately reflect the agricultural classifications of each property.

THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Classification Maps:** The Assessor's files contain maps of each agricultural property. The maps are updated during each reappraisal and accurately reflect the various land classifications of the parcel.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Bulletin Use:** The assessor valued all agricultural parcels using the current Agricultural Bulletin (194).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Residential Home-site Valuation:** The Assessor valued all home-sites in the study consistent with the requirements of NRS 361A.140, NRS 361.227 (1) and Agricultural Bulletin 194, page 3 regarding "Farmsteads." Comparable land sales in the area were used consistent with the requirements of NAC 361.118 (1).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Improvements:** Two improved agricultural properties were included in the study. Both properties were within ratio parameters and valued correctly using the Rural Building Manual.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Deferred Taxes:** There are 1,812 deferred agricultural parcels in Pershing County. The Assessor's files include a current agricultural application for each operator. The Assessor requires a new application when the ownership changes. The procedures utilized by the Assessor in calculating and collecting deferred taxes are consistent with the requirements of NAC 361A.110 through NAC 361A.160.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Higher Use:** Pershing County has one higher use area on agricultural land. This higher use area, which is commercial in nature, has a land value similar to comparable commercial properties in the area.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Conversions:** For the calendar year 2004 the Assessor had 26 parcels totaling 16,640 acres converted from agricultural use to residential or commercial / industrial use. A review of the Assessor's calculation for deferred taxes are consistent with the requirements of NAC 361A.110 through NAC 361A.160.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Assessment Maps:** The Assessor's maps are prepared by Desert Mountain Surveying in Winnemucca. They are of good quality and easy to use.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Prescribed Parceling System:** The Assessor uses the prescribed parceling system pursuant to NRS 361.189. Summary or referral parcels are no longer used in Pershing County.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

***Personal Property Discovery and Valuation Work Practices***

**Discovery:** The Assessor discovers personal property within the county consistent with NRS 361.260(1) and NRS 361.265. Manufactured home owners are required to obtain a building permit and inspection prior to the hookup of utilities. The Assessor obtains a building permit listing from the building department on a regular basis. Manufactured homes are also discovered using Dealer's Report of Sale (DRS), trip permits from other counties and discovery in the field. The county requires business licenses for all businesses and this information is transmitted to the ssessor's office. Most agricultural use properties have been in operation for some time.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Record-keeping:** The Pershing County's record keeping system displayed some weaknesses during the 2002-03 ratio studies, with respect to manufactured housing records. During the current study of 2005-06, the record keeping system shows no deficiencies. Business and ranch declarations are filed in individual folders with present and past years declarations enclosed. Manufactured home records are also kept in individual folders and filed numerically by account number.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Property:** Pershing County has a significant amount of ranch and farm equipment for its size. Seven Secured and five unsecured agricultural accounts were reviewed and valued consistently with the Personal Property Manual authorized by NAC 361.1365(3). None of these accounts were out of tolerance.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3)

**Business Property:** All observations within the sample are being valued consistently with the Personal Property Manual authorized by NAC 361.1365(3). The samples consisted of six secured and seven unsecured accounts. There were no outliers.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Manufactured Housing:** The Assessor values manufactured housing classified as personal property consistent with the requirements of NAC 361.1365 and the Personal Property Manual. Based on the ratios found in this study of six secured manufactured home accounts and nineteen unsecured accounts, there were no outliers.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billboards:** Two billboard accounts were reviewed and values were within ratio limits. The billboards are valued consistently with the requirements of NRS 361.227 (4) and NAC 361.1305.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Aircraft:** No aircraft accounts were reported being present in Pershing for this study. The Division, after doing a search of the FAA registry determined that there were at least 6 aircraft listed as having a Pershing County address. The Web Site for the FAA was given to the assessor for future use. Upon recommendation the Assessor did send out letters of inquiry. The Assessor received two valid replies. The rest of the aircraft had either been destroyed or were no longer operable. For this study it could not be determined if there are any aircraft escaping valuation. The Division will be reviewing this category during the next ratio study.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billing/Collection (penalties applied, seizure and sale):** In Pershing County, the Treasurer is responsible for the collection of both secured and unsecured accounts. Penalties have been applied to all delinquent accounts and collected from the taxpayer. The Assessor had sent twenty-six seizure notices out this year and of these, two might be seized before the end of fiscal year 2004.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Migratory Property:** The Assessor reported that there was no migratory property in Pershing County (N/A)

***Other Work Practices***

**Possessory Interest Valuation - Real & Personal Property:** The only possessory interests valued by the Assessor in Pershing County are the privately owned hangers at the county owned airport. The hangers at the airport have only an improvement value, which is calculated in accordance with NRS 361.157.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Statutes and Regulations:** The Nevada Revised Statutes and Nevada Administrative Codes are available in the assessor's office. Both have been correctly updated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Cost Manuals and Systems:** The Assessor uses the Marshall and Swift computer estimator programs to value most major improvements. The estimator updates are loaded into the computer once each year at the beginning of the work year. The October 2003 update is currently being used for the commercial program and the September 2003 update is being used for the residential program. The Assessor has a copy of the Rural Building Cost Handbook and copies of the Marshall and Swift residential and commercial cost manuals. All of the manuals have been correctly updated. The Assessor's miscellaneous building program which is based on the Marshall and Swift cost manuals and the Rural Building Cost Handbook is used to value most minor and agricultural improvements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Records:** The information in the files is maintained in a timely manner and is consistent with NAC 361.146.. The assessor is taking new pictures and making new drawings as needed. The files include a picture and drawing of the improvements, a Marshall and Swift data entry sheet and printouts, miscellaneous building sheets and some information from the previous appraisals may also be included. Only the information needed to identify the property and defend the appraisal is included.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Filing System:** The assessor's real property files are organized in parcel number order. The agricultural parcels that are maintained in a separate summary file, along with a summary index that cross references all pertinent information such as ag applications. The assessor is in the process of updating agricultural applications to replace those that are deteriorating.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reports:** The numerous reports required of the Assessor were completed consistent with the requirements of NAC 361.150, NAC 361.151, NAC 361.152, NAC 361.058, NRS 361.079, NRS 360.250, NRS 361.260; and NRS 361.310 and delivered on time, except NRS 360.250.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appeal Preparation and Presentations:** For this tax year there were seven appeals to the Pershing County Board of Equalization.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reopened Roll Log:** The roll log required by NRS 361.310 to be received by the division on or before October 31, 2004, this was received on time. This report was completed in accordance with statutory requirements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Obsolescence:** There are currently no properties in Pershing County that have obsolescence applied. (N/A)

**Land Use and Exemption Codes:** The assessor uses and correctly applies the approved land use and exemption codes.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Cycle:** The Assessor uses a five year appraisal cycle.

| Year of Reappraisal | Reappraisal Area | Description | % of Improved Parcels |
|---|---|---|---|
| 2000 | 1 | Imlay, Outside Imlay, Grass Valley | 28% |
| 2001 | 2 | Vacant lands | 52% |
| 2002 | 3 | Outside City of Lovelock | 6% |
| 2003 | 4 | City of Lovelock | 8% |
| 2004 | 5 | 600 agricultural,<br>109 Rural Improved, 20 Rural Improved<br>LOCATED:<br>Western half, SE County | 6% |

This cycle conforms to the requirements of NRS 361.260 (6) and NAC 361.144. The cycle works well for the Assessor and is manageable with the available staff.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Improvement Factoring:** When factoring improvements, the assessor uses a composite factor which incorporates statutory depreciation and the improvement factor approved by the Nevada Tax Commission.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraiser Certifications:** The Assessor and one real property appraiser are certified.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisers Training Requirements:** The two real property appraisers are in compliance with NRS 361.221 and NRS 361.223.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

WASHOE COUNTY
*Part II:*
2005-06 Work Practices Survey
ANALYSIS AND RECOMMENDATIONS

*Real Property Discovery and Valuation Work Practices*

**Sales Data Collection:** All real property transfers are obtained from the recorder's office by members of the Assessor's staff. Copies of sales documents such as deeds and declarations of value are kept on file in the Assessor's office by year.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Verification**: Sales data is verified by examination of data maintained by title companies with regard to price, terms and conditions of the sales. The county staff sends out verification letters to buyers and sellers as well as making personal contact by phone in many cases in order to identify whether the parties involved in the sales conducted the transactions at arms-length. After determining the validity of the sales, the staff then assigns various codes to the sales which show the confidence level and type of verification completed. The procedures are consistent with NAC 361.118 (3).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3)

**Sales Data Base:** The verified and coded sales are entered into the computer database where they can be accessed by appraisers and other workers in the assessor's office. The sales data base is used to establish land factors pursuant to NRS 361.260 (5) and to establish the value of land pursuant to NRS 361.260 (7). The sales database is maintained in a satisfactory manner.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Vacant Land (excluding agricultural property):** The Assessor uses comparable vacant land sales to establish value. The Division staff examined a large sample of 30 properties, including unimproved land, ranchettes, single-family residential, multi-family residential, commercial, retail and industrial lots. The ratios of the observations were within the statutory parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3)

**Subdivision Analysis:** The County has assigned this specialized task to a senior appraiser. There are currently five subdivisions that have qualified for a discount pursuant to NAC 361.1295. The discounts allowed range from 20 to 40 percent. A review of the data and documentation found the Assessor's methods and conclusions were supported.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential, Multi-Family Residential, and Commercial/Industrial Land:** Washoe County appraisal staff applied the comparable sales methodology authorized by NAC 361.118 when there were sufficient comparable sales for an area. In areas which did not have sufficient sales, the allocation method described in NAC 361.109 was used.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Observation:** The County has established a system in which a set of parcel maps for the reappraisal area are put in one centrally located file. Within these maps the land value for each parcel is written on the parcel and a list of comparable sales which were used in setting these values are included.

**Land Factors:** The Washoe County appraisal staff uses validated, confirmed arms'-length sales to establish land factors. The land factors were applied by reappraisal area in an effort to avoid island factoring. The Assessor's staff takes a very conservative approach when applying land factors. The statutes allow a median ratio between 30 and 35 percent and the Assessor generally recommends factors which result in a median ratio on the low end of this range. The Division staff confirmed that the land factors approved by the Nevada Tax Commission were applied to land outside the reappraisal area.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family and Multi-family Residential Improvements:** This property category contained the majority of the Division's sample for this ratio study. The property types included minor improved properties, mobile homes, converted mobile homes, condominiums, single-family "stick" built houses, duplexes, condominiums, and apartment complexes. The tables in the Marshall/Swift Cost Handbook are applied, however, at present the county does not have the ability to use the computerized Marshall and Swift tables for manufactured houses, therefore, a cost run on a standard "stick" built house of low quality is modified by the computer using a list of reducing factors. This is a viable approach but a computer error caused some incorrect valuations on other improvements associated with converted mobile homes. It was discovered that the computer was incorrectly applying the reduction factor used on converted mobile homes to all the other improvements on the parcel. The county staff has decided to calculate the costs for all converted mobile homes manually using the appropriate Marshall and Swift manuals until this computer problem can be corrected or a new computerized costing system can be obtained.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Commercial and Industrial Improvements:** The commercial and industrial samples included a wide range of improvements and property types, including small retail stores, "big box" retail outlets such as WalMart, steel fabrication plant, and a chocolate manufacturing plant, among others. Most of the subjects in this category were within ratio study parameters. The outliers in this area were generally due to valuation of car wash, occupancy valuation changes since the last reappraisal, or missed improvements such as a second floor office mezzanine. One commercial sample was found to have a large square foot difference (1,750) due to one incorrect measurement. The county staff corrected this parcel before the close of the tax roll and sent the taxpayer a new valuation notice. In fact, the county staff attempted to correct all of the errors found during the ratio study, including all property categories, in time that new valuations could be sent out to the taxpayers.

In general, building classifications and other major value criteria were appropriately used by the county. One of the samples in this category pointed to a difference in cost values produced by the county computer and those produced by the Division's estimator program. The sample in question had identical valuation criteria as did the Division but the cost run produced by the county was a slightly lower than that of the Division. A different version of the commercial estimator caused this discrepancy. The Assessor and his staff are working on a better system of in-house costing which will improve this situation.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Minor Improvements:** The Assessor's staff develops a model for yard improvements based on Marshall/Swift costs and further supported by a local study. Units of improvements are applied using mass appraisal techniques. Minor improvements are routinely discovered and valued using the units of improvements methodology.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**New Construction Valuation:** The main method of discovery is through city and county building permits. After inputting these permits into the computer, a special team is assigned the task of appraising these new properties throughout the year. The Assessor also has additional staff work on new construction just prior to the lien date in an attempt to discover and value all of the existing improvements. These new construction parcels are placed on the proper roll by using the reopened roll log option now available to the assessor. A review of several parcels with new construction indicates the improvements are valued and depreciated pursuant to NRS 361.227.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land:** Twelve agricultural parcels were sampled for this ratio study. All parcels were valued consistent with the Agricultural Land Values Bulletin #194 and were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Records:** The agricultural land records are updated and reflect the various land classifications for each parcel.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Classification Maps:** Land classification maps are available for agricultural parcels and are updated upon reappraisal.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Bulletin Use:** The Assessor used the current Agricultural Bulletin 194 to value agricultural land.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Residential Home-site Valuation:** None of the agricultural samples had a home-site. (NA)

**Agricultural Improvements:** Two of the ratio study samples had improvements. Both were valued by the Assessor using the Rural Building Manual or the Marshall Swift manual pursuant to NAC 361.128 (2), and were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Deferred Taxes:** There were 1204 deferred agricultural parcels in Washoe County. The procedures utilized by the Assessor in calculating and collecting deferred taxes are consistent with the requirements of NAC 361A.110 through NAC 361A.160.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Conversions:** The Assessor listed forty parcels totaling 1,469 acres which were converted from agricultural use to residential or commercial use during the 2004 calendar year. . The Assessor's calculation of deferred taxes was verified and found to be consistent with NAC 361A.240.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Assessment Maps:** The Assessor's maps are prepared by the county mapping department. The Assessor continues to work on remapping the county on the new GIS mapping system. The new maps are of very good quality and comply with statutory requirements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Prescribed Parceling System:** The assessor uses the state prescribed parceling system pursuant to NRS 361.189. Summary or referral parcels are not used in Washoe County.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

*Personal Property Discovery and Valuation Work Practices*

**Discovery:** Washoe County discovers personal property within the county consistent with NRS 361.260(1) and NRS 361.265. Mobile homes are discovered through building permits, Dealer's Report of Sales (DRS's), moving permits and field inspections which are ongoing during the year. Approximately twice each year the assessor's office sends out an inquiry letter to the mobile home parks located in the county. The parks reply with a list of all the mobiles located in the park. This list was then verified through field inspections. This audit process is ongoing and conducted on a daily basis. Billboards are discovered during reappraisal and through building permits.

Aircraft are discovered through the Department of Taxation sales tax reports. The Assessor sends an inquiry letter to the larger aircraft hangar owners and asks for a list of tenants and tail numbers. In prior years an on-site visit of the airports in Washoe County was made to verify what existed and to discover aircraft that might not have been reported previously. The aircraft owners were then sent an inquiry letter and declaration. The Federal Aviation Administration's aircraft registry indicates approximately 1,100 private aircraft that are registered in Washoe County. The personal property data base submitted to the Division for sample selection indicated slightly over 300. The FAA Web site address was given to the Assessor's office to aid in future discovery efforts.

Businesses are tracked through business licenses that are issued by the various county authorities. Copies of those licenses that are issued outside of Reno proper are transmitted to the assessor's office.

This year upon review of office procedures it was determined that there were some deficiencies in the discovery process which in turn translates over to the valuation end of the process. Methods of improving the discovery process are under review and have been discussed with the Division and will be implemented in the very near future. Currently Washoe County has around 20,000 personal property accounts to manage. After discussing the methods employed with the appraiser it was determined that the current staff size was too small to service the number of accounts that needed to be maintained and valued. At the time of the Division's review, it was noted that substantial amounts of accounts had not yet been entered in the database. In recent times field auditors/appraisers that left the Assessor's office were not replaced. The Assessor's office has recognized the need to improve efficiency and undertaken a plan that will cross train real and personal property appraisers. With an increase in cross-trained staff the discovery process should improve.
THE ASSESSOR'S PROCEDURES ARE DEFICIENT (1).

**Record-keeping:** Washoe County's personal property files are organized and managed. Personal property accounts are filed in individual file folders and are easy to locate. Mobile home accounts are filed by account number. The aircraft declarations are filed by tail number. Business accounts are filed in alphabetical order with current and previous year's declarations contained in the file. Agricultural and billboard accounts are filed in alphabetical order. Inactive accounts are filed separately and maintained for several years.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Property:** There were ten secured agricultural personal property accounts and seven unsecured agricultural property accounts that were reviewed. Nearly all were done consistently with the Personal Property Manual authorized by NAC 361.1365(3). There were a few sub-items within the main account that were out of ratio and these were due to the items being almost fully depreciated. No major account was out of compliance
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Business Property:** There were thirty-two secured and fourteen unsecured business accounts reviewed. Upon review of the individually signed declarations, it was determined that there were a disproportionate number of older accounts (some dating back to the 1970's) that reported "same as last year" or "no change." The authenticity of these declarations of personal property items are insufficiently reviewed by the county. Of the other samples reviewed in these categories, a few incorrect class life assignments and some input errors were found. The declaration is designed for class life reporting by year on the front and for itemization of additions and deletions on the back. On many of these declarations it was impossible to determine the "type or category" of item being valued as they were "lump summed" and hence impossible to assign correct depreciation lives. The county has an 85-90 percent rate of return on declarations but many of these are inadequately filled out to allow for accurate valuation. All commercial accounts are initially sent a declaration. If the owner does not respond, a second declaration is sent.
THE ASSESSOR'S PROCEDURES ARE DEFICIENT (1).

**Manufactured Housing:** There were eleven secured and twenty-three unsecured manufactured homes accounts reviewed. None of the properties in these two categories were found to be out of range. The county maintains a separate file on every mobile home for minor improvements of real and personal property items. The Assessor values manufactured housing classified as personal property consistent with the requirements of NAC 361.1365 and the Personal Property Manual. The Assessor's procedure for converting manufactured housing from personal property to real property is consistent with NRS 361.2445, NRS 361.325, and NAC 361.130
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billboards:** Five unsecured billboard accounts were reviewed and no outliers were found. There no secured billboard accounts. All were being valued consistently with the requirements of NRS 361.227 (4) and NAC 361.1305.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Aircraft:** In this years' ratio study it was determined that a sample size of six accounts would be accurate enough to determine if correct procedures and valuation methods were being applied to this property type. The staff is assessing this segment of personal property consistent with the requirements of the Personal Property Manual. . All observations were within standards.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Migratory Property:** Migratory property is assessed in accordance with NRS 361.505. All businesses or other personal property which are likely to leave the county during the tax year, are categorized as migratory and are monitored and appropriately valued depending upon length of time situated within Washoe County.
THE ASSESSOR'S PROCEDURES MEETS STANDARDS (3).

**Billing/Collection (penalties applied, seizure and sale):** The county has a low delinquency rate indicating that there are appropriate procedures in place for collecting unsecured taxes. Appropriate penalties and interest are being applied to accounts in accordance with statutes. The Assessor sent out between 50-75 seizure notices this past year. Approximately 5 were seized, however, none were sold because the taxpayers paid the taxes prior to the sale.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

***Other Work Practices***

**Possessory Interest Valuation - Real Property:** There are a few accounts in which Real Property possessory interest are valued. The Assessor applied a land and improvement value to those parcels consistent with the requirements of NRS 361.227(3), NRS 361.2275 and NRS 361.157. The income approach is applied when necessary. Expense rates and capitalization rates are market developed.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Possessory Interest Valuation – Personal Property:** The Assessor did not report any personal property possessory interests. N/A

**Statutes and Regulations:** Several copies of the Nevada Revised Statues and the Nevada Administrative Codes are available in the Assessor's office. Both have been correctly updated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Cost Manuals and Systems:** During the past several years Washoe County has been actively developing an "in-house" valuation program that incorporates the Marshall & Swift Valuation Schedules. This will provide a standard costing system that will yield an improvement value once all the data has been entered. The Assessor also uses the Marshall and Swift commercial estimator program to value commercial/industrial improvements. Some unique localized improvements are valued manually using the approved Rural Building Manual. Agricultural type improvements are valued using the Rural Building Cost Handbook published by the Division. The Assessor has several copies of the Rural Building Cost Handbook and several copies of the Marshall and Swift residential and commercial cost manuals. All manuals have been correctly updated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

> RECOMMENDATION: The Assessor should review the cost system to ensure the modifiers reflect the current Washoe County building codes.

**Appraisal Records:** The sample of observations indicates the information in the files is maintained in a timely manner and is consistent with NAC 361.146. The Assessor is taking new pictures and making new sketches as they are needed. The files include an appraisal record, building and land data, a valuation history, the owner's name and property address, the appraiser's initials and the date of the last appraisal visit. Included in the folder is an activity log. The folder may also contain a new construction worksheet, any correspondence relating to the property and data from the previous appraisal which is used for comparison purposes.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Filing System:** The Assessor's real property record files are organized in parcel number order.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reports:** The numerous reports required of the Assessor were completed consistent with the requirements of NAC 361.150, NAC 361.151, NAC 361.152, NAC 361.058, NRS 361.079, NRS 360.250, NRS 361.260; and NRS 361.310 except NRS 360.250.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appeals Preparation and Presentation:** For this tax year there were a total of 1350 appeals to the Washoe County Board of Equalization. No observations were made of presentations to the County Board of Equalization.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reopened Roll Log:** The roll log, required by NRS 361.310 to be received by the Department on or before October 31, 2004 was received in a timely manner and was completed in accordance with statutory requirements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Obsolescence:** Obsolescence is measured pursuant to the requirements of NRS 361.227, using the various approaches to value. The county studies market and economic conditions continuously. Any property that exhibits a loss in value for what ever reason is adjusted.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Use and Exemption Codes:** The Assessor uses and correctly applies the approved land use and exemption codes consistent with the requirements of NRS 361.227(1); NRS 361.260(7); and the various statutes exempting certain real and personal property.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Cycle:** The Washoe County Assessor uses a five year reappraisal cycle, as follows:

| Year of Reappraisal | Reappraisal Area | Description | % of Improved Parcels |
|---|---|---|---|
| 2000 | 4 | NW, NE Reno and Sparks | 28% |
| 2001 | 5 | North County Suburban, Valleys & Rural | 21% |
| 2002 | 1 | South County, Lake Tahoe | 15% |
| 2003 | 2 | SW, SE Reno, airport, McQueen, Mogul-Verdi | 23% |
| 2004 | 3 | Reno Central Core | 13% |

This cycle works well for the assessor and is manageable.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Improvement Factoring:** The Assessor applied the statewide improvement factor approved by the Nevada Tax Commission in all non-reappraisal areas of the county.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraiser Certifications:** All appraisers involved with the valuation of taxable properties are certified. In addition, several of the real property appraisers are being cross-trained to value personal property.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisers Training Requirements:** All of the Washoe County staff appraisers are presently in compliance with NRS 361.223. THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

## WHITE PINE COUNTY
## *Part II:*
## *2005-2006 Work Practices Survey*

## ANALYSIS AND RECOMMENDATIONS

***Real Property Discovery and Valuation Work Practices***

**Sales Collection:** The Assessor's main source of sales data is copies of deeds and declarations of value sent from the recorder's office. These documents are the basis of the sales data bank.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Verification:** The Assessor uses the declaration of value as the primary method of verification. Sales verification letters are sent to the buyer and seller for additional information. The Assessor also uses direct contact with buyers, sellers and real estate professionals for specific information. The procedures are consistent with NAC 361.118 (3).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Database:** The sales data are entered into the computer on the primary record for each parcel. Sales data are included for years 1999 through 2004. The sales data base is used to establish land factors pursuant to NRS 361.260 (5) and to establish the value of land pursuant to NRS 361.260 (7).
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Vacant Land (excluding agricultural property):** The Assessor uses comparable vacant land sales to establish value. Thirty two vacant properties were sampled for this study; all were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Subdivision Analysis:** Nevada Revised Statute 361.227 (2) (b) directs assessors to value qualified subdivisions using the appraisal methods set out in NAC 361.229 and NAC 361.1295. There are no subdivisions in White Pine County that qualify for subdivision analysis.

**Single-family Residential, Multi-Family Residential, and Commercial/Industrial Land:** The Assessor applies the comparable sales methodology authorized by NAC 361.118 when there are sufficient comparable sales for an area. Thirty improved single-family residential parcels were included in the study; there was only one parcel that was out of tolerance. Twenty improved multi-family residential land parcels were included in the study; all were within ratio parameters. Twenty five improved commercial/industrial land parcels were included in the study; all were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Factors:** The Assessor's sales data bank is used when establishing land factors. The Assessor has established factored areas and has a working knowledge of the factoring process. Due to the limited number of sales each year, the Assessor must use several years of sales to develop a factor trend, consistent with NAC 361.118(1)(f)(2).

The Division staff confirmed that the land factors approved by the Nevada Tax Commission were applied to land outside the reappraisal area using a sample of randomly-drawn observations.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential Improvements:** The Assessor's staff applies the Marshall/Swift residential cost estimator pursuant to NAC 361.128. Thirty two improved single-family residential properties were included in the study. There were two parcels in the Assessors physical reappraisal area that were out of tolerance. Also there were ten parcels out of tolerance in the old non-reappraisal areas. These twelve parcels were out of tolerance because of minor differences in calculating the minor improvements and the differences in the year to year values with Marshall and Swift.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Multi-family Residential Improvements:** The Assessor's staff applies the Marshall/Swift residential cost estimator pursuant to NAC 361.128. Twenty improved multi-family residential properties were included in this study. Four of these parcels in the Assessors non-reappraisal areas were out of tolerance due to valuing the minor improvements and the year differences with the Marshall and Swift valuations.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Commercial and Industrial Improvements:** The Assessor's staff applies the Marshall/Swift commercial cost estimator pursuant to NAC 361.128. Twenty five improved commercial/industrial properties were included in the study. A total of five parcels were out of tolerance. Three were in the Assessor's non-reappraisal area, due to the year difference with Marshall and Swift valuation and a State Board of Equalization value change. The two parcels out of parameters in the reappraisal area were due to obsolescence.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Minor Improvements:** Generally the assessor's staff are identifying and correctly valuing minor improvements in the reappraisal area, the only problem is in the non-reappraisal areas, when the Department values the minor improvements with more recent costs and the Assessors costs are three or four years older.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**New Construction Valuation:** New construction is discovered through the use of county and city building permit system. New permits are organized by areas; then, the improvements are inspected and valued throughout the year. New construction that is discovered before the close of the roll in December is included at that time. New construction that is discovered after the close of the roll is included on the roll log. A review of several properties with new construction revealed that the improvements are being correctly measured and valued and depreciated pursuant to NRS 361.227.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land:** Agricultural land was valued consistent with the Agricultural Land Values Bulletin #194. Twelve agricultural parcels were sampled for this study. All parcels were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Records:** The land records are updated and reflect the classification of all agricultural properties.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Classification Maps:** The agricultural maps are updated during each reappraisal and accurately reflect the various land classifications of each parcel.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Bulletin Use:** The correct Agricultural Land Value Bulletin (194) was used and values applied consistent with the Bulletin values.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Residential Home-site Valuation:** There were no home-sites on agricultural parcels selected for the ratio study. (NA)

**Agricultural Improvements:** The improvements were valued using a combination of the Rural Building Manual and the Marshall & Swift Manual pursuant to NAC 361.128 (2). Four improved parcels were included in the ratio study. All were within ratio parameters.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Deferred Taxes:** White Pine County has 1016 deferred agricultural parcels. A review of the procedures used by the assessor in calculating and collecting deferred taxes are consistent with the requirements of NAC 361A.110 through NAC 361A.160.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Higher Use:** White Pine County has no "higher use" areas (multi-residential or commercial) on agricultural land. (NA)

**Agricultural Land Conversions:** Forty two parcels totaling 413 acres were converted from agricultural use to residential use for calendar year 2004. The Assessor's calculation of deferred taxes was verified and found to be consistent with NAC 361A.240.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Assessment Maps:** At present the maps are being maintained in house by existing staff. The maps that are produced are of good quality and easy to use.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Prescribed Parceling System:** The Assessor uses the prescribed parceling system pursuant to NRS 361.189. The Assessor uses summary parcels on a very limited basis and only on agricultural parcels. The referral parcels are used for the convenience of the taxpayer so that they may receive only one tax bill. The Assessor maintains an individual value for each parcel that belongs to the referral parcel.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

***Personal Property Discovery and Valuation Work Practices***

**Discovery:** The Assessor discovers personal property within the county consistent with NRS 361.260(1) and NRS 361.265. Aircraft are primarily tracked through the Federal Aviation tail number reports furnished by the federal government. Occasional inspections of the airport help ensure that any owner of aircraft located in this area is sent a declaration form. The Assessor's office is aided in the discovery of businesses by the business license department of the city. In addition, the staff makes an effort to find all

business operations through newspapers and periodic drive-by inspections of the city. Manufactured homes are required to have an inspection from the city building department before any hookups can be turned on. This information is used by the Assessor's office to locate and assess all manufactured homes within the county. Only a handful of billboard and agricultural equipment accounts exist within the county and the staff is aware of them.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Record-keeping:** The personal property records have continued to improve over the past two ratio studies. The files are kept in a very neat and orderly fashion. All of the personal property accounts are kept in individual folders. Aircraft are filed by tail numbers and contain the latest information on the correct acquisition cost and acquisition year of each aircraft. Business declarations are filed alphabetically with the current years and past year's declarations enclosed. Manufactured homes are placed in individual envelopes and are filed alphabetically. The division found it very easy to locate and examine the samples included in the ratio study.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Business Property:** This remains the largest property category in the county and demands a great deal of time to manage. All observations within the sample are being valued consistently with the Personal Property Manual authorized by NAC 361.1365(3).The Assessor uses an itemized declaration that is sent to each taxpayer for review and correction. Of 68 business accounts sampled, 26 secured and 42 unsecured, all are within ratio tolerance.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Manufactured Housing:** The Assessor values manufactured housing classified as personal property consistent with the requirements of NAC 361.1365 and the Personal Property Manual. Of 115 homes sampled, 61 secured and 54 unsecured, three were found to be out of tolerance. These were due to minor errors such as setup fees and profits not included in the original retail-selling price. The staff discovers real property items during field inspections, and is depreciates these items in accordance with regulatory requirements. The value is then added to the manufactured home accounts prior to billing. A separate file is maintained on all manufactured home accounts. During each of the five reappraisal cycles, the appraisal staff updates these minor improvement sheets.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billboards:** White Pine County has only one billboard account in the reappraisal area. The assessor valued this property consistently with the requirements of NRS 361.227 (4) and NAC 361.1305.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Aircraft:** White Pine county has a relatively small number of aircraft. Four of the twelve aircraft in the county were included in the ratio study and no errors were found. The aircraft were valued consistent with the requirements of the Personal Property Manual.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Migratory Property:** The Assessor and his staff are handling migratory property in accordance with NRS 361.505. All businesses or other personal property, which are likely to leave the county during the tax year, are designated migratory and are assessed immediately.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billing/Collection (penalties applied, seizure and sale):** All appropriate penalties and late fees are applied to delinquent accounts and collected from the taxpayer. The number of delinquent personal property accounts is very small. The staff and assessor are diligent in the billing and collection of taxes.

Although the county has not seized any personal property in the past few years, the Assessor has an adequate procedure in place. Following the fourth quarter March billing, a seizure notice is sent to the taxpayer. A notice to the taxpayer's lien holder is sent if the taxpayer has not responded.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

***Other Work Practices***

**Possessory Interest Valuation - Real & Personal Property:** Possessory interests valued by the assessor in White Pine County include the three cabins on Forest Service land in Sagehen Canyon. The Assessor applied a land and improvement value to those parcels consistent with the requirements of NRS 361.227(3), NRS 361.2275 and NRS 361.157.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Possessory Interest Valuation- Personal Property:** There are no personal property possessory interests in White Pine County. (N/A)

**Statutes and Regulations:** The Nevada Administrative Codes are available in the assessor's office. The Nevada Revised Statues are available in the commissioner's chambers for the Assessor's use. Both have been correctly updated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Cost Manuals and Systems:** The Assessor uses the Marshall and Swift computer estimator program to value most major improvements. The estimator program is updated annually at the beginning of the work year. The October 2003 update is used for the commercial property and the September 2003 update is used for the residential property. The Assessor has two copies of the Assessor's Handbook of Rural Building Costs, two copies of the Marshall and Swift Residential handbook and two copies of the Marshall and Swift Commercial cost manuals. All of the manuals have been correctly updated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Records:** The information in the files is maintained in a timely manner and is consistent with NAC 361.146. Each property record file contains a drawing and picture of the improvements, a Marshall and Swift data entry form and printout, and a miscellaneous building sheet. In addition, some information from the previous appraisals may be included. Only the information needed to identify the property and defend the appraisal is included.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Filing System:** The Assessor's real property record files are organized in parcel number order. This system allows for easy retrieval and is efficient to use.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reports:** The numerous reports required of the Assessor were completed consistent with the requirements of NAC 361.150, NAC 361.151, NAC 361.152, NAC 361.058, NRS 361.079, NRS 360.250, NRS 361.260; and NRS 361.310 and delivered on time, except NRS 360.250.

THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appeal Preparation and Presentations:** There were three appeals to the White Pine County Board of Equalization for this tax year.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reopened Roll Log:** The roll log required by NRS 361.310 to be received on or before October 31, 2004 was received on September 29, 2004. This report was completed in accordance with statutory requirements.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Obsolescence:** The Assessor applies obsolescence to properties in which taxable value exceeds full cash value. Obsolescence is measured pursuant to the requirements of NRS 361.227, using the various approaches to value. The Assessor keeps a list of those properties receiving obsolescence. There are currently nine properties in White Pine County receiving obsolescence. Most are the result of deferred maintenance. The data on each parcel is complete and the Department found the Assessor's conclusions were supported.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Use and Exemption Codes:** The Assessor uses and applies the land use and exemption codes consistent with the requirements of NRS 361.227(1); NRS 361.260(7); and the various statutes exempting certain real and personal property.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Cycle:** The Assessor uses a five year reappraisal cycle, as follows:

| Year of Reappraisal | Reappraisal Area | Description | % of Improved Parcels |
|---|---|---|---|
| 2000 | Area 2 | Books 4, 5<br>McGill, 804 parcels<br>Gleason Creek Estates<br>Gate of Hercules<br>Cross Timbers | 14% |
| 2001 | Area 1 | Book 2<br>East Ely, 915 parcels<br>Town of Ruth, 311 parcels | 22% |
| 2002 | Area 5 | Book 1, Ely, 1375 parcels | 24% |
| 2003 | Area 4 | Book 5, Ag land, Baker,<br>School of Natural Order,<br>Cherry Creek<br>325 parcels | 6% |
| 2004 | Area 3 | Books 6, 7, 8, 9, 10, 11, 12 | 34% |

General County,
Town of Lund, Preston
1,895 non-ag (788 improved)

This cycle conforms to the requirements of NRS 361.260 (6) and NAC 361.144. The cycle works well for the assessor and is manageable with the available staff.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Improvement Factoring:** The Assessor applied the statewide improvement factor approved by the Nevada Tax Commission in all non-reappraisal areas of the county.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraiser Certifications:** The Assessor and four real property appraisers are all certified. There are no certified personal property appraisers on staff.
THE ASSESSOR'S PROCEDURES NEEDS IMPROVEMENT (2).

**Appraisers Training Requirements:** The White Pine Assessor's has new staff that will require certification if they are involved with valuation. Currently the Assessor is in compliance with NRS 361.221 and NRS 361.223. Additional training hours will be needed in the year 2006.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

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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; J. ROBERT ANDERSON, an individual; LES BARTA, an individual; on behalf of themselves and others similarly situated,<br><br>Plaintiffs/Petitioners,<br><br>vs.<br><br>STATE OF NEVADA on relation of the STATE BOARD OF EQUALIZATION; WASHOE COUNTY; BILL BERRUM, WASHOE COUNTY TREASURER;<br><br>Defendants/Respondents | Case No.: CV 03-06922<br><br>Dept. No. 7<br><br>**STATEMENT OF PLAINTIFFS/PETITIONERS ON THE SCOPE OF THE ISSUES** |

Plaintiffs/Petitioners submit the following statement regarding the scope of the issues in this action on remand from the Nevada Supreme Court:

I. BACKGROUND.

When the Village League filed this action in November of 2003, it sought, in relevant part, a mandatory injunction directing and requiring the State Board of Equalization to perform its duty of statewide equalization under NRS 361.395 particularly as it impacted the disparity in

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taxable value of similarly situated properties at Lake Tahoe in Douglas and Washoe Counties. Since November of 2003, the Supreme Court has affirmed the express and affirmative statutory duty of the State Board of Equalization to equalize property valuations throughout the state, writing in State ex rel. State Board of Equalization v. Barta (Barta), 124 Nev. 58, 188 P.3d 1092 (2008), as follows:

> Under NRS 361.395(1), the State Board clearly has a duty to equalize property valuations throughout the state: "the [State Board] shall . . . [e]qualize property valuations in the State." Furthermore, NRS 361.400 establishes a requirement, separate from the equalization duty, that the State Board hear appeals from decisions made by the county boards of equalization. The two statutes create separate functions: equalizing property valuations throughout the state and hearing appeals from the county boards. 188 P.3d at 1102.[1]

The Supreme Court also made clear that the *sine qua non* of equalization was uniformity of appraisal methodology, explaining its reasoning at some length as follows:

> As the Legislature apparently appreciated, uniform assessment methods, properly applied, will necessarily produce the same measure of taxable value for like properties. Those evenly measured taxable values will be assessed at a uniform rate - 35 percent - resulting in an equally proportioned tax among like properties and allowing the County and State Boards to the[n] thoroughly carry out their duties to equalize any assessor- or property- type based assessment differences. **However, if varying methods are used to determine the taxable values of like properties (take, for instance, two nearly identical, neighboring properties), then equalization becomes difficult and there can be no guarantee that the same measure of taxable value will be assigned to the properties. Clearly, this would violate the constitutional promise of "a uniform and equal rate of assessment and taxation."** 188 P.3d at 1101 (Emphasis added.)

The Court then concluded, as follows:

> Consequently, in Bakst, we stated that "the Constitution clearly and unambiguously requires that the methods used for assessing taxes throughout the state must be 'uniform.' " [Citation] The rule thus enunciated requires county assessors to apply only those valuation methodologies set forth in regulations adopted by the

[1] This last statement was necessary to refute the position taken from time to time by counsel for the State Board of Equalization that it performed its statewide duty of equalization simply by hearing appeals from county boards of equalization, that the two duties were somehow essentially the same.

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> Tax Commission for use throughout the state, ensuring that taxpayers' properties are uniformly assessed and taxed. Id.

Both the Supreme Court and the Legislature focus on methodology because of Nevada's unique "taxable" value system. In a market value property tax system, the focus is on the value as determined by the Assessor and whether it comports with the value established by the market. There is uniformity because everyone's value is determined and reviewed against an objective, external standard -- value as established in the market.

In 1981, however, in an attempt to provide property tax relief, the Nevada Legislature discarded the prior market value system of property taxation and adopted a "taxable" value system. In Nevada's taxable value system, residential property is valued by valuing the land and improvements separately with the sum of the two values constituting the property's "taxable" value. The improvements are valued using a fairly straightforward formula. The land is to be valued at its market value. The difficulty arises with the valuation of the land portion because there is no meaningful market in improved land under an existing house. Few, if any, homeowners sell the land under their houses separate and apart from the sale of the whole property, house included. In the absence of a market, assessors, under Tax Commission regulations, look to the market in vacant land[2] as a comparable substitute to estimate the value of residential land. The market in vacant land is a workable substitute as long as there are sufficient comparable vacant land sales. In the absence of sufficient comparable vacant land sales, however, the "taxable value" system fails for lack of a uniform methodology.

In a market value system, whatever valuation methodology is used, whether it is comparable sales, allocation between land and improvements, income, or some other method, the resulting determination comes up against the actual market value which is the standard. In Nevada's taxable value system, there is no "taxable value" standard. Although the regulations identify alternate valuation methodologies, they provide no model for their uniform

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[2] The issue of the definition of "vacant land" for these purposes remains undetermined. The Tax Commission has never defined "vacant land" as used for purposes of estimating the value of the land portion of improved residential property. The various assessors in Nevada interpret the term differently as do the recognized treatises, some regarding vacant land as raw land, others viewing vacant land as building sites, lacking only the constructed improvement.

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application. The alternate valuation methodologies themselves were adopted with no underlying studies or other evidence to assure uniformity with a comparable sale analysis estimate of value. The assessors and the Department of Taxation itself will opine that the alternative methodologies result in higher land valuations.

The end result is that, in a taxable value system, there is no objective, external standard either for taxable value as a whole or for the land portion of the taxable value of residential real property. The "taxable value" of residential property bears no relationship to the market value of that property other than, by law, taxable value must be less than market value. In the absence of an external, objective market standard, the only way to achieve uniformity of taxable value is to assure that the assessors use uniform methods in determining taxable value. Only if similar properties are valued using the same methodology can the constitutional requirement of uniformity be satisfied.

In 2002, when the Washoe County Assessor's Office performed its 5-year reappraisal of residential property at Incline Village/Crystal Bay, it found a lack of vacant land sales. In order to generate additional vacant land sales and otherwise determine the value of the land portion of Incline Village/Crystal Bay residential property, the Assessor's Office used teardowns, time-adjusted sales, a view classification system and other methods that had not been adopted in any Tax Commission regulation for use throughout the state. In valuing the "land" portion of condominium properties at Incline Village and Crystal Bay, the Assessor used an allocation methodology that was not authorized by Tax Commission regulation. The result was massive increases in property taxes at Incline Village and Crystal Bay. For the 2003-2004 tax year, while property taxes in the rest of Washoe County rose less than 2.5%, the average increase in property taxes for Incline Village and Crystal Bay property owners was 31%, with increases of as much as 400% in some individual cases. Incline Village homeowners noted not only the difference between their taxes and the taxes of other Washoe County taxpayers but also the much lower taxes paid by their neighbors in Douglas County.

Individual taxpayers challenged their valuations through the administrative process. Some 17 of those taxpayers took the case all the way to the Supreme Court and ultimately

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prevailed. State ex rel. State Bd. of Equalization v. Bakst (Bakst), 122 Nev. 1403, 148 P.3d 717 (2006). The Supreme Court determined that the methodologies used throughout Incline Village and Crystal Bay were unconstitutional but could provide relief only to the 17 taxpayers in the case before it. Although the equalization issue raised in the original complaint focused on the disparities between Douglas and Washoe Counties, that complaint also sought relief for the whole of Incline Village and Crystal Bay from those unconstitutional valuation methodologies. The Bakst decision created an unjust lack of equalization within Incline Village and Crystal Bay and the instant action presents the opportunity to remedy that injustice to the other approximately 9000 parcels in Incline Village and Crystal Bay.

That remedy is required not only by justice but by larger issues of public policy. Unless the Assessor's unconstitutional valuations are set aside across Incline Village and Crystal Bay, he has no disincentive to continuing those unconstitutional valuations. Notwithstanding three published Supreme Court decisions and numerous unpublished orders, the Washoe County Assessor continues to value residential real property at Incline Village and Crystal Bay in much the same unconstitutional way that he did with respect to the 2003-2004 reappraisal.

## II. THE ISSUES TO BE DETERMINED.

The Court must first determine, as stated in the Supreme Court's remand order, whether the plaintiffs' claim for mandatory injunctive relief is viable. As pointed out by the Supreme Court, that claim actually lies in mandamus under NRS 34.160. In its Order, citing NRS 34.160, the Court wrote that "insofar as Village League alleged that the State Board failed to perform an act required by law and sought an order directing that act's performance, such was appropriately raised in its district court complaint." Order, p. 7, lns. 4-7. There is no question that the Board had a duty of annual statewide equalization under NRS 361.395 in 2003 and every year thereafter. The statutory language is express and unambiguous. The State Board complains regularly about the number of parcels involved in statewide equalization but the saving grace of the taxable value system is that the State Board does not need to go parcel by parcel throughout the state. Equalization in Nevada's taxable value system is a function of uniformity of valuation methodology. Furthermore, the claim in this case does not require

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statewide equalization. The issue is equalization at Lake Tahoe, a discrete number of residential parcels even if the determination was made to review equalization parcel by parcel.

Under the circumstances of this case, however, the Court should go beyond merely considering whether a writ of mandamus should issue to the State Board of Equalization to perform its duty with respect to equalization of property values between Douglas and Washoe Counties at Lake Tahoe beginning in 2003. This case has already been almost six years in the legal system. If the Court is going to mandamus the State Board of Equalization to perform its equalization duty, that mandate should include specific guidelines and directions for the Board to follow. Notwithstanding the statutory imperative and even the occasional representation of its counsel that it has, in fact, "equalized"[3], the State Board of Equalization has, in fact, not performed its duty of statewide equalization for many years and has no idea how it should be done. In that light, the parties should develop the facts through discovery and present and argue the facts and the law to the Court so that the Court can issue an informed mandamus order providing specific direction to the State Board and possibly avoiding a third round in this equalization litigation.

For example, in Barta, supra, the Supreme Court has noted that equalization of taxable value is a function of uniform methodology. In Bakst, and reiterated in Barta, the Supreme Court also found the Washoe County Assessor's 2003-2004 Incline Village and Crystal Bay land valuation methodologies to be unconstitutional. The methodologies used by the Douglas County Assessor have not been challenged and stand as constitutional. The facts that reflect the disparities in valuation between Douglas County and Washoe County need to be developed. It is not sufficient simply to cite an average percentage of difference. This Court needs a factual basis on which to direct the State Board as to how to equalize the unconstitutional Incline Village/Crystal Bay land valuations to the constitutional valuations of the Douglas County Assessor.

The passage of almost six years has also seen the Bakst and Barta decisions to the effect that the unauthorized land valuation methodologies used by the Washoe County Assessor for

[3] It just has not done so in public contrary to the requirements of the Open Meeting law.



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the 2003-2004 reappraisal of Incline Village and Lake Tahoe (and used as base valuations for the following four years until the 2008-2009 reappraisal) resulted in unconstitutional valuations and void assessments. The remedies in Bakst and Barta, however, were limited to a tiny fraction of the affected homeowner taxpayers at Incline Village and Crystal Bay. The taxpayer owners of almost 9000 additional parcels at Incline Village and Crystal Bay were similarly affected by the unauthorized and unconstitutional methodologies but continue to suffer from the failure to equalize their similarly situated properties. Although the State Board of Equalization has failed for many years to perform its duty under NRS 361.395 of statewide equalization, it has historically equalized property valuations within a geographic area to reflect similar valuation conditions. At a minimum, the State Board of Equalization must be directed to equalize all of Incline Village and Crystal Bay for the 2003-2004 tax year by returning the land values to their 2002-2003 levels consistent with Bakst and the Constitutional requirement of uniformity.

DATED this 1st day of June, 2009.

MORRIS PETERSON

By _____
Attorneys for Plaintiffs/Petitioners

**AFFIRMATION**

**Pursuant to NRS 239B.030**

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

DATED this 1st day of June, 2009.

_____
Suellen Fulstone

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## CERTIFICATE OF SERVICE

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

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Office of the Attorney General
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David Creekman
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DATED this 1st day of June, 2009.

By Elaine K Bates
Employee of Morris Peterson

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Attorneys for Petitioners

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Petitioners,

vs.

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

Respondents

Case No.: CV 03-06922

Dept. No. 7

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

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

## GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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in this action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE PETITIONERS PRAY AS FOLLOWS:

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

2. That the Court issue a peremptory writ of mandamus requiring the State Board of Equalization to equalize the land portion of residential real property at Incline Village and Crystal Bay to 2002-2003 values to reflect the area wide use by the Assessor of unlawful and unauthorized valuation methodologies resulting in unconstitutional valuations and assessments, to certify those changes to Washoe County and to direct the payment of refunds pursuant to NRS 361.405.

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

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

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

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

DATED this19th day of June, 2009.

MORRIS PETERSON

By /s/ Suellen Fulstone
Suellen Fulstone
Attorneys for Petitioners

**AFFIRMATION**

**Pursuant to NRS 239B.030**

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

DATED this19th day of June, 2009.

MORRIS PETERSON

By /s/ Suellen Fulstone
Suellen Fulstone
Attorneys for Petitioners

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## VERIFICATION

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

Dated this 19th day of June, 2009.

Maryanne Ingemanson

## CERTIFICATE OF SERVICE

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

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100 North Carson St.
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David Creekman
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DATED this 19th day of June, 2009.

By _____
Employee of Morris Peterson

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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 corp., on behalf of its members, and others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>STATE OF NEVADA, on relation of its DEPT. OF TAXATION, the NEVADA STATE TAX COMMISSION, and the STATE BOARD OF EQUALIZATION; WASHOE COUNTY, ROBERT McGOWAN, WASHOE COUNTY ACCESORY; BILL BERRUM, WASHOE COUNTY TREASURER,<br><br>Defendants. | Case No. CV03-06922<br><br>Department No. 7 |



**STATE BOARD OF EQUALIZATION'S RESPONSE TO VILLAGE LEAGUE'S STATEMENT OF ISSUES**

Defendant STATE OF NEVADA ex rel. STATE BOARD OF EQUALIZATION ("State Board"), through counsel CATHERINE CORTEZ MASTO, Attorney General, by DEONNE E. CONTINE, Deputy Attorney General, hereby submits its Response to Village League's Statement of Issues Brief.

The Village League contends the issues remaining in this matter are whether this Court should issue a Writ of Mandamus beginning in 2003 to compel statewide equalization

pursuant to NRS 361.395. The Village League urges this Court to issue a broad mandamus order and include "specific guidelines and directions for the board to follow" in performing its equalization duties. Each issue will be addressed below.

### A. Mandamus Relief

While the Nevada Supreme Court remanded this case on the issue of whether the lower court should have proceeded to determine whether Village League's claim for injunctive relief was viable, the Supreme Court cited to NRS 34.160, which seems to suggest that the Court may have intended that a writ standard apply. NRS 34.160 states in pertinent part:

> The writ may be issued by the Supreme Court, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station . . . .

Mandamus relief, like injunctive relief, is an extraordinary remedy and mandamus will issue only when the right to the relief requested is clear and the petitioners have no plain, speedy, and adequate remedy in the ordinary course of law. *Gumm ex rel. Gumm v. Nevada Dept. of Educ.*, 113 P.3d 853, 856, 121 Nev. 371, 375 (2005).

In this case, there was no clear duty related to general equalization in 2003 and the Village League is not entitled to the relief requested. Furthermore, as discussed in the State Board's Statement of the Issues, the Village League had a plain, speedy, and adequate remedy in the ordinary course, specifically, the remedy in NRS 361.355.

#### 1. Clear Duty Requirement

Village League maintains in its Statement of the Issues brief that "There is no question that the Board had a duty of annual statewide equalization under NRS 361.395 in 2003." However, that duty and exactly what it entails was the subject of (and still is the subject of) extensive litigation.

The cases cited in the Nevada Supreme Court Remand Order may give some guidance on the type of standard or duty is needed for mandamus to issue. First, the Court cited *Idaho Tax Comm'n v. Staker*, 104 Idaho 734, 663 P.2d 270 (1982). That case involved an injunction action by the Idaho Tax Commission (which equalized in its capacity as the Idaho State Board of Equalization). Pursuant to a statute that has since been repealed

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(former IC 63-605, enacted in 1969, repealed by S.L. 1996, ch. 98, § 1, eff. Jan. 1, 1997, as an equalization measure, the Commission had sent a directive to local auditors to change the values on the rolls. Not all of the auditors complied with the order, and the Idaho Supreme Court granted a writ of mandate requiring the auditors to comply with the Commissions directive. It is not clear what guidance the Supreme Court intended here because *Idaho Tax Comm'n* is fairly specific and factually distinguishable from the instant case. Additionally, Nevada courts have also granted mandamus where a public official has a duty to comply with requirements that leave not discretion to the public official. *See State v. Eggers*, 36 Nev. 364, 136 P. 104 (1913).

Additionally in its Remand Order, the Supreme Court cited *Fondren v. State Tax Commission*, 350 So.2d 1329 (Miss. 1977), in which case a private person (Fondren) sought an injunction effectively barring collection of the assessed taxes, by enjoining recapitulation of the rolls, until they are in compliance with statutory law requiring equalization. The Mississippi Supreme Court found that Fondren had stated a cause of action, pursuant to a statute that conferred jurisdiction on courts over suits by taxpayers to restrain collection of taxes "levied or attempted to be collected without authority of law." The duty of the Tax Commission, the breach of which was found could be a basis for such an injunction, was as follows (as stated in the Mississippi court's opinion):

> The Legislature has imposed the duty of enforcing this section on the State Tax Commission. Mississippi Code Annotated section 27-35-113 (1972) reads in part:
>
> It shall be the duty of the tax commission to carefully examine the recapitulations of the assessment rolls of the counties, when received, to compare the assessed valuation of the various classes of property in the respective counties, to investigate and determine if the assessed valuation of any classes of property in any one or more counties of the state is not equal and uniform with the assessed values fixed upon the same classes of property in other counties of the state, and to ascertain if any class of property in any one or more counties is assessed for less than the true value of the property.
>
> The same section goes on to give the Commission the authority to equalize assessments among the counties. The next section, Mississippi Code Annotated section 27-35-115 (1972), instructs the Commission to report its determinations to the various boards of supervisors. The following section, Mississippi Code

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Annotated section 27-35-117 (1972), provides a method for the boards of supervisors and for affected individuals to contest the determination of the State Tax Commission. However, the final authority for determining assessments rests with the Commission.

Unlike the duty to equalize found in NRS 361.395, which simply states that the State Board shall "Equalize property valuations in the State," the duty articulated in the Mississippi statute is very clear and defined.

Furthermore, it was not until 2008 that the Nevada Supreme Court specifically indicated that the State Board had a more general duty to equalize which involves something other than hearing appeals or responding to issues as brought to it by the County Assessors. On October 20, 2008, the Supreme Court remanded to the State Board the case of *Village League to Save Incline Assets, Inc. v. State ex rel. State Bd. of Equalization*, 194 P.3d 1254 (2008) to review a general equalization decision of the County Board; however, the Supreme Court provided no specific instruction on the steps that should be taken by the State Board to perform such duties.

Consequently, the State Board, which consists of a majority of newly appointed members, and until April 9, 2009, did not have a Chairperson, has been working diligently over the last several months to review and digest the relevant statutory provisions and the State Board began the regulatory process to develop regulations on general equalization pursuant to NRS 361.395.[1] While those regulations are not yet adopted, they have assisted in fleshing out the process for the State Board members.

The State Board remand case deals solely with equalization, and there are no statutes or regulations to provide the State Board or county boards of equalization with specific direction on how to equalize generally. [2] Interestingly, the State Board has been ordered on remand by the Supreme Court to determine whether approximately 8700 Incline Village and Crystal Bay properties' values were properly rolled back to 2002-2003 values by the County

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[1] Regulation workshops related to equalization under NRS 361.395 were held on January 26, 2009, February 26, 2009 and May 8, 2009.

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Board of Equalization. *Village League*, 194 P.3d at 1262. This is exactly what Village League is requesting this Court mandate in the instant action.

Additionally, Village League's claim that methodologies are the issues in this case is erroneous.[3] Indeed, Village League misstates *Barta* because *Barta* says that uniform methodology is the foundation for equalization not that uniform methodologies is all that is needed for equalization. *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 58, 188 P.3d 1092, (2008) Furthermore, the Village League makes the unsupported assertion that Douglas County used methodologies that have withstood some sort of legal challenge. In *Bakst* at fn. 38, the court simply noted that Douglas County used a different methodology for determining the view effect on value. *State ex rel. State Bd. of Equalization v. Bakst*, 112 Nev. 1403, 148 P.3d 717, 726 (2006). The court rendered no opinion as to whether the methodology was codified in statute or regulation. Indeed, no action has every determined whether there was anymore regulatory support for Douglas County's methods than there was for Washoe County's methods.

**2. Relief Requested**

In addition to showing a clear duty, the party applying for a writ must show that they are entitled by law to the relief it seeks. *State v. Daugherty,* 231 P. 384, 48 Nev. 299 (1924) It is clear from Village League's Statement of Issues that it is not even seeking NRS 361.395 equalization by the State Board nor is it seeking the original relief it sought with respect to Lake Tahoe property in both Douglas and Washoe Counties. What it seeks here is the same remedy sought in *Barta*, *Bakst* and the *Village League* case that is currently on remand to the State Board of Equalization.[4] The Village League wants land values reduced and does not really care about general equalization as it believes general equalization is the same as rolling

[3] Village League states at page five, line 27 of its Scope of Issues Brief that "Equalization . . is a function of uniformity of valuation methodology." However, nowhere is such direction is found in either statute or Nevada Supreme Court holdings.

[4] The State Board was set to hear the remand ordered by the Court in *Village League* on June 10, 2009; however, on June 9, 2009, Village League filed a motion to stay the State Board's hearing on the remand even after it had filed a motion several weeks earlier to hold the State Board in contempt for taking too long to comply with the Supreme Court's remand order in *Village League*. Both motions were denied by the Supreme Court. However, in an attempt to resolve Village League's concerns, the State Board granted a continuance.

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back the values. This is clear from the following request in its Scope of Issues brief: "The State Board of Equalization must be directed to **equalize** all of Incline Village and Crystal Bay for the 2003-2004 tax year **by returning the land values to their 2002-2003 levels**. . ." Simply put, Village League does not want any equalization that would not include a rollback of land values. Village League is not entitled to such requested relief in mandamus.

Even if there was authority to issue a writ to compel the State Board to Equalize, there is no authority for this Court to mandate specific guidelines and directions for the Board to follow as requested by Village League. As discussed above, the State Board is in the process of promulgating regulations related to NRS 361.391. Although mandamus could lie to compel a public body to perform a duty, mandamus cannot issue to control the exercise of the body's discretion while carrying out such duty. *State v. Boerlin*, 98 P. 402, 30 Nev. 473 (1908)

Finally, even if mandamus could have been issued in 2003 to compel the State Board to fulfill its general equalization duty under 361.395, this Court should not issue mandamus now because the State Board is in the process of complying with its statutory duty under NRS 361.395. In fact, the State Board is preparing to issue a general equalization decision on remand from the Nevada Supreme Court in the *Village League* State Board remand case which requests that same rollback as the Village League is requesting in this case.

**B. Conclusion**

As discussed above, mandamus in not warranted in this case because Village League has and is pursing other legal remedies. Indeed, what Village League actually is seeking in this case is not mandamus relief but an order that equalization include rolling back all of Incline and Crystal Bay properties to their 2002-2003 values. Such an order cannot be made in this case because this Court has no authority to exercise its own discretion for that of the

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public body being compelled to perform its duty. Finally, this Court should consider that there is a general equalization matter pending before the State Board of Equalization relating to these exact same properties. Based on the foregoing, mandamus relief is not proper in this case.

DATED this 19th day of June, 2009.

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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 19th day of June, 2009.

CATHERINE CORTEZ MASTO
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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 its members, and others similarly situated,

Plaintiffs,

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.
_____/

Case No. CV03-06922

Dept. No. 7

**REPLY TO PLAINTIFFS'/PETITIONERS' STATEMENT ON SCOPE OF THE ISSUES BEFORE THE COURT**

Defendants Washoe County, along with the Washoe County Assessor and Treasurer, by and through their counsel of record, Richard A. Gammick, District Attorney of Washoe County, Nevada, and David Creekman, Chief Deputy District Attorney, herein provide this Court with their "Reply to Plaintiffs'/Petitioners'

Statement on Scope of the Issues Before This Court." This pleading is submitted in accord to this Court's Order of April 21, 2009, as amended as to its due date by agreement of the parties. This pleading is supported by the following "Statement of Points and Authorities," along with all the papers, pleadings and documents on file with this Court in this matter.

Dated this 19th day of June, 2009.

RICHARD A. GAMMICK
District Attorney

By David C. Creekman

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ATTORNEYS FOR WASHOE COUNTY

STATEMENT OF POINTS AND AUTHORITIES

I. Introduction

Following their recitation of their view of the history of the property valuation system in Nevada for ad valorem taxation purposes, the Plaintiffs/Petitioners have told the Court that "[a]t a minimum, the State Board of Equalization must be directed to equalize all of Incline Village and Crystal Bay for the 2003 - 2004 tax year by returning the land values to their 2002 - 2003 levels consistent with Bakst and the Constitutional requirement of uniformity." Statement of Plaintiffs/Petitioners on the Scope of the Issues," p. 7, l. 10 - 13. This statement belies the underlying Complaint's plain language as to the relief they actually originally requested. They now urge that this Court impermissibly interfere with, by usurping, the workings of the State Board of Equalization.

The Plaintiffs'/Petitioners' November 13, 2003 "Complaint" sets forth a number of allegations and prayers for relief, all of which were dismissed by this Court on June 2, 2004. Following an appeal of this Court's dismissal to the Nevada Supreme Court, the Supreme Court upheld the dismissal of all of the Plaintiffs'/Petitioners' causes of action except for the one in which the Plaintiffs'/Petitioners' asked for injunctive relief with respect to questions of equalization between Douglas and Washoe Counties. In particular, the Court's attention is directed to those portions of the Plaintiffs'/Petitioners' "Complaint" in which they ask:

That the Court declare that the disparity in valuation between property at Lake Tahoe in Douglas and Washoe Counties for the tax year 2003/2004 violates the guarantee in the Nevada State Constitution of a uniform, equal and just system of property taxation throughout the state; [and]

That the Court enter a mandatory injunction requiring the State Board of Equalization to redress the disparity in valuation between property at Lake Tahoe in Douglas and Washoe Counties and to equalize those property valuations as required by the Nevada Constitution and statutes. "Complaint," p. 16, l. 23 through p. 17, l. 2.

II. Douglas County is a necessary party to this action and due to the applicable statute of limitations and venue rules becomes an indispensable party – as an indispensable party who cannot now be joined in this action, equity and good conscience obligate the dismissal of this action against all party defendants.

An indispensable party is a party necessary to an action but who, for some reason, cannot be made a party to that action. If a necessary party is found to be unavailable, the court must decide whether, in equity and good conscience, the action cannot proceed without the necessary party. If it decides that the action cannot proceed without the necessary party, the case must be dismissed as against all parties, under Nevada Rule of Civil Procedure 19(b). Potts v. Vokits, 101 Nev. 90, 692 P.2d 1304 (1985).

In this case, the Plaintiffs/Petitioners complain of inequities between property valuations in Washoe and Douglas Counties. If such inequities are found to exist, the Plaintiffs/Petitioners obviously desire that their Washoe County valuations be lowered. However, in order to find if this inequity exists, the full party participation of Douglas County

is necessary because this issue requires a comparison of assessments in both Douglas and Washoe Counties. And if such inequities do exist, it could just as easily be that Douglas County values would be subject to being raised, rather than Washoe County's values being lowered. Were this to occur, the affected property owners, along with Douglas County itself, must be provided with notice and an opportunity to be heard. NRS 361.400(2); NRS 361.405.

Yet if this action was brought under NRS 361.420's provisions for an action for the recovery of taxes, Douglas County cannot now be joined in this proceeding as the 3 month statute of limitations contained in that statute elapsed long, long ago. Similarly, if this action is governed by NRS chapter 11's period of limitations for "[a]n action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded," NRS 11.190(5)(b), the one year period of limitations set forth in that statute also elapsed long ago. Under either scenario, Douglas County, as a necessary party, cannot now be joined and this action must be dismissed against all Defendants.

III. The relief now being sought by the Plaintiffs/Petitioners violates separation of powers principles.

The relief these Plaintiffs'/Petitioners' now apparently seek goes far beyond any entitlement they may have to injunctive relief. Although, as previously stated in these Defendants'

June 1, 2009 "Statement of Issue Before this Court, and Position of Washoe County Defendants," the Plaintiffs/Petitioners are not entitled to injunctive relief, they now request that this Court interject itself into property valuation questions to such an extent that were this Court to do so it would be violating a characteristic feature, and one of the cardinal and fundamental principles, of the American constitutional system. That is that the governmental powers are divided among the three departments of government, the legislative, executive and judicial, and that each of these is separate from the others. O'Donoghue v. United States, 289 U.S. 516 (1933).

In the area of separation of powers, what essentially distinguishes this Court from the Nevada State Board of Equalization is that under our constitutional system of separating the three branches of government, this Court is part of the judicial, whereas the Nevada State Board of Equalization is part of the executive, branch of the government. See generally Bradley v. Bloomfield, 85 NJL 506, 89 A. 1009 (1914)(distinguishing a "court" as a branch of the government vested with judicial power from ministerial agencies of every kind and character). Yet the Plaintiffs/Petitioners in this case seek to have this Court interject itself in the business of performing what is essentially a function of the executive branch of Nevada's state government and one which, as previously set forth by these Defendants, has already been performed.

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IV. Conclusion

For the reasons previously set forth by these Defendants, this Court cannot issue the injunctive relief requested by these Plaintiffs/Petitioners. Nor can this Court proceed in the manner, and to the issues, as requested by these Plaintiffs/Petitioners, due to the absence of Douglas County in this action. For these reasons, this case should be dismissed by this Court.

Douglas County also cannot be joined in this action under Nevada's venue rules. NRS 13.030 establishes that "[a]ctions against a county may be commenced in the district court of the judicial district embracing the county...." With respect to Douglas County, venue is not proper in this Court, sitting in Washoe County. For this additional reason, Douglas County, as a necessary party, cannot now be joined and this action must be dismissed against all Defendants.

AFFIRMATION PURSUANT TO NRS 239B.030

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

Respectfully submitted this 19th day of June, 2009.

RICHARD A. GAMMICK
District Attorney

By David C. Creekman

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ATTORNEYS FOR WASHOE COUNTY

**CERTIFICATE OF SERVICE BY MAIL**

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, I deposited for mailing in the U. S. Mails, with postage fully prepaid, a true and correct copy of the foregoing REPLY TO PLAINTIFFS'/PETITIONERS' STATEMENT ON SCOPE OF THE ISSUES BEFORE THE COURT in an envelope addressed to the following:

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Dated this 19 day of June, 2009.

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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|---|---|
| VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., a Nevada non-profit corporation, on behalf of their members and others similarly situated; MARYANNE INGEMANSON, Trustee of the Larry D. and Maryanne B. Ingemanson Trust; DEAN R. INGEMANSON, individually and as Trustee of the Dean R. Ingemanson Individual Trust; J. ROBERT ANDERSON; and LES BARTA, on behalf of themselves and others similarly situated,<br><br>Petitioners,<br><br>vs.<br><br>STATE OF NEVADA on relation of the STATE BOARD OF EQUALIZATION; WASHOE COUNTY; BILL BERRUM, WASHOE COUNTY TREASURER;<br><br>Respondents | Case No.: CV 03-06922<br><br>Dept. No. 7<br><br>REPLY BRIEF OF PETITIONERS RE SCOPE OF ISSUES |

Petitioners submit the following reply to the statements of respondents regarding the scope of the issues in this action on remand from the Nevada Supreme Court:

I. INTRODUCTION.

Both the State and County respondents devote substantial portions of their arguments to the alleged non-availability of preliminary injunctive relief and seek to identify the "single issue" before the Court as whether the Village League to Save Incline Assets, Inc. was entitled to preliminary injunctive relief in 2003 when the complaint in this matter was first filed. The

standard for preliminary injunctive relief is wholly out of place. The "likelihood of prevailing on the merits" is only an issue on preliminary injunctive relief. Petitioners do not seek and have never sought "preliminary" injunctive relief.

In terms of injunctive relief, in the original complaint, the Village League sought a mandatory permanent injunction compelling the State Board of Equalization to perform its duty of statewide equalization. As noted by the Supreme Court in its order of remand, however, the claim for equalization actually lies in mandamus rather than as an action for a mandatory injunction. As requested by petitioners and granted by the Court in this matter, petitioners have now filed an amended petition expressly seeking the same relief in mandamus.

Respondents are wrong in any event. If the issue were "preliminary" injunctive relief, and if this Court had denied the Village League that in 2003 on the basis either that the League failed to show the likelihood of prevailing on the merits or that the League had other remedies at law, the Village League would have taken an appeal, the Supreme Court would then, as it did in 2008 in State ex rel. State Board of Equalization v. Barta (Barta), 124 Nev. 58, 188 P.3d 1092, 1102 (2008), have dealt with the merits by acknowledging the separate, express and affirmative statutory duty of the State Board of Equalization under NRS 361.395 to equalize property valuations statewide. The Court would similarly have dealt with the issue of irreparable harm by noting the absence of an administrative process to exhaust, the inability of taxpayers to sue the State Board of Equalization for damages, and the limited relief provided to individual taxpayers through the administrative process of appealing the Assessor's land valuations.

Both the State and the County respondents scramble frantically in their attempt to persuade this Court to dismiss this action rather than address the issue of equalization. They make essentially ridiculous arguments. The State respondents, for example, argue that taxpayers do not need injunctive relief because "[i]f the Village League believes that the State Board has violated any subsection in NRS 361.395, **it could have filed a lawsuit** alleging violations of such provision." SBOE Statement of the Issues and Request for Dismissal ("SBOE Brief"), p. 11, lns. 3-4 (Emphasis added). It cannot be that the State respondents have

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misapprehended the nature of this very proceeding. The League did file a lawsuit. That is what this case is, a lawsuit alleging the violation by the State Board of its statutory duty of statewide equalization and seeking to compel the performance of that duty.

On the other hand, if the State respondents are trying to say that the Village League and/or taxpayers should have brought an action at law for damages for "equalization malpractice," then they are at odds with their own position in a concurrent case. Taxpayers have separately filed a civil rights action under 48 U.S.C. 1983 for damages based on the failure of statewide equalization.[1] In that case, however, the State Board is claiming that its members enjoy "immunity" from damages actions. The State respondents cannot have it both ways. They cannot simply argue whatever is convenient to the particular case. If, in fact, the State respondents are now prepared to waive their claims of immunity, however, the taxpayers will amend their petition/complaint to seek damages rather than to compel the Board to perform its statutory duty of statewide equalization.

The State respondents deny that taxpayers risk any "irreparable harm" stating that "as five and a half years have passed since the Village League filed its Complaint in the instant case, if any irreparable harm was to have occurred it would have occurred by now." SBOE Brief, p. 11, lns. 25-27. And so it has. If a showing of "irreparable harm" is necessary here, then five and a half years of excess property taxes paid by approximately 9000 homeowners for which this case provides the only possibly remedy meets that requirement.

The State respondents also trot out the familiar refrain about "statewide equalization" requiring the State Board to look at "in excess of one million parcels and nearly 300,000 personal property assessments in the State of Nevada." SBOE Brief, p. 4, lns. 4-7, p. 8, lns. 11-14. No one, certainly not the Village League or the Incline Village taxpayers, has suggested that equalization requires a property by property review. The Board need examine only the valuation methods used. As the Supreme Court stated in Barta, supra, "uniform assessment

[1] The federal civil rights action was brought at a time that this mandamus/mandatory injunction action for equalization had been dismissed for failure to exhaust administrative remedies. Based on the status at that time, the complaint alleged the lack of an adequate remedy under state law. The remedy available in this action remains undetermined.

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methods, properly applied, will necessarily produce the same measure of taxable value for like properties." 188 P.3d at 1101. Furthermore, in this case, the Board would only be looking at the land portion of residential real property at Lake Tahoe in Douglas and Washoe Counties, closer to 15,000 parcels than 1,000,000. Even then, the Board would need a minimal look at the 9,000 parcels in Washoe County because the Supreme Court has already determined that the methodologies used to value those parcels were unlawful.

Just as the State respondents want to re-litigate whether the State Board has a duty of statewide equalization, the County respondents want to re-litigate both the exhaustion requirement and the standing of the Village League. In Barta, supra, the Supreme Court settled the duty issue, writing that "Under NRS 361.395(1), the State Board clearly has a duty to equalize property valuations throughout the state. . . ." 188 P.3d at 1102. Likewise, in the order in this case remanding the equalization claim for "further proceedings," the Supreme Court settled both the exhaustion and the standing issues. On standing, the Court wrote as follows:

> Having considered respondents' argument that Village League lacks standing to raise the equalization claim, we conclude that it is without merit. Order Affirming in Part, Reversing in Part, and Remanding, p. 7, fn. 5.

The County respondents, however, suggest that the Supreme Court's ruling on standing "applied only to the [League's] standing to bring its action before the Supreme Court. . . ." Statement of Issue Before this Court and Position of Washoe County Defendants ("County Brief"), p. 7, fn. 1. No authority is cited for a "flexible" concept of standing such that, in the same action, a party can have standing in the Supreme Court and not in the District Court. Petitioners submit that no such authority exists. The Supreme Court inserted its footnote 5 on "standing" at the end of the sentence in which it remanded this case for "further proceedings" on the equalization claim. In context, the Court's determination of standing clearly was not limited to the matter in the Supreme Court.[2]

[2] To moot the standing issue, the amended complaint/petition for mandamus includes several individual taxpayers as petitioners and putative class representatives.

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Re-arguing exhaustion, the County respondents contend that taxpayers are required to assert their equalization claims to the County Board of Equalization under either NRS 361.355 or NRS 361.356 and then take appeals from the County Board decisions to the State Board. County Brief, p. 15, ln. 15 - p. 18, ln. 17.[3] According to the County respondents, taxpayer petitioners or their representatives having failed to pursue that process cannot be heard on equalization by the State Board of Equalization. Those petitioners and their representatives "now [have] no access to the State Board of Equalization" and "[n]either can this Court provide [them} with such access." Id., p. 19, lns. 11-13.

The statutes, however, as recognized by the Supreme Court, distinguish between claims which are heard by the State Board of Equalization on appeal from decisions of the County Boards of Equalization and the State Board of Equalization's affirmative duty of annual statewide equalization which is automatic and not triggered by any taxpayer action or inaction. Not only are the County respondents wrong on the law, but this issue has been determined by the Supreme Court and, just as the State Board's affirmative statutory duty of statewide equalization and the standing of the Village League, is not open to being re-litigated. County respondents should have filed a motion for reconsideration in the Supreme Court if they wanted to pursue further argument on exhaustion.

Finally, the County respondents also argue that the interest in "stability" and "reliability" of the property tax system outweighs the "other" significant public policy of Constitutional equality and uniformity with the "balance of hardships" somehow favoring the indisputably unconstitutional valuations of the County Assessor over the rights of individual taxpayers. County Brief, p. 24, ln. 14 - p. 25, ln. 12. Setting aside the fact that it cannot act as a shield for the unconstitutional, the "balance of hardships" has nothing to do with an action in mandamus. The "balance of hardships" does not relieve the State Board of Equalization from

[3] The County respondents relate their exhaustion arguments to their standing arguments by claiming that the Village League lacks associational standing because "the individual participation of each property owner who wishes to challenge his or her assessment is necessary for the resolution of the issue in this case." County Brief, p. 24, lns. 4-7. Equalization, however, is not a matter of individual taxpayer challenges to their individual assessments.

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its affirmative and mandatory statutory duty under NRS 361.395 to effect statewide equalization.

II. REPLY TO THE SBOE'S STATEMENT OF THE ISSUE.

The State Board of Equalization (SBOE) summarizes its four arguments for dismissal of the petitioners' equalization claim as follows:

"[1] the Village League would not have been entitled to such relief at that time because no clear duty of general equalization existed at that time,

[2] NRS 361.355 provides an adequate remedy to challenge property assessments between counties and . . .

[3] other adequate legal remedies exist for such challenges.

[4] . . . Village League could not have shown that it would suffer irreparable harm for which legal damages are an inadequate remedy. SBOE Brief, p. 12, lns. 19-24.

These arguments are addressed in turn below.

A. NRS 361.395 Establishes A Clear Duty Of Statewide Equalization.

The argument that the petitioners' equalization claim should be dismissed because "no clear duty of general equalization existed" in 2003 when the initial complaint in this action fails on a number of grounds:

(1) NRS 361.395 has been part of Nevada law since at least the early nineteenth century and itself clearly imposes a duty of general statewide equalization. It cannot be more clearly stated than "During the annual session . . . , the State Board of Equalization shall: (a) Equalize property valuations in the State. . . ." In 2008, when the Supreme Court wrote in the Barta decision that "Under NRS 361.395(1), the State Board clearly has a duty to equalize property valuations throughout the state . . . ," it did not create that duty but rather merely recognized a pre-existing duty. 188 P.3d at 1102. The language of NRS 361.395 was the same in 2003 as it was in 2008. The duty of statewide equalization imposed by that statute was likewise the same.

(2) If, instead of dismissing the equalization claim in 2004 on failure to

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exhaust grounds, this Court had addressed the merits and dismissed the claim or denied preliminary injunctive relief[4] on the equally erroneous grounds that no duty of statewide equalization existed, petitioners would have appealed, the dismissal would have been reversed, and the duty of statewide equalization recognized by the Supreme Court as it was in Barta, supra. The SBOE's duty of statewide equalization would not only be a matter of statute, it would be the law of the case as well as binding precedent.

B. NRS 361.355 Does Not Address Petitioners' Equalization Claims.

The State respondents argue that "NRS 361.355 provides an adequate legal remedy to address disparity in valuations between counties." SBOE Brief, p. 9, lns. 17-18; p. 12, lns. 20-21. The State respondents are wrong as will be set forth below. More importantly, however, they are off track. The issue here is the duty of the State Board under NRS 361.395 to effect statewide equalization as part of its annual functions. The efforts of the State respondents to pass the buck to the County Board of Equalization or to individual taxpayers or taxpayer groups must be rejected as irrelevant. The language of NRS 361.395 is absolute, not conditional. The State Board's duty under NRS 361.395 is not triggered by some act or failure to act on the part of others.

In any event, if an "adequate legal remedy" was in issue, NRS 361.355 would clearly not provide that remedy. NRS 361.355 authorizes a taxpayer of one county to complain to the county board of equalization from a different county that property in that second county is undervalued or has been missed altogether by the assessor of that county. The State respondents suggest that Incline Village taxpayers should have complained under NRS 361.355 to the Douglas County Board of Equalization that property at Lake Tahoe in Douglas County was "undervalued." Of course, Incline Village taxpayers did not believe in 2003 and do not believe now that residential property at Lake Tahoe in Douglas County was undervalued. Incline Village taxpayers believe that their residential property at Lake Tahoe in Washoe County was overvalued. Their complaint is not encompassed by NRS 361.355 which only

[4] As noted above, petitioners do not seek and have never sought preliminary injunctive relief.

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provides a procedure for challenging undervaluation or property escaping taxation and only provides for property values to be increased.

Furthermore, NRS 361.355 requires that the matter first be heard by the County Board of Equalization. The County Board's decision would then be heard on appeal to the State Board of Equalization. As the Supreme Court made clear in Barta, supra, hearing appeals from county boards is an entirely different and separate State Board function from statewide equalization.

The Court wrote as follows:

> Under NRS 361.395(1), the State Board clearly has a duty to equalize property valuations throughout the state. . . . Furthermore, NRS 361.400 establishes a requirement, separate from the equalization duty, that the State Board hear appeals from decisions made by the county boards of equalization. The two statutes create separate functions: equalizing property valuations throughout the state and hearing appeals from the county boards. 188 P.3d at 1102.[5]

C. Other Legal Remedies Do Not Exist For Statewide Equalization.

The State respondents also argue that "other adequate legal remedies exist for such challenges [as statewide equalization]." SBOE Brief, p. 11, lns. 1-18; p. 12, ln. 22. State respondents begin with the suggestion that the taxpayers have an action against the Board for damages which, although at odds with the position actually taken by the State Board in a contemporaneous action brought by taxpayers for damages, would be an acceptable alternative for taxpayers. The "other legal remedies" referenced by the State respondents are other lawsuits brought by taxpayers, including the Barta case, arguing that the Supreme Court declined to

---

[5] State respondents argue that NRS 361.395 was "historically" interpreted by the State Board of Equalization to encompass only "equalization by appeal" from a County Board. SBOE Brief, p. 7, ln. 6 - p. 9, ln. 9. State respondents fail to cite, however, to any such interpretation by the State Board because none exists. In truth, the "historical" approach to NRS §361.395, at least the history since the 1981 adoption of the "taxable value" system, has been to ignore the statute altogether.

The notion that the State Board "historically" performed its statewide equalization function by hearing appeals from County Boards of Equalization is, in truth, just a relatively recent invention of counsel to explain the State Board's failure of statewide equalization. It makes no sense anyway. The hit-and-miss approach of individual taxpayer valuation challenges cannot possibly substitute for statewide equalization.

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reach the equalization issue in Barta because of the availability of a legal remedy -- tax refunds. With the one exception noted above in which taxpayers seek an award of damages against the individual members of the State Board in a 42 U.S.C. 1983 civil rights action, the cases brought by taxpayers have been challenges to the valuation regulations, actions for judicial review of individual taxpayer decisions by the State Board of Equalization, and an action for breach of a settlement agreement. None of these cases seek or offer the possibility of an equalization remedy. In Barta, for example, 37 taxpayers successfully challenged their individual property valuations on the grounds that the Assessor determined those values using unlawful and unauthorized valuation methodologies. The successful challenge to individual property valuations, however, does not even speak to the issue of equalization let alone provide an alternate legal remedy.

The State Board of Equalization has an affirmative duty of annual statewide equalization. As Barta makes clear, that duty is separate and independent of its duty to hear and determine appeals of County Board decisions on individual taxpayer challenges to valuation. The State Board of Equalization is not absolved of its duty of statewide equalization either by the actions of taxpayers in bringing individual challenges to valuation or by the failure of taxpayers to do so. That is the express ruling on the remand in this very case. The claim to compel the State Board to perform its duty of statewide equalization has no requirement of exhaustion of administrative remedies and is not barred by the failure to exhaust those remedies because there is no administrative process to exhaust. The State Board's duty of statewide equalization is an affirmative duty imposed by law, not triggered by taxpayer action and not excused by the omission of such action.

D. Taxpayers Will Suffer Irreparable Harm If Their Equalization Claim Is Dismissed.

The State respondents acknowledge that the Supreme Court held in Barta, supra, that "a taxpayer suffers injury when properties are not valued using uniform and equal rates of assessment." They argue, however, that "there is nothing irreparable about that injury . . . . because [individual] taxpayers, including those who are members of Village League received a monetary remedy when their tax assessments were rolled back to the rate they were assessed in

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2002." SBOE Brief, p. 11, lns. 21-25. The State respondents continually confuse the right of the individual taxpayer to challenge the valuation of his property with the affirmative statutory duty of the State Board to effect statewide equalization. The failure of the State Board to perform that duty in 2003-2004 and subsequent years has resulted in the assessment and payment of excess taxes by the residential homeowner taxpayers of Incline Village and Crystal Bay. Although irreparable harm is not an element required for relief in mandamus, the excess taxes paid here are undeniable and that harm will be irreparable unless the petitioners' equalization claim is enforced.

III. REPLY TO COUNTY'S STATEMENT OF THE ISSUE.

Like the State respondents, the County respondents effectively seek the dismissal of the petitioners' equalization claim on the basis that the elements of injunctive relief are not satisfied. County respondents make the same inapposite argument as the State respondents about the petitioners' alleged inability to establish the "likelihood of prevailing on the merits" as though petitioners were seeking preliminary injunctive relief. County respondents also make the same irrelevant argument about NRS 361.355, the statute under which a taxpayer may complain about the "undervaluation" of other property to a county board of equalization. In response to those arguments, the petitioners restate their response above to the SBOE Brief. The County's arguments on standing and failure to exhaust are addressed above as well.

With respect to the remainder of the County's arguments, petitioners reply below.

The County Brief contains several significant misstatements of fact. The County writes, for example, as follows:

> Under Bakst, the use of assessment methodologies not supported by regulations of the Nevada Tax Commission caused the constitutional violation. This is a situation since rectified by the Nevada Tax Commission's adoption of such regulations in 2004. County Brief, p. 5, lns. 12-16.

In fact, although the Tax Commission adopted amended regulations in 2004, those amended regulations did not authorize the unlawful assessment methodologies used by the Washoe County Assessor for the 2003-2004 reappraisal of Incline Village and Crystal Bay. The

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regulations, as amended in 2004, also failed to address many of the valuation issues and remain inadequate guidelines for county assessors.

The County also writes that:

> In Barta, however, assessment methodology regulations were in place, but they were impermissibly applied retroactively, thus causing the constitutional violation found to exist in that case. County Brief, p. 5, lns. 19-22.

Again, the County Brief is inaccurate. The Bakst case involved the 2003-2004 tax year. The Barta case involved the 2004-2005 tax year. The County Assessor did not reappraise property at Incline Village/Crystal Bay for the 2004-2005 tax year but rather used the same unlawful 2003-2004 reappraisal and the identical values as 2003-2004. As such, the Supreme Court found those valuations and the assessments based on those valuations unconstitutional and void as they had in Bakst. In Barta, the Supreme Court merely declined to reach the issue of the 2004 amendments to the regulations because, even if those regulations had included the Assessor's methodologies (which they did not), they could not be used to retroactively validate unconstitutional valuations and resulting assessments.

The County respondents also write as follows:

> In performing its equalization function under NRS 361.395(1), the State Board of Equalization performs this significant function only after the Nevada Department of Taxation assists the State Tax Commission and the State Board of Equalization by testing a variety of information using applied statistics to determine if inequity or assessment bias exists. County Brief, p. 11, ln. 5 - p. 12, ln. 3.

The County Brief continues as follows:

> If inequity or bias is discovered, NRS 361.333 provides the Nevada Tax Commission with authority to correct inequitable conditions. If the Nevada Tax Commission fails to perform this function, the Nevada State Board of Equalization is free to step in and perform this function, pursuant to its authority to 'equalize' under NRS 361.395(1). Id., p. 12, lns. 6-12.

This scenario is invented out of whole cloth by the County respondents without a shred of supporting authority. The State Board of Equalization's duty of statewide equalization has

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been a matter of Nevada statute since the 1800s. NRS 361.333 which provides for the conduct of "ratio studies" by the Department of Taxation was originally enacted in 1967 as part of a larger statute revising the funding for local school districts. "Ratio studies" were developed for use in market value ad valorem tax systems and generally measure an Assessor's performance by comparing the Assessor's value to market value. In 1967, Nevada had a market value ad valorem tax system. In adopting the use of "ratio studies," the Nevada Legislature changed nothing whatsoever about the State Board of Equalization's duty of statewide equalization as reflected in the legislative history of the 1967 law which will be provided separately.

The 1967 legislation, in fact, effectively ratified the State Board of Equalization's existing duties by amending NRS 361.405 to provide that, going forward, the county auditor was required to advise the Tax Commission as well as the county commission with respect to any changes in valuation made by the State Board of Equalization. Since 1967, NRS 361.333 has been amended a number of times. None of those amendments contains any language that would purport to limit the State Board of Equalization's duty of statewide equalization, that would substitute the ratio studies or Tax Commission action for any part of that duty, or that would connect the ratio studies in any way to that duty.

In 1981, when the Legislature amended the Nevada property tax system to replace "market value" with "taxable value," it retained, without discussion, the statutory provision for ratio studies. In a non-market value system such as Nevada's taxable value system, "ratio studies" can no longer be based on market data. In a non-market value system, the assessor's valuation is compared to a "taxable" value to be determined independently, in the circumstances of the Nevada tax system by an appraiser in the Department of Taxation. In reality, that independent appraisal does not occur, seriously undermining the validity of the Department of Taxation's ratio studies. Because only the conclusions of the ratio studies are presented for Tax Commission approval and that approval is agendized as an administrative action, the ratio studies get only the most cursory scrutiny. Accordingly, even if, as alleged by the County respondents, the ratio studies show no lack of equalization between Douglas and Washoe Counties, the results must be taken with the proverbial grain of salt. Not only would

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those conclusions be inconsistent with the conclusions of the Lake Tahoe Special Study; but, absent a determination of the validity of the underlying numbers, the statistical analysis is essentially meaningless.

Contrary to the representations of the County respondents, the State Board of Equalization's statutory duty of statewide equalization has not become a default duty, to "step in" and correct non-equalization where it is identified in the ratio studies and not remedied by the Tax Commission. The State Board's continuing, absolute and independent duty under NRS 361.395 of statewide equalization is further reinforced by the fact that, although the Nevada Legislature has amended NRS 361.333 more than once to break up the ratio studies obligation, first into a two-year obligation and subsequently by dividing the counties into three segments and doing one segment each year, with the whole state covered over a three-year period, no comparable action has ever been taken with respect to the State Board's duty under NRS 361.395. Both before and since the adoption of ratio studies in 1967, that duty of statewide equalization was, is and has remained an annual duty encompassing the entire State.

The State Board of Equalization is, at least ostensibly, a separate agency which performs its statutory functions including the review of Tax Commission property valuations independent of the actions of the Commission and the Department. Contrary to the representations of the County respondents, the State Board of Equalization does not perform and has never performed its duty of statewide equalization under NRS 361.395(1) "by reference to NRS 361.333's ratio study." County Brief, p. 25, lns. 15-16.

## IV. CONCLUSION.

Petitioners submit that equalization is primarily a function of uniformity of methodology. Accordingly, so that this Court may remand this matter to the State Board of Equalization with appropriate instructions and guidelines, petitioners request the opportunity to do discovery into the valuation methodologies used in Washoe and Douglas Counties for the valuation of the land portion of residential real property at Lake Tahoe for the 2003-2004 tax year and subsequent years. With the information obtained through discovery, the parties can submit detailed proposals for the equalization of property valuations at Lake Tahoe for the

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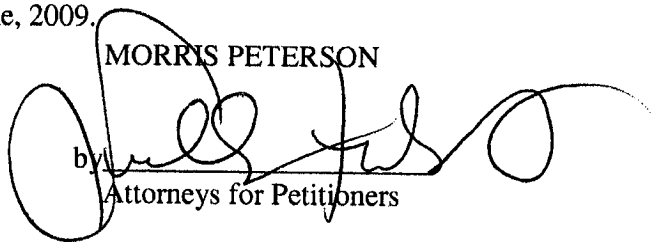
Court's use in fashioning a remand order to the State Board that will not simply produce another five and a half years of litigation without resolution.

DATED this 19th day of June, 2009.

MORRIS PETERSON



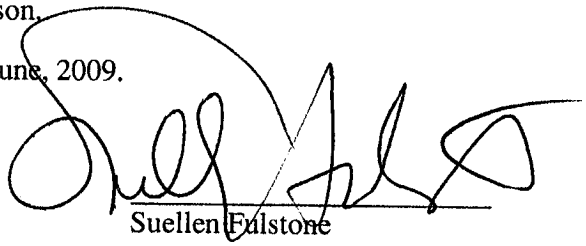
by: _____
Attorneys for Petitioners

**AFFIRMATION**

**Pursuant to NRS 239B.030**

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

DATED this 19th day of June, 2009.



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## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of MORRIS PETERSON and that I served via first class mail, postage prepaid, a true copy of the foregoing upon the following:

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David Creekman
Washoe County District Attorney's Office
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P.O. Box 30083
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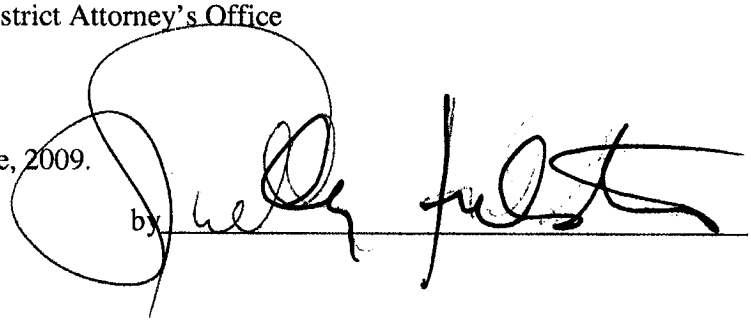
Dated this 19th day of June, 2009.

by: 

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondents.

_____/

Case No. 56030

# JOINT APPENDIX

# VOLUME II


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## APPENDIX INDEX

4185

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

--o0o--

| | |
|---|---|
| VILLAGE LEAGUE, ET AL,<br>Plaintiffs,<br>vs.<br>DEPARTMENT OF TAXATION, ET AL,<br>Defendants. | Case No. CV03-06922<br>Dept. No. 7 |

TRANSCRIPT OF PROCEEDINGS

HEARING

Friday, September 25, 2009

Reported by: EVELYN J. STUBBS, CCR #356

APPEARANCES:

For the Plaintiffs:

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By: Suellen Fulstone, Esq.
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DENNIS BELCOURT, ESQ.
Deputy Attorney General
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Carson City, Nevada 89701

Also Present:

Joshua G. Wilson,
Washoe County Assessor

Maryanne Ingemanson,
President, Village League

RENO, NEVADA; FRIDAY, SEPTEMBER 25, 2009; 2:30 P.M.

--o0o--

THE COURT: Miss Clerk, please call the case.

THE CLERK: CV03-06922, Village League versus the Department of Taxation.

Counsel, please state your appearance.

MS. FULSTONE: Suellen Fulstone, Morris Peterson, on behalf of the Village League to Save Incline Assets. Maryanne Ingemanson, Todd Lowe, and J. Robert Anderson and Les Barta.

MR. CREEKMAN: Good afternoon, Your Honor. I'm David Creekman with the Washoe County District Attorney's Office on behalf of Washoe County, its assessor and its treasurer.

MR. BELCOURT: Good afternoon, Your Honor. Dennis Belcourt, Deputy Attorney General, on behalf of the State of Nevada, including Department of Taxation and the State Board of Equalization.

THE COURT: Okay. And welcome, Mr. Wilson, our county assessor.

MR. WILSON: Good afternoon.

MS. FULSTONE: With me is Ms. Ingemanson.

THE COURT: Good afternoon, Ms. Ingemanson.

I didn't mean to exclude you from our greetings

today.

I notice that since our hearing back in April, the Village League has filed an amended complaint, and are following the Nevada Supreme Court's suggestion in its order that mandamus was a more appropriate vehicle to address these.

I've had a chance to read the briefs both parties have submitted.

Let me start with you, Ms. Fulstone. You're suggestion is, before a remand back to the state, some discovery might be appropriate so we can avoid another five and a half years of litigation before it gets addressed here.

Did I summarize what your position is?

MS. FULSTONE: You've summarized what my position is. If you want me to summarize it some more, I can do that.

THE COURT: How do you think we should proceed?

MS. FULSTONE: We have, as Your Honor has noted, we filed the amended complaint. I think that should be answered by way of writ of mandamus or response or however it's characterized. And then I think we should proceed under the rules to do limited discovery, as the parties decide to do that, into the issues. And then hopefully we will be in a position to present it to

the Court.

I don't think we are talking about a trial here. At least not a lengthy one, not where we're going to bring taxpayers up or any of that sort of thing. But I think there needs to be some additional development of the facts before we go forward.

THE COURT: I'm most concerned about the scope of discovery. I know we talked about it last time, and I note in your brief that while the State had said there's a million parcels out there, we narrowed it down considerably. And maybe we're getting ahead of ourselves. Maybe this an issue for the discovery commissioner.

I want to try and, not reduce the cost to your clients and the State, but to try and find a measurable, meaningful, statistical standpoint that would a assist you in validating your argument and reducing the burden to all the parties.

MS. FULSTONE: My clients agree completely. It's okay with us if you want to reduce the costs to the plaintiffs in this case.

THE COURT: Both sides.

MS. FULSTONE: Both sides as well. Since I speak for the plaintiffs, I can only speak for the plaintiffs.

But yes, I think that whether it's a matter of counsel getting together or -- I'm not sure it's something you can do in open court, but I agree completely. We should narrow the discovery. It shouldn't just be discovery without bar, without any limitation. It should be focused on the issues and proceed in a very limited fashion.

THE COURT: What I'm contemplating is a discovery plan along the lines of federal court. Something more than just boilerplate that's filed in the state court here. Something more discreet. And it's in the fields of Incline.

Thank you, Ms. Fulstone.

Mr. Creekman.

MR. CREEKMAN: With all due respect, I feel that Your Honor is somewhat placing the cart before the horse here. I am of the firm belief that this Court is without jurisdiction, because, as we made introductions, we saw that Ms. Fulstone was here on behalf of the Village League, I'm here on behalf of Washoe County, the Washoe County Assessor and the Washoe County Treasurer, and Mr. Belcourt is here behalf of the State of Nevada. What is most revealing in this case is he or she who is not here. And that's the Douglas County Assessor.

I am happy to enter into a discovery plan after

Ms. Fulstone, if she can, effectuates service on Douglas County.

It is fundamentally unfair for this proceeding to continue through discovery and toward resolution without Douglas County's participation in this case. And that's because the Nevada Supreme Court last October the 30th in an equalization decision acknowledged that where equalization is at issue, the decision-maker has two options, Your Honor. They can raise the property that's valued too low or they can lower the value of the property that's raised too high.

Without Douglas County's involvement in this case. You have no jurisdiction over Douglas County.

THE COURT: What's the status of the hearing in Douglas County?

MR. CREEKMAN: There is no hearing, Your Honor, in Douglas County.

THE COURT: I thought there was a lawsuit. Let me hear from Ms. Fulstone. Isn't there some proceeding in front of Judge Russell?

MS. FULSTONE: There's a proceeding. There are all kinds of proceedings here. I think the one you're asking about was the one in which, I think the order was issued on October 30th, which was a remand from the supreme court to the State Board of Equalization

regarding the Washoe County's geographic equalization decision in 2006. That matter went before the State Board of Equalization on July 20th. The State Board of Equalization affirmed the county board's decision. And now we're awaiting a written decision from the state board. And at that point the county will presumably appeal.

So that one is at that stage now.

Taxpayers have also brought a mandamus action, which has been assigned to Judge Adams, to compel the payment, the treasurer to pay the refunds that are due, based on the county board's decision in 2006.

Now that there's no stay of that decision, it's our position that those refunds should be paid and paid promptly.

In front of Judge Russell we also have several cases. We have a -- and the case you may be thinking of. We have a case that we just filed that has to do with '08-'09, because that decision was just made in April by the state board. We have consolidated cases for '06-'07 and '07-'08, which are judicial review cases. Then we have an equalization case for the '07 tax year.

In '07 the county board did not do the geographic equalization, so we went to the state board to get equalization. We took that case to Judge Russell.

That decision was dismissed in part. Part of the dismissal is now on appeal to the supreme court. And then the other portion of the case was remanded to the state board. And that remand is scheduled to be heard this coming Wednesday.

THE COURT: Thank you.

MS. FULSTONE: Don't know where that gets us here, but that's the state of events.

THE COURT: Address Mr. Creekman's contention that the Douglas County Assessor is an indispensable party to the case.

MS. FULSTONE: Well, my understanding --

THE COURT: It makes sense.

MS. FULSTONE: You know, I think on the surface it makes sense, but then if you go back and look at what it is that this action is trying to do, I think the Douglas County Assessor is not an indispensable party, not even necessary or even probably a proper party.

This is a mandamus action to compel the State Board of Equalization to equalize between Douglas and Washoe. The idea of doing some discovery was so there could be some guidance given to the state board.

Clearly the state board's duty is not a discretionary one. It has a statutory duty to equalize statewide. That would be equalizing between Douglas and

Washoe County, among other things. But in this particular case that's its duty.

How it performs that duty is somewhat discretionary, but certainly to the extent that there can be guidelines for that that facilitate getting this thing decided and over with, rather than send it back, which the court could to do today, and then have the State Board of Equalization continue to flounder, as they have in the past, with equalization issues, and then back to you and then back there and continually back and around, the idea was to get some of the facts out to have the court give the State Board of Equalization some guidance.

Douglas County comes into the matter before the state board, not before this court. This court isn't going to order Douglas County to do anything. I mean the idea here was to order the state board to equalize, to perform its duty of equalization. When you get to the state board then, and you know, Douglas County would certainly be involved, and if in fact the state board determined, as I guess it theoretically could, to increase valuations in Douglas County, then the Douglas County taxpayers would be involved. The Douglas County Assessor probably as well, but more importantly the Douglas County taxpayers.

This court isn't going to increase anybody's

taxes.

THE COURT: Not in Douglas County.

MS. FULSTONE: Not in Douglas, and I don't think in Washoe County either.

THE COURT: Let me hear from Mr. Belcourt.

MR. BELCOURT: Thank you, Your Honor.

Let me talk about what Ms. Fulstone is proposing. I don't think any discovery whatsoever is needed. If this court decides that, you know, that it has all the necessary parties before it and decides that the duty was not fulfilled of equalizing and, you know, that it's within its jurisdiction to do that, then the equalization process has to be handled by the state board itself.

Let me just correct some characterization that Ms. Fulstone put on this. The state board has in recent years met and discussed, well, is there a need to equalize? And they haven't identified an equalization problem. Confronted with additional -- and you know, the supreme court decision has come down. They have set about doing regulations, and those have not gone to the Legislative Counsel Bureau yet for approval. But there have been two workshops on that. And the Village League has participated, as have other taxpayers and the assessors. I believe other taxpayers.

The whole thing about having a mandatory duty to do something is, once you undertake that duty, how you go about it is where you've got discretion. And this court I don't believe can control that discretion in advance.

If the state board meets and does something that is outside the law, then this board can intercede; but if it doesn't, if it's acting within the law, that discretion is within the state board to do so. And the challenges to those acts of discretion may not lay in mandamus, because it's a discretionary duty.

I don't know why we would need to do discovery to control in advance what the state board is going to do. If this court really finds that the state board has to do the duty, and they've got the parties before them -- I'm not saying that you have them. I would like to have Mr. Creekman's position fully imbedded.

But if you do, then the state board equalizes. And the state board doesn't equalize between property owners in two different counties. It's a statewide duty under 361.395. That's what we're talking about here.

There are duties under 361.355 and 361.356. Those are not before this court, because the supreme court didn't address those, in terms of what the next action has to be.

Under 395, that doesn't involve the parties, you know, between property owners in different areas contesting -- I mean, basically the statewide equalization, I guess I would like to liken it to trueing a wheel. You've got a wheel that you don't just deal with two spokes in the wheel. The statewide equalization process is holistic. It's a real frightening obligation to have to equalize the whole state. And that's probably why we're trying to go to regulations and getting them to determine now what that process involves.

The legislature, this statute, 395, was enacted I don't know how many years ago and it was under a different configuration of agencies. You have the State Board of Equalization operating as the tax commission with different hats.

It is a problematic statute. The regulations may address it, but when we mention that the state board is entertaining, as I understand it, the possibility of convening a meeting concerning, not '03-'04, because that's before this court, but concerning the current tax year, which would involve the assessor. So they're still exploring the process. But I think the decision, if it were to go, is up to agency. And this court can act if the agency is violating the law, and again, all the preconditions for mandamus or prohibition or whatever

bases for that action are there.

THE COURT: Thank you.

Ms. Fulstone.

I'll get to you, Mr. Creekman.

MR. CREEKMAN: Okay. Thank you.

THE COURT: The sun will not set today until I've given everybody an opportunity to say what they want to say.

Go ahead, Ms. Fulstone.

MS. FULSTONE: Mr. Belcourt says the State Board of Equalization has met and looked at equalization. The only publicly-noticed hearing that I'm aware of where they met and looked at equalization was when Judge Griffin remanded the 2004-5 case to them for equalization. And they basically threw up their hands and said, let's table this for another meeting. At which point Judge Griffin took it back, and the parties appealed it to the supreme court, and the supreme court decided and didn't breach the equalization issue, because of the evaluation issues.

If it's met and looked at equalization, it has not done so in a publicly-noticed hearing as required by law.

You know Mr. Belcourt says it's 395, 361.395 is a problematic statute. It's not really a problematic

statute. It's a very clear statute. It says the state board will meet on an annual basis and engage in statewide equalization.

We're not here about the duty of statewide equalization going forward. We're not here about the regulations that the state board of Equalization is trying to develop in order to perform this statewide duty of equalization. By law if they adopt those regulations now, we're talking here about equalization in 2003-2004. So they can't take regulations that they adopt now and go back and say, okay, we're going to use these regulations to deal with this seven, eight-year-old equalization issue. We're not dealing with statewide equalization.

This is not an action to compel the State Board of Equalization to equalize statewide for the 2003-2004 tax year and going forward, but essentially to equalize for the Lake Tahoe area. The equalization issues that we raised then, which were ignored and which have been pretty much validated by the Lake Tahoe study. And I don't think anybody on any side here would even deny the lack of equalization between Douglas County and Washoe County.

I don't want to get us sidetracked. The issue of whether the Douglas County Assessor needs standing here, I mean if he needs standing, we'll bring him in. I

don't think this case in its present posture requires the participation of the Douglas County Assessor.

THE COURT: Thank you.

Mr. Creekman.

MR. CREEKMAN: I would take Ms. Fulstone up on her offer. If you need standing, we'll bring him in. I suggest that she serve or attempt to serve Douglas County with respect to this case and see what sort of response she receives from Douglas County. Until that time, no discovery is necessary.

I will point the Court's attention to my belief that the state board has no authority over Douglas County, either, at the present time relative to the 2003-2004 values. And that's because of the process of statewide equalization, which necessarily includes equalization on a microcosm level, has already occurred for this tax year. And it occurred under a chapter of the tax code, which coincidentally, falls in a section called, "Equalization of Assessment Among the Several Counties." That's found at 361.333.

And the State Board of Equalization only performs its function under 395 when the State Tax Commission and the Department of Taxation under 361.333 are derelict in their duties or prior to -- if an extreme problem is noticed or in response to a petition -- prior

to the completion of those ratio studies, which by operation of the completion of the studies and the resulting conclusion that the assessed value to actual value falls within a range of 32 to 36 percent, the presumption is that equalization has occurred across the state of Nevada.

That's what occurred with respect to this tax year. That's what occurs with respect to every tax year.

The State Board of Equalization acting under 395, when they do so, only has jurisdiction in the world of equalization with respect to the current tax year. The statutory scheme under 333 with respect to these ratio studies is a prospective operation, and a conclusion I've reached by virtue of the relief that's granted when property is out of equalization, it's applied to the succeeding tax list and the succeeding tax rolls.

There is no problem with regard to equalization issues in this case as between Douglas and Washoe County, because the issue has already been taken care of.

Furthermore, I think it would be interesting to ascertain the extent to which these plaintiffs availed themselves of other remedies, which may have once been available to them. Particularly the remedy that is specific to dispute as between a property owner in one

county and a property owner in another county.

When a property owner in one county is it dissatisfied that his or her assessment is excessive relative to the next county, there is a detailed statutory procedure that that property owner can follow. I don't believe it was followed in this particular case.

And backing up to Your Honor's comment on Judge Russell's order in the case involving the '07-'08 values. I want Your Honor to be aware that Judge Russell has concluded, just as I've represented to the Court, in that order remanding to the State Board of Equalization, he said NRS 361.333 sets forth the procedure whereby the taxation shall ensure that the assessed value of each type or class of property for one county is equalized with the same type or class of property with the remaining counties in the state.

The DOT, meaning taxation, is to prepare a study as set forth in the statute to ensure the equality of assessment. If there's exists an under-assessment or an over-assessment the DOT shall order the board to conduct an appraisal, and so on and so forth.

"This is the statutory procedure to be followed," said Judge Russell.

Under 395 (1), and again, that's the equalization statute, the state board has a duty to

equalize property valuations throughout the state. Further, 400 requires, separate from the equalization duty, to hear appeals.

Your Honor, full and complete relief cannot be afforded in this case without Douglas County's participation. It is fundamentally a proceeding prejudicial to Washoe County for Your Honor to order this case to be sent back to the State Board of Equalization for equalization when that function has already been performed, it's already been performed in compliance with the statute, with the resulting conclusion that there is no equalization problem as between Douglas and Washoe County.

Rule 19 requires the exercise of equity in good conscious in deciding these issues. Once again, Your Honor, it is simply inequitable and, frankly, unconscionable for this proceeding to continue without, at a minimum, attempting to effectuate service on Douglas County to bring Douglas County into this proceeding with full party status. You have no jurisdiction over them at the present time, nor, I believe, does the State Board of Equalization.

THE COURT: All right.

Mr. Belcourt.

MR. BELCOURT: I just would like to respond to

some of what Ms. Fulstone said.

One, I'm not necessarily advocating that this court wait for the state board to do regulations, but it certainly could apply procedural regulations to the current instance, if it chose to. I can't tell the state board what to do, even though I advise it from time to time.

I'm not the regular board counsel. They certainly make their own minds up, even with the advice of counsel, and of course, follow the law in all cases.

THE COURT: Of course.

MR. BELCOURT: But anyway, with that being said, they have actually and talked about equalization. Whether Ms. Fulstone was given the agenda, I don't know. I know in at least one case where I reviewed the record where they did talk about it.

But the important thing is that this court, if it decides, if it is going down the path of limiting this to a, you know, Washoe County-Douglas County-Lake properties-issue, that is controlling -- if you're telling the state board that, well you can only look at these properties, that is controlling their discretion.

That's a violation of a principle of mandamus that you can control discretion. You can decide when there's been abuse of discretion and act on that. But to

control with the discretion which -- in the statute it's a discretion that the supreme court presumably had in mind, and that is, go out and exercise your duty.

They're saying that the supreme court felt there was a clear duty there. They didn't tell the state board, this is how you do it. There's really, actually, contrary to the briefs in this case, there's nothing of what the supreme court says that tells the state board how -to equalize.

THE COURT: Isn't that the problem, though? They go down, the state board says, we don't understand what we're supposed to do. And they just pass the buck to the county. Says, well whatever we did, is good enough. And it goes back up to the state, back in court again.

MR. BELCOURT: If the state board hasn't actually put pen to paper to do it, then that's what the supreme court is saying hasn't happened.

You can scrutinize, I guess, I mean, if there's going to be discovery about anything, it would be about what the State's board has done in the past. And that is, did they actually met and talk about it. We would only have staff to talk about it, because there's been a complete turnover in the state board membership.

The determination of what their duties are, it

could be -- if this court wants to get a legal brief on what equalization means and then use that as guidance, you know, that would be a legal issue. Do you feel comfortable about that or, you know, you want to do that in advance to get a decision on what equalization means before hand?

But the fact of the matter is, as Mr. Creekman mentioned, the only equalization that's flushed out in the statute is under 361.333. It's basically statistical studies, ratios of sales, and so forth. And also there are procedures in there for the department to review assessor practices.

That's kind of what's actually going into the regulations for the state board thus far. They obviously aren't finalized, in the sense that they have been put to the LCD. You know, in the workshop process that an agency must go through to develop regulations involves getting input from different people. And the tendency is, the desire is, to get a consensus. And you know, unless I'm incorrect, there is no consensus yet on the regulations that the state board has in mind -- or not has in mind, has under consideration for doing the equalization process.

That could be a direction in which to go, if Ms. Fulstone can tell me yes, they are willing to go

along with the draft regulations that are in the process. She's attended both meetings. She testified there were modifications made pursuant to her or her clients' views.

If she can tell us that, then, you know, maybe we can go through the regulation process. If the board determines to make it applicable to the instant litigation, which we're talking about procedural, it's not substantive, there's no due process issue, in my opinion with regard to having procedures in place. If the duties are in the statute, we are just filling in the blanks on the duty. That would be a way to go.

But I don't see doing a lot of discovery to determine, is there an equalization process, without any state board, you know, input or involvement. And they really have to guide it. I think the court can guide the state board as to what the law is, but the state board needs to be the ones who carry out the process.

Again, we have all five -- how many members do we have? Five members. All five members have been there for less than a year and a half. So you don't have the same board that was there when Judge Maddox's remand occurred. There was a meeting in 2007 where the state board discussed equalization. Maybe it wasn't agendized as clearly as it should have been, but they did discuss it. I don't remember what they discussed in 2008. 2009

they're talking about a different expanded meeting. And it's occurring a little later than expected under the law, but it would occur anyway.

But my opinion is that there could be -- there's something -- discovery and trying to control the state board discretion even before they have a chance to act pursuant to the supreme court decision and this court's follow-on decision is inappropriate. It doesn't meet the requirements for mandamus.

And we also don't know -- I think Ms. Fulstone is presuming that Douglas County is right on the money and Washoe County is high in terms of valuation. They could come out with a different opinion at the state board, if there is a difference, if there is a lack of equalization. I don't think there has been a determination in the record in this case that there has been a lack of equalization.

THE COURT: When is the board likely to act on these regulations?

MR. BELCOURT: Well, I just called over to the staff, and the -- I think that they're going to do another workshop or two. Obviously, I think the main holdouts, in terms of a consensus, have been the Village League and the members.

THE COURT: Have they been invited to be part

of the process?

MR. BELCOURT: Of course. It's a public workshop. And I think Assessor Wilson was at the last one and maybe the first one. There have been two. They were in January and February. I don't know if there was a third. Of course they would be able to participate.

And again, we don't really have any guidance from the supreme court yet on what they feel the statewide equalization process should look like.

THE COURT: How do you expect to get that guidance? In what form?

MR. BELCOURT: I don't expect to get it. Not until --

THE COURT: Then what are we waiting for?

MR. BELCOURT: Well, I think the state board looks at, can look at how other jurisdictions do it. They have right now a process that carries over some of the ratio studies and some of the other statistical analyses that are done under 333 by the department. They're looking at that. But also in the draft regulations they have, they also envision looking at evaluating the methods that are being used in the process.

That was as a result of concerns raised by the Village League. So that's what they're looking at.

There is a proposal in the works, it just isn't law yet. And I think that perhaps, you know, some agencies are reluctant to go forward with regs, but this procedure could help that process go forward.

THE COURT: What procedure?

MR. BELCOURT: This court action right now. The immediacy of this. But I don't pretend to say that they're going to. But if they get together and nothing happens, you know, this court could conceivably retain jurisdiction or it could come forward on a follow-up procedure, if that's warranted.

THE COURT: The problem I have, Mr. Belcourt, is this court already has jurisdiction. The court has this case remanded back from the Nevada Supreme Court saying, do something. And I intend to do something.

When the Nevada Supreme Court remands the case back with instructions, the court follows those instructions.

I asked both sides to brief to the court what they thought the Nevada Supreme Court meant by its order. And I appreciated the briefs. And they were well researched, well thought out, vigorously advocated on behalf of both sides or all sides, the state as well as the county, and the plaintiffs.

My dilemma is threefold.

It's, all right. Mr. Belcourt, you can stand down.

MR. BELCOURT: I'll listen.

THE COURT: This is not profound, so you don't have to write this down.

I can either do something now. We have an amended complaint. We can ask for a response, the motions to dismiss, lack of jurisdiction, we can go through civil procedure.

I can do something later, which is wait until the state board meets where draft regulations are discussed, that are under consideration, are discussed, maybe even go to the LCB, maybe go to some committee, maybe get adopted, maybe the plaintiffs are invited to have their input in the regulations, and then see what comes out of that before I act.

Or I do nothing, and let things swing in the wind. And that's just not my DNA.

MR. BELCOURT: Your Honor, I understand that.

THE COURT: So I'm asking, what do you think?

MR. BELCOURT: My thinking is we need an answer.

THE COURT: I don't want to waste anybody's time. If your position is that the plaintiffs' concerns can be adequately addressed by their participation in

this regulatory process, perhaps this court's discretion is better exercised in not interfering with that process.

And I'm more than willing -- actually, not more than willing. I'm required by case law to defer to these agencies, because they do have that expertise.

I certainly feel that no court is in a position to tell the assessor or the state board how to exercise their discretion. As you pointed out, all the plaintiffs are saying here is, exercise it pursuant to statute, pursuant to law. They claim you haven't. They claim that you are -- but I want to, it's incumbent upon the court to give you an opportunity to do your job, before I come in and say you haven't.

So I want to give you that opportunity.

MR. BELCOURT: Thank you, Your Honor.

You know, I guess what I would say is, I'm not one to delay things just for the sake of delay. I'm certainly not going --

THE COURT: But if delay resolves these matters, perhaps that is the more prudent course of action.

MR. BELCOURT: My hope would be that -- and if this court wants to give Ms. Fulstone an opportunity to indicate whether she feels the regulation process will satisfy her clients' concerns, because -- you know, I

understand an agency could adopt something without all the interested stakeholders, you know, having agreement with it.

THE COURT: I understand.

MR. BELCOURT: If she's willing to do that, maybe that would be a good process. If she's not, we can proceed to answer the complaint, do dispositive motions, and maybe -- I don't want to rush into discovery. I don't see a point in discovery at all, unless possibly if there's an issue about whether -- I mean if the court wants to know whether the state board actually has done anything in the past, we certainly can produce that.

I produced information on that one agenda in the Marvin case. I think it was the Marvin case. The agenda where they did talk about equalization. And they looked at Douglas County and Washoe County. They haven't been presented with information about -- they weren't presented information about Clark County, but that's something in my opinion the statute calls for, or the other 15 counties and Carson City.

So, but if we can go forward with a process that -- you know, there's no compelling the state board to make it retroactive. It would be something that if they got input from the taxpayers that would be workable for them. And they can go to LCB, and LCB would

obviously have to pass on the legality, which I think is legal, but I'm not with that office.

That would be a way to go, but if they're not seeing that as a way to go, I think the process will still happen. They will still do the workshops and they will still meet with the assessors for the coming year. And we can see how that worked out. And that might be a template for going back to '03-'04, if it gets to that point. Go retro, and saying this is how we do equalization for '03-'04.

I view those two alternatives as better than, you know, undertaking some kind of discovery process that who knows where it will lead, and it's expensive and time consuming. I just went through that with another litigation with the same opponent.

So that would be my motion.

THE COURT: All right. Let me hear from Mr. Creekman.

MR. CREEKMAN: You know, Your Honor, it continues to be my belief, not only based on the necessary and indispensable party argument, but also on general principles of associational and organizational standing that there's no jurisdiction here whatsoever.

If there is any jurisdiction in this court, it's clear to me that the underlying issues are

ultimately only going to be resolved with some degree of finality by the supreme court of the state of Nevada.

THE COURT: That's a good conclusion.

MR. CREEKMAN: It is absolutely clear to me.

And this case, let's forget about the fact, just temporarily, that this involves property tax issues as between Douglas and Washoe County, let's forget about the fact that the Department of Taxation, the State Tax Commission and the State Board of Equalization have or haven't adopted regulations in this area and that have or haven't agendized issues of equalization.

Let's forget about all that, and let's look at what this case really is. This is a request for an injunction to send something to a state board. Forget about the substance of what the state board does. It's a simple, relatively speaking, case involving injunctive relief.

There are standards applicable to requests for injunctive relief that have been adopted by our supreme court and which Your Honor and all the district court judges here in this building are obligated to follow.

So, once again, I am not conceding that there's any jurisdiction in this court. In fact I think just the opposite. In fact I'm so adamant about it, I have ready to file a motion to dismiss based on the lack of

necessary and indispensable parties in this case.

But if Your Honor disagrees with my position with respect to the jurisdictional concerns, treat the case as a simple request for injunctive relief. And analyze the request for injunctive relief against the standards for injunctive relief; whether there's an adequate legal remedy, irreparable harm and a balance of the hardships, relatively straightforward standards against which Your Honor balances the facts and makes your decision, and decide whether the case appropriately goes to the state board or doesn't go to the state board.

But beyond that, I don't see any need for detailed discovery in this case, assuming once again the jurisdiction does exist.

I really think we need to enter this with our eyes wide open and with a focus on the Village League, and the Village League in the past in response to the Basque decision, the Department of Taxation and the Tax Commission adopted additional regulations governing the exercise of the assessor's discretion in assessing properties.

Immediately upon doing so, the Village League has brought an action challenging the validity of those regulations here in the Second Judicial District Court. That is pending with respect to those regulations.

I really think that past performance is an indicator of future behavior, and leads to the veracity of my conclusion and belief that this won't ultimately be resolved by Your Honor. It has to end up in the supreme court. And I suggest we find a way to get it there -- once again, assuming the jurisdiction exists in this court, a point I will not concede -- as rapidly as possible.

THE COURT: All right. This is what I'm going to do here. I'm going to allow -- I disagree with you, Counsel. The amended complaint, this isn't asking for injunctive relief. Maybe it's injunctive relief in extraordinary red clothing, but the amended petition is for mandamus.

MR. CREEKMAN: It's nonetheless a form of equity, Your Honor.

THE COURT: No question about that.

MR. CREEKMAN: At least one of the same standards applies. The, "No adequate legal remedy."

THE COURT: Well that's an additional standard. Yes, that's correct.

What I'm going to do is allow -- at least get us in a procedural posture to proceed.

We'll have an answer to the amended complaint, a motion to dismiss filed. Whatever this court does,

it's going to have to do on the record anyway. So today is not the time to make these rulings. I want to give both sides an opportunity to meet and contest the other side's positions. Make a better record than what we have here today. And then I'll make a ruling with respect to the instructions of the Nevada Supreme Court.

And that is before we -- that will allow us at least to make the record before we launch off into 9,000 depositions. And I see Ms. Ingemanson's nodding there, as I'm sure Mr. Wilson agrees on this point. There might be agreement there.

MS. FULSTONE: I just want to ask one thing. It may be the court's practice, I'm just not familiar with it. I'm assuming they're going to file motions, with answers; or just motions. But when everything is briefed, and the court is prepared to rule, will we have another opportunity to argue rather than just decide it on the papers?

THE COURT: Correct. This is an important case.

These are good lawyers on both sides of this case. It doesn't make the judge's job any easier. But I want to give both sides every opportunity to put on the record or put in the record their positions. And so certainly, after the briefing, answers on motions to

dismiss, we'll come in and address those, and I'll be in a better position to help guide this litigation.

It certainly would be, might be wishful thinking, but certainly would be a benefit if we could corral all of these horses into one corral, instead of having these litigations in Department 6. And these are good judges, no question about it. But in order to bring some finality to this important issue it certainly would behoove the court to work with or to speak with one voice, as Mr. Creekman did. This is eventually going to get to the supreme court. Might as well get there in one wagon, so to speak. And I don't know how that's going to -- how that's going to occur.

Other than Department 6, are there any other cases filed in this district court?

MS. FULSTONE: There's another case that's before you, and that's essentially a breach of contract case over the settlement of some of the '06 individual taxpayer cases. Then there are cases before Judge Russell, and there is also the '08-'09 case assigned to Judge Wilson.

So we have Wilson, Adams, Russell, and Flanagan.

THE COURT: Well, that's good.

MS. FULSTONE: And we have a case in federal

court as well.

MR. CREEKMAN: At the Ninth Circuit, Your Honor. And another, most likely, although the client hasn't yet made the decision, another on the way.

THE COURT: Well, I can't deal with things that aren't here.

MR. CREEKMAN: Nonetheless, I just want you to know there is the continuing possibility of more litigation.

THE COURT: It may not surprise anybody, but I would expect that. Not in this particular case, but that's the business we're in.

All right. I've said enough.

MS. FULSTONE: Just to respond to your suggestion. If there were any way, as you put it, to corral them before one judge, it would certainly be satisfactory to the plaintiffs that I represent.

THE COURT: The problem we have here is that you're going to have four different judges. If this happens, thinking it's a great judge, great idea to give it to four other judges. So, some other judge than this one.

All right. For our purposes here today, let's just proceed on a normal path of civil procedure. Let's get an answer to the amended complaint or motion to

dismiss. Let's get some briefing on that. Once the dust is settled, in short order, I want to hold a hearing in oral arguments.

And what I will suggest to my judicial colleagues is that we take a look at how far along each case is and make a recommendation, perhaps to the supreme court, have the supreme court make a decision as to which judge or to consolidate these cases.

Go ahead, Ms. Fulstone.

MS. FULSTONE: Just one suggestion. I think it might facilitate, and it's a little bit outside the procedure.

THE COURT: It's Friday afternoon. We do that all the time.

MS. FULSTONE: When there's a complaint, there's either an answer or a motion to dismiss. If you file a motion to dismiss, you don't have to file an answer.

In this case could we have answers along with a motion to dismiss? We can agree that it won't trigger discovery. But if we had answers, at least then the court and the parties would be aware of all the affirmative defenses that are going to be asserted. And there really wouldn't be any prejudice to anybody. It would simply, when the motions were decided, and if the

case is dismissed for lack of jurisdiction, it's kind of a no harm/no foul, and if the jurisdiction motion was denied, and the case proceeded, they wouldn't then be waiting for an answer.

That's all I'm suggesting.

THE COURT: All right.

Mr. Creekman.

MR. CREEKMAN: Your Honor, I would disagree that there wouldn't be any prejudice, because the right to file a motion to dismiss is a substantive right of the client.

THE COURT: I think what she is suggesting is that you piggyback any answer to that motion.

MR. CREEKMAN: And I believe that's violative of a substantive right, particularly with all the parallel litigation going on in all of these courts.

And with respect to that point, I want Your Honor to keep in mind that precisely the same issues are arising, not with these plaintiffs, but with other similarly, so they feel, situated plaintiffs in Clark County, and the HAD and Nye County in the Fifth Judicial District Court. These are issues and statutes of statewide applicability and statewide concern.

This litigation as against taxing authorities is a trend. The exponential increase in litigation

against taxing authorities is a nationwide trend. I don't care about what's happening in California, Oregon, Alabama or Mississippi. Just commenting that it is going on. But what I do care about is what's occurring in Nevada with respect to the operations of the State Department of Taxation, the Nevada Tax Commission, and the Nevada Department of Equalization operating under the same statutes.

So I want Your Honor to remain aware or cognizant, at least, of the fact that these issues are brewing with each meeting of the administrative bodies, with each meeting of the administrative staff to the Department of Taxation, and probably with each convening of a district court, either in one or the other JD's here in the state of Nevada. They are percolating their way through the system. Maybe as a result of some of the other litigation, we'll get some answers to the big questions in this or the other cases.

But do, please, keep that fact in mind.

THE COURT: Well, I'm not going to be persuaded by any sort of common knowledge. I'm not going to be persuaded by any public opinion or public groundswell or political theories espoused by certain elements.

Just a minute, Mr. Creekman.

This is a court of statewide jurisdiction.

This is a state trial court. And we will address all claims that are brought in front of us, not things that are percolating through, not trends throughout the country, all legal claims and legal defenses that are submitted before it. And nothing more.

And we will be persuaded by nothing other than the controlling law of the state of Nevada and any applicable federal law that may be persuasive thereon, and the facts that are brought before it by the parties, period.

MR. CREEKMAN: I wasn't suggesting otherwise, Your Honor. I was just asking that you remain cognizant of such with respect to your decision as to what to obligate us to answer the complaint, while simultaneously exercising any other rights that we might have available to us under the Nevada Rules of Civil Procedure.

THE COURT: All right. Thank you very much. I'll take that under consideration.

Mr. Belcourt.

MR. BELCOURT: Your Honor, I guess I would only be concerned if the answer would be somehow waiver, you know, jurisdictional defects. That's the concern I would have of that.

THE COURT: All right. Thank you. I appreciate that.

All right. This is what I'll do. I'll ask that -- let's see. We have this electronically filed, time stamped June 19th, 2009, 3:34, so clearly the time is spent.

So, Miss Clerk, I will order that any responsive motions, whether it's -- I'm not going to dictate what the defendants are to file -- but any responsive motions to the amended complaint filed on June 19th shall be filed in 20 days.

And Miss Clerk, when is 20 days? I don't want it to land on a weekend.

THE CLERK: October 15th, which is --

THE COURT: That's a Thursday. That's fine.

THE CLERK: Okay.

THE COURT: And then we will just follow the local rules with respect to responses and replies. And then I'll take it under submission.

I promise both sides we'll set an oral argument before I make a ruling, so I can hear both sides. And we will take it one step at a time.

All right. Ms. Fulstone, anything further?

MS. FULSTONE: No, Your Honor. Thank you.

THE COURT: All right. Thank you very much.

Mr. Creekman, anything further?

MR. CREEKMAN: Nothing for me.

MR. BELCOURT: Nothing for me.

THE COURT: It's a pleasure. Always a pleasure. All right.

Well, this court's in recess then.

(Proceedings Concluded)

--o0o--

STATE OF NEVADA )
)ss.
COUNTY OF WASHOE )

I, EVELYN STUBBS, certified court reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That as such reporter I was present in Department No. 7 of the above court on FRIDAY, SEPTEMBER 25, 2009, at the hour of 2:30 p.m. of said day, and I then and there took stenotype notes of the proceedings had and testimony given therein upon the case of VILLAGE LEAGUE, ET AL, Plaintiff, vs. DEPARTMENT OF TAXATION, ET AL, Defendant, Case No. CV03-06922.

That the foregoing transcript, consisting of pages numbered 1 to 42, inclusive, is a full, true and correct transcript of my said stenotype notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given therein upon the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada, this 9th day of October, 2009.

_____
EVELYN J. STUBBS, CCR #356

2290
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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 corp., on behalf of its members, and others similarly situated,

Plaintiffs,

vs.

STATE OF NEVADA, on relation of its DEPT. OF TAXATION, the NEVADA STATE TAX COMMISSION, and the STATE BOARD OF EQUALIZATION; WASHOE COUNTY, ROBERT McGOWAN, WASHOE COUNTY ACCESORY; BILL BERRUM, WASHOE COUNTY TREASURER,

Defendants.

Case No. CV03-06922

Department No. 7

**STATE BOARD OF EQUALIZATION'S MOTION TO DISMISS COMPLAINT/PETITION FOR WRIT OF MANDAMUS**

Defendant STATE OF NEVADA ex rel. STATE BOARD OF EQUALIZATION ("State Board"), through counsel CATHERINE CORTEZ MASTO, Attorney General, by DEONNE E. CONTINE, Deputy Attorney General, hereby submits its Motion to Dismiss in the above captioned action.

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## I. Background and Procedural History.

In November of 2003, The Village League to Save Incline Assets, Inc. (Village League) filed its Complaint for Declaratory and Related Relief against the Department of Taxation, the Nevada Tax Commission, the State Board of Equalization, the Washoe County Assessor and Washoe County Treasurer (Complaint). Village League's Complaint sought declaratory and injunctive relief regarding the property tax assessment methods of the Washoe County Assessor and alleged that the Nevada Tax Commission and State Board of Equalization failed to carry out their duties under the Nevada Constitution and NRS Chapter 361. Defendants moved for dismissal of all causes of action because Village League failed to exhaust its administrative remedies prior to bringing suit. On June, 2, 2004, the District Court Granted Defendants' Motion to Dismiss in its entirety. Village League appealed the case to the Nevada Supreme Court.

On March 19, 2009, the Nevada Supreme Court issued an Order Affirming in Part, Reversing In Part and Remanding (Remand Order) for further proceedings on the equalization claim. While agreeing with the District Court's determination that the Village League was required to exhaust administrative remedies prior to bringing suit, in its Remand Order, the Court noted that, "It is not clear, however, that Village League had available any means to administratively challenge the State Board of Equalization's alleged failures to carry out its equalization duties." Remand Order, page 6.

Based on the perceived lack of an administrative remedy by the Supreme Court, this case was remanded as the Court's order states, "insofar as Village League alleged that the State Board failed to perform an act required by law and sought an order directing that act's performance, such was appropriately raised in its district court complaint."

On June 19, 2009, Village League amended its Complaint and on September 25, 2009, this Court held a status hearing in which it gave the parties until October 15, 2009, to respond to Village League's Amended Complaint/Petition for Writ of Mandamus. This motion is the State Board's response.

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## II. Legal Argument

### A. Village League is Not Entitled To Mandamus Relief on its 2003 Lawsuit

While the Nevada Supreme Court remanded this case on the issue of whether the lower court should have proceeded to determine whether Village League's claim for injunctive relief was viable, the Supreme Court cited to NRS 34.160, which seems to suggest, although a writ has never been requested with respect to the instant matter until Village League filed its Amended Complaint on June 19, 2009, that the Supreme Court may have intended that a writ standard apply. NRS 34.160 states in pertinent part:

> The writ may be issued by the Supreme Court, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station . . . .

Mandamus relief, like injunctive relief, is an extraordinary remedy and mandamus will issue only when the right to the relief requested is clear and the petitioners have no plain, speedy, and adequate remedy in the ordinary course of law. *Gumm ex rel. Gumm v. Nevada Dept. of Educ.*, 113 P.3d 853, 856, 121 Nev. 371, 375 (2005). In this case, there was no clear duty related to general equalization in 2003 and the Village League is not entitled to the relief requested. Accordingly, mandamus relief is not available in this case.

#### 1. Clear Duty Requirement

The cases cited in the Nevada Supreme Court Remand Order may give some guidance on the type of standard or duty needed for mandamus to issue. First, the Court cited *Idaho Tax Comm'n v. Staker*, 104 Idaho 734, 663 P.2d 270 (1982). That case involved an injunction action by the Idaho Tax Commission (which equalized in its capacity as the Idaho State Board of Equalization). Pursuant to a statute that has since been repealed (former IC 63-605, enacted in 1969, repealed by S.L. 1996, ch. 98, § 1, eff. Jan. 1, 1997), as an equalization measure, the Commission had sent a directive to local auditors to change the values on the rolls. Not all of the auditors complied with the order, and the Idaho Supreme Court granted a writ of mandate requiring the auditors to comply with the Commission's directive. *Idaho Tax Comm'n* is fairly specific and factually distinguishable from the instant case.

First, the auditors in the Idaho case were to comply with a specific directive under the law; namely, change the values on the rolls. Indeed, Nevada courts have also granted mandamus where a public official has a duty to comply with requirements that leave no discretion to the public official. *See State v. Eggers*, 36 Nev. 364, 136 P. 104 (1913). Conversely, while a general equalization requirement is provided in NRS 361.395,[1] much discretion is left to the State Board in fulfilling said duty. Specifically, NRS 361.395(1) provides:

> **NRS 361.395** Equalization of property values and review of tax rolls by State Board of Equalization; notice of proposed increase in valuation.
>
> 1. During the annual session of the State Board of Equalization beginning on the fourth Monday in March of each year, the State Board of Equalization shall:
>
> (a) Equalize property valuations in the State.
>
> (b) Review the tax rolls of the various counties as corrected by the county boards of equalization thereof and raise or lower, equalizing and establishing the taxable value of the property, for the purpose of the valuations therein established by all the county assessors and county boards of equalization and the Nevada Tax Commission, of any class or piece of property in whole or in part in any county, including those classes of property enumerated in NRS 361.320.

Unlike the *Idaho Tax Comm'n* case where the auditors failed to comply with a specific directive, it is within the State Board's discretion under NRS 361.395 in equalizing to raise or lower the values. NRS 361.395(1). Accordingly, while a duty exists to meet and equalize, how that duty is carried out is left to the discretion of the State Board.[2]

Additionally, in its Remand Order, the Supreme Court cited *Fondren v. State Tax Commission*, 350 So.2d 1329 (Miss. 1977), in which case a private person (Fondren) sought an injunction effectively barring collection of the assessed taxes, by enjoining recapitulation of

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[1] However, prior to the Nevada Supreme Court's Decision in *State ex rel. State Bd. of Equalization v. Barta* 124 Nev. 58, 188 P.3d 1092, 1102 (2008), and at the time that Village League filed the instant action, the State Board interpreted its function under NRS 361.395 as equalizing either by taxpayer appeal or in response to a correction by the county board. Accordingly, while established in 2008 by the Court in *Barta*, in 2003, the State Board did not understand the duty to equalize to include a general equalization function.

[2] *Cf.* NRS 361.333 which sets the procedure for Department of Taxation to equalization assessments among the counties.

the rolls, until they are in compliance with statutory law requiring equalization. The Mississippi Supreme Court found that Fondren had stated a cause of action, pursuant to a statute that conferred jurisdiction on courts over suits by taxpayers to restrain collection of taxes "levied or attempted to be collected without authority of law." The duty of the Tax Commission, the breach of which was found could be a basis for such an injunction, was as follows (as stated in the Mississippi court's opinion):

> The Legislature has imposed the duty of enforcing this section on the State Tax Commission. Mississippi Code Annotated section 27-35-113 (1972) reads in part:
>
> It shall be the duty of the tax commission to carefully examine the recapitulations of the assessment rolls of the counties, when received, to compare the assessed valuation of the various classes of property in the respective counties, to investigate and determine if the assessed valuation of any classes of property in any one or more counties of the state is not equal and uniform with the assessed values fixed upon the same classes of property in other counties of the state, and o ascertain if any class of property in any one or more counties is assessed for less than the true value of the property.

The same section goes on to give the Commission the authority to equalize assessments among the counties. The next section, Mississippi Code Annotated section 27-35-115 (1972), instructs the Commission to report its determinations to the various boards of supervisors. The following section, Mississippi Code Annotated section 27-35-117 (1972), provides a method for the boards of supervisors and for affected individuals to contest the determination of the State Tax Commission. However, the final authority for determining assessments rests with the Commission.

Similarly, the final authority for determining equalization lies with the State Board. However, unlike the duty to equalize found in NRS 361.395, which simply states that the State Board shall "Equalize property valuations in the State," the duty articulated in the Mississippi statute is very clear and defined.

Furthermore, it was not until 2008 that Nevada case law specifically indicated that the State Board had a more general duty to equalize which involves something other than hearing appeals or responding to issues as brought to it by the County Assessors or taxpayers. *State ex rel. State Bd. of Equalization v. Barta* 124 Nev. 58, 188 P.3d 1092 (2008).

Consequently, the State Board, which consists of a majority of newly appointed members, and until April 9, 2009, did not have a Chairperson, has been working diligently over the last several months to review and digest the relevant statutory provisions and the State Board began the regulatory process to develop regulations on general equalization pursuant to NRS 361.395.[3] While those regulations are not yet adopted, they have assisted in fleshing out the process of general equalization for the State Board members.

Additionally, Village League's claim that methodologies are the issue in this case is erroneous.[4] Indeed, Village League misstates *Barta* because *Barta* says that uniform methodology is the foundation for equalization not that uniform methodologies is all that is needed for equalization. *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 58, 188 P.3d 1092, 1102 (2008) Furthermore, the Village League makes the unsupported assertion that Douglas County used methodologies that have withstood some sort of legal challenge. In *Bakst* at fn. 38, the court simply noted that Douglas County used a different methodology for determining the view effect on value. *State ex rel. State Bd. of Equalization v. Bakst*, 112 Nev. 1403, 148 P.3d 717, 726 (2006). The court rendered no opinion as to whether the methodology was codified in statute or regulation. In fact, no action has ever determined whether there was anymore regulatory support for Douglas County's methods than there was for Washoe County's methods.

Based on the foregoing, while it has been made clear by the Court in *Barta* that there is a more generalized duty to equalize under NRS 361.395, the procedure for complying with that duty is being developed and is going through the regulatory process by the State Board as they work to exercise their discretion in carrying out said duty. Accordingly, mandamus should not issue at this time.

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[3] Regulation workshops related to equalization under NRS 361.395 were held on January 26, 2009, February 26, 2009 and May 8, 2009.

[4] Village League states at page five, line 27 of its Scope of Issues Brief that "Equalization . . is a function of uniformity of valuation methodology." However, nowhere is such direction is found in either statute or Nevada Supreme Court holdings.

## 2. Mandamus Should Not Issue Because Village League is Not Entitled to The Relief Requested

In addition to showing a clear duty, the party requesting a writ must show that it is entitled by law to the relief it seeks. *State v. Daugherty,* 231 P. 384, 48 Nev. 299 (1924); *See also, State ex rel. Schaw v. Noyes*, 25 Nev. 31, ___, 56 P. 946, 950 (1899) ("This court has also held that the writ should not issue unless the relators show a clear legal right to the relief demanded"). It is clear from Village League's Statement of Issues that it is not even seeking NRS 361.395 equalization by the State Board nor is it seeking the original relief it sought with respect to Lake Tahoe property in both Douglas and Washoe Counties. What it seeks here is the same remedy sought in *Barta*, *Bakst* and the *Village League* case that was recently remanded to the State Board of Equalization. Village League wants land values reduced and does not really care about general equalization as it believes general equalization is the same as rolling back the values. This is clear from the following request in its Scope of Issues brief: "The State Board of Equalization must be directed to ***equalize*** all of Incline Village and Crystal Bay for the 2003-2004 tax year ***by returning the land values to their 2002-2003 levels***. . ." (Emphasis added) Furthermore in its prayer for relief in its Amended Complaint Village League asks "That the Court issue a peremptory writ of mandamus requiring the State Board of Equalization to equalize the land portion of residential real property at Incline Village and Crystal Bay to 2002-2003 values . . ." and to "direct the payment of refunds . . ." Amended Complaint, p. 7, line 20. Its next prayer for relief also seeks an order directing a refund. Amended Complaint, p. 7, line 26.

Simply put, Village League does not want any equalization that would not include a tax rollback. Village League is not entitled to such requested relief in mandamus because such an order would eviscerate the discretion of the State Board in fulfilling its duty under NRS 361.395. Accordingly, even if there was authority to issue a writ to compel the State Board to equalize, there is no authority for this Court to mandate specific directions for the Board to follow as requested by Village League. Although mandamus could lie to compel a public body to perform a duty, mandamus cannot issue to control the exercise of the body's discretion while carrying out such duty. *State v. Boerlin*, 98 P. 402, 30 Nev. 473 (1908); *see also,*

*Gragson v. Toco,* 90 Nev. 131, 133 520 P.2d 616, 617 (1974) ("As a general rule, while mandamus will lie to enforce ministerial acts or duties and to require the exercise of discretion, it will not serve to control the discretion.") Accordingly, mandamus relief as requested by Village League is not permitted in this case.

### 3. Mandamus Should Not Issue Because Primary Jurisdiction to Equalize Should Be Left to the State Board.

Finally, even if mandamus could have been issued in 2003 to compel the State Board to fulfill its general equalization duty under 361.395, this Court should not issue mandamus now because the State Board is in the process of complying with its statutory duty under NRS 361.395. The doctrine of primary jurisdiction, "requires that courts should sometimes refrain from exercising jurisdiction so that technical issues can first be determined by an administrative agency." *Sports Form, Inc. v. Leroy's Horse and Sports Place*, 108 Nev. 37, 823 P.2d 901 (1992). In adopting the primary jurisdiction doctrine, the *Sports Form, Inc.*, Court noted the two policies advanced by the traditional primary jurisdiction doctrine: "(1) the desire for uniformity of regulation and, (2) the need for an initial consideration by a tribunal with specialized knowledge." (citing *Kapplemann v. Delta Air Lines,* 539 F.2d 165, 168-169 (C.A.D.C.1976). Indeed, both policies would be served in this case by allowing the State Board time to complete its adoption of regulations related to its duty under NRS 361.395 and, once it has completed them, applying them in doing statewide equalization.

## III. Conclusion

Mandamus cannot issue in this case because Village League cannot show that it has a clear legal right to the relief request. Indeed, an order to refund taxes paid as requested by Village League is not possible because this Court has no authority to exercise its own discretion for that of the public body being compelled to perform its duty. Because Village League is not entitled to the relief requested and because the doctrine of primary jurisdiction

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requires this Court to refrain from jurisdiction in this case, Village League's Amended Complaint should be dismissed and its Petition should be denied.

DATED this 15th day of October, 2009.

CATHERINE CORTEZ MASTO
Attorney General

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*Attorneys for Defendant State Board of Equalization*

**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 15th day of October, 2009.

CATHERINE CORTEZ MASTO
Attorney General

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*Attorneys for Defendants State Board of Equalization*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 15th day of October 2009, I served a copy of the foregoing **STATE BOARD OF EQUALIZATION'S MOTION TO DISMISS COMPLAINT/PETITION FOR WRIT OF MANDAMUS** by causing to be delivered to the Nevada State Department of General Services for mailing at Carson City, Nevada, a true copy thereof, addressed to:

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

David Creekman, Esq.
Washoe County District Attorney's Office
Civil Division
Post Office Box 30083
Reno, Nevada 89520

/s/ Jean Kvam
An Employee of the Office of the Attorney General

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DAVID C. CREEKMAN
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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,

Plaintiffs,

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.
_____/

Case No. CV03-06922

Dept. No. 7

**MOTION TO DISMISS (NRCP 12(b)(5) AND NRCP 12(b)(6)) AND MOTION TO STRIKE AMENDED COMPLAINT (NRCP 15)**

Respondents Washoe County, along with the Washoe County Assessor and Treasurer, by and through their counsel of record, Richard A. Gammick, District Attorney of Washoe County, Nevada, and David Creekman, Chief Deputy District Attorney, herein provide this Court with this "Motion to Dismiss (NRCP 12(b)(5) and NRCP 12(b)(6)) and Motion to Strike Amended Complaint (NRCP 15)." This pleading is submitted in response to this Court's Order of Friday, September 25, 2009, following a status conference held on that date. This pleading is supported

by the following "Statement of Points and Authorities," along with all the papers, pleadings and documents on file with the Court in this matter.

Dated this 5th day of October, 2009.

RICHARD A. GAMMICK
District Attorney

By: David C. Creekman

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(775) 337-5700

ATTORNEYS FOR WASHOE COUNTY

## TABLE OF CONTENTS

## STATEMENT OF POINTS AND AUTHORITIES

### I. Introduction

This case was initiated when Petitioners (alternatively referred to throughout this "Motion to Dismiss" as "taxpayers" and as the "Village League") filed a Complaint in the Second Judicial District Court on November 12, 2003. Then-Washoe County Assessor Robert McGowan, and Treasurer Bill Berrum, moved to dismiss on November 19, 2003. These responding parties asserted the grounds of failure to exhaust administrative remedies and Village League's lack of standing to bring the lawsuit in the District Court. The State Board of Equalization and Nevada Department of Taxation also filed "Motions to Dismiss." Following the completion of briefing and oral argument, this Court, through its predecessor judge, the Honorable Peter Breen, on June 2, 2004, granted all motions to dismiss, based upon the Court's perception that the Petitioners had failed to exhaust their administrative remedies. The Washoe County parties filed a "Notice of Entry of Order" on June 4, 2004. The Village League filed its "Notice of Appeal" to the Nevada Supreme Court on June 10, 2004. The appeal was from this Court's Order granting all the defending parties', from both the State of Nevada and Washoe County, "Motions to Dismiss."

On March 19, 2009, the Nevada Supreme Court issued its "Order Affirming in Part, Reversing in Part and Remanding" in this case. The Supreme Court's Order concluded that this Court properly dismissed the action below, except for the valuation equalization claim as between Douglas and Washoe Counties, because the Village League failed to exhaust its administrative remedies before seeking judicial review. Following this conclusion, the Supreme Court directed that this Court should have proceeded to determine if the Village League's valuation equalization claim for injunctive relief was viable and remanded this one issue back to this Court for further proceedings. It did so in likely recognition of its prior holding in State Board of Equalization v. Barta, 124 Nev. 58, 188 P.3d 1092 (2008), that "[u]nder NRS 361.395(1), the State Board clearly has a duty to equalize property valuations throughout the

state: 'the [State Board] shall ... [e]qualize property valuations in the State'" Barta, 124 Nev. at ___, 188 P.3d at 1102, coupled with its holding, also in Barta, that:

> NRS 361 establishes a duty, separate from the equalization duty, that the State Board hear appeals from decisions made by the county boards of equalization. The two statutes create separate functions: equalizing property valuations throughout the state and hearing appeals from the county boards. Id.

Following the Supreme Court's remand to this Court of the above-described one remaining cause of action, this Court conducted a status conference in April of 2009. At that status conference, the Court Ordered that the parties file briefs concerning their perceptions of the issues then before the Court, and state their positions with respect to those issues. The parties did so, as ordered by the Court, with such briefs fully completed, and filed, with the Court by mid-June 2009. At the April status conference, this Court also granted Village League the opportunity to file an amended complaint, which the Village League did on June 19, 2009, after the above-described briefs were fully completed, and filed, with the Court. Although the Certificate of Service attached to the Village League's amended complaint indicates that Washoe County was "served via the Court's electronic filing system," Washoe County is not registered to receive electronic filings through the Second Judicial District Court, nor was it aware of, nor did it receive a copy of, the Village League's amended complaint until after the most recent status conference in this matter, held before the Court on Friday, September 25, 2009. At that status conference, the Court ordered either an answer, or other responsive pleading, to be filed by Thursday, October 15, 2009.

The Village League's amended complaint contains numerous flaws, each of which, as explained below, fail to state a claim upon which relief should be granted, as that relief is now requested by the Village League in this case at this time. Alternatively, these flaws should result in striking the amended complaint.

## II. Identification of the nature of the Village League's claims for relief

The Village League's amended complaint first requests that this Court certify that this

action be maintained as a class action. Then, the amended complaint goes on to request the issuance of a Writ of Mandamus to require the State Board of Equalization to consider valuation issues, and to conclude that inequities exist with respect to those valuations, between certain residential properties in Douglas and Washoe County, for the 2003 – 2004 tax year, when this action was initially initiated, and for all subsequent tax years. Finally, the amended complaint requests that any issued Writ of Mandamus direct the payment of tax refunds to the taxpayers involved in this manner.

**III. NRCP 12(b)(5) provides authority for this "Motion to Dismiss"**

NRCP 12(b)(5) establishes, in relevant part, that the defense of a "failure to state a claim upon which relief can be granted" may be made by motion. Gull v. Hoalst, 77 Nev. 54, 359 P.2d 383 (1961). A motion under NRCP 12(b)(5) should not be granted unless it appears beyond a doubt that the party bringing the action is entitled to no relief under any set of facts which could be proved in support of the claim. Blackjack Bonding v. Las Vegas Mun. Ct., 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000), citing to Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997).

For the purposes of a motion brought under NRCP 12(b)(5), this Court must accept the allegations of the complaint as true, and draw all inferences in favor of the non-moving party. Brent G. Theobald Constr., Inc. v. Richardson Constr., Inc., 122 Nev. 1163, 147 P.3d 238, 241 (2006). However, motion to dismiss for failure to state a claim upon which relief can be granted may be granted irrespective of the type of action involved or its complexity because "[d]ismissal is proper where the allegations are insufficient to establish the elements of a claim for relief." Id.

The standard to be applied to motion for failure to state a claim contains two components: (1) fair notice of the nature and basis of a claim and (2) sufficiency of the claim. "The formal sufficiency of a claim is governed by NRCP 8(a), which requires that the claim, 'shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled.'" Breliant v. Preferred

Equities Corp., 109 Nev. 842, 846, 858 P.2d 1258, 1261 (1993), citing to NRCP 8(a).

"The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim ..." Id., 109 Nev. At 846, 858 P.2d at 1260 (Internal citations omitted). A complaint must set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the adverse party has adequate notice of the claim. Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674, citing Johnson v. Travelers Ins. Co., 89 Nev. 467, 472, 515 P.2d 68, 71, (1973) (a complaint must allege facts sufficient to establish all necessary elements of the claims for relief.)

## IV. Washoe County's response to Village League's request for class action relief

### A. The law of class action relief

Class actions are governed by NRCP 23. The rule permits one or more persons to sue as representative parties on behalf of a class only if the four prerequisites set forth in NRCP 23(a) are satisfied and, in addition, if at least one of the prerequisites of NRCP 23(b) can be satisfied. Johnson v. Travelers Ins. Co., 89 Nev. 467, 471, 515 P.2d 68, 71 (1973). The determination to use the class action vehicle is a discretionary function wherein the district court must determine pragmatically whether it is better to proceed as a single action or in many individual actions in order to redress a single fundamental wrong. Meyer v. Eighth Jud. Dist. Ct., 110 Nev. 1357, 1365, 885 P.2d 622, 627 (1994); Deal v. 999 Lakeshore Ass'n, 94 Nev. 301, 306, 579 P.2d 775, 779 (1978).

The first of the four prerequisites in NRCP 23(a) is that the class be so numerous that joinder of all members is impracticable. See Cummings v. Charter Hospital of Las Vegas, Inc., 111 Nev. 639, 643, 896 P.2d 1137, 1139 (1995). The second of the four prerequisites in NRCP 23(a) is that there be questions of law or fact common to the class. A question of law or fact will be common to the class when the answer to the question holds true for all class members. See Jane Roe Dancer I-VII v. Golden Coin, Ltd., 124 Nev. ___, 176 P.3d 271, 276 (2008); Shuette v.

Beazer Homes Holdings Corp., 121 Nev 837, 847, 124 P.3d 530, 537 (2005). The third of the four prerequisites contained in NRCP 23(a) is that the claims or defenses of the representative parties be typical of the claims or defenses of the class. "[T]he class representative must have the same interest in the outcome of the litigation and have the same injury as the other class members." Jane Roe Dancer I-VII v. Golden Coin, Ltd., 124 Nev. ___, 176 P.3d 271, 276 (2008). The fourth, and final, prerequisite of NRCP 23(a) is that the representative parties adequately protect the interests of the class. This prerequisite is meant to uncover conflicts of interest between the named parties and the putative class they represent. Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 849, 124 P.3d 530, 539 (2005).

B. Neither the Village League, nor the named parties to this action, can meet, at a minimum, the second and third prerequisites for class action relief

First, the amended complaint only mentions the petitioners' desire that the Court certify that this action may be maintained as a class. The amended complaint does not mention NRCP 23, nor does it purport to establish the elements needing to be met under NRCP 23 for such class action certification. Second, even if the amended complaint did so, these petitioners cannot establish that they meet the second and third prerequisites for class relief: common issues of fact do not exist in this case and Village League, as a non-profit corporation which owns no property and pays no property taxes, cannot claim to have an interest in the outcome of the litigation and to have suffered the same injury as the other class members.

1. Common questions of fact do not exist here, thus defeating the requirement of NRCP 23(a)(2)

In general, a suit cannot be maintained by one taxpayer on behalf of himself and others similarly situated to recover taxes alleged to have been illegally assessed. Sampson v. Kenny, 185 Neb. 230, 175 N.W.2d 5 (1970). Instead, the Sampson court said, each taxpayer must bring an action on his own behalf. A class refund action, the court explained, would run counter to the principle that a suit cannot be maintained as a class action unless the named plaintiff has the

power as a member of the class to satisfy a judgment on behalf of all class members. Accord, Hansen v. County of Lincoln, 188 Neb. 461, 197 N.W.2d 651 (1972). Relying upon the rationale of the decision in Trustees of Jackson Township v. Thoman, 51 Ohio St. 285, 37 N.E. 523 (1894), the court held in Monteith v. Alpha High School Dist., 125 Neb. 665, 251 N.W. 661 (1933), that a taxpayer cannot maintain a representative suit to recover taxes alleged to have been illegally assessed. Where recovery of taxes is sought, each taxpayer must bring an action on his own behalf. In tax refund suits, the courts reasoned, the rights of each taxpayer are purely legal and perfectly distinct, so that the outcome of each taxpayer's case depends upon its own particular circumstances. Thus, there was no merit to the contention that representative refund actions should be permitted in order to avoid a multiplicity of suits. Upon determining that representative tax actions are improper, the court held that the trial court was correct in concluding that a complaint which sought the recovery of allegedly illegal property taxes did not state facts that were sufficient to justify recovery on behalf of all the persons from whom the tax was collected. Id.

In Trustees of Jackson Township v. Thoman, 51 Ohio St. 285, 37 N.E. 523 (1894), a suit to enjoin the collection of township property tax, the court said that a suit cannot be maintained by one taxpayer on behalf of himself and other taxpayers to recover taxes alleged to have been illegally assessed. Each taxpayer, the court said, must bring a suit on his own behalf. The court explained that a tax refund suit is substantially different from a suit to enjoin the collection of a tax, because in a tax suit invoking principles of equity jurisdiction for injunctive relief, not only is each taxpayer interested in the question involved, but a judgment may be rendered in favor of all taxpayers as a class. In contrast, it said, the outcome of a refund suit depends on whether individual taxpayers made a voluntary or involuntary payment of taxes due and, when a refund is due, the amount depends upon the payments made by each taxpayer. Accord, Pennsylvania R. Co. v. Scioto-Sandusky Conservancy Dist., 101 Ohio App. 61, 137 N.E.2d 891, app dismissed, 165 Ohio St. 466, 135 N.E.2d 765 (1956).

Class action status in tax litigation was also determined inappropriate where condominium owners sought to recover a refund of property taxes they paid, but the trial court was advised it erred in permitting the taxpayers to bring a class action where most of the plaintiffs failed to pursue the statutory remedy provided for protesting their property valuation. Hoffman v. Colorado State Bd. of Assessment Appeals, 683 P.2d 783 (Colo. 1984). Likewise, in actions by taxpayers who sought tax refunds alleging that reassessment of their properties was discriminatory, unconstitutional and illegal, the trial court properly denied a motion for class certification. The trial court did so where governmental actions were involved and subsequent plaintiffs would be adequately protected under the doctrine of stare decisis, and where commencement of the action purportedly on behalf of all similarly situated taxpayers did not constitute an appropriate indicia of protest by each proposed member of the class such that a determination of whether individual taxpayers would be entitled to a refund could be made. Conklin v. Southampton, 141 App.Div.2d 596, 529 N.Y.S.2d 517 (1988). Similarly, in an action by taxpayers seeking a declaratory judgment that a school district illegally collected statutory penalties attached to ad valorem taxes which were delinquent prior to the effective date of a penalty statute, the trial court did not abuse its discretion in denying class certification to the class of taxpayers against whom the statutory penalties had been assessed and by whom they were subsequently paid, where claims of each individual class member would require fact findings as to the voluntary or involuntary nature of payment of penalty. Salvaggio v. Houston Independent School Dist., 709 S.W.2d 306 (Tex. App. Houston, 14th Dist. 1986).

2. Because Village League lacks the required standing to bring this case, it cannot claim to have an interest in the outcome of this litigation and to have suffered the same injury as the other would-be class members, thus defeating its ability to meet NRCP 23(a)(3)'s requirement of typicality for a class action.

"Standing is the legal right to set judicial machinery in motion." Heller v. Legislature of Nev., 120 Nev. 456, 460, 93 P.3d 746, 749 (2004)(quoting Smith v. Snyder, 267 Conn.456, 839 A.2d 589, 594 (2004)). Because standing affects the court's original jurisdiction, courts must

address standing even if the parties fail to do so. See Heller, 120 Nev. at 461, 93 P.3d at 749. The question of standing is similar to the issue of real party in interest because it also focuses on the party seeking adjudication rather than on the issues sought to be adjudicated. Szilagyi v. Testa, 99 Nev. 834, 673 P.2d 495 (1983).

The traditional two-prong test for standing is that the claimant must allege that the complained of action caused the claimant's injury-in-fact, and the claimant's interest must arguably be within the zone of interest protected or regulated by the statute or constitutional guarantee in question. Ass'n of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150(1970); see also Heller v. Legislature of Nev., 120 Nev. 456, 460, 93 P.3d 746, 749 (2004). The inquiry of standing is separate from and preliminary to a decision on the merits. Ass'n of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150 (1970); S.F. County Democratic Cent. Comm. v. Eu, 826 F.2d 814 (9th Cir. 1987).

As stated, standing represents a jurisdictional requirement, Pedro/Aspen, Ltd. v. Board of County Com'rs for Natrona County, 94 P.3d 412 (Wyo. 2004), which remains open to review at all stages of the litigation. Alabama Alcoholic Beverage Control Bd. v. Henri-Duval Winery, LLC, 890 So.2d 70 (Ala. 2003). Such jurisdiction may not be waived and Nevada's Supreme Court has recognized this rule, along with the same fundamental rule in other states. Swan v. Swan, 106 Nev. 464, 469, 796 P.2d 211, 224 (1990).

The standing rule is well established and is to be extended to the class action context. One cannot rightfully invoke the jurisdiction of the court to enforce private rights unless the person seeking relief can show that he has sustained or is in immediate danger of sustaining some injury to his personal or property rights as a result of the matter complained of, and can show that he will be benefitted by the relief granted. Boeing Airplane Co. v. Perry, 322 F.2d 589 (10th Cir. 1963)(when a statute or rule creates a cause of action and designates the persons who may sue, none but the persons so designated has the right to bring such action). The specific designation of a person or class of persons as the beneficiaries of certain statutory provisions respecting the

performance of certain duties by others has the effect of limiting the right of action to the person or class of persons so described. Hunt v. State, 201 N.C. 37, 158 S.E. 703 (1931).

In this regard, the real party in interest to a challenge of an assessor's valuation is clearly identified in NRS chapter 361 as the real property owner who alleges improper assessment or valuation. NRS 361.356(1) establishes that "[a]n owner of property who believes that his property was assessed at a higher value than another property whose use is identical and whose location is comparable may appeal the assessment...." NRS 361.356(1). Plaintiff does not allege that it owns any affected property within Washoe County. Rather, the Complaint is drafted to indicate that members of the association, rather than the association itself, are the property owners. The plain language of the amended complaint itself establishes the Petitioners' status here:

> Petitioner Village League to Save Incline Assets, Inc. ('Village League'), is a nonprofit membership corporation organized and existing under the laws of the State of Nevada, whose members own real property at Crystal Bay and/or Incline Village, in Washoe County, Nevada, and pay taxes on that property as assessed....

Village League is not a real party in interest in this lawsuit.[1] It owns no property and it pays no taxes. It has suffered no injury nor is it subject to any irreparable injury. It, thus, lacks standing to bring, and maintain, this action. With respect to the issue of standing, as related to construction defect litigation, in Deal v. 999 Lakeshore Ass'n., 94 Nev. 301, 304, 579 P.2d 775, 777 (1978), the Supreme Court stated:

> NRCP 17(a) provides: 'Every action shall be prosecuted in the name of the real party in

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[1] Plaintiff Village League could have, however, once possibly availed itself of NRS 361.361's provisions for appeals by third parties on behalf of owners of property. But that section's protections are available only "at the time that a person files an appeal pursuant to NRS 361.356, 361.357 and 361.360 on behalf of the owner of a property..." NRS 361.362. As previously stated, no such appeal was filed by these taxpayers with respect to their Douglas versus Washoe County valuation and taxation equalization disputes. Therefore, this remedy to Plaintiff's lack of standing is now also foreclosed upon.

> interest.' In the absence of any express statutory grant to bring suit on behalf of the owners, or a direct ownership interest by the association in a condominium within the development, a condominium management association does not have standing to sue as a real party in interest.... Only the owners of condominiums have standing to sue.... Id.

Similarly, in this case, it is the property owners themselves, not the Petitioner association, who have standing to sue since they must eventually bear the costs of the tax assessments.

Neither is associational standing available to this Petitioner. The United States Supreme Court, in Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977), set forth the requirements for associational standing. Those requirements include that an association's members would otherwise have standing to sue in their own right, that the interests the association seeks to protect are germane to the organization's purpose and that neither the claims nor the requested relief require the participation of individual members in the lawsuit. Hunt, 432 U.S. at 343. At a minimum, the Village League fails to satisfy the last element of the Hunt requirements for associational standing because the claims and the relief being sought in this case require, under Nevada law, the participation of the individual members of the association. Simply stated, the individual participation of each property owner who wishes to challenge his or her assessment is necessary for the resolution of the issue in this case. Because all those individual property owners are not before this Court, in their capacities as individual taxpayers, these Petitioners not only lack standing but that lack of standing establishes that Village League cannot meet NRCP 23(a)(3)'s requirement that it establish an interest in the relief sought, along with the same injury having been suffered by the other taxpayers that the Village League purports to represent in this case.

C. Recent Nevada Supreme Court precedent in the class action context also obligates rejection of this attempt to certify this as a class action

As recently as September 3, 2009, a Nevada Supreme Court decision was rendered in D.R. Horton, Inc. v. Eighth Judicial Dist. Court, __ Nev.__, 215 P.3d 697 (2009). The D.R. Horton case involved a petition for extraordinary writ relief in which, in the underlying case, the

question arose as to whether a homeowners' association had standing to pursue constructional defect claims on behalf of its members with respect to alleged defects in individual units in a common-interest community. Under a statutory provision relative to common interest communities, the equivalent of which does not exist in the property tax context, the Supreme Court concluded that the homeowner's association enjoyed a right to bring a class-action to redress the individual homeowners' grievances, if the suit fulfills the requirements of NRCP 23 and the principles and concerns of Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 124 P.3d 530 (2005). Of particular relevance to this case is the Supreme Court's recognition, in both Shuette and D.R. Horton that because a fundamental tenent of property law is that land is unique, "as a practical matter ... [these disputes involving land-related issues] will rarely be appropriate for class action treatment." Shuette, 121 Nev at 854, 124 P.3d at 542. In other words, because tax disputes, such as this, relate to multiple properties and will typically involve different types of damages, issues concerning causation, defenses and compensation are widely disparate and cannot be determined through the use of generalized proof. Rather, individual parties must pursue, and substantiate, their own claims and class action certification is not appropriate.

## V. Mandamus is not available to these Petitioners to grant the relief they request

### A. The law of mandamus

A writ of mandamus may be issued by a district court "to compel the performance of an act" of an inferior state tribunal, corporation, board or person. NRS 34.160. It enjoins the inferior body or person to affirmatively act in a manner which the law already compels the body or person to act. See D.R. Horton, Inc. v. Eighth Jud. Dist. Ct. ex rel. County of Clark, 123 Nev. 468, 168 P.3d 731, 737 (2007).

Before a writ of mandamus will be issued, certain requirements must be met. First the act required to be performed must be a duty resulting from the office and required by law. State ex rel. McGuire v. Watterman, 5 Nev. 323, 326 (1869). It must also appear that the defendant has it in his power to perform the duty required of him, and that the writ will have a beneficial effect to

the applying party. Id. The writ of mandamus does not lie unless the usual and ordinary remedies fail to provide a plain, speedy and adequate remedy. Cote v. Eighth Jud. Dist. Ct. ex rel. County of Clark, 124 Nev. 36, 175 P.3d 906, 908 (2008). Petitions for writs of mandamus are not used to control discretionary acts, unless the discretion has been manifestly abused or is exercised in an arbitrary and capricious manner. See State v. Second Jud. Dist. Ct. ex rel. County of Washoe, 121 Nev. 413, 415 – 416, 116 P.3d 834, 835 (2005).

B. Mandamus is not available to control the exercise of discretion in the manner requested by these Petitioners

Although mandamus can compel an exercise of discretion, it cannot control or interfere with the manner in which the discretion is exercised or demand a particular result or determination. Sunset Drive Corp. v. City of Redlands, 73 Cal. App. 4th 215, 86 Cal. Rptr.2d 209 (4th Dist. 1999); Williams v. James, 684 So.2d 868 (Fla. Dist. Ct. App. 2d Dist. 1996); Tamaroff v. Cowen, 270 Ga. 415, 511 S.E.2d 159 (1999); Bellon v. Monroe County, 577 N.W.2d 877 (Iowa Ct. App. 1998); Berman v. Board of Registration in Medicine, 355 Mass. 358, 244 N.E.2d 553 (1969); McCarten v. Sanderson, 111 Mont. 407, 109 P.2d 1108 (1941); State ex rel. Affiliated Const. Trades Foundation v. Vieweg, 205 W.Va. 687, 520 S.E.2d 854 (1999); Wisconsin Pharmaceutical Ass'n. v. Lee, 264 Wis. 325, 58 N.W.2d 700 (1953).

As stated, mandamus is unavailable to control discretionary acts. Yet the Petitioners in this case seek a Writ of Mandamus to do precisely that. A review of their prayer for relief establishes that they seek a Writ of Mandamus to require the State Board of Equalization to reach the conclusion they desire with respect to valuation issues between certain residential properties in Douglas and Washoe Counties and then to direct the payment of tax refunds to the taxpayers involved in this action. Mandamus is unavailable to control the exercise of the State Board of Equalization's discretion in such a micro-managed fashion.

C. The fact that the relief these Petitioners now seek could have once been considered in a proceeding at law bars their claim for mandamus relief

The inadequacy of a remedy at law is not the test of a right to mandamus. The true test is much more simple. It questions whether judgment could be obtained in a proceeding at law. If it could be, or could have been, mandamus will not lie. County of Washoe v. Reno, 77 Nev. 152, 360 P.2d 602 (1961). Mandamus is not the proper remedy if there is a plain, speedy and adequate remedy at law. Id. Because of the adequacy of the below-described remedies at law, available to all taxpayers, mandamus is inappropriate in this case.

1. The first methods for properly invoking the jurisdiction of the State Board of Equalization, as an appellate body from decisions of the County Boards of Equalization under NRS 361.400, with respect to disparate property valuations and eligibility for refunds, are found in NRS 361.355, 361.356 and 361.360, with refund availability only obtainable pursuant to NRS 361.405(4).

   a. NRS 361.355

Under this statute, the State Board of Equalization may become involved in valuation issues only if a taxpayer concerned with valuation issues between his property and similarly-situated property in another county "... appear[s] before the county board of equalization of the county or counties where the undervalued or non-assessed property is located and make[s] a complaint concerning it and submit[s] proof thereon. The complaint and proof must show the name of the owners or owners, the location, the description, and the taxable value of the property claimed to be undervalued or non-assessed." NRS 361.355(1). Nothing in the Petitioner's amended complaint establishes that any of the taxpayers alleged to be represented by the Village League in this case availed themselves of this remedy. Instead, they came directly into this Court, without first exhausting this important statutory remedy once available to them.

If these taxpayers had so availed themselves, the statute goes on to provide that if the county board of equalization to which they complained determines that "just cause for making the complaint" existed, "it shall immediately make such increase in valuation of the property complained of as conforms to its taxable value, or cause the property to be placed on the assessment roll at its taxable value, as the case may be and make proper equalization thereof."

NRS 361.355(3). But the most important part of NRS 361.355, from the perspective of this case, is that it clearly and unambiguously establishes the fact that these Petitioners have absolutely no possibility of success on the merits of their case before this Court — this Court cannot issue mandamus relief as they request because of the fact that they once could have obtained the relief they now seek at a proceeding at law and because of the statute's admonition that:

> ...any such person, firm, company, association or corporation who fails to make a complaint and submit proof to the county board of equalization of each county wherein it is claimed property is undervalued or non-assessed, as provided in this section, is not entitled to file a complaint with, or offer proof concerning that undervalued or non-assessed property to, the State Board of Equalization. NRS 361.355(4)(emphasis added).

Nothing could be clearer. The State Board of Equalization is now statutorily-barred from hearing the Petitioners' complaints concerning disparities in valuation between their Washoe County properties and similarly-situated properties in Douglas County. As the State Board cannot hear these complaints, pursuant to NRS 361.355(4), this Court, similarly, cannot grant the mandamus relief requested by these taxpayers. Due to Petitioner's non-compliance with the statutory mandates of NRS 361.355, Petitioner had an adequate remedy at law, the once availability of which, coupled with their non-exercise of which, now absolutely precludes mandamus relief.

b. NRS 361.356

Even if this statute provides a remedy for disparate valuations between similarly-situated properties in different counties,[2] the Petitioners make no allegation that they availed themselves

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[2] Washoe County does not so concede. In fact, Washoe County directs the Court's attention to that portion of NRS 361.356 in which the Legislature obligates an aggrieved residential taxpayer attempting to avail himself of the protections of this section to "...cite other property within the same subdivision if possible." NRS 361.356(4). Arguably, this requirement is intended to limit the application of this section to valuation disparities between similarly-situated properties located in the same Nevada county, not as between different counties.

of its protections and, as such, they cannot now seek this Court's assistance in rectifying their mistake. Under NRS 361.356, "[a]n owner of property who believes that his property was assessed at a higher value than another property whose use is identical and whose location is comparable may appeal the assessment, on or before January 15 of the fiscal year in which the assessment was made, to the county board of equalization." NRS 361.356(1). In this case, the record is, once again, devoid of any such appeal based upon allegations of unequal assessments between similarly situated properties in Washoe and Douglas Counties. This failure to follow this once-possibly available statutory remedy, just as with these Petitioners' failure to follow NRS 361.355's provisions, now make it impossible for these Petitioners to legitimately claim a right to the mandamus relief they seek, in order to bring their claims before the State Board of Equalization.

c. NRS 361.360

Adding another important dimension for the Court to consider in its determination that these Petitioners enjoy no right to mandamus relief is NRS 361.360's admonition that appeals to the State Board of Equalization may only be heard as a result of an appeal filed with the State Board of Equalization by "[a]ny taxpayer aggrieved at the action of the county board of equalization in equalizing, or failing to equalize, the value of his property, or property of others, or a county assessor...." NRS 361.360(1). In this regard, the case law is clear, and long-established, that a taxpayer who believes the assessment of his property is incorrect may apply to the board of equalization for a reduction, and if he does not do so he has lost his remedy. He cannot later complain of the assessment in subsequent court proceedings. State v. Wright, 4 Nev. 251 (1868), cited, State v. Sadler, 21 Nev. 13, 17, 23 P. 799 (1880).

d. NRS 361.405(4)

NRS 361.405(4) provides, chronologically and after a taxpayer has pursued the above-described statutory remedies, ending with success before the State Board of Equalization, with respect to the taxpayer's valuation concerns, the availability of a possible tax refund:

> As soon as changes resulting from cases having less than a substantial effect on tax revenue have been certified to him by the Secretary of the State Board of Equalization, the county tax receiver shall adjust the assessment roll or the tax statement or make a tax refund, as directed by the State Board of Equalization. NRS 361.405(4).

Thus, Petitioners now have no access to the State Board of Equalization. Neither can this Court provide Petitioners with such access, in the form of mandamus relief, pursuant to Nevada Supreme Court precedent, as set forth, supra, in State v. Wright and in State v. Sadler. This legal impossibility completely eliminates any likelihood of success for these taxpayers.

Finally, NRS 361.405(4)is followed by NRS 361.410's admonition that access to any remedy or redress in a court of law relating to the payment of taxes "... must be for redress from the findings of the State Board of Equalization, and no such action may be instituted upon the act of a county assessor or of a county board of equalization or the Nevada Tax Commission until the State Board of Equalization has denied complainant relief." NRS 361.410(1).

2. The second method for properly invoking the jurisdiction of the State Board of Equalization, with respect to the assessment and refund issues these Petitioners assert an entitlement to, may be found in NRS 361.420's "payment under protest" provisions but is now unavailable to these Petitioners, thus barring their requested mandamus relief

a. NRS 361.420

NRS 361.420 contains no apparent obligatory administrative process which a taxpayer is required to follow in challenging the State Board of Equalization's compliance with its equalization duties, in accord with the Supreme Court's remand order in this case ("no statute provides for an administrative process to remedy the State Board's failure to equalize county valuation, insofar as Village League alleged that the State Board failed to perform an act required by law...") and in compliance with the Supreme Court's recognition, in Barta, that "NRS 361.400 establishes a duty, separate from the equalization duty, that the State Board hear appeals from decisions made by the county boards of equalization. The two statutes create separate functions: equalizing property valuations throughout the state and hearing appeals from the county boards." Barta, 124 Nev. 58, 188 P.3d at 1102. Nothing in Barta, the law of this case, the law of voluntary

payments or in NRS 361.420's procedural requirements establishes the optionality of the statute's requirements. Instead, these requirements are obligatory, and must be followed, by a taxpayer seeking equalization of assessments and a resulting refund of taxes allegedly overpaid in a manner other than by pursuing relief, as described above, through the traditional administrative process and beginning with a county board of equalization. Nothing in the Petitioners' amended complaint establishes such compliance with either avenue of relief.

But, NRS 361.420 permits a "property owner whose taxes are in excess of the amount which the owner claims justly to be due" to "pay each installment of taxes as it becomes due under protest in writing. The protest must be in the form of a separate, signed statement ... and filed with the tax receiver at the time of the payment...." NRS 361.420(1). The statute then anticipates the involvement of the State Board of Equalization before the taxpayer may commence suit "for a recovery of the difference between the amount of taxes paid and the amount which the owner claims justly to be due." NRS 361.420(2); County of Washoe v. Golden Road Motor Inn, Inc., 105 Nev. 402, 777 P.2d 358 (1989).

This statute goes on to envision a suit for precisely the relief ultimately now being sought by these Petitioners in this action before this Court. NRS 361.420(4)(f) permits a suit on the grounds "[t]hat the assessment is out of proportion to and above the valuation fixed ... for the year in which the taxes were levied and the property assessed; or (g) [t]hat the assessment complained of is discriminatory in that it is not in accordance with a uniform and equal rate of assessment and taxation, but is at a higher rate of the taxable value of the property so assessed than that at which the other property in the State is assessed."

b. Recovery of voluntarily-paid taxes is not permitted by the law

A taxpayer is not entitled to recover taxes paid voluntarily, Stratton v. St. Louis Southwestern Ry. Co., 284 U.S. 530 (1932), unless recovery is authorized by statute. Getto v. City of Chicago, 86 Ill. 2d 39, 426 N.E.2d 844 (1981); Bass v. South Cook County Mosquito Abatement Dist., 236 Ill. App.3d 466, 603 N.E.2d 749 (1st Dist. 1992). This rule is known as the

"voluntary payment doctrine," the public policy behind which is to prevent the taxing entity from using funds paid by taxpayers in a given budget year and subsequently being required to refund those amounts. City of Laredo v. South Texas Nat. Bank, 775 S.W.2d 729 (Tex. App. San Antonio 1989). The rule that taxes voluntarily paid are not recoverable absent a specific statute conferring such right is a rule which is necessary for the orderly and efficient administration of governmental affairs. Budget Rent-A-Car of Tulsa v. State ex rel. Oklahoma Tax Com'n., 773 P.2d 736 (Okla. 1989). The voluntary payment rule bars taxpayers from seeking a refund of their property taxes, where the taxpayers pay their property taxes prior to filing an action seeking recovery of payments. Oxford v. Perry, 340 Ark. 577, 13 S.W.3d 567 (2000).

The tax collecting entity need not refund taxes voluntarily paid, but illegally collected, Ring v. Metropolitan St. Louis Sewer District, 969 S.W.2d 716 (Mo. 1998), and the payment of a tax cannot be recovered, even after a taxing statute or rule is declared illegal, unless the taxpayer can demonstrate that the payment was involuntary. Video Aid Corp. v. Town of Wallkill, 85 N.Y.2d 663, 651 N.E.2d 886 (1995); Imperial Gardens, Inc. v. Town of Wallkill, 228 A.D.2d 562, 644 N.Y.S.2d 528 (N.Y.A.D. 1966).

The voluntary payment rule originated at common-law and has been adopted in Nevada at NRS 361.420. The rule is so stringent that it prohibits the recovery of voluntarily paid taxes, except where and in the manner provided by statute, and is followed even when a refund is requested on an illegal-exaction claim based on constitutional grounds. Elzea v. Perry, 340 Ark. 588, 12 S.W.3d 213 (2000); Mertz v. Pappas, 320 Ark. 368, 896 S.W.2d 593 (1995). In the absence of statutory authority, even a tax that is voluntarily, although erroneously, paid, albeit under an unconstitutional statute, cannot be refunded. Community Federal Sav. & Loan Ass'n v. Director of Revenue, 796 S.W.2d 883 (Mo. 1990); Lett v. City of St. Louis, 948 S.W.2d 614 (Mo. Ct. App. E.D. 1996); New Jersey Hosp. Ass'n v. Fishman, 283 N.J. Super. 253, 661 A.2d 842 (App. Div. 1995).

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c. Nothing in the amended complaint establishes that these Petitioners paid under NRS 361.420's protest provisions for the tax year involved in this case and they are now time barred from doing so

Despite the once-available "payment under protest" remedy available to all taxpayers, nothing in the amended complaint establishes, asserts or alleges that these Petitioners availed themselves of this remedy. This form of legal relief, once readily available to these Petitioners, is now time-barred under NRS 361.420's 3-month period of limitation "after the date of the payment of the last installment of taxes and if not so commenced is forever barred." NRS 361.420(3). No suit may now be made for the recovery of the difference between the amount paid and the amount these Petitioners claim to be justly due.

d. Just as with the other previously-described remedies at law once available to these Petitioners, the availability of the "payment under protest" remedy contained in NRS 361.420 goes to the question of whether judgment could have been obtained in a proceeding at law.

The proper focus in a mandamus action is whether judgment could be obtained in a proceeding at law. If it could be, mandamus will not lie. County of Washoe v. Reno, 77 Nev. 152, 360 P.2d 602 (1961). Because of the once-available payment under protest remedy, as described above, mandamus is not now an option for these Petitioners and it should not be considered by this Court.

## VI. NRCP 12(b)(6) provides additional authority for this "Motion to Dismiss"

### A. NRCP 12(b)(6) and its relationship to NRCP 19

NRCP 12(b)(6) establishes that "[e]very defense, in law or fact, to a claim for relief in any pleading ... shall be asserted in the responsive pleading thereto ..., except that the following defenses may at the option of the pleader be made by motion: --- (6) failure to join a party under Rule 19" NRCP 12(b)(6). NRCP 12 goes on to state, in subsection (h) of the Rule, that a "defense of failure to join a party indispensable under Rule 19 ... may be made in any pleading permitted or ordered ..., or by motion for judgment on the pleadings, or at the trial on the merits." NRCP 12(h)(2). Additionally, "[w]henever it appears by suggestion of the parties or

otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." NRCP 12(h)(3).

Meanwhile, NRCP 19 provides, in relevant part, that "[a] person[3] who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties ...." NRCP 19 goes on to establish that if a person described in subsection (a) of the Rule cannot be made a party, "the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable." NRCP 19(b).

In dealing with the issue of necessary and indispensable parties under the analogous Federal Rule of Civil Procedure, the Seventh Circuit Court of Appeals stated that "Rule 19 is designed to protect the interests of absent persons, as well as those already before the court, from duplicative litigation, inconsistent judicial determinations, or other practical impairment of their legal interests." Hammond v. Clayton, 83 F.3d 191, 195 (7th Cir. 1996). The Ninth Circuit Court of Appeals has held similarly in CP National Corporation v. Bonneville Power Administration, 928 F.2d 905 (1991). The Ninth Circuit has also recognized that the absence of "necessary" parties may be raised by reviewing courts sua sponte. McCowen v. Jamieson, 724 F.2d 1421, 1424 (9th Cir. 1984); McShan v. Sheriff, 283 F.2d 462, 464 (9th Cir. 1960). Furthermore, the issue can be properly raised at any stage in the proceeding, Provident

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[3] Defendants note that NRCP's use of the word "person" is not limited to human beings. See Schwab v. Hemsoth, 98 Nev. 293, 646 P.2d 1212 (1982) (corporation declared indispensable party); University of Nevada v. Tarkanian, 95 Nev. 389, 594 P.2d 1159 (1979) (athletic association declared a necessary party); Guerin v. Guerin, 114 Nev. 127, 953 P.2d 716 (1998) (trust declared an indispensable party); United States of America v. Bureau of Revenue, 69 N.M. 101, 364 P.2d 356 (1961) (government's financial interest makes it necessary party).

Tradesmen Bank and Trust v. Patterson, 390 U.S. 102, 126 (1968), according to United States Supreme Court precedent.

Meanwhile, Nebraska's state courts have declared that the presence of necessary parties is jurisdictional and cannot be waived, and if such persons are not made parties, then a court has no jurisdiction to determine the controversy. Langemeier v. Urwiler Oil & Fertilizer, Inc., 259 Neb. 876, 613 N.W.2d 435 (2000). The Langemeier court's holding was similar to the Virginia Supreme Court's holding that necessary parties' interest in the subject matter of the suit, and in the relief sought, are so bound up with that of the other parties, that their legal presence as parties to the proceeding is an absolute necessity, without which the court cannot proceed, and in such cases the court refuses to entertain the suit, when those parties cannot be subjected to jurisdiction. Jett v. DeGaetani, 259 Va. 616, 528 S.E.2d 116 (2000). In accord with these holdings is the Nevada Supreme Court case of Potts v. Vokits, 101 Nev. 90, 692 P.2d 1304 (1985), in which the Supreme Court explained law of necessary and indispensable parties in the context of the Court's jurisdiction.

The core concept of NRCP 12(b)(6) is that a case will be dismissed if there is an absent party under NRCP 19, without whom complete relief cannot be granted or whose interest in the dispute is of such a nature that to proceed without that party could prejudice either that party or others. Here, it is Washoe County whose interests are prejudiced by the maintenance of this litigation, without the full party participation of Douglas County.

B. Douglas County is a necessary party to this action

The only remaining claim in this lawsuit seeks this Court's intervention in ascertaining whether mandamus relief is appropriate to direct the State Board of Equalization to consider the Petitioners' claims that an alleged disparity in valuation between property at Lake Tahoe in Douglas and Washoe Counties violates the Nevada Constitution's guarantee that the Legislature will provide for a uniform and equal rate of assessment and taxation. In deciding this issue, this Court must remain mindful of the Nevada Supreme Court's holding, in Village League to Save

Incline Assets v. State of Nevada, 194 P.3d 1254 (October 30, 2008). In that case, the Court paraphrased the choices the Washoe County Board of Equalization believed it was faced with then it dealt with an issue of equalization as between similarly-situated properties. The County Board viewed a Board of Equalization's choices, when it finds that the properties are not in equalization, is to either raise the taxable values of the properties determined to be valued too low or to lower the values of the properties determined to be valued too high. Village League, 194 P.3d 1254 at 1261. But other options exist, including the simple acknowledgment that lowering some property values does not, in and of itself, create an equalization problem, at least not without some evidentiary basis, in the record, of such a problem. The same is the case here, Douglas County must be offered an opportunity to establish the basis of Douglas County property values, in order to ascertain if an equalization problem exists at all.

But, in this case, the Petitioners appear to complain of inequities between property valuations in Douglas and Washoe Counties. If such inequities are found to exist, the Petitioners obviously desire that their Washoe County valuations be lowered. However, in order to find if this inequity exists, the full party participation of Douglas County is necessary because this issue requires a comparison of assessments in both counties. And if such inequities do exist, it could just as easily be that there exists a legitimate basis for such inequities or that Douglas County's values could be subject to being raised, rather than Washoe County's values being lowered. Were this to occur, the affected property owners, along with Douglas County itself, must be provided with notice and an opportunity to be heard. NRS 361.400(2); NRS 361.405.

C. Equity and good conscience, along with absolute legal barriers, do not now permit the joinder of Douglas County as a necessary party to this action and, as such, Douglas County becomes an indispensable party obligating the dismissal of this case

Considerations of equity and good conscience guide this Court's discretion in deciding upon a NRCP 12(b)(6) "Motion to Dismiss" such as this. Regarding these considerations, it is not only the case that without Douglas County's party participation any decision favorable to the

taxpayers will automatically, and unfairly, fall entirely to Washoe County. In this regard, it is also the case that both Douglas and Washoe Counties have already participated in this process of equalization between counties, pursuant to NRS 361.333 (relating to the preparation, and consideration, of a ratio study to ascertain whether equalization has occurred between Nevada's counties), and that other opportunities for these Petitioners to obtain the relief they now seek have been provided to them, pursuant to NRS 361.355 (relating to procedures to handle taxpayer complaints of disparities between values of similarly-situated properties in different counties), NRS 361.356 (relating to procedures to handle taxpayer complaints of disparities between values of similarly-situated property, irrespective of county lines), NRS 361.360 (relating to the State Board of Equalization's appellate jurisdiction limited to hearing appeals of County Board of Equalization decisions) and NRS 361.420 (relating to payment under protest as a condition precedent to obtaining relief other than through the process of exhausting administrative remedies).

These considerations can result in but one conclusion: the continued maintenance of this lawsuit without Douglas County's involvement is inappropriate, inequitable and prejudicial to Washoe County. As such, this lawsuit should be dismissed against all parties. Although the undersigned counsel cannot purport to speak on behalf of Douglas County, Douglas County's prior involvement in these issues,[4] coupled with the long-ago expiration of any possibly-applicable statutes of limitation to this action (which may range, depending upon the issue involved, from NRS 361.420's "payment under protest" 3-month statute of limitation, to NRS 11.190(5)(b)'s one-year statute of limitations for an action for the refund of taxes, to NRS 11.190(3)'s three-year period of limitations to bring "[a]n action upon a liability created by statute...."). Adding additional difficulty, if not impossibility, to Douglas County's joinder in

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[4] This prior involvement occurred with respect to all of Nevada's counties, by operation of law, at NRS Chapter 361.

this proceeding is Nevada's venue rule, at NRS 13.030 which, in relevant part, establishes that "[a]ctions against a county may be commenced in the district court of the judicial district embracing the county...." NRS 13.030.

**VII. Motion to Strike Amended Complaint**

Finally, these Washoe Respondents also move this Court for its Order striking the amended complaint in this matter. Although the Court is imbued with authority to allow the addition of additional issues and parties beyond those fairly raised by the original pleadings, NRCP 15(c), the amended complaint goes so much further than that permitted under either the law of this case or the rule itself. NRCP 15(a) establishes that "[a] party shall plead in response to an amended pleading ..." and contemplates this Motion to Strike the Amended Complaint.

The Supreme Court's March 19, 2009 "Order Affirming in Part, Reversing in Part and Remanding" in this case directed that this Court should have proceeded to determine whether the Plaintiff's equalization claim for injunctive relief was viable (emphasis added). This is the issue which was originally fully briefed by the parties to this proceeding, such briefs on file with the Court in this matter since June 2009. Yet in the amended complaint, no claim for injunctive relief remains. Instead, these Petitioners have converted this proceeding to one in which the advisability of mandamus is at issue with respect to issues surrounding would-be parties who never availed themselves of any of the once-available statutory remedies, described elsewhere in this pleading, and for tax years which had not yet even occurred at the time the Petitioners' original complaint was filed. This situation should not be permitted and the amended complaint should be stricken.

The Supreme Court, in Nelson v. City of Las Vegas, 99 Nev. 548, 665 P.2d 1141 (1983) discussed the parameters of the relation-back doctrine in the context of NRCP 15(c) and amended pleadings. With respect to statutes of limitations, the Court stated that "[w]henever the claim or defense asserted in the amended pleading arose after the conduct, transaction , or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates

back to the date of the original pleading." But the Court continued, "... where an amendment states a new cause of action that described a new and entirely different source of damages, the amendment does not relate back, as the opposing party has not been put on notice concerning the facts in issue." Id. The Nelson Court cited favorably to Raven v. Marsh, 94 N.M. 116, 607 P.2d 654, 656 (1980), in stating that "[t]he liberality with which Rule 15 is to be viewed applies mainly to the manner in which the court's discretion shall be exercised in permitting amended pleadings. NRCP 15(a) does not permit us to so liberalize limitation statutes when new facts, conduct and injuries are pleading, that the limitation statutes lose their meaning." The Petitioners' original complaint gave absolutely no indication that additional parties were to be added, in the guise of a class action, nor that causes of action relative to tax years which had not yet occurred were to be added. This Court should conclude these additions are barred and should strike these additions to the amended complaint.

Thus, language contained within the amended complaint that attempts to add parties and causes of action, by using language such as "... [and] who are similarly situated...," "... and until 2007...," "[s]ince 2007", "... and subsequent years...," "... and prior and subsequent years...," "...for any of those years as required...," and "...and prior and subsequent tax years..." raises new claims, with new parties and issues, that are not now fairly raised because they were not contained, or even contemplated, in the original complaint. This is the case because each tax year, and taxpayer, is an individual matter. Statutory support for this concept is also found in NRS 361.345's provision that when the county board of equalization exercises its power to change valuation of property, "[a] change so made is effective only for the fiscal year for which the assessment was made." Meanwhile, similar support is found in NRS 361.360 which states, in part, that "[a]ny change made in an assessment appealed to the State Board of Equalization is effective only for the fiscal year for which the assessment was made." Each tax year, and each taxpayer, is thus to be treated individually, to which a new statute of limitations, already exceeded, attached.

## VIII. Conclusion

This motion fosters the precise reasons why the rules upon which it is based exist. It permits, based upon a review of the allegations contained within the Petitioners' Amended Complaint, as against the applicable law, the early dismissal of this case for the plainly-obvious failure to these Petitioners to meet the standards needing to be met for class certification in the property-tax dispute context. It further establishes the existence of the fact that judgment could have been sought in other manners, in proceedings at law, which defeat the availability of mandamus as an appropriate form of relief in this case. Additionally, without Douglas County's full-party participation in this matter, Washoe County faces extreme prejudice in light of the liability potential it should not be required to bear alone. Assuming, arguendo, that jurisdiction otherwise exists, Washoe County's important defense (that it not necessarily be subject to a lowering of Washoe County valuations), recognized by the Supreme Court in Village League to Save Incline Assets v. State of Nevada, 194 P.3d 1254 at 1261, is foreclosed upon before the litigation even begins. Furthermore, Washoe County is subject to inconsistent results in cases (or under other statutory remedies) long-ago available, none of which were alleged to have ever been pursued, but all of which are now time-barred.

This "Motion to Strike Amended Complaint" responds to these Petitioners' attempt to expand this proceeding far beyond that permitted pursuant to the Supreme Court's remand order in this case or as permitted by NRCP 15 and case law interpreting that rule.

For all of the foregoing reasons, this case should be dismissed, as against all Washoe County responding parties.

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AFFIRMATION PURSUANT TO NRS 239B.030

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

Respectfully submitted this 15th day of October, 2009.

RICHARD A. GAMMICK
District Attorney

By: _____
DAVID C. CREEKMAN
Chief Deputy District Attorney
P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700

ATTORNEYS FOR WASHOE COUNTY

**CERTIFICATE OF SERVICE BY MAIL**

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, I deposited for mailing in the U. S. Mails, with postage fully prepaid, a true and correct copy of the foregoing MOTION TO DISMISS (NRCP 12(b)(5) AND NRCP 12(b)(6)) AND MOTION TO STRIKE AMENDED COMPLAINT (NRCP 15) in an envelope addressed to the following:

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

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

Dated this 15 day of October, 2009.

2645
Suellen Fulstone
Nevada State Bar #1615
MORRIS PETERSON
6100 Neil Road, Suite 555
Reno, Nevada 89511
Telephone: (775) 829-6009
Facsimile: (775) 829-6001

Attorneys for Petitioners

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Petitioners,

vs.

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

Respondents

Case No.: CV 03-06922

Dept. No. 7

**POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO STRIKE AMENDED COMPLAINT**

The County respondents have moved the court pursuant to NRCP Rule 12(f) to enter an order striking the petitioners' amended complaint/petition for mandamus. County respondents argue that the "original complaint gave absolutely no indication that additional parties were to be added in the guise of a class action nor that causes of action relative to tax years which had not yet occurred were to be added" and asks that these allegations be stricken. Motion to

Dismiss (NRCP 12(b)(5) and NRCP 12(b)(6) and Motion to Strike Amended Complaint (NRCP 15) (Motion to Strike), p. 25, lns. 9-12. County respondents are simply wrong.

The complaint as initially filed, served and dismissed was structured as a class action. The difference is that the Village League was the only named plaintiff. In order to avoid non-productive litigation over the associational standing of the Village League, the amended complaint/petition names individual taxpayer petitioners as well as the Village League as class representatives. Both the original and the amended complaints, however, were structured as class actions.

Likewise, in November of 2003 when the original complaint was filed, petitioners' focus with respect to the equalization claim was the State Board's failure to perform its duty of statewide equalization for the then current 2003-2004 tax year and prior years. Nothing in the original complaint, however, limited the allegations or the relief sought to those years. Petitioners did not cause the case to be dismissed and petitioners had no reason to know or anticipate that this case would be in the Supreme Court for more than 5 years. When the dismissal was reversed and the claim remanded, petitioners were entitled to amend their complaint to seek relief for the intervening years as well as for 2003/2004.

Under NRCP Rule 12(f), "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." The allegations of the amended complaint/petition for mandamus do not fall within the limits of a "motion to strike" as set forth in the rule. The County respondents fail even to suggest that there is any language in the amended complaint/petition for mandamus that is "redundant, immaterial, impertinent or scandalous." They do apparently argue that the claims as to some of the intervening years are barred by the statute of limitations and cite to two cases involving limitations period and relation back issues. Neither case holds or even suggests that striking portions of the pleading is an acceptable procedure for addressing such issues.

Petitioners have not added either claims or parties with their amended complaint/ petition for writ of mandamus. They have maintained the same class action, dropped the claims whose dismissal was upheld by the Supreme Court, and alleged only the equalization claim. Rather than 2003-2004 and prior years, that claim now encompasses 2003-2004, prior years, and the intervening years from 2003-2004 to 2008-2009. The State Board cannot claim

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that it has not had notice that the petitioner-taxpayers contend that there is an annual duty of statewide equalization and that the Board has not performed that duty, at least since the 2003-2004 tax year. The equalization claim is fleshed out in the petition for mandamus but no claims are added and no "relation back" issue is presented. Even if there were a "relation back" or some other limitations issue, the statute of limitations is an affirmative defense and is not properly argued on a motion to strike.

The "motion to strike" is generally disfavored. See, e.g., 5C Wright and Miller, Federal Practice and Procedure §1280, p. 394 and cases cited at fn. 10 (comparable FRCP Rule 12(f)). For this reason perhaps, there appear to be no Nevada cases addressing the propriety of its use. The case law under FRCP Rule 12(f), however, makes clear that a motion to strike is not properly used to dismiss a complaint as the County would have this court do here. See, e.g., Yamamoto v. Omiya, 564 F.2d 1319, 1327 (9th Cir. 1977). Taxpayer petitioners respectfully submit that Washoe County's motion to strike is both unauthorized and without merit and must be denied.

DATED this 2nd day of November, 2009.

MORRIS PETERSON

By _____
Suellen Fulstone
Attorneys for Petitioners

**AFFIRMATION**

**Pursuant to NRS 239B.030**

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

DATED this 2nd day of November, 2009.

MORRIS PETERSON

By _____
Suellen Fulstone
Attorneys for Petitioners

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**CERTIFICATE OF SERVICE**

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

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

and that I served a true copy of the foregoing by first class mail, postage prepaid upon

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

DATED this 2nd day of November, 2009.

By Elaine K Bates
Employee of Morris Peterson

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Attorneys for Petitioners

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

Petitioners,

vs.

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

Respondents

Case No.: CV 03-06922

Dept. No. 7

**POINTS AND AUTHORITIES IN OPPOSITION TO STATE BOARD OF EQUALIZATION'S MOTION TO DISMISS**

Rather than answer, the State Board of Equalization has moved the Court to dismiss the taxpayers' petition for mandamus. The Board's motion is legally untenable on its face and would support the imposition of sanctions for obstruction and delay. The Board begins by challenging whether the Board had a duty of statewide equalization in 2003 when this case was filed. That duty is established beyond dispute by NRS 361.395 initially adopted in 1917, by the Supreme Court's affirmation in State ex rel. State Bd. of Equalization v. Barta (Barta), 124 Nev. 58, 188

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P.3d 1092 (2008), and by the Order Affirming in Part, Reversing in Part and Remanding (Order of Remand) in this very case.

The Board also argues that the petition for mandamus must be dismissed because taxpayers are not entitled to the refunds requested as part of their relief. It is well and long established in Nevada law that the request for relief is not part of the cause of action and is not an appropriate target of a motion to dismiss. The Court will decide the relief at the end of the case, not on motion brought before the issues are even joined.

Finally, the State Board raises the wholly inapposite doctrine of "primary jurisdiction" and argues that it should be excused from its past equalization failures on the basis that it is presently "working on" regulations to establish a procedure for statewide equalization. The current State Board is to be commended for addressing the issue rather than continuing to look the other way or simply throwing up its hands. However commendable those efforts may be going forward, they cannot be the basis for denying relief to taxpayers for the Board's past violations of their statutory and constitutional rights to uniform annual statewide equalization of taxes. The "primary jurisdiction" doctrine was developed and is properly applied only for purposes of allocating to preliminary agency review those issues which call for agency expertise and reserving judicial issues for court determination. That doctrine provides no ground for excusing past violations on the promise of future good behavior.

## I. NRS §361.395 IMPOSES A CLEAR DUTY OF ANNUAL STATEWIDE EQUALIZATION.

The State Board argues that mandamus will not lie in this case because, prior to the Supreme Court's 2008 Barta decision, the Board had no "clear duty" of statewide equalization sufficient to support an action in mandamus. State Board of Equalization's Motion to Dismiss Complaint/Petition for Writ of Mandamus (Board Motion), p. 3, lns. 14-16; p. 5, lns. 25-28. The only polite word for this argument is "nonsense." The Supreme Court is not the Legislature. The Supreme Court did not create the State Board's duty of statewide equalization in its Barta decision. Under the "separation of powers" doctrine, the Supreme Court could not "create" such a duty which exists only pursuant to statute. In fact, since 1917, the Nevada statutes have required the State Board to equalize property valuations throughout the state. See, NRS 361.395; 1917 Statutes, pp. 328-338 (Exhibit 1 attached). Since 1917, the Nevada statutes have required this equalization of valuations to be performed annually and to be achieved by raising or lowering

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valuations in the "various counties." Id. With respect to the "clear duty" standard described by the Board in its Motion to Dismiss, the Supreme Court held as follows:

> Under NRS 361.395(1), the State Board **clear**ly has a **duty** to equalize property valuations throughout the state . . . . Barta, 188 P.3d at 1102.

That "clear duty" of statewide equalization was established in 1917; and, with the statutes essentially unchanged, that duty was clearly in existence in 2003 when this action was first filed and just as clearly remains in existence today. Undeniably, the State Board of Equalization ignored its statewide equalization duty was for many years. Ignoring a statutory duty, however, does not make it go away. Relieving the State Board of its annual duty of statewide equalization would require a legislative repeal.

According to the State Board, prior to the 2008 Barta decision, it had no understanding that NRS §361.395 imposed a general duty of equalization and rather "interpreted" its function under NRS §361.395 as "equalizing either by taxpayer appeal or in response to a correction by the county board." Board Motion, p. 4, fn. 4. This statement is relegated to a footnote with no citation to any supporting evidence of any kind because it is simply not true.[1] In 2006, for example, Judge Griffin of the First Judicial District Court interpreted NRS §361.395 just as the Supreme Court did two years later. **See Exhibit 2** attached. At that time, State Board counsel represented that the State Board performed its duty of statewide equalization by reviewing the county tax rolls as provided by statute and was only "remiss" in not performing that duty "in a public meeting" (an obvious violation of the Open Meeting Law). **See Exhibit 3** attached, at p. 30, lns. 21-23 attached. In 2006, State Board counsel further expressly distinguished between performing the duty of statewide equalization and determining individual appeals. Id., p. 31, ln. 14–p.32, ln.15. Calling counsel's bluff, Judge Griffin remanded the case to the State Board to provide its proof of statewide equalization. **See Exhibits 2 and 3.**

On remand, the State Board never pretended to have performed its duty of statewide

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[1] It should not come as a surprise that no member or former member of the Board has signed a declaration to the effect that his or her understanding was that, by deciding the particular valuation issues of isolated individual appeals around the state, the Board was somehow performing its NRS §361.395 duty of statewide equalization. Even suggesting that such was the "understanding" of Board members is an insult to their intelligence. In truth, Board members present and past simply do not know and have not known how to effect statewide equalization in a taxable value system. Board members themselves have never claimed to have performed their duty of statewide equalization.

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equalization. As described by the Supreme Court in Barta,

> The transcript of the State Board hearing reflects, however, that the State Board appeared uncertain about how to equalize property values, the scope of its duty to equalize, or how to resolve potential conflicts between its and the Tax Commission's property value determinations. The Department of Taxation contended that the duty to equalize statewide was accomplished through the Department's ratio studies and review of county assessors' methodologies and work product and, thus, the State Board had no independent duty or power to engage in equalization. The Taxpayers, however, argued that the State Board had both a statutory duty and the authority to equalize property values statewide. After also hearing from the public, the Assessor, and a Deputy Attorney General, the State Board concluded that it needed more time to consider the remanded issue and continued the matter, without responding to the district court's remand order. 188 P.3d at 1097.

That remand hearing ended with the Board agreeing to schedule a subsequent hearing to get public input. **See Exhibit 4**, at p. 127, lns. 4-17. Clearly the Board was not looking to the public to tell them how they had actually performed their duty of statewide equalization without realizing it but rather to hear whatever ideas might be presented as to how to effect that duty. The public hearing, however, was never held. As reflected in Barta,

> Frustrated by the delay, the Taxpayers requested that the district court rescind the remand. 188 P.3d at 1097.

The remand was rescinded and the State Board's decisions on individual taxpayer issues were appealed. In addition to reversing the State Board on its individual taxpayer decisions, the Supreme Court recognized the Board's affirmative statutory duty under NRS §361.395 of statewide equalization. Barta, supra.

Instead of addressing the allegations of the petition in its motion to dismiss, the State Board also attempts inexplicably to "distinguish" the two cases cited by the Supreme Court in its Order of Remand to support its conclusion that

> As no statute provides for an administrative process to remedy the State Board's failure to equalize county valuations, insofar as Village League alleged that the State Board failed to perform an act required by law and sought an order directing that act's performance, such was appropriately raised in its district court complaint. Order of Remand, p. 7, lns. 3-7.

The Supreme Court did not cite either case as binding precedent of any kind or even as involving similar facts. In fact, the Supreme Court does not discuss either case in any detail whatsoever. The cases are cited merely as illustrative of the availability of mandamus in property tax matters.

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In any event, this court is in no position to "review" the authorities cited by the Supreme Court in its Order of Remand or to reverse that Court's determination that the State Board's failure to perform its duty of statewide equalization "was appropriately raised in [the Village League's] district court complaint." The Order of Remand is indisputably the "law of this case" and cannot be reconsidered or revisited by this court. See, e.g., Geissel v. Galbraith, 105 Nev. 101, 103, 769 P.2d 1294, 1296 (1989); Sherman Gardens Co. v. Longley, 87 Nev. 558, 563, 491 P.2d 48, 51 (1971) (" '[t]he decision (on the first appeal) is the law of the case, not only binding on the parties and their privies, but on the court below and on this court itself' " (quoting Wright v. Carson Water Co., 22 Nev. 304, 308, 39 P. 872, 873-74 (1895)). The appropriateness of the authorities cited by the Supreme Court had to have been questioned, if at all, on a petition for rehearing in that Court. That opportunity has passed. No purpose is served in challenging those authorities in this court.

## II. TAXPAYERS ARE ENTITLED TO RELIEF IN MANDAMUS.

This case was originally filed in 2003, dismissed on motion, appealed and the equalization claim returned to this court in 2009. Petitioner taxpayers amended their complaint to reflect the Order of Remand as well as Barta, supra; State ex rel. State Bd. of Equalization v. Bakst (Bakst), 122 Nev. 1403, 148 P.3d 717 (2006), and other cases decided at the County Board, State Board, and District Court level involving similarly situated Incline Village/Crystal Bay residential homeowner taxpayers. Petitioners have converted their complaint to a petition for mandamus and, among other relief, seek an order requiring the State Board, in the exercise of its duty of statewide equalization, to equalize 2003-2004 valuations of all Incline Village/ Crystal Bay

The State Board argues now that the mandamus petition should be dismissed because petitioners do "not want any equalization that would not include a tax rollback" and are seeking "the same remedy sought in Barta, Bakst and the Village League case that was recently remanded to the State Board of Equalization." Board Motion, p. 7, lns. 8-10, 21-22. As alleged in their petition for mandamus, petitioners believe that NRS 361.395 imposes a duty of statewide equalization within as well as between counties in Nevada. That duty requires that the State Board acknowledge the Supreme Court's determination in Bakst that residential properties at Incline Village/Crystal Bay were valued using unauthorized methodologies not used elsewhere in Washoe County or the State of Nevada resulting in unconstitutional valuations.

The State Board argues that an order requiring equalization within the Incline Village/

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Crystal Bay area of Washoe County as part of statewide equalization would "eviscerate the discretion of the State Board in fulfilling its duty under NRS 361.395." Board Motion, p. 7, lns. 23-24. The State Board's equalization discretion, however, is not unfettered and cannot be exercised without reference to applicable law or established fact. In this action, taxpayer petitioners are not asking the court to control the Board's discretion. They are merely seeking to have the Court provide non-discretionary parameters to the Board in the exercise of that discretion. It has taken six years to get to the point in this case of requiring answers from the respondents. Taxpayer petitioners respectfully submit that the court should act to the extent permitted by law to avoid the necessity of another appeal, another decision by the Supreme Court reversing an erroneous determination by the State Board, yet another remand to the State Board to try again, and another six years or more before the constitutional rights of taxpayers are vindicated.

In any event, the specifics of the relief to which taxpayer petitioners are entitled in this action are a matter for the ultimate determination by the court. Those specifics are not subject to determination on a NRCP Rule 12 motion to dismiss. Under the established standard, a complaint/petition for mandamus "should be dismissed only if it appears beyond a doubt that [petitioners] could prove no set of facts, which, if true, would entitle [them] to relief." Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ----, ----, 181 P.3d 670, 672 (2008); see also, Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). The nature of that relief is not at issue on a motion to dismiss. See, e.g., Midwest Supply, Inc. v. Waters, 89 Nev. 210, 213, 510 P.2d 876, 878 (1973) (prayer for relief is "'not a part of the claimant's cause of action.'"). This holding is applicable to mandamus actions as to other civil actions. NRS §34.300. The State Board's motion to dismiss the taxpayers' mandamus petition on the grounds of the relief sought must be rejected as a matter of law.[2]

## III. THE DOCTRINE OF PRIMARY JURISDICTION IS INAPPOSITE.

The State Board argues that taxpayers should be denied mandamus in this case because

[2] The State Board cites two cases as support for dismissal based on the relief sought: State v. Daugherty, 231 P. 384, 48 Nev. 299 (1924) and State ex rel. Schaw v. Noyes, 25 Nev. 31, 56 P. 946 (1899). Board Motion, p. 7, lns. 2-6. Neither case involves a dismissal under NRCP Rule 12 or its demurrer counterpart under prior rules of procedure. Both decisions were reached on the merits after hearing and provide no authority for the dismissal sought by the State Board in the present case.

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the Board "is in the process of complying with its statutory duty under NRS 361.395." Board Motion, p. 8, lns. 8-10. According to the Board, "[t]he doctrine of primary jurisdiction 'requires that courts should sometimes refrain from exercising jurisdiction so that technical issues can first be determined by an administrative agency.'" Id., p. 8, lns. 10-12 (Citation omitted.) The operative term in that statement is "first." As explained by the U.S. Supreme Court, the doctrine of primary jurisdiction applies "where a claim is originally cognizable in the courts. . . but . . . requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body." United States v. Western Pac. R. Co., 352 U.S. 59, 63-64, 77 S.Ct. 161, 1 L.Ed.2d 126 (1956). Under those circumstances, the court has discretion to defer to the administrative body. Sports Form, Inc. v. Leroy's Horse and Sports Place, 108 Nev. 37, 823 P.2d 901 (1992); Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. County of Clark, 120 Nev. 948, 962, 102 P.3d 578, 588 (2004); Richardson Const., Inc. v. Clark County School Dist., 123 Nev. 61, 156 P.3d 21, 24 (2007).

Nothing in the present case resembles even remotely the circumstances in which the "primary jurisdiction" doctrine may be applied. The State Board had its "primary jurisdiction" during its 2003 term when it ignored its duty of statewide equalization. The Board continued to exercise its "primary jurisdiction" by ignoring its duty of statewide equalization for the next five years. Only with a new Board in 2009 was the process of drafting equalization regulations begun. The 2003/2004 through 2008/2009 tax years are no longer before the State Board. The only tax year presently before the State Board is the 2009/2010 tax year. If this Court dismisses this case while the State Board works on its regulations, the State Board will escape any accountability at all for its repeated annual failures of statewide equalization from 2003 through 2008.

Although it is characterized as the State Board, it is more accurate to say that it is the Department of Taxation which is, at long last, looking at equalization regulations. The State Board itself has had little if anything to do with the drafting of these regulations. In any event, the regulations themselves are likely to create more problems than any they may resolve. A copy of the Department's most recent iteration is attached as Exhibit 5. The proposed regulations massively overcomplicate the issue of equalization, bringing in, without adjustment, concepts from market value jurisdictions and creating impenetrable statistical barriers to any challenge by taxpayers. At the "workshops," Department representatives have refused to answer any questions about the content of their proposed regulations. Equalization in Nevada's taxable value system is,

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first of all, about assuring uniformity of methodology. As the Supreme Court has stated, both eloquently and succinctly:

> As the Legislature apparently appreciated, uniform assessment methods, properly applied, will necessarily produce the same measure of taxable value for like properties. Those evenly measured taxable values will be assessed at a uniform rate-35 percent-resulting in an equally proportioned tax among like properties and allowing the County and State Boards to the thoroughly carry out their duties to equalize any assessor- or property-type based assessment differences. However, if varying methods are used to determine the taxable values of like properties (take, for instance, two nearly identical, neighboring properties), then equalization becomes difficult and there can be no guarantee that the same measure of taxable value will be assigned to the properties. Clearly, this would violate the constitutional promise of "a uniform and equal rate of assessment and taxation." Consequently, in Bakst, we stated that "the Constitution clearly and unambiguously requires that the methods used for assessing taxes throughout the state must be 'uniform.' "
> Barta, supra, 188 P.3d at .

Counsel for the State Board argues that "uniform methodologies" are not "all that is needed for equalization." Board Motion, p. 6, lns. 9-10. The Board fails to articulate any other considerations, but, as pointed out by the Supreme Court, any assessor or property-based differences are, first, minimized by the enforcement of uniform methodologies and certainly can be addressed by the respective Boards without resort to elaborate ratio studies or any other statistical analyses. It is apparently a notion too simple for the Department to grasp but professional appraisers will reach similar conclusions if they use the same methods. The proof is in the valuation of residential improvements using Marshall Swift. Whether it's Lincoln County or Clark County or Washoe County, the assessors follow the same guidelines and get essentially the same results.

In any event, the primary jurisdiction doctrine applies where, although it has jurisdiction, a court determines that there are issues that are more appropriately addressed initially at the agency level. The primary jurisdiction doctrine does not apply and cannot be invoked by the agency in order to avoid review of its failures. Statewide equalization is an annual duty not a one-time event. Even if regulations were adopted and statewide equalization were effected for the 2009/2010 tax year (which remains in doubt), that would not in any way remedy the previous multi-year failures of statewide equalization. If the State Board here truly believes that the issues of statewide equalization for the tax years from 2003/2004 to 2008/2009 should be decided by the

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agency, it should not be asking this court to dismiss this case. Instead, it should be offering to stipulate to the entry of a writ of mandate directing it specifically to address those issues for those past tax years.

## IV. CONCLUSION

The basic issue before the court on this motion has already been decided by the Supreme Court when it determined that "insofar as Village League alleged that the State Board failed to perform an act required by law and sought an order directing that act's performance, such was appropriately raised in its district court complaint." Order of Remand, p. 7, lns. 4-7. That holding is the "law of the case." No argument that petitioners have "failed to state a claim" can now be asserted. The Board's motion to dismiss must be denied and the Board required to answer the petition so that the issues are framed and appropriate relief may be fashioned without further delay.

Respectfully submitted this 2nd day of November, 2009.

MORRIS PETERSON

By _____
Suellen Fulstone
Attorneys for Petitioners

**AFFIRMATION**

**Pursuant to NRS 239B.030**

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

DATED this 2nd day of November, 2009.

MORRIS PETERSON

By _____
Suellen Fulstone
Attorneys for Petitioners

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## CERTIFICATE OF SERVICE

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

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

and that I deposited a true copy of the foregoing in the U.S. Postal Service addressed to:

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

DATED this 2nd day of November, 2009.

By Elaine K Bates
Employee of Morris Peterson

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## INDEX OF EXHIBITS

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|---|---|
| Exhibit 1: | 1917 Nevada Statutes, Chapter 177 (11 pages) |
| Exhibit 2: | Order Granting Motion to Remand with Instructions entered by Hon. Michael R. Griffin in Case No.04-01145A on February 13, 2006. (4 pages) |
| Exhibit 3: | Cited portions of Transcript of Hearing, February 1, 2006 (6 pages) |
| Exhibit 4: | Cited portion of Transcript of SBOE Remand Hearing, March 27, 2006, (4 pages) |
| Exhibit 5: | Working Draft of Proposed Temporary Regulation of the State Board of Equalization dated February 26, 2009 (7 pages) |

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# EXHIBIT 1

"Contingent Emergency Bond Interest and Redemption Fund," which shall be used for the purpose of paying interest and the annual redemption of the bonds authorized by this act. If after the payment of interest and the redemption of the number of bonds as herein provided for there shall remain a surplus in said fund, such surplus shall be used for the retirement and cancelation of additional bonds provided for in this act to the amount of such surplus.

Disposition of receipts

SEC. 6. The receipts from the sale of bonds herein provided shall be paid into the state general fund in the state treasury.

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CHAP. 177—*An Act in relation to public revenues, creating the Nevada tax commission and the state board of equalization, defining their powers and duties, and matters relating thereto, and repealing all acts and parts of acts in conflict herewith.* [Approved March 23, 1917]

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

Tax commission created

How composed

SECTION 1. There is hereby created a commission to be designated and known as the Nevada tax commission. Said Nevada tax commission shall consist of a chairman and six commissioners. The chairman shall be the governor of the State of Nevada. One of the commissioners shall be one of the associate commissioners of the railroad commission of the State of Nevada, to be designated by the governor; one of the said commissioners shall be versed in and possess a practical knowledge and experience in the classification of land and the value thereof; one of said commissioners shall be versed in and possess a practical knowledge and experience in live stock and the value thereof; one of said commissioners shall be versed in and possess a practical knowledge and experience in the mining industry; one of the said commissioners shall be versed in and possess a practical knowledge and experience in business; one of said commissioners shall be versed in and possess a practical knowledge and experience in banking; each of said commissioners at the time of his appointment shall be actively engaged in the business of the department which he is chosen to represent on the commission. Said appointments shall be made by the governor, and not more than one of said commissioners shall be appointed from any one county in this state, and not more than a majority of the said commission shall be of the same political party. Three of said commissioners shall be appointed for a term of four years, and two of said commissioners for a term of two years, and upon the expiration of the terms for which the appointments are made all commissioners shall be appointed for terms of four years. The chairman and each of said commissioners shall have a vote upon all matters which shall come before

Appointments made by governor

said commission. Before entering upon his duties each of said commissioners, except the governor and the railroad commissioner, shall enter into a bond payable to the State of Nevada, to be approved by the board of examiners, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties, and shall subscribe to the official oath. The commission shall appoint a secretary who shall give his entire time and attention to the duties of the office of secretary of the commission, and who shall be in charge of the office of the commission. Secretary

SEC. 2. The members of said commission shall have power to prescribe rules and regulations for its own government and governing the procedure and order of business of all regular and special sessions, and five members shall constitute a quorum for the transaction of business. The secretary shall keep full and correct records of all transactions and proceedings of said commission, and perform such other duties as may be required, and, with the approval and consent of the commission and of the state board of examiners, may employ such clerical or expert assistance as may be required. Powers of commission

SEC. 3. Said Nevada tax commission, hereinafter and heretofore referred to as "said commission," is hereby empowered:

First—To confer with, advise and direct assessors, sheriffs, as ex officio collectors of licenses, county boards of equalization, and all other county officers having to do with the preparation of the assessment roll or collection of taxes or other revenues as to their duties; to direct what proceeding, actions or prosecutions shall be instituted to support the law. Said commission may call upon the district attorney of any county or the attorney-general to institute and conduct such civil or criminal proceedings as may be demanded. Powers of tax commission specified

Second—To have the original power of appraisement or assessment of all property mentioned in section 5 of this act. Original power of appraisement

Third—To establish and prescribe the general and uniform rules and regulations governing the assessment of property by the assessors of the various counties, not in conflict with law; to prescribe the form and manner in which assessment rolls or tax lists shall be kept by assessors (and county commissioners shall supply books and blanks for the use of the assessors in such form), and also to prescribe the form of the statements of property owners in making returns of their property; and it is hereby made the duty of all county assessors to adopt and put in practice such rules and regulations and to use and adopt such form and manner of keeping such assessment rolls or tax lists, and to use and require such property owners to use, and the county commissioners shall furnish, the blank statements required by said commission in making their property returns. Rules

Fourth—To require assessors, sheriffs, as ex officio collec-

Revenue officers must give information

tors of licenses, and the clerks of the county boards of equalization, and all other county officers having to do with the preparation of the assessment roll or collection of taxes or other revenues, to furnish such information in relation to assessments, licenses, or the equalization of property valuations, and in such form as said commission may demand.

Witnesses may be examined

Fifth—To summon witnesses to appear and testify on any subject material to the determination of property valuations, licenses, or the net proceeds of mines, but no property owner and no officer, director, superintendent, manager, or agent of any company or corporation, whose property is wholly in one county, shall be required to appear, without his consent, at a place other than the county-seat or at the nearest town to his place of residence, or the principal place of business of such company or corporation. Such summons may be served by personal service by any member of said commission, or by the sheriff of the county, and who shall certify to such service without compensation therefor. Any member of said commission may administer oaths to witnesses.

Oaths

May examine corporation books

Sixth—To make diligent investigation with reference to any class or kind of property believed to be escaping just taxation; and in pursuance whereof, said commission, or any commissioner thereof, may examine the books and accounts of any person, copartnership, or corporation doing business in the state, when such examination is deemed necessary to a proper determination of the valuation of any property subject to taxation, or the determination of any licenses for the conduct of any business, or the determination of the net proceeds of any mine.

Budgets of county expenses

Seventh—To require boards of county commissioners to submit a budget estimate of the county expenses for the current year in such detail and form as may be required by the commission; to require boards of county commissioners to increase or decrease the county tax rate of their respective counties to produce the net revenue estimated as necessary for the conduct of such county government, as appears from such budget; to require county boards of education and district school trustees and all school officers having control over any school expenditures in any district in which a special tax is to be levied during the current year, to submit a budget estimate of the expenses for which such tax is levied in such detail and form as may be required by the commission. To require cities, municipalities and towns and the governing boards thereof to submit budget estimates of the expenses for the government of such city, municipality or town for the current year, in such form and detail as may be required by the commission, and to require the governing boards of any municipality, city or town to increase or decrease the tax rate therein to produce the net revenue estimate for the conduct of such municipality, city or town in said budget.

Eighth—The commission shall have, in addition to the specific powers enumerated, the power to exercise general supervision and control over the entire revenue system of the state. General supervision of revenue

Ninth—The commission shall have the power to require county assessors, county boards of equalization, any county auditor or county treasurer to place upon the roll any property found to be escaping taxation. Untaxed property to be on roll

Tenth—The commission shall have the power to authorize the secretary to hold hearings or make investigations, and upon any such hearing the secretary shall have the authority to examine books, compel the attendance of witnesses, administer oaths and conduct investigations. Power and duties of secretary

The enumeration of the foregoing powers shall not be considered as excluding the exercise of any needful and proper power and authority of said commission. Foregoing powers do not exclude

SEC. 4. Said commission shall keep its office at Carson City, and shall be in general session and open for the transaction of business the usual hours and days in which public offices are kept open. There shall annually be held at Carson City two regular sessions of said commission, namely, one beginning on the second Monday in January of each year at 9 o'clock a. m., and continuing from day to day until the business is completed, at which valuations shall be established by said commission on the several kinds and classes of property mentioned in section 5 of this act; and one regular session shall be held annually beginning on the first day of October, or the first legal day thereafter, at the same hour, and continuing from day to day until the business is completed, at which said commission shall equalize property valuations in the state as provided in section 7 of this act, exclusive of live stock. The publication in the statutes of the foregoing time, place, and purposes of such regular session shall be deemed sufficient notice thereof to all concerned, but said commission, if it so elects, may cause published notices of such regular sessions to be made in the press, or may notify parties in interest by letter or otherwise. All sessions shall be public and all parties shall have the right to appear, to be heard in person or by their agents or attorneys, or to submit evidence in documentary form. The publication once a week, for two consecutive weeks, of notice of a special session, in some newspaper of general circulation in the county in which such special session is to be held, five days' personal service on, or registered mailed notice, to the person, firm, or corporation affected, stating the time, place, objects and purposes of such special session, shall be deemed sufficient notice thereof to all concerned. Special sessions may be held at such times and places and for such purposes as said commission may declare. Office at Carson City; Sessions; What is legal notice of session

SEC. 5. At the regular session of said commission held on the second Monday of January of each year, said commission

Commission to assess all live stock

shall assess all live stock throughout the state, accepting the valuation per head for the year 1917, using the valuation theretofore established by the state board of equalization at its regular session held in August, 1916, and thereafter using the valuation per head established by the preceding session of the state board of equalization for the then current year, as provided for in section 6 of this act, and shall establish the valuation on any property of an interstate or intercounty nature, and which shall in any event include: The

Railroads, etc.

property of all interstate or intercounty railroads, sleeping-car, private car line, street railway, traction, telegraph, water, telephone, and electric light and power companies, together with the franchises, and the property and franchises of all express companies operating on any common carrier in this state, and which foregoing, exclusive of live stock, shall

Franchises

be assessed as follows: Said commission shall establish and fix the valuation of the franchise, and all physical property used directly in the operation of any such business of any such company in this state, as a collective unit; and if operating in more than one county, on establishing such unit valuation for the collective property, said commission shall then proceed to determine the total aggregate mileage operated within the state and within the several counties thereof, and

Mile-unit valuation

so apportion the same upon a mile-unit valuation basis, and the number of miles so apportioned to any county shall be subject to assessment in that county according to the mile-unit valuation so established by said commission. The word

"Company" defined

"company" shall be construed to mean and include any person or persons, company, corporation, or association engaged in the business described. In case of the omission by said commission to establish a valuation for assessment purposes upon any property mentioned in this section, it shall be the duty of the assessors of any counties wherein such property is situated to assess the same. All other property shall be assessed by the county assessors. On or before the first Monday in June it shall be the duty of the said commission to transmit to the several assessors the assessed valuation found by it on such classes of property as are enumerated in this section, together with the apportionment of each county of such assessment. The several county assessors shall enter on the roll all such assessments transmitted to them by the Nevada tax commission.

Tax commission and county assessors to sit as state board of equalization

SEC. 6. Beginning on the third Monday of August the said commission shall, together with the county assessors of the several counties of this state, sit in Carson City as a state board of equalization. The chairman of the said commission shall be the chairman of the said board of equalization, and each member of said commission and each of the county assessors shall have a vote upon said board. The secretary of the Nevada tax commission shall act as the secretary of

the state board of equalization. The actual necessary expenses of the county assessors in attending the meeting of the said board of equalization shall be paid by the respective counties. At such meeting it shall be the duty of the state board of equalization to review the tax rolls of the various counties as corrected by county boards of equalization, and to raise or lower for the purpose of state equalization the valuations therein established by county assessors and county boards of equalization, on any class or piece of property in whole or in part in any county save and except those classes of property enumerated in section 5 of this act, exclusive of live stock, which shall be equalized by the said state board; and in equalizing the assessment of said property it shall be the duty of said state board of equalization to so raise or lower such valuation as to produce an aggregate assessment of all property within the state (including the property enumerated in section 5 of this act) sufficient when the state tax levy is applied thereto to produce the revenues required from taxation as shown in the budget of estimated state expenses provided for in section 8 of this act; *provided, however,* that if said state board of equalization shall fail to perform the duties enumerated in this section, the Nevada tax commission may make such equalization as will be necessary. Said board of equalization shall complete their labors on or before the thirtieth day of September, and any person whose assessment valuation has been raised by said state board of equalization may complain to the Nevada tax commission on or before the third Monday in October in said year, and said tax commission may correct or remedy any inequality or error so complained of. Showing on complaint may be made by letter or in person, and said commission may, in its discretion, require affidavits in support thereof. If any county assessor shall be unable to attend the meeting of the state board of equalization, the board of county commissioners may appoint a qualified person to act in his stead. At the meeting of the state board of equalization, as provided for in this section, in the year 1917, and annually thereafter, said state board of equalization shall fix the valuation for assessment purposes per head of all live stock in the state; and such valuation, however, shall be subject to equalization.

Tax commission and county assessors to sit as state board of equalization

Proviso

SEC. 7. At the regular session commencing on the first day of October, the Nevada tax commission for the purpose of state equalization may raise or lower any valuations theretofore established by it upon any class or piece of property, exclusive of live stock, enumerated in section 5 of this act, to conform with the equalization of assessments effected by the state board of equalization.

May regulate valuations, except live stock

SEC. 8. It shall be the duty of the state board of examiners, on or before the first Monday in May of each year, to prepare and file with the Nevada tax commission a detailed

State budget required

budget estimate of the aggregate amount of money necessary to be raised by taxation, and from other sources of revenue, to maintain the government of the state upon a cash basis.

Secretary to certify charges

SEC. 9. The secretary of the Nevada tax commission shall certify any change in the assessed valuation of any piece or class of property in whole or in part made by the tax commission or the state board of equalization to the auditor of the county wherein such property is assessed and said auditor shall make such changes in the assessment roll prior to the delivery of his completed tax roll to the ex officio tax receiver.

Taxpayers not deprived of legal redress

SEC. 10. No taxpayer shall be deprived of any remedy or redress in a court of law relating to the payment of taxes, but all actions at law shall be for redress from the findings of said commission or the state board of equalization, and may not be instituted upon the act of an assessor, or of a county board of equalization or the state board of equalization until said commission has denied the complainant redress. Said Nevada tax commission, in that name, may sue and be sued, and shall be so named as defendant in any action at law brought under the provisions of this section, and the attorney-general shall defend the same, but the burden of proof shall be upon the complainant to show by clear and satisfactory evidence that any valuation established or equalized by said commission or the state board of equalization is unjust and inequitable.

Method of paying taxes if proceedings are instituted

SEC. 11. (a) Any property owner whose taxes exceed the sum of $300, who has instituted a court proceeding for redress from any increased valuation of his property for assessment purposes, and who shall have paid his December installment of taxes thereon in full, may, on filing with the treasurer of the county a certificate of the clerk of any court that such issue is pending, pay his June installment in two separate payments, to wit: One payment in a sum which, when added to the December installment, shall represent the amount of taxes payable if computed on the valuation of the preceding tax year plus the taxes on any improvements added since such preceding levy; and the other for the balance required to make up the full June installment; and said county treasurer shall receipt for the latter as a special deposit to be held by such treasurer undisbursed until the court, by its finding, shall award it; and said property in such case shall not be liable for any penalty under the delinquent tax act; and if the court, by its findings reduces the assessment of such property, said county treasurer, on order of the court, shall refund from such special deposit an amount corresponding to such reduction; and if the court shall not reduce the valuation of said property, then said county treasurer shall transfer the entire special deposit to the public revenues.

(b) Any property owner whose taxes are less than $300, and who has paid his December installment of taxes in

full, may, on filing with the treasurer of the county a certificate of the secretary of the Nevada tax commission that he has made complaint or applied to said commission for redress from any increased valuation of his property, pay his June installment in two separate payments, one payment in the sum which, when added to the December installment, shall represent the amount of taxes payable if computed on the valuation of the preceding tax year plus the taxes on any improvements added since such preceding levy, and the other for the balance required to make up the full June installment; and the county treasurer shall receipt for the latter as a special deposit, to be held by such treasurer undisbursed until the Nevada tax commission shall, by its findings, grant or refuse redress from such increased valuation, and said property owner, in such case, shall not be liable for any penalty under the delinquent tax act; and if the Nevada tax commission, by its findings, reduces the assessment valuation of such property, said county treasurer, on order of said commission, shall refund from such special deposit an amount corresponding to such reduction, and shall transfer the remainder to the public revenues; and if said commission shall not reduce the valuation of said property, then said county treasurer shall transfer the entire special deposit to the public revenues. Nothing in this section shall be deemed to deprive any taxpayer of any right or remedy he may now have or be entitled to under the laws of Nevada.

Method of paying when owner has applied to commission for redress

(c) Any property owner, whose taxes exceed the sum of $300, and the first installment of which is in excess of the amount which he claims to be justly due for taxes, may pay his installment of taxes as they become due under protest, and may commence a suit against the state and county in which the same was paid for the difference between the amount of the taxes paid and the amount which he claims to be due. In an action by or against the person assessed he may complain or defend upon the following grounds:

Property owner may sue, when

Grounds for action

(1) That the taxes have been paid before the suit; or

(2) That the property is exempt from taxation under the provisions of the revenue or tax laws of the state specifying in detail the claim of exemption; or

(3) That the person assessed was not the owner and had no right, title or interest in the property assessed at the time of assessment;

(4) That the property is situate in and has been duly assessed in another county and the taxes thereon paid; or

(5) Fraud in the assessment or that the assessment is out of proportion to and above the actual cash value of the property assessed; or the assessment is out of proportion to and above the percentage of valuation fixed by the Nevada tax commission for the year in which the taxes were levied and the property assessed; *provided, however,* that in all cases mentioned in this paragraph where the complaint is based

upon any grounds mentioned herein the entire assessment shall not be declared void, but shall only be void as to the excess in valuation; *provided further,* that in every action brought under the provisions of this section the burden of proof shall be upon the plaintiff to show by clear and satisfactory evidence that any valuation established or equalized by the Nevada tax commission, or the state board of equalization, or the county assessor, or the county board of equalization is unjust and inequitable.

Limited to three months

Every action commenced under and by virtue of the provisions of this section shall be commenced within three months from the date of the payment of the last installment of taxes, and if not so commenced shall be forever barred.

Distribution or apportionment of taxes not prevented

Nothing in this section or in any remedy granted hereby shall prevent the distribution or apportionment of the taxes so paid into the various funds of the state and county, but in the event of judgment in favor of the plaintiff the amount of said judgment shall be paid out of the general fund of the state and county defendants as their liability may appear. The county treasurer or tax receiver in making settlement with the state shall notify the state controller of the amount of state tax moneys which were paid under protest and an amount equivalent thereto shall be thereby deemed to be and is hereby appropriated for the purpose of paying any judgment recovered against the state in an action under the provisions of this section.

All property assessed at full cash value

SEC. 12. All property subject to taxation shall be assessed at its full cash value.

Proceeds of mines assessed

SEC. 13. In pursuance of the general supervision and control over the revenue system of the state, said commission is hereby empowered to investigate and determine the net proceeds of all operating mines. In pursuance whereof, said commission, in each instance, shall investigate and determine from all obtainable data, evidence, and reports, the gross value of the bullion actually extracted from the reduction of the ores and the proceeds from the sale of the ores of any mine, mining claim, or patented mine, and to deduct therefrom only such actual costs of extraction, transportation, reduction, or sale of ores, as shall be deemed by said commission to be just, proper, and reasonable, and not introduced to deprive or defraud the state of any portion of its just revenue; and in any suit at law arising under the provisions of this section, the burden of proof shall be upon the owner of such mine, mining claim, or patented mine, to establish that any item of cost disallowed by said commission is, nevertheless, just, proper, and reasonable, and not entered to defraud the state.

Provisions of this act mandatory

SEC. 14. All the provisions of this act with respect to county assessors, sheriffs, as ex officio collectors of licenses, county commissioners, county auditors, and all other county officers having to do with the preparation of the assessment

roll or collection of taxes or other revenues, and persons summoned as witnesses, the requirement of witnesses to testify, the examination of the books and accounts of persons, copartnerships, and corporations doing business in this state, are mandatory; and any such county officer, or witness summoned, or witness required to testify, or person, copartner, or officer, director, superintendent, or manager, or agent of any corporation, who neglects, fails or refuses to comply with such mandates shall, for the first offense, be deemed guilty of a misdemeanor, and subject to the penalty prescribed in section 6285, Revised Laws of Nevada; and for persistence therein, constituting a second offense, shall be deemed guilty of a gross misdemeanor, and subject to the penalty prescribed in section 6284 of said Revised Laws. Any person who shall testify falsely shall be guilty of and punished for perjury. Penalty for refusal

SEC. 15. All acts herein required between the assessment and the collection of the taxes or commencement of suit shall be directory merely; and no assessment, or act relating to assessment, or collection of taxes shall be illegal on account of informality, nor because the same was not completed within the time required by law. Informalities not to invalidate

SEC. 16. The governor and the associate railroad commissioner shall receive no compensation for their services as members of the Nevada tax commission. The secretary shall receive a salary of three thousand dollars, payable in equal monthly installments as other state officers are paid. Each of the other five commissioners mentioned in section 1 of this act shall receive a salary of six hundred dollars ($600) per annum, payable in equal monthly installments as other state officers are paid. Salary of secretary and commissioners

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SEC. 17. The members of the said commission, and such expert assistants as may be employed, shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of said commission. Actual expenses allowed

SEC. 18. The sum of seven thousand dollars ($7,000) is hereby annually appropriated, out of any moneys in the state treasury not otherwise appropriated, to carry out the purposes of this act, and which shall be available for necessary clerical hire, office furniture and fixtures, advertising, rental and traveling and other expenses. All such expenditures shall be certified to by the chairman of said commission, and, when approved by the state board of examiners, shall be paid by the treasurer from such appropriation on warrants drawn by the controller. Appropriation $7,000

SEC. 19. The commission shall make and publish an annual report for each calendar year, showing its transactions and proceedings for the year. Annual report

SEC. 20. All forms, blanks, envelopes, letterheads, circulars, and reports required to be printed by said commission shall be printed at the state printing office under the general provisions of the act entitled "An act to designate and Printing to be done at state printing office

authorize the work to be done in the state printing office," approved March 5, 1909.

Meetings continuations of old commission

SEC. 21. All meetings of the commission of the Nevada tax commission created under and by virtue of this act shall be deemed and shall be continuations of such meetings as are now being held or authorized by the Nevada tax commission created under and by virtue of "An act in relation to the public revenues, creating the Nevada tax commission and the state board of equalization, defining their powers and duties, and matters relating thereto, and repealing all acts and parts of acts in conflict therewith," approved March 17, 1915.

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CHAP. 178—*An Act to amend an act entitled "An act creating the office of labor commissioner of this state, providing for the appointment of such commissioner and other employees, defining their duties and fixing their compensation, and providing a penalty for the violation of its provisions, and other matters relating thereto," approved March 24, 1915.*

[Approved March 23, 1917]

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Section 1 of the above-entitled act is hereby amended to read as follows:

Labor commissioner created

Section 1. There is hereby created the office of labor commissioner of the State of Nevada, and one member of the Nevada industrial commission, other than a state officer, shall be designated by the governor to act as ex officio commissioner. Said commissioner shall receive as compensation for his services as labor commissioner a salary of six hundred ($600) dollars per annum, payable in monthly installments out of the state treasury of Nevada as other salaries are paid. Said commissioner shall receive his actual necessary traveling expenses when traveling in the discharge of his official duties, and may employ such clerical or stenographic assistance, not to exceed the sum of twelve hundred ($1,200) dollars per annum, as may be approved by the board of examiners.

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# EXHIBIT 2

Case No. 04-01145A

Dept. I

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J. HARRELROAD

ALAN GLOVER CLERK

BY _____ DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

TODD LOWE,

Plaintiff/Petitioner,

v.

STATE OF NEVADA ex rel. STATE BOARD OF EQUALIZATION, an agency of the State of Nevada; WASHOE COUNTY, a subdivision of the State of Nevada; WASHOE COUNTY ASSESSOR; NEVADA TAX COMMISSION; and NEVADA DEPARTMENT OF TAXATION,

Defendants/Respondents.

_____/

**ORDER GRANTING MOTION TO REMAND WITH INSTRUCTIONS**

On November 23, 2005, Norman J. Azevedo, Esq., filed a Motion for Remand with Instructions on behalf of Petitioner Barbara Frederic. On December 14, 2005, the Nevada Tax Commission, the State Board of Equalization and the Nevada Department of Taxation all being represented by Karen R. Dickerson, Esq., Senior Deputy Attorney General, filed an Opposition to Petitioner's Motion for Remand With Instructions. On December 15, 2005, Petitioner Todd A. Lowe, by and through Thomas J. Hall, Esq., filed his Joinder to Petitioner's Motion to Remand with Instructions. On December 19, 2005, Terry Shea, Esq., Deputy District Attorney on behalf of

Washoe County and the Washoe County Assessor filed an Opposition to Motion to Remand with Instructions. On December 18, 2005, Norman J. Azevedo, Esq., filed a Reply to the Oppositions on behalf of Petitioner Frederic. On December 20, 2005, the Karen R. Dickerson, Esq., on behalf of the State of Nevada, filed a Notice of Non-Opposition to Joinder in Petitioner's Motion for Remand with Instructions.

On January 10, 2006, the Court heard oral arguments regarding the Motion for Remand with Instructions. After a thorough review of the pleadings and papers on file herein, and hearing the oral arguments of counsel and good cause appearing.

IT IS HEREBY ORDERED that Petitioner's Motion for Remand with Instructions is hereby GRANTED and the case is remanded to the State Board of Equalization to promptly equalize all property to its properly determined taxable value.

In support of its Order, the Court finds that:

1) NRS 361.395 imposes an affirmative statutory obligation upon the State Board of Equalization to equalize the value of all property within the State of Nevada to its properly determined taxable value. The statutory duty of the State Board of Equalization to discharge its equalization function is not dependent upon a property owner requesting the State Board of Equalization to equalize property values to their properly determined taxable value. The State Board of Equalization discharges its statutory duty by reviewing the tax rolls of each of the seventeen (17) counties as adjusted by the County Board of Equalizations and raising or lowing the values thereby equalizing property values statewide and then establishing the taxable value of all property.

2) The statutory duty of equalization contemplated in NRS 361.395 is intended to assure that all property in the State of Nevada should bear an equal burden of taxation imposed pursuant to chapter 361 of the Nevada Revised Statutes. The equalization mandate

embodies the principle that, for example, property located in Carson City should not bear any greater burden than property located in Elko County.

3) In other related matter, Petitioner Bakst did request the State Board of Equalization to equalize all values in this State to their properly determined taxable value. Specifically, on August 24, 2004 during the 2004-2005 session of the State Board of Equalization, Petitioner Bakst requested the following action from the State Board of Equalization.

> DR. BAKST: I want to bring up two points. The NRS statutes 361.399 [sic 361.395] which I have in Exhibit 1 clearly states that it is your lawful duty to equalize values in the state of Nevada, and in furtherance of this obligation, Nevada legislature requires you to review the tax rolls of each county, and I provide clear and uncontrovertible evidence that the taxable value of factually similar properties in Douglas County have significantly lower taxable values as compared to properties in Washoe County. . . .
>
> . . . .
>
> CHAIRMAN FITCH: Before we go through, we have already dealt with this a couple of times. Before you do that, we're not sure that that has any relevance to your case today. We have already made that decision yesterday.
>
> See, Transcript of STATE BOARD Hearing held August 24, 2004 @ pp. 85-85. [Emphasis added.]

The State Board of Equalization dismissed Petitioner Bakst's request as not being relevant.

4) Neither the record on appeal before the Court nor any of the papers filed by the State and County indicate that the State Board of Equalization did equalize property values as required by NRS 361.395. In fact, the record on appeal suggests that the State Board of Equalization did not equalize property values pursuant to NRS 361.395.

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5) The Reply to the Motion for Remand requested an alternate remedy that if the Court were to deny the request for a remand, the Plaintiff requested an evidentiary hearing pursuant to NRS 361.420(5). Since the Court has ordered a remand, the alternate request for an evidentiary hearing is DENIED.

IT IS SO ORDERED.

DATED this 13th day of February, 2006.

Michael R. Griffin

MICHAEL R. GRIFFIN
District Judge

Submitted by:

THOMAS J. HALL, ESQ.
Nevada Bar No. 675
305 South Arlington Avenue
Reno, Nevada 89509
(775) 348-7011
Attorney for Petitioner,
Todd A. Lowe

# EXHIBIT 3

CASE NO. 05-00261A

DEPT. NO. 1

REC'D & FILED

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ALAN GLOVER
CLERK
BY: HARKLEROAD
DEPUTY

COPY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

MARYANNE B. INGEMANSON, LESLIE P. BARTA, THEODORE G. HARRIS, TODD A. LOWE, ALVIN A. BAKST, and VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., a Nevada nonprofit corporation,
Plaintiffs,

vs.

STATE OF NEVADA ex rel. STATE BOARD OF EQUALIZATION, an agency of the State of Nevada; ROBERT W. McGOWAN, Assessor for Washoe County, Nevada; WILLIAM BERRUM, Treasurer for Washoe County; NEVADA TAX COMMISSION, and NEVADA DEPARTMENT of TAXATION,
Defendants.

_____/

TRANSCRIPT OF PROCEEDINGS

Hearing

February 1, 2006

THE HONORABLE MICHAEL R. GRIFFIN, DISTRICT JUDGE PRESIDING

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APPEARANCES

| | |
|---|---|
| ON BEHALF OF PLAINTIFFS: | THOMAS J. HALL<br>Attorney at Law |
| | SUELLEN FULSTONE<br>Attorney at Law |
| IN PROPRIA PERSONA: | LESLIE BARTA<br>Plaintiff |
| ON BEHALF OF DEFENDANT STATE BOARD OF EQUALIZATION: | KAREN R. DICKERSON<br>Sr. Deputy Attorney General |
| ON BEHALF OF DEFENDANT WASHOE COUNTY AND WASHOE COUNTY ASSESSOR: | TERRANCE SHEA<br>Deputy District Attorney |
| ON BEHALF OF PLAINTIFFS IN OTHER RELATED CASES: | NORMAN J. AZEVEDO<br>Attorney at Law |

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REPORTED BY: Julietta Forbes, CCR #105, Official Reporter

takes. That way, a record gets made that will serve to support all three of these cases that Your Honor has remanded. And Your Honor's order would help define the parameters of that agenda item.

THE COURT: Okay. Thank you, Mr. Shea.

MR. SHEA: I just don't see that this is going to be an expense that needs to be footed by the Incline Village folks.

THE COURT: I see a writ of mandamus lying someplace.

MR. SHEA: I tried that, Your Honor.

THE COURT: I know. But the question -- the question is now -- is now, if I remand it for equalization, and they don't do what I -- what they think I -- they should have done, that will be a writ of mandamus in a heartbeat. That's just a guess.

Ms. Dickerson.

MS. DICKERSON: On behalf of the State Board of Equalization, they feel like they have equalized every year. And the Department serves as their staff, and they've already begun preparing all the documentation and backup necessary for the Board to put that on the record.

Their session starts the fourth Monday in March, and it's their plan, with or without Your Honor's order, that they're going to show how they equalized every year

that is in litigation.

THE COURT: Okay, so --

MS. DICKERSON: Including the current year.

THE COURT: So if their response is going to be "we did it, and it shows how we did it," then there is going to be an appeal from that decision, correct? And then we'll put this all, the case together, and we'll decide it one way or the other. Is that what you are telling me, Ms. Dickerson, huh?

MS. DICKERSON: Yes, Your Honor.

THE COURT: So their response to my order to equalize is they've done it, and they are going to show they did it. That at least lets us know what the parameter of the issue is, correct?

You're telling me now, for sure, that's your response?

MS. DICKERSON: Yes, Your Honor.

THE COURT: The State Board's going to say "we've already done this, and here's how we've done it"?

MS. DICKERSON: "We've done it every year, and this is exactly how we've done it." And the only point that they would probably admit they were remiss is having it in a public meeting, as far as the exact process that they've gone through every year.

THE COURT: What would their response be to

somebody, to a person who makes an appeal who says, "My property tax, on similarly situated property in Incline Village, taking -- taking out of the equation the cyclical assessment, within a -- within a short period of time, my -- my property is identical, is three times as -- as much taxation as my neighbor," how will they say they've equalized? They did it last -- they did it in the first of the year?

MS. DICKERSON: I think that -- I think their answer would be that that would be a particular appeal that would come before them, and they would look at how the properties were assessed, and that if they were -- if it was a fair assess --

THE COURT: The question, though, the question is, If an individual taxpayer requests equalization, do they do that at that time? Or do they just tell them they've already equalized this year? That's my question.

MS. DICKERSON: To the best of my understanding, that would be an individual appeal that would be taken at that time, during their session.

The equalization is done on a statewide basis, with the huge help of the Department, by doing studies and --

THE COURT: But the problem with it is, see, is equalization implies -- the county level equalization implies countywide equalization. At the state level, it

implies -- you look at property similarly situated in Douglas County compared to property in, in Washoe County, that has comparable issues of value, and equalize between the -- on the county level, not the -- I mean, the inner county, not state -- the county level. So if somebody says, "I want you to equalize my property," is it the Board's opinion that they've got to equalize it on a -- on an appeal statewide, or just look at it and say "does this look okay to us" or what? How is that going to work?

MS. DICKERSON: That would be an individual appeal, because equalization statewide is not looking at particular properties. It's -- it's done by reviewing the tax rolls of the various counties. It's -- it's multiple. I -- I didn't bring, but we already have six pages of how the Board equalizes every year.

THE COURT: Okay. Well, thank you. Then your response is going to be "we already did it."

MS. DICKERSON: (Nodding affirmatively.)

THE COURT: Okay. So we'll be back again here, shortly, with the other issues as to whether they did it correctly or not, I assume, correctly.

So the stay is, is not -- is meaningless. We might as well get it taken care of. So I'll lift the stay. Remand it to the Board for proceedings, consistent with my order, and we'll see what they do.

# EXHIBIT 4

**STATE OF NEVADA**

**DEPARTMENT OF TAXATION**

**STATE BOARD OF EQUALIZATION**

Hand Delivered
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**TRANSCRIPT OF PROCEEDINGS**

**PUBLIC MEETING**

**MONDAY, MARCH 27, 2006**

**CARSON CITY, NEVADA**

| | |
|---|---|
| THE BOARD: | CLAY FITCH, Chairman<br>STEPHEN R. JOHNSON, Member<br>MICHAEL CHESHIRE, Member<br>WES SMITH, Member<br>RICHARD M. MASON, Member |
| FOR THE BOARD: | DAWN KEMP<br>Deputy Attorney General |
| FOR THE DEPARTMENT: | CHUCK CHINNOCK<br>Executive Director<br>TOM SUMMERS<br>Deputy Executive Director<br>TERRY RUBALD, Chief, Division of Assessment Standards<br>SARA MARTEL<br>Coordinator<br>NAN PAULSON<br>Coordinator |
| REPORTED BY: | CAPITOL REPORTERS<br>Certified Court Reporters<br>BY: MARY E. CAMERON, RPR, CP<br>Nevada CCR #98<br>410 East John Street, Ste. A<br>Carson City, Nevada 89706<br>(775) 882-5322 |

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like to put any comments on the record concerning the remand? Anyone else? I think we'll probably move on through the agenda.

Discussion and possible action is what it says. What we discussed today is we're going to start the process of trying to figure out exactly how we are going to respond to the remand. I think we're going to ask the public for written comments. They'll probably come out in some kind of an order, I guess, that we're probably going to be looking at this sometime in the future.

We haven't been able to set our schedule yet but I assure everybody will have an opportunity to get in what you believe are things that are important that you stressed today, reemphasize them if you'd like to, however you want to do it, and at that time we'll start into another hearing at another time to come up with what I believe the Board has as a position. Is that okay with the Board?

I guess we can move to the next agenda item.

MR. CHINNOCK: Is that me?

CHAIRMAN FITCH: That's you, sir.

MR. CHINNOCK: Briefing to the Board and the Secretary and staff and the first item is briefing schedules.

CHAIRMAN FITCH: Briefing schedules. We don't really want to -- we could try to get up with our schedule

# EXHIBIT 5

**WORKING DRAFT OF**

**PROPOSED TEMPORARY REGULATION OF**

**THE STATE BOARD OF EQUALIZATION**

February 26, 2009

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§ 1-41, Sec. NRS 361.375(9)

A REGULATION relating to taxation; providing for the process by which the State Board ensures that property under its jurisdiction is appraised equitably at the taxable value required by law.

**Section 1.** Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 41 inclusive, of this regulation.

**Sec. 2.** ***As used in sections 2 to 41, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 15, inclusive, of this regulation have the meanings ascribed to them in those sections.***

**Sec. 3.** ***"Assessment progressivity" means an appraisal bias such that high-value properties are appraised higher than low-value properties in relation to taxable values. If higher value properties are appraised proportionately higher than lower value properties, the class or group of property is considered progressive.***

**Sec. 4.** ***"Assessment regressivity" means an appraisal bias such that high-value properties are appraised lower than low-value properties in relation to taxable values. If higher value properties are appraised proportionately lower than lower value properties, the class or group of property is considered regressive.***

**Sec. 5.** ***"Commission" means the Nevada Tax Commission.***

**Sec. 6.** ***"Director" means the Director of the Department of Taxation.***

**Sec. 7.** ***"Equalization" means the process by which the State Board ensures that property under its jurisdiction is appraised uniformly by the methods and at the taxable value required by law.***

**Sec. 8.** *"Horizontal inequity" means a determination that all properties of a particular type or class, such as, but not limited to, single-family residential, agricultural, or commercial classes, are not appraised at the same level of assessment with respect to taxable value.*

**Sec. 9.** *"Inter-jurisdictional equalization" means the adjustment of assessed value of a class or strata of property between two or more counties.*

**Sec. 10.** *"Intra-jurisdictional equalization" means the adjustment of assessed value of property by class or strata within the same county or appraisal area.*

**Sec. 11.** *"Population" means all the items of interest, for example, all the properties in a jurisdiction or neighborhood; all the observations in a data set from which a sample may be drawn.*

**Sec. 12.** *"Procedural audit" means the systematic investigation or evaluation of procedures or operations of a county assessor or the Department for the purpose of determining conformity with methods of valuation prescribed by the Commission.*

**Sec. 13.** *"Ratio study" means an evaluation of appraisal performance that compares the assessed value produced by the assessor for each parcel in a sample to the estimate of taxable value produced by the Department or to the sales price of a sold property. The comparison is called a "ratio."*

**Sec. 14.** *"Stratification" means the division of a sample of observations into two or more subsets according to some criterion or set of criteria.*

**Sec. 15.** *"Vertical inequity" means a determination that properties of different values but within the same property group or class are not assessed at the same level of taxable value; and generally reflects either assessment progressivity or assessment regressivity.*

**Sec. 16.** *1. The State Board may annually determine whether inter-jurisdictional equalization or intra-jurisdictional equalization is necessary by reviewing:*

*(a) Tax rolls submitted pursuant to NRS 361.390(1) and the central assessment roll required by NRS 361.3205;*

*(b) The results of the ratio studies and audits of work practices performed pursuant to NRS 361.333;*

*(c)The results of procedural audits ordered by the State Board, of the methods used by county assessors or the Department to determine taxable value for a class or group of property; or*

*(d) The results of one or more ratio studies ordered by the State Board to determine the quality and uniformity of assessments.*

Sec. 17. *The State Board may order the Director to prepare statistical reports informing the State Board of the level of assessed value and the quality of assessment of the classes and groups of property in each county and a certification of his or her opinion regarding the level of value and quality of assessment in each county.*

Sec. 18. *Statistical reports on the level and quality of assessment prepared by the Department must:*

*(1) Be performed in accordance with professionally accepted mass appraisal methods, and use the statistical measures, studies, practices and definitions in the evaluation of the level and quality of assessments adopted by the Nevada Tax Commission;*

*(2) Identify the population that is the subject of the study. The population may be subject to stratification by neighborhood, age, construction type, or other appropriate division of properties into two or more subpopulations;*

*(3) Test whether the level of appraisal meets statutory requirements;*

*(4) Test for the presence of horizontal or vertical inequity; and*

*(5) Test whether sold and unsold parcels are treated equally.*

Sec. 19. *The applicable time frame from which sales may be drawn to develop statistical studies concerning the level of assessment and quality of assessments is the two year period prior to the close of the tax roll pursuant to NRS 361.310.*

**Sec. 20.** ***The State Board may order the Director to prepare procedural audits of the methods used by a county assessor or the centrally assessed section of the Division of Assessment Standards to establish taxable value.***

**Sec. 21.** ***The Director may make nonbinding recommendations for consideration by the State Board.***

**Sec. 22.** ***The State Board may adjourn from time to time until the equalization process is complete.***

**Sec. 23.** ***If the State Board determines that the method of valuation or level of assessment of a class or group of property within a county or among counties may not satisfy the requirements of law, the State Board must issue an Order to Show Cause and Notice of Hearing to the County and shall set a date for hearing at least 10 days following the mailing of the Order to Show Cause and Notice of Hearing.***

**Sec. 24.** ***The Order to Show Cause and Notice of Hearing shall be sent by certified mail, postage prepaid (a return receipt may also be requested) to the county clerk, county assessor, chairperson of the county board, and the County Attorney. The Order to Show Cause and Notice of Hearing shall also be provided to the Department by delivery of a copy of the Order to the offices of the Director or through the United States Postal Service by certified mail, a return receipt may be requested.***

**Sec. 25.** ***A legal representative of a County may waive notice of hearing on any proposed order.***

**Sec. 26.** ***In an equalization hearing before the State Board, the interest of the County may be represented by:***

***(1) A member of the county board of equalization;***

***(2) The county clerk or current deputy clerk, who serves as secretary to the county board of equalization;***

*(3) The county assessor, or current deputy county assessor, holding office at the time of the hearing;*

*(4) The county attorney, or his or her deputy; or*

*(5) Legal counsel for the county board of equalization.*

**Sec. 27.** *A legal representative of a County may consent to entry of the proposed order.*

**Sec. 28.** *At the hearing the county assessor or other legal representatives of the county may appear and show cause why the value of a class or group of property within the county should not be adjusted or a reappraisal not be performed.*

**Sec. 29.** *At a hearing, the State Board may receive testimony under oath from any interested person.*

**Sec. 30.** *Hearings held pursuant to NRS 361.395(1) may be held by means of video conference.*

**Sec. 31.** *The presiding chairman may exclude any person from the hearing room when that person is disrupting the hearing.*

**Sec. 32.** *Any party aggrieved by a final decision of the State Board is entitled to judicial review in accordance with NRS 361.410.*

**Sec. 33.** *(1) The State Board, when conducting hearings or proceedings pursuant to NRS 361.395 (1) shall issue notice of hearings or proceedings to interested persons in the manner required by NRS 361.395(2).*

*(2) All equalization notices of the State Board shall state the time and place of the meeting and a statement that the agenda shall be available for inspection to any interested person at the offices of the Department during normal business hours.*

*(3) The State Board shall, not less than three (3) business days prior to the first hearing or proceedings pursuant to NRS 361.395(1) cause a copy of the notice and the agenda to be placed on the Department's website (www.tax.state.nv.us).*

**Sec. 34.** ***If the State Board finds that inter-jurisdictional or intra-jurisdictional equalization is necessary, the State Board may:***

***(1) Increase or decrease the value of a class or group of property in any county or property valued by the state so that the median of the ratio of assessed value to taxable value of the class or group of property in the aggregate falls within the range of 32 percent to 36 percent; or***

***(2) Order the reappraisal of a class or group of property.***

**Sec. 35.** ***The order shall specify the percentage increase or decrease or whether reappraisal is necessary; and the class or group of property affected or the corrections or adjustments to be made to the class or group of property affected.***

**Sec. 36.** ***Under this section, individual taxpayers do not have the right to request that the State Board equalize their individual property, as part of a class or group, with a class or subclass or centrally assessed property in other counties. Individual appeals must be made pursuant to NRS 361.400 or NRS 361.403.***

**Sec. 37.** ***Upon completion of the hearing or hearings, the State Board may adopt a motion to issue Findings and Orders to take no action for any county.***

**Sec. 38.** ***The order of the State Board shall be sent by certified mail (a return receipt may be requested) to the county assessor and by regular mail to the county clerk and chairperson of the county board.***

**Sec. 39.** ***The specified changes shall be made by the county assessor to each parcel or part of a parcel of real property in the county so affected.***

**Sec. 40.** ***On or before June 30 of each year, the county assessor of any county adjusted by an order of the State Board shall recertify the Tax Roll to the Department. On or before August 1 of each year, the Department shall certify to the State Board that any order issued pursuant to these regulations was implemented by the county assessor. The Department may audit the records of the county assessor to determine whether the orders were implemented.***

**Sec. 41.** ***The State Board may reconsider any Order issued by the State Board during the statewide equalization proceedings so long as five (5) calendar days notice is provided to the county clerk, county assessor, and chairperson of the county board. Any Order issued after reconsidering the original order must be issued before the date for completion of equalization of the same year as the original order.***

2645
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Attorneys for Petitioners

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Petitioners,

vs.

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

Respondents

Case No.: CV 03-06922

Dept. No. 7

**POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS (NRCP 12(b)(5) AND NRCP 12(b)(6)**

## I. INTRODUCTION.

The County moves to dismiss the amended complaint/petition for writ of mandamus in this matter by asking the court to deny class certification, rearguing issues already decided by the Supreme Court and binding as the law of the case, and suggesting that the case cannot proceed

because Douglas County is a "necessary" party who cannot be joined as a matter of law. The argument with respect to class certification is both inaccurate and procedurally improper. Issues decided on a prior appeal of the same case are binding as a matter of law on the court and the parties in subsequent proceedings. Since petitioners make no claim against Douglas County, it is not a necessary party. If it should be deemed to be a necessary party, however, there is no legal reason that it cannot be named, served and joined.

## II. THE COUNTY'S BACK-DOOR ATTACK ON CLASS CERTIFICATION MUST BE REJECTED.

The County attempts to attack petitioners' class allegations on a NRCP Rule 12(b)(5) motion to dismiss. The County inaccurately describes both those allegations and the applicable law. Furthermore, a Rule 12(b)(5) motion assumes the truth of a party's allegations and cannot be used to dispute those allegations. See, e.g., Hynds Plumbing & Heating Co. v. Clark County School District, 94 Nev. 776, 587 P.2d 1331 (1978); Morris v. Bank of America, 110 Nev. 1274, 886 P.2d 454 (1994). NRCP Rule 23 provides for the process by which the court determines whether a class action is to be maintained. Petitioners have alleged as follows:

> 9. The petitioner class consists of the owners of approximately 9,000 parcels of real property at Incline Village and Crystal Bay, in Washoe County, Nevada; said class is so numerous that the joinder of each individual member of the class is impracticable.
>
> 10. The claims of class members against respondents involve common questions of law and fact including, without limitation, the affirmative and mandatory duty of the State Board of Equalization pursuant to NRS 361.395 to effect statewide equalization on an annual basis, specifically including the equalization of the taxable value of comparable residential real property in Douglas and Washoe Counties at Lake Tahoe.
>
> 11. The claims of the individual petitioners and the members of the Village League are representative and typical of the claims of the class. The claims of all members of the class arise from the same acts and omissions of the respondents that give rise to the claims and rights of the members of the Village League.
>
> 12. The individual petitioners as representatives of the class, are able to, and will, fairly and adequately protect the interests of the class.
>
> 13. This action is properly maintained as a class action because respondents have acted or refused or failed to act on grounds which are applicable to the class and have by reason of such conduct made appropriate and necessary relief with respect to the entire class as

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sought in this action.

The County whines that "the amended complaint does not mention NRCP 23." Motion to Dismiss (NRCP 12(b)(5) and NRCP 12(b)(6) ("County Motion"), p. 5, lns. 13-14. No rule or statute requires express reference to NRCP 23 in a complaint or extraordinary writ petition. These allegations meet the specific requirements of Rule 23. They allege numerosity, common questions of law and fact, typicality, and fair and adequate representation as required by NRCP Rule 23(a). They further allege that respondents have acted or refused to act on grounds applicable to the class as required by NRCP Rule 23(b).

The County also denies that there are common issues of fact. According to the County, each taxpayer must bring a separate suit because the "outcome of each taxpayer's case depends upon its own particular circumstances." County Motion, p. 6, lns. 6-9. The County has not been paying attention. This is not a taxpayer action for the recovery of taxes. This is a mandamus proceeding to require the State Board of Equalization to perform its duty of statewide equalization – a single duty required to be performed annually and applicable to all taxpayers. When that duty has been performed, if there are valuation adjustments, tax refunds will follow as a matter of law. Taxpayers should not have to file another action to enforce the State Board's decision.

In addition to the Village League, petitioners include Maryanne Ingemanson, as Trustee of the Larry D. and Maryanne B. Ingemanson Trust; Dean R. Ingemanson, individually and as Trustee of the Dean R. Ingemanson Individual Trust, J. Robert Anderson, and Les Barta. The pursuit of this mandamus proceeding does not depend on the representation of taxpayers by the Village League and no purpose is served in litigating the League's "standing." Individual petitioners undeniably have standing based on the allegations of the petition. Class certification can be decided at the appropriate time and in the manner specified by NRCP Rule 23.

## III. TAXPAYERS ARE ENTITLED TO RELIEF IN MANDAMUS.

In its Order Affirming in Part, Reversing in Part and Remanding (Order of Remand), citing NRS §34.160, the statute authorizing a mandamus proceeding in the district court, the Supreme Court held as follows:

> . . . insofar as Village League alleged that the State Board failed to perform an act required by law and sought an order directing that

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act's performance, such was appropriately raised in its district court complaint. Order of Remand, p. 7, lns. 4-7.

When the case was remanded to this court, taxpayers converted their complaint to a petition for mandamus seeking, among other relief, an order requiring the State Board to perform its duty of statewide equalization for the 2003/2004 tax year and subsequent years.

There is no dispute as to the State Board's duty of statewide equalization. That duty is established by statute and has been affirmed by the Supreme Court. NRS §361.395; Barta, supra, 188 P.3d at 1102. There is no dispute as to the Board's failure to perform that duty. The Board is a public agency governed by the Open Meeting Law. It cannot "equalize" except as part of an agendized public meeting. No such meeting occurred with respect to the 2003/2004 tax year. No such meeting occurred for an unknown period of years preceding the 2003/2004 tax year. No such meetings occurred in the years subsequent to the 2003/2004 tax year. With respect to the 2004/2005 tax year, upon the representation of Board counsel that the Board had, in fact, reviewed the tax rolls and performed its duty of statewide equalization but had been remiss only in not doing so in a public meeting, the First Judicial District Court remanded the matter before it to the Board to supply proof of such private performance of the duty of statewide equalization. See Exhibits 1-3. No such proof was forthcoming. Id.

It the Order of Remand, the Supreme Court deemed a claim in mandamus by taxpayers' seeking an order requiring the State Board to perform its statutory duty of equalization to be "appropriately raised." That determination is indisputably the "law of this case" and cannot be reconsidered or revisited by this court. See, e.g., Geissel v. Galbraith, 105 Nev. 101, 103, 769 P.2d 1294, 1296 (1989); Sherman Gardens Co. v. Longley, 87 Nev. 558, 563, 491 P.2d 48, 51 (1971) (" '[t]he decision (on the first appeal) is the law of the case, not only binding on the parties and their privies, but on the court below and on this court itself' " (quoting Wright v. Carson Water Co., 22 Nev. 304, 308, 39 P. 872, 873-74 (1895)).

The County now objects to mandamus on the purported grounds that taxpayers could have obtained the tax relief they seek through other statutes, citing NRS §361.355, §361.356, §361.360, §361.405(4), and §361.420. County Motion, p. 13, ln. 7 – p. 17, ln. 21. Taxpayer petitioners seek an order requiring the State Board to perform its duty of statewide equalization as that duty

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encompasses equalization between the Lake Tahoe areas of Douglas and Washoe Counties as well as equalization within the Incline Village/Crystal Bay area of Washoe County. None of the statutes cited by the County provide that relief. The Supreme Court has already addressed this issue, providing in its Order of Remand as follows:

> While NRS 361.356 allows a property owner to raise equalization issues regarding properties with comparable locations before the county board, and while NRS 361.360 allows taxpayers to challenge the county board's failure to equalize, those statutes do not address statewide, county-by-county equalization issues. Order of Remand, p. 6, lns. 11-16.

Although the Supreme Court did not specifically address either NRS §361.355, NRS §361.405(4), or NRS §361.420, the same analysis applies. None of those statutes addresses statewide equalization issues. NRS §361.355 allows a taxpayer resident in one county to go before the county board of equalization in another county and complain about the lesser valuation of property in that second county.[1] NRS §361.405 merely concerns what happens after the State Board has made adjustments to a county's assessment roll. NRS §361.420 addresses an action for the recovery of taxes after the denial of relief by the State Board of Equalization. Contrary to the representations of the County, an action under NRS §361.420 involves an "obligatory administrative process." County Motion, p. 16, ln. 17 – p. 17, ln. 21. Under NRS §361.420(6), the court must "confine its review to the record before the State Board of Equalization."[2]

The County asks this court to dismiss the taxpayers' petition in mandamus on the grounds

---

[1] Even if it could be argued that, because it crosses county lines, NRS §361.555 addresses in part the issue of statewide equalization, it still excludes the claim made by taxpayer petitioners in this case. NRS §361.555 is limited solely to claims that another taxpayer's property is undervalued. In this case, taxpayer petitioners believe that it is their own properties that have been overvalued. NRS §361.555 contains no provision for such a claim.

[2] The County argues that NRS §361.420 "goes on to envision a suit for precisely the relief ultimately now being sought by these Petitioners in this action before this Court." County Motion, p. 17, lns. 15-16. The County then cites to NRS §361.420(4)(f) as permitting "a suit on the grounds '[t]has the assessment is out of proportion to and above the valuation fixed . . . for the year in which the taxes were levied and the property assessed. . . ." Id., p. 17, lns. 16-18. The County expressly omitted five words from its quoted language in NRS §;361.420(4)(f). In its entirety, NRS §361.420(4)(f) reads as follows: "That the assessment is out of proportion to and above the valuation fixed **by the Nevada Tax Commission** for the year in which the taxes were levied and the property assessed." (Emphasis added.) It has no application at all even to individual property valuations by the County Assessor, County Board of Equalization or State Board of Equalization.

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that taxpayers could have sought relief through other legal means. It is not, however, up to the taxpayer to accomplish equalization for his own property. Annual statewide equalization is the affirmative and mandatory duty under NRS §361.395 of the State Board of Equalization. The necessity and justification for a mandamus proceeding, as the Supreme Court determined, are found in the absence of "any means [by which a taxpayer] could administratively challenge the State Board of Equalization's alleged failures to carry out its equalization duties." Order of Remand, p. 6, lns. 9-11. That "absence" of any such "means" cannot be "remedied" by any of the statutes cited by the County. Taxpayers' only remedy lies in mandamus.

The County also argues that the taxpayers' mandamus petition must be dismissed because mandamus is "unavailable to control discretionary acts." County Motion, p. 12, ln. 18. Both NRS 361.395 and the Supreme Court have made it clear that the duty of statewide equalization is not discretionary. Taxpayer petitioners are not asking the court to control the Board's discretion in the performance of that duty. That equalization "discretion," however, is not unfettered and cannot be exercised without reference to applicable law or established fact. Taxpayer petitioners seek to have the court provide non-discretionary parameters to the Board in the exercise of that discretion. It has taken six years to get to the point in this case of requiring answers from the respondents and action by the State Board. Taxpayer petitioners respectfully submit that the court should act to the extent permitted by law to avoid the necessity of another appeal, another decision by the Supreme Court reversing an erroneous determination by the State Board, yet another remand to the State Board to try again, and another six years or more before the constitutional rights of taxpayers are vindicated.

In any event, the specifics of the relief to which taxpayer petitioners are entitled in this action are a matter for the ultimate determination by the court. Those specifics are not subject to determination on a NRCP Rule 12 motion to dismiss. Under the established standard, a complaint/petition for mandamus "should be dismissed only if it appears beyond a doubt that [petitioners] could prove no set of facts, which, if true, would entitle [them] to relief." Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ----, ----, 181 P.3d 670, 672 (2008); see also, Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). The nature of that relief is not at issue

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on a motion to dismiss. See, e.g., Midwest Supply, Inc. v. Waters, 89 Nev. 210, 213, 510 P.2d 876, 878 (1973) (prayer for relief is "'not a part of the claimant's cause of action.'"). This holding is applicable to mandamus actions as to other civil actions. NRS §34.300. The County's motion to dismiss the taxpayers' mandamus petition on the grounds of the relief sought must be rejected as a matter of law.

## IV. DOUGLAS COUNTY IS NEITHER A NECESSARY NOR AN INDISPENSABLE PARTY.

The County moves to dismiss the amended complaint/petition for mandamus under NRCP Rule 12(b)(6) on the grounds that Douglas County is a necessary party to these proceedings and has not been named. Motion to Dismiss, p. 19, ln. 18 - p. 24, ln. 3. The obvious action if Douglas County is deemed to be a necessary party is simply to add the County as a defendant. Washoe County, however, argues that there are statute of limitations and "venue" issues that prevent adding Douglas County, making Douglas County "indispensable" and requiring the dismissal of the taxpayers' petition in its entirety. Id., p. 23, ln. 14- p. 24, ln. 3. The County's Rule 12(b)(6) motion reflects a fundamental misunderstanding of both this case and the rules governing necessary and indispensable parties.

In its Order of Remand, citing NRS §34.160, the statute authorizing writs of mandamus, the Supreme Court held that "insofar as Village League alleged that the State Board failed to perform an act required by law and sought an order directing that act's performance, such was appropriately raised in its district court complaint." Order of Remand, p. 7, lns. 4-7. In their amended petition for writ of mandamus, taxpayer petitioners allege that the State Board of Equalization failed its mandatory statutory duty of statewide equalization both within Washoe County and between Washoe and Douglas Counties to the detriment of petitioners. Petitioners ask the court to issues a writ of mandamus directing the State Board to perform that duty.

Douglas County is not a necessary party because taxpayer petitioners make no claim against Douglas County. When, subject to a writ of mandate from this court, the State Board of Equalization commences to perform its equalization duties for the 2003/2004 and subsequent tax years, Douglas County will be involved in any such administrative proceeding. Washoe County is properly a party because petitioners have asked the court to enter a specific writ mandating the

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State Board to equalize within the Incline Village/Crystal Bay area of Washoe County under the parameters of the Supreme Court decision in State ex rel. State Bd. of Equalization v. Bakst (Bakst), 122 Nev. 1403, 148 P.3d 717 (2006). Taxpayers have asked the court to require the State Board to equalize between Lake Tahoe properties in Douglas and Washoe Counties but have not sought a specific outcome for that equalization action. The State Board will make that determination.

Douglas County is not a necessary party; but, even if it were, there is no reason that Douglas County cannot be added as a party defendant. There are no statutes of limitations applicable to this mandamus proceeding. See, e.g., Buckholt v. Second Judicial Dist. Court, In and For Washoe County, 94 Nev. 631, 584 P.2d 672 (1978). Laches certainly will not apply to bar taxpayers' claims. This matter was filed in 2003 when it became apparent that the State Board of Equalization was not going to perform its equalization duty. The venue argument is equally ineffectual. If the County argument were correct, two counties could never be sued in the same lawsuit. Douglas County has not died or disappeared from the jurisdiction. There is no reason that it cannot be made a party if this court deems it to be a necessary party.

The County argues that Douglas County must be included in this case because "Douglas County must be offered an opportunity to establish the basis of Douglas County property values in order to ascertain if an equalization problem exists at all." County Motion, p. 22, lns. 10-11. The County is simply wrong. This proceeding does not require the court to determine whether or not there was in the 2003/2004 tax year a lack of equalization between Douglas County and Washoe County. The State Board's affirmative statutory duty of statewide equalization does not depend on a finding by the court that there was a lack of equalization.

This court could simply issue a writ of mandate directing the State Board to perform its duty of statewide equalization for the 2003/2004 and subsequent tax years. In the hope of avoiding another six years or more before a final resolution of the equalization issue even for the 2003/2004 tax year is achieved, taxpayer petitioners ask the court to provide some instructions to the State Board in the performance of its equalization duties, not to interfere with the Board's discretion but to inform and control that discretion pursuant to law.

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The County argues that . . .

> it is also the case that both Douglas and Washoe Counties have already participated in this process of equalization between counties, pursuant to NRS 361.333 (relating to the preparation, and consideration, of a ratio study to ascertain whether equalization has occurred between Nevada's counties), and that other opportunities for these Petitioners to obtain the relief they now seek have been provided to them, pursuant to NRS 361.355 . . . , NRS 361.356 . . . , NRS 361.360 . . ., and NRS 361.420 . . . .
> Motion to Dismiss, p. 23, lns. 2-13.

As set forth above, none of these statutes has anything to do with the State Board's annual affirmative duty of statewide equalization. See, argument at p. 5, ln. 1 – p. 6, ln. 10.

The relationship, if any, of ratio studies under NRS §361.333 to the State Board's affirmative statutory duty of annual statewide equalization is beyond the scope of this opposition brief. Suffice it to say that, from the adoption of the ratio studies statute in 1967 through the most recent amendment of that statute in 1999, the Nevada Legislature has not altered the language of NRS 361.395 requiring annual statewide equalization by the State Board and has not required the State Board to review the Department's ratio studies or otherwise take them into consideration in any way in the performance of that duty. With respect to the 2003/2004 tax year which gave rise to the instant matter, the court should note that (1) neither Washoe County nor Douglas County was the subject of the Department's ratio studies for that year; (2) in the three-year rotation of counties where ratio studies were performed, those studies were never done of Washoe County and Douglas County in the same year; (3) as of 2003/2004, ratio studies were only performed on the reappraisal area in any county for the year of the study and, as a result, the combination of the three-year rotation of counties for ratio studies and the five-year rotation of reappraisal areas within counties like Washoe County (as authorized by NRS §361.260(6)), a "ratio study" was done of any particular reappraisal area only once every **fifteen** years; and (4) as of 2003/2004, the most recent ratio study that even tangentially included Incline Village/Crystal Bay was in 1997[3]. Whenever the County or the State argue that statewide equalization is achieved through the

[3] Washoe County was the subject of the Department's ratio studies for the 2002/2003 tax year. For that year, the reappraisal area was Area 5, the area north of Reno to the Oregon State Line. See Exhibit 5. As noted, the last time Area 1 (which includes Incline Village and Crystal Bay) was studied was in 1997. Exhibit 5, p. 60.

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Department's ratio studies, the court need only scratch the surface to conclude, to use the colloquial expression, "that dog won't hunt."

Taxpayers make no claim against Douglas County and Douglas County is not going to be subject to any risk of double, multiple or otherwise inconsistent obligations if it does not participate in this proceeding. Douglas County can protect its interests through the proceedings held by the State Board of Equalization. Douglas County is not seeking intervention. NRCP Rule 19 does not mandate the inclusion of Douglas County in this judicial proceeding. If the court deems otherwise, Douglas County can be named and served. Taxpayers request only that it be done promptly to avoid further unnecessary delay in reaching an ultimate resolution of their equalization claims.

## V. CONCLUSION.

Taxpayer petitioners respectfully submit that the County's motion is without merit and must be denied and the County required to answer the petition so that the issues are framed and appropriate relief may be fashioned without further delay.

DATED this 2nd day of November, 2009.

MORRIS PETERSON

By _____
Suellen Fulstone
Attorneys for Petitioners

## AFFIRMATION

## Pursuant to NRS 239B.030

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

DATED this 2nd day of November, 2009.

MORRIS PETERSON

By _____
Suellen Fulstone
Attorneys for Petitioners

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## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of MORRIS PETERSON and that I served a true copy of the foregoing by first class mail, postage prepaid addressed to:

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

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

DATED this 2nd day of November, 2009.

By _____
Employee of Morris Peterson

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## INDEX OF EXHIBITS

| | |
|---|---|
| Exhibit 1: | Order Granting Motion to Remand with Instructions entered by Hon. Michael R. Griffin in Case No.04-01145A on February 13, 2006. (4 pages) |
| Exhibit 2: | Cited portions of Transcript of Hearing, February 1, 2006 (6 pages) |
| Exhibit 3: | Cited portion of Transcript of SBOE Remand Hearing, March 27, 2006, (4 pages) |
| Exhibit 4: | Cited portion of 2003-2004 Report of Assessment Ratio Study (2 pages) |
| Exhibit 5: | Cited portions of 2002-2003 Report of Assessment Ratio Study (12 pages) |

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**FILED**
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Howard W. Conyers
Clerk of the Court
Transaction # 1131704

# EXHIBIT 1

Case No. 04-01145A

Dept. I

REC'D & FILED

'06 FEB 13 P2:08

J. HARRELROAD

ALAN GLOVER

CLERK

BY _____ DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

TODD LOWE,

Plaintiff/Petitioner,

v.

STATE OF NEVADA ex rel.
STATE BOARD OF EQUALIZATION,
an agency of the State of Nevada;
WASHOE COUNTY, a subdivision of the
State of Nevada; WASHOE COUNTY
ASSESSOR; NEVADA TAX COMMISSION; and
NEVADA DEPARTMENT OF TAXATION,

Defendants/Respondents.

_____/

**ORDER GRANTING MOTION TO REMAND WITH INSTRUCTIONS**

On November 23, 2005, Norman J. Azevedo, Esq., filed a Motion for Remand with Instructions on behalf of Petitioner Barbara Frederic. On December 14, 2005, the Nevada Tax Commission, the State Board of Equalization and the Nevada Department of Taxation all being represented by Karen R. Dickerson, Esq., Senior Deputy Attorney General, filed an Opposition to Petitioner's Motion for Remand With Instructions. On December 15, 2005, Petitioner Todd A. Lowe, by and through Thomas J. Hall, Esq., filed his Joinder to Petitioner's Motion to Remand with Instructions. On December 19, 2005, Terry Shea, Esq., Deputy District Attorney on behalf of

Washoe County and the Washoe County Assessor filed an Opposition to Motion to Remand with Instructions. On December 18, 2005, Norman J. Azevedo, Esq., filed a Reply to the Oppositions on behalf of Petitioner Frederic. On December 20, 2005, the Karen R. Dickerson, Esq., on behalf of the State of Nevada, filed a Notice of Non-Opposition to Joinder in Petitioner's Motion for Remand with Instructions.

On January 10, 2006, the Court heard oral arguments regarding the Motion for Remand with Instructions. After a thorough review of the pleadings and papers on file herein, and hearing the oral arguments of counsel and good cause appearing.

IT IS HEREBY ORDERED that Petitioner's Motion for Remand with Instructions is hereby GRANTED and the case is remanded to the State Board of Equalization to promptly equalize all property to its properly determined taxable value.

In support of its Order, the Court finds that:

1) NRS 361.395 imposes an affirmative statutory obligation upon the State Board of Equalization to equalize the value of all property within the State of Nevada to its properly determined taxable value. The statutory duty of the State Board of Equalization to discharge its equalization function is not dependent upon a property owner requesting the State Board of Equalization to equalize property values to their properly determined taxable value. The State Board of Equalization discharges its statutory duty by reviewing the tax rolls of each of the seventeen (17) counties as adjusted by the County Board of Equalizations and raising or lowing the values thereby equalizing property values statewide and then establishing the taxable value of all property.

2) The statutory duty of equalization contemplated in NRS 361.395 is intended to assure that all property in the State of Nevada should bear an equal burden of taxation imposed pursuant to chapter 361 of the Nevada Revised Statutes. The equalization mandate

embodies the principle that, for example, property located in Carson City should not bear any greater burden than property located in Elko County.

3) In other related matter, Petitioner Bakst did request the State Board of Equalization to equalize all values in this State to their properly determined taxable value. Specifically, on August 24, 2004 during the 2004-2005 session of the State Board of Equalization, Petitioner Bakst requested the following action from the State Board of Equalization.

> DR. BAKST: I want to bring up two points. The NRS statutes 361.399 [sic 361.395] which I have in Exhibit 1 clearly states that it is your lawful duty to equalize values in the state of Nevada, and in furtherance of this obligation, Nevada legislature requires you to review the tax rolls of each county, and I provide clear and uncontrovertible evidence that the taxable value of factually similar properties in Douglas County have significantly lower taxable values as compared to properties in Washoe County. . . .
> . . . .
>
> CHAIRMAN FITCH: Before we go through, we have already dealt with this a couple of times. Before you do that, we're not sure that that has any relevance to your case today. We have already made that decision yesterday.
>
> See, Transcript of STATE BOARD Hearing held August 24, 2004 @ pp. 85-85. [Emphasis added.]

The State Board of Equalization dismissed Petitioner Bakst's request as not being relevant.

4) Neither the record on appeal before the Court nor any of the papers filed by the State and County indicate that the State Board of Equalization did equalize property values as required by NRS 361.395. In fact, the record on appeal suggests that the State Board of Equalization did not equalize property values pursuant to NRS 361.395.

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5) The Reply to the Motion for Remand requested an alternate remedy that if the Court were to deny the request for a remand, the Plaintiff requested an evidentiary hearing pursuant to NRS 361.420(5). Since the Court has ordered a remand, the alternate request for an evidentiary hearing is DENIED.

IT IS SO ORDERED.

DATED this 13th day of February, 2006.

Michael R. Griffin

MICHAEL R. GRIFFIN
District Judge

Submitted by:

Thomas J. Hall

THOMAS J. HALL, ESQ.
Nevada Bar No. 675
305 South Arlington Avenue
Reno, Nevada 89509
(775) 348-7011
Attorney for Petitioner,
Todd A. Lowe

# EXHIBIT 2

CASE NO. 05-00261A

DEPT. NO. 1

REC'D & FILED

'06 FEB -2 A11:51

ALAN GLOVER

BY: HARKLEROAD CLERK DEPUTY

COPY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

MARYANNE B. INGEMANSON, LESLIE P. BARTA, THEODORE G. HARRIS, TODD A. LOWE, ALVIN A. BAKST, and VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., a Nevada nonprofit corporation,

Plaintiffs,

vs.

STATE OF NEVADA ex rel. STATE BOARD OF EQUALIZATION, an agency of the State of Nevada; ROBERT W. McGOWAN, Assessor for Washoe County, Nevada; WILLIAM BERRUM, Treasurer for Washoe County; NEVADA TAX COMMISSION, and NEVADA DEPARTMENT of TAXATION,

Defendants.

_____/

TRANSCRIPT OF PROCEEDINGS

Hearing

February 1, 2006

THE HONORABLE MICHAEL R. GRIFFIN, DISTRICT JUDGE PRESIDING

-oOo-

APPEARANCES

| | |
|---|---|
| ON BEHALF OF PLAINTIFFS: | THOMAS J. HALL<br>Attorney at Law |
| | SUELLEN FULSTONE<br>Attorney at Law |
| IN PROPRIA PERSONA: | LESLIE BARTA<br>Plaintiff |
| ON BEHALF OF DEFENDANT STATE BOARD OF EQUALIZATION: | KAREN R. DICKERSON<br>Sr. Deputy Attorney General |
| ON BEHALF OF DEFENDANT WASHOE COUNTY AND WASHOE COUNTY ASSESSOR: | TERRANCE SHEA<br>Deputy District Attorney |
| ON BEHALF OF PLAINTIFFS IN OTHER RELATED CASES: | NORMAN J. AZEVEDO<br>Attorney at Law |

-oOo-

REPORTED BY: Julietta Forbes, CCR #105, Official Reporter

takes. That way, a record gets made that will serve to support all three of these cases that Your Honor has remanded. And Your Honor's order would help define the parameters of that agenda item.

THE COURT: Okay. Thank you, Mr. Shea.

MR. SHEA: I just don't see that this is going to be an expense that needs to be footed by the Incline Village folks.

THE COURT: I see a writ of mandamus lying someplace.

MR. SHEA: I tried that, Your Honor.

THE COURT: I know. But the question -- the question is now -- is now, if I remand it for equalization, and they don't do what I -- what they think I -- they should have done, that will be a writ of mandamus in a heartbeat. That's just a guess.

Ms. Dickerson.

MS. DICKERSON: On behalf of the State Board of Equalization, they feel like they have equalized every year. And the Department serves as their staff, and they've already begun preparing all the documentation and backup necessary for the Board to put that on the record.

Their session starts the fourth Monday in March, and it's their plan, with or without Your Honor's order, that they're going to show how they equalized every year

that is in litigation.

THE COURT: Okay, so --

MS. DICKERSON: Including the current year.

THE COURT: So if their response is going to be "we did it, and it shows how we did it," then there is going to be an appeal from that decision, correct? And then we'll put this all, the case together, and we'll decide it one way or the other. Is that what you are telling me, Ms. Dickerson, huh?

MS. DICKERSON: Yes, Your Honor.

THE COURT: So their response to my order to equalize is they've done it, and they are going to show they did it. That at least lets us know what the parameter of the issue is, correct?

You're telling me now, for sure, that's your response?

MS. DICKERSON: Yes, Your Honor.

THE COURT: The State Board's going to say "we've already done this, and here's how we've done it"?

MS. DICKERSON: "We've done it every year, and this is exactly how we've done it." And the only point that they would probably admit they were remiss is having it in a public meeting, as far as the exact process that they've gone through every year.

THE COURT: What would their response be to

somebody, to a person who makes an appeal who says, "My property tax, on similarly situated property in Incline Village, taking -- taking out of the equation the cyclical assessment, within a -- within a short period of time, my -- my property is identical, is three times as -- as much taxation as my neighbor," how will they say they've equalized? They did it last -- they did it in the first of the year?

MS. DICKERSON: I think that -- I think their answer would be that that would be a particular appeal that would come before them, and they would look at how the properties were assessed, and that if they were -- if it was a fair assess --

THE COURT: The question, though, the question is, If an individual taxpayer requests equalization, do they do that at that time? Or do they just tell them they've already equalized this year? That's my question.

MS. DICKERSON: To the best of my understanding, that would be an individual appeal that would be taken at that time, during their session.

The equalization is done on a statewide basis, with the huge help of the Department, by doing studies and --

THE COURT: But the problem with it is, see, is equalization implies -- the county level equalization implies countywide equalization. At the state level, it

implies -- you look at property similarly situated in Douglas County compared to property in, in Washoe County, that has comparable issues of value, and equalize between the -- on the county level, not the -- I mean, the inner county, not state -- the county level. So if somebody says, "I want you to equalize my property," is it the Board's opinion that they've got to equalize it on a -- on an appeal statewide, or just look at it and say "does this look okay to us" or what? How is that going to work?

MS. DICKERSON: That would be an individual appeal, because equalization statewide is not looking at particular properties. It's -- it's done by reviewing the tax rolls of the various counties. It's -- it's multiple. I -- I didn't bring, but we already have six pages of how the Board equalizes every year.

THE COURT: Okay. Well, thank you. Then your response is going to be "we already did it."

MS. DICKERSON: (Nodding affirmatively.)

THE COURT: Okay. So we'll be back again here, shortly, with the other issues as to whether they did it correctly or not, I assume, correctly.

So the stay is, is not -- is meaningless. We might as well get it taken care of. So I'll lift the stay. Remand it to the Board for proceedings, consistent with my order, and we'll see what they do.

# EXHIBIT 3

**STATE OF NEVADA**

**DEPARTMENT OF TAXATION**

**STATE BOARD OF EQUALIZATION**

Hand Delivered
MAR 3 0 2006

**TRANSCRIPT OF PROCEEDINGS**

**PUBLIC MEETING**

**MONDAY, MARCH 27, 2006**

**CARSON CITY, NEVADA**

| | |
|---|---|
| THE BOARD: | CLAY FITCH, Chairman<br>STEPHEN R. JOHNSON, Member<br>MICHAEL CHESHIRE, Member<br>WES SMITH, Member<br>RICHARD M. MASON, Member |
| FOR THE BOARD: | DAWN KEMP<br>Deputy Attorney General |
| FOR THE DEPARTMENT: | CHUCK CHINNOCK<br>Executive Director<br>TOM SUMMERS<br>Deputy Executive Director<br>TERRY RUBALD, Chief, Division of Assessment Standards<br>SARA MARTEL<br>Coordinator<br>NAN PAULSON<br>Coordinator |
| REPORTED BY: | CAPITOL REPORTERS<br>Certified Court Reporters<br>BY: MARY E. CAMERON, RPR, CP<br>Nevada CCR #98<br>410 East John Street, Ste. A<br>Carson City, Nevada 89706<br>(775) 882-5322 |

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like to put any comments on the record concerning the remand? Anyone else? I think we'll probably move on through the agenda.

Discussion and possible action is what it says. What we discussed today is we're going to start the process of trying to figure out exactly how we are going to respond to the remand. I think we're going to ask the public for written comments. They'll probably come out in some kind of an order, I guess, that we're probably going to be looking at this sometime in the future.

We haven't been able to set our schedule yet but I assure everybody will have an opportunity to get in what you believe are things that are important that you stressed today, reemphasize them if you'd like to, however you want to do it, and at that time we'll start into another hearing at another time to come up with what I believe the Board has as a position. Is that okay with the Board?

I guess we can move to the next agenda item.

MR. CHINNOCK: Is that me?

CHAIRMAN FITCH: That's you, sir.

MR. CHINNOCK: Briefing to the Board and the Secretary and staff and the first item is briefing schedules.

CHAIRMAN FITCH: Briefing schedules. We don't really want to -- we could try to get up with our schedule

# EXHIBIT 4

# STATE OF NEVADA

# DEPARTMENT OF TAXATION

## 2003-2004

## REPORT OF ASSESSMENT RATIO STUDY

PREPARED BY THE

DIVISION OF ASSESSMENT STANDARDS

ADOPTED BY THE NEVADA TAX COMMISSION

MAY 5, 2003

## Table of Contents

**FILED**
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Transaction # 1131704

# EXHIBIT 5

# STATE OF NEVADA

# DEPARTMENT OF TAXATION

## 2002-2003

## REPORT OF ASSESSMENT RATIO STUDY

PREPARED BY THE

DIVISION OF ASSESSMENT STANDARDS

MAY 7, 2002

## Table of Contents

## WASHOE COUNTY
### *Part II:*
### 2002-03 Work Practices Survey

Washoe County's reappraisal area is referred to as the Northern County Suburban, Valleys and Rural Area, this takes in all of the valleys north of Reno and Sparks all the way to the Oregon state line. The geographic area contained in this reappraisal cycle is very large encompassing over 80 percent of the area of the entire county. The parcel map books involved are Books 35, 61, 66, 71, 74, 76-90, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 522, 524, 528, 530, 534, 550, 552, 554, 556, 558, 560, 566 and 570 which represent 37,400 nonagricultural parcels and 1,104 agricultural properties. These nonagricultural parcels account for 28.58 percent of the 130,841 total nonagricultural parcels in the county.

Although much of this year's reappraisal area is vacant land and agricultural properties, it is considered one of the most difficult appraisal tasks because of the great amount of diversity in properties and structures. It ranges from mobile homes in Sun Valley to above average residential subdivisions located north of Sparks along the Pyramid Lake Highway and Vista Boulevard. Included are the older military structures and industrial property located at Stead; the ranchette properties in the Red Rock and Spanish Springs area; the mixture of mobile homes, older homes and newly built homes located in the Cold Springs and Lemmon, Golden and Panther Valleys. Combined with all this are isolated pockets of commercial growth located along the access routes into these northern valleys. Most of the area is now experiencing significant growth in residential building as many individuals are willing to make the short commute into Reno and Sparks.

The division's sample reflects the great diversity of properties in the reappraisal area. The types of properties included in the sample are mobile homes, single-family residences, condominiums, minor improvements, converted mobile homes, duplexes, four-plexes, apartments, mobile home parks, industrials, strip malls, shopping centers, fast food restaurants, mini-markets and office complexes. The total sample for this year's appraisal area consisted of 427 parcels.

## ANALYSIS AND RECOMMENDATIONS

### *Real Property Discovery and Valuation Work Practices*

**Sales Collection:** The collection of real property sales in Washoe County is done in an accurate and efficient manner. All real property transfers are obtained from the recorder's office by members of the assessor's staff. Copies of the important sales documents such as deeds, declarations of value, etc. are kept on file in the assessor's office by year.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Verification:** Staff visits title companies to verify price, terms and conditions of the sales. The county staff sends out verification letters to buyers and sellers as well as making personal contact, in many cases in order to obtain the true motivations of the parties involved in the sales. After determining the validity of the sales, the staff then assigns various codes to the sales which show the confidence level and type of verification completed.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Sales Data Base:** The sales data base appears reliable. The verified and coded sales are input into the mainframe computer where they can be accessed by appraisers and other staff members in the assessor's office. In addition, the sales database is drawn upon to compute land factors in that portion of the county (80 percent) which is not being reappraised. The verified sales from the sales bank are the basis used to establish land values in the reappraisal area.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Vacant Land (excluding agricultural property):** Because of the many types of vacant land in this reappraisal area, the division examined a large sample of 30 which includes bare land, ranchettes, single-family residential, multi-family residential, commercial, retail and industrial lots. Only two outliers occurred in this property category. From the statistics shown, market land values within the reappraisal area are correctly assigned.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Subdivision Analysis:** There are currently eleven subdivisions that have qualified for a discount. The discounts are all in the 20 to 30 percent range. A review of the data and documentation found the assessor's methods and conclusions to be correct.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential Land:** In the areas which had sufficient sales, the appraisal staff did a sales analysis to obtain credible land values for single-family residential lots. In other areas which did not have sufficient sales, comparable sales data was used from other parts of the county outside the reappraisal area. One example of this method was used in a new subdivision where the land and home were sold only as a package. With no vacant lot sales the county staff examined another subdivision outside the reappraisal area where the same builder was constructing the same model homes. Although the improved sales for these homes were different from one area of the county to the other, the county staff was able to compute a land value based on the comparison of identical models and land to building ratios. The overall ratios for this category were very good with only one outlier out of a sample size of 307. One procedural item within this category should be discussed. The county has established a system in which a set of parcel maps for the reappraisal area is put in one centrally located file. Within these maps the land value for each parcel is written on the parcel and a list of comparable sales which were used in setting these values are included. This procedure is excellent and helps reduce confusion, increase accessibility and enhances productivity.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Multi-family Residential Land:** The division's sample in this category was very diverse and included 26 properties. All were found to be within ratio study tolerances. During the division's analysis of this property category it was made aware of a study conducted by the county staff on mobile home parks. A review of the study found the data to be complete and the conclusions correct.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Commercial and Industrial Land:** Of the 36 samples examined none were found out of the statutory ratio parameters. Very few commercial sales existed in the area so the county staff used older commercial and industrial sales as well as sales from other areas of the county. The division agrees with this approach. The county staff was able to complete a price per square foot table for various size parcels, which was quite accurate. This was accomplished through the use of trended older sales and current real estate listings within the area.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Factors:** A concerted effort is made by the staff to ensure only reliable sales are used in establishing land factors. The county has continued to improve its factoring ability by the establishment of neighborhoods. Through the use of the multiple listing service market areas the staff was able to define logical neighborhood boundaries. The assessor's staff takes a very conservative approach when applying land factors. Even though the statutes allow a median ratio between 30 and 35 percent when factoring, the county seems to target the low end of this range.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Single-family Residential Improvements:** This property category contained the majority of the division's sample for this ratio study. The property types included minor improved properties, mobile homes, converted mobile homes, condominiums and single-family "stick" built houses. The median ratio would be a lot closer to 35 percent if the mobile home outliers were removed from this sample - about 60 percent of the 21 outliers in this category came from mobile home parcels. The cause of the mobile home outliers is documented in the minor improvement section of this ratio study.

Several minor areas of concern in this area need to be considered. The first is a difference in cost approaches on apartment style properties which have condominium type ownerships. This problem has been documented in past ratio studies and has not changed at the present time. The county staff continues to cost these units separately as townhouse units rather than costing the entire low rise multiple building and then apportioning the cost to each unit in the building. The division still affirms that the latter cost approach is the correct one. Only four samples in the ratio study were outliers due to this problem.

Overall this property category is being managed satisfactorily. This category experienced very few outliers.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Multi-family Residential Improvements:** Twenty-six improved multi-family residential properties were included in the study. The samples in this property category represented a broad spectrum of buildings and property types including mobile home parks and apartment complexes. Only one outlier occurred in this category. The division and the county staff were in agreement on nearly all of the samples of this property type.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Commercial and Industrial Improvements:** The commercial and industrial samples included a wide range of improvements and property types. The sample of 36 was well representative of the area since a relatively small number of commercial properties exist in this reappraisal area. The division examined a number of small to medium commercial properties as well as several industrial sites including one very large and complex manufacturing plant. The outliers in this area were generally due to the difference in the amount of value given to other minor improvements such as curbing, asphalt paving, lighting and large pole signs. The county staff did not value any of the signs or any curbing on the commercial subjects. See the discussion on *Minor Improvements* for a detailed explanation of these items. THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Minor Improvements**

**Analysis:** This property category continues to be one of the areas which has exhibited some problems in the real property valuation process. The deficiencies in this area have been documented in past ratio studies and still exist within all of the improvement areas.

As part of the costing procedure for single-family homes there is a lump sum amount, which is used to value all minor yard improvements such as fences, sprinklers, planters, etc. The appraiser estimates the number of minor improvements per site and adds an appropriate amount for the lump sum. This type of valuation is acceptable since the number of parcels in each reappraisal area would make it virtually impossible to measure and value them separately. Since the division has the ability to value all of the minor improvements separately, the samples in the ratio study are a very good analysis of how well the lump sum system is working. The results from the study indicate that the county staff is consistently lower in its valuation of minor improvements. This problem caused a number of outliers in the lower end (under 32 percent) and pulled the overall percentage down in this property category.

The property type, which showed the biggest problem of lower valuations on minor improvements, was mobile homes. This property type was the cause of about 60 percent of the outliers in the single-family residential improvement category. Research revealed that fences, due to the high cost per liner foot, was responsible for most of the cost differences and outliers.

There exist two problem areas with the application of the lump sum system. The first is that the lump sum value is too low to cover the typical minor improvements, which are encountered within this property category. The second problem is the ability of the staff appraisers to estimate the right number of lump sum amounts to use in order to adequately value all of the minor improvements.

**Recommendation:** THE ASSESSOR'S PROCEDURES NEED IMPROVEMENT (2). The division recommends that the lump sum value used for the valuation of minor improvements on single-family parcels be raised to reflect a more typical minor improvement value. The assessor has already confronted the situation for next year's reappraisal in an effort to correct the problem.

A further recommendation is to initiate an ongoing training program of the appraisers on the correct use of lump sum costing. Special emphasis should be made on the manufactured home type properties where the tendency is to underestimate the value of minor improvements. A second area of emphasis should be the personal property items associated with manufactured homes. A greater effort is needed for communications between the personal property department and the real property department, to ensure all minor improvements are accounted for and valued in a uniform manner.

**New Construction Valuation:** The main method of discovery is through city and county building permits. After inputting these permits into the computer, a special team is assigned the task of appraising these new properties throughout the year. The assessor also has additional staff work on new construction just prior to the lien date in an attempt to discover and value all of the existing improvements. These new construction parcels are placed on the proper roll by using the reopened roll log option now available to the assessor. It is apparent from the emphasis that is being made in new construction that the assessor and his staff understand the importance of accurately adding new improvements. Since the volume of reappraisal work does not allow time for major changes it is imperative that the improvements are valued correctly when first appraised.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land:** Twenty-eight agricultural properties were sampled in this study. One of the samples was not within ratio parameters due to a clerical error in land classification. This has been brought to the assessors attention and was corrected. The other twenty-seven samples were valued correctly.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Records:** The agricultural land records are accurately updated and reflect the classifications of each property.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Classification Maps:** The assessor's files contain maps of each agricultural property. The maps are updated at each reappraisal and accurately reflect the various land classifications of the parcel.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Bulletin Use:** The assessor valued all agricultural parcels in the reappraisal area using the current Agricultural Bulletin.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Residential Home-site Valuation:** The assessor correctly identified and valued the residential homesites on the agricultural parcels as required.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Improvements:** Eleven improved agricultural properties were included in the study. Five of the samples were not within ratio parameters. Two were due to new improvements being added to the parcel after the assessor's appraisal visit but prior to the divisions visit. One was due to the assessor's staff incorrectly measuring the improvement. Two of the samples were valued correctly by the staff but input into the roll incorrectly. One of these was incorrectly depreciated and the other had improvement values that did not get included in the roll value.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Deferred Taxes:** There are 1,509 deferred agricultural parcels in Washoe County. The assessor's files include a current agricultural application for each operator. The assessor requires a new application when the ownership changes.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Higher Use:** Washoe County has valued six higher use areas on agricultural land in the reappraisal area. Five are gravel pits and one is a service garage. These higher use areas are valued similarly to other commercial property in the area. These areas were previously converted from agricultural land.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural Land Conversions:** The assessor had twenty-six parcels totaling 414.850 acres convert from agricultural use to residential or commercial/industrial use for tax year 2001-02. A review of the assessor's calculations for deferred taxes found them to be correct.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Assessment Maps:** The assessor's maps are prepared by the county mapping department. The assessor continues to work on re-mapping the county on the new GIS mapping system. The new maps are of very good quality and easy to use.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Prescribed Parceling System:** The assessor uses the prescribed parceling system. Summary or referral parcels are not used in Washoe County.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

***Personal Property Discovery and Valuation Work Practices***

**Discovery:** Aircraft are discovered through the FAA tail number website, tie down reports from the airports, as well as letters of inquiry to aircraft hanger owners. The letters request information on current tenants renting hanger space. Manufactured homes are tracked through Dealer's Report of Sales (DRS's) from mobile home dealers, moving permits, county set up permits and the zoning enforcement department. The county has a field inspector that visits all manufactured home sites and verifies the correct home is at the site and measures and values accessories and minor improvements. Billboards are discovered through the Department of Transportation's Billboard Report. Agricultural properties are well established with little movement. They are tracked through agricultural exemption filings.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Record-keeping:** Each personal property account is filed in its own folder. Manufactured homes are filed by account number with the DRS and other supporting valuation documentation enclosed. Unsecured business and agricultural declarations are filed according to account number with secured businesses and secured agricultural declarations filed by assessor's parcel number. Aircraft accounts are filed by account number.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Agricultural/Business Property**

**Analysis:** As stated in previous studies, these categories are being managed very well with no outliers. Our study is limited in scope because the declarations used by the assessor's office are lump sum declarations and do not allow for in-depth analysis of depreciation. The division cannot give Washoe County the highest rating due to a problem which continues to exist with the basic element of business property reporting – the personal property declaration. The assessor has chosen to continue using a personal property declaration which has all equipment and assets grouped together by acquisition year in a lump sum amount. The division has encouraged the development and usage of an itemized declaration

for a number of studies but no change has occurred. Washoe County remains one of the few counties within the state that does not have an itemized personal property declaration.

The deficiencies of a non-itemized declaration have been discussed in previous studies and only a brief summary will be given here. This type of declaration makes it difficult if not impossible to do the following:

1. Accurately track the addition and deletions of personal property items.
2. Correctly assign the proper life schedule to all items of personal property.
3. Determine whether an item has been assessed both on the real and personal property rolls.

Due to the above-mentioned problems, the need for an itemized declaration is evident.

**Recommendation:** THE ASSESSOR'S PROCEDURES NEED IMPROVEMENT (2). The county is taking steps to remedy this deficiency. The assessor's office is in the process of installing a new computer program called AssessPro. This new system is reported to have a personal property module capable of creating and using itemized declarations. If the assessor uses this module the current deficiency would be corrected.

**Manufactured Homes:** Of 152 manufactured homes, 8 secured and 144 unsecured, sixteen were found to be out of tolerance. All outliers were due to the accessory amount being excluded from the total retail sales cost. There are dealer inconsistencies in what items should be included on the accessory line of the dealer's reports of sales. Various manufactured home dealers are including upgrades on carpeting, appliances, etc... including real property items. While other dealers are reporting real property items only. This has caused a lot of confusion as to what to report as the total retail sales cost. The division recommends the staff send a personal property declaration to each manufactured home owner to request which items were included in the accessory amount reported on the D.R.S. There would be a better response to the declarations if an explanation was included such as being concerned about double taxing the customers. This procedure should clarify any misunderstandings concerning what the accessory amount actually includes. On those manufactured homes pending conversion to real property, a notice is put in the file stating pending conversion and a separate pending file is created. It is taxed as personal property until the county receives confirmation of conversion from manufactured housing. The file is then sent upstairs to the real property appraisers for assessment.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billboards:** Our sample included approximately twelve percent of the billboard accounts in Washoe County. No outliers were found.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Aircraft:** Of the 30 unsecured aircraft sampled, no errors were found. The files were very well organized and easy to find with a separate file for dead accounts.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Migratory Property:** Washoe County doesn't have any manufactured homes that they consider migratory. Migratory equipment is discovered through business licenses and field inspections. When migratory property is located, it is prorated one-twelfth for each full month which has elapsed since the beginning of the fiscal year. No errors were found in this property type.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Billing/Collection (penalties applied, seizure and sale):** Tax bills are generated by the assessor's office but the taxes are collected by the treasurer's office. All appropriate penalties and interest are being applied to delinquent accounts.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

***Other Work Practices***

**Possessory Interest Valuation - Real Property:** There are fifteen possessory interest real properties valued in Washoe County. The division reviewed several of these properties and found that the assessor's methods and values are correct and that the backup data necessary to review the valuation is available.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Possessory Interest Valuation - Personal Property:** There are no personal property possessory interests in Washoe County. (N/A)

**Statutes and Regulations:** The Nevada Revised Statutes and the Nevada Administrative Code are available in the assessor's office. Both have been correctly updated.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Cost Manuals and Systems:** In the past, the assessor used several different costing systems provided by Marshall and Swift to value residential improvements. Due to the difference in the final improvement value between these costing systems and the turnaround time to receive these values from Marshall and Swift, the assessor is now using the Marshall and Swift Residential Estimator program. This has provided a standard costing system that will yield an improvement value once all the data has been entered into the computer.

The assessor's staff is adjusting the residential quality class downward one-half of a class to compensate for the lower costs associated with homes having slab floors. This method of adjustment, which is one of several that could be used, did not result in any sample ratios being outside statutory limits. However, the preferred method and the one recommended by the Division is to use the slab floor entry provided by the Marshall and Swift Residential program to make this adjustment. The new Computer Assisted Mass Appraisal system purchased by the county will provide for this adjustment.

The assessor also uses the Marshall and Swift Commercial Estimator program to value commercial/industrial improvements. The estimator updates are loaded into the computer once each year at the beginning of the work year. The September 2000 update is being used for the residential property and the October 2000 update is being used for the commercial property. The assessor does have several copies of the Assessor's Handbook of Rural Building Costs and several copies of the Marshall and Swift Residential and Commercial Cost Manuals. All of the manuals have been correctly updated. Minor improvements such as paving, sheds or fences are valued using the assessor's in-house computer program that is based on the Marshall and Swift cost manuals and some local costs. Agricultural type improvements are valued using the Assessor's Handbook of Rural Building Costs published by the division.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Records:** The information in the files is complete, correct and up to date. The assessor is taking new pictures with a digital camera and making new sketches as they are needed. The sketches are being prepared on the new Patriot sketch program. Each property record folder contains the most recent appraisal record which includes building and land data, value history, the owners name and property address, the appraiser's initials, and the date of the last appraisal visit. Included in the folder are drawings and pictures of the improvements, a property sale record, and an activity log. The folder may also contain a new construction worksheet, any correspondence relating to the property and data from the previous appraisal, which is used for comparison purposes. Only the information needed to identify the property and defend the appraisal is included.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Filing System:** The assessor's real property record files are organized in parcel number order. This system allows for easy retrieval and is efficient to use.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reports:** The numerous reports required of the assessor were completed correctly and delivered on time.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appeal Preparation and Presentations:** For this tax year, there were a total of 143 appeals to the Washoe County Board of Equalization. The assessor's staff is well prepared and very professional in their presentation of Washoe County's position at the board of equalization hearings.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Reopened Roll Log:** The roll log is required by NRS 361.310 to be received by the division on or before October 31, 2001. The roll log submitted by Washoe County was received on October 15, 2001 and was correctly completed.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Obsolescence:** The assessor maintains a data bank listing of sales of improved and vacant properties within the county. The assessor's taxable values for these properties are then compared to their sales prices, and a ratio of taxable value to sales price is calculated for each property. Properties with a taxable value that exceeds their sales price can then be identified. The assessor also uses Metro Scan, which has the ability to array data many different ways so that different property types and different age improvements can be studied.

The assessor has applied obsolescence to 663 properties in Washoe County. Of these, 258 are condominium properties, which were reduced because taxable value exceeded full cash value. The number of condominium properties receiving obsolescence has decreased significantly since the last ratio study. One hundred and fourteen residential properties have also been reduced. The remainder of the properties receiving obsolescence are; 63 general commercial, 104 offices, 35 casinos and 18 hotels/motels. The other 71 are mixed property types. These parcels were reduced because taxable value exceeded full cash value. The assessor is reviewing property sales annually to determine if continued obsolescence is necessary. The division reviewed several parcels with obsolescence and found that the assessor's value is correct and the backup material complete.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**New Construction:** New construction is discovered through the use of the county and city building permits. New permits are organized by area and a special team is assigned the task of inspecting and valuing these improvements throughout the year. The assessor also has additional staff working on new construction just prior to the lien date in an attempt to discover and value all of the existing improvements. New construction that is discovered before the close of the roll in December is included at that time. New construction that is discovered after the close of the roll is included on the roll log. A review of several properties with new construction revealed that the improvements are being correctly measured and valued by the assessor's staff.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Land Use and Exemption Codes:** A review of the assessment roll revealed that the assessor is correctly applying the land use and exemption codes.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisal Cycle:** The assessor uses a five-year reappraisal cycle. During this ratio study, Area 5, which is referred to as North Country Suburban, Valleys and Rural. This takes in all of the valleys north of Reno and Sparks all the way to the Oregon state line. The geographic area contained in this reappraisal cycle is very large encompassing over 80 percent of the area of the entire county. The parcel map books involved are Books 35, 61, 66, 71, 74, 76-90, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 522, 524, 528, 530, 534, 550, 552, 554, 556, 558, 560, 566 and 570 which represent 37,400 nonagricultural parcels and 1,104 agricultural properties. These nonagricultural parcels account for 28.58 percent of the 130,841 total nonagricultural parcels in the county. During the 2001 reappraisal cycle, Area 5 accounted for 28 percent of the county parcels. During the 2000 reappraisal cycle, Area 4 was studied. This area accounted for 21 percent of the county parcels. During the 1999 reappraisal cycle, Area 3 was studied. This area accounted for 10 percent of the county parcels. 22 percent of the county parcels were studied during the 1998 reappraisal. During the 1997 reappraisal study 19 percent of the county was studied, this was Area 1. The existing reappraisal cycle works well for the assessor, conforms to statute requirements, and is manageable with the available personnel.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Improvement Factoring:** The assessor uses the approved improvement factor in all factored areas of the county. The factor applied is the composite factor, which includes an additional year of depreciation. This results in those improvements that are 50 years old and older receiving depreciation beyond the 75 percent maximum. This is corrected during reappraisal.

**Appraiser Certifications:** The division has certified 27 staff members as real property appraisers to appraise for ad valorem tax purposes. The division has certified five members of the assessor's staff in the valuation of personal property. In addition, several staff members have earned professional designations; one ISRPA, six CAE's, three RES's, two SRA's and two CMS's.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

**Appraisers Training Requirements:** All of the Washoe County staff appraisers are presently in compliance with NRS 361.221 and NRS 361.223.
THE ASSESSOR'S PROCEDURES MEET STANDARDS (3).

3790
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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,

Plaintiffs,

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.
_____/

Case No. CV03-06922

Dept. No. 7

**REPLY TO OPPOSITION TO STRIKE AMENDED COMPLAINT AND OPPOSITION TO MOTION TO DISMISS**

Defendants Washoe County, along with the Washoe County Assessor and Treasurer, by and through their counsel of record, Richard A. Gammick, District Attorney of Washoe County, Nevada, and David Creekman, Chief Deputy District Attorney, herein provide this Court with this Reply to "Points and Authorities in

Opposition to Strike Amended Complaint" and "Points and Authorities in Opposition to Motion to Dismiss (NRCP 12(b)(5) and NRCP 12(b)(6)." This Reply is based upon the following Statement of Points and Authorities.

Dated this 10th day of November, 2009.

RICHARD A. GAMMICK
District Attorney

By David C. Creekman

DAVID C. CREEKMAN
Chief Deputy District Attorney
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ATTORNEYS FOR WASHOE COUNTY,
WASHOE COUNTY ASSESSOR, AND
WASHOE COUNTY TREASURER

STATEMENT OF POINTS AND AUTHORITIES

I. The Amended Complaint

In opposing the Washoe County Respondents' move to strike their Amended Complaint, the Petitioners somehow avoid the inevitable conclusion that their newly-stated claims for subsequent tax years are claims for substantially the same relief they stated for the original tax year involved in this litigation. These newly-stated claims cannot now relate back to the date of the original pleading and, if permitted to stand, eviscerate any meaning behind the statutes of limitation applicable to their causes of action. Although the case arose outside the property tax context, this is precisely the position espoused by the Supreme Court in Nelson v. City of Las Vegas, 99 Nev. 548, 665 P.2d 1141 (1983), in which the Court clearly concluded that where an amendment states a new cause of action that describes new and entirely different sources of damages, the amendment does not relate back as the opposing party has not been put on notice concerning the facts in issue. Here, each tax year stands alone. Each challenge to a different tax year stands alone. Each tax year constitutes a new and entirely different source of damages. For instance, change in valuation is effective only for the fiscal year for which the assessment was made. NRS 361.345. The Assessor, meanwhile, is subject to a duty to annually assess, "...by diligent inquiry and examination, all real and secured personal property that is in his county on July 1 which is subject to taxation..." NRS 361.260. Each

possible cause of action contained within NRS chapter 361 contains its own statute of limitations, based upon the recognition that at some point, the right to pursue this litigation must be brought to a stop.

As for the Petitioners' claim that they have added new petitioners so as to substantiate their claims that this case is now somehow automatically converted to a class action pursuant to NRCP 23, doing so now invokes NRCP 23.2's heightened provisions relating to class actions brought by unincorporated associations. As for unincorporated association class actions, which these Petitioners now apparently seek if the Village League is denied organizational standing, NRCP 23.2 provides that the Court may make appropriate orders corresponding with those described in Rule 23(d). Those NRCP 23(d) orders include, among other things, notice as to whether the alleged members of the class consider the representation fair and adequate, imposing conditions on the representatives of the class, and requiring that pleadings be amended to eliminate allegations as to representation of absent parties. The problem with the Amended Complaint is that it provides no indication, with any degree of precision, of who might belong to this class and, if different taxpayers might belong to this class, whether they want to belong to this class and agree with the allegations contained in the Amended Complaint. Nor can the Amended Complaint overcome the foundational problems associated with this entire proceeding being maintained as a class action --- that none of the named

petitioners can establish their claims are common with anyone else's claims, for the simple reason that a taxpayer's right to sue is unique to that taxpayer, the outcome of which is unique to the circumstances of each individual taxpayer --- including the uniqueness of each individual taxpayer's property. For these reasons, the allegations of the Amended Complaint fit squarely into NRCP 12(f)'s provision that the Court may strike "... immaterial, impertinent or scandalous material." Without such information, that which is contained in the Petitioners' Amended Complaint has no meaning, and no relevance. It should be stricken. Otherwise, these Petitioners must be obligated to provide a more definite statement as to precisely who is involved in this alleged class action, pursuant to authority contained in NRCP 12(e), in order to assist both the Court and the Respondents in ascertaining whether the requirements of NRCP 23 are met in this case.

II. The Motions to Dismiss

These Respondents' 12(b)(5) and 12(b)(6) Motions to dismiss were based upon the plain language of the Petitioners' Amended Complaint in which they clearly seek tax refunds. Yet, in their Opposition, the Petitioners state that this is really an equalization request and that "this is not a taxpayer action for the recovery of taxes," p. 3, l. 12. The Amended Complaint, however, contains the following prayers for relief:

> 2. That the Court issue a peremptory writ of mandamus requiring the State Board of Equalization to equalize the land portion of residential real property at Incline Village

and Crystal Bay to 2002-2003 values to reflect the area wise use by the Assessor of unlawful and unauthorized valuation methodologies resulting in unconstitutional valuations and assessments, to certify those changes to Washoe County and to direct the payment of refunds pursuant to NRS 361.405. (emphasis added).

3. That the Court issue a peremptory writ of mandamus requiring the State Board of Equalization further to equalize property at Lake Tahoe in Douglas and Washoe counties for the 2003 - 2004 tax year and subsequent years as required by the Nevada Constitution and statutes, to certify those changes to Washoe County and to direct the payment of refunds pursuant to NRS 361.405. (emphasis added).

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

These Petitioners, by their own language contained in their Amended Complaint, are asking for property tax refunds in this action. They seek a particular result from this Court --- and they ask that this Court manipulate the discretion of the State Board of Equalization in order to achieve a particularized result. And they seek to do so, as explained in these Respondents' underlying motion, outside the law and without the obligating full party participation of Douglas County, all to the detriment of these Respondents.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding

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

Respectfully submitted this 10th day of November, 2009.

RICHARD A. GAMMICK
District Attorney

By David C. Creekman

DAVID C. CREEKMAN
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ATTORNEYS FOR WASHOE COUNTY
WASHOE COUNTY ASSESSOR AND
WASHOE COUNTY TREASURER

**CERTIFICATE OF SERVICE**

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

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

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

Dated this 10 day of November, 2009.

3795
CATHERINE CORTEZ MASTO, Attorney General
DENNIS L. BELCOURT, Deputy Attorney General
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*Attorneys for State Board of Equalization*

**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 corp., on behalf of its members, and others similarly situated,

Plaintiffs,

vs.

STATE OF NEVADA, on relation of its DEPT. OF TAXATION, the NEVADA STATE TAX COMMISSION, and the STATE BOARD OF EQUALIZATION; WASHOE COUNTY, ROBERT McGOWAN, WASHOE COUNTY ACCESORY; BILL BERRUM, WASHOE COUNTY TREASURER,

Defendants.

Case No. CV03-06922

Department No. 7

**STATE BOARD OF EQUALIZATION'S REPLY TO VILLAGE LEAGUE'S OPPOSITION TO MOTION TO DISMISS**

Defendant STATE OF NEVADA ex rel. STATE BOARD OF EQUALIZATION ("State Board"), through counsel CATHERINE CORTEZ MASTO, Attorney General, by DEONNE E. CONTINE, Deputy Attorney General, hereby submits its Reply to Village League's Opposition to the State Board's Motion to Dismiss in the above captioned action.

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This case was remanded by the Nevada Supreme Court on the sole issue of whether injunctive relief (although framed as mandamus relief by the Supreme Court) was a viable claim for Village League at the time it filed its Complaint in November of 2003 for any alleged failure to equalize by the State Board. Accordingly, the relief is restricted to that relief which this Court could order in mandamus. As discussed in the State Board's Motion to Dismiss, even assuming that the State Board failed to fulfill its statutory duty to equalize under NRS 361.395, Village League would not be entitled to the relief it has sought both in its original complaint, its amended complaint and in its opposition. Accordingly, this case should be dismissed.

**1. Village League is Not Entitled to Mandamus Order that Dictates to the State Board The Parameters to Fulfill Its Statutory Duty Under Of General Equalization**

Village League offers that it is not seeking an order from this Court controlling the State Board's discretion; instead it is "merely seeking to have the Court provide non-discretionary parameters to the Board in the exercise of that discretion." Opposition, page 6 lines 4-7. First, it is difficult to understand how the Court could provide "non-discretionary parameters" that do not control the discretion of the Board. Second, Village League is not entitled to such requested relief in mandamus because such an order would necessarily control the State Board's discretion.

Furthermore, while Village League may have filed its original complaint six years ago, this Court should not act now merely for the Village League's convenience as requested in its opposition. Moreover, Village League would have no right to challenge any general equalization decision made by the Board unless the Board sought to increase their property values. NRS 361.395 requires the State Board to give 10 days notice to interested persons when it proposes to increase the valuation of property on the assessment roll. NRS 361.395(2). Consequently, unless these individuals' property valuations are increased by the State Board, they would have no right to notice to appear before the State Board or to judicial review of a general equalization decision. Indeed NRS 361.410 provides the procedure for a challenge in the nature of judicial review.

**NRS 361.410 Taxpayer not deprived of remedy or redress; burden of proof upon complainant; Executive Director and Department prohibited from seeking judicial review of certain decisions.**

1. No taxpayer may be deprived of any remedy or redress in a court of law relating to the payment of taxes, but ***all such actions must be for redress from the findings of the State Board of Equalization***, and no action may be instituted upon the act of a county assessor or of a county board of equalization or the Nevada Tax Commission until the State Board of Equalization has denied complainant relief. This subsection must not be construed to prevent a proceeding in mandamus to compel the placing of nonassessed property on the assessment roll.
2. The Nevada Tax Commission or the Department, in that name and in proper cases, may sue and be sued, and the Attorney General shall prosecute and defend all such cases, but ***the burden of proof is upon the complainant to show by clear and satisfactory evidence that any valuation established by the Nevada Tax Commission or the Department or equalized by the State Board of Equalization is unjust and inequitable***. (Emphasis added)

. . .

Therefore, because any challenge to a general equalization decision pursuant to NRS 361.395 could only be made by those taxpayers whose property valuations are increased from the assessment rolls (NRS 361.395(2) and because NRS 361.410 provides the procedure for such review in the nature of judicial review, the Village League's Petition should not be granted and its Complaint should be dismissed.

Accordingly, even if there was authority to issue a writ to compel the State Board to equalize, there is no authority for this Court to mandate specific directions for the Board to follow as requested by Village League. Although mandamus could lie to compel a public body to perform a duty, mandamus cannot issue to control the exercise of the body's discretion

while carrying out such duty. *State v. Boerlin*, 98 P. 402, 30 Nev. 473 (1908); *see also, Gragson v. Toco,* 90 Nev. 131, 133 520 P.2d 616, 617 (1974) ("As a general rule, while mandamus will lie to enforce ministerial acts or duties and to require the exercise of discretion, it will not serve to control the discretion.") Accordingly, mandamus relief as requested by Village League is not permitted in this case. If the State Board was ordered to equalize under NRS 361.395, the remedy available to the Village League related to the decision would be found in NRS Chapter 361, not by an order in mandamus.

**2. <u>The Primary Jurisdiction Does Apply In this Case</u>**

Village League maintains the State Board has ignored its duty of statewide equalization for six years. However, while the Nevada Supreme Court has now established that a general duty of equalization exists, that duty was disputed by the State Board and was the subject of litigation that resulted in a decision by the Nevada Supreme Court. *See State ex rel. State Bd. of Equalization v. Barta* 124 Nev. 58, 188 P.3d 1092 (2008). Since the *Barta* decision, the State Board (which has had complete board member turnover in the last two years), has been working to fulfill its duties under NRS 361.395. The State Board should be allowed to complete its regulatory duties and apply the regulations to its general equalization decision.

**3. <u>Conclusion</u>**

Mandamus cannot issue in this case because Village League cannot and has not shown that it has a clear legal right to the relief requested. Indeed, an order to refund taxes paid as requested by Village League is not possible because this Court has no authority to exercise its own discretion for that of the public body being compelled to perform its duty. Because Village League is not entitled to the relief requested Village League's Complaint should be dismissed and its Petition should be denied. Moreover, this Court should allow the

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State Board to complete its regulatory process and apply those regulations in exercising its general equalization duties under NRS 361.395.

DATED this 13th day of November 2009.

CATHERINE CORTEZ MASTO
Attorney General

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*Attorneys for Defendant State Board of Equalization*

**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 13th day of November, 2009.

CATHERINE CORTEZ MASTO
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*Attorneys for Defendants State Board of Equalization*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 13th day of November, 2009, I served a copy of the foregoing by causing to be delivered to the Nevada State Department of General Services for mailing at Carson City, Nevada, a true copy thereof, addressed to:

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

David Creekman, Esq.
Washoe County District Attorney's Office
Civil Division
Post Office Box 30083
Reno, Nevada 89520

/s/ Jean Kvam
An Employee of the Office of the Attorney General

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondents.

_____/

Case No. 56030

# JOINT APPENDIX

## VOLUME III


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Washoe County
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## APPENDIX INDEX

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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,

Plaintiffs,

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.
_____/

Case No. CV03-06922

Dept. No. 7

**STATEMENT OF NEW AUTHORITY**

Defendants Washoe County, along with the Washoe County Assessor and Treasurer, by and through their counsel of record, Richard A. Gammick, District Attorney of Washoe County, Nevada, and David Creekman, Chief Deputy District Attorney, herein provide this Court with new and recently-adopted authority, in support of positions previously taken by these Washoe County

Defendants in this case in the following two documents:

1. The June 1, 2009 "Statement of Issue Before this Court, and Position of Washoe County Defendants;" and
2. The October 15, 2009 "Motion to Dismiss (NRCP 12(b)(5) and NRCP 12(b)(6) and Motion to Strike Amended Complaint (NRCP 15).

I. Description of Positions Previously Taken by Washoe County and Which this Supplemental Authority Is Intended to Support

In its June 1, 2009 pleading, Washoe County contended that the Plaintiff in this case (which, at the time, involved a request for injunctive relief) had no likelihood of success on the merits of this case because the equalization processes set forth throughout NRS chapter 361 were being followed. In particular, Washoe County argued that NRS 361.333's ratio studies adequately protect against any inequities which might exist in Nevada's system of real property assessment, and that the statutory scheme found at NRS 361.333 adequately meets the Nevada Constitution's standard for a "uniform and equitable rate of assessment and taxation…." Pages 10 - 15 of that portion of Washoe County's argument, already on file with the court, is attached hereto as Exhibit 1.

In its October 15, 2009 pleading, this time responding to the Plaintiff's request for mandamus relief, Washoe County advised the court that "both Douglas and Washoe Counties have already participated in this process of equalization between counties, pursuant to NRS 361.333 (relating to the preparation and consideration of a ratio study to ascertain whether equalization has occurred between Nevada's counties)," see

October 15, 2009 Motion to Dismiss, page 23, lines 1 - 5, and that this, and other legal opportunities once available to the Plaintiffs to obtain the relief they seek in this case, should bar their effort in this case.

II. Description of Supplemental Authority in Support of Washoe County's Positions Previously Taken

On March 1, 2010, the State Board of Equalization, in a duly noticed meeting (see "State Board of Equalization Agenda," attached hereto as Exhibit 2), and after giving Notice of Public Hearing for the Adoption and Amendment of Permanent Regulations of the State Board of Equalization (see "Notice," attached hereto as Exhibit 3), adopted regulations (see Proposed Revisions to LCB File No. R153-09, attached hereto as Exhibit 4) which set forth the criteria to determine whether property has been assessed uniformly in Nevada, including through the Nevada Department of Taxation's review of relevant ratio studies prepared in accord with NRS 361.333. The regulations adopted by the State Board of Equalization are entirely consistent with Washoe County's previously-provided description of NRS 361.333's law of equalization, and with Washoe County's belief that the law of equalization establishes an adequate legal remedy, employed for many years within the State of Nevada, which should bar this Court from considering these Plaintiffs' request for equitable writ relief. Although the newly-adopted regulations of the State Board of Equalization do not take effect until October 1, 2010, it is further Washoe County's belief that these

regulations merely confirm the long existing status of the law of equalization in Nevada, in conformance with the rule announced by the Supreme Court in Welfare Division v. Maynard, 84 Nev. 525, 529, 445 P.2d 153 (1968) that "[a] statutory enactment can be simply a legislative pronouncement of existing law."

III. This Court's Authority to Take Judicial Notice of the State Board's Action

Judicial notice of the fact of the State Board of Equalization's March 1, 2010 meeting and action can be taken by this Court under NRS 47.130's provision that judicial notice may be taken of facts in issue or facts from which they may be inferred if those facts are "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." Judicial notice of the matter of law involved here is permitted under NRS 47.140's provision that judicial notice may be taken of "[t]he Nevada Administrative Code," NRS 47.140, or, in the event the court is concerned that the action of the State Board of Equalization is not yet effective, "[a] regulation not included in the Nevada Administrative Code if adopted in accordance with law and brought to the attention of the court." NRS 47.140(6).

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding

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

Dated this 31st day of March, 2010.

RICHARD A. GAMMICK
District Attorney

By David C. Creekman

DAVID C. CREEKMAN
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(775) 337-5700

ATTORNEYS FOR WASHOE COUNTY
WASHOE COUNTY ASSESSOR AND
WASHOE COUNTY TREASURER

**CERTIFICATE OF SERVICE**

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

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

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

Dated this 3 day of March, 2010.

MICHELLE FOSTER

LIST OF EXHIBITS

1. Pages 10 – 15 of Washoe County's Statement of Issues Before This Court, and Position of Washoe County Defendants

2. State Board of Equalization Agenda for March 1, 2010

3. Notice of Public Hearing for the Adoption and Amendment of Permanent Regulations of the State Board of Equalization

4. State Board of Equalization - Proposed Revisions to LCB File No. R153-09

# EXHIBIT "1"

# EXHIBIT "1"

enjoys a reasonable probability of success on the merits and that he or she will suffer irreparable harm for which compensation is an inadequate remedy. Number One Rent-A-Car v. Ramada Inns, Inc., 94 Nev. 779, 587 P.2d 1329 (1978), Christensen v. Chromalloy American Corp., 99 Nev. 34, 36, 656 P. 2d 844, 846 (1983); Sobol v. Capital Mgmt. Consultants, Inc., 102 Nev. 444, 446, 726 P.2d 335, 337 (1986); Dixon v. Thatcher, 103 Nev. 414, 415, 742 P.2d 1029 (1987); S.O.C., Inc. v. Mirage Casino-Hotel, 117 Nev. 403, 408, 23 P.3d 243, 246 (2001); Department of Conservation & Natural Resources v. Foley, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). An additional standard for injunctive relief also permits the Court to weigh the public interest and the relative hardships of the parties in deciding whether to grant such relief. Ellis v. McDaniel, 95 Nev. 455, 596 P.2d 222 (1979); University & Cmty. Coll. Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

IV. This plaintiff cannot meet the standards needing to be achieved for injunctive relief

**A. This Plaintiff Enjoys No Likelihood Of Success On The Merits Of This Case**

In State Board of Equalization v. Barta, 124 Nev. 58, ___, 188 P.3d 1092, 1102 (2008), the Nevada Supreme Court recognized that a property taxpayer suffers injury when properties are not valued in accordance with the constitutional right to a uniform and equal rate of assessment. Yet, in this case, the equalization processes set forth throughout NRS chapters 360 and

361[2] existed, and continue to exist, to ensure that this important constitutional right was protected here, not only for this Plaintiff, but for all Nevadans.

1. NRS 361.333

In performing its equalization function under NRS 361.395(1), the State Board of Equalization performs this significant function only after the Nevada Department of

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[2] In response to the Nevada Constitution's mandate that "[t]he Legislature shall provide by law for a uniform and equal rate of assessment and taxation...," Nevada's Legislature has, over the years, enacted an extremely complex statutory scheme, involving numerous players. Key among those players are the various County Assessors who undertake the actual on-the-ground assessment work with respect to property within their jurisdictions, the various County Boards of Equalization, the Nevada Tax Commission, the Nevada State Board of Equalization and the Nevada Department of Taxation which provides general supervision and control over the entire revenue system of the State of Nevada. Of course, the Nevada judiciary is also part of this system, as the final arbiter of disputes arising under this complicated structure. Each plays a significant role in the system of "checks and balances" designed by Nevada's Legislature to assure uniformity and equality with respect to assessment and taxation.

As stated, in the Legislature's system of "checks and balances" everyone has an important role to play. These Defendants contend that their construction of this complex statutory scheme, as set forth below, is not only plausible, it is the only workable construction in this important area of Nevada's revenue-generation system. Additionally, these Defendants' construction of the entire statutory scheme regulating the revenue system of the State is the one possible construction which is entirely consistent with the tenent of statutory construction requiring statutes to be "construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory," Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 502, 797 P.2d 946, 949 (1990), *overruled on other grounds by* Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000), and is based on the "presumption that every word, phrase and provision in the enactment has meaning." Id. at 502 - 503, 797 P.2d at 949.

Taxation assists the State Tax Commission and the State Board of Equalization by testing a variety of information using applied statistics to determine if inequity or assessment bias exists. The Department surveys and analyzes assessor work practices to ensure the uniform application of valuation and assessment methodology as provided by law and assessment standards. If inequity or bias is discovered, NRS 361.333 provides the Nevada Tax Commission with authority to correct inequitable conditions. If the Nevada Tax Commission fails to perform this function, the Nevada State Board of Equalization is free to step in and perform this function, pursuant to its authority to "equalize" under NRS 361.395(1).

Because Nevada law, at NRS 361.225, requires that "[a]ll property subject to taxation must be assessed at 35% of its taxable value," known as the assessment ratio, the Department of Taxation, acting under authority of NRS 361.333, conducts a ratio study each year designed to measure the level of appraisal accuracy of local county assessors. Generally speaking, a "ratio study" is designed to evaluate appraisal performance or determine taxable value through a comparison of appraised or assessed values estimated for tax purposes with independent estimates of value based on either sales prices or independent appraisals. The comparison of the estimate of assessed value produced by the assessor on each parcel in the sample to the estimate of taxable value produced by the Department of Taxation is called a "ratio." The ratio study involves the determination

of assessment levels by computing the central tendencies (mean, median and aggregate ratios) of assessment ratios. Nevada specifies the use of the median ratio, the aggregate ratio, and the coefficient of dispersion of the median to evaluate both the total property assessments and the assessments of each major property class.

In likely recognition of the administrative burden imposed on both the Department of Taxation and the Nevada Tax Commission of such an undertaking being performed on an annual basis, NRS 361.333(2) permits the Department of Taxation to conduct a ratio study on smaller groups of counties instead of the entire state in any one year. The 2005 - 2006 ratio study included three year statistics for all of Nevada's Counties and is attached hereto as Exhibit 1 and is incorporated herein by reference.[3] The Department of Taxation calculates the overall, or aggregate, ratio by dividing the total assessed value of all the parcels in the sample by the total taxable value of all the parcels in the sample. This produces a ratio weighted by dollar value. Because parcels with higher values exert more influence than parcels with lower values, all the ratios are arrayed in order

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[3] For the purposes of this action, the 2005 - 2006 Ratio Study is the most relevant to the 2003 - 2004 tax year at issue in this case as it included a review of Washoe County during the 2005 study year and as it summarized a review of Douglas County during the prior, or 2004, study year. Prior to the 2005 - 2006 Ratio Study, Washoe County was last reviewed in 2002 and Douglas County was last reviewed in 2001, both of which occurred before the 2003 - 2004 valuations at issue in this proceeding.

of magnitude and the median, a statistic describing the measure of central tendency of the sample, divides the sample into two equal parts. The median is the most widely used measure of central tendency by equalization agencies because it is less affected by extreme ratios and is therefore the preferred measure for monitoring appraisal performance or evaluating the need for a reappraisal.[4]

NRS 361.333(5)(c) states that under- or over-assessment may exist, under the ratio study, if the median of the ratios falls in a range of less than 32% or more than 36%. As Exhibit A indicates, the median of individual ratios for all property in Washoe County, in the 2005 - 2006 Ratio Study, fell at 34.40%. For the major classes of properties, as enumerated in NRS 361.333(5)(c)[5], Washoe County's ratios varied between 33.50% and 34.90%, all well within the permissible median ratio of assessed value to taxable value. As for Douglas County, Exhibit A establishes that the median of individual ratios for all property in Douglas County, in the 2004 - 2005 Ratio Study, fell at 34.60%, with the major classes of property falling between 33.20% and 35.00%. Once again, these ratios are well within the permissible statutory range of 32% to 36%, as established at NRS

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[4] International Association of Assessing Officers, Standard on Ratio Studies, (1999), p. 23.

[5] The statutorily-enumerated major classes of property include vacant land, single-family residential, multi-residential, commercial and industrial and rural.

361.333(5)(c).

Because the ratios fell within the permissible statutory range, it can reasonably be concluded that no over- or under-assessment existed in either Washoe or Douglas Counties, thus permitting the further conclusion that equalization occurred both within, and between, these counties. This conclusion, in turn, obviates the need for the State Board of Equalization to step in and equalize pursuant to its authority to do so under NRS 361.395(1). Had the Department of Taxation and the Tax Commission not so acted[6], however, or had the ratios fallen outside the permissible range, the State Board of Equalization could reasonably be expected to step in and correct this situation under its authority, as recognized in Barta, to equalize, pursuant to NRS 361.395(1)'s mandate.

2. NRS 361.355

Under this statute, the State Board of Equalization may become involved in equalization issues only if a taxpayer concerned with equalization issues between his property and similarly-situated property in another county, "... appear[s]

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[6] Although the Department of Taxation and the Nevada Tax Commission did act with respect to this ratio study to assure uniformity and equality, the possibility that they might not so act is entirely plausible, given the Nevada Supreme Court's recognition, in the Bakst case, of "...the Tax Commission's dereliction..." in the area of its failure to adopt administrative regulations for use by Nevada's county assessors. Such regulations would have set forth permissible assessment methodologies, to be consistently applied, not only in Washoe County, but also by assessors in other counties. See Bakst, 122 Nev. at 1416, 148 P.3d at 726.

# EXHIBIT "2"

# EXHIBIT "2"

POSTED: 2-23-2010

**STATE BOARD OF EQUALIZATION AGENDA**
LEGISLATIVE BUILDING
401 South Carson Street, Room 2135
Carson City, Nevada

**March 1, 2010**
**9:00 A.M.**

WITH VIDEO CONFERENCING TO:

GRANT SAWYER STATE OFFICE BUILDING
555 East Washington Ave., Room 4412
Las Vegas, Nevada

UNR SCHOOL OF MEDICINE – ELKO
701 Walnut Street, Griswold Hall Room 31
Elko, Nevada

**THIS MEETING WILL ALSO BE PART OF A TELECONFERENCE. Please call the Department at 775-684-2160 for the teleconference number.**

ACTION WILL BE TAKEN ON THE ITEMS INDICATED IN **BOLD:**

**Consideration of Adoption of Additions and Amendments to Permanent Regulations:**

A. **Adding to and amending NAC Chapter 361, LCB File No. R153-09, pertaining to implementation of NRS 361.395 with respect to the process of equalization of property values for property tax purposes by the State Board of Equalization**

B. ***Briefing to and from the Board and the Secretary and Staff***
- **Briefing Schedules**
- **Proposed Hearing Schedules and Docket Management**
- **Discussion by Board Regarding Matters Affecting the Board**

C. *State Board of Equalization Comments*

D. *Public Comment*: No action will be taken on any matters during public comment. Public comment will be limited to comments of three minutes or less; and relevant to and within the authority of the State Board. Public comment will be taken only under the last agenda item noted below unless otherwise noted on this agenda or granted by the Chairman.

***E. Adjournment***

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The Department is pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Department of Taxation in writing or call (775) 684-2160 prior to the meeting.

**Notice agendas were posted at the following locations:**
DEPARTMENT OF TAXATION LOCATIONS:
1550 E. College Parkway, Carson City; 4600 Kietzke Lane, Bldg L, Ste 235, Reno; 850 Elm Street, Elko;
555 E. Washington Ave, #1300, Las Vegas; 2550 Paseo Verde Parkway, Suite 180, Henderson
Also: CLARK COUNTY GOVERNMENT CENTER, 500 S. Grand Central Parkway, Las Vegas
CLARK COUNTY ASSESSOR'S OFFICE, 500 S. Grand Central Parkway, 2nd Floor, Las Vegas
LAS VEGAS LIBRARY, 833 Las Vegas Blvd, Las Vegas; STATE LIBRARY & ARCHIVES, 100 Stewart St, Carson City

# EXHIBIT "3"

# EXHIBIT "3"

STATE OF NEVADA
STATE BOARD OF EQUALIZATION

JIM GIBBONS
*Governor*

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7921
Telephone (775) 684-2160
Fax (775) 684-2020
In-State Toll Free: 800-992-0900

DINO DICIANNO
*Secretary*

**POSTED January 28, 2010**

# NOTICE OF PUBLIC HEARING FOR THE ADOPTION AND AMENDMENT OF PERMANENT REGULATIONS OF THE STATE BOARD OF EQUALIZATION

**The State Board of Equalization (State Board) will hold a public hearing on March 1, 2010 commencing at 9:00 a.m. via video-conference at the following locations:**

| | | |
|---|---|---|
| **Legislative Building** | **Grant Sawyer State Office Building** | **UNR School of Medicine - Elko** |
| **401 South Carson Street** | **555 East Washington Avenue** | **701 Walnut Street** |
| **Room 2135** | **Room 4412** | **Griswold Hall Room 31** |
| **Carson City, Nevada** | **Las Vegas, Nevada** | **Elko, NV 89801** |

The State Board will receive testimony from all interested persons and consider and take action on the following proposed adoption of amendments, additions and deletions to the Nevada Administrative Code pertaining to the process of equalization of property values for property tax purposes. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the State Board may proceed immediately to act upon any written submissions:

1. **The Need for and Purpose of the Proposed Permanent Regulations.**
   The need and purpose of the proposed permanent regulations are to implement NRS 361.395 with respect to the equalization of property values for property tax purposes by the State Board, and to set forth and clarify various substantive and procedural matters in connection with the process of equalization.

2. **Terms or Substance of the Proposed Permanent Regulations or Description of the Subjects and Issues Involved.**

   First: Adding to and amending NAC Chapter 361, LCB File No. R153-09, providing for the review of the tax roll of each county; determine whether the property in Nevada has been assessed uniformly in accordance with the methods of appraisal and at the assessment level required by law; determine whether the taxable values specified in the tax roll of any county must be increased or decreased to equalize property valuations in this state; and take such additional actions as the State Board deems necessary to carry out the provisions of NRS 361.395

   Second: The regulation provides the criteria to determine whether property has been assessed uniformly, including *review of relevant ratio studies, performance audits, and other relevant evidence; provides for requests for* information from county assessors and the Department and provides for ratio study analysis in accordance with the provisions of the Standard on Ratio Studies, July 2007 edition, published by the International Association of Assessing Officers. The regulation also provides that the State Board may order a systematic investigation and evaluation of the procedures and operations of the county assessor.

Third: The regulation provides for a hearing process to vet the preliminary findings of the State Board and allows the State Board to equalize by requiring reappraisal, or in the alternative, increase or decrease the taxable value of properties, and the procedures necessary to fulfill the equalization hearing process.

3. **Estimated Economic Effect of the Proposed Permanent Regulations on the Business, which it is to Regulate and the Public.**

   **A. Adverse and Beneficial Effects.**

   The proposed permanent regulation could present an adverse economic effect to businesses or to the general public if the State Board makes findings in the future that property has been undervalued and must be equalized. However, the permanent regulation could have a beneficial economic effect on businesses and the general public by providing transparent criteria for determining when property would be subject to equalization; and to appropriately correct the burden of property taxation on taxpayers through the equalization process. Those impacts cannot be quantified at this time.

   **B. Immediate and Long-Term Effects.**

   Same as above.

4. **Estimated Cost to Agency for Enforcement of Proposed Permanent Regulations.**

   The proposed permanent regulation will present some foreseeable or anticipated cost for enforcement by local governments because assessors will be required to provide more information about property on tax rolls and to effectuate equalization orders; and additional cost to the Department of Taxation to provide ratio studies and performance auditing services for the State Board. However, the amount of the cost is unknown at this time.

5. **Regulations of Other State or Local Governmental Agencies which the Proposed Permanent Regulations Overlap or Duplicate and the Necessity Therefore.**

   The proposed permanent regulations do not appear to overlap or duplicate regulations of other state or local governmental agencies.

6. **Establishment of New Fee or Existing Fee Increase.**

   None.

Persons wishing to comment on the proposed action of the State Board of Equalization may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the State Board of Equalization in care of the Department of Taxation, 1550 College Parkway, Suite 115, Carson City, Nevada 89706. **Written submissions must be received at least two weeks prior to the above scheduled public hearing.**

A copy of this notice and the proposed permanent regulations to be adopted and amended will be on file at the Nevada State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours and at other locations listed below, as well as the Department's internet website at http://tax.state.nv.us/. The text of the proposed permanent regulations will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.

Dino DiCianno, Secretary to the State Board
January 28, 2010

**Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the Department of Taxation in writing or by calling 775-684-2160 no later than five working days prior to the meeting. Notice has been posted at the following locations:** The Department of Taxation - 1550 College Parkway, Carson City, Nevada. Notice was mailed to each County Public Library for posting. **Notice has been FAXED for posting at the following locations:** Department of Taxation - 4600 Kietzke Lane, Building L, Suite 235, Reno, Nevada; Department of Taxation - 555 E. Washington Avenue, Grant Sawyer Office Building, Suite 1300, Las Vegas, Nevada; Department of Taxation – 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada; Department of Taxation – 850 Elm Street, No. 2, Elko, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; and the Nevada State Library, 100 Stewart Street, Carson City, Nevada.

# EXHIBIT "4"

# EXHIBIT "4"

STATE OF NEVADA
STATE BOARD OF EQUALIZATION

JIM GIBBONS
*Governor*

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7921
Telephone (775) 684-2160
Fax (775) 684-2020
In-State Toll Free: 800-992-0900

DINO DICIANNO
*Secretary*

February 12, 2010

## Proposed Revisions to LCB File No. R153-09

**Amendment to Section 10, add the following paragraph:**

*2. If the publication adopted by reference pursuant to subsection 1 is revised, the State Board will review the revision to determine its suitability for this State. If the State Board determines that the revision is not suitable for this State, the State Board will hold a public hearing to review its determination and give notice of that hearing within 30 days after the date of the publication of the revision. If, after the hearing, the State Board does not revise its determination, the State Board will give notice that the revision is not suitable for this State within 30 days after the hearing. If the State Board does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.*

Purpose of the Revision: To provide a process for reviewing amendments and updates to the referenced document, Standard on Ratio Studies. The revision was requested by the Department at the workshop on February 11, 2010.

**Amendment to Section 13:**

**Sec. 13.** *2. If the State Board desires a county assessor to provide any information pursuant to this section, the State Board will require the Department to send to the county assessor by regular mail a notice of the request which describes the information requested and the format and type of media in which the information is requested. The county assessor shall submit the information to the State Board in the format and type of media requested within 10 business days after the date of the postmark on the notice of the request. THE STATE BOARD MAY CONSIDER EXTENDING THE DUE DATE UPON REQUEST OF THE ASSESSOR.*

Purpose of the Revision: To allow an extension of time to the assessor to comply with requests for information from the State Board, if necessary. The revision was requested by county assessors at the workshop on February 11, 2010.

**Amendment to Section 14:**

**Sec. 14.** *1. Upon the request of the State Board, the Department or county assessor shall perform and submit to the State Board any ratio study or other statistical analysis that the State Board deems*

*appropriate to assist it in determining the quality and level of assessment of any class or group of properties in a county.*

*2. Each ratio study or other statistical analysis requested by the State Board pursuant to this section must:*

*(a) Be performed in accordance with the provisions of the Standard on Ratio Studies adopted by reference in section 10 of this regulation, except any specific provision of the Standard on Ratio Studies that conflicts or is inconsistent with the laws of this State or any regulations adopted by the State Board or the Commission.*

*(b) Identify the [~~class or group of properties~~] STATISTICAL POPULATION, that is the subject of the ratio study or statistical analysis, which may be divided into two or more [~~categories~~] STRATA according to neighborhood, age, type of construction or any other appropriate criterion or set of criteria.*

*(c) Include an adequate sampling of [~~each category of property~~] STRATA into which the [~~class or group of properties~~] STATISTICAL POPULATION that is the subject of the ratio study or statistical analysis is divided, and such statistical criteria as may be required, to indicate an accurate ratio of assessed value to taxable value and an accurate measure of equality in assessment.*

Purpose of the revision: To properly refer to the terms "statistical population" and "strata" instead of "category" and "class." The term statistical population is broader than class or group of properties, and means all the items of interest, for example, all the observations in a data set from which a sample may be drawn. The revision was requested by the Department at the workshop held on February 11, 2010.

**Amendment to Section 16:**

**Sec. 16.** *1. If the State Board, after considering the information described in section 12 of this regulation, makes a preliminary finding that any class or group of properties in this State was not assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law, the State Board will:*

*(a) Schedule a hearing concerning that preliminary finding on a date which is not less than 10 business days after the notice of the hearing is mailed pursuant to paragraph (b).*

*(b) Require the Department to send by registered or certified mail a notice of the hearing to the county clerk, county assessor, district attorney and chair of the county board of each county in which any of the property is located. A legal representative of the county may waive the receipt of such notice.*

*(c) Require the Secretary to provide a copy of the notice of the hearing to the Commission AND TO THE COUNTY BOARD OF COMMISSIONERS.*

**Amendment to Section 17:**

**Sec. 17.** *2. If the State Board orders the reappraisal of a class or group of properties pursuant to this section, the State Board will:*

*(c) Require the Secretary to notify the Commission AND THE COUNTY BOARD OF COMMISSIONERS of the date, time and location of the hearing.*

**Amendment to Section 19:**

**Sec. 19.** *1. The following persons shall appear at each hearing scheduled pursuant to section 16 or 17 of this regulation:*

*(a) The county assessor of each county in which any of property that is the subject of the hearing is located or a representative of the county assessor.*

*(b) [~~A representative of the board of county commissioners of each county in which any of the property that is the subject of the hearing is located.~~*

*~~(c)~~ ] A representative of the county board of each county in which any of the property that is the subject of the hearing is located.*

The purpose of the changes in sections 16, 17, and 19 is to remove the requirement that the county commissioners attend the hearing, but to keep them informed of the equalization process. The request for the revision was made by county assessors at the workshop held on February 11, 2010.

**Additional Section:**

**Sec. 23.** *The effective date of these regulations shall be October 1, 2010.*

The purpose of the new Section 23 is to not impose a new equalization process during the current fiscal year. The request for the revision was made by the Nevada Taxpayers Association.

**PROPOSED REGULATION OF THE**

**STATE BOARD OF EQUALIZATION**

**LCB File No. R153-09**

January 14, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted

AUTHORITY: §§1-22, NRS 361.375 and 361.395.

A REGULATION relating to taxation; establishing procedures for the equalization of property valuations by the State Board of Equalization; and providing other matters properly relating thereto.

**Section 1.** Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this regulation.

**Sec. 2.** ***As used in sections 2 to 21, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.***

**Sec. 3.** ***"County board" means a county board of equalization.***

**Sec. 4.** ***"Equalize property valuations" means to ensure that the property in this State is assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law.***

**Sec. 5.** ***"Interested person" means an owner of any relevant property, as indicated in the records of the county assessor of the county in which the property is located or, if the Commission establishes the valuation of the property, as indicated in the records of the Department.***

**Sec. 6.** *"Ratio study" means an evaluation of the quality and level of assessment of a class or group of properties in a county which compares the assessed valuation established by the county assessor for a sampling of those properties to:*

*1. An estimate of the taxable value of the property by the Department or an independent appraiser; or*

*2. The sales price of the property,*

*as appropriate.*

**Sec. 7.** *"Secretary" means the Secretary of the State Board.*

**Sec. 8.** *"State Board" means the State Board of Equalization.*

**Sec. 9.** *The provisions of sections 2 to 21, inclusive, of this regulation govern the practice and procedure for proceedings before the State Board to carry out the provisions of NRS 361.395.*

**Sec. 10.** *The State Board hereby adopts by reference the Standard on Ratio Studies, July 2007 edition, published by the International Association of Assessing Officers. The Standard on Ratio Studies may be obtained from the International Association of Assessing Officers, 314 West 10th Street, Kansas City, MO 64105-1616, or on the Internet at http://www.iaao.org/store, for the price of $10. A free copy of the Standard on Ratio Studies, July 2007 edition, may be obtained on the Internet at http://www.iaao.org/uploads/RatioStd07.pdf.*

**Sec. 11.** *1. During each annual session of the State Board, the State Board will hold one or more hearings to:*

*(a) Review the tax roll of each county, as corrected by the county board;*

*(b) Determine whether the property in this State has been assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law;*

*(c) Determine whether the taxable values specified in the tax roll of any county must be increased or decreased to equalize property valuations in this State; and*

*(d) Take such additional actions as it deems necessary to carry out the provisions of NRS 361.395.*

*2. Subject to the time limitations specified in NRS 361.380, the State Board may adjourn its annual session from time to time until it has completed its duties pursuant to NRS 361.395 for the applicable fiscal year.*

**Sec. 12.** *In determining whether the property in this State has been assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law, the State Board will consider:*

*1. The tax roll of each county, as corrected by the county board and filed with the Secretary pursuant to NRS 361.390;*

*2. The central assessment roll prepared pursuant to NRS 361.3205;*

*3. The results of any relevant ratio study conducted by the Department pursuant to NRS 361.333;*

*4. The results of any relevant audit of the work practices of a county assessor performed by the Department pursuant to NRS 361.333 to determine whether a county has adequate procedures to ensure that all property subject to taxation is being assessed in a correct and timely manner;*

*5. Any relevant evidence submitted to a county board or the State Board pursuant to NRS 361.355;*

*6. Any information provided to the State Board pursuant to sections 13, 14 and 15 of this regulation; and*

*7. Any other information the State Board deems relevant.*

**Sec. 13.** *1. In addition to the information contained in the tax roll filed with the Secretary pursuant to NRS 361.390, a county assessor shall, upon the request of the State Board, provide any information the State Board deems necessary to carry out the provisions of NRS 361.395, including, without limitation:*

*(a) The assessor's parcel number for any parcel of property.*

*(b) The taxable value and assessed value determined for any land, improvements or personal property before and after any adjustments to those values by the county board.*

*(c) The value per unit determined for any land or personal property before and after any adjustments to that value by the county board.*

*(d) Land use codes for the county.*

*(e) Market areas in the county.*

*(f) The year in which any improvements were built.*

*(g) The classification of quality for any improvements.*

*(h) The size of any improvements.*

*(i) The size of any lot.*

*(j) The zoning of any property.*

*(k) The date of the most recent sale of any property and the sales price of the property.*

*(l) Summary statistics concerning taxable values and assessed values for tax districts, market areas, neighborhoods and land use codes, including, without limitation, the applicable medians and modes.*

*2. If the State Board desires a county assessor to provide any information pursuant to this section, the State Board will require the Department to send to the county assessor by regular mail a notice of the request which describes the information requested and the format and type of media in which the information is requested. The county assessor shall submit the information to the State Board in the format and type of media requested within 10 business days after the date of the postmark on the notice of the request.*

**Sec. 14.** *1. Upon the request of the State Board, the Department or county assessor shall perform and submit to the State Board any ratio study or other statistical analysis that the State Board deems appropriate to assist it in determining the quality and level of assessment of any class or group of properties in a county.*

*2. Each ratio study or other statistical analysis requested by the State Board pursuant to this section must:*

*(a) Be performed in accordance with the provisions of the Standard on Ratio Studies adopted by reference in section 10 of this regulation, except any specific provision of the Standard on Ratio Studies that conflicts or is inconsistent with the laws of this State or any regulations adopted by the State Board or the Commission.*

*(b) Identify the class or group of properties that is the subject of the ratio study or statistical analysis, which may be divided into two or more categories according to neighborhood, age, type of construction or any other appropriate criterion or set of criteria.*

*(c) Include an adequate sampling of each category of property into which the class or group of properties that is the subject of the ratio study or statistical analysis is divided, and such statistical criteria as may be required, to indicate an accurate ratio of assessed value to taxable value and an accurate measure of equality in assessment.*

*3. The State Board will determine the appropriate time frame from which sales of property may be considered in any ratio study or statistical analysis requested pursuant to this section. If the State Board determines that the appropriate time frame is any period other than the 36 months immediately preceding July 1 of the year before the applicable lien date, the State Board will provide the reasons for that determination to the Department or county assessor.*

*4. The State Board will evaluate each ratio study and statistical analysis performed pursuant to this section to determine whether the ratio study or statistical analysis reliably indicates the quality and level of assessment for the applicable class or group of properties. In making that determination, the State Board will consider:*

*(a) Whether the Department or county assessor used a sufficient number of sales or appraisals in performing the ratio study or statistical analysis;*

*(b) Whether the samples of property selected by the Department or county assessor adequately represent the total makeup of the applicable class or group of properties;*

*(c) Whether the Department or county assessor correctly adjusted the samples of property for market conditions;*

*(d) Whether any variations among sales or appraisal ratios affect the reliability of the ratio study or statistical analysis; and*

*(e) Any other matters the State Board deems relevant.*

**Sec. 15.** *Before making any determination concerning whether the property in a county has been assessed uniformly in accordance with the methods of appraisal required by law, the State Board will require the Department to:*

*1. Conduct a systematic investigation and evaluation of the procedures and operations of the county assessor; and*

*2. Report to the State Board its findings concerning whether the county assessor has appraised the property in the county in accordance with the methods of valuation prescribed by statute and the regulations of the Commission.*

**Sec. 16.** *1. If the State Board, after considering the information described in section 12 of this regulation, makes a preliminary finding that any class or group of properties in this State was not assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law, the State Board will:*

*(a) Schedule a hearing concerning that preliminary finding on a date which is not less than 10 business days after the notice of the hearing is mailed pursuant to paragraph (b).*

*(b) Require the Department to send by registered or certified mail a notice of the hearing to the county clerk, county assessor, district attorney and chair of the county board of each county in which any of the property is located. A legal representative of the county may waive the receipt of such notice.*

*(c) Require the Secretary to provide a copy of the notice of the hearing to the Commission.*

*2. The notice of the hearing must state:*

*(a) The date, time and location of the hearing;*

*(b) The information on which the State Board relied to make its preliminary finding that the class or group of properties was not assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law; and*

*(c) The proposed order of the State Board.*

*3. The Department shall include with each notice provided pursuant to paragraph (b) of subsection 1, and upon the request of any interested person, provide to that person, a copy of any analysis or other information considered by the State Board in making its preliminary finding that the class or group of properties was not assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law.*

**Sec. 17.** *1. Upon the completion of a hearing scheduled pursuant to section 16 of this regulation, the State Board will issue:*

*(a) An order stating that the State Board will take no action on the matter and specifying the reasons that no action will be taken;*

*(b) An order referring the matter to the Commission for the Commission to take such action within its jurisdiction as the Commission deems to be appropriate;*

*(c) An order requiring the reappraisal by the county assessor of a class or group of properties in a county; or*

*(d) Except as otherwise provided in this paragraph, if a ratio study or other statistical analysis performed pursuant to NRS 361.333 or section 14 of this regulation indicates with a confidence level of at least 95 percent that the median assessment ratio for any class or group of properties is less than 32 percent or more than 36 percent, an order increasing or decreasing the assessed valuation of that class or group of properties by such a factor as the State Board deems to be appropriate to cause the median assessment ratio to be not less than 32 percent and not more than 36 percent. The State Board will not issue such an order if the application of the factor would cause the coefficient of dispersion calculated for the class or group of properties to fail to meet the recommendations set forth in the Standard on Ratio Studies adopted by reference in section 10 of this regulation.*

*2. If the State Board orders the reappraisal of a class or group of properties pursuant to this section, the State Board will:*

*(a) Schedule an additional hearing to determine whether to issue an order:*

*(1) Stating that the State Board will take no further action on the matter and specifying the reasons that no further action will be taken;*

*(2) Referring the matter to the Commission for the Commission to take such action within its jurisdiction as the Commission deems to be appropriate; or*

*(3) Increasing or decreasing the taxable valuation of the class or group of properties in accordance with the reappraisal or in such other manner as the State Board deems appropriate to equalize property valuations.*

*(b) Require the Department to send by registered or certified mail, not less than 10 business days before the date of the additional hearing, notice of the date, time and location of the hearing to the county clerk, county assessor, district attorney and chair of the county board of the county in which the property is located. A legal representative of the county may waive the receipt of such notice.*

*(c) Require the Secretary to notify the Commission of the date, time and location of the hearing.*

*3. Each order issued pursuant to this section must include a statement of any pertinent findings of fact made by the State Board. If the State Board issues an order pursuant to this section:*

*(a) Requiring the reappraisal of a class or group of properties, the order must specify:*

*(1) The class or group of properties affected;*

*(2) The purpose and objectives of the reappraisal; and*

*(3) The procedures required for the reappraisal, including the particular methods of appraisal prescribed by the regulations of the Commission.*

*(b) Increasing or decreasing the valuation of any class or group of properties, the order must specify:*

*(1) The class or group of properties affected; and*

*(2) The amount of or the formula to be used to calculate the amount of that increase or decrease.*

*4. Upon the issuance of any order pursuant to this section:*

*(a) The Department shall send a copy of the order:*

*(1) By certified mail to the county assessor of each affected county; and*

*(2) By regular mail to the county clerk and chair of the county board of each affected county; and*

*(b) The Secretary shall provide:*

*(1) A copy of the order to the Commission; and*

*(2) Any certification and notice required to carry out the provisions of NRS 361.405.*

*5. As used in this section, "assessment ratio" means the ratio of assessed value to taxable value.*

**Sec. 18.** *1. The State Board will require the Department to place on the Internet website maintained by the Department, not less than 10 business days before the date of each hearing scheduled pursuant to section 16 or 17 of this regulation, a copy of the notice of the hearing and of the agenda for the meeting at which the State Board will conduct the hearing.*

*2. If the State Board proposes to issue an order increasing the valuation of any class or group of properties at any hearing scheduled pursuant to section 16 or 17 of this regulation,*

*the State Board will require the Department to provide to each interested person the notice of the hearing required by subsection 2 of NRS 361.395. If the notice is not provided to an interested person by personal service and the mailing address of that person is not available, the Department must send the notice of the hearing by registered or certified mail to the address of the relevant property or, if the interested person has designated a resident agent pursuant to chapter 77 of NRS, the address of that resident agent as it appears in the records of the Secretary of State. For the purposes of subsection 2 of NRS 361.395, the State Board construes the term "interested person" to have the meaning ascribed to it in section 5 of this regulation.*

**Sec. 19.** *1. The following persons shall appear at each hearing scheduled pursuant to section 16 or 17 of this regulation:*

*(a) The county assessor of each county in which any of property that is the subject of the hearing is located or a representative of the county assessor.*

*(b) A representative of the board of county commissioners of each county in which any of the property that is the subject of the hearing is located.*

*(c) A representative of the county board of each county in which any of the property that is the subject of the hearing is located.*

*2. At each hearing scheduled pursuant to section 16 or 17 of this regulation:*

*(a) The State Board will receive testimony under oath from interested persons.*

*(b) The county assessor or his or her representative, the representative of the board of county commissioners and the representative of the county board may:*

*(1) Provide additional information and analysis in support of or in opposition to any proposed order of the State Board; and*

*(2) Show cause why the State Board should not increase or decrease the valuation, or require a reappraisal, of the pertinent class or group of properties in the county.*

*3. A hearing scheduled pursuant to section 16 or 17 of this regulation may be held by means of a video teleconference between two or more locations if the video technology used at the hearing provides the persons present at each location with the ability to hear and communicate with the persons present at each other location.*

*4. The presiding member of the State Board may exclude any disruptive person from the hearing room.*

**Sec. 20.** *If the State Board orders any increase or decrease in the valuation of any property in a county pursuant to section 17 of this regulation:*

*1. The county assessor of the county shall, on or before June 30 immediately following the issuance of the order or such a later date as the State Board may require, file with the Department the assessment roll for the county, as adjusted to carry out that order; and*

*2. The Department shall, on or before August 1 immediately following the issuance of the order or such a later date as the State Board may require:*

*(a) Audit the records of the county assessor of the county to the extent necessary to determine whether that order has been carried out; and*

*(b) Report to the State Board its findings concerning whether the county assessor has carried out that order.*

**Sec. 21.** *The State Board may reconsider any order issued pursuant to section 17 of this regulation in the manner provided in NAC 361.7475, except that:*

*1. A petition for reconsideration must be filed with the Secretary within 5 business days after the date on which the order was mailed to the petitioner; and*

*2. If the State Board takes no action on the petition within 10 business days after the date the petition was filed with the Secretary, the petition shall be deemed to be denied.*

**Sec. 22.** NAC 361.682 is hereby amended to read as follows:

361.682 1. The provisions of NAC 361.682 to 361.753, inclusive:

(a) Govern the practice and procedure in contested cases before the State Board.

(b) *Except where inconsistent with the provisions of sections 2 to 21, inclusive, of this regulation, apply to proceedings before the State Board to carry out the provisions of NRS 361.395.*

*(c)* Will be liberally construed to secure the just, speedy and economical determination of all issues presented to the State Board.

2. In special cases, where good cause appears, not contrary to statute, deviation from these rules, if stipulated to by all parties of record, will be permitted.

# Standard on Ratio Studies

Approved July 2007

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS

The assessment standards set forth herein represent a consensus in the assessing profession and have been adopted by the Executive Board of the International Association of Assessing Officers. The objective of these standards is to provide a systematic means by which concerned assessing officers can improve and standardize the operation of their offices. The standards presented here are advisory in nature and the use of or compliance with such standards is purely voluntary. If any portion of these standards is found to be in conflict with the Uniform Standards of Professional Appraisal Practice (USPAP) or state laws, USPAP and state laws shall govern.

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Contents

# Standard on Ratio Studies

# *Standard on Ratio Studies*

# Part 1. Guidance for Local Jurisdictions

This standard comprises two major parts. Part 1 focuses on the needs of local assessors. Part 2 presents guidelines for oversight agencies that use ratio studies for equalization and appraisal performance monitoring. The Definitions section explains the terms used in this standard. The appendixes present many technical issues in greater detail. More information on many topics addressed in this standard can be found in Property Appraisal and Assessment Administration (IAAO 1990, chapter 20) and in Gloudemans (1999, chapter 5).

## 1. Scope

This part of the standard provides recommendations on the design, preparation, interpretation, and use of ratio studies for the real property quality assurance operations of an assessor's office. Quality assurance/control measures include data integrity review, assessment level and uniformity analysis, and computer-assisted mass appraisal (CAMA) system performance testing, among others.

Assessors may have the opportunity to utilize ratio study information at a greater depth than oversight agencies. These internal studies can help improve appraisal methods or identify areas within the jurisdiction that need attention. External ratio studies conducted by oversight agencies (Part 2) focus more upon testing the assessor's past performance in a few broad property categories.

## 2. Overview

For local jurisdictions, *ratio study* is used as a generic term for sales-based studies designed to evaluate appraisal performance. The term is used in preference to the term *assessment ratio study* because use of assessments can mask the true level of appraisal and confuse the measurement of appraisal uniformity when the legal assessment level is other than 100 percent of fair market value.

### 2.1 The Concepts of Market Value and Appraisal Accuracy

Market value is the major focus of most mass appraisal assignments. The major responsibility of assessing officers is estimating the market value of properties based on legal requirements or accepted appraisal definitions. The viability of the property tax depends largely on the accuracy of such value estimates. The accuracy of appraisals made for assessment purposes is therefore of concern, not only to assessors but also to taxing authorities, property taxpayers, and elected representatives. Appraisal accuracy refers to the degree to which properties are appraised at market value, as defined by professional standards (see *Glossary for Property Appraisal and Assessment* [IAAO 1997]) and legal requirements. While a single sale may provide an indication of the market value of the property in question, it cannot form the basis for a ratio study, which provides information about the market values of groups of properties. Dividing the appraised value by the sale price forms the ratios. The ratio can be multiplied by 100 and expressed as a percentage.

Market value is a concept in economic theory and cannot be observed directly. However, market values can be represented in ratio studies by sales prices (market prices) that have been confirmed, screened, and adjusted as necessary (see Appendix A, "Sales Validation Guidelines"). Sales prices provide the most objective estimates of market values and under normal circumstances should provide good indicators of market value.

### 2.2 Aspects of Appraisal Performance

There are two major aspects of appraisal accuracy: level and uniformity. Appraisal level refers to the overall ratio of appraised values to market values. Level measurements provide information about the degree to which goals or certain legal requirements are met. Uniformity refers to the degree to which properties are appraised at equal percentages of market value.

### 2.3 Uses of Ratio Studies

Key uses of ratio studies are as follows:

- measurement and evaluation of the level and uniformity of mass appraisal models
- internal quality assurance and identification of appraisal priorities
- determination of whether administrative or statutory standards have been met
- determination of time trends
- adjustment of appraised values between reappraisals

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination (see Appendix F). However, ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel. Such statistics can be used to adjust assessed values on appealed properties to the common level.

## 2.4 Applicability

Local jurisdictions should use ratio studies as a primary mass appraisal testing procedure and their most important performance analysis tool. The ratio study can assist such jurisdictions in providing fair and equitable assessment of all property. Ratio studies provide a means for testing and evaluating mass appraisal valuation models to ensure that value estimates meet attainable standards of accuracy; see *Uniform Standards of Professional Appraisal Practice* (USPAP) *Standard Rule 6-6* (Appraisal Foundation 2006). Ratio study reports are typically included as part of the written documentation used to communicate results of a mass appraisal and to comply with *Standard Rule 6-7(b)*. Ratio studies also play an important role in judging whether constitutional uniformity requirements are met. Compliance with state or provincial performance standards should be verified by the local jurisdiction before value notices are sent to property owners.

# 3. Steps in Ratio Studies

Ratio studies generally involve the seven basic steps listed below.

1. define the purpose, scope and objectives
2. design
3. stratification
4. collection and preparation of market data
5. matching of appraisal and market data
6. statistical analysis
7. evaluation and use of results

## 3.1 Definition of the Purpose, Scope, and Objectives

The first step in any ratio study is to determine and state clearly the reasons for the study. This crucial step of identifying the purpose of the study determines the specific goals, scope, content, depth, and required flexibility.

## 3.2 Design

In the design of the study the assessor must consider the quantity of sale data and the resources available for conducting the ratio study. Although absolute accuracy cannot be ensured, all reasonable, cost-effective steps should be taken to maximize reliability.

The assessor should identify the following factors:

- the groups or classes of properties to be included in the study
- important legal, physical, and economic characteristics of the properties selected for study
- the quantity and quality of data available
- the values being tested and sales period being used
- available resources, such as the number and expertise of staff, computer hardware and software applications, and additional limiting conditions

### *3.2.1 Level of Sophistication and Detail*

A basic design principle is to keep the study as simple as possible while consistent with its purpose. Ratio studies are not all alike and should be tailored to an intended use.

Data analysis has been made easier through computerization. Although every study does not require the same level of statistical detail, each ratio study should include measures of appraisal level, appraisal uniformity, and statistical reliability. Graphs, charts, or other pictorial representations can be useful tools for showing distributions and patterns in the data. There is no model ratio study design that can serve all jurisdictions or all situations equally well. Informed, reasoned judgment and common sense are required in the design of ratio studies.

### *3.2.2 Sampling*

A ratio study is a form of applied statistics, because the analyst draws conclusions about the appraisal of the population (the entire jurisdiction) of properties based only on those that have sold during a given time period. The sales ratios constitute the sample that will be used to draw conclusions or inferences about the population.

To determine the accuracy of appraisals with absolute certainty, it would be necessary for all properties in the population to have been sold in arm's-length, open-market transfers near the appraisal date. Since this is not possible, ratio studies must use samples and draw inferences or conclusions about the population from these samples.

The number of parcels in the population (the jurisdiction or stratum) is not an important determinant of a statistically valid and reliable sample.

#### *3.2.2.1 Limitations of Sale Samples*

Users of sales ratio studies should be aware of the following cautions associated with use of sale samples:

- Sales are not "randomly selected" from the population, in the strict technical sense (see section 4.5, Sample Representativeness).
- Value-related characteristics of a sale sample may not represent all the value-related characteristics of the population.
- Adjustments to sale prices may be difficult to support or may be subjective.

#### *3.2.2.2 Data Accuracy and Integrity*

The findings of a ratio study can only be as accurate as the

data used in the study. Personnel involved in collecting, screening, and adjusting sales data or making appraisals should be familiar with real estate conveyance practices in their region. They also should be proficient in the principles and practices of real estate appraisal and understand local market conditions.

Accuracy and integrity of data entered into or transferred through computer systems must be ensured. Design of computer programs should make it easy to verify data accuracy. Query tools should be accessible to users, so that data can be verified easily. Methods for checking the accuracy of assigned strata (such as school district, city, neighborhood, and category) as well as of assessed or appraised value, sale price, parcel identifier, and other fields must be established to reduce these and other nonsampling errors.

### 3.3 Stratification

Stratification divides all the properties within the scope of the study into two or more groups or strata. Stratification facilitates a more complete and detailed picture of appraisal performance and can enhance sample representativeness.

Each type of property subject to a distinct level of assessment could constitute a stratum. Other property groups, such as neighborhoods and age and size ranges, could constitute additional strata.

When the purpose of the study is to evaluate appraisal quality, flexibility in stratification is essential. The general goal is to identify areas in which the assessment levels are too low or lack uniformity and property groups for which additional reappraisal work may be required. In such cases, it also is highly desirable to stratify on the basis of more than one characteristic simultaneously.

Stratification can help identify differences in level of appraisal between property groups. In large jurisdictions, stratification by geographic areas is generally more appropriate for residential properties, while stratification of commercial properties by either geographic area or property subtypes (e.g., office, retail, and warehouse/industrial) can be more effective.

### 3.4 Collection and Preparation of Market Data

The reliability of a ratio study depends in part on how well the sales used in the study reflect market values. The underlying principle for review of sales data is to optimize the sample size, but at the same time to exclude sales that provide invalid indicators of market value. A ratio study sample with fewer than five sales tends to have exceptionally poor reliability and is not very useful.

### 3.5 Matching of Appraisal and Market Data

The physical and legal characteristics of each property used in the ratio study must be the same as when sold. This implies two essential steps. First, the appraiser must ascertain whether the property descriptions match. If a parcel is split between the appraisal date and the sale date, a sale of any of its parts should not be used in the ratio study.

Second, the appraiser must ascertain whether the property rights transferred, the permitted use, and the physical characteristics of the property on the date of assessment are the same as those on the date of sale. If the physical characteristics of the property have changed since the last appraisal, adjustments may be necessary before including the property in a ratio study. Properties with significant differences in these factors should be excluded from the ratio study.

When statutory constraints are imposed on appraisal methods, the resulting assessment may be less than market value. In such cases a sales ratio study may not provide useful performance information. Constraints typically apply to land that qualifies for agricultural use value, subsidized housing, mineral land, and timberland.

### 3.6 Statistical Analysis

After a ratio is computed for each parcel in the study, measures of appraisal level, uniformity, and reliability for the entire jurisdiction and each group or stratum should be computed. The sample also could undergo exploratory data analysis to reveal patterns or features of the data (Hoaglin, Mosteller, and Tukey 1983).

### 3.7 Evaluation and Use of Results

A properly designed ratio study is a powerful tool for analyzing appraisal performance, evaluating CAMA system models, and suggesting strategies for improvement. A ratio study also can identify weaknesses in appraisal system performance. Unexpected study results may indicate a need to respecify or recalibrate an appraisal model or to reevaluate the data elements used in the valuation process. However, users of ratio studies should recognize the inherent limitations of this tool, as follows:

1. A ratio study cannot provide perfect information about appraisal performance. Lack of sufficient sales or overrepresentation of one geographic area or type of property can distort results.
2. Ratio study validity requires that sold and unsold parcels be appraised at the same level and in the same manner. Violation of this condition seriously undermines the validity of the study.
3. Findings should be used only in ways that are consistent with the intended use(s) for which the study was designed.
4. Ratio study data are subject to statistical sampling errors and other processing (nonsampling) errors (see Lessler and Kalsbeek), but these limitations

do not invalidate their use for informed decision-making.

## 4. Timing and Sample Selection

### 4.1 Data Requirements and Availability

The availability of data influences the design of the study and can call for revisions in the objectives of the study, limit the usefulness of the calculated statistics, or both.

#### *4.1.1 Nature of the Population*

The type of properties, market conditions, and composition of the population in terms of age, size, and value range are essential to the proper design of the study and interpretation of the results. Very large properties that rarely sell (e.g., a large power plant) can be ignored in a ratio study designed to evaluate local appraisal performance.

#### *4.1.2 Assessment Information*

Appraised values are the numerators in the ratios used in a ratio study. Information about appraisal dates, legal requirements concerning reappraisals, the dates on which the appraisals were originally set, and the period they remained in effect is required for establishing the date of analysis.

#### *4.1.3 Indicators of Market Value*

Sale price, as an indicator of market value, is the denominator in the calculation of the ratio. Specific information about the date, amount, terms, and conditions of a sale is required for proper analysis.

#### *4.1.4 Property Characteristics*

Information on property characteristics is crucial for determining whether property that was assessed is essentially the same as what was sold. Data for both sold and unsold properties should be current, relevant, and collected in a consistent manner.

### 4.2 Frequency of Ratio Studies

The purpose of a ratio study dictates how often it should be conducted. Regardless of the reappraisal cycle, ratio studies made by assessors should be conducted at least annually. This frequency enables potential problems to be recognized and corrected before they become serious.

When there is a revaluation, assessors should conduct at least four ratio studies to establish the following:

1. a baseline of current appraisal performance
2. preliminary values so that any major deficiency can be corrected
3. values used in assessment notices sent to taxpayers
4. final values after completion of the first, informal phase of the appeals process

The final study can be used in planning for the following year. In addition, ratio studies can be conducted as needed to evaluate appraisal procedures, investigate a discrimination complaint, or answer a specific question.

### 4.3 Date of Analysis

The date of analysis depends on the purpose of the study, but generally is the assessment date of the tax year being studied, which can be the current, the next, or a past year. The assessment date of the next tax year should be used when the purpose of the study is to evaluate preliminary values in a reappraisal.

### 4.4 Period from Which Sales Are Drawn

This period depends on the purpose of the study and on sales activity. In general, the period should be as short as possible and, ideally, no more than one year. A longer period may be required to produce a representative sample for some strata within a jurisdiction.

To develop an adequate sample size, the sales used in ratio studies can span a period of as long as five years provided there have been no significant economic shifts or changes to property characteristics and sales prices have been adjusted for time as necessary.

### 4.5 Sample Representativeness

In general, a ratio study is valid to the extent that the sample is sufficiently *representative* of the population.

The distribution of ratios in the population cannot be ascertained directly and appraisal accuracy can vary from property to property. By definition, a ratio study sample would be representative when the distribution of ratios of properties in the sample reflects the distribution of ratios of properties in the population. Representativeness is improved when the sample proportionately reflects major property characteristics present in the population of sold and unsold properties. As long as sold and unsold parcels are appraised in the same manner and the sample is otherwise representative, statistics calculated in a sales ratio study can be used to infer appraisal performance for unsold parcels.

However, if parcels that sell are selectively reappraised based on their sale prices and if such parcels are in the ratio study, uniformity inferences will not be accurate (appraisals appear more uniform than they are). In this situation, measures of appraisal level also will not be supportable unless similar unsold parcels are appraised by a model that produces the same overall percentage of market value (appraisal level) as on the parcels that sold (see Appendix D, "Sales Chasing Detection Techniques"). Assessing officials must incorporate a quality control program; including checks and audits of the data, to ensure that sold and unsold parcels are appraised at the same level.

Operationally, representativeness is improved when the following occur:

1. Appraisal procedures used to value the sample parcels are similar to procedures used to value the corresponding population
2. Accuracy of recorded property characteristics data for sold property does not differ substantially from that of unsold property,
3. Sample properties are not unduly concentrated in certain areas or types of property whose appraisal levels differ from the general level of appraisal in the population
4. Sale prices provide valid indicators of market value.

The first requirement generally is met unless sampled parcels are valued or updated differently from nonsampled parcels, or unless appraisals of sample parcels were done at a different time than appraisals of nonsampled parcels. For example, it is unlikely that the sample is representative of unsold parcels when the sample consists mostly of new construction, first-time sales of improved properties, condominium conversions, or newly platted lots.

The second requirement is met only if value-related property characteristics are updated uniformly for all property in a class as opposed to being updated only upon sale.

The third requirement relates to the extent to which appraisal performance for the sample reflects appraisal performance for the population.

The fourth requirement generally is met when the sales to be used in the sample are properly screened, adjusted if necessary, and validated.

### 4.6 Acquisition and Validation of Sales Data

Sales data are important in ratio studies and play a crucial role in any credible and efficient mass appraisal system. In some instances, it may be necessary to make adjustments to sales prices so they are more representative of the market. When there is more than one sale of the same property during a study period, only one of the transactions should be used in the ratio study. For guidelines on sales validation see Appendix A.

## 5. Ratio Study Statistics and Analyses

Once data have been properly collected, reviewed, assembled, and adjusted, outlier handling and statistical analysis can begin. This process involves the following steps.

1. A ratio should be calculated for each observation in the sample by dividing the appraised (or assessed) value by the sale price.
2. Graphs and exhibits can be developed that show the distribution of the ratios.
3. Exploratory data analysis, including outlier labeling/identification, and tests of the hypotheses of normality may be conducted.
4. Ratio study statistics of both appraisal level and uniformity should be calculated.
5. Reliability measures should be calculated.

An example of a ratio study statistical analysis report is given in table 1-1.

### 5.1 Data Displays

Displays or exhibits that provide a profile or picture of ratio study data are useful for illustrating general patterns and trends, particularly to nonstatisticians. The particular form of the displays, as well as the data used (e.g., sales prices, sales ratios, and property characteristics) depends on the purposes of the particular display. Types of displays useful in ratio studies are arrays, frequency distributions, histograms, plots, and maps (Gloudemans 1999).

Graphic displays can be used to

- indicate whether a sample is sufficiently representative of the properties in a stratum
- indicate the degree of nonnormality in the distribution of ratios
- depict the overall level of appraisal
- depict the degree of uniformity
- depict the degree of value bias (regressivity or progressivity)
- compare the level of appraisal or degree of uniformity among strata
- detect outlier ratios
- identify specific opportunities to improve mass appraisal performance
- track performance measures over time

### 5.2 Outlier Ratios

Outlier ratios are very low or high ratios as compared with other ratios in the sample. The validity of ratio study statistics used to make inferences about population parameters could be compromised by the presence of outliers that distort the statistics computed from the sample. One extreme outlier can have a controlling influence over some statistical measures. However, some statistical measures, such as the median ratio, are resistant to the influence of outliers and trimming would not be required. Although the coefficient of dispersion (COD) is affected by extreme ratios, it is affected to a lesser extent than the coefficient of variation (COV) and the mean. The price-related differential (PRD) and weighted mean are sensitive to sales with high prices even if the ratios on higher priced sales do not appear unusual relative to other sales.

**Table 1-1.** Example of Ratio Study Statistical Analysis
Data Analyzed

| Rank of ratio of observation | Appraised value ($) | Sale Price ($) | Ratio (AV/SP) |
|---|---|---|---|
| 1 | 48,000 | 138,000 | 0.348 |
| 2 | 28,800 | 59,250 | 0.486 |
| 3 | 78,400 | 157,500 | 0.498 |
| 4 | 39,840 | 74,400 | 0.535 |
| 5 | 68,160 | 114,900 | 0.593 |
| 6 | 94,400 | 159,000 | 0.594 |
| 7 | 67,200 | 111,900 | 0.601 |
| 8 | 56,960 | 93,000 | 0.612 |
| 9 | 87,200 | 138,720 | 0.629 |
| 10 | 38,240 | 59,700 | 0.641 |
| 11 | 96,320 | 146,400 | 0.658 |
| 12 | 67,680 | 99,000 | 0.684 |
| 13 | 32,960 | 47,400 | 0.695 |
| 14 | 50,560 | 70,500 | 0.717 |
| 15 | 61,360 | 78,000 | 0.787 |
| 16 | 47,360 | 60,000 | 0.789 |
| 17 | 58,080 | 69,000 | 0.842 |
| 18 | 47,040 | 55,500 | 0.848 |
| 19 | 136,000 | 154,500 | 0.880 |
| 20 | 103,200 | 109,500 | 0.942 |
| 21 | 59,040 | 60,000 | 0.984 |
| 22 | 168,000 | 168,000 | 1.000 |
| 23 | 128,000 | 124,500 | 1.028 |
| 24 | 132,000 | 127,500 | 1.035 |
| 25 | 160,000 | 150,000 | 1.067 |
| 26 | 160,000 | 141,000 | 1.135 |
| 27 | 200,000 | 171,900 | 1.163 |
| 28 | 184,000 | 157,500 | 1.168 |
| 29 | 160,000 | 129,600 | 1.235 |
| 30 | 157,200 | 126,000 | 1.248 |
| 31 | 99,200 | 77,700 | 1.277 |
| 32 | 200,000 | 153,000 | 1.307 |
| 33 | 64,000 | 48,750 | 1.313 |
| 34 | 192,000 | 144,000 | 1.333 |
| 35 | 190,400 | 141,000 | 1.350 |
| 36 | 65,440 | 48,000 | 1.363 |

*Note: Due to rounding, totals may not add to match those on following table, which reports results of statistical analysis of above data.*

**Results of statistical analysis**

| Statistic | Result |
|---|---|
| Number of observations in sample | 36 |
| Total appraised value | $3,627,040 |
| Total sale price | $3,964,620 |
| Average appraised value | $100,751 |
| Average sale price | $110,128 |
| Mean ratio | 0.900 |
| Median ratio | 0.864 |
| Weighted mean ratio | 0 915 |
| Price-related differential (PRD) | 0.98 |
| Coefficient of dispersion (COD) | 29.8% |
| 95% median two-tailed confidence interval | (0.684, 1.067) |
| 95% weighted mean two-tailed confidence interval | (0.806, 1.024) |
| Normal distribution of ratios (0.05 level of significance) | Reject – D'Agostino Pearson $K^2$ & Shapiro-Wilk $W$ |
| Date of analysis | 9/99/9999 |
| Category or class being analyzed | Residential |

Outlier ratios can result from any of the following:

1. an erroneous sale price
2. a nonmarket sale
3. unusual market variability
4. a mismatch between the property sold and the property appraised
5. an error in the appraisal of an individual parcel
6. an error in the appraisal of a subgroup of parcels
7. any of a variety of transcription or data handling errors

In preparing any ratio study, outliers should be

1. identified
2. scrutinized to validate the information and correct errors
3. trimmed if necessary to improve sample representativeness

For guidelines on outlier identification and trimming, see Appendix B, "Outlier Trimming Guidelines."

## 5.3 Measures of Appraisal Level

Estimates of appraisal level are based on measures of central tendency. They should be calculated for each stratum and for such aggregations of strata as may be appropriate. Several common measures of appraisal level (central tendency) should be calculated in ratio studies, including the median ratio, mean ratio, and weighted mean ratio. When one of these measures is calculated on the data in a sample, the result is a point estimate, which is accurate for the sample but is only one indicator of the level of appraisal in the population. Confidence intervals around the measures of level provide indicators of the reliability of the sample statistics as predictors of the overall level of appraisal of the population. Note that noncompliance with appraisal level standards cannot be determined without the use of confidence intervals or hypothesis tests.

### *5.3.1 Median*

The median ratio is the middle ratio when the ratios are arrayed in order of magnitude. If there is an even number of ratios, the median is the average of the two middle ratios.

The median always divides the data into two equal parts and is less affected by extreme ratios than the other measures of central tendency. Because of these properties, the median is the generally preferred measure of central tendency for evaluating overall appraisal level, determining reappraisal priorities, or evaluating the need for a reappraisal.

### *5.3.2 Arithmetic Mean*

The arithmetic mean (aka mean or average) ratio is the average of the ratios. It is calculated by summing the

ratios and dividing by the number of ratios. In a normal distribution the mean equals the median. In a distribution skewed to the right (typical of ratio study data), the mean is greater than the median. The mean is affected more by extreme ratios than the median.

### *5.3.3 Weighted Mean*

The weighted mean ratio is the value-weighted average of the ratios in which the weights are proportional to the sales prices. The weighted mean also is the ratio of the average assessed value to the average sales price value. The weighted mean gives equal weight to each dollar of value in the sample, whereas the median and mean give equal weight to each parcel. The weighted mean is an important statistic in its own right and also is used in computing the PRD, a measure of uniformity between high- and low-value properties

The weighted mean also can be calculated by (1) summing the appraised values, (2) summing the sales prices, and (3) dividing the first result by the second. The weighted mean also is called the *aggregate ratio*.

### *5.3.4 Contrasting Measures of Appraisal Level*

Because it gives equal weight to each ratio and is unaffected by extreme ratios, the median is the preferred measure of central tendency for evaluating appraisal performance. Although the mean ratio is also a parcel-based measure, it can be affected appreciably by extreme ratios and can be relied upon only if the sample is of adequate size and contains few outliers.

## 5.4 Measures of Variability

Measures of dispersion or variability relate to the uniformity of the ratios and should be calculated for each stratum in the study. In general, the smaller the measure, the better the uniformity, but extremely low measures can signal one of the following:

acceptable causes

- extremely homogeneous properties
- very stable markets

unacceptable causes

- lack of quality control
- calculation errors
- poor sample representativeness
- sales chasing

Note that as market activity changes or as the complexity of properties increases, the measures of variability usually increase, even though appraisal procedures may be equally valid.

### *5.4.1 Coefficient of Dispersion*

The most generally useful measure of variability or uniformity is the COD. The COD measures the average percentage deviation of the ratios from the median ratio and is calculated by the following steps:

1. subtract the median from each ratio
2. take the absolute value of the calculated differences
3. sum the absolute differences
4. divide by the number of ratios to obtain *the average absolute deviation*
5. divide by the median
6. multiply by 100

The COD has the desirable feature that its interpretation does *not* depend on the assumption that the ratios are normally distributed. In general, more than half the ratios fall within one COD of the median. The COD should not be calculated about the mean ratio.

### *5.4.2 Other Measures of Variability*

Other useful measures of variability or the distribution of ratio study data are as follows:

- range
- percentiles
- quartiles
- interquartile range
- median absolute deviation (MAD)
- median percent deviation
- coefficient of concentration
- standard deviation
- coefficient of variation (COV)
- weighted coefficient of dispersion
- weighted coefficient of variation

See *Property Appraisal and Assessment Administration* (IAAO 1990, chapter 20) and Gloudemans (1999, chapter 5) for further discussion on these statistical measures.

Note that the typical percentage error is not the COD, but is expressed by the median percentage deviation statistic. Also, it is the interquartile range, not the COD, that brackets the middle 50 percent of the assessment ratios.

## 5.5 Measures of Reliability

Reliability, in a statistical sense, concerns the degree of confidence that can be placed in a calculated statistic for a sample. (For example, how precisely does the sample median ratio approximate the population median appraisal

ratio?) The primary measure of importance to the local assessor is the confidence interval. A confidence interval consists of two numbers (upper and lower limits) that bracket a calculated measure of central tendency for the sample; there is a specified degree of confidence that the calculated upper and lower limits bracket the true measure of central tendency for the population. See Appendix 20-4 in *Property Appraisal and Assessment Administration* (IAAO 1990) and Appendix C for guidelines on calculating small-sample confidence intervals.

New computer-intensive statistical methods, such as the "bootstrap" (Efron and Tibshirani 1993), now enable the development of confidence interval estimates for any statistic of interest, including measures of level and uniformity.

Measures of reliability explicitly take into account the errors inherent in a sampling process. In general, these measures are tighter (better) when samples are relatively large and the uniformity of ratios is relatively good.

Measures of reliability indicate whether there is a desired degree of confidence that a given level of appraisal has *not* been achieved. This does not mean that an appraiser should tolerate measures of central tendency that fail to meet goals whenever measures of reliability are wide due to small samples, poor uniformity, or both. Such cases require either additional data for proper analysis or alternative action, such as a reappraisal, if poor uniformity is the cause. Such correction might include reappraisal, trending of strata, and respecifying or recalibrating mass appraisal models (see section 9 in this part for a discussion of ratio study standards).

## 5.6 Vertical Inequities

The measures of variability discussed in section 5.4 relate to "horizontal," or random, dispersion among the ratios in a stratum, regardless of the value of individual parcels. Another form of inequity can be systematic differences in the appraisal of low- and high-value properties, termed "vertical" inequities. When low-value properties are appraised at greater percentages of market value than high-value properties, assessment *regressivity* is indicated. When low-value properties are appraised at smaller percentages of market value than high-value properties, assessment *progressivity* is the result. Appraisals made for tax purposes of course should be neither regressive nor progressive.

An index statistic for measuring vertical equity is the PRD, which is calculated by dividing the mean ratio by the weighted mean ratio. This statistic should be close to 1.00. Measures considerably above 1.00 tend to indicate assessment regressivity; measures below 1.00 suggest assessment progressivity. When samples are small or the weighted mean is heavily influenced by several extreme sales prices, the PRD may not be a sufficiently reliable measure of vertical inequities. A scatter plot of ratios versus appraised values or sale prices is a useful diagnostic tool. A downward (or upward) trend to the data indicates systematic regressivity (or progressivity). Assuming representativeness, high PRDs generally indicate low appraisals on high-priced properties. If not sufficiently representative, extreme sales prices can be excluded in calculation of the PRD. Similarly, when samples are very large, the PRD may be too insensitive to show small pockets in which there is significant vertical inequity. Standards for evaluating the PRD are given in section 9.2.7 in this part. In addition, more powerful statistical tests for vertical inequities are available and should be employed to determine the significance of the indication provided by the PRD (see section 5.7 in this part and Twark, Everly and Downing [1989]).

When these tests show vertical inequities, such inequities should be addressed through reappraisal or other corrective actions. In some cases, additional stratification can help isolate the problem. Measures of level computed for value strata should not be compared as a way of determining vertical inequity because of a boundary effect that is most pronounced in the highest and lowest strata (Schultz 1996).

## 5.7 Tests of Hypotheses

An appropriate test should be used whenever the purpose of a ratio study is implicitly or explicitly to test a hypothesis. A hypothesis is essentially a tentative answer to a question, such as, Are residential and commercial properties appraised at equal percentages of market value? A test is a statistical means of deciding whether the answer "yes" to such a question can be rejected at a given level of confidence. In this case, if the test leads to the conclusion that residential and commercial properties are not appraised at equal percentages of market value, some sort of corrective action on the part of assessing officials is clearly indicated.

Tests are available to determine whether the

- level of appraisal of a stratum fails to meet an established standard
- meaningful differences exist in the level of appraisal between two or more strata
- high-value properties are appraised at a different percentage of market value than low-value properties

Appropriate tests are listed in table 1-2 and discussed in Gloudemans (1999), *Property Appraisal and Assessment Administration* (IAAO 1990), and *Improving Real Property Assessment* (IAAO 1978, 137–54).

## 5.8 The Normal Distribution

Many conventional statistical methods assume the sample data conform to the shape of a bell curve, known as the

normal (or Gaussian) distribution. Performance measures based on the mean or standard deviation can be misleading if the study sample does not meet the assumption of normality. As a first step in the analysis, the distribution of sample ratios should be examined to reveal the shape of the data and uncover any unusual features. Although ratio study samples typically do not conform to the normal distribution, graphical techniques and numerical tests can be used to explore the data thoroughly. Traditional choices are the binomial, chi-square, and Lilliefors tests. Newer and more powerful procedures are the Shapiro-Wilk $W$, the D'Agostino-Pearson $K^2$, and the Anderson-Darling $A^2$ tests (D'Agostino and Stephens 1986).

### 5.9 Parametric and Distribution-Free (Nonparametric) Statistics

For every problem that might be solved by using statistics, there is usually more than one measure or test. These measures and tests can be divided into two broad categories: parametric and distribution-free (nonparametric). Parametric statistics assume the population data conform to a known family of probability distributions (such as the normal distribution). When the mean, weighted mean, and standard deviation are used in this context, they tend to be more meaningful. Distribution-free statistics make less restrictive assumptions and do not require knowledge about the shape of the underlying population distribution. Given similar distribution of ratios in the underlying populations, distribution free tests, such as the Mann-Whitney test, can determine the likelihood that the level of assessment of property groups differ (Hart 2001). Distribution-free statistics are the median and the COD.

## 6. Sample Size

### 6.1 Importance of Sample Size

There is a general relationship between statistical reliability and the number of observations in a sample. The larger the sample size, the greater the reliability.

### 6.2 Evaluating the Adequacy of a Given Sample Size

The adequacy of a given sample size can be evaluated by computing measures of reliability. If the confidence interval is sufficiently narrow, the sample is large enough. If the confidence interval is too wide, the assessor must either accept less precision or enlarge the sample, if possible.

### 6.3 Required Sample Size

Formulas are available to compute the minimum sample size necessary to produce selected margins of error at a specified level of confidence. Such formulas depend crucially on the estimated variability of the ratios (Cochran 1977).

### 6.4 Remedies for Inadequate Samples

Small samples should be enlarged if the assessor desires to increase the reliability of statistical measures. Inadequate sample sizes are typically indicated by unacceptably wide confidence intervals. The following alternatives should be considered:

1. ***Restratification.*** If levels of appraisal are similar or properties are homogenous, broader strata containing larger samples can be created by combining existing strata or by stratifying on a different basis.
2. ***Extending the period from which sales are drawn.*** This is often the most practical and effective approach. Sales from prior years can be used; however, adjusting the sale price for time may be necessary and significant property characteristics must not change.
3. ***Enlarging the sample by validating previously rejected sales.*** Sales previously excluded from the analysis, because it was not administratively expedient to confirm them or to make adjustments, can be reevaluated.

**Table 1-2.** Tests of Hypotheses

| Null Hypothesis | Nonparametric Test | Parametric Test |
|---|---|---|
| 1. Ratios are normally distributed. | Shapiro-Wilk $W$ test<br>D'Agostino-Pearson $K^2$ test<br>Anderson-Darling $A^2$ test<br>Lillifores Test | N/A |
| 2. The level of appraisal meets legal requirements. | Binomial test | t-test |
| 3. Two property groups are appraised at equal percentages of market value. | Mann-Whitney test | t-test |
| 4. Three or more property groups are appraised at equal percentages of market value. | Kruskal-Wallis test | Analysis of Variance |
| 5. Low- or high-value properties are appraised at equal percentages of market value. | Spearman Rank test | Correlation or regression analysis |
| 6. Sold and unsold parcels are treated equally. | Mann-Whitney test | t-test |

4. ***Imputing appraisal performance.*** Ratio study statistics for strata with no or few sales can sometimes be imputed from the results obtained for other strata. These strata should be as similar as possible. Procedures and techniques used to appraise properties in the strata also should be similar.

### 6.5 Other Sample Size-Related Representativeness Problems

Sales from areas or substrata in which the number of sales is disproportionately large can distort ratio study results by weighting level and uniformity indicators toward whatever conditions exist in the overrepresented area. To alleviate this problem and create better representativeness, large samples can be further stratified by

- randomly selecting sales to be removed
- isolating the overrepresented groups into substrata
- redefining the time period for the overrepresented groups
- weighting the data

## 7. Reconciliation of Ratio Study Performance Measures

An important objective of a ratio study conducted by a local jurisdiction is the evaluation of model performance. This is a USPAP requirement in the reconciliation of a mass appraisal. Assessing officials must incorporate a quality control program, including checks and audits of the data, to ensure that sold and unsold parcels are appraised at the same level. This also requires characteristic data for both sold and unsold properties to be current, appropriate, relevant, and collected in a consistent manner.

## 8. Presentation of Findings, Documentation, and Training

The findings of a ratio study should be sufficiently detailed and documented to meet the needs of the users of the study. Documentation for internal ratio studies can be less detailed than for reports prepared for external uses. The following documentation should be provided in conjunction with any published ratio study.

### 8.1 Text

A brief text describing the purpose and the methods used should accompany a ratio study. This information can be incorporated in the report of the findings or be contained in a separate memorandum. The text should contain the statistics presented and outline the major procedural steps in completing the study. The text also should describe any rules for eliminating sales or extreme ratios and acknowledge any significant limitations in the data.

### 8.2 Exhibits

The body of the ratio study report should include for each stratum the statistical results intended to be used for decision-making purposes. All reports should contain the following information:

- date and tax year of the appraisals being evaluated
- number of parcels in each stratum
- number of sales
- number of sales trimmed from the study
- measures of central tendency (appraisal level)
- measures of uniformity (variability) and price-related biases
- confidence interval (measures of reliability) about the measures of central tendency
- summary of adjustments made to sales prices

In addition, there should be a description of the steps taken to ensure that sold and unsold properties were valued and described consistently. If the sold and unsold properties were not treated identically, the documentation should characterize the differences discovered between them.

### 8.3 *Analyses and Conclusions*

An objective statement of the results of the ratio study should be prepared. If the study is one in a series, a comparison of the results with those of previous studies can be helpful.

### 8.4 *Documentation*

Ratio study procedures should be documented thoroughly. This documentation should take three forms. First, a general guideline should explain the design of the study. This guideline should be updated whenever procedures are changed. Second, all software applications should be documented so that the program logic can be reviewed and modified as needed. Third, a user's manual should explain how to execute the study or run the software.

### 8.5 Training and Education

The effectiveness of ratio studies can be improved through education and training. Assessment supervisors should conduct seminars or workshops for the appraisal staff to explain how to interpret reports, how ratio studies can be used to improve appraisal performance, and how the results will be used in-house.

## 9. Ratio Study Standards

Each local jurisdiction should have ratio study performance standards. Local standards should be consistent with state or provincial standards. The standards summarized in table 1-3 are suggested for jurisdictions in which

current market value is the legal basis for assessment. In general, when these standards or other local standards are not met, reappraisal or other corrective measures should be taken.

All standards recommended in this section are predicated on the assumption that steps have been taken to maximize representativeness and validity in the underlying ratio study.

## 9.1 Level of Appraisal

In analyzing appraisal level, ratio studies attempt to measure statistically how close appraisals are to market value (or to a required statutory constraint that can be expressed as a percentage of market value) on an overall basis. While the theoretically desired level of appraisal is 1.00, an appraisal level between 0.90 and 1.10 is considered acceptable for any class of property. However, each class of property must be within 5 percent of the overall level of appraisal of the jurisdiction (see Section 9.2.1 in this part). Both criteria must be met. By themselves, the calculated measures of central tendency provide only an indication, not proof, of whether the level meets the appropriate goal. Confidence intervals and statistical tests should be used to determine whether it can be reasonably concluded that appraisal level differs from the established goal in a particular instance. Additionally, when uniformity measures show considerable variation between ratios, level measurements may be less meaningful.

### *9.1.1 Purpose of Level-of-Appraisal Standard*

Jurisdictions that follow the IAAO recommendation of annual revaluations *(Standard on Property Tax Policy* [IAAO 2004] and *Standard on Mass Appraisal of Real Property* [IAAO 2002]) and comply with USPAP standard rules should be able to develop mass appraisal models that maintain an overall ratio level of 100 percent (or very near thereto). However, the local assessor may be compelled to follow reappraisal cycles defined by a legal authority or public policy that can extend beyond one year. During extended cycles the influence of inflation or deflation can shift the overall ratio.

The purpose of a performance standard that allows reasonable variation from 100 percent of market value is to recognize uncontrollable sampling error and the limiting conditions that may constrain the degree of accuracy that is possible and cost-effective within an assessment jurisdiction. Further, the effect of performance standards on local assessors must be considered in light of public policy and resources available.

### *9.1.2 Confidence Intervals in Conjunction with Performance Standards*

The purpose of confidence intervals and similar statistical tests is to determine whether it can be reasonably concluded that the appraisal level differs from the established performance standard in a particular instance. A conclusion of noncompliance requires a high degree of confidence; thus, a 90 percent (two-tailed) or 95 percent (one-tailed) confidence level should be used, except for small or highly variable samples. The demonstration ratio study report in table 1-4 presents 95% two-tailed confidence interval estimates for the mean, median, and weighted mean ratio.

## 9.2 Appraisal Uniformity

Assuming the existence of an adequate and sufficiently representative sample, if the uniformity of appraisal is unacceptable, model recalibration and/or reappraisal should

**Table 1-3.** Ratio Study Performance Standards indicating inadequate general quality*

| Type of property—General | Type of property—Specific | COD Range** |
|---|---|---|
| Single-family residential (including residential condominiums) | Newer or more homogeneous areas | 5.0 to 10.0 |
| Single-family residential | Older or more heterogeneous areas | 5.0 to 15.0 |
| Other residential | Rural, seasonal, recreational, manufactured housing, 2–4 unit family housing | 5.0 to 20.0 |
| Income-producing properties | Larger areas represented by large samples | 5.0 to 15.0 |
| Income-producing properties | Smaller areas represented by smaller samples | 5.0 to 20.0 |
| Vacant land | | 5.0 to 25.0 |
| Other real and personal property | | Varies with local conditions |

*These types of property are provided for guidance only and may not represent jurisdictional requirements.*

** Appraisal level for each type of property shown should be between 0.90 and 1.10, unless stricter local standards are required.*

*PRD's for each type of property should be between 0.98 and 1.03 to demonstrate vertical equity.*

*PRD standards are not absolute and may be less meaningful when samples are small or when wide variation in prices exist. In such cases, statistical tests of vertical equity hypotheses should be substituted (see table 1-2).*

*** CODs lower than 5.0 could indicate selective reappraisal of sold parcels or non-representative samples.*

be undertaken. It is important to recognize that the COD is a point estimate and, especially for small samples, should not be accepted as proof of assessment uniformity problems. Proof can be provided by recognized statistical tests, including bootstrap confidence intervals.

In unusually homogeneous strata, low CODs can be anticipated. In all other cases, CODs less than 5 percent should be considered suspect and possibly indicative of nonrepresentative samples or selective reappraisal of selling parcels.

### *9.2.1 Uniformity among Strata*

Although the goal is to achieve an overall level of appraisal equal to 100 percent of the legal requirement, ensuring uniformity in appraisal levels among strata also is important. The level of appraisal of each stratum (class, neighborhood, age group, market areas, and the like) should be within 5 percent of the overall level of appraisal of the jurisdiction. For example, if the overall level of appraisal of the jurisdiction is 1.00, but the appraisal level for residential property is 0.93 and the appraisal level for commercial property is 1.06, the jurisdiction is not in compliance with this requirement. This test should be applied only to strata subject to compliance testing. It can be concluded that this standard has been met if 95 percent (two-tailed) confidence intervals about the chosen measures of central tendency for each of the strata fall within 5 percent of the overall level of appraisal calculated for the jurisdiction. Using the above example, if the upper confidence limit for the level of residential property is 0.97 and the lower confidence limit for commercial property is 1.01, the two strata are within the acceptable range.

### *9.2.2 Uniformity among Single-Family Residential Properties*

The COD for single-family homes and condominiums in older or more heterogeneous areas should be between 5.0 and 15.0. In areas of newer or fairly similar residences, it should be between 5.0 and 10.0.

### *9.2.3 Uniformity among Income-Producing Properties*

The COD should be between 5.0 and 20.0. In larger, urban market areas, it should be between 5.0 and 15.0.

### *9.2.4 Uniformity among Unimproved Properties*

The COD for vacant land should be between 5.0 and 20.0. The upper limit for an acceptable COD for vacant rural residential or seasonal land may be 25.0.

### *9.2.5 Uniformity among Rural Residential and Seasonal Properties, Manufactured Housing, and Multifamily Dwellings*

The COD for heterogeneous rural residential property, recreational or seasonal homes, manufactured housing, and multifamily dwellings (2-4 units) should be between 5.0 and 20.0.

### *9.2.6 Uniformity among Other Properties*

Target CODs for special-purpose real property and personal property should reflect the nature of the properties involved, market conditions, and the availability of reliable market indicators.

**Table 1-4.** Demonstration Ratio Study Report

| Rank | Parcel # | Appraised value | Sale price* | Ratio | Statistic | Result |
|---|---|---|---|---|---|---|
| 1 | 9 | $87,200 | 138,720 | 0.629 | Number (n) | 17 |
| 2 | 10 | 38,240 | 59,700 | 0.641 | Total appraised value | $1,455,330 |
| 3 | 11 | 96,320 | 146,400 | 0.658 | Total sale price | $1,718,220 |
| 4 | 12 | 68,610 | 99,000 | 0.693 | Avg appraised value | $85,608 |
| 5 | 13 | 32,960 | 47,400 | 0.695 | Avg sale price | $101,072 |
| 6 | 14 | 50,560 | 70,500 | 0.717 | | |
| 7 | 15 | 61,360 | 78,000 | 0.787 | Mean ratio | 0.827 |
| 8 | 16 | 47,360 | 60,000 | 0.789 | Median ratio | 0.820 |
| 9 | 17 | 56,580 | 69,000 | 0.820 | Weighted mean ratio | 0.847 |
| 10 | 18 | 47,040 | 55,500 | 0.848 | | |
| 11 | 19 | 136,000 | 154,500 | 0.880 | | |
| 12 | 20 | 98,000 | 109,500 | 0.895 | Price-related differential | 0.98 |
| 13 | 21 | 56,000 | 60,000 | 0.933 | Coefficient of dispersion | 14.5 |
| 14 | 22 | 159,100 | 168,000 | 0.947 | | |
| 15 | 23 | 128,000 | 124,500 | 1.028 | 95% conf. int. mean (two-tailed) | 0.754 to 0.901 |
| 16 | 24 | 132,000 | 127,500 | 1.035 | 95% conf. int. median (two-tailed) | 0.695 to 0.933 |
| 17 | 25 | 160,000 | 150,000 | 1.067 | 95% conf. int. wtd. mean (two-tailed) | 0.759 to 0.935 |

*Date: 0/0/00. No outlier trimming*

** or adjusted sale price*

### *9.2.7 Vertical Equity*

PRDs should be between 0.98 and 1.03. The reason this range is not centered on 1.00 relates to an inherent upward bias in the arithmetic mean (numerator in the PRD) that does not equally affect the weighted mean (denominator in the PRD). When samples are small, have high dispersion, or include properties with extreme values, the PRD may not provide an accurate indication of assessment regressivity or progressivity. Similar considerations apply to special-purpose real property and to personal property. It is good practice to perform an appropriate statistical test for price-related biases before concluding that they exist (see table 1-2).

### *9.2.8 Alternative Uniformity Standards*

The above standards may not be applicable to properties in unique, depressed, or rapidly changing markets. In such cases, assessment administrators may be able to develop target standards based on an analysis of past performance or results in similar markets elsewhere. Such an analysis can be based on ratio study results for the past five years or more.

## 9.3 Natural Disasters and Ratio Study Standards

Natural disasters such as earthquakes, floods, and hurricanes can have a substantial impact on the interpretation and use of ratio studies. In particular, they

- increase the difficulty of accurately identifying the physical and economic characteristics of property on the dates of sale and appraisal
- increase the difficulty of producing sufficiently reliable appraised values
- decrease the availability of usable sales and other market data
- disrupt the supply and demand equilibrium in the neighborhood community or region

As a result of these potential problems, a number of unreliable sample properties may need to be excluded and sample sizes may be unavoidably reduced. All these factors should be considered when ratio study standards are being applied to study results from areas substantially affected by disasters. Such consideration must not result in unwarranted relaxation of applicable standards. When faced with such situations, assessors must use informed, reasoned judgment and common sense to produce a sufficiently reliable ratio study, based upon the best information available.

## 10. Personal Property Ratio Studies

Studies can be done by local assessors to determine the quality of assessments of personal property in their jurisdictions. For guidelines on conducting personal property ratio studies, see section 12 in Part 2.

# *Standard on Ratio Studies*

# Part 2. Equalization and Performance Monitoring

## 1. Scope

This part of the standard provides guidance and supplementary information to oversight agencies that perform ratio studies. Oversight or equalization ratio studies are designed to examine the overall degree of accuracy of assessments within or among categories of property, market areas, assessment jurisdictions or political subdivisions, such as school districts, municipalities, counties, states or provinces.

## 2. Oversight Ratio Studies

Oversight agencies are often required to monitor appraisal performance and take corrective actions when necessary. Equalization is a common tool used by oversight agencies to address problems associated with appraisal level. Reappraisal orders can be used to correct uniformity problems.

### 2.1 Monitoring of Appraisal Performance

Oversight agencies usually perform sales ratio studies, which can include independent appraisals, to monitor local assessment performance. The findings can serve as the basis for enforcement actions, such as reappraisal or equalization orders. State/provincial agencies also often perform ratio studies to advise assessors and the public about local appraisal conditions. Many state or provincial oversight agencies have a dual role. One role is to advise and assist local appraisal offices, and the other role is to measure local appraisal performance. These two roles can create a conflict of interest, which should be minimized.

### 2.2 Equalization

Oversight agencies can use the results of ratio studies to equalize, directly or indirectly, appraisals or assessments in taxing jurisdictions. Direct equalization is accomplished by an oversight agency which alters locally determined assessments by ordering appraisals within jurisdictions or property classes to be adjusted to market value or to the legally required level of assessment. Direct equalization can also involve adjusting appraisals of centrally assessed properties. When indirect equalization is used, appraisals are not adjusted. Instead, indirect equalization involves an oversight agency estimating total taxable value, given the legally required level of assessment or market value. Indirect equalization allows proper distribution of intergovernmental transfer payments between state or provincial and local governments despite different levels of appraisal among jurisdictions or property classes. Equalization is not an appraisal or a substitute for reappraisal.

When equalization is based on ratio study samples, sampling error must be taken into account. When confidence intervals include an acceptable range, equalization cannot be supported statistically. When confidence intervals *fail* to bracket official requirements, equalization actions are supported (see section 6.5, "Measures of Reliability," and section 11.1, "Level of Appraisal").

Legal aspects of ratio studies, many of which relate to equalization, are discussed in Appendix F.

#### *2.2.1 Direct Equalization*

Many states and provinces have authority and specific procedures for direct equalization. The advantage of direct equalization is that it can be applied to specified strata, such as property classes, geographic areas, and political subdivisions that fail to meet appraisal level performance standards (Dornfest [Journal of Property Tax Assessment and Administration, 2004]). Direct equalization also produces results that are generally more visible to the taxpayer and more clearly reduces perceived inequities between classes (*Standard on Property Tax Policy* [IAAO 2004]). For example, direct equalization allows proper and equal application of debt and tax rate limits and equitable partial exemptions.

Direct equalization involves use of adjustment factors, which produce effects mathematically identical to those derived through the application of "trending" or "index" factors, which are commonly used for value updating by local assessing jurisdictions. The most significant differences typically are the level of the jurisdiction originating the adjustments and the stratification of property to which the factors are applied. Local jurisdictions with primary assessment responsibility can develop value adjustment factors as an interim step between complete reappraisals. Such factors commonly are applied to properties by property type, location, size, age and other characteristics (see *Property Appraisal and Assessment Administration* [IAAO 1990, p. 310]). It is rare for equalization factors developed by oversight agencies to be applied to strata more specific than property class or broad geographic area. Often such factors are applied jurisdiction-wide.

States and provinces that employ direct equalization techniques should understand that such equalization is not a substitute for appraisal or reappraisal. Direct equalization

applied at the stratum level improves equality in effective tax rates between strata and lessens the effect of assessment practices that improperly favor one stratum over another. For example, assuming that all classes of property are to be assessed at 100% of market value, without such equalization, in a case where residential property is assessed at a median of 80% of market value, while commercial property is assessed at a median of 90% of market value, residential property will pay 80% of its proper tax share and commercial property will pay 90% of its proper tax share. Other classes that may be assessed at 100% will pay more than their proper tax shares. Direct equalization mitigates this problem. However, such equalization cannot improve uniformity between properties within a given stratum. So, in the previous example, the median level of assessment for residential property can be adjusted from 80% to 100% of market value, assessment disparities between individual residential properties will not be addressed. For this reason, reappraisal orders should be considered as the primary corrective tool for uniformity problems, and direct equalization should be considered appropriate only if time or other constraints preclude such an approach.

### *2.2.2 Indirect Equalization*

The most common use of indirect equalization is to enable proper funding distribution, particularly for school districts. Such equalization provides an estimation of the proper tax base (acknowledging statutory constraints such as agricultural use value) despite appraisals that are higher or lower than legally required levels in certain jurisdictions. For example, if the assessed value of residential property in a jurisdiction is $750 million, but a residential ratio study shows an assessment level of 75 percent, while the legally required level of assessment is 100 percent, an equalized value of $1,000 million could be computed ($750 million/0.75). This adjusted or equalized value would then be used to apportion payments or requisitions between the state or province and associated local governments.

Indirect equalization results in fairer funding apportionment because the overall appraisal levels of the taxing jurisdictions tend to vary. If there were no equalization, the extent that a jurisdiction under- or overestimated its total tax base would result in over- or under-apportionment of funds. Indirect equalization does not correct under- or overvaluation between classes of property within a jurisdiction. It adjusts only a portion of the tax or sometimes only intergovernmental payments, is less visible to taxpayers, and often lacks checks and balances associated with direct equalization (see *Standard on Property Tax Policy* [IAAO 2004]). By adjusting governmental payments, tax rates, or partial exemptions, indirect equalization encourages taxing jurisdictions to keep their overall tax bases close to the required level.

Whether used to equalize shared funding or tax rates, the degree of equalization of the property tax is more limited than with direct equalization. Indirect equalization generally is applied to or affects only a portion of the funding or property tax levy (perhaps the school general levy or city levy). Indirect equalization usually is applied to the jurisdiction, rather than to a stratum, and therefore resolves interjurisdictional discrepancies in assessment level. In addition, properties in strata with poor uniformity are affected disproportionately. For this reason, indirect equalization also is not a substitute for reappraisal.

## 3. Steps in Ratio Studies

Ratio studies conducted by oversight agencies generally follow the basic steps described for the assessor's office in Part 1, except that it is more important to adopt uniform procedures and be consistent in their application.

### 3.1 Definition of the Purpose, Scope, and Objectives

The first step in any ratio study is to determine and state clearly the reasons for the study. This crucial step of identifying the purpose of the study determines the specific goals, scope, content, depth, and required flexibility.

### 3.2 Design of Study

The most important design consideration is that the study sample be sufficiently representative of the population of properties or the distribution of values in the jurisdiction under review. For direct equalization the level of appraisal for property classes or strata subject to such equalization is the primary area of interest and the sample must be designed accordingly. Indirect equalization seeks to estimate the overall dollar value of the population, so the sample must be representative of that overall value and must reflect the disproportionate influences of high value properties. Performance monitoring is concerned with both level and uniformity, but typically involves sample design similar to that required in direct equalization.

### *3.2.1 Level of Sophistication and Detail*

A basic design principle is to keep the study as simple as possible consistent with its purpose. Ratio studies are not all alike and should be tailored to an intended use.

Data analysis has been made easier through computerization. Although every study does not require the same level of statistical detail, each ratio study should include measures of appraisal level, appraisal uniformity, and statistical reliability. Graphs, charts, or other pictorial representations can be useful tools for showing distributions and patterns in the data. There is no model ratio study design that can serve all jurisdictions or all situations equally well. Informed, reasoned judgment and common sense are required in the design of ratio studies.

### *3.2.2 Sampling*

A ratio study is a form of applied statistics, because the analyst draws conclusions about the appraisal of the universe (the entire jurisdiction) of properties based only on those that have sold during a given time period or appraisals selected for a random sample. The ratios constitute the sample that will be used to draw conclusions or inferences about the population.

To determine the accuracy of appraisals within a jurisdiction with absolute certainty, it would be necessary for all properties in the population to have been sold in arm's-length, open-market transfers near the appraisal date or all properties would need to be appraised independently by the oversight agency. Since this is not possible, ratio studies must use samples and draw inferences or conclusions about the population from these samples.

The number of parcels in the population (the jurisdiction or stratum) is not an important determinant of a statistically valid and reliable sample.

### *3.2.3 Determining the Composition of Samples*

In the design stage, the oversight agency must decide whether the ratio study sample should comprise sales (or asking prices when appropriate), independent appraisals, or a combination of the two. Each sample type has its advantages and disadvantages, as described below.

#### *3.2.3.1 Sale Samples*

The advantages of using sale samples include the following:

- Properly validated sales provide more objective indicators of market value than independent appraisals.
- Using sales is much less expensive than producing independent appraisals.

The disadvantages include the following:

- Difficulty in collecting sales data in jurisdictions without disclosure documents
- The oversight authority may not have control over the sales data collection and validation process
- Influence of sales chasing can be difficult to detect or prevent
- Samples of sales may not adequately represent the population of properties
- An adequate sample size may not be achieved if sales data are scarce
- Time adjustments are more critical when supplemental sales are included

#### *3.2.3.2 Independent Appraisal Samples*

Independent appraisals also can be used instead of or in addition to sales for ratio study samples. (See section 8, "Appraisal Ratio Studies," in this part.)

#### *3.2.3.3 Samples Combining Sales and Independent Appraisals*

The oversight agency can design and conduct ratio studies using samples comprised of sales and independent appraisals. In this approach, the combined advantages of sale samples and appraisal samples are realized. However, the disadvantage of combining sales and independent appraisals is the possible existence of some of the disadvantages of sale samples and/or appraisal samples (see Section 8.7).

## 3.3 Collection and Preparation of Market Data

The reliability of a ratio study depends in part on how accurately the sales or independent appraisals used in the study reflect market values. For sales-based studies, oversight agencies should conduct an independent sales verification and screening program if resources permit. Alternatively, oversight agencies should develop audit criteria to review data submitted to qualify sales, corroborate representativeness and confirm adequate sample size. Audit decisions should accommodate needs of the agency and resources available. Independent appraisals used in ratio studies must comply with the appropriate sections of the *Uniform Standards of Professional Appraisal Practice* (USPAP; Appraisal Foundation 2007), and reflect market values as of the date being studied. Most oversight agencies use property data collected by the local jurisdiction to develop their independent appraisals. In order to produce credible appraisals, the oversight agency must be certain that the local jurisdiction accurately recorded the appropriate value-related property characteristics for each property it is independently appraising. Steps must be taken to ensure that errors in the database made by the local jurisdiction do not materially or significantly affect the conclusions or opinions of value developed by the oversight agency.

## 3.4 Stratification

Stratification divides all the properties within the scope of the study into two or more groups or strata. Stratification facilitates a more complete and detailed picture of appraisal performance and can enhance sample representativeness

Each type of property subject to a distinct level of assessment could constitute a stratum. Other property groups, such as market areas, school districts and tax units, could constitute additional strata.

Strata should be chosen to be consistent with factors in the mass appraisal model. When the purpose of the study is to evaluate appraisal quality, flexibility in stratification

is essential. The general goal is to identify areas in which the assessment levels are too low or lack uniformity and property groups for which additional reappraisal work may be required. In such cases, it also is highly desirable to stratify on the basis of more than one characteristic simultaneously.

Stratification can help identify differences in level of appraisal between property groups. In large jurisdictions, stratification by market areas is generally more appropriate for residential properties, while stratification of commercial properties by either geographic area or property subtypes (e.g., office, retail, and warehouse/industrial) can be more effective.

## 3.5 Matching Appraisal Data and Market Data

The physical and legal characteristics of each property used in the ratio study must be the same when appraised for tax purposes and when sold. This implies two essential steps. First, the property description for the sold parcel must match the appraised parcel. If a parcel is split between the appraisal date and the sale date, a sale of any of its parts should not be used in the ratio study.

Second, the property rights transferred, permitted use, and physical characteristics of the property on the date of assessment must be the same as those on the date of sale. Properties with significant differences in these factors should be excluded from the ratio study.

When statutory constraints are imposed on appraisal methods, the resulting assessment may be less than market value. In such cases a sales ratio study may not provide useful performance information. Constraints typically apply to land that qualifies for agricultural-use value, subsidized housing, mineral land, and timberland.

### *3.5.1 Stratification for Equalization Studies*

Oversight agencies generally should define the strata prior to acquiring and compiling data for the ratio study. Predefined stratification is more transparent and enhances cooperation between the oversight agency and the jurisdiction appraising the property subject to equalization. In general, oversight agencies should not redefine the strata once they have been defined for equalization purposes, especially in the case of direct equalization. It is appropriate, however, to collapse strata to compensate for otherwise inadequate samples sizes. In addition a reappraisal or equalization order can be targeted for specific problem areas that cause noncompliance at a broader level of aggregation.

### *3.5.2 Stratification for Direct Equalization*

Strata should be chosen consistent with operational requirements for the required level of equalization. Statistical issues in the determination of strata include the size of the population and resulting strata and the likely variability of the ratios in each stratum. Care must be taken not to over-stratify, that is, to create strata that are too small to achieve statistical reliability (see section 6, Sample Size" in part 1 and Sherrill and Whorton [1991]). No conclusion about stratum level or uniformity should be made from stratum samples that are unreliably small (resulting in unacceptably large margins of error). Ultimately, the degree of stratification is determined largely by available sales data, unless it is cost-effective and practical to add sufficient independent appraisals. If sufficient sales or appraisals are not available for a given stratum, it should be combined with similar strata. When strata are combined, provided there is no reason to suspect dissimilar ratios as evidenced by different level or uniformity measures, such combinations permit broader applicability of ratio study results and prevent ratio study analysis from becoming too focused on substrata with few sales or appraisals. When jurisdiction or category wide equalization actions are required, reliability of component strata is not an issue.

### *3.5.3 Stratification for Indirect Equalization*

Indirect equalization develops an estimate of full market value, but assessed values of individual properties are not altered. Such studies can use a substantially different approach to stratification than ratio studies intended for performance evaluation or direct equalization. The purpose of stratification in this case is to minimize distortions due to different assessment levels, which can vary by property type, value range, geographic area, and other factors. When equalization actions are required stratum reliability is not an issue. A reasonable number of strata with small samples and larger margins of error can increase overall representativeness and may reduce the margin of error for the overall jurisdiction-wide sample.

The primary level of stratification should ordinarily be by major property type (e.g., residential, commercial, and vacant land). If circumstances permit, a secondary level of stratification also is recommended. When relying on the weighted mean, the secondary level of stratification (substrata) should normally be value range. Higher-value properties can sell with a different frequency than low-value properties, and appraisal levels can vary between high and low-value properties. As a result, high-value properties can be oversampled (or undersampled) and, because of their high value, can exert a disproportionate influence on the weighted mean and resulting estimated value. Value stratification reduces distortion of the weighted mean caused by over or under-representation of value strata with different levels of appraisal. To properly develop and use value strata, the oversight agency needs each individual assessment in the study universe. If detailed value information is not available, the oversight agency should work with local taxing jurisdictions to obtain sufficient information. At a minimum, a questionnaire can be used to request the total value and number

of parcels in predetermined value categories or quantiles (each range contains the same amount of value).

In situations in which value stratification information is not available, or where property ratios are not significantly value-influenced, substrata can be created based on property subtype, geographic area, or other appropriate criteria. Stratification by these criteria corrects for differences in level of appraisal between substrata. In large jurisdictions, substratification by geographic areas generally is more appropriate for residential properties while sub-stratification by either geographic area or property subtypes (e.g., office, retail, and warehouse/industrial) can be appropriate for income-producing properties.

When relying on the median and when sample sizes permit, it is appropriate to stratify within property class by whichever property characteristic is most likely to capture differences in appraisal levels. This characteristic can be geographic area, property subtype, or value range. Substratification by value range helps capture value-related differences in assessment levels, which (unlike the weighted mean) are not reflected in the median.

### 3.6 Statistical Analysis

When ratio studies are conducted for equalization purposes, confidence intervals and statistical tests can be used to determine whether it should be concluded at a given confidence level that appraisal performance or level requirements in a stratum (or jurisdiction) being tested meets or falls outside of mandated standards. Statistical tests can be used for comparisons among strata, provided the sample sizes are large enough that meaningful differences are not missed (see section 6, "Ratio Study Statistics and Analyses").

### 3.7 Evaluation and Use of Results

Lack of independence between locally determined values and sale prices (sales chasing) or independent appraisals can subvert attempts to improve equity (direct equalization) and result in incorrect distribution of funds between states or provinces and local jurisdictions (indirect equalization). To guard against these possibilities, oversight agencies should ensure that sold and unsold properties are appraised similarly. Also, appraisals used as substitutes for sales must reflect market value, and the oversight agency must take remedial measures in instances in which they do not (see section 9, "Estimating Performance of Unsold Properties", and Appendix D, "Sales Chasing Detection Techniques").

## 4. Timing and Sample Selection

Ratio studies made by oversight and equalization agencies should be conducted at least annually. Where possible, ratio studies conducted by equalization agencies should use final values established at the local level, inclusive of changes made by local appeal boards up to that time. However, if local appraisers or boards "chase sales" or set values in a manner that is dissimilar to the way other property values have been set, the sample may not be sufficiently representative and should not be used without careful investigation and necessary adjustment.

### 4.1 Date of Analysis

The date of analysis is a past year when appraisals from past years are being evaluated to avoid the effects of sales chasing. When prior-year assessments are used to gauge current performance (to avoid sales chasing), the results should be adjusted for any reappraisal activity or assessment changes that occurred in the population (net of new construction) between the prior and current years. Sale prices also should be adjusted to the assessment date to account for time trending.

If the purpose of the study is equalization, using sales after the appraisal date (adjusted for time as necessary) helps ensure the independence of appraisals and sales prices. A sales period spanning the appraisal date can be used if measures are taken to ensure the independence of appraisals made after the earlier sales. This approach has the advantage of reducing the importance of time adjustments.

### 4.2 Representativeness of Samples

The design and conduct of ratio studies requires decisions that maximize representativeness within the constraints of available resources.

In many kinds of statistical studies, samples are selected randomly from the population and from within each stratum to maximize representativeness. Ratio study samples based on independent appraisals can be randomly selected. Because sales are convenience samples and do not represent true random samples, care must be taken to maximize the representativeness of sales samples.

A ratio study sample is considered sufficiently representative for direct equalization and mass appraisal performance evaluation when the distribution of ratios of properties in the sample reflects the distribution of ratios of properties in the population. A ratio study is considered sufficiently representative for indirect equalization when the distribution of ratios of dollars of property value in the samples reflects the distribution of ratios of dollars of property value in the population.

Sales from areas or substrata in which the number of sales is disproportionately large can distort ratio study results by weighting level and uniformity indicators toward whatever conditions exist in the overrepresented area. To alleviate this problem and create better representativeness, large samples can be further stratified by

- randomly selecting sales to be removed
- isolating the overrepresented groups into substrata

- redefining the time period for the overrepresented groups
- weighting the data

### *4.2.1 Maximizing Representativeness with Independent Appraisals*

For independent appraisal-based ratio studies, the application of random sampling techniques can help ensure that appraisal procedures used for the sampled properties are similar to the corresponding population. A well-designed random sampling plan also can help ensure that properties selected for independent appraisals are not concentrated in areas of high sales activity or associated with property types with higher turnover rates in the market.

The USPAP competency rule requires appraisers to have both knowledge and experience required to perform specific appraisals. Independent single-property appraisals must be developed in compliance with Standard 1, must be reported in compliance with Standard 2, and must be reviewed in compliance with Standard 3 of USPAP. Most importantly, care must be taken to ensure that independent appraisals reflect market value as of the appraisal date. Independent mass appraisals must be developed and reported in compliance with Standard 6 of *USPAP*.

### *4.2.2 Very High-Value Properties*

Assessment jurisdictions often contain unique, very-high-value properties (for example, properties that constitute more than 10 percent of the value of a property class) that cannot reasonably be combined with other properties for purposes of the ratio study. For indirect equalization, high-value parcels are especially important to maximize representativeness. For instance, consider a population consisting of 1,000 properties, 999 of which range in value from $20,000 to $750,000, and one that is valued at $1 billion (e.g., a power plant). If the intended use of the ratio study is to estimate the general level and uniformity of appraisal in regard to the typical property, the stratified population of parcels need not include the $1 billion property. If the intended use of the ratio study is to estimate the total market value in the jurisdiction, however, exclusion of the power plant can distort the study.

Very high-value properties should not be ignored or assumed to be appraised at the legal or general level for indirect equalization studies. An equalization agency should place very high-value property in a separate stratum to prevent distortion of the overall weighted mean or total estimated value. To value the property for ratio study purposes the equalization agency should use a recent properly adjusted sales price if available. If a recent sale is not available the agency should conduct an appraisal of such properties (this is the preferred option) or audit and adjust as necessary the values developed by the local jurisdiction.

## 5. Acquisition and Analysis of Sales Data

The highest level of independence and objectivity in an equalization or performance monitoring ratio study requires independent sales validation. If resources are not available to achieve this level of sophistication, then a comprehensive audit program should be developed to review the validation and screening work of the local jurisdiction (see Appendix A, "Sales validation Guidelines").

### 5.1 Sale Adjustments for Statutorily Imposed Value Constraints

Most states and provinces require appraisal of certain classes of property using statutorily prescribed methods of appraisal that are intended to produce a constrained value that is less than market value. The most common class of property to which such constraints apply is farmland and rangeland that qualifies for agricultural-use valuation. However, constraints may also apply to subsidized housing, mineral land, and other classes. When the purpose of the ratio study is direct or indirect equalization, sales prices must be adjusted as if the selling parcel were subject to the same constraints. If this cannot be done, independent appraisals, which employ the required constraints, should be used to determine the level of appraisal in a manner consistent with the statutory constraints. For example, assume that statutory restrictions require a fixed or artificially high capitalization rate to be used in determining farmland value. If unadjusted farmland sales were to be used, the resulting ratios would be low and could lead to improper equalization decisions. Instead, independent appraisals using the required capitalization rate should be done. These appraisals would lead to ratios that would correctly allow for the statutory constraint.

Use of constrained values produces ratio study results that do not provide information on the true level of appraisal in relation to market value. Use of constrained values is appropriate for equalization. However, when the purpose of the ratio study is to determine the overall quality of assessments or the amount of benefit being awarded by a given statutory constraint on appraised value, the unadjusted sale price or independent market value appraisal must be used. Often, procedural audits can be used as adjuncts to more traditional ratio studies. These audits can be particularly effective when the purpose is to judge overall appraisal quality and when precise, quantitative statistical measures are not obtainable.

### 5.2 Outlier Ratios

Oversight agencies should consider the extent of sales verification when developing guidelines for trimming limits. In practice, this means that if an oversight agency derives sales data from assessing jurisdictions that may have already removed outliers from the sample, additional trimming may not be necessary (see Appendix B, "Outlier Trimming Guidelines").

### *5.2.1 Value Outliers*

When the weighted mean is used for indirect equalization, a method that identifies high-value *influential* sales is recommended. Since an influential sale may not have an unusually low or high ratio relative to the rest of the sample, the definition of distortion is based on the principle that the point estimate calculated from the sample should not be statistically significantly different whether the suspect observation is in the sample or not.

To test for an influential sale, one approach is to remove it from the sample and compute the weighted mean and associated confidence interval. If the weighted mean of the sample lies outside the confidence interval calculated without the influential sale, then the sale is truly influential and is a candidate for further scrutiny, isolation in a separate stratum, or possible trimming.

This procedure is intended to test the presence of individual influential sales and is not intended to be used successively after deletion of a sale, but can be applied to more than one apparent outlier at a time by leaving all other sales in the comparison group. Note, however, that the presence of multiple influential sales can indicate the start of a trend. Presence of influential sales is often associated with high price-related differential (PRD) values, which could be the result of systematic regressivity or progressivity.

### *5.2.2 Outlier Trimming*

Statistics calculated from trimmed distributions, obviously, cannot be compared to those from untrimmed distributions or interpreted in the same way. This is especially problematic when making interjurisdictional comparisons. For this reason, oversight agencies may wish to promulgate uniform trimming procedures, based on sound statistical principles. Regardless of the chosen procedure, trimming of outliers must not occur more than once for any sample.

## 6. Ratio Study Statistics and Analyses

Ratio study measures covered in Part 1 are equally applicable to equalization ratio studies based upon sales or independent appraisals. See section 5.3, "Measures of Appraisal Level," and section 5.4, "Measures of Variability," in Part 1.

### 6.1 Measures of Appraisal Level

The median is the generally preferred measure of central tendency for direct equalization, monitoring of appraisal performance, or evaluation of the need for a reappraisal. The mean should not be used for indirect equalization if there are measurable differences in appraisal level of high- and low-value properties (see table 2-2). In data commonly containing outliers, the trimmed mean can be substituted for the mean (Gloudemans 1999, chapter 3). See Appendix B for outlier-trimming procedures. Because of its dollar-weighting feature, the weighted mean is most appropriately used in indirect equalization, when estimating the total dollar value of the jurisdiction. When relying on the measure, however, outliers should be carefully reviewed (and deleted if appropriate), since they can strongly affect the weighted mean, particularly when they occur for high-value properties and in small samples.

### 6.2 Overall Ratio for Combined Strata

For purposes of oversight monitoring of overall appraisal performance and direct equalization, the generally preferred approach is to weight the median ratio of each stratum on the basis of the relative number of properties in the stratum. For indirect equalization, the weight assigned to a measure of central tendency of a stratum should be proportional to the share of that stratum's total estimated market value. Because the number of parcels bears only a loose relationship to dollar value, weighting by number of parcels is not appropriate for indirect equalization.

For indirect equalization, the preferred method of calculating the overall market value of a jurisdiction is as follows:

1. Divide the total appraised (or assessed) value of each stratum by the stratum sample's measure of central tendency (see section 6.3, "Contrasting Measures of Appraisal Level," in this part) to obtain an estimate of the total market value of taxable property in the stratum.
2. Sum the estimates of total stratum market value to obtain an estimate of the total market value of taxable property in the jurisdiction or class of property.
3. To obtain an overall weighted level of assessment (or ratio), divide the total appraised (or assessed) value of the jurisdiction or class of property by the estimated total market value (table 2-1 contains a simplified example).

### 6.3 Contrasting Measures of Appraisal Level

Table 2-2 summarizes the preferred measures of central tendency for the three broad purposes of indirect equalization, direct equalization, and the general monitoring of appraisal performance.

For indirect equalization, the preferred measure is the weighted mean (the measure used in table 2-1), because it gives equal weight to each dollar. This helps achieve an accurate estimate of total dollar value, the goal of indirect equalization. However, there are implicit difficulties in obtaining sales samples that are representative of all significant groups of properties with different ratios. The weighted mean can be disproportionately influenced by high-value properties, particularly in a small sales sample. A disproportionate influence of high-value properties can

**Table 2-1.** Illustration of Combining Measures of Central Tendency (Example shown is for indirect equalization)

| Data for properties in the study | | | | | |
|---|---|---|---|---|---|
| Stratum (1) | Total sample assessed value (2) | Total sample sale price (3) | Weighted mean (2)/(3) (4) | Total assessed value of stratum (5) | Indicated market value of stratum (6) |
| Residential | $3,000,000 | $4,000,000 | 0.750 | $600,000,000 | $800,000,000 |
| All other | 950,000 | 1,000,000 | 0.950 | 400,000,000 | 421,000,000 |
| **Total** | | | | **$1,000,000,000** | **$1,221,000,000** |

*Overall ratio = $1,000,000,000/$1,221,000,000 = 0.819*

**Table 2-2.** Preferred Estimators

| | Indirect Equalization | Direct Equalization | Monitoring Performance |
|---|---|---|---|
| Median | — | X | X |
| Mean | — | — | — |
| Weighted Mean | X* | — | — |

* Caution should be exercised when the sample contains value outliers or indicates value bias based on the PRD

be reduced through value stratification within the property class. Such value stratification helps capture value-related ratio differences, as well as improve representativeness, regardless of which measure of central tendency is used. If there are provable value-related ratio differences within strata, the weighted mean must be used since the median is incapable of capturing value-related differences. In cases in which value stratification is not practicable, equalization agencies may stratify by some proxy for value, such as neighborhood or property sub-class. If results appear distorted by non-representative high-value sales, outlier identification methods described in Appendix B should be employed.

While not conceptually preferred, the median can be used to prevent the disproportionate influence of high-value properties with outlier ratios. To be clear, although the median is not the conceptually appropriate measure, it nonetheless has the desirable property of smaller sampling variance and, in cases in which assessment regressivity/progressivity has not been found to be a significant concern, can provide an acceptable substitute for the weighted mean.

If samples are known to be reasonably representative through outlier trimming, the use of stratification or selection of random appraisals, the weighted mean would be the (only) correct measure. In cases which sample representativeness is a concern due to small samples or outliers, the median can reasonably be used as long as the equalization agency has checked to ensure that there are no significant price-related biases within the strata used in the study.

## 6.4 Measures of Variability

Measures of dispersion or variability relate to the uniformity of the ratios and should be calculated for each stratum in the study. In general, the smaller the measure, the better the uniformity, but extremely low measures can signal one of the following:

acceptable causes

- extremely homogeneous properties
- very stable markets

unacceptable causes

- lack of quality control
- calculation errors
- poor sample representativeness
- sales chasing

Note that as market activity changes or as the complexity of properties increases, the measures of variability usually increase, even though appraisal procedures may be equally valid.

## 6.5 Measures of Reliability

It is good practice to calculate measures of reliability whenever the results of a ratio study are used for equalization. Measures of reliability will indicate whether there is a desired degree of confidence that a given level of appraisal has not been achieved. The most commonly used measure of ratio study sample reliability is the confidence interval. This interval brackets the unknown population parameter for any sample statistic with a specified (chosen) degree of confidence. When the interval includes a desired assessment level or a performance standard range around the desired level (see section 11 and Table 2-4), equalization adjustments are not warranted. Similarly, when the interval includes a maximum allowable COD (see Table 2-3), reappraisal or other action to correct poor uniformity is not warranted.

## 6.6 Vertical Inequities

The measures of variability discussed in section 6.4 relate to "horizontal," or random, dispersion among the ratios in a stratum, regardless of the value of individual parcels. Another form of inequity can be systematic differences in the appraisal of low- and high-value properties, termed "vertical" inequities. When low-value properties are appraised at greater percentages of market value than high-value properties, assessment *regressivity* is indicated. When low-value properties are appraised at smaller percentages

of market value than high-value properties, assessment *progressivity* is the result. Appraisals made for tax purposes should be neither regressive nor progressive.

An index statistic for measuring vertical equity is the PRD, which is calculated by dividing the mean ratio by the weighted mean ratio. This statistic should be close to 1.00. Measures considerably above 1.00 tend to indicate assessment regressivity; measures below 1.00 suggest assessment progressivity. When samples are small or the weighted mean is heavily influenced by several extreme sales prices, however, the PRD may not be a sufficiently reliable measure of vertical inequities. A scatter plot of ratios versus appraised values or sale prices is a useful diagnostic tool. A downward (or upward) trend to the data indicates systematic regressivity (or progressivity). If not sufficiently representative, extreme sales prices can be excluded in calculation of the PRD. Similarly, when samples are very large, the PRD may be too insensitive to show small pockets in which there is significant vertical inequity. Standards for evaluating the PRD are given in section 9.2.7 in this part. In addition, more powerful statistical tests for vertical inequities are available and should be employed to determine the significance of the indication provided by the PRD (see section 5.7 in this part and Twark, Everly and Downing [1989]).

When these tests show vertical inequities, such inequities should be addressed through reappraisal or other corrective actions. In some cases, additional stratification can help isolate the problem. Measures of level computed for value strata should not be compared as a way of determining vertical inequity because of a boundary effect that is most pronounced in the highest and lowest strata (Schultz 1996).

### 6.7 Tests of Hypotheses

An appropriate test should be used whenever the purpose of a ratio study is implicitly or explicitly to test a hypothesis. A hypothesis is essentially a tentative answer to a question, such as, Are residential and commercial properties appraised at equal percentages of market value? A test is a statistical means of deciding whether the answer "yes" to such a question can be rejected at a given level of confidence. In this case, if the test leads to the conclusion that residential and commercial properties are not appraised at equal percentages of market value, some sort of corrective action on the part of assessing officials is clearly indicated. Appropriate tests are listed in table 1-2 and discussed in Gloudemans (1999), *Property Appraisal and Assessment Administration* (IAAO 1990), and *Improving Real Property Assessment* (IAAO 1978, 137–54)

### 6.8 The Normal Distribution

Many conventional statistical methods assume the sample data conform to the shape of a bell curve, known as the normal (or Gaussian) distribution. Performance measures based on the mean or standard deviation can be misleading if the study sample does not meet the assumption of normality. As a first step in the analysis, the distribution of sample ratios should be examined to reveal the shape of the data and uncover any unusual features. Although ratio study samples typically do not conform to the normal distribution, graphical techniques and numerical tests can be used to explore the data thoroughly. Traditional choices are the binomial, chi-square, and Lilliefors tests. Newer and more powerful procedures are the Shapiro-Wilk $W$, the D'Agostino-Pearson $K^2$, and the Anderson-Darling $A^2$ tests (D'Agostino and Stephens 1986).

## 7. Sample Size

### 7.1 Importance of Sample Size

If it is desirable to create narrow, uniform margins of error in jurisdictions without sufficient sales, independent appraisals may be added.

### 7.2 Adequacy of a Given Sample Size

The adequacy of a given sample size can be evaluated by computing measures of reliability. If the confidence interval is sufficiently narrow, the sample is large enough. If the confidence interval is too wide, the oversight authority must either accept less precision or enlarge the sample, if possible.

### 7.3 Required Sample Size

Because designing for sampling objectives and planning for resource allocation in ratio studies must occur well before final ratio data sets are available and ratio study statistics are calculated, decisions on critical input variables must be made well before their true values are known. For example, the sample size formulas (Cochran 1977; Sherrill and Whorton 1991; and Gloudemans 1999) used to plan for specific margins of error and/or specific levels of confidence theoretically require, as input variables, the actual variation within the final ratio data sets (usually measured by the coefficient of variation). However, the actual variation in final ratio data sets is not known during the design and planning stage and, thus, the desired sample size must be projected based upon the best information available at the time of design and planning. This projection results in unavoidable forecast error and can result in the production of a higher or lower sample size than needed to reach sampling objectives. This issue is an accepted part of conducting ratio studies when it is necessary and important to attain a predetermined or uniform degree of precision. In other cases, it may be acceptable to use all available qualified sales. When predetermination of sample size is important, the variation in the ratio data set from the most recent time period available can provide a reasonable estimate for the time period under analysis.

### 7.4 Remedies for Inadequate Samples

In addition to recommendations discussed in section 6.4, "Remedies for Inadequate Samples," in Part 1, supplemental independent appraisals can be combined with sales (also see section 8.7, "Combining of Sales and Appraisals," in this part ).

### 7.5 History of Sales Reporting

Oversight agencies that develop ratio studies from sales provided by local assessment jurisdictions should track the number of transfers obtained in different study periods. Quality control techniques can be used to measure market activity or to determine whether an assessor is fully reporting sales information.

## 8. Appraisal Ratio Studies

Appraisal ratio studies are conducted by using appraised values for a random sample of parcels. Such sampling plans can be designed to be more representative of the population in terms of property characteristics than a sales sample of the same size but require adequately trained appraisers and are comparatively expensive. Few ratio studies are based solely on independently conducted appraisals, which then are compared to values determined by assessing officials. Many equalization or oversight agencies, however, do ratio studies in which both sales and appraisals are combined. Furthermore, it may be possible to develop sales driven models for use in appraising a particular population of properties (excluding those not adequately represented in the underlying model) or randomly selected parcels for ratio study purposes (see *Standard on Automated Valuation Models*, [IAAO 2003]). Estimates of value developed for use in appraisal ratio studies are considered appraisal services and must comply with *USPAP* Standards 1 and 2 or Standard 6.

### 8.1 Rationale

Independent appraisals can be used as indicators of market value. Independent appraisals are appraisals performed by appraisers who are not employees of the appraisal agency that is the subject of the study. Such appraisal ratio studies are particularly useful for property classes with limited sale data, such as commercial and industrial real property and personal property (see *Property Appraisal and Assessment Administration* IAAO 1990, appendix 1-1] and Gloudemans [1999, chapter 6]). In addition, appraisal ratio studies can be used for agricultural or other properties not appraised on an ad valorem basis. In this case, the appraisals should reflect the use value or other statutory basis on which the properties are appraised.

### 8.2 Advantages and Disadvantages

Appraisal ratio studies have both advantages and disadvantages. The advantages of appraisal ratio studies are

- the ability to sample from areas or property types with insufficient sales information
- a high degree of control in sample size that enables the analyst to treat jurisdictions equally, regardless of the availability of market information
- the avoidance of nonrepresentativeness stemming from the use of sales samples that may not represent the property population.
- the size of the sample can be specified and
- the initial sample can be randomly drawn, thus helping to maximize representativeness.

If objectivity can be maintained, the appraisal ratio study avoids potential distortions due to systematic differences between appraisals of sampled and unsampled properties. In addition, independent appraisals can be used to test for systematic differences between appraisals of sold and unsold properties.

A disadvantage of appraisal ratio studies is the extra time and cost involved with the independent appraisal process. The subject and any comparables should be physically inspected and the appraisals documented according to appropriate standards. Applicable USPAP guidelines should be followed. Independent single-property appraisals should be developed in compliance with *Standard 1*, should be reported in compliance with *Standard 2*, and should be reviewed in compliance with *Standard 3* of USPAP. Independent appraisals done with a mass appraisal model should be developed and reported in compliance with *Standard 6* of USPAP. Another disadvantage is that appraisals are an opinion of value. Accordingly, they should be documented and tested against the market. However, this becomes difficult when sales data are scarce. To reduce this disadvantage, appraisal ratio study analysts should ensure that appraisals are carefully reviewed and allow local appraisers to submit appraisal information that may affect the value conclusion (see *Standard on Administration of Monitoring and Compliance Responsibilities* [IAAO 2003]). Where adequate sales are available, independent appraisals should be checked for consistency with sales.

### 8.3 Sample Selection and Resource Requirements

Sample selection and resource planning in appraisal ratio studies require knowledge of statistical sampling, estimation principles, and available resources. Judgment must be used, because the determination of an adequate sample can require more information than is available during the design and planning phase, such as the actual variation within the final ratio data sets (see section 6.2, "Adequacy of a Given Sample Size," in Part 1). Moreover, the cost of the study increases with the size of the sample. Therefore, the value of more reliable information must be balanced

against the costs of obtaining that information.

In determining the size of the sample for each stratum, the following should be taken into consideration:

1. the required precision (typically measured by the margin of error) of the estimate of the appraisal level, for example, ±0.05
2. the required confidence level, for example, 95 percent
3. the amount of dispersion expected in the final ratio data set
4. the wastage associated with properties that cannot be efficiently appraised or appraisals that cannot be used for one reason or another (see Gloudemans [1999, chapter 6] for sample size formulas and required input variables; also see Sherrill and Whorton [1991]).

Once the desired size of an appraisal sample has been determined, the individual properties that will constitute the sample should be selected using a statistically valid sampling plan. Stratified random sampling is preferred.

If value stratification is used, sample properties selected from value groups during resource planning can shift into other value groups before completion of the study, thus reducing the ultimate representativeness of the sample. Some appraisal parcels may need to be removed from the sample when anomalous conditions are discovered such as environmental contamination (sufficiently reliable valuations may be prohibitively difficult or resource intensive) or when the independent appraiser is not allowed access to the property. Any sample parcels that are voided or that shift from a stratum because of value changes should be replaced if possible.

Appraisal ratio studies, as with sales ratio studies, require informed, reasoned judgment to maximize sample representativeness and statistical reliability.

## 8.4 Data Requirements and Appraisal Techniques

The appraisal techniques selected for an appraisal ratio study should be consistent with accepted appraisal principles and practices. The appraisals should reflect the appraisal date in question and should be well documented. Statistical software should be used as much as possible to expand analytical capabilities and perform calculations.

The appraisals used in appraisal ratio studies can be based on CAMA and automated valuation model (AVM) techniques (see Standard on Automated Valuation Models, [IAAO 2003]). The models used must be developed independently from those used for assessment purposes. Adequate market data and property characteristic data are required to develop reliable and defensible model estimates. If available, sales from a later period can be used to expand sample size. However, as in sales-based ratio studies, sales derived from primary assessing jurisdictions should be reviewed to ensure accuracy and validity. CAMA and AVM models have the advantage of reducing costs, permitting the use of larger, more representative samples. CAMA and AVM models developed for equalization must focus on the adequacy of overall, not individual, value or level of assessment estimates.

Because the purpose of the appraisal is to make an *independent* value estimate, not audit the assessor's work, the appraisals should be made without knowledge of the assessor's value. Appraisers should *not* be supplied with copies of the assessor's appraisal work sheets or model information. Supervisors should spot-check and review the work of staff appraisers to ensure that the required independence is maintained. When the purpose of the ratio study is equalization or performance measurement, rather than internal quality assurance, the appraisals should not be revealed to the assessor until the assessor's values are final.

## 8.5 Appraisal Chasing

Appraisal chasing can take two forms, either of which reduces or destroys the validity of the ratio study. The first occurs when an independent appraiser knows the local appraised value and either consciously or unconsciously biases the independent appraised value towards the local appraised value. Independent appraisers should not have access to the local appraiser's values or appraisal work papers prior to completing their appraisals. Also, independent appraisals should be reviewed and tested against the market.

The second form of appraisal chasing occurs when the local appraisal jurisdiction knows which properties are in the ratio study appraisal sample and adjusts local appraised values on some or all of these properties to achieve better ratios without making similar adjustments to unsampled properties. This form of appraisal chasing is similar to sales chasing and has similar consequences (see Appendix D, "Sales Chasing Detection Techniques"). Ratio study analysts should guard against this form of appraisal chasing by withholding the release of sample information until the local appraisal office's values are final. If this form of appraisal chasing occurs, the oversight agency can use local values prior to adjustment to provide a more accurate representation of the population ratios.

## 8.6 Reviewing of Appraisals

Appraisal supervisors should review appraisal models or individual single-property appraisals to ensure that USPAP and the agency's standards are met. It also is good practice to include some recently sold properties in the sample being appraised as a check on the validity of the methods being applied. In addition, the assessor must be afforded an opportunity to review the appraisals along with supporting

documentation and to submit information supporting different value conclusions. If different value conclusions or factual information would materially affect the outcome of the study, a procedure for resolving conflicts, for example, by an independent review body, should be established.

### 8.7 Combining of Sales and Appraisals

Appraisals can be combined with valid sales in a ratio study. Using available sales adds objectivity to the study and reduces the required number of appraisals. On the other hand, combining sales and appraisals mixes two market indicators. If sales and appraisals are combined, an analysis should be performed to test the consistency of measures of central tendency derived from the sales ratios compared to the same measures derived from the appraisal ratios. A Mann-Whitney test comparing values per unit or comparing ratios based on sales with those based on appraisals is appropriate for this purpose. Significant differences can result from several of the following conditions:

1. Sales have been chased.
2. Sales and appraisals came from different geographic areas with different markets and different levels of appraisal (maximize representativeness by stratifying).
3. Sales and appraisals have different property characteristics that cause different levels of appraisal.
4. All or some of the sales are invalid.
5. Outlier ratios are causing sale/appraisal ratio differences.
6. All or some of the appraisals are inaccurate.

If none of the first five conditions listed above apply, the appraisals should be tested against the market and revised as necessary (see Wooten, 2003).

Variability measures computed on sales used in the sample should not be expected to be similar to variability measures computed on appraisals. Sales ratios reflect the vagaries of the marketplace. Appraisal ratios, on the other hand, come from comparing the results of one appraisal model (the oversight agency's) to the results of another (the assessing office's). If both parties use mass appraisal procedures, differences in appraisals between the two models should be less than when compared with sales; thus, variability measures based on appraisal ratios can be expected to be lower than those based on sales ratios as long as they represent properties with similar characteristics and similar degrees of appraisal difficulty.

### 8.8 Average Unit Value Comparisons

In addition to a traditional ratio study, "expert" appraisals can take the form of average unit values and be compared against the assessor's average unit value for the same parcels. In this technique, parcels are stratified into homogeneous groups, as they would be for appraisal purposes. Appropriate units of comparison are identified for each group, and average unit values are determined through an analysis of available sales, cost, and income data. The assessor's average unit values for the same strata are then calculated and the two averages are compared. Average unit value comparisons is well-rooted in mass appraisal theory and offers an alternative to the time and expense associated with the selection and appraisal of individual parcels.

## 9. Estimating Performance for Unsold Properties

The objective of a ratio study is to determine appraisal performance for the population of properties. As long as sold and unsold parcels are appraised in the same manner and the data describing them are coded consistently, statistics calculated in a sales ratio study can be used to infer appraisal performance for unsold parcels. However, if parcels that sell are selectively reappraised or recoded, based on their sale prices or some other criterion (such as listing price) and if such parcels are in the ratio study, sales ratio study uniformity inferences will not be accurate (appraisals will appear more uniform than they are). In this situation, measures of appraisal level will also be unsupportable unless similar unsold parcels were appraised by a model that produces the same overall percentage of market value (appraisal level) as the parcels that sold.

Oversight agencies must ensure that sold and unsold parcels are appraised at the same level. Several techniques are available for determining whether assessors are selectively appraising sold parcels (see Appendix D, "Sales Chasing Detection Techniques," or *Property Appraisal and Assessment Administration* [IAAO 1990, appendix 20-2] and Gloudemans [1999, chapter 6] for a more detailed discussion).

If unsold properties within a properly specified group are not appraised consistently with sold properties within the same group and according to applicable guidelines, unadjusted sales ratio results cannot be used. The oversight agency will have to adjust calculated results or conduct an alternative study.

Once it is determined that *sales chasing* probably has occurred and probably is reducing the validity of ratio study statistical measures of level or uniformity, it is necessary to redo the ratio study to establish valid measures before any other recommendations, such as reappraisal or equalization action, can be made. If feasible, probably the best approach is to select a sample period that effectively precludes sales chasing. For example, when the lien or appraisal date is January 1, many jurisdictions use sales occurring before that date to make valuation decisions. To test the resulting valuations, it would be appropriate to use

sales occurring after January 1 (or after the last date for changing assessments for the year in question), provided such data are time-adjusted (when necessary) backward to match the appraisal date. As a slight variation on this principle, earlier sales could be used, except when sales chasing is detected, in which case it is appropriate to switch to a later, post-appraisal-date sales period.

Legal or practical constraints can prevent use of optimal sample periods in many cases. In these situations, it is important to determine the exact cause of the sales chasing. For example, if a large proportion of selling properties are appealed and if appeal boards typically adjust to sale price, the result is the same as sales chasing by the assessor. One solution is to use appraised values prior to the action of the appeal board, provided that the appeal adjustment is not merely the result of an atypical clerical or other error. Another approach is to use current sales prices and prior-year values, adjusted for reappraisal activity or assessment value changes in the population. The percentage increase or decrease in the prior-year's appraised values for the population (net of new construction) should be used to adjust the prior-year's values for the sample (Gloudemans 1999).

## 10. Presentation of Findings, Documentation, and Training

Oversight agencies should produce ratio studies in a manner that is transparent in all stages to all stakeholders.

(See section 8, Part 1.)

## 11. Ratio Study Standards

Each state and province should have ratio study performance standards. These standards, summarized in table 2-3, are suggested for jurisdictions in which current market value is the legal basis for assessment. In general, when state and provincial standards are not met, reappraisal or other corrective measures should be taken or equalization procedures can be imposed. When an oversight agency orders such actions, the burden of proof should be on the agency to show that the standards have not been achieved.

All standards recommended in this section are predicated on the assumption that all practicable steps necessary to maximize representativeness and validity in the underlying ratio studies have been conducted.

### 11.1 Level of Appraisal

The calculated measures of central tendency are point estimates and provide only an indication, not proof, of whether the level meets the appropriate goal. Confidence intervals and statistical tests should be used to determine whether the appraisal level differs from the established goal in a particular instance.

A decision by an oversight agency to take some action (direct equalization, indirect equalization, reappraisal) can have profound consequences for taxpayers, taxing jurisdictions, and other affected parties. This decision should not be made without a high degree of certainty that the action is warranted. Conversely, a decision not to take action when action is needed can have equally profound consequences.

**Table 2-3.** Ratio study uniformity standards indicating acceptable general quality*

| General Property Class | Jurisdiction Size /Profile /Market Activity | Max COD |
|---|---|---|
| Residential improved (single family dwellings, condominiums, manuf. housing, 2-4 family units) | Very large jurisdictions / densely populated / newer properties / active markets | 10.0 |
| | Large to mid-sized jurisdictions / older & newer properties / less active markets | 15.0 |
| | Rural or small jurisdictions / older properties / depressed market areas | 20.0 |
| Income-producing properties (commercial, industrial, apartments,) | Very large jurisdictions / densely populated / newer properties / active markets | 15.0 |
| | Large to mid-sized jurisdictions / older & newer properties / less active markets | 20.0 |
| | Rural or small jurisdictions / older properties / depressed market areas | 25.0 |
| Residential vacant land | Very large jurisdictions / rapid development / active markets | 15.0 |
| | Large to mid-sized jurisdictions / slower development / less active markets | 20.0 |
| | Rural or small jurisdictions/ little development / depressed markets | 25.0 |
| Other (non-agricultural) vacant land | Very large jurisdictions / rapid development / active markets | 20.0 |
| | Large to mid-sized jurisdictions / slower development / less active markets | 25.0 |
| | Rural or small jurisdictions/ little development / depressed markets | 30.0 |

*These types of property are provided for general guidance only and may not represent jurisdictional requirements.*
**The COD performance recommendations are based upon representative and adequate sample sizes, with outliers trimmed and a 95% level of confidence.*

**Appraisal level recommendation for each type of property shown should be between 0.90 and 1.10.*

**PRD's for each type of property should be between 0.98 and 1.03 to demonstrate vertical equity.*

*PRD standards are not absolute and may be less meaningful when samples are small or when wide variation in prices exist. In such cases, statistical tests of vertical equity hypotheses should be substituted.*

**CODs lower than 5.0 may indicate sales chasing or non-representative samples.*

Oversight agencies should weigh all the options and consider the issues discussed below when developing or revising a level-of-appraisal standard, and when developing equalization or other appraisal oversight procedures.

### *11.1.1 Purpose of Level-of-Appraisal Standard*

Jurisdictions that follow the IAAO recommendation of annual reassessments and comply with USPAP standards should be able to develop mass appraisal models that maintain an overall ratio level of 100 percent (or very near thereto). The local assessor may be required to observe reappraisal cycles defined by a legal authority or public policy that can extend beyond one year. During extended cycles inflation or deflation can influence the overall ratio.

The purpose of a performance standard that allows reasonable variation from 100 percent of market value is to recognize uncontrollable sampling error and the limiting conditions that may constrain the degree of accuracy that is possible and cost-effective within an assessment jurisdiction. Further, the effect of performance standards on local assessors must be considered in light of expectations of public policy and resources available. For these reasons, states or oversight agencies may adopt performance standards for appraisal level that allow some variance from the 100 percent goal of market value.

### *11.1.2 Recommended Appraisal Level Standards for Direct and Indirect Equalization*

The performance standard adopted by an oversight agency should be a range around the legally required level of appraisal in a property class or an overall jurisdiction. This range should be 90 to 110 percent of the legally required level of appraisal for direct equalization or reappraisal, or 95 to 105 percent for indirect equalization. A smaller maximum range for indirect equalization is justified because taxpayers are not as comprehensively affected. Oversight agencies should adopt performance standards that are as close to the legally required level as can be justified given the local situation and taking into account the factors discussed herein.

In addition to the above appraisal level standards, each class of property for which appraisal level standards have been defined must be within 5 percent of the overall level of appraisal of the jurisdiction (see section 11.2.3, "Uniformity among Strata," in this part). Both criteria must be met.

### *11.1.3 Confidence Intervals in Conjunction with Performance Standards*

By themselves, the calculated measures of central tendency provide only an indication, not proof, of whether the appraisal level meets the performance standard. So, the purpose of confidence intervals and similar statistical tests is to determine whether the appraisal level differs from the established performance standard in a particular instance. A conclusion of noncompliance requires a high degree of confidence, thus a 90 percent (two-tailed) or 95 percent (one-tailed) confidence interval should be used, except for small or highly variable samples as described in section 11.1.5, "Adjustment for High Variability and Small Samples," in this part.

### *11.1.4 Decision Model*

The oversight agency should determine whether the estimate is outside the acceptable range around the legal level of appraisal with a specified degree of statistical significance. The chosen interval should overlap the performance standard range of 90 percent to 110 percent in the case of direct equalization or measuring appraisal performance. For indirect equalization the chosen interval should overlap the performance standard range of 95 percent to 105 percent. If the confidence interval does not overlap any portion of the appropriate range, equalization is performed or reappraisal orders are issued. See table 2-4 for an example of the direct equalization or appraisal performance decision making process.

### *11.1.5 Adjustments for High Variability and Small Samples*

High variability, small sample size, or a combination of these factors often causes confidence intervals to become quite wide. Wide confidence intervals reflect the imprecision of the underlying statistic and can decrease the usefulness of performance measures. Also, wide confidence intervals can cause an inequitable situation in which jurisdictions with small samples and large variability are never subject to equalization or reappraisal orders, while jurisdictions with larger samples and much less variability are more likely to be subject to such orders even though their appraisal performance may be arguably better.

For these reasons, oversight agencies should consider expanding sample sizes by taking steps to increase the number of sales or by making independent appraisals (see

**Table 2-4.** Ratio Study Standards and Decision Making—Direct Equalization or Appraisal Performance Using Median 90%–110% Standard

*Example demonstrating application of standard at a 95% level of confidence*

| Case | Point Estimate | Confidence Interval (CI) Width (95%) | CI Overlaps Performance Standard Range | Point Estimate in Performance Standard Range | Equalization Action or Reappraisal Order |
|---|---|---|---|---|---|
| 1 | 92% | 86% to 101% | yes | yes | no |
| 2 | 88% | 81% to 95% | yes | no | no |
| 3 | 84% | 79% to 88% | no | no | yes |

section 7.4 part 2). If the sample size cannot be increased, two options may be considered when the point estimate fails to achieve compliance but the confidence interval overlaps the range of compliance:

- If a particular point estimate does not meet the standard for the current study cycle the oversight agency may reduce the level of confidence by 5% the following year. This may be followed by an annual stepwise reduction of 5%. Such a reduction may continue to a 70 percent level of confidence if the point estimate fails to meet the compliance threshold over this period of time. Corrective action would be imposed when a given year's confidence interval fails to include the performance standard range.
- The oversight agency may examine statistical point estimates over several study cycles. A jurisdiction that fails to meet a particular point standard for 5 consecutive years has a probability of less than 5% that compliance has been achieved, even if the confidence interval overlaps the compliance threshold every year. In such cases the oversight agency would impose corrective decisions based upon the point estimate.

### *11.1.6 Calculating Equalization Adjustments*

If noncompliance with either direct or indirect equalization standards is indicated, the appropriate point estimate (statistic) measuring appraisal level should be used to calculate adjustment factors, by dividing it into 100 percent.

## 11.2 Appraisal Uniformity

Assuming the existence of an adequate and sufficiently representative sample, if the uniformity of appraisal is unacceptable, reappraisal should be undertaken regardless of the level of appraisal. The oversight agency should recognize that the COD is a point estimate and cannot be accepted as proof of assessment uniformity problems without an appropriate degree of statistical confidence. Such proof can be provided by recognized statistical tests, including bootstrap confidence intervals. If the data are normally distributed, the COV and confidence intervals around this measure also can be determined. Then the COV can be mathematically converted into an equivalent COD.

### *11.2.1 Oversight Uniformity Standards*

Oversight agencies should establish uniformity standards for local assessment jurisdictions. Any COD performance standards applied to strata within a particular jurisdiction should be related to the overall size, profile of property characteristics (type, age, condition, and obsolescence) and market activity. In general, tighter uniformity standards can be applied to larger jurisdictions with newer construction and active markets. And generally, less stringent uniformity standards should be applied to older, economically depressed or less densely developed areas with less efficient markets. Standards should also be relaxed in jurisdictions that experience economic instability due to sudden changes in supply or demand factors. In developing uniformity standards, oversight agencies should consider reasonable tolerance ranges in making compliance decisions.

### *11.2.2 Multi-level Uniformity Standards*

The uniformity standards presented in table 2-3 are defined in terms of the COD (point estimate) measure and are intended to apply to ratio studies based on sales, not those based on independent appraisals in which lower CODs often are typically observed. If reliability measures are not employed, sample size will play a critical role in setting the maximum acceptable COD. In addition, in unusually homogeneous or restrictive markets or for properties subject to use-value or similar constrained value assessment, low CODs also can be anticipated. In all other cases, CODs less than 5 percent should be considered unusual and possibly indicative of nonrepresentative samples or the selective reappraisal of sold parcels. The COD standards in table 2-3 may not be applicable to property strata in unique, depressed, or rapidly changing markets. In such cases, assessment administrators may be able to develop target standards based on an analysis of past performance or results in similar markets elsewhere. Such an analysis can be based on ratio study results for the past five years or more.

### *11.2.3 Uniformity among Strata*

Although the goal is to achieve an overall level of appraisal equal to 100 percent of the legal requirement, ensuring uniformity in appraisal levels among strata is also important. The level of appraisal of each stratum (class, neighborhood, age group, market areas, and the like) should be within 5 percent of the overall level of appraisal of the jurisdiction. For example, if the overall level of appraisal of the jurisdiction is 1.00, but the appraisal level for residential property is 0.93 and the appraisal level for commercial property is 1.06 the jurisdiction is not in compliance with this requirement. This test should be applied only to strata subject to compliance testing. The oversight agency can conclude that this standard has been met if 95 percent (two-tailed) confidence intervals about the chosen measures of central tendency for each of the stratum fall within 5 percent of the overall level of appraisal calculated for the jurisdiction. Using the above example, if the upper confidence limit for the level of residential property is 0.97 and the lower confidence limit for commercial property is 1.01, the two strata are within the acceptable range.

### *11.2.4 Vertical Equity*

PRDs should be between 0.98 and 1.03. The reason this range is not centered on 1.00 relates to an inherent upward

bias in the arithmetic mean (numerator in the PRD) that does not equally affect the weighted mean (denominator in the PRD). When samples are small, have high dispersion, or include properties with extreme values, the PRD may not provide an accurate indication of assessment regressivity or progressivity. Similar considerations apply to special-purpose real property and to personal property. It is good practice to perform an appropriate statistical test for price-related biases before concluding that they exist (see table 1-2 in Part 1).

### 11.3 Natural Disasters and Ratio Study Standards

Natural disasters such as earthquakes, floods, and hurricanes can have a substantial impact on the conduct of ratio studies and the interpretation and use of the results, and in general, they:

- increase the difficulty of accurately identifying the physical and economic characteristics of property on the dates of sale/lease and the date of appraisal
- increase the difficulty of producing sufficiently reliable appraised values (numerators)
- decrease the availability of usable sales and other market data
- increase the difficulty of identifying and obtaining such usable data
- increase the difficulty of producing sufficiently reliable independent appraisals
- increase the difficulty of accurately matching the characteristics of numerators with those of denominators

These potential problems can result from extraordinary changes in market conditions and in the physical and economic characteristics of property between the dates of sale/lease and the date of appraisal. As a result of these potential problems, a number of unreliable sample properties may need to be voided and usable sample sizes can be reduced significantly. All of these factors should be considered when ratio study standards are applied to ratio study results from areas substantially affected by natural disasters, but such consideration must not result in unwarranted relaxation of applicable standards. When faced with such situations, oversight agencies must use informed, reasoned judgment and common sense to produce a sufficiently reliable ratio study, based upon the best information available.

## 12. Personal Property Studies

Most personal property ratio studies performed by oversight agencies are performed for equalization purposes. Because indirect equalization in particular requires overall estimation of value, it is imperative for these ratio studies to focus on large accounts.

Horizontal equity requires similar levels of appraisal between real and personal property. Sales data for personal property are difficult to obtain and analyze because markets for personal property are generally less visible and more difficult to follow than real property markets. Therefore, performance reviews and appraisal ratio studies should be used in place of sales ratio studies to determine the quality of appraisal of personal property. The performance review does not quantify assessment conditions but can determine general assessment quality. The appraisal ratio study can be used to determine the level and uniformity of assessment for personal property.

### *12.1. The Performance Review*

The performance review is an empirical study that evaluates the assessment method used and the ability of the jurisdiction to meet its legal requirement in the assessment of personal property. This type of study can be used to allocate tax dollars in multijurisdictional funding calculations or equalization by assuming that jurisdictions passing the performance review are assessing personal property at the general level of other classes of property analyzed with ratio studies.

#### *12.1.1. Discovery*

The jurisdiction must have the ability to discover the owners or users of taxable personal property within the jurisdiction. This is accomplished using phone books, business/occupational licenses, listings, sales tax rolls, and field reviews (see IAAO Course 500, "The Assessment of Personal Property," and *Standard on Personal Property Valuation* [IAAO 2005] for a complete list).

#### *12.1.2. Valuation*

Personal property is valued by using acceptable schedules and methods including depreciation schedules published by nationally recognized valuation firms, market data from published valuation guides, and other generally accepted valuation methods and acceptable adjustments (see Standard on Valuation of Personal Property).

#### *12.1.3. Verification*

Inclusiveness of personal property returns and reports should be verified by an audit program. The audit program should focus on larger and complex accounts; however, it also should include randomly selected accounts. The audit program should provide coverage of the entire tax base regardless of the jurisdiction's reappraisal cycle.

#### *12.1.4 Forms and Renditions*

Comprehensive forms supplied by the assessment authority should allow the taxpayer to disclose fully all assessable personal property. The tax laws should require mandatory compliance, with meaningful penalties for noncompliance.

## 12.2. Appraisal Ratio Studies for Personal Property

The appraisal ratio study produces an estimate of the level of assessment of personal property by developing a ratio for property that is on the tax roll through the use of appraisals. The level of assessment determined in this way can be adjusted downward to account for property that has not been assessed.

### *12.2.1 Assessment Ratio for Personal Property*

Personal property market values are usually derived from appraisals using a replacement cost new less depreciation (RCNLD) approach (see IAAO Course 500). A comparison of the depreciation schedules in use to nationally accepted schedules would enable the calculation of a ratio for property on the roll. A statistically sound process should be used to select a sample that is representative of personal property on the tax rolls. Such a sample can be parcel- or value-based depending on the intended use of the ratio study in indirect or direct equalization.

### *12.2.2 Stratification*

Proper stratification of personal property accounts should be done for greater statistical accuracy. Strata should be based on the type and value of personal property accounts.

Stratification by type of account should occur first. Personal property accounts can be divided into residential (motor vehicles, boats, aircraft, and the like), agriculture, and business accounts. Further stratification can occur in residential and agricultural accounts but is necessary in business or commercial accounts. Business accounts are usually stratified by size into a minimum of four groups. Value ranges for these groups should be derived from the value ranges in the local market. One example would be small (less than $250,000), medium ($250,000 to $1 million), moderate ($1-$5 million), and large (greater than $5 million). Individual size of account can be determined by value on the prior-year personal property roll.

### *12.2.3 Property Escaping Assessment*

Personal property is particularly prone to escaping assessment. Some determination should be made about the portion of taxable personal property not on the assessment roll. However, estimates based on national averages are less meaningful at the local jurisdictional level.

#### *12.2.3.1 Identifying Personal Property Owners and Users Not on the Roll*

Discovery tools can be used to determine accounts not on the roll for a sample area or group. Once the extent of the problem is identified, a projection can be made of the percentage of personal property not identified on the assessment roll.

#### *12.2.3.2 Identifying Personal Property Not Included in Taxpayer Returns/Reports*

The accepted method of determining the property omitted in taxpayer returns/reports is to audit the account (see IAAO workshops on auditing). The audit results are applied back to the account value. The resulting fraction is property that is escaping taxation within that particular personal property account. If appropriate sampling techniques are used in selecting the accounts for audit, the resulting ratio is applied to the total roll to help determine the percentage of personal property escaping assessment within the jurisdiction.

### *12.2.4 Computing the Level of Appraisal*

The overall ratio is then determined by reducing the valuation ratio by the percent of property wholly or partially escaping taxation. For example, if the appraisal level is found to be 90 percent and it is determined that 5 percent of personal property is escaping assessment, then the corrected level of assessment is the appraisal level times the percentage of personal property assessed: $0.90 \times (1 - 0.05) = 0.855$. For indirect equalization, this calculation would result in a higher equalized value.

# *Standard on Ratio Studies*

## Definitions

**Absolute value.** The value of a number (or variable) regardless of its sign. For example, 3 and –3 (minus 3) both have an absolute value of 3. The mathematical symbol for absolute value is one vertical bar on each side of the number in question, for example, |3|.

**Accuracy.** The closeness of a measurement, computation, or estimate to the true, exact, or accepted value. Accuracy also can be expressed as a range about the true value. *See also* **precision** *and* **statistical accuracy.**

**Adjusted sale price.** The sale price that results from adjustments made to the stated sale price to account for the effects of time, personal property, financing, or the like.

**Appraisal.** "The act or process of developing an opinion of value; an opinion of value" (USPAP 1999). The act of estimating the money value of property. The money value of property as estimated by an appraiser.

**Appraisal date.** The date as of which a property's value is estimated. *See also* **assessment date.**

**Appraisal ratio.** (1) The ratio of the appraised value to an indicator of market value. (2) By extension, an estimated fractional relationship between the appraisals and market values of a group of properties. *See also* **level of appraisal.**

**Appraisal ratio study.** A ratio study using independent expert appraisals as indicators of market value.

**Appraisal-sale price ratio.** The ratio of the appraised value to the sale price (or adjusted sale price) of a property; a simple indication of appraisal accuracy.

**Appraised value.** The estimate of the value of a property before application of any fractional assessment ratio, partial exemption, or other adjustments.

**Arithmetic mean.** A measure of central tendency. The result of adding all the values of a variable and dividing by the number of values. For example, the arithmetic mean of 3, 5, and 10 is 18 divided by 3 or 6.

**Array.** An ordered arrangement of data, such as a listing of sales ratios, in order of magnitude.

**Assessed value.** (1) A value set on real estate and personal property by a government as a basis for levying taxes. (2) The monetary amount at which a property is put on the assessment roll for purposes of computing the tax levy. Assessed values differ from the assessor's estimate of actual (market) value for four major reasons: fractional assessment ratios, partial exemptions, preferential assessments, and decisions by assessing officials to override market value.

**Assessment.** (1) In general, the official acts of determining the amount of the tax base. (2) As applied to property taxes, the official act of discovering, listing, and appraising property, whether performed by an assessor, a board of review, or a court. (3) The value placed on property in the course of such act.

**Assessment-appraisal ratio.** The ratio of the assessed value of a property to an independent appraisal.

**Assessment date.** The status date for tax purposes. Appraised values reflect the status of the property and any partially completed construction as of this date.

**Assessment progressivity (regressivity).** An appraisal bias such that high-value properties are appraised higher (or lower) than low-value properties in relation to market values. *See also* **price-related differential.**

**Assessment ratio.** (1) The fractional relationship of an assessed value to the market value of the property in question. (2) By extension, the fractional relationship of the total of the assessment roll to the total market value of all taxable property in a jurisdiction. *See also* **level of assessment.**

**Assessment-sale price ratio.** The ratio of the assessed value to the sale price (or adjusted sale price) of a property.

**Assessor.** (1) The head of an assessment jurisdiction. Assessors can be either elected or appointed. In this standard the term is sometimes used collectively to refer to all assessment officials charged with administering the assessment function. (2) The public officer or member of a public body whose duty it is to make the original assessment.

**Average deviation.** The arithmetic mean of the absolute deviations of a set of numbers from a measure of central tendency such as the median. Taking absolute values is generally understood without being stated. The average deviation of the numbers 4, 6, and 10 about their median (6) is $(2 + 0 + 4) \div 3 = 2$. The average deviation is used in computing the coefficient of dispersion (COD).

**Bias.** A type of nonsampling error in which a calculated statistic differs systematically from the population parameter. A process is biased if it produces results that vary systematically with some factor that should be irrelevant. In assessment administration, assessment progressivity (regressivity) is one kind of possible bias.

**Bootstrap.** A computer-intensive method of statistical inference that is based on a repeated resampling of data to provide more information about the population characteristics. The bootstrap is a data-driven procedure that is

particularly useful for confidence interval approximation when no traditional formulas are available or the sample has been drawn from a population that does not conform to the normal distribution.

**CAMA.** *See* ***computer-assisted mass appraisal***

**Central tendency.** (1) The tendency of most kinds of data to cluster around some typical or central value, such as the mean or median. (2) By extension, any or all such statistics. Some kinds of data, however, such as the weights of cars and trucks, may cluster about two or more values, and in such circumstances the meaning of central tendency becomes unclear. This may happen in ratio studies in which two or more classes of property are combined.

**Class.** A set of items defined by common characteristics. (1) In property taxation, property classes such as residential, agricultural, and industrial may be defined. (2) In assessment, building classification systems based on type of building design, quality of construction, or structural type are common. (3) In statistics, a predefined category into which data may be put for further analysis. For example, ratios may be grouped into the following classes: less than 0.500, 0.500 to 0.599, 0.600 to 0.699, and so forth.

**COD.** *See* ***coefficient of dispersion.***

**Coefficient of concentration.** The percentage of observations falling within a specified percentage (say, 15 percent) of a measure of central tendency.

**Coefficient of dispersion (COD).** The average deviation of a group of numbers from the median expressed as a percentage of the median. In ratio studies, the average percentage deviation from the median ratio.

**Coefficient of variation (COV).** A standard statistical measure of the relative dispersion of the sample data about the mean of the data; the standard deviation expressed as a percentage of the mean.

**Computer-assisted mass appraisal (CAMA).** A process that uses a system of integrated components and software tools necessary to support the appraisal of a universe of properties through the use of mathematical models that represent the relationship between property values and supply/demand factors.

**Confidence interval.** A range of values, calculated from the sample observations, that are believed, with a particular probability, to contain the true population parameter (mean, median, COD). The confidence interval is not a measure of precision for the sample statistic or point estimate, but a measure of the precision of the sampling process (see **reliability**).

**Confidence level.** The degree of probability associated with a statistical test or confidence interval, commonly 90, 95, or 99 percent. For example, a 95 percent confidence interval implies that were the estimation process repeated again and again, then 95 percent of the calculated intervals would be expected to contain the true population measure (such as the median, mean, or COD).

**Contributory value.** The amount a component of a property contributes to the total market value. For improvements, contributory value must be distinguished from costs.

**COV.** *See* **coefficient of variation.**

**Date of sale (date of transfer).** The date on which the sale was consummated. This is considered to be the date the deed, or other instrument of transfer, is signed. The date of recording can be used as a proxy if it is not unduly delayed as it would be in a land contract.

**Direct equalization.** The process of converting ratio study results into adjustment factors (trends) and changing locally determined appraised or assessed values to more nearly reflect market value or the legally required level of assessment. *See also* **equalization** and **indirect equalization**.

**Dispersion.** The degree to which data are distributed either tightly or loosely around a measure of central tendency. Measures of dispersion include the range, average deviation, standard deviation, coefficient of dispersion, and coefficient of variation.

**Distribution-free statistics.** A set of robust nonparametric methods whose interpretation or reliability does not depend on stringent assumptions about the distribution of the underlying population from which the sample has been drawn. *See also* **parametric statistics**.

**Equalization.** The process by which an appropriate governmental body attempts to ensure that property under its jurisdiction is assessed at the same assessment ratio or at the ratio or ratios required by law. Equalization can be undertaken at many different levels. Equalization among use classes (such as agricultural and industrial property) can be undertaken at the local level, among properties in a school district and a transportation district; equalization among counties is usually undertaken by the state to ensure that its aid payments are distributed fairly. *See also* **direct equalization** *and* **indirect equalization**.

**Exploratory data analysis.** That part of statistical practice concerned with reviewing the data set to isolate structures, uncover patterns, or reveal features that may improve the confirmatory analysis.

**Fixture.** An asset that has become part of real estate through attachment in such a manner that its removal would result in a loss in value to either the asset or the real estate to which the asset is affixed.

**Fractional assessments.** Assessments that by law or by practice have assessment ratios different from 1. Usually the assessment ratio is less than 1, and if assessment biases are present, different classes of property may have different fractional ratios.

**Frequency distribution.** A table or chart showing the number or percentage of observations falling in the boundaries of a given set of classes. Used in ratio studies to summarize the distribution of the individual ratios. *See also* **class** *and* **histogram.**

**Histogram.** A bar chart or graph of a frequency distribution in which the frequencies of the various classes are indicated by horizontal or vertical bars whose lengths are proportional to the number or percentage of observations in each class.

**Hypothesis.** A statement in inferential statistics, the truth of which the analyst is interested in determining.

**Independent appraisal.** An estimate of value using a model different from that used for assessment purposes. Independent appraisals are used to supplement sales in sales ratio studies or in appraisal ratio studies.

**Indirect equalization.** The process of computing hypothetical values that represent the oversight agency's best estimate of taxable value, given the legally required level of assessment or market value. Indirect equalization allows proper distribution of intergovernmental transfer payments between state or provincial and local governments despite different levels of appraisal between jurisdictions or property classes. *See also* **equalization** *and* **direct equalization.**

**Interquartile range (IQR).** The result obtained by subtracting the first quartile from the third quartile. By definition 50 percent of the observations fall within the IQR.

**Land contract.** An executor's contract for the purchase of real property under the terms of which legal title to the property is retained by the vendor until such time as all conditions stated in the contract have been fulfilled; commonly used for installment purchase of real property.

**Level of appraisal.** The common, or overall, ratio of appraised values to market values. Three concepts are usually of interest: the level required by law, the true or actual level, and the computed level based on a ratio study.

**Level of assessment.** The common or overall ratio of assessed values to market values. *See also* **level of appraisal.** *Note:* The two terms are sometimes distinguished, but there is no convention determining their meanings when they are. Three concepts are commonly of interest: what the assessment ratio is legally required to be, what the assessment ratio for the population actually is, and what the assessment ratio for the population seems to be, on the basis of a sample and application of inferential statistics. When level of assessment is distinguished from assessment ratio, *level of assessment* usually means either the legal requirement or the true ratio, and *assessment ratio* usually means the true ratio or the sample statistic.

**Margin of error.** A measure of the uncertainty associated with statistical estimates of a parameter. It is typically linked to consumer surveys or political poll questions. A margin of error is a key component of a confidence interval. It reports a "plus or minus" percentage or proportion quantity in a confidence interval at a specified level of probability (typically 95 percent). *See also* **confidence interval.**

**Market value.** The major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined. A current economic definition agreed upon by agencies that regulate federal financial institutions in the United States is: The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: The buyer and seller are typically motivated; Both parties are well informed or well advised, and acting in what they consider their best interests; A reasonable time is allowed for exposure in the open market; Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (See USPAP for additional comments.)

**Mass appraisal.** The process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing (see *USPAP*)

**Mean.** *See* **arithmetic mean.**

**Median.** A measure of central tendency. The value of the middle item in an uneven number of items arranged or arrayed according to size; the arithmetic average of the two central items in an even number of items similarly arranged.

**Median absolute deviation.** The median of the absolute deviations from the median. In a symmetrical distribution, the measure approximates one-half the IQR.

**Median percent deviation.** The median of the absolute percent deviations from the median; calculated by dividing the median absolute deviation by one-hundredth of the median.

***Nonparametric statistics.*** ***See distribution-free statistics.***

**Nonsampling error.** The error reflected in ratio study statistics from all sources other than sampling error. While nonsampling error is unavoidable due to the inefficiencies inherent in real property markets, the imperfections of the appraisal process, and the imperfections of conducting ratio studies, all practicable steps must be taken to minimize nonsampling error in ratio studies.

**Normal distribution.** A theoretical distribution often approximated in real world situations. It is symmetrical and bell-shaped; 68 percent of the observations occur within one standard deviation of the mean and 95 percent within two standard deviations of the mean.

**Observation.** One recording or occurrence of the value of a variable, for example, one sale ratio among a sample of sales ratios.

**Outliers.** Observations that have unusual values, that is, differ markedly from a measure of central tendency. Some outliers occur naturally; others are due to data errors.

**Parameter.** Numerical descriptive measure of the population, for example, the arithmetic mean or standard deviation. Parameters are generally unknown and estimated from statistics calculated from a sample of the population.

**Parametric statistics.** Statistics whose interpretation or reliability depends on the distribution of the underlying data. *See also* **distribution-free statistics**.

**Percentile.** The values that divide a set of data into specified percentages when the data are arrayed in ascending order. The tenth percentile includes the lowest 10 percent of the values, the twentieth percentile includes the lowest 20 percent of the values, and so forth.

**Personal property.** *See* **property.**

**Plottage value.** The excess of the value of a large parcel of land formed by assemblage over the sum of the values of the unassembled parcels.

**Point estimate.** A single numerical value that can be used to estimate a population parameter. It is calculated on the basis of information collected from a sample. Point estimates are generally constructed to provide the best unbiased estimate of the population parameter consistent with the sample data. However, the point estimate is only an estimate, and is unlikely to have the same value as the population parameter. (See **Confidence interval** and **Reliability** for discussion of precision of the sampling process.)

**Points.** Prepaid interest on a loan; one point is equal to 1 percent of the amount of the loan. It is common to deduct points in advance of the loan, so that an individual pays interest on 100 percent of the loan but gets cash on, say, only 99 percent.

**Population.** All the items of interest, for example, all the properties in a jurisdiction or neighborhood; all the observations in a data set from which a sample may be drawn.

**Precision.** The level of detail in which a quantity or value is expressed or represented. It can be characterized as the number of digits used to record a measurement. A high level of represented precision may be used to imply a greater level of accuracy; however, this relationship may not be true. Precision also relates to the quality of an operation or degree of refinement by which results are obtained. A method of measurement is considered precise if repeated measurements yield the same or nearly the same numeric value. *See also* **accuracy** *and* **statistical precision.**

**PRD.** *See* **price-related differential.**

**Price.** The amount asked, offered, or paid for a property. (See USPAP [2004] for additional comments.)

**Price-related differential.** The mean divided by the weighted mean. The statistic has a slight bias upward. Price-related differentials above 1.03 tend to indicate assessment regressivity; price-related differentials below 0.98 tend to indicate assessment progressivity.

**Progressivity.** *See* **assessment progressivity (regressivity).**

**Property.** An aggregate of things or rights to things. These rights are protected by law. There are two basic types of property: real and personal. Real property consists of the interests, benefits, and rights inherent in the ownership of land plus anything permanently attached to the land or legally defined as immovable; the bundle of rights with which ownership of real estate is endowed. To the extent that "real estate" commonly includes land and any permanent improvements, the two terms can be understood to have the same meaning. Also called *realty*. Personal property is defined as those items that generally are movable or all items not specifically defined as real property. Many states include as personal property the costs associated with placing personal property in service, such as sales tax, freight, and installation. Installation items include, but are not limited to, wiring, foundations, hookups, and attachments. Two commonly used tests for distinguishing real and personal property are (1) the intent of the parties and (2) whether the item may be removed from the real estate without damage to either.

**Qualified sale.** A property transfer that satisfies the conditions of a valid sale and meets all other technical criteria for inclusion in a ratio study sample. If a property has undergone significant changes in physical characteristics, use, or condition in the period between the assessment date and sale date, it would not technically qualify for use in ratio study.

**Quartiles.** The values that divide a set of data into four equal parts when the data are arrayed in ascending order. The first quartile includes the lowest quarter of the data, the second quartile, the second lowest quarter, and so forth.

**Random sample.** A sample of $n$ items selected from a population in such a way that each sample of the same size is equally likely. This also includes the case in which each element in the sample has an equal chance of being selected.

**Range.** (1) The maximum value of a sample minus the minimum value. (2) The difference between the maximum and minimum values that a variable may assume.

**Ratio study.** A study of the relationship between appraised or assessed values and market values. Indicators of market values may be either sales (sales ratio study) or independent "expert" appraisals (appraisal ratio study). Of common interest in ratio studies are the level and uniformity of the appraisals or assessments. *See also* **level of appraisal** *and* **level of assessment.**

**Real property.** *See* **property.**

**Regressivity.** *See* **assessment progressivity (regressivity).**

**Regressivity index.** *See* **price-related differential.**

**Reliability.** In a sampling process, the extent to which the process yields consistent population estimates. Ratio studies typically are based on samples. Statistics derived from these samples may be more or less likely to reflect the true condition in the population depending on the reliability of the sample. Representativeness, sample size, and sample uniformity all contribute to reliability. Formally, reliability is measured by sampling error or the width of the confidence interval at a specific confidence level relative to the central tendency measure.

**Representative sample.** A sample of observations from a larger population of observations, such that statistics calculated from the sample can be expected to represent the characteristics of the population being studied.

**Sale price.** (1) The actual amount of money exchanged for a unit of goods or services, whether or not established in a free and open market. An indicator of market value. (2) Loosely used synonymously with "offering" or "asking price."

**Sale ratio.** The ratio of an appraisal (or assessed) value to the sale price or adjusted sale price of a property.

**Sales chasing.** Sales chasing is the practice of using the sale of a property to trigger a reappraisal of that property at or near the selling price. If sales with such appraisal adjustments are used in a ratio study, the practice causes invalid uniformity results and causes invalid appraisal level results, unless similar unsold parcels are reappraised by a method that produces an appraisal level for unsold properties equal to the appraisal level of sold properties. (2) By extension, any practice that causes the analyzed sample to misrepresent the assessment performance for the entire population as a result of acts by the assessor's office. A subtle, possibly inadvertent, variety of sales chasing occurs when the recorded property characteristics of sold properties are differentially changed relative to unsold properties. Then the application of a uniform valuation model to all properties results in the recently sold properties being more accurately appraised than the unsold ones.

**Sales ratio study.** A ratio study that uses sales prices as proxies for market values.

**Sample.** A set of observations selected from a population. If the sample was randomly selected, basic concepts of probability may be applied.

**Sampling error.** The error reflected in ratio study statistics that results solely from the fact that a sample of the population is used rather than a census of the population.

**Scatter diagram or scatter plot.** A graphic means of depicting the relationship or correlation between two variables by plotting one variable on the horizontal axis and one variable on the vertical axis. Often in ratio studies it is informative to determine how ratios are related to other variables. A variable of interest is plotted on the horizontal axis and ratios are plotted on the vertical axis.

**Significance.** A measure of the probability that an event is attributable to a relationship rather than merely the result of chance.

**Skewed.** The quality of a frequency distribution that makes it asymmetrical. Distributions with longer tails on the right than on the left are said to be skewed to the right or to be positively skewed. Distributions with longer tails to the left are said to be skewed to the left or to be negatively skewed.

**Standard deviation.** The statistic calculated from a set of numbers by subtracting the mean from each value and squaring the remainders, adding together all the squares, dividing by the size of the sample less one, and taking the square root of the result. When the data are normally distributed, the percentage of observations can be calculated within any number of standard deviations of the mean from normal probability tables. When the data are not normally distributed, the standard deviation is less meaningful and the analyst should proceed cautiously.

**Standard error.** A measure of the precision of a measure of central tendency; the smaller the standard error, the more reliable the measure of central tendency. Standard errors are used in calculating a confidence interval about the arithmetic mean and the weighted mean. The standard error of the sample mean is the standard deviation divided by the square root of the sample size.

**Statistical accuracy.** The closeness between the statistical estimate and the true (but unknown) population parameter value it was designed to measure. It is usually characterized in terms of error or the potential significance of error and can be decomposed into sampling error and nonsampling error components. Accuracy can be specified by the level of confidence selected for a statistical test. *See also* **accuracy.**

**Statistical precision.** A reference to how closely the survey results from a sample can reproduce the results that would be obtained from the entire population (a complete census). The amount by which a sample statistic can vary from the true population parameter is due to error. Even

if all the sample data are perfectly accurate, random (sampling) error affects statistical precision (measured by the standard error or standard deviation). The dispersion of ratios in the population and the sample size have a controlling influence over the precision of any statistical estimate. When the reliability of a statistical measure is being evaluated, narrower confidence intervals have greater precision. *See also* **precision.**

**Statistics.** Numerical descriptive data calculated from a sample, for example, the median, mean, or COD. Statistics are used to estimate corresponding measures, termed parameters, for the population.

**Stratify.** To divide, for purposes of analysis, a sample of observations into two or more subsets according to some criterion or set of criteria.

**Stratum, strata** (pl.). A class or subset that results from stratification.

**Time-adjusted sale price.** The price at which a property sold adjusted for the effects of price changes reflected in the market between the date of sale and the date of analysis.

**Trimmed mean.** The arithmetic mean of a data set identified by the proportion of the sample that is trimmed from each end of the ordered array. For example, a 10 percent trimmed mean of a sample of size ten is the average of the eight observations remaining after the largest and smallest observations have been removed.

**Value.** (1) The relationship between an object desired and a potential owner; the characteristics of scarcity, utility, desirability, and transferability must be present for value to exist. (2) Value may also be described as the present worth of future benefits arising from the ownership of real or personal property. (3) The estimate sought in a valuation. (4) Any number between positive infinity and negative infinity.

**Variable.** An item of observation that can assume various values, for example, square feet, sales prices, or sales ratios. Variables are commonly described by using measures of central tendency and dispersion.

**Weighted mean; weighted average.** An average in which each value is adjusted by a factor reflecting its relative importance in the whole before the values are summed and divided by their number.

**Weighted mean ratio.** Sum of the appraised values divided by the sum of the sales prices (or independent estimates of market value), which weights each ratio in proportion to the sale price (or independent estimate of market value).

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Additional readings on ratio studies can be found at Member Link, IAAO's bibliographic database, and http://www.iaao.org. Many Web sites offer good information on statistics. Because Web site addresses change frequently, they are not listed here.

# Appendix A. Sales Validation Guidelines

## A.1 Sources of Sales Data

The best sources of sales data are copies of deeds or real estate transfer affidavits containing the full consideration and other particulars of the sale. Assessing officers in jurisdictions without laws mandating full disclosure of sales data to assessing officials work under a severe handicap and should seek legislation that provides for such disclosure.

1. *Real estate transfer documents.* These documents are (1) copies of deeds and land contracts, (2) copies of real estate transfer affidavits, and (3) closing statements.
2. *Buyers and sellers.* Buyers and sellers of real property can be contacted directly to secure or confirm sales data. Means of contact include sales questionnaires, telephone interviews, and personal interviews.
3. *Third-party sources.* Third-party sources include multiple listing agencies, real estate brokers and agencies, government and private fee appraisers, attorneys, appraisal organizations, and others. Of particular value are those individuals or agencies that publish lists of sales or provide sales in an electronic format.

## A.2 Information Required

The following data are needed to make any necessary adjustments to sales prices, compute sales ratios, and update ownership information.

1. *Full consideration involved.* This is the total amount paid for the property, including the cash down payment and amounts financed. The sale price is the most essential item of information concerning the sale, and its accuracy must be carefully scrutinized. In many jurisdictions it is common practice in deeds of conveyance to state considerations in such terms as "one dollar plus other due and just consideration." These amounts are rarely the actual selling price and should be ignored in favor of information from the buyer and seller or other reliable source.
2. *Names of buyer and seller.* This information permits the assessor to maintain a current record of the owners of all property in the jurisdiction. Transfer documents often refer to the buyer as the grantee or transferee and to the seller as the grantor or transferor.
3. *Addresses, phone numbers, and other contact information of buyer and seller or their legal designee.* This information helps to identify more positively the parties to the sale. If the buyer will not reside at the property, the buyer's address may be needed for future correspondence. If the seller has established a new address, this information will aid the assessor in contacting the seller regarding the sale.
4. *Relationship of buyer and seller.* It is important to know whether the buyer and seller are related individuals or corporate affiliates because such sales often do not reflect market value.
5. *Legal description, address, and parcel identifier.* If each parcel is assigned a unique parcel identifier and if this number is noted on the document at the time it is recorded, then the assessor can locate the parcel in the files directly. If not, the legal description or street address is essential to locate the parcel.
6. *Type of transfer.* It is crucial to identify whether or not a sale is an "arm's-length" transfer. Therefore, if the sources of sales data do not include copies of deeds, the type of deed should be specifically required.
7. *Time on the market.* Sales that have been exposed to the open market too long, not long enough, or not at all may not represent market value.
8. *Interest transferred.* The appraiser must identify whether or not the entire bundle of rights (fee simple) to the property has transferred. For example, in some transactions, only a life tenancy ("life estate") may be conveyed, or the seller may retain mineral or other rights to the property. Similarly, the sale price of a property encumbered by a long-term lease may not reflect the market value of the fee simple estate in the property.
9. *Type of financing.* In analyzing the sale, it is helpful to know the amount of down payment; the type, remaining amount, and interest rates of notes secured by mortgages or deeds of trust assumed by the buyer; and the value of any stocks, bonds, notes, or other property passed to the seller. It is also important to know whether the sale conveys title to the property or that it is a land contract, in which title is not conveyed until some time in the future, typically several years.
10. *Personal property.* A sales ratio study requires knowledge of the amount paid for the real

property. The sale document ideally would note the type and value of any significant personal property items included in the transaction.

11. *Date of transfer.* This is the date on which the sale was closed or completed. The date the deed or other transfer document was recorded can be used as a surrogate, provided there was no undue delay in the recording. If there has been a delay in recording, the date of the deed or transfer instrument should be used.
12. *Instrument number.* This number, as well as the record or deed book and page, indicates where the deed is located in the official records and thus can be important in researching sales or leases and identifying duplication.

The data noted above should be maintained in a separate data file or the sale history file component of a CAMA system. In addition, the file should include additional information useful for stratification and other analytical purposes. Sales data files should reflect the physical characteristics of the property when sold. If significant legal, physical, or economic changes have occurred between the sale date and the assessment date, the sale should not be used for ratio studies. (The sale may still be valid for mass appraisal modeling by matching the sale price against the characteristics that existed on the date of sale.)

## A.3 Confirmation of Sales

### A.3.1 Importance of Confirmation

The usefulness of sales data is directly related to the completeness and accuracy of the data. Sales data should be routinely confirmed or verified by contacting buyers, sellers, or other knowledgeable participants in the transaction. In general, the fewer the sales in a stratum, the less common or more complex the type of property, and the more atypical the sale price, the greater the effort should be to confirm the particulars of the sale. With larger sample sizes, It may be sufficient to confirm single-family residential sales by audit or exception.

### A.3.2 Methods of Confirmation

In general, the completeness and accuracy of sales data are best confirmed by requesting the particulars of a sale from parties to the sale. If a transfer document is not required, questionnaires after the sale can be used. A sales questionnaire, which requests the type of information listed in Section A.2, is one practical means of confirming sales. Telephone or personal interviews can be more comprehensive than mailed questionnaires. Forms with space to record the same types of information should be used for such interviews. Appendix G contains a model sale confirmation questionnaire (additional sample sales questionnaires and interview forms can be found in *Improving Real Property Assessment* [IAAO 1978, 95–104]).

Mailed sales questionnaires should be as concise as possible and should include

- a postage-paid return envelope
- official stationery
- purpose of the questionnaire
- contact person
- authorized signature

Forms designed for telephone interviews should include the name and phone number of the contact person. Such forms also should include the date and name of the person conducting the interview along with the number of attempts made to contact a party to the sale.

## A.4 Screening Sales

Sales used in a ratio study must be screened to determine whether they reflect the market value of the real property transferred. Specific objectives of sales screening are as follows:

- to ensure that sales prices reflect to the maximum extent possible only the market value of the real property transferred and not the value of personal property, financing, or leases
- to ensure that sales that occurred only during the period of analysis are used
- to ensure that sales are excluded from the ratio study only with good cause (e.g., when they compromise the validity of the study)

Every arm's-length, open-market sale that appears to meet the conditions of a market value transaction should be included in the ratio study unless one of the following occurs:

- Data for the sale are incomplete, unverifiable, or suspect.
- The sale fails to pass one or more specific tests of acceptability.
- A sufficiently representative sample of sales that occurred during the study period can be randomly selected to provide sufficiently reliable statistical measures.

The sales reviewer should take the position that all sales are candidates as valid sales for the ratio study unless sufficient and compelling information can be documented to show otherwise. If sales are excluded without substantiation, the study may appear to be subjective. Reason codes can be established for invalid sales.

No single set of sales screening rules or recommendations can be universally applicable for all uses of sales data or under all conditions. Sales screening guidelines and procedures should be consistent with the provisions of the

value definition applicable to the jurisdiction. Appraisers must use their judgment, but should not be arbitrary. To help analysts make wise and uniform judgments, screening procedures should be in writing. Each sales analyst should be thoroughly familiar with these procedures as well as with underlying real estate principles (Tomberlin 2001).

### A.4.1 Sales Generally Invalid for Ratio Studies

The following types of sales are often found to be invalid for ratio studies and can be automatically excluded unless a larger sample size is needed and further research is conducted to determine that sales are open-market transactions.

1. *Sales involving government agencies and public utilities.* Such sales can involve an element of compulsion and often occur at prices higher than would otherwise be expected.
2. *Sales involving charitable, religious, or educational institutions.* A sale to such an organization can involve an element of philanthropy, and a sale by such an organization can involve a nominal consideration or restrictive covenants.
3. *Sales involving financial institutions.* A sale in which the lienholder is the buyer can be in lieu of a foreclosure or a judgment and the sale price can equal the loan balance only.
4. *Sales between relatives or corporate affiliates.* Sales between relatives are usually non-open-market transactions and tend to occur at prices lower than would otherwise be expected.
5. *Sales settling an estate.* A conveyance by an executor or trustee under powers granted in a will may not represent fair market value, particularly if the sale takes place soon after the will has been filed and admitted to probate in order to satisfy the decedent's debts or the wishes of an heir.
6. *Forced sales.* Such sales include those resulting from a judicial order. The seller in such cases is usually a sheriff, receiver, or other court officer.
7. *Sales of doubtful title.* Sales in which title is in doubt tend to be below market value. When a sale is made on other than a warranty deed, there is a question of whether the title is merchantable. Quit claim deeds and trustees' deeds are examples.

### A.4.2 Sales with Special Conditions

Sales with special conditions can be open-market sales but must be verified thoroughly and used with caution in ratio studies.

1. *Trades.* In a trade, the buyer gives the seller one or more items of real or personal property as all or part of the full consideration. If the sale is a pure trade with the seller receiving no money or securities, the sale should be excluded from analysis. If the sale involves both money and traded property, it may be possible to include the sale in the analysis if the value of the traded property is stipulated, can be estimated with accuracy, or is small in comparison to the total consideration. However, transactions involving trades should be excluded from the analysis whenever possible, particularly when the value of the traded property appears substantial.
2. *Partial interests.* A sale involving the conveyance of less than the full interest in a property should be excluded from the analysis unless several sales of partial interests in a single property take place at the same time and the sum of the partial interests equals the fee-simple interest. Then the sum of the sales prices of the partial interests can sometimes be assumed to indicate the sale price of the total property. At other times, however, the purchase of such partial interests is analogous to plottage value in which a premium may have been paid.
3. *Land contracts.* Land contracts and other installment purchase arrangements in which title is not transferred until the contract is fulfilled require careful analysis. Deeds in fulfillment of a land contract often reflect market conditions several years in the past, and such dated information should be excluded from analysis. Sales data from land contracts also can reflect the value of the financing arrangements. In such instances, if the transaction is recent, the sale price should be adjusted for financing (see section A.5.2).
4. *Incomplete or unbuilt common property.* Sales of condominium units and of units in planned unit developments or vacation resorts often include an interest in common elements (for example, golf courses, clubhouses, or swimming pools) that may not exist or be usable on the date of sale or on the assessment date. Sales of such properties should be examined to determine whether prices might be influenced by promises to add or complete common elements at some later date. Sales whose prices are influenced by such promises should be excluded from the analysis, or the sales prices should be adjusted to reflect only the value of the improvements or amenities in existence on the assessment date.

5. *Auctions.* In general, auction sales of real property tend to be at the lower end of the price spectrum. Auction sales that have been well-advertised and well-attended may be valid for consideration in ratio studies. The seller also must have the option to set a minimum bid on the property or the right of refusal on all bids *(with reserve)* in order for the sale to be considered valid.

### A.4.3 Multiple-Parcel Sales

A multiple-parcel sale is a transaction involving more than one parcel of real property. These transactions present special considerations and should be researched and analyzed before being used in ratio studies.

If the appraiser needs to include multiple-parcel sales, he or she should first determine whether the parcels are contiguous and whether the sale comprises a single economic unit or multiple economic units. Regardless of whether the parcels are contiguous, any multiple-parcel sale that also involves multiple economic units generally should not be used in ratio studies because of the likelihood that these sales include some plottage value or some discount for economies of scale, unless adequate adjustments for these factors can be made to the sale price.

### A.4.4 Acquisitions or Divestments by Large Property Owners

Acquisitions or divestments by large corporations, pension funds, or real estate investment trusts (REITs) that involve multiple parcels typically should be rejected for ratio study purposes.

### A.4.5 IRS 1031 Exchanges

Internal Revenue Service (IRS) Regulation 1031 stipulates that investment properties can be sold on a tax-deferred basis if certain requirements are met. Sale transactions that represent Section 1031 exchanges should be analyzed like any other commercial transaction and, absent conditions that would make the sale price unrepresentative of market value, should be regarded as valid.

### A.4.6 Internet Marketing

Property that sells on the Internet and meets the criteria of being an open-market, arm's-length transaction should be included as a valid transaction in a ratio study. Brokerage and realty firms are using the Internet as an additional method to advertise and market their inventory of property.

### A.4.7 Inaccurate Sale Data

Sale information should never be considered absolutely trustworthy. Jurisdictions can reduce the problem by requiring a sale verification questionnaire (see Appendix G). There should be statutory penalties for persons who falsify information.

## A.5 Adjustments to Sale Prices

Sale prices used in ratio studies may need to be adjusted for financing, assumed long-term leases, personal property, gift programs, and date of sale. This is especially true for nonresidential properties. The real property tax is based on the market value of real property alone as of a specific date. This value may not be the same as investment value (that is, the monetary value of a property to a particular investor) and does not include the value of personal property or financing arrangements.

If adjustments for more than one purpose are to be made, they should be made in the following order:

1. adjustments that develop or isolate the price paid for taxable real property (These include adjustments for personal property received by the buyer, property taken in trade by the seller, the combination of partial interest sales, and incomplete or unbuilt common property.)
2. adjustments that convert the price to a better representation of the market value as of the date of sale (These include adjustments for financing and assumed long-term leases.)
3. adjustments for differences in market value levels between the date of sale and the date of analysis

Procedures for adjusting sales prices should be documented and the adjustment factors supported by market data. These requirements imply an ongoing study of local real estate prices, interest rates, and financing practices. Unsubstantiated or blanket adjustments can jeopardize the acceptance accorded a ratio study by making it appear subjective.

### A.5.1 Adjustments for Personal Property

Sales screening includes determining the contributory value of any significant personal property included in the sale. Personal property includes such tangibles as machinery, furniture, and inventories and such intangibles as franchises, licenses, and non-compete agreements. Ordinarily, it is not necessary to consider goodwill, going-concern value, business enterprise value, or the like, unless the value of these intangible assets has been itemized in a sales contract or a formal appraisal has been prepared by either party.

It is necessary to decide whether each item included in the sale should be classified as real or personal property. (See *Standard on Valuation of Personal Property* [IAAO 2005], which provides guidance on classification of property as real or personal.)

Sale prices should be adjusted by subtracting the contributory value of personal property received by the buyer. Ordinary window treatments, outdated models of free-standing appliances, and common-grade used furniture included with residential property do not usually influence the sale price of real property and do not require an adjustment unless the items were specifically broken out in the contract as personal property included in the sale price.

If the value of personal property appears to be substantial *(10 percent for residential, 25 percent for commercial)*, the sale should be excluded as a valid sale in statistical analysis unless the sample size is small.

### A.5.2 Adjustments for Financing

When financing reflects prevailing market practices and interest rates, sales prices require no adjustment for financing. Adjustments should be considered in the following instances:

1. The seller and lender are the same party and financing is not at prevailing market rates.
2. The buyer assumes an existing mortgage at a non-market interest rate. As with personal property, the preferred means of adjusting for financing is by individual parcel. In this instance and no. 1 above, downward adjustments are warranted when (1) the loan appears to be well secured and the contract interest rate is less than the market interest rate, or (2) the loan appears not to be well secured and the contract interest rate is lower than that required by the market for a loan of equal risk. The amount of adjustment can be computed by capitalizing the difference between monthly payments based on the required market interest rate and those based on the actual interest rate. Market analysis using paired sales (sales of similar properties, some with and some without conventional financing) or statistical techniques can correct for such factors.
3. The seller pays "points" (a percentage of the loan amount). *(Points paid by the borrower are part of the down payment and do not require adjustment.)* When the seller pays points, the sale price should be adjusted downward by the value of the points.
4. The property is sold under a gift program. Gift programs are a type of creative financing for qualified buyers by certain lending institutions that provide the buyer with additional monies to use as part of a down payment or for property improvements. This program is typically associated with low-value properties and can be difficult to discover without a validation questionnaire and/or telephone interview. The gift amount is added to the actual sale price of the property; however, the seller is never in receipt of the gift amount. This gift amount must be deducted from the actual sale price of the real estate prior to statistical analysis.

Adjustments for financing require data on actual and market interest rates, the amount of the loan, and the term and amortization provisions of the loan. Obtaining and properly analyzing such data, as well as estimating the extent to which the market actually capitalizes non-market financing, are difficult and time-consuming and require specialized skills.

### A.5.3 Adjustments for Assumed Leases

The sale price of a property encumbered by a long-term lease of at least three years should be adjusted as follows:

- If the contract rent differs significantly from market rent, then the sales price should be adjusted by the difference between the present worth of the two income streams.
- If the contract rent exceeds market rent, the present worth of the difference in the two income streams should be subtracted from the sale price.
- If the contract rent is less than current market rent, the present worth of the difference in the two income streams should be added to the sale price.

### A.5.4 Adjustments for Time

There should be a program to track changes in price levels over time and adjust sale prices for time as required. This step is an important component of a ratio study. Time adjustments must be based on market analysis and supported with appropriate documentation.

Valid time-adjustment techniques are as follows:

- tracking sales and appraisal ratios over time
- including date-of-sale as a variable in regression or feedback models
- analyzing re-sales
- comparing per-unit values over time in homogeneous strata, such as a subdivision or condominium complex
- isolating the effect of time through paired sales analysis
- statistically supported time trend analysis studies

These techniques are discussed in Gloudemans (1990; 1999), *Property Appraisal and Assessment Administration* (IAAO 1990, Appendix 5-3), and *Improving Real Property Assessment* (IAAO 1978, section 4.6). If sales prices have generally been rising, ratios for sales that

occurred after the assessment date tend to understate the overall level of appraisal. Similarly, sales ratios for sales that occurred before the assessment date tend to overstate the level of appraisal. If prices are generally declining, an opposite pattern results. When tracking ratios over time (using the inverse ratio technique) for determining time adjustments, it is important that ratios for chased sales be excluded, since there is no correlation of such sales ratios with the date of sale.

Changes in price levels should be monitored and time adjustments made by geographic area and type of property, because different segments of the market tend to change in value at different rates.

Oversight agencies can make any appropriate time adjustments after making all other adjustments.

### A.5.5 Other Adjustments

Adjustments to sales prices should not be made for real estate sales and brokerage commissions; closing costs, such as attorney's fees, transfer taxes, and title insurance; and current or delinquent property taxes. Exceptions to this general rule occur when the buyer agrees to pay real estate commissions and delinquent property taxes, in which case the amounts of the payments should be added to the sale price if not already included in the sale amount. Other exceptions occur when the seller agrees to pay expenses normally paid by the buyer. Such expenses include loan origination fees and repair allowances. Loan origination fees paid by the seller should be deducted from the sale price. Repair allowances should be deducted from the sales price only if the property was in an unrepaired state on the appraisal date, but sold at a higher price reflecting the value of the repairs. If the sale occurred before the appraisal date and the repairs were made prior to that date, no adjustment should be made (Knight, Miceli, and Sirmans 2000).

### A.5.6 Special Assessments

Special assessments are used to finance capital improvements or provide services adjacent to the properties they directly benefit. Typically, the property owner is obligated to make annual payments of principal and interest to a local unit of government over a specified number of years. The sale price of a property encumbered by a special assessment can require adjustment if the current balance of the defrayed amount is significant. The sale price can be adjusted upward to account for this lien. If the effect on market value is significant and can be ascertained, an adjustment should be made.

# Appendix B. Outlier Trimming Guidelines

## B.1 Identification of Ratio Outliers

It is first necessary to determine a procedure to identify outliers. Outlier identification based on the interquartile range (IQR) uses order statistics (see table B-1) and has been shown to be robust for a wide variety of distributions (Iglewicz and Hoaglin 1993; Barnett and Lewis 1994). The term outlier is often associated with ratios that fall outside 1.5 multiplied by the IQR. A factor of 3.0 X IQR often is chosen to identify extreme outliers. Other outlier identification procedures are found in statistical literature and can be used. Outlier identification and trimming must not be a part of the sales validation process.

The example in table B-1 demonstrates the use of the 1.5 X IQR procedure to identify outlier ratios. The distribution of ratios often is skewed to the right; therefore, it may be preferable to apply appropriate transformations to the ratios prior to applying the IQR method. For example, the use of logarithmic transformations tends to identify fewer high and more low ratios as outliers.

## B.2 Scrutiny of Identified Outliers

The preferred method of handling an outlier ratio is to subject it to additional scrutiny to determine whether the sale is a non-market transaction or contains an error in fact. If an error can be corrected (for example, data entry), the property should be left in the sample. If the error cannot be corrected or inclusion of the identified outlier would reduce sample representativeness, the sale should be excluded.

## B.3 Outlier Trimming

Once outliers have been identified and scrutinized and any errors resolved, the next step is to exclude those that may unduly influence calculated statistical measures. For this reason, it is acceptable to trim outliers identified by recognized procedures (for cautionary notes on trimming small samples, see Tomberlin [2001] and Hoaglin, Mosteller, and Tukey [1983]. An example of such trimming is found in Table B-2. However, trimming of outliers using arbitrary limits, for example, eliminating all ratios less than 50 percent or greater than 150 percent, tends to distort results and should not be employed.

Detected outliers should be reported and can be treated in a variety of ways, including trimming (D'Agostino and Stephens 1986). If outliers are to be considered for removal, the analyst can select a procedure to trim all or just the extreme or influential outliers (see table B-2). If a trimming method has been used to reject ratios from the sample, this fact must be stated in the resulting statistical analysis. Outlier trimming is not mandatory; however, if

**Table B-1.** A Distribution-Free Method for Locating Outliers
*(The following procedure identifies outlier ratios that fall more than 1.5 times beyond the range of the middle 50 percent of the arrayed sample.)*

**Locating trim boundaries**
**Data set before trimming**

| Rank | Ratio (A/S) |
|---|---|
| 1 | 0.611 |
| 2 | 0.756 |
| 3 | 0.762 |
| 4 | 0.853 |
| 5 | 0.867 |
| 6 | 0.909 |
| 7 | 0.925 |
| 8 | 0.944 |
| 9 | 1.014 |
| 10 | 1.052 |
| 11 | 1.178 |
| 12 | 1.367 |
| 13 | 1.850 |
| 14 | 2.500 |
| **Median ratio** | **0.935** |
| **COD** | **32.271** |

**Steps to locate trim boundaries**

1. *Locate the first quartile point*
   Formula to locate the first quartile:
   (0.25 x number of ratios) + 0.25
   (0.25 x 14 ratios) + 0.25 = 3.75
   3.75 is three-quarters between the third and fourth ranked ratios.
   Ratio 3 = 0.762
   Ratio 4 = 0.853
   Three-quarters between = (0.853 - 0.762) x 0.75 = 0.068
   The first quartile point = 0.762 + 0.068 = 0.830

2. *Locate the third quartile point*
   Formula to locate the third quartile
   (0.75 x number of ratios) + 0.75
   (0.75 x 14 ratios) + 0.75 = 11.25
   11.25 is one-quarter between the eleventh and twelfth ranked ratios.
   Ratio 11 = 1.178
   Ratio 12 = 1.367
   One-quarter between = (1.367 - 1.178) x 0.25 = 0.047
   The third quartile point = 1.178 + 0.047 = 1.225

3. *Compute the interquartile range*
   The distance between the first and third quartile = interquartile range
   1.225 - 0.830 = 0.395

4. *Establish the lower boundary*
   Lower trim point = first quartile - (interquartile range x 1.5 or 3.0)
   0.830 - (0.395 x 1.5) = 0.238.

5. *Establish the upper boundary*
   Upper trim point = (interquartile range x 1.5 or 3.0) + third quartile
   (0.395 x 1.5) + 1.225 = 1.818

**Outliers identified:**
1.850
2.500

**Table B-2.** Effects of Outlier Trimming
*Outliers identified in Table B-1 trimmed*

| | ***After 1.5x trimming*** |
|---|---|
| ***Rank*** | ***Ratio (A/S)*** |
| 1 | 0 611 |
| 2 | 0.756 |
| 3 | 0.762 |
| 4 | 0 853 |
| 5 | 0.867 |
| 6 | 0.909 |
| 7 | 0.925 |
| 8 | 0.944 |
| 9 | 1.014 |
| 10 | 1.052 |
| 11 | 1.178 |
| 12 | 1.367 |
| Median ratio | 0.917 |
| COD15.649 | |

outlier-trimming procedures are not used, sales with extreme or influential ratios must be thoroughly validated and determined to be highly trustworthy observations because they can play a pivotal role in the ratio study outcome.

## B.4 Trimming Limitations

For some distributions, such as when the sample exhibits a high clustering around a specific ratio, the IQR outlier identification method is not appropriate. In such cases the IQR could be quite narrow, leading to the calculation of lower and upper boundaries for outliers and extremes that are quite close to the middle of the data. In such cases, ratios beyond those boundaries should not be automatically excluded, but instead reasonable judgment should be applied to exclude only true outliers or extremes. As one safeguard, analysts can refrain from automatically deleting any "outliers" or "extremes" inside the boundaries where 95 percent (two standard deviations) of the observations would be expected to lie, assuming a normal distribution of data.

It is also appropriate to set maximum trimming limits. For small samples, no more than 10 percent (20 percent in the most extreme cases) of the ratios should be removed. For larger samples, this threshold can be lowered to 5 to 10 percent depending on the distribution of the ratios and the degree to which sales have been screened or validated. Trim limits should be developed in consideration of the extent of sales verification.

In general, IQR-based outlier identification should be undertaken in instances in which sample sizes are sufficient to preclude the aberrant results that can be expected when this procedure is applied to small, highly variable samples.

## B.5 Analytical Use of Identified Outliers

After identification, scrutiny, and correction of errors associated with outliers, the procedure can be run again to identify any remaining apparent outliers. If outlier ratios tend to be concentrated in certain areas or other subsets of the sample, they can point directly to systematic errors in the appraisal process and should be stratified and reanalyzed if they are sufficiently representative.

## B.6 *Reporting Trimmed Outliers and* Results

Ratio study reports or accompanying documentation should clearly state the basis for excluding outlier ratios. Statistics calculated from trimmed distributions, obviously, cannot be compared to those from untrimmed distributions or interpreted in the same way.

# Appendix C.
# Median Confidence Interval Tables for Small Samples

For small samples, tables C-1 and C-2 demonstrate use of a formula based upon the binomial distribution (Clapp 1989) to develop the lower and upper median confidence interval estimates. $R_i$ is the ratio in an array ranked from the lowest ($i = 1$) to the highest (sorted in ascending order). Each confidence interval boundary typically falls between two ratios in the array. The interpolation factor is multiplied by the ratio value and the two are added together to obtain a weighted average. This method should be used for small samples with up to 30 observations (see tables C-1 and C-2). For larger samples the method found in *Property Appraisal and Assessment Administration* (IAAO 1990, p 609) may be used.

**Example**

Using data from table 1-4 (n =17 ratios) and a 95 percent confidence interval in table C-2:

Lower bound:

[0.695 ($Ratio_5$) X 0.9899] + [0.717 ($Ratio_6$) X 0.0101] = **0.695**

Upper bound.

[0.933 ($Ratio_{13}$) X 0.9899] + [0.895 ($Ratio_{12}$) X 0.0101] = **0.933**

Therefore, the 95% median ratio confidence interval in table 1-4 is from .695 to .933.

From **Table 1-4.** Demonstration Ratio Study Report

| Rank | Parcel # | Appraised value | Sale price* | Ratio |
|---|---|---|---|---|
| 1 | 9 | $87,200 | 138,720 | 0.629 |
| 2 | 10 | 38,240 | 59,700 | 0.641 |
| 3 | 11 | 96,320 | 146,400 | 0.658 |
| 4 | 12 | 68,610 | 99,000 | 0.693 |
| 5 | 13 | 32,960 | 47,400 | 0.695 |
| 6 | 14 | 50,560 | 70,500 | 0.717 |
| 7 | 15 | 61,360 | 78,000 | 0.787 |
| 8 | 16 | 47,360 | 60,000 | 0.789 |
| 9 | 17 | 56,580 | 69,000 | 0.820 |
| 10 | 18 | 47,040 | 55,500 | 0.848 |
| 11 | 19 | 136,000 | 154,500 | 0.880 |
| 12 | 20 | 98,000 | 109,500 | 0.895 |
| 13 | 21 | 56,000 | 60,000 | 0.933 |
| 14 | 22 | 159,100 | 168,000 | 0.947 |
| 15 | 23 | 128,000 | 124,500 | 1.028 |
| 16 | 24 | 132,000 | 127,500 | 1.035 |
| 17 | 25 | 160,000 | 150,000 | 1.067 |

*Date: 0/0/00. No outlier trimming*

** or adjusted sale price*

**Table C-1.** 90% Confidence Interval Table

| n | Lower Bound | Upper Bound |
|---|---|---|
| 5 | .8800 x $R^1$ + .1200 x $R^2$ | .8800 x $R^5$ + .1200 x $R^4$ |
| 6 | .6333 x $R^1$ + .3667 x $R^2$ | .6333 x $R^6$ + .3667 x $R^5$ |
| 7 | .2286 x $R^1$ + .7714 x $R^2$ | 2286 x $R^7$ + .7714 x $R^6$ |
| 8 | .8643 x $R^2$ + .1357 x $R^3$ | .8643 x $R^7$ + .1357 x $R^6$ |
| 9 | .5667 x $R^2$ + .4333 x $R^3$ | .5667x $R^8$ + .4333 x $R^7$ |
| 10 | .1067 x $R^2$ + .8933 x $R^3$ | .1067 x $R^9$ + .8933 x $R^8$ |
| 11 | .7855 x $R^3$ + .2145 x $R^4$ | .7855 x $R^9$ + .2145 x $R^8$ |
| 12 | .4282 x $R^3$ + .5718 x $R^4$ | .4282 x $R^{10}$ + .5718 x $R^9$ |
| 13 | .9558 x $R^4$ + .0442 x $R^5$ | .9558 x $R^{10}$ + .0442 x $R^9$ |
| 14 | .6511 x $R^4$ + .3489 x $R^5$ | .6511 x $R^{11}$ + .3489 x $R^{10}$ |
| 15 | .2217 x $R^4$ + .7783 x $R^5$ | .2217 x $R^{12}$ + .7783 x $R^{11}$ |
| 16 | .8261 x $R^5$ + .1739 x $R^6$ | .8261 x $R^{12}$ + .1739 x $R^{11}$ |
| 17 | .4603 x $R^5$ + .5397 x $R^6$ | .4603 x $R^{13}$ + .5397 x $R^{12}$ |
| 18 | .9735 x $R^6$ + .0265 x $R^7$ | .9735 x $R^{13}$ + .0265 x $R^{12}$ |
| 19 | .6480 x $R^6$ + .3520 x $R^7$ | .6480 x $R^{14}$ + .3520 x $R^{13}$ |
| 20 | .2072 x $R^6$ + .7928 x $R^7$ | .2072 x $R^{15}$ + .7928 x $R^{14}$ |
| 21 | .8084 x $R^7$ + .1952 x $R^8$ | .8084 x $R^{15}$ + .1952 x $R^{14}$ |
| 22 | .4156 x $R^7$ + .5844 x $R^8$ | .4156 x $R^{16}$ + .5844 x $R^{15}$ |
| 23 | .9413 x $R^8$ + .0587 x $R^9$ | .9413 x $R^{16}$ + .0587 x $R^{15}$ |
| 24 | .5884 x $R^8$ + .4116 x $R^9$ | .5884 x $R^{17}$ + .4116 x $R^{16}$ |
| 25 | .1203 x $R^8$ + .8797 x $R^9$ | .1203 x $R^{18}$ + .8797 x $R^{17}$ |
| 26 | .7371 x $R^9$ + .2629 x $R^{10}$ | .7371 x $R^{18}$ + .2629 x $R^{17}$ |
| 27 | .3161 x $R^9$ + .6839 x $R^{10}$ | .3161 x $R^{19}$ + .6839 x $R^{18}$ |
| 28 | .8687 x $R^{10}$ + .1313 x $R^{11}$ | .8687 x $R^{19}$ + .1313 x $R^{18}$ |
| 29 | .4831 x $R^{10}$ + .5169 x $R^{11}$ | .4831 x $R^{20}$ + .5169 x $R^{19}$ |
| 30 | .9876 x $R^{11}$ + .0124 x $R^{12}$ | .9876 x $R^{20}$ + .0124 x $R^{19}$ |

**Table C-2.** 95% Confidence Interval Table

| n | Lower Bound | Upper Bound |
|---|---|---|
| 6 | .9000 x $R^1$ + .1000 x $R^2$ | .9000 x $R^6$ + .1000 x $R^5$ |
| 7 | .6857 x $R^1$ + .3143 x $R^2$ | .6857 x $R^7$ + .3143 x $R^6$ |
| 8 | .3250 x R1 + .6750 x $R^2$ | 3250 x $R^8$ + .6750 x $R^7$ |
| 9 | .9222 x $R^2$ + .0778 x $R^3$ | .9222 x $R^8$ + .0778 x $R^7$ |
| 10 | .6756 x $R^2$ + .3244 x $R^3$ | .6756 x $R^9$ + .3244 x $R^8$ |
| 11 | .2873 x $R^2$ + .7127 x $R^3$ | .2873 x $R^{10}$ + .7127 x $R^9$ |
| 12 | .8936 x $R^3$ + .1064 x $R^4$ | .8936 x $R^{10}$ + .1064 x $R^9$ |
| 13 | .6056 x $R^3$ + .3944 x $R^4$ | .6056 x $R^{11}$ + .3944 x $R^{10}$ |
| 14 | .1659 x $R^3$ + .8341 x $R^4$ | .1659 x $R^{12}$ + .8341 x $R^{11}$ |
| 15 | .8218 x $R^4$ + .1782 x $R^5$ | .8218 x $R^{12}$ + .1782 x $R^{11}$ |
| 16 | .4827 x $R^4$ + .5173 x $R^5$ | .4827 x $R^{13}$ + .5173 x $R^{12}$ |
| 17 | .9899 x $R^5$ + .0101 x $R^6$ | .9899 x $R^{13}$ + .0101 x $R^{12}$ |
| 18 | .7076 x $R^5$ + .2924 x $R^6$ | .7076 x $R^{14}$ + .2924 x $R^{13}$ |
| 19 | .3059 x $R^5$ + .6941 x $R^6$ | .3059 x $R^{15}$ + .6941 x $R^{14}$ |
| 20 | .8835 x $R^6$ + .1165 x $R^7$ | .8835 x $R^{15}$ + .1165 x $R^{14}$ |
| 21 | .5479 x $R^6$ + .4521 x $R^7$ | .5479 x $R^{16}$ + .4521 x $R^{15}$ |
| 22 | .0697 x $R^6$ + .9303 x $R^7$ | .0697 x $R^{17}$ + .9303 x $R^{16}$ |
| 23 | .7381 x $R^7$ + .2619 x $R^8$ | .7381 x $R^{17}$ + .2619 x $R^{16}$ |
| 24 | .3373 x $R^7$ + .6627 x $R^8$ | .3373 x $R^{18}$ + .6627 x $R^{17}$ |
| 25 | .8958 x $R^8$ + .1042 x $R^9$ | .8958 x $R^{18}$ + .1042 x $R^{17}$ |
| 26 | .5481 x $R^8$ + .4519 x $R^9$ | .5481 x $R^{19}$ + .4519 x $R^{18}$ |
| 27 | .0677 x R8 + .9323 x R9 | .0677 x R20 + .9323 x R19 |
| 28 | .7221 x R9 + .2779 x R10 | .7221 x R20 + .2779 x R19 |
| 29 | .3063 x R9 + .6937 x R10 | .3063 x R21 + .6937 x R20 |
| 30 | .8709 x R10 + .1291 x R11 | .8709 x R21 + .1291 x R20 |

# Appendix D. Sales Chasing Detection Techniques

As long as sold and unsold parcels are appraised in the same manner and the data describing them are coded consistently, statistics calculated in a sales ratio study can be used to infer appraisal performance for unsold parcels. However, if parcels that sell are selectively reappraised or recoded based on their sale prices or some other criterion (such as listing price) and if such parcels are in the ratio study, sales ratio study uniformity inferences will not be accurate (appraisals will appear more uniform than they are). In this situation, measures of appraisal level also will be unsupportable unless similar unsold parcels were appraised by a model that produces the same overall percentage of market value (appraisal level) as on the parcels that sold based on consistently coded descriptive and locational data.

Assessors and oversight agencies do not need to employ all the detection techniques described in this appendix, but should consider implementing at least one procedure. In some cases, access to assessment information for all properties is necessary to perform the suggested techniques. Agencies that do not have access to these data are at a disadvantage, but should still implement detection techniques, such as those described in sections D.3 and D.4, which do not require such comprehensive assessment information.

## D.1 Comparison of Average Value Changes

If sold and unsold properties within a specified group are appraised in the same way, their appraised values should reflect similar average percentage changes from year to year. Accordingly, changes in appraised values for sold and unsold parcels can be compared to determine whether sold parcels have been selectively appraised. Alternatively, the average percent change in value for sample parcels can be compared to that for the population of properties within a specified group or stratum for an indication of selective reappraisal.

For example, if sold parcels are considered representative of a stratum and appraised values increased an average of 10 percent while appraised values for unsold parcels in the same stratum increased an average of only 2 percent, "sales chasing" is a likely conclusion. At a more sophisticated level, the distribution of value changes for sold and unsold parcels can be compared, or statistical tests can be used to determine whether the distributions are different at a given level of confidence.

Statistical significance in the absence of practical significance may be moot. In large samples, small differences in the magnitude of assessed value changes on sold and unsold parcels can be proven to be statistically significant, yet the actual differences may be slight. Therefore, it is prudent to establish some reasonable tolerance, such as 3 percentage points (e.g., a change of 6 percent for sold properties and 3 percent for unsold properties), before concluding that a meaningful problem exists. Such tolerance applies to other detection techniques discussed below.

## D.2 Comparison of Average Unit Values

If sold and unsold parcels are appraised equally, average unit values (for example, value per square foot) should be similar. An appropriate test (Mann Whitney or t-test) can be conducted to determine whether differences are significant.

## D.3 Split Sample Technique

In this technique, two ratio studies are performed, one using sales that occurred before the appraisal date and one using sales after the appraisal date, both adjusted for date of sale as appropriate. Except for random sampling error and any error in time adjustments, results of the two studies should be similar. Sales chasing is indicated if the results of the first study are consistently better than those from the second. In such a case, the second study is still valid; the first study should be rejected.

## D.4 Comparison of Observed versus Expected Distribution of Ratios

Assuming the ratio studies are based on sales that have been properly adjusted for time and other factors, a strong indication of the likelihood of "sales chasing" can be obtained by computing the proportion of ratios that would be expected to fall within a particular narrow range of the mean given the lowest likely standard deviation (although this depends somewhat on the assumption of a normal distribution). For example, with a standard deviation of 5 percent given a normal distribution, about 32 percent of the ratios would be expected to fall within ±2 percent of the mean (for example, between 98 and 102 percent, given a mean of 100 percent). Except in highly constrained or well-behaved real estate markets, many appraisers consider such a low standard deviation, corresponding approximately to a COD of 4 percent, to be unachievable. Regardless of the distribution of the ratios, the likelihood is extremely low that there would be a sufficiently representative sample with more than this proportion of ratios in such a narrow range. If such is the case, "sales chasing" is a likely conclusion. Sometimes other processes through which adjustments to assessments on selling parcels are more pronounced than on the population as a whole mimic the effect of sales chasing, such as more intensive reviews of sales than non-sales. Regardless of the practice, the

representativeness of the ratio study is called into question and additional tests should be instituted.

Although samples may not be normally distributed, in which case equivalently precise proportions of expected ratios around the median cannot be determined, the 32 percent concentration is very conservative. Finding such a high concentration of ratios around any measure of central tendency is a strong indicator of sales chasing or of a non-representative ratio study. In addition, when the distribution of ratios is bimodal or multimodal, similar significant concentrations of ratios around these modes can indicate selective reappraisal or sales chasing.

Table D-1 demonstrates the conservative nature of the 32 percent concentration. If the minimum achievable COD is, in fact, higher than 4 percent for the strata or property class being analyzed, then even lower concentrations could indicate sales chasing, and previously discussed investigative procedures should be instituted. One disadvantage to this procedure is that it can be misleading when applied to small samples. Therefore the method should not be employed for sample sizes less than 30.

Even when critical proportions of ratios shown in table D-1 are exceeded, further investigation should be conducted before concluding that sales chasing has occurred.

## D.5 Mass Appraisal Techniques

Provided sales are sufficient in number, oversight agencies can develop mass appraisal models to apply to a random sample of unsold properties or to the population of properties that are represented by the sold properties. An independent multiple regression or other automated calibration techniques can be used to develop the models. An appraisal ratio study is then conducted for the unsold parcels by using values predicted by the independent models as indicators of market values. This approach has the following advantages:

- It is objective and rooted in the market.
- The models can be reviewed for sufficient reliability before being applied to the unsold parcels.
- The technique yields measures of central tendency, which can be compared against those produced by the sales ratio study and tested for compliance with standards for the level of appraisal.
- The technique takes the form of an appraisal ratio study but avoids the time and expense of single-property appraisals.

Reliability of this method depends on the accuracy and independence of the mass appraisal models used to generate the value estimates. The models must be consistent with appraisal theory and reviewed for sufficient reliability by examining goodness-of-fit statistics. The models should be independent of those used for assessment purposes.

**Table D-1.** Example of critical ratio concentrations indicative of sales chasing or similar practices

| Minimum achievable COD | Standard deviation assuming normal distribution and mean ratio of 100% | Critical proportion of ratios* | z score based on ± 2% range (Absolute value) | Expected proportion of ratios below 0.98 | Expected proportion of ratios below 1.02 | Expected proportion between 0.98 and 1.02 (within ± 2% of central tendency) |
|---|---|---|---|---|---|---|
| 1.6% | 2.00% | 69 | 1.0000 | 0.1587 | 0.8413 | 0.6826 |
| 4.0% | 5.00% | 32 | 0.4000 | 0.3446 | 0.6554 | 0.3108 |
| 5.0% | 6.25% | 26 | 0.3200 | 0.3745 | 0.6255 | 0.2510 |
| 6.0% | 7.50% | 22 | 0.2667 | 0.3949 | 0.6051 | 0.2102 |
| 7.0% | 8.75% | 19 | 0.2286 | 0.4110 | 0.5896 | 0.1801 |
| 8.0% | 10.00% | 16 | 0.2000 | 0.4207 | 0.5793 | 0.1586 |
| 10 0% | 12.50% | 13 | 0.1600 | 0.4364 | 0.5636 | 0.1272 |
| 12.0% | 15.00% | 11 | 0.1333 | 0.4467 | 0.5530 | 0.1063 |
| 14.0% | 17.50% | 10 | 0.1143 | 0.4545 | 0.5455 | 0 0910 |
| 16.0% | 20.00% | 8 | 0.1000 | 0.4602 | 0.5398 | 0.0796 |

** Given the assumption that the COD shown represents the minimum achievable COD for the property type, class, or strata being analyzed with the ratio study, sales chasing (or a similar distortive procedure) is very likely if the concentration of ratios with ± 2% of a measure of central tendency, such as the median or a mode, or 100%, equals or exceeds this value. This proportion is based on values of the standard normal distribution function and assumption that sample size is greater than 30. The critical number equals the integer immediately exceeding the expected proportion.*

# Appendix E. Alternative Uses for Ratio Study Statistics

In addition to the use of statistical measures to determine underlying assessment level and uniformity, comparisons between measures can provide useful information about sample representativeness, the distribution of the ratios, and the influence of outliers. For example, by comparing the mean and weighted mean, even without determining the PRD, the analyst should be aware that a large difference between these two measures indicates probable influence of atypical ratios on high-priced properties. This in turn could mean that outliers are still present in the sample and that the sample is not representative. Alternatively, it could indicate systematic appraisal error in the appraisal of properties within a particular price range. The geometric mean-to-mean relationship can provide similar information, especially about the presence of very low ratios, which have a greater influence on the geometric mean. The relationship between the COD and COV can provide similar additional guidance. This standard chooses the COD as the primary recommended measure of uniformity. This choice reflects the expectation of non-normal distributions of ratios. Despite this consideration, it is useful to recognize that, in a normal distribution, the COV is approximately 1.25 times the COD. When the COV/COD ratio exceeds 1.25, the likely cause is a small number of very high ratios, which may again be non-representative.

It is incumbent on the analyst to review the ratio study sample to attempt to provide a representative sample. Comparisons of statistics, such as those given in this appendix, provide an additional tool to help the analyst in this regard.

# Appendix F. Legal Aspects of Ratio Studies

Property taxation is governed by federal, state, and provincial constitutions, statutes, and administrative rules or regulations, many of which require uniform treatment of property taxpayers. Ratio studies play an important role in judging whether uniformity requirements are met. Relevant Canadian Federal statutes based on the Constitution Acts of 1867–1975 provide that municipal councils cannot discriminate between taxpayers of the same class within municipalities.

Relevant United States federal provisions include the Bill of Rights, the commerce clause of the United States Constitution, the Fourteenth Amendment, and the Tax Injunction Act (28 U.S.C. § 1341). Together they guarantee basic protections and due process while still granting states the authority to classify property and grant reasonable exemptions. Many constitutions have clauses that require uniformity in the assessment and taxation of property, although some jurisdictions, either by constitution or statute, permit certain differences between classes. Ratio studies provide a gauge of whether uniformity requirements are being met.

A key U.S. federal statute relating to ratio studies is the U.S. Railroad Revitalization and Regulatory Reform Act ("4-R Act") of 1976 (49 U.S.C. § 11501). The 4-R Act requires that rail transportation property be assessed for tax purposes at no more than 105 percent of the assessment level of other commercial and industrial property in the same taxing jurisdiction. Similar federal statutes relate to air transportation property, motor carriers, and bus lines (49 U.S.C. §§14502 and 40116).

The 4-R Act provides that ratio studies be used to measure alleged discrimination. In such cases, as in any ratio study, the purpose of the study must be clearly defined and the study must be conducted so that it accurately evaluates the issues at hand. Important issues in ratio studies conducted pursuant to the 4-R Act include the proper definition of "other" commercial and industrial property, screening and adjustments to sales data, proper measures of the level of appraisal, and the combining and weighting of centrally valued and locally assessed properties.

# Appendix G. Sales Validation Questionnaire

Parcel Identification Number _____ Instrument Number _____
*Instrument Type* _____ ❑ *Multi Parcel Sale* ❑ *Split Sale* *Recording Date* _____

| Seller (Grantor) Name | Buyer (Grantee) Name |
|---|---|
| _____ | _____ |
| Mailing _____ | Mailing _____ |
| City/ST/ZIP _____ | City/ST/ZIP _____ |
| Phone _____ | Phone _____ |
| E-mail address _____ | E-mail address _____ |
| Brief Legal Description | Property/Situs Address _____ |
| _____ | Name and Mailing Address for Tax Statements |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

**PLEASE ANSWER THE FOLLOWING QUESTIONS:**

1 Special factors:
❑ Sale between immediate family members:
*SPECIFY THE RELATIONSHIP*
❑ Sale involved corporate affiliates belonging to the same parent company
❑ Sale of convenience (correct defects in title; create a joint or common tenancy, etc.)
❑ Auction Sale
❑ Deed transfer in lieu of foreclosure or repossession
❑ Forced sale or sheriff's sale
❑ Sale by judicial order (guardian, executor, conservator)
❑ Sale involved a government agency or public utility
❑ Buyer (new owner) is a religious, charitable, or benevolent organization, school or educational association
❑ Land contract or contract for deed
❑ Sale of only a partial interest in the real estate
❑ Sale involved a trade or exchange of properties
❑ **NONE OF THE ABOVE**

2. Check use of property at the time of sale:
❑ Single Family Residence ❑ Agricultural Land
❑ Farm/Ranch with Residence ❑ Vacant Lot
❑ *Condominium Unit* ❑ *Commmercial/Industrial*
❑ Other: (Specify) _____

3. Was the property rented or leased at the time of sale? ❑ Yes ❑ No
4. Did the sale price include an existing business? ❑ Yes ❑ No
5. Was any personal property (such as furniture, equipment, machinery, livestock, crops, business franchise or inventory, etc.) included in the sale price? ❑ Yes ❑ No
If yes, please describe _____
Estimated value of all personal property items included in the sale price $ _____
6. Any recent changes to the property? ❑ Yes ❑ No
❑ New Construction ❑ Demolition
❑ Remodeling ❑ Additions
*Was the work performed by a professional?* ❑ *Yes* ❑ *No*
Date Completed ____/____/____
Estimated cost of labor and materials? $ _____
7. Was there a change in use? ❑ Yes ❑ No
*If yes, please explain:* _____
8. Does the buyer hold title to any adjoining property? ❑ Yes ❑ No
9. Was there an appraisal made on the property? ❑ Yes ❑ No
10. Were any **delinquent** taxes assumed by the purchaser?
❑ Yes—Amount $_____ ❑ No
11. Were the **delinquent** taxes included in the sale price?
❑ Yes ❑ No ❑ NA
12. How property was marketed (check all that apply):
❑ Listed with real estate agent ❑ Displayed a "For Sale" sign
❑ Advertised in the newspaper ❑ Offered by word of mouth
13. Was the property made available to other potential purchasers?
❑ Yes ❑ No
If not, explain _____
14. How long was the property on the market? _____
15. What was the asking price? _____
16. *Date sales price was agreed upon* ____/____/____
17. Method of financing (check all that apply):
❑ New loan(s) from a Financial Institution
Name of lending institution: _____
*Cash down payment* $_____
Amount $_____ Interest rate _____% Term _____
❑ Assumption of Existing Loan(s)
Amount $_____ Interest rate _____% Term _____
❑ Seller Financing
Amount $_____ Interest rate _____% Term _____
❑ Trade of Property: Estimated Value $_____
Describe Traded Property _____
❑ All Cash ❑ Not Applicable
18. **Total Sale Price $**_____
19. Was the sale influenced by any unusual circumstances?
❑ Yes ❑ No
If yes, please explain _____
20. *Is the total sale price a fair reflection of the market value for the real* estate on the sale date? ❑ Yes ❑ No If no, please explain _____

PRINT NAME - _____

SIGNATURE _____
❑ GRANTOR (SELLER) Daytime Phone No. (___) _____
❑ GRANTEE (BUYER) Daytime Phone No. (___) _____
❑ AGENT Daytime Phone No. (___) _____

# Assessment Standards of the International Association of Assessing Officers

**JULY 2007**
Standard on Ratio Studies

**JULY 2007**
Standard on Property Tax Policy

**OCTOBER 2006**
Standard on Mass Appraisal of Real Property

**DECEMBER 2005**
Standard on Valuation of Personal Property

**AUGUST 2004**
Guide to Assessment Administration Standards

**AUGUST 2004**
Standard on Manual Cadastral Maps and Parcel Identifiers

**SEPTEMBER 2003**
Standard on Automated Valuation Models

**JULY 2003**
Standard on Administration of Monitoring and Compliance Responsibilities

**JULY 2003**
Standard on Digital Cadastral Maps and Parcel Identifiers

**JANUARY 2003**
Standard on Facilities, Computers, Equipment, and Supplies

**FEBRUARY 2002**
Standard on Contracting for Assessment Services

**JULY 2001**
Standard on Assessment Appeal

**JULY 2001**
Standard on Public Relations

**JULY 2001**
Standard on Valuation of Property Affected by Environmental Contamination

**DECEMBER 2000**
Standard on Professional Development

To order any standards listed above or to check current availability and pricing, go to: *http://www.iaao.org/*

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c/o Terry Rubald and / or Donna Proper
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Carson City, NV. 89706-7937

February 8, 2010

RE: Workshop on R153-09

Dear Sir / Madam,

Please review the attached comments on the proposed regulations under LCB file number R153-09, scheduled to be discussed in a workshop on February 11, 2010. Thank you.

Sincerely,

Les Barta

PROPOSED SBOE REGULATIONS ON EQUALIZATION PER NRS 361.395
LCB FILE NUMBER R153-09

**(1) Legal Standards**

The requirements and standards for uniform and equal assessment and taxation under Article 10, section 1 of Nevada's constitution and Nevada's statutory scheme are set forth in State Bd. of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006) . The constitutional requirement for uniformity is "**guaranteed.**" State Bd. of Equalization v. Barta, 188 P.3d 1092, at 1102 (Nev. 2008). The constitutional guarantee of uniformity in assessment requires all assessment to comply with Tax Commission regulations. NRS 360.250(1) and NRS 360.280(1)(a). See Bakst, supra, 1410, 1413.

Compliance with these requirements requires the use of only those methods of valuation either expressly authorized by statute, or **expressly approved** for uniform statewide application in the regulations of the Nevada Tax Commission. Bakst id, 1409, footnote 13; Barta supra, 1101. This requirement applies to all assessments, including those made by the Department and the boards of equalization. NRS 360.250(1). NRS 361.375(10).

Unless an assessment or valuation method is authorized by statute, any valuation standard or method used to change or determine an assessment must be expressly approved by the Tax Commission as a regulation promulgated pursuant to NRS 233B in the administrative code. Under Nevada law, only the Tax Commission is authorized to establish valuation standards and methods.

Under NRS 361.395, the State Board is required to equalize the valuations established by "...all county assessors and county boards of equalization and the Nevada Tax Commission..." The State Board has the authority, therefore, to review and determine the validity of all assessments of taxable value and is required to apply the proper standards of law to equalize assessments throughout and within the counties and the state.

It must be the **predominant concern** of the State Board to ensure that the constitutional guarantee of uniformity is upheld. Barta supra, 1100-1102, at 1102. Accordingly, the predominant concern of the State Board must be to ensure that any valuations established by the aforementioned parties, including the Tax Commission itself, are based exclusively on assessment standards and methods expressly authorized by Nevada law.

Therefore, The Tax Commission has the sole authority to establish standards and methods of assessment and valuation, whereas the State Board is authorized and required to make sure that these standards and methods meet the constitutional standard for uniformity and are uniformly applied.

**(2) Ratio studies**

These regulations authorize the State Board to apply "ratio study" methodology to accomplish equalization of assessed values. The State Board's adoption of ratio study methodology for this purpose conflicts with statute and settled law as established by the Supreme Court in several respects:

(a) NRS 361.333 authorizes the Tax Commission to apply ratio studies to equalize assessment values statewide. There is no statute, regulation, or other legal authority which permits the State Board or any other party to apply ratio studies for this purpose or any other purpose. The Tax Commission does not have authority to assign or transfer its legal duties to another party or agency, and the State Board lacks any authority to assume the Tax Commission's statutory functions in any capacity. For the State Board to engage in precisely those functions required simultaneously of the Tax Commission would create serious conflicts of authority and would violate state law.

(b) Section 10 of the regulations authorizes the State Board to "adopt by reference" the "Standard on Ratio Studies" published by the IAAO. Section 11(c) authorizes the State Board to use ratio studies to "determine whether the taxable values specified in the tax roll of any county must be increased or decreased to equalize property valuations in this state." Section 14 authorizes the State Board to apply the IAAO standard on ratio studies to accomplish this, and Section 17 sets forth a specific methodology and specific standards to apply ratio study methodology to adjust and establish taxable values. As such, the regulations establish specific valuation methodology for use by the State Board to determine the taxable value of property. As shown above, pursuant to NRS 360.250(1) and NRS 361.375(10) the State Board is limited to the use of standards and methods expressly authorized by Tax Commission regulations. None of the aforementioned ratio study standards or methodologies is "expressly approved" in Tax Commission regulations. The State Board is not authorized to adopt its own valuation standards and methods. The adoption and / or use of any such valuation methods by the State Board would, therefore, expressly conflict with the constitutional requirement for uniformity in assessment.

(c) The State Board has previously maintained the validity of its reliance on the "generally recognized appraisal standards of the IAAO." However, this argument was expressly rejected by the Bakst Court, which held that "generally accepted appraisal standards" do **not** assure uniformity and are **not** an acceptable substitute for specific methods expressly approved by the Tax Commission for uniform statewide application. Bakst supra, 1416. Accordingly, any provision enabling the State Board to "adopt by reference" the standards of the IAAO would directly conflict with the holdings of the Supreme Court.

(d) The IAAO provides its own disclaimer on the use of its standard on ratio studies, declaring that these standards are only intended for use in the context of total market value assessment schemes. See attached. Accordingly, these IAAO ratio study standards would be inherently incompatible with Nevada's taxable value system.

(e) Equalization or remediation of values as contemplated by NRS 361.345 authorizes boards of equalization to raise or lower values to match the levels of similarly situated properties whose assessments are presumed to be correct. However, the boards of equalization are not authorized to establish new or different levels of value by means of methods which are not expressly approved by statute or Tax Commission regulations.

**(3) Equalization of Methodology**

As shown above, the Supreme Court has held that it must be the State Board's "**predominant concern**" to ensure that assessment are based upon uniform

methods "expressly approved" by Nevada law. The regulations do provide for the examination of methodologies by the State Board. However, the provision for equalization of methodologies is minimal and inadequate to address what the Supreme Court has identified as the boards of equalizations' primary equalization function. Instead the regulations focus primarily on equalization of values through ratio study methodology - a process which is already prescribed by statute for exclusive application by the Tax Commission.

Section 17 of the regulations provides for a variety of optional remedies to address circumstances of inequitable relative levels of value. However, the regulations do not adequately address circumstances in which the State Board may have identified the use of nonuniform methodologies. The regulations do provide for discretionary reappraisal. However, in Bakst and Barta the Supreme Court declared that the proper remedy for unconstitutional assessments resulting from the use of nonuniform methodologies is to declare them void in excess of a prior level of assessment presumed to be valid (Bakst, supra 1409, Barta, supra 1097) with refunds for excess taxes (Barta, 1102; Bakst, 1416). Reappraisals would allow unconstitutional assessments to remain valid for an indefinite period, which contradicts the holdings of the Supreme Court. The regulations must reflect the law established by the Supreme Court, which held that unconstitutional methodology must be the predominant concern of the State Board.

**(4) Due Process**

Section 18 of the regulations provides for procedures in the event of a potential increase in assessed values. This section fails to provide adequate due process for taxpayers whose interests may be adversely affected. In addition to the 10 days notice specified by NRS 361.395, taxpayers must also be advised of the factual and legal basis of any potential change in assessment, so that they may have a fair opportunity to present evidence to defend their interests. Each affected party must additionally be provided with adequate opportunity to be heard, including reasonable hearing procedures for presentation and rebuttal of evidence.

**(5) Conclusion**

Because of the aforementioned conflicts with State law, in their current form these regulations are subject to effective challenge and will not provide a sound basis for the State Board to accomplish its duty under NRS 361.395.

## 2. Overview

For local jurisdictions, *ratio study* is used as a generic term for sales-based studies designed to evaluate appraisal performance. The term is used in preference to the term *assessment ratio study* because use of assessments can mask the true level of appraisal and confuse the measurement of appraisal uniformity when the legal assessment level is other than 100 percent of fair market value.

### 2.1 The Concepts of Market Value and Appraisal Accuracy

Market value is the major focus of most mass appraisal assignments. The major responsibility of assessing officers is estimating the market value of properties based on legal requirements or accepted appraisal definitions. The viability of the property tax depends largely on the accuracy of such value estimates. The accuracy of appraisals made for assessment purposes is therefore of concern, not only to assessors but also to taxing authorities, property taxpayers, and elected representatives. Appraisal accuracy refers to the degree to which properties are appraised at market value, as defined by professional standards (see *Glossary for Property Appraisal and Assessment* [IAAO 1997]) and legal requirements.

### 2.3 Uses of Ratio Studies

Key uses of ratio studies are as follows:

- measurement and evaluation of the level and uniformity of mass appraisal models
- internal quality assurance and identification of appraisal priorities
- determination of whether administrative or statutory standards have been met
- determination of time trends
- adjustment of appraised values between reappraisals

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination (see Appendix F). However, ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel. Such statistics can be used to adjust assessed values on appealed properties to the common level.

Source: "Standard On Ratio Studies", page 7
published 2007 by International Association of Assessing Officers ("IAAO")

**3880**
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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 Individual Trust; J. ROBERT ANDERSON; and LES BARTA; on behalf of themselves and other similarly situated;

Petitioners,

vs.

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

Defendants.
_____/

Case No. CV03-06922

Dept. No. 7

**RESPONSE TO STATEMENT OF NEW AUTHORITY**

Petitioners, Village League to Save Incline Assets, Inc., Maryanne Ingemanson, Dean R. Ingemanson, J. Robert Anderson and Les Barta, respond to the Statement of New Authority filed by the Washoe County defendants regarding the "equalization" regulation "adopted" by the State Board of Equalization on March 1, 2010 and attach the following:

Exhibit 1: Transcript of State Board of Equalization hearing on March 1, 2010
Exhibit 2: John Dougherty. "Tax board schedules dubious 'quick-fix' for property-tax system" published by the Nevada Policy Research Institute on February 26, 2010.

Exhibit 3: Affidavit of Richard Almy
Exhibit 4: John Dougherty. "State Board of Equalization adopts controversial property-tax regulation" published by the Nevada Policy Research Institute on March 3, 2010.

The Court should be advised that the proposed "equalization" regulation is not final. The administrative process has not been completed. In addition, the regulation as ultimately approved may be challenged in the courts pursuant to NRS §233B.110.

These materials are provided to the Court to reflect a fuller and more accurate record with respect to the proposed "equalization" regulation as provided by the Washoe County defendants attached to their Statement of New Authority.

DATED this 10th day of March, 2010.

MORRIS PETERSON

/s/ Suellen Fulstone

By_____
Suellen Fulstone
Attorneys for Petitioners

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## CERTIFICATE OF SERVICE

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

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

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

DATED this 10th day of March, 2010.

/s/ Holly W. Longe

By_____
Employee of Morris Peterson

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## INDEX OF EXHIBITS

Exhibit 1: Transcript of State Board of Equalization hearing on March 1, 2010

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Exhibit 3: Affidavit of Richard Almy, an expert on appraisal and the assessment process recommended to the Village League by the Nevada Department of Taxation

Exhibit 4: John Dougherty. "State Board of Equalization adopts controversial property-tax regulation" published by the Nevada Policy Research Institute on March 3, 2010.

# EXHIBIT 1

CERTIFIED COPY

**STATE OF NEVADA**

**DEPARTMENT OF TAXATION**

**STATE BOARD OF EQUALIZATION**

**TRANSCRIPT OF PROCEEDINGS**

**TELECONFERENCE AND TELEPHONIC PUBLIC MEETING**

**MONDAY, MARCH 1, 2010**

**CARSON CITY, LAS VEGAS & ELKO, NEVADA**

| | |
|---|---|
| THE BOARD: | TONY WREN, Chairman<br>RUSS HOFLAND, Member<br>AILEEN MARTIN, Member<br>DENNIS MESERVY, Member<br>ANTHONY MARNELL, III, Member |
| FOR THE BOARD: | DAWN KEMP<br>Deputy Attorney General |
| FOR THE DEPARTMENT: | DINO DiCIANNO<br>Executive Director<br>TERRY RUBALD, Chief, Division of Assessment Standards<br>DONNA PROPER, Coordinator |
| REPORTED BY: | CAPITOL REPORTERS<br>Certified Court Reporters<br>BY: MARY E. CAMERON<br>Nevada CCR #98<br>1201 North Stewart Street<br>Suite 130<br>Carson City, Nevada 89706<br>(775) 882-5322 |

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**CARSON CITY, NEVADA, MONDAY, MARCH 1, 2010, 9:07 A.M.**

**-oOo-**

CHAIRMAN WREN: I will call this meeting to order. This is the State Board of Equalization, March 1st, 2010. I am Tony Wren, I'm the Chair. What I want to ask each of you to do is we will go through and I will identify Elko, then we'll go to Las Vegas and for those people on the phone, Mary is here transcribing this.

MEMBER MARTIN: Hi, Mary.

CHAIRMAN WREN: I'll ask you not to talk out of turn.

MEMBER MARTIN: Thanks, Tony.

CHAIRMAN WREN: If I could have Elko identify yourselves and who is there and then after that Las Vegas. Then on the phone, Aileen and Dino, when you come back on the phone, identify yourselves each time, please. Elko?

MEMBER HOFLAND: Yes, Mr. Chairman, it's Russ Hofland and Michael Mears.

CHAIRMAN WREN: Good morning Las Vegas.

MEMBER MESERVY: Dennis Meservy.

MEMBER MARNELL: Anthony Marnell, III.

CHAIRMAN WREN: And on the phone?

MS. RUBALD: Did someone new just join us? I know that Dino --

MR. DOUGHERTY: John Dougherty just listening in.

MR. DiCIANNO: Mr. Chairman, this is Dino DiCianno, Director for the Department. Thank you for allowing me to do this by phone.

CHAIRMAN WREN: Thank you, Dino, and we wish you a quick recovery.

MR. DiCIANNO: Thank you very much.

CHAIRMAN WREN: If you'd introduce yourself and staff and we'll proceed.

MS. RUBALD: Good morning. I'm Terry Rubald, Chief of the Division of Assessment Standards and with me today is Donna Proper who is the coordinator for the State Board.

CHAIRMAN WREN: Thank you very much. If you could give us an overview of what we're going to be looking at today, and then I will ask for public comment. If any of the Commissioners have questions as we go through, go ahead and feel free to join in. If not, I'll ask for comments after everybody has had an opportunity to say their peace.

MS. RUBALD: Thank you, Mr. Chairman. Again I'm Terry Rubald for the record. This morning you are considering regulations known as LCB file number R153-09. These regulations have been the subject of four workshops, the first January 26, 2009, the second February 26, 2009, the third May 8, 2009, and finally the workshop we had just a few

weeks ago to review the LCB regulations and that workshop occurred on February 11th.

These regulations establish various procedures for equalization and I would like to just briefly go through some of the highlights of these regulations. I would like to direct your attention first to section 4, the definition for equalize property valuations which means to ensure that the property in this state is assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law.

You might recall that back in January 2009 the way this phrase was first defined was the process by which the State Board ensures that property under its jurisdiction is appraised uniformly at the taxable value required by law.

We received comments at the time, including a comment from Mr. Barta, who recommended alternative language to say that equalization means the process by which the State Board ensures that property under its jurisdiction is appraised uniformly by the methods and at the taxable value required by law, and his recommendation is essentially what is proposed for adoption today.

This definition does not propose to say that the level of assessment required by law is any more or any less important than the method used to obtain the value. They are both equally important.

I would like to direct your attention now to section 6. Basically I will mention that sections 6, 10, 14 and a portion of 17 deal with what a ratio study is and how it is to be interpreted and applied. Section 6 defines what a ratio study is. It can either be a ratio study measuring the taxable value generated in the state or it can be a sales ratio study, whichever is appropriate.

Section 10 allows this Board to reference the IAAO standard on ratio studies which is the premiere standard, if not the only standard, for the conduct of ratio studies of mass appraisal of real property.

Section 14 addresses issues that are typically encountered in the interpretation of ratio studies, such as which group or class of properties are the subject of the study, ensuring that a statistically valid sample size is used in the analysis, making sure that the samples that are used are representative of the area which is being studied, making sure that the samples have all been appropriately adjusted for market conditions, making sure that sales are drawn from the same time frame, but also recognizing that the State Board might have to use older sales appropriately adjusted to study micro economic areas that don't generate enough sales in the three-year time period.

Like any study, a ratio study is the product of the assumptions and the data that goes into it. That's why

section 14 requires the State Board to consider whether those assumptions and data are reliable, sufficient and representative. If those assumptions and data are not reliable, sufficient and representative, the State Board can throw out the ratio study.

Finally, the purpose of section 17, subparagraph 1(d), is to place a final limitation on the use of a ratio study. If the study is found to be reliable, sufficient and representative, how would the Board apply it? It could not be applied unless there was a 95 percent chance that a factor that would be proposed from the study would result in the vast majority of properties falling between 32 and 36 percent of taxable value, or if the coefficient of dispersion which is the average deviation from the median, if that coefficient does not fall in the guidelines that are listed in the standard on ratio studies.

If a factor doesn't improve a statistical median value for the properties in the geographic areas being considered or if it results in even more progressive or regressive values, then it shouldn't be used. While there is a lot of space on paper that is devoted to the explanation of ratio studies, uses and limitations of ratio studies, it is equally important for State Board purposes to have the ability to consider audits of work practices.

So, now I'm going to discuss sections 11, 12 and

15 in that regard. Let's review section 11 first. Section 11 permits the Board to hold hearings to review the tax rolls corrected by county boards. Secondly, to determine whether property has been assessed uniformly and in accordance with the methods of appraisal and at the level of assessment required by law.

Thirdly, to determine whether property values should be increased or decreased to become equalized, and fourth, to do whatever is required to conform with the requirements of NRS 361.395.

Since tax rolls alone would not be of much assistance to the State Board in determining whether a property has been assessed uniformly because they generally only contain a property description, ownership information and the assessed value, the State Board needs more information than that. That's why we have section 12.

In looking at section 12, that section permits the State Board to consider not only the tax roll but also the centrally assessed property's tax roll. The results of ratio studies conducted for the Tax Commission, the results of audits of work practices conducted for the Tax Commission, evidence that might have come forward during appeals by taxpayers under NRS 361.355, any ratio studies or audits of work practices that the State Board might order itself, and any other information the State Board deems relevant.

That's pretty wide open and certainly allows the Board to consider information that taxpayers might want to bring forward. So, while on the one hand we have three sections that limit the use and application of ratio studies, the State Board also has the ability to consider a wide open range of information with no limitations.

Section 15, however, is a limitation in that before the State Board concludes whether a property has been assessed uniformly in accordance with the requirements of law, it will direct the Department to conduct a systematic investigation of the procedures used by the county assessor.

Section 15 is designed to give you the information you need to make a determination about whether property has been assessed using the methods provided in statute and regulation.

In this discussion I skipped over section 13 and I would like to return to it now. Section 13 allows the Board to request additional information from the county assessor beyond the information that is currently in the tax roll, such as the laundry list that appears in section 13.

Section 13 also provides for a deadline for submitting information and there is an amendment proposed for this section which I will return to later when we discuss the amendments.

I would like to go on then, since we've already

discussed sections 14 and 15, to turn your attention to section 16. Once the Board has the information it needs as outlined in section 12, you can proceed to determine whether property has not been assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law as provided in section 16.

First, you must hold a hearing giving ten days notice to the county clerk, county assessor, district attorney and chair of the county commission. The notice can be waived. The Tax Commission will also be provided a notice of the hearing.

Information related to what the Board has found so far and what it intends to do about it in terms of a proposed order will be included with the notice of hearing. Once the final hearing has been held pursuant to section 16, the Board can decide what to do in section 17.

It can decide to do nothing, it can decide to refer the matter to the Tax Commission, it can order a reappraisal or it can apply a factor if the factor actually improves the statistical median and the coefficient of dispersion which I've already discussed. It cannot apply a factor if there is not a 95 percent statistical confidence level that the level of assessment will be improved.

If the State Board decides that a reappraisal is necessary, then another hearing must be scheduled upon

completion of the reappraisal as a follow-through measure to ensure that the reappraised properties are in fact assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law.

The State Board has essentially the same choices to make: Do nothing, refer the matter to the Tax Commission, or apply a factor, and that's after it's been reappraised.

Any order for reappraisal the State Board issues must indicate the group or class of properties involved, the purpose of the reappraisal and the procedures to be used. If an order to increase or decrease property values is issued, the order must also indicate what group or class of properties is affected, as well as the amount of increase or decrease, and the formula used to derive the increase or decrease.

If I could ask you to turn your attention to section 18 now, as part of the due notice required, section 18 states that the notice of hearing, whether it is the first one provided in section 16 or the second one after reappraisal as provided in section 17, either way, those notices of hearing must be placed on the Department's web site, and if the determination is to increase the property value, individual notice to each taxpayer must be provided.

If a hearing is held pursuant to section 16 or section 17, and I'm moving on to section 19, the county

assessor must appear and a representative of the County Board. Right now it also says a representative of the Board of County Commissioners, but there is an amendment to that section which I will discuss in a moment about who should appear.

Section 19 also provides that testimony will be taken from interested persons at any hearing held, that the county assessor may provide additional information and analysis, and to show why an increase or decrease in value should or should not be done.

If I could turn your attention to section 20, section 20 provides for a follow up to any order for an increase or decrease in which the county assessor will provide a revised tax roll showing the effects of the increase or decrease by June 30th, and the Department will verify by auditing records that the order has been carried out.

If I could ask you to turn to section 21, section 21 provides for reconsideration of a State Board order but a petition for reconsideration must be made within five business days, and if the State Board takes no action within ten days, the petition will be deemed to be denied.

And finally, in section 22, it provides that the rules of practice and procedure before the State Board apply to equalization proceedings, unless they are inconsistent

with this regulation.

I would like to turn your attention now to the proposed amendments which are found on page three of your packets just right after the hearing notice. Most of these proposed revisions were discussed at the workshop on February 11th.

The proposed amendment to section 10 is to add the paragraph that's styled as paragraph number 2 which says, "If the publication adopted by reference pursuant to subsection 1," that happens to be the standard on ratio studies. So, if the standard on ratio studies was adopted and if it should be revised by the IAAO, the State Board will review the revision to determine its suitability for this state.

If the State Board determines that the revision is not suitable, the State Board will hold a public hearing to review its determination and give notice of that hearing within 30 days after the date of the publication of the revision.

If after the hearing the State Board does not revise its determination, the State Board will give notice that the revision is not suitable for this state within 30 days after the hearing. If the State Board does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.

So, the purpose of this revision is to provide a process -- LCB regulations require us to place in the regulation the specific publication currently in existence which was as of July 2007, so if the IAAO should make some revisions to that publication, this provides for a process for reviewing those amendments and those updates and still be able to reference the publication if it is still applicable to this state. This revision was requested by the Department at the workshop.

The next amendment is an amendment to section 13 in which we're adding a sentence at the bottom of the paragraph. Basically what the paragraph says is that the State Board can ask for information and the assessor will respond and submit that information within ten business days. The additional sentence says that the State Board may consider extending the due date upon request of the assessor.

This was to allow an extension of time to the assessor to comply with requests for information from the State Board if necessary. The revision was requested by county assessors at the workshop on February 11th.

There is now also a proposal for an amendment to section 14. It's on page four of your packet or page two of the amendments. Basically instead of identifying a class or group of properties, we're asking that the identification be of the statistical population. Instead of saying divided

into two or more categories, we're asking that to be a reference to strata.

So, basically the ratio study would identify the statistical population that is the subject of the ratio study or statistical analysis which may be divided into two or more strata according to neighborhood, age, type of construction, or any other appropriate criterion or set of criteria.

The purpose of this revision was to properly refer to the term statistical population and strata instead of category and class. The term statistical population is broader than class or group of property and means all the items of interest, for example, all the observations in a data set from which a sample may be drawn. This was also a request of the Department and was talked about at the February 11th workshop.

There's a proposal to amend section 16, and actually I'd like to take 16, 17 and 19 together. There was a comment by county assessors to remove the requirement that county commissioners attend the hearing, but to keep them informed of the process. So, that's basically what this does. Amending section 16 will give them a notice of hearing just like we will to the Nevada Tax Commission, whether it's the first hearing or the second hearing, and then remove the requirement that they actually attend.

And the final amendment will be an additional

section, we'll call it section 23, that the effective date of these regulations would be October 1st, 2010. This was a request made by the Nevada Taxpayers Association not to impose the new equalization process during the current fiscal year.

And that is the basis of my comments, Mr. Chairman. I'd be happy to take your questions.

CHAIRMAN WREN: Terry, thank you very much. I'd like to thank you and your staff for the amount of work and time that you've put into this up to this point. Do we have any comments or questions for Terry?

MEMBER MESERVY: Dennis Meservy. I have some questions. Regarding when we say statistical population and strata, is it defined anywhere else? Obviously we put our own little clause as to what that is. Is that anywhere else in the revisions there or the regs?

MS. RUBALD: No, sir, there is not a definition.

MEMBER MESERVY: So, we don't have a true definition? We do have a definition but it's not in the document?

MS. RUBALD: Right, but I believe it is in the standard on ratio studies. Let me confirm that for you. Yes, for strata, that's at page 62 of your packet or page 44 of the standard on ratio studies. There is a definition for strata which is a class or subset that results from

stratification.

And there is also a definition for population and that's on page 60 of your packet or page 42 of the standard on ratio studies, and that definition is all the items of interest; for example, all the properties in a jurisdiction or neighborhood, all the observations in a data set from which a sample may be drawn.

MEMBER MESERVY: Thanks, Terry.

MS. RUBALD: You're welcome.

CHAIRMAN WREN: Any other questions of Terry? Okay. Terry, again, thank you very much.

I'll open it up for public comment. We will entertain public comment for five minutes each, Donna, so if you'd help me watch the time and we'll start in Elko first. Do we have any public comment in Elko, Russ?

MEMBER HOFLAND: No comments.

CHAIRMAN WREN: Okay. Las Vegas? Dennis, Anthony, do you guys have any public there?

MEMBER MARNELL: No, Mr. Chairman, we do not, besides the Clark County Assessor. Do you guys have any comment? They're not itching to get up to the microphone.

CHAIRMAN WREN: Is Jeff there?

MEMBER MESERVY: That's a yes.

CHAIRMAN WREN: Wow, okay. Better check to see if he has a temperature or something.

MEMBER MESERVY: He seems to be breathing.

CHAIRMAN WREN: I'm worried now. We'll bring it to Carson now. Public comment.

MR. LOWE: Good morning, Chairman Wren and Members of the Board. I'm Todd Lowe, an Incline Village resident. What I wanted to share today is a concern about the regulations as proposed.

I think in summary they're incomplete, not quite ready for approval. In spite of as much work has been done, I think a little more work has to be done before you recommend them for adoption.

My concern is related to the use of the standard, the IAAO standard, the ratio study, because I think it is as described in the regulations that are proposed inappropriate for our particular system of property taxation and this is because it's bifurcated. The bifurcated nature of our taxable value system makes this not quite right on, and let me explain.

If you look at the standard itself, when you go to section 2, which is the overview, it disqualifies itself for application in a nonmarket value system which is what we have. As most people know, we're the only state in the union that has such a system. The second sentence of the overview says, "Use of assessments can mask the true level of appraisal and confuse the level of measurement of appraisal

uniformity when the legal assessment level is other than 100 percent of fair market value," which is very much what we have here. Fair market value is not the standard, nor the law here.

So, if it was, then this would be a beautiful standard to apply and I think it can be applied in a portion of this process which is when you are comparing or evaluating uniformity of unimproved land, and if this regulation restricted it to that use, I think that would be appropriate.

Let me share a real live example from two years ago that would show how this goes off the tracks. So, this Board, although I don't think any of the current Members were on the Board at the time, requested that the Department go out and do a sales ratio study and bring the results back to the Board and they did this inside Washoe County which has five reappraisal districts. I didn't bring any copies, I have one copy of that here, but you should have it, it's public record.

The results were this: I'm going to read them. Of the five areas, and I'll label them A, B, C, D and E, one came in at a ratio of 41.7 percent, another came in at 71 percent, C came in at 59 percent, area D came in at 53 percent, and area E came in at 32 percent.

What is one to do with that kind of information? This is a sales ratio study. You have one group that is 110,

120 percent higher than another group. Very difficult to take action with that.

Now, I understand that the regulations say if it's inappropriate you don't do it, but I think this opens the Board up for a lot of taxpayers bringing this kind of information in front of you and saying that guy is paying half the taxes I am, we've got the same value properties and this is just the beginning of a bunch of, you know, a new wave of lawsuits from taxpayers who do this kind of thing because sales ratio studies are kind of easy to do, particularly by taxpayers.

Now, do these numbers indicate that there's lack of equalization here? I don't know. Not necessarily. These could be absolutely, these results could comply precisely with Nevada law. Unfortunately you can't tell that from the sales ratio study. If you open the door to use the sales ratio study in a nonmarket value system, then I think you're going to have all kinds of problems.

Another piece of evidence on that particular point is this thing that I just pulled off the web. I think most of the Board has seen this, I have copies if you haven't, it's an article that was written by John Dougherty, published by NPRI, I heard John Dougherty on the roll call, so maybe he could speak to this, but he went out and interviewed Richard Almy, who is a past president of the

IAAO, I should say Executive Director and his firm was a contributor to the creation of the standards being referenced.

John did an interview and a couple of excerpts from that interview just for the record, one was he said, "There's not much bang for the buck in the State Board of Equalization's proposed regulations."

MS. PROPER: Excuse me, time.

CHAIRMAN WREN: I'll give you a couple more minutes.

MR. LOWE: Okay, I appreciate that, Chairman Wren. Like I say, I think you've already read this, so the guy who has actually been a creator of the standard says this isn't necessarily going to work very well. I'll just read a couple extra from that interview.

He says, "Almy states ratio studies are very useful in a market based property tax system to measure equalization of property assessments. Nevada, however, abandoned a market based property tax system in 1981 adopting a unique model called taxable value. In market based property tax systems ratio studies are used to compare the assessed values determined by tax authorities to market sales," and then "A consistent ratio would indicate that property taxes are being assessed equally across political jurisdictions."

Then another quote from Almy, "Under such a scenario, said Almy, the tax department's application of ratio studies accomplishes little more than checking the math of county assessors. Even then, he said, the ratio studies proposed by the Board will fall short of being a useful tool for determining whether equalization is occurring. That's because neither the county nor the state measures the valuations against market values."

So, even a guy who was a partial author of the standard says this is a problem to apply it after he has read the proposed regulations. So, what I would propose is that a little more work be done to make some modifications. One is to go ahead and use the standard because, as Terry said, I think it's one of the few if not the only one, but apply it where it can be used and explicitly exclude it where it cannot.

You can use it on land, but on the improvements, do what we have to do under law and I think you'll find it a very simple and straightforward task which I witnessed inside the Blue Ribbon Committee, which is to go out and determine whether the assessors are properly applying the Marshall-Swift. It's just a check calculation. It's almost formulaic in application.

If you do those two things and look at each one separately, then I think you can get to the point where you

can conclude that equalization has been done, whether it exists or it doesn't exist. But if you allow the use of sales ratio studies on nonmarket based values, then I just think it's opening up a can of worms and you don't want to go there.

It's not a big fix but it can be done and a lot of work has already been done to get this far, so let's just finish the job and get it right the first time. Thank you.

CHAIRMAN WREN: Thank you very much.

MS. INGEMANSON: Maryanne Ingemanson, but I will defer to Suellen Fulstone to use my five minutes.

CHAIRMAN WREN: Okay, great. Good morning.

MS. FULSTONE: Good morning, Chairman Wren. Suellen Fulstone, attorney for the Incline Village taxpayers. I will go longer than five minutes. I thank Mrs. Ingemanson for her time as well. I would ask the Board's indulgence.

I think this is an important regulation, and under NRS 233B.061, I think it would be improper to cut off any interested person or any public comment, even if it goes longer than five or even ten minutes, simply because it's not as though the room is full of people who want to give public comment. So, I think you should listen to the public comment that's being offered without undue limitation.

I'll start by saying I agree in part with Mr. Lowe. I probably agree more so with Mr. Almy. There are

a couple of familiar lines from Shakespeare's Macbeth and they go like this. "It is a tale told by an idiot full of sound and fury signifying nothing."

When I first read the proposed regulation, these lines immediately came to my mind. Every time I reread it that refrain starts running again in my head. Obviously Shakespeare wasn't talking about this regulation, but the description fits.

Notwithstanding multiple pages and as Ms. Rubald said this morning many, many words devoted to ratio studies, this equalization regulation in its entirety is useless, unworkable, unnecessary and certainly cost prohibitive.

There is so much wrong with this regulation from the unauthorized delegation of this Board's duty of equalization obligation to the definitions, it would take me more than all morning to go through it section by section. So, I'm just going to talk about a few things that stand out.

Under the law the Board's authority to adopt regulations is limited. Under NRS 233B.030, an agency such as the Board may adopt regulations only, and I quote, "to the extent authorized by the statute applicable to it."

The only specific statutory authority for this Board to adopt regulations is under NRS Section 361.379, paragraph 9, which says that the Board may adopt regulations and I quote, "governing the conduct of its business."

In section 4 the proposed regulation effectively purports to define equalization. This Board cannot do that. It does not have the statutory authority. The definition is improper even if this Board could adopt a definition of equalization. Section 4 reads that equalized property valuation means to ensure that the property in this state is assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law.

NRS 361.395 which is the source of this Board's duty of equalization never talks about assessment. It talks about equalizing property valuation. Equalization is not about assessment uniformity, it is about property valuation.

Section 4 talks about looking to see that property is, and again I quote, "assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law."

The Supreme Court made it a lot simpler. In the Barta case they said, "If varying methods are used to determine the taxable values of like property, then equalization becomes difficult and there can be no guarantee that the same measure of taxable value will be assigned to the property. Clearly, this would violate the constitutional requirements of," and then this is a quote from the constitution of course, "uniform and equal."

In the Bakst decision with which you are all

familiar the Court recognized that constitutional uniformity requires that the Tax Commission adopt valuation regulations for use throughout the state by all assessors, and that the assessors follow those regulations.

In Barta the Court went further. Realizing that constitutional uniformity in a taxable value system, not a market based system, but a taxable value system, required not just that the valuation regulations adopted by the Commission be used by the assessors, but that the same valuation methodology be used by all assessors for the same kind of property.

Under the Nevada constitution it is impossible to achieve uniformity of taxation without uniformity of valuation methodology. Under the Nevada constitution it is impossible to achieve equalization or equal taxation without uniformity of valuation methodology.

An assessor cannot value the land in one residential property using comparable sales of vacant land and the land under another residential property using abstraction. There is simply no evidence, and I have asked the Department for this evidence on more than one occasion, but there is no evidence that when you use different methods, that the properties are uniformly or equally valued. In fact, the evidence is all to the contrary.

Under the constitution and the Supreme Court

decisions in Bakst and Barta, as well as the statutes, equalization is first and foremost a function of assessors using the same valuation method to value similar properties. This Board had the right idea back in April or May of last year when it promised taxpayers from Incline Village and Crystal Bay that it would bring the assessors as well as taxpayers throughout the state, that it would bring the assessors before it and ask them how they value property. That never happened.

Although I think there was a request to the assessors to appear, as I recall the assessors demurred and for all practical purposes they refused to come and that refusal was accepted by this Board.

Under section 12 of the proposed --

MEMBER MARNELL: Excuse me, Ms. Fulstone, I'd like to stop you right there. That's not correct. Dawn, can you inform Ms. Fulstone what is correct and what has been scheduled just for the record?

MS. KEMP: There is a meeting scheduled to meet with the assessors at the end of the month, if I'm correct. Do you have the exact date, Terry?

MS. RUBALD: March 22nd.

MS. KEMP: March 22nd.

MEMBER MARNELL: Thank you, Dawn.

MS. FULSTONE: I appreciate hearing that. Thank

you, Member Marnell.

MEMBER MARNELL: You're welcome.

MS. FULSTONE: I'm glad to know that. I think that that's an appropriate action to take.

Under section 12 of the proposed regulation the Board in making its equalization determination is to consider the county tax rolls, the central assessed roll, the ratio studies performed by the Department under NRS 361.333, the work audits performed by the Department, evidence from the taxpayer, but that evidence is limited to evidence provided under NRS 361.355, which is the specific statute that allows a taxpayer to go to a different county board of equalization and argue that certain property in that county is being undervalued.

It's a very limited statute, I'm not sure it's ever been used, but it certainly limits the evidence that a taxpayer may offer here. And finally, evidence provided pursuant to sections 13, 14 and 15.

In this section of what the Board considers, there is no mention of evidence of valuation methods used by the assessors except as may be contained in the Department's work audits which, because I have had the occasion to review those audits, make no effort whatsoever, at least the audits as they've been conducted to date, to determine whether uniform methods are used by different county assessors.

Under section 13 of the proposed regulation the Board can seek additional information from the county. There are 12 itemized categories of information that the Board can seek with no catchall anything else even at the end, and notable again in its absence are the valuation methodologies used by the assessor. All kinds of information except the information that matters most. As I said when I started this presentation, full of sound and fury signifying nothing.

Under section 14 of the proposed regulation the Board can seek additional ratio studies to be performed either by the Department or the county assessor. Under the regulation the Department can essentially do ratio studies of its ratio studies, all with the same meaningless results as pointed out by Mr. Almy in his interview with Mr. Dougherty.

The structure of the proposed regulation is essentially to base equalization on ratio studies, which are to be evaluated by the Board, although how this Board will evaluate ratio studies that are nothing but conclusions is not clear. Without going behind the conclusions, the Board's evaluation of ratio studies cannot be anything more than a rubber stamp or anything other than a rubber stamp.

In the lawsuit where Incline Village taxpayers are challenging the validity of the 2008 revisions to the valuation regulations we have had some access to Department files. One of the things that I came across was a cartoon

apparently distributed by the Department to assessors at the one of the meetings of the county assessors association, and that cartoon asked in essence what do you do when the statistics don't help you? And the answer of course was you develop new statistics.

There isn't anyone in the room, on the phone or in Las Vegas or Elko who does not realize that statistics can be and generally are manipulated. Making statistical analyses the driving force of the determination of equalization simply takes the taxpayer and for that matter the Board itself out of the determination and insulates both the Department and the assessors from any meaningful accountability.

I'm offended by that, not just as a lawyer for Incline Village/Crystal Bay homeowners/taxpayers, but as a member of the public. Public officials and public employees ought not to seek and certainly ought not to be allowed to avoid public accountability.

Section 6 of the proposed regulation defines ratio study. Ratio study means an evaluation of the quality and level of assessment of a class or group of properties in a county which prepares the assessed valuations established by the county assessor for a sampling of those properties to an estimate of the taxable value of the property by the Department or an independent appraiser or the sales price of

the property as appropriate.

There's a different definition in the IAAO standard which you're also adopting. There is a provision for conflicts I think that simply invites litigation. The bottom line is that a meaningful ratio study cannot be done in a taxable value system without employing independent appraisers, which is wholly cost prohibitive even without the budget constraints that we're dealing with in this state at this time.

One I think that is quite accurate about the proposed definition written by the Department here and that is the description of "estimate of taxable value of the property," and I'll put in either, "either by the Department or an independent appraiser," taking the Department and an independent appraiser as mutually exclusive things.

The ratio studies that the Department has done under NRS 361.333 demonstrate beyond any doubt that the estimates of taxable value done by the Department do not remotely resemble an independent appraisal.

One of the things we looked at in the regulation lawsuit again were the work papers for the Department's ratio studies and assessor work audits. For the most part there was not even the pretext of an independent appraisal. The Department just adopted the assessor's land value.

When the Department simply adopts the assessor's

land values, the ratio study's conclusions are meaningless. You can't compare the same values and come up with anything in terms of significance for equalization. The ratio studies as proposed in this regulation are nothing more than busy work, job security for Department employees.

Under section 15, the regulation finally gets close to looking at methodologies, but it makes sure that the doesn't do any of the looking. Section 15 has the Department report to the Board "its findings concerning whether the county assessor has appraised the property in the county in accordance with the methods of valuation prescribed by statute and the regulations of the Commission."

Again, all the Board gets are the conclusions of the Department, and even those conclusions don't reach the constitutional issue which is whether assessors across the state value the same kinds of property in the same way.

When you're looking at whether the assessors value property in accordance with the methods of valuation prescribed by statute, that's not looking at how they apply those methods and whether they apply the same methods to the same kinds of properties.

The regulation as it existed before the Bakst case, as it exists now, and as it's proposed to be revised contains a number of alternative methods of valuation. You have to apply, in order to satisfy the constitution, you have

to apply the same methods to the same kind of property.

The proposed regulation doesn't reach that issue in my mind because the Department knows that the assessors cannot and do not meet -- well, cannot in the sense that if you look at what they do, they do not meet the constitutional standard. It's not that they are unable to, it's that they do not meet that standard.

Contrary to all the notions of open government, these findings by the Department are going to be made behind closed doors, presented to the Board without any opportunity for contest of any kind.

Ms. Rubald talked about the first hearing being under section 16. Well, the first hearing in this proposed regulation can't be under section 16 because the hearing under section 16 comes only after this Board has made certain determinations. This Board cannot make determinations consistent with the Open Meeting Law without having a hearing or at least a meeting. The initial equalization hearing is under section 11 and that's apparently an administrative hearing with a three-day notice to the public. I think that's wholly inadequate.

I don't know how any taxpayer or taxpayer's attorney would prepare on three days notice to respond to what's actually been in the preparation stage for a much longer period of time. The hearings under sections 16 and 17

have a ten-day public notice. If the Board ever gets to a hearing under section 17 that proposes an increase in property valuation, that's the only time there's personal notice to the property owner.

Interestingly from a lawyer's standpoint no provision is made for the property owner or taxpayer to be a party to any of these equalization hearings, even the one which proposes to increase the value of the taxpayer's property. The county gets two parties to the proceeding, both the assessor and the county board, originally three parties, the county commission as well, but apparently can be amended to exclude the commission at the request of the county.

The taxpayer only gets to provide oral testimony. By keeping the taxpayer from being a party of record, then the taxpayer cannot seek judicial review of any determination.

One of the strongest underlying themes of the proposed regulation is the exclusion of the taxpayer from the process. In my mind that is extremely shortsighted, not just wrong and unfair, but shortsighted. The primary prerequisite for an action under the federal law is the unavailability of a remedy under state law.

If you exclude the taxpayer from the process and preclude the taxpayer from seeking judicial review of any

determination you simply drive the taxpayer into federal court.

An equalization regulation ought to do a couple things my mind. It ought to provide for a process and it ought to be a streamlined process, not this cascade of hearings that we have here; a hearing under 11, a hearing under 16, a hearing under 17, another hearing if you propose an increase, a hearing on a reappraisal, hearings and hearings and hearings.

It also ought to provide for meaningful participation by taxpayers, not just the county assessors, and for a meaningful determination by the Board. It is important in a representative government that government be accessible. I think that's the import of the taxpayers' bill of rights.

I think accessibility and understandability and participation are particularly important and have been from before this country was formed even when it comes to taxes. Nothing, maybe some things, but few things come closer to the citizens' concerns than the taxes that he or she is assessed and required to pay.

An appropriate equalization regulation ought also to focus on the uniform application of Commission promulgated valuation regulations which the Supreme Court has clearly made the crux of constitutionally mandated equal and uniform

taxation. The proposed regulation does none of these things.

One obstacle to the drafting of an effective regulation is the Department's conflict of interest. It is the Department's job to monitor the performance of assessors and assure the uniform use of valuation methodology. They stopped doing that job many years ago. The Department has become aligned, fully aligned with the assessors. This is a well established phenomenon in regulation. It's called by social scientists regulatory capture.

The regulators become identified with the regulated and arrayed against the public. This is why the FCC failed to stop Bernie Madoff. It wasn't that there weren't red flags all over the place.

One of the things that Almy mentions is when you adopt this regulation with ratio studies you're not really doing anything more than checking the math of the assessors. If you look at the definition of assessment ratio, which is at page ten --

CHAIRMAN WREN: Two minutes, please.

MS. FULSTONE: I will do my best. The example is clearly where all you're doing is math, you're applying the assessment percentage to the taxable value established by the assessor.

This regulation is written to obscure and obfuscate and bury the Department's failure to meet its

obligations to monitor assessors. Under the circumstances, having the Department draft an equalization regulation is like having the foxes design the henhouse.

The Department's proposal blocks every exit with unintelligible statistical mesh and even those lucky little taxpayer chickens who have and know how to use statistical mesh cutters, like Mr. Lowe, are barred from using them by the exclusion of the taxpayer. The goal and this Board's duty of state-wide property tax equalization is not advanced a single iota by this proposed regulation.

It is a bad regulation, it is an unconstitutional regulation, it is an expensive and ultimately unworkable regulation. It should be rejected by the Board, the Board should insist that the Department develop an equalization regulation that focuses on establishing the uniform use of valuation methodologies that provides for effective taxpayer involvement in the process and that doesn't waste the State's money. Thank you.

CHAIRMAN WREN: Thank you very much. Any other public comment? Terry, I'll come back to you for a minute. Do we have any other comments?

MS. RUBALD: Thank you, Mr. Chairman. I do have a few responses to the comments that you've just heard from Mr. Lowe and Ms. Fulstone. I deeply regret that they perceive the Department in such a black way when in fact we

are really trying our very best to produce the information that all the parties that are interested wish to have.

First I'd like to comment to Mr. Lowe's reference to section 2.2 in the standard on ratio studies. If you look at the standard, there's actually two parts. There's part one, guidance for local jurisdictions, and part two, equalization and performance monitoring.

If you look at 2.2, which is on page 39 of your packet or page 21 of the ratio study, it says "Oversight agencies can use the results of ratio studies to equalize, directly or indirectly, appraisals or assessments," and further on here, I've lost the place, but it does say in here that you can use appraisals in lieu of sales, and in fact that is what the Department has done since 1981 in producing ratio studies for the Tax Commission because we do have this difference in taxable value.

We go out and appraise the properties using the methods that are required in NRS 361.227. You know, I don't know, in the interview with Mr. Almy, who by the way is the person that I recommended that Incline Village contact because he does have such a premiere reputation in the mass appraisal world, I don't know if Mr. Almy was aware of the appraisal program that we do carry on. So, I really don't know how he was interpreting the question of what facts that he had available to him when he said those things.

I guess I should take some offense at the tale told by an idiot signifying nothing. Last I knew, I had a master's degree and I've had 22 years of experience. I don't think that's being an idiot.

Useless, unworkable, unnecessary and cost prohibitive, we already have a staff on board and have had since 1981 performing these appraisals, so I don't think that we expect that there's to be an increase necessarily in the cost.

Unauthorized delegation of authority to the Department, that's a major reason why these regulations are vetted through the Legislative Counsel Bureau, to ensure that anything that might be proposed is actually authorized in law. So, when we get a draft back from LCB, we know that they have approved it as to your authority.

I would also like to note that there was some comment about you can't define equalization because NRS 361.395 never talks about assessment, but you do have to read all of the statutes together, and I would refer you to NRS 361.380. Let me just get that quickly. 380 says that the State Board of Equalization shall conclude the business of equalization on cases that in its opinion have a substantial effect on tax revenues before April 15th. So, that of necessity then includes assessment.

The notion that the taxpayers are excluded, I

think I made a very specific reference to the fact that the items that you can look at include all of these tax rolls and whatnot, the audits of work practices, and this is in section 12, item 7, and it says, "and any other information the Board deems relevant." That's why this is wide open.

The taxpayers can come to you with any information, they're not precluded from developing their own ratio studies or their own work practice reviews and bringing that forward.

I'll try to make this short. The conflict, it was mentioned that there's some sort of conflict in section 6, the definition of ratio studies. With the standard on ratio studies, and I would reference that I believe it says in section 14(2)(a), it says that "any ratio study be performed in accordance with the provisions of the standard on ratio studies adopted by reference in section 10 of this regulation, except any specific provision on the standard of ratio studies that conflict or is inconsistent with the laws of this state or any regulations adopted by the State Board or the Commission." That's put in there specifically to avoid any such conflict between your regulations and the standard.

Again, with the comment that the Board will only get the conclusion of the Department under section 15, you know, that's a good twist. We're trying to provide you with

the information that you need. It doesn't preclude you from hearing any other information.

Section 16, the assertion that there's an exclusion of the taxpayer from the process, again that is not so whatsoever. All of these hearings are to ensure that there is an orderly process in which the taxpayers can participate and that includes the preliminary hearings where you're looking at the tax rolls. All of those things are notice to the public and they can watch it from the beginning and participate in it from beginning to end.

So, the notion that the Department has a conflict of interest, that we are somehow fully aligned with the assessors, I think not. You have only to look at some of the ratio study recommendations that we've made in the past. Perhaps they've not been adopted by the Tax Commission, but we have certainly made them and made those observations as an independent agency from the assessors.

Having said that, thank you for the time.

CHAIRMAN WREN: Thank you very much. I want to thank everybody for their comments. I'm going to go to the Commissioners for comments. Before I do that, Dino, do you have any input? Is Dino there? Apparently not. Okay.

Commissioners, let's start with Russ. Comments?

MEMBER HOFLAND: No comments at this time.

CHAIRMAN WREN: Aileen?

MEMBER MARTIN: I need to go back through some of this regulation, the proposed regulation, so I'll reserve my comments for just a few minutes, okay?

CHAIRMAN WREN: Okay, that's fine. Dennis?

MEMBER MARNELL: Mr. Chairman, is it possible to take maybe a five-minute break to gather some of our thoughts and use the rest room?

CHAIRMAN WREN: Yes. Let's go off the record for ten minutes.

MEMBER MARNELL: Thank you.

(A short recess was taken.)

CHAIRMAN WREN: We're going to go back on the record. It appears that everybody is still here. So, Dennis, comments? Excuse me. Who do we have on the telephone? Aileen?

MEMBER MARTIN: Yes, I'm still here.

CHAIRMAN WREN: Dino, are you back? Dennis, go ahead.

MEMBER MESERVY: I'm really impressed that Terry has been able to expend all this effort and I think she's very capable and I think she's been working hard on this. So, I'm grateful that we have somebody on staff working hard on this.

A couple of questions I have. First of all, if this were to take effect October 1st, are there deadlines

that have to be met on when they're ratified or can we keep making changes as we go? What date does it become effective, as of October 1st, do you know?

MS. RUBALD: Mr. Chairman and Mr. Meservy, in answer to that, what happens is if you adopted these regulations today, the next step would be to have approval by the Legislative Commission. The purpose in having an October 1st date was to consider the comments from the Nevada Taxpayers Association that perhaps it would be in the best interests of all to have these apply to the next fiscal year since the property tax calendar is well into the 2010 tax year.

If, for instance, you were to have these apply today, it might not be enough time really for people to respond and put in place all the things that need to happen, at least that was the point of view of the Taxpayers Association. I don't know, have I answered your question, Mr. Meservy?

MEMBER MESERVY: I agree that we wouldn't want to go retro and I think October 1st makes sense. I guess what I'm saying is if we waited until October 1st or if we did it today, when is the break off to make it effective or does it matter?

MS. RUBALD: Actually it does. If you want permanent regulations they basically have to be adopted by

July 1st. Thereafter if you adopted regulations, say in October, they would be temporary regulations and then you would have to go through the process again to make them permanent a year later. So, there is a deadline in terms of making regulations permanent and that is July 1st.

CHAIRMAN WREN: Dennis, my understanding of what happens also is if we pass these regulations today, then they would go back to LCB. Am I saying that right?

MS. RUBALD: They will go to the Legislative Commission which is staffed by LCB, yes.

CHAIRMAN WREN: Because they approved the original language but there's recommendations for some changes in there. If we pass it today, then it will go to them again for their approval and it will come out of their committee; is that correct?

MS. RUBALD: It has to be approved by the Legislative Commission which is staffed by actual legislators.

CHAIRMAN WREN: Anything else, Dennis?

MEMBER MESERVY: I'm still learning. Thank you.

CHAIRMAN WREN: Anthony?

MEMBER MARNELL: Mr. Chairman, as usual, I have a ton of questions for three or four different people, so I'd like to start with Dawn. Dawn, do you have a legal opinion or would you like to weigh in legally whether or not this

Board is allowed to adopt these regulations?

MS. KEMP: Yes. Let me refer you to your authority under 361.375, section 9, "The board may adopt regulations governing the conduct of its business." What you're regulating under is the State Board of Equalization shall equalize property valuations in the state.

So, both of those are pretty broad grants of authority to be interpreted by the State Board.

MEMBER MARNELL: Okay. Mr. Chairman, do you have any thoughts on that?

CHAIRMAN WREN: You know, I reread the regulations again this morning, and of course I can't give you a legal opinion at all, but from my layman's opinion, it appears we have the authority to do this. It appears to go hand in hand with my understanding of what the Supreme Court has kind of indicated we should be doing also.

MEMBER MARNELL: I would agree with that. I just wanted to make sure that that was in the record.

Terry, for me, is Terry there?

CHAIRMAN WREN: Yes.

MEMBER MARNELL: Again at a very high level, could you state maybe more of a summary of the exact purpose of the State Board adopting this regulation and what specific problems you think it's going to help us solve as a State entity?

MS. RUBALD: Mr. Chairman, Mr. Marnell, thank you for the question. You have the authority to equalize under 361.395, and in fact you've done so. At a high level, what these regulations provide is process, an orderly process to gather information, to make sure all of the parties, including the taxpayers, are included, and the counties because it is also the counties who have to implement any equalization order that you might 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.

MEMBER MARNELL: Thank you. Can you speak specifically to the purpose of the ratio study and how you see that in this regulation?

MS. RUBALD: Yes. When we talk about -- in section 4, what the definition for equalize property valuations are, it's a two-part process. I don't think it's correct to say that equalization is only the result of method because the constitution also says -- what the constitution actually says is that the legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all properties.

So, even in that sense it's a two-part process.

When we're talking about equalizing property valuations, you have to ensure that, yes, the methods that were used to arrive at value are uniform and equal, but you also have to make sure that the level of assessment has been reached.

I know in some of the workshops there was some suggestion that, well, of course it's always going to be 35 percent, but that's not the true.

When you have a variation in taxable value and you multiply it by 35 percent, you will have a variation in the assessment level and that's what ratio studies are designed to detect, is if there is some variation in ultimately the taxable value that results in nonuniformity and the level assessment has not been reached.

MEMBER MARNELL: Okay. Thank you. I do I have one question, it's the same question for Mr. Lowe and Ms. Fulstone, if they're there still?

CHAIRMAN WREN: They're coming up.

MEMBER MARNELL: Great. Thank you.

MS. FULSTONE: Suellen Fulstone, Member Marnell. I'm sorry, what was the question?

MEMBER MARNELL: I haven't asked it yet.

MS. FULSTONE: I thought you said you had the same question so I could think about it.

MEMBER MARNELL: Are you ready?

MS. FULSTONE: I am ready.

MEMBER MARNELL: I just wanted to understand your and Mr. Lowe's involvement in these workshops, and I don't have your specific quotes from the record, so if I misstate this, then please correct me.

I wanted to know what your level and Mr. Lowe's level of involvement was in these workshops and if you proposed or have any proposed alternative language to this the regulation other than your testimony today. Do we have a work doc with a red line of your thoughts or Mr. Lowe's?

MS. FULSTONE: You don't. I went to two or three of the workshops, submitted comments when I was there in writing and orally making much the same objections I'm making now. I did not go to the most recent workshop because at that point in time this hearing for final approval of the regulation had already been noticed, so it seemed to me that it wasn't going to be changed, so there wasn't much point in my going and objecting there.

The problem with the way this process gets done in terms of developing regulations is that the taxpayers or anyone else for that matter, I don't know -- I mean the assessors have some input with the Department, but the Department puts together the regulation, and then they notice the workshop and then you come and you're kind of faced with the structure that they've already established.

So, in my mind this is completely wrongheaded.

This is the wrong way to go about equalization. It's got too many hearings, it's got too much -- I don't -- I don't challenge at all the -- I'm sorry?

MEMBER MARNELL: I don't want to interrupt you, but I got that. I have the or I think I have the impression rightly from that your standpoint you think this whole thing is wrong, and regardless of some of the things you may have said prior, I do respect your opinion and the opinion of the different taxpayers.

That's why I wanted to know -- for me sometimes it's easier sitting on this Board, and as you know, I am not a certified appraiser and appraisal is not my background. I've said this publicly, I don't know if that's my purpose necessarily here as a member of a team of five, but I do read red line documents really well and I do understand comments that are stricken and comments that are added.

Then I think I could be much more valuable to the process in asking you why you believe what should be out and what should be in. You give your testimony and you give it well and you give it quick and we do bounce around a lot in here. That's why I wanted to know if you have that or have prepared something like that, it would be very useful at least for this Board Member to understand the contrary opinions of yourself and the potential other taxpayers.

MS. FULSTONE: Well, I will say I had hoped that

the ultimate revision after the, I don't know whether it was the second or third workshop, I think it was the third workshop, would not be the regulation as it's presently drafted. If I had known that perhaps I could have drafted some sort of parallel regulation.

As I said, when the Department sets the structure of the regulation, and I'm a lawyer, I've done work on a lot of red line documents and I understand how that process works. It just doesn't work when the basic premise of the document is wrong.

Then you go back as a lawyer and you start from scratch and you rewrite it and you send that off to the other side and they send you back a red line or they say we're not going to come to any kind of an agreement here.

In this case, I think this regulation could clearly use more time and more modification and more input and perhaps more workshops, I don't know, but some -- there are issues with this regulation, and as I said, I didn't try to cover them all. If we're looking at a date of October 1st, I think we have time to modify this regulation, but if you want me to develop a parallel draft regulation, I'm happy to try to do that.

Again, the thoughts are the ones I expressed earlier. Statistical analysis ought not to be the driving force. Uniformity of methodology ought to be the driving

force, and this ought to be an open and accessible process. But I can write one if you want to give me some time.

MEMBER MARNELL: Let me address that later in the closing comments with the Board, but I appreciate your testimony. I don't know if Mr. Lowe would like to answer or if you've maybe spoken for both you in the interests of time, but Mr. Lowe, I'll turn it to you.

MR. LOWE: Just briefly. To answer your direct question, I did not participate in the workshops. I think they were mostly in February and that's a time of year when I'm elsewhere, not in Nevada.

However, an experience that I do have and would love to bring to you and to the rest of the Board is that I was the guy who spent many, many days and hours and hours with Mr. Almy back at the time that the Department of Taxation was conducting the Tahoe study. So, I know that he has a good understanding of what's going on here in Nevada because he studied it in detail, as well as his partners.

I know what he thinks and what he would recommend that we do in this state to get it right and that's an experience that I would love to bring to this Board.

I haven't done a red line, but I'd be happy to write something and offer it and submit it to the Department and the Board for your review. I think it would be helpful, and something that I think would be even more helpful would

be for the Board to do what we did at Terry's suggestion as she mentioned earlier which was reach out to him and get his advice because he has specific recommendations that would work here in the state of Nevada.

I don't think it would take much time, I don't think it would be very difficult and I think the end result would produce something, particularly since we have all the way to October to get it done, that it would be very satisfactory.

MEMBER MARNELL: I appreciate that and maybe this Board will have that discussion here shortly, but you, Mr. Lowe, are very well aware of the public process and it's somewhat difficult for me, again I do respect what you've had to say, what you've continued to say and what you've said in the past, but to not be involved in any of the workshops and be on the record with any of your thoughts, and to show up on the day of and drop such major objections to this piece of, what's the proper word here, regulations all at the last minute, I don't think that's -- the Board tries to give the public the due process and respect of the process, and for you to come in at the last minute with so many major objections when there's been I guess right now 13 months of time to do this, it's just a little unfair and I just would like to point that out.

I'm still committed to listening to you, I think

that you've got thoughts that should be heard, but I would like to see in the future if you wouldn't mind is to follow the process that's been laid out in the state of Nevada to go through the workshop process and get all your comments on the record.

MR. LOWE: I appreciate that, and my apologies for not being there. One of the things that gave me some comfort in coming just today is that before I left, I did read what Les Barta had prepared, whose comments largely reflected my point, which was a single point, it's not a lot of points, and so I thought that was right and you'd pay attention to that and I'm here to provide emphasis on those remarks which were made in writing well over a month ago.

MEMBER MARNELL: Thank you very much. Mr. Chairman, I don't have any other questions at this time.

CHAIRMAN WREN: Thank you.

MS. FULSTONE: Mr. Chairman and Member Marnell, could I say one further thing in respect to what Member Marnell was saying because I do think it's a bit unfair to chastise us for what he characterized as being last minute in a sense.

The regulation as it was initially drafted and presented in the workshop was not the regulation you see now. The adoption of the IAAO ratio study as I recall came only in February and was only discussed at a workshop which, as I

pointed out earlier, was essentially meaningless because the regulation as it existed had already been noticed for a formal hearing before this Board.

So, it wasn't as though we didn't have our input along the way, it's just my recollection and Terry can correct me if I'm wrong and point me to the earlier drafts, but my recollection is the IAAO draft of ratio study never came into the regulation until just something like a month or so ago and we really did not have an adequate opportunity to address that in a workshop.

MEMBER MARNELL: So, Ms. Fulstone, you're saying that that piece of the regulation came in on the February 11th, 2010 workshop, not February 26, 2009, just for clarification?

MS. FULSTONE: Correct.

MEMBER MARNELL: And I wasn't chastising you, I would never use a Shakespearean idiotic comment to describe some good ideas by this Board Member.

MS. FULSTONE: I appreciate that. Thank you.

MS. RUBALD: May I respond to that as well?

CHAIRMAN WREN: Yes, and I have a question for you, so I'm glad you came up.

MS. RUBALD: When we began this process in January of 2009 we actually had most of the major concepts of statistical analysis in the regulations and the folks from

Incline Village told us that we shouldn't have all of these things in the regulation, and that is why we went to the standard so that the individual things that are in the standard would not be separately listed in the regulations.

CHAIRMAN WREN: Okay, good. Mr. Marnell, I am a certificated general appraiser. However, I do not see red, so I don't see red lining. However, strike-out works real well for me and I do understand that, so I agree with you.

One of the things I want to ask Terry, in the workshops, and I had the opportunity to be at the February 11th one and I know there was input from the assessors, some of the assessors at that meeting, what type of input did you have from the assessors and I'm going to get an opportunity on March 22nd to ask them face to face some of these questions and their thoughts on how we're doing things and how they're doing things.

But can you kind of give us a synopsis of their input and their feelings on this regulation?

MS. RUBALD: I'm trying to recall exactly. The input that they had, we tried not only at the February 11th workshop, but in all the workshops, we tried to at each succeeding draft accommodate those comments, the comments by the assessors at the 2010 workshop because it had already been vetted by LCB.

At that point in time there wasn't -- it wasn't

intended to have a whole change of direction. That's what the three earlier workshops were for. But there were some minor things that they suggested and I ran them past LCB and they were willing to say these are minor changes and we can accommodate that.

Lest Incline Village thinks that I didn't do the same for them, virtually all their suggestions about getting taxpayer access and so forth were accommodated in this draft. The only thing that was not accommodated was the removal of the ratio study.

CHAIRMAN WREN: Okay. So, I guess I want to make sure. Since we were not at these meetings, they are attended, they were noticed so both the assessors and the taxpayers had an opportunity to come in and help vet through this information?

MS. RUBALD: Yes.

CHAIRMAN WREN: Okay. Russ, back to you.

MEMBER HOFLAND: Mr. Chairman, I still have no comment.

CHAIRMAN WREN: Okay, good. Or okay I guess, not necessarily good. Aileen?

MEMBER MARTIN: Mr. Chairman, I don't know if I should make any comments being that I didn't participate in the February hearing on the regulations, so, I have no comment.

CHAIRMAN WREN: Okay. Anybody want to make a motion?

MEMBER MESERVY: I'd like to hear if I could some of your comments a little bit more, Tony, what your thoughts are on this whole process, Mr. Chairman.

CHAIRMAN WREN: Okay. I'm in favor of the regulation. I think it has been well thought out, I think it's been well prepared, I think it's been vetted through the system.

Is it perfect? No. Do we have a perfect system? No. Is it apparent that we need to do the best we can given our charge of equalization and what's happened in the past? The answer is yes.

I think we need to go forward with the best system as we see it and this is a tool that can be utilized as we go forward in the equalization process. Do I imagine that there's probably going to be required additional changes and other regulations and other things happening as time progresses? Yeah, absolutely.

But in my opinion, Dennis, at this point it's a step in the right direction. I feel very confident that it has been vetted through the system. The taxpayers have had the opportunity to have their input.

I see just from sitting in on the meeting on February 11th that some of the taxpayers' comments and

requests have been incorporated into those changes. I feel pretty comfortable that the assessors had quite a bit of input too. A lot of things happen just on a day-to-day basis that we just don't see. Some are seen through the workshops, but I know that the assessors have on a day-to-day basis worked with Terry and her staff to make sure that this type of information and this type of system is as cohesive as possible.

In my mind if there was a problem, the assessors would be jumping up and down saying, listen, this doesn't work, this doesn't make sense, we shouldn't be going in that direction and we're not getting any of that testimony at all.

I'm assuming that through the vetting system and through the workshops that the assessors have helped create this system that is going to benefit both them and the State and help us do our job as well as we can.

MEMBER MESERVY: Thank you. With that, I have no problem with giving a motion that we do adopt it with the thought in mind that as with all regulations, they are subject to future changes as more insights are developed and more opportunities to improve.

CHAIRMAN WREN: I have a motion. Do I have a second?

MEMBER HOFLAND: This is Russ Hofland. I'll second.

CHAIRMAN WREN: Further discussion?

MEMBER MARNELL: Yes, Mr. Chairman. This is Member Marnell in Las Vegas. The only discussion that I have is I am interested in listening more to -- I heard what you said loud and clear that if something was wrong with this, that the assessors would be jumping up and down if they didn't feel it was valuable, but at the same time, the adverse to that, unless you have a different thought, we have two taxpayers that are jumping up and down.

Now, it's not unlike Ms. Fulstone and Mr. Lowe to jump up and down at every meeting we have, but at the same time I think that there were some things that were brought out this morning that I would certainly like to learn more about.

I guess if we are going to make a motion and a second and a final approval to adopt this, I would like the ability to give those two taxpayers, limit the forum, and I don't know if I'm allowed to do this, so if I'm speaking out of school, please let me know, but I would like to understand very specifically in black and white the pieces of the regulation that they do not feel work, what their proposed alternative is and why they think it's better.

If they're willing to make that effort, at least this Board Member would like to see it, read it and understand it to do my job better as a part of this Board.

So, that's my only comment.

CHAIRMAN WREN: I don't disagree with you. I'm like you, I listen very carefully to everything everybody has to say and listening to the testimony, what I got out of it is Ms. Fulstone basically said there was nothing in the regulation that she agreed to at all.

The other gentleman indicated he thought that it was kind of 50/50, in other words, that the statistical information worked in our bifurcated system with our land analysis since that's market based, but not the full cash value predicated on Marshall & Swift.

I understand those comments. Like I said, it's not perfect, but I'm not sure that we're really at this late date since this has been going on for a year necessarily start from scratch again which is basically what they, my understanding is what they indicated they would do, start on line one.

The way this system works is that anybody -- if we pass this today, then it goes forward, it still has to go through LCB and come out with any final revisions or directions that they put in it, and next week, the week after that, next month, anybody who wants to propose a regulation to this Board has the ability to do that.

If they want to go out and rewrite it and spend the effort and the time that staff has spent in the last year

in doing this, then I would wholeheartedly look at those changes and/or rewrite the regulation sometime in the future.

MEMBER MESERVY: That's why I feel comfortable too.

MEMBER MARNELL: I guess, Mr. Chairman, I think that's a good thing. So, if you're willing to commit to that time and prepare that document, then I would agree with you that this Board is open to entertaining that as soon as they would like to present it.

CHAIRMAN WREN: Absolutely. Further discussion from the Board? Seeing no further discussion, all in favor of the motion say aye.

MEMBER HOFLAND: Aye.

MEMBER MESERVY: Aye.

MEMBER MARNELL: Aye.

CHAIRMAN WREN: Aye. Opposed?

MEMBER MARTIN: Opposed.

CHAIRMAN WREN: The motion passes. I want to thank everybody, staff. Ms. Fulstone, I'm going to have to go back and read more Shakespeare I can see already.

The next item is a briefing to and from the Board and the Secretary and staff.

MR. DiCIANNO: Mr. Chairman, this is Dino DiCianno. Can you hear me okay?

CHAIRMAN WREN: Are you back, Dino?

MR. DiCIANNO: Yes, thank you. From my perspective, and unfortunately I'm not there and I haven't been back to my office for a few days, everyone needs to keep in mind that not only this regulation that you have vetted here today, you have to keep in mind that it's only one piece of a larger puzzle.

Clearly the equalization process has to be done by the State Board, there's no question about that, and I do appreciate the comments that Member Marnell made and that you made here today prior to adoption.

We are also trying to vet out the valuation process that is the responsibility of the Nevada Tax Commission and that process is to be followed through and joined in with the adoption of the equalization process that you have to do.

In addition, the Department has a further responsibility of completing the manual for the assessors, and unfortunately until those regulations on the specific valuation methodologies that the assessors use have not become part of the regulation, it becomes a little problematic for us to issue the manual, but we will do so.

What I get a little concerned about is that if we do nothing we are chastised, if we go to do something, we are further chastised, and I can tell you this much from my vantage point as the Director of the Department. We have

always, always maintained an open process with everyone.

We are not the driver. The parties to the regulation, those that are affected by the regulation are the ones that drive this, and we hope and anticipate that we do respond and act in accordance with what the Supreme Court has directed, both in Bakst 1 and in Bakst 2.

What I would not want to see is further litigation on something that I believe that all of us want to come to a conclusion with, and if the Board Members or yourself, Mr. Chairman, have any questions of me, I'd be more than happy to respond.

I'm sure Terry is well prepared to brief you on further docket issues and what's going to happen with the State Board here in the future, so I'll leave that up to you, Mr. Chairman. Thank you very much.

CHAIRMAN WREN: Dino, thank you very much and I appreciate that. That kind of alludes to the comments that I was making that this is an ongoing process and that things need happen, and we as a Board realize things need to happen and are taking the steps as fast as we can to do our job. That's where we are.

Did anybody have any other questions for Dino? Dino, thank you very much. Terry?

MS. RUBALD: Mr. Chairman, I just wanted to confirm with the Board that we do have a few centrally

assessed appeals that normally would be heard on the fourth Monday in March, but we're devoting -- I wanted to make sure that you wanted to devote that entire day to the visit with the assessors and no other business?

CHAIRMAN WREN: If you can schedule it, we can do a two-day. We can do the 22nd and 23rd if you need to, if that fits everybody's schedule, but I definitely want to devote one full day to the assessors.

MS. RUBALD: Very good. Thank you.

CHAIRMAN WREN: One thing I want to put on the public record that we've talked about or has come up a couple times is from time to time I get requests for interviews from reporters, which is fine, that's their job. I make a point, up to this point, to not give interviews. I don't mean to be rude by not returning their phone calls.

My opinion is that I am one member of a board of five. We do everything that we do, we make all of our decisions, have all our discussions in open meeting. It's transcribed. If I have an opinion about something or I make a statement, I make it during this open meeting period and it is there to be reviewed. So, I just want to make the point again for those people who ask for interviews, I'm not going to give any, okay?

Any other comments?

MEMBER MARTIN: Mr. Chairman? I was wondering if

we're going to schedule any joint hearings with the Tax Commission.

CHAIRMAN WREN: We don't have a joint meeting set up with them right now. I'm actually meeting with the Chairman one-on-one this afternoon to talk about some things between the two Chairs. I have asked him and will again ask him to be here or make sure he has a representative here on the 22nd so that they understand what we're doing and the information that we're getting, but as far as a joint meeting, right now we don't have one, no.

MEMBER MARTIN: Thank you.

CHAIRMAN WREN: Any other comments? Any other public comment? That's the only hearing information we have right now. We're going to be here on the 22nd, here in Carson City. Does anybody know if they have a conflict with the 23rd?

MEMBER MESERVY: Dennis Meservy. Obviously I can move things around, but I'm in the middle of tax season and it sure is not easy, so if there is a way to do it after April 15th, I'd like to make sure I'm there. Otherwise it's pretty difficult sometimes.

CHAIRMAN WREN: You use that excuse a lot.

MEMBER MESERVY: Well, taxes come once a year.

MEMBER MARNELL: I do have some things I have scheduled, Mr. Chairman, and I could move them. I don't know

if it's possible to cover the business on the 23rd with maybe an 8:00 a.m. start and be done by 11. I don't know how many appeals we've got, but that would be helpful.

MS. RUBALD: Mr. Chairman, we can schedule these centrally assessed some other time. It's not mandatory to have that it day.

CHAIRMAN WREN: We won't worry about it, then, we'll to discuss on the 22nd. Any other public comment?

Seeing none, thank you very much.

(The proceedings concluded at 11 o'clock.)

STATE OF NEVADA, )
) ss.
CARSON CITY. )

I, MARY E. CAMERON, Official Court Reporter for the State of Nevada, Department of Taxation, State Board of Equalization, do hereby certify:

That on Monday, the 1st day of March, 2010, I was present at 401 South Carson Street, Room 2135, Carson City, Nevada, for the purpose of reporting in verbatim stenotype notes the within-entitled public meeting;

That the foregoing transcript, consisting of pages 1 through 66, inclusive, includes a full, true and correct transcription of my stenotype notes of said public meeting.

Dated at Carson City, Nevada, this 4th day of March, 2010.

Mary E. Cameron

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STATE OF NEVADA

DEPARTMENT OF TAXATION

**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the following document **DOES NOT** contain the social security number of any person:

1) State Board of Equalization Meeting, 3/1/10

Mary E. Cameron
MARY E. CAMERON

3/4/10
DATE

# EXHIBIT 2

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# Tax board schedules dubious 'quick-fix' for property-tax system

## Experts suggest scheme is illegal, ineffective

John Dougherty

CARSON CITY — Nevada tax authorities are poised to address the state's long-unlawful property-tax-assessment system Monday by adopting a quick-fix regulation that won't work, says a leading property-tax-appraisal expert.

"There is not much bang for the buck" in the State Board of Equalization's proposed regulation, said Richard Almy, the former executive director of the International Association of Assessing Officers and a foremost expert on the methodology Nevada tax regulators are proposing to adopt.

Almy is widely considered to be among the world's authorities on property-tax assessment and is senior technical director of the IAAO's textbook, Property Appraisal and Assessment Administration. Almy made his comments after reviewing the state Board's proposed regulations.

The five-member state Board has scheduled for passage March 1 a regulation adopting a statistical tool called "ratio studies" as the basis for determining whether the state's 17 elected county assessors are valuing similar property equally across the state as required by the Nevada Constitution.

State law has long required that regulations ensuring statewide equalization be written, but neither the State Board of Equalization nor the Nevada Tax Commission ever actually produced such rules. Now the Board — after holding only a single two-hour workshop in early February that discussed adopting the IAAO standards for ratio studies — appears to be rushing to put a regulation in place.

Individual taxpayers, county assessors and the Nevada Taxpayers Association criticized the proposed regulations, urging that more time be taken before adoption. The state Board's agenda for its upcoming meeting, however, shows the regulations scheduled for adoption.

Almy's criticism comes at the same time as the head of the state Department of Taxation is also expressing doubt about the effectiveness of using ratio studies to determine statewide equalization.

"The ratio study isn't the end all and be all for equalization," said Dino DiCianno, executive director of the state tax department.

DiCianno said ratio studies, while far from full proof, could still assist the state Board in making a "judgment call" on whether property taxes are equalized.

"Does it ensure [equalization] completely? Maybe, maybe not," he said.

Rather than relying on ratio studies, Les Barta, a property-tax expert and Incline Village property owner who has been a leader in an eight-year property-tax revolt, said the state Board should be following two recent Supreme Court rulings requiring county assessors to only use appraisal methodologies adopted by the Nevada Tax Commission.

"There is minimum mention of the state Board's predominant duty to determine whether uniform appraisal methodologies have been used by county

assessors," Barta said during a Feb. 11 tax department workshop on the proposed regulation.

The Nevada Supreme Court ruled in 2006 and 2008 that county assessors must only use appraisal methodologies that have been expressly approved by the state Tax Commission.

The commission, however, has been slow to implement detailed, uniform appraisal methodologies, and what regulations have been passed are under challenge in state court as being too vague.

The Tax Commission is also in violation of state statute for failing to provide assessors a tax manual prescribing appraisal methodologies. The commission hasn't published the tax manual since 1999.

State Board Chairman Anthony Wren, a Reno appraiser, did not return a phone call Thursday seeking comment in response to Almy's criticism. Wren is pushing for quick adoption of the regulations.

"This is something that has not been rushed through," Wren said at the Feb. 11 workshop.

Almy said ratio studies are very useful in a market-based property-tax system to measure equalization of property assessments. Nevada, however, abandoned a market-based property-tax system in 1981, adopting a unique model called "taxable value."

No other state in the country uses a taxable-value system where land is valued at market price and improvements at replacement cost new, less 1.5 percent depreciation per year based on the age of the structure.

In market-based property-tax systems, ratio studies are used to compare the assessed values determined by tax authorities to market sales. A consistent ratio would indicate that property taxes are being assessed equally across political jurisdictions.

In Nevada, however, the proposed state Board regulation merely calls for ratio studies to compare the tax department's determination of taxable value of a sample of properties with a county assessor's determination of assessed values of the same properties.

By law, county assessors first determine the taxable value of a property, and multiply it by 35 percent to determine assessed value. In ratio studies conducted in the past for the Nevada Tax Commission, the tax department routinely used county assessors' appraisals rather than doing their own.

Under such a scenario, said Almy, the tax department's application of the ratio studies accomplishes little more than checking the math of the county assessors.

Almy said that only if the tax department conducts independent appraisals of property could the ratio studies provide some degree of state oversight of county assessors.

Even then, he said, the ratio studies proposed by the Board will fall short of being a useful tool for determining whether equalization is occurring. That's because neither the county nor the state measures the valuations against market values.

"Market value," he said, "is the only objective yard stick to measure against."

Asked whether there is any statistical 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."

Almy also said adoption of the proposed regulation is not cost-effective.

"The taxpayers in the state of Nevada are not getting much for the money they will spend on it," he said.

County assessors, individual taxpayers and the Nevada Taxpayers Association have also leveled criticism of the state Board's proposed regulation.

Carole Vilardo, president of the Nevada Taxpayers Association, questioned whether the Board had the authority to adopt the regulations, some of which appear to fall under the purview of the Tax Commission.

Vilardo suggested that the state Board and the Tax Commission hold a joint meeting before adopting any regulation. Currently, the Board and the Commission are scheduled to hold separate meetings Monday.

The Clark County Assessors Office questioned how much authority the state Board has over elected county assessors, including whether the state Board could order a county to conduct a reappraisal.

"There is a certain amount of authority that the state Board has over the process of equalization, but I'm not sure that extends to authority in all cases to tell [assessors] what to do," said Clark County Deputy Assessor Jeff Payson.

"The assessor is a statutory officer and elected official and I think that needs to be considered when the state Board asks them to submit and perform certain things," he added.

Brent Howard, a Las Vegas accountant, criticized the regulations for failing to make them easily understandable to taxpayers and providing vague guidelines on how assessors conduct appraisals.

"The regulation does not give us a uniform and equal application of the law and assessment of property values," Howard said. "I think the state Board should be involved in making this an easy process for the taxpayer to understand."

Suellen Fulstone, a Reno attorney representing North Lake Tahoe property owners who have been challenging state and county property-tax authority, cited numerous shortcomings with the proposed regulation.

"Ratio studies were developed for use in market-value appraisal jurisdictions where actual sales provide an objective standard," she said, echoing Almy's criticism.

She also questioned whether the state Board has the legal authority to adopt ratio studies as its standard to measure statewide equalization and whether it can delegate authority to the tax department to do the studies.

"There is no statutory authority for the [state Board] to discharge its duty of statewide equalization by performing one or more ratio studies," she stated in comments submitted to the state Board.

"The [state Board] itself cannot perform ratio studies and there is no authority for it to delegate its duty of statewide equalization by directing the [tax] department to perform ratio studies," Fulstone stated.

Maryanne Ingemanson, president of the Village League to Save Incline Assets, a nonprofit taxpayers group leading the North Shore Lake Tahoe tax revolt, said more litigation will likely result if the state Board adopts the proposed regulation.

"If in fact they pass this mess, which is against state statute, then it will just have to be used against them in court," she said.

Barta, who is also a member of the Village League, cautioned the state Board at the conclusion of the Feb. 11 workshop about passing the regulations without more scrutiny.

"It's never a good idea to ram through regulations as fast as these are being done," he said. "There needs to be more vetting."

*John Dougherty is the principal of InvestigativeMedia.com and has long been one of America's leading investigative reporters. He has been retained by the Nevada Policy Research Institute to report on critical issues of Nevada governance.*

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- Nov 20: **County assessors fight state request to appear**
- Nov 17: **Nevada's property tax shaft**
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# # #

# EXHIBIT 3

# AFFIDAVIT

of

Richard Almy

I, Richard Almy, have been asked by the Village League to Save Incline Assets to make this affidavit about what I heard in a meeting of members of the League and of the Nevada Department of Taxation on Thursday, November 17th, 2005 in Carson City. (I am a partner in the firm of Almy, Gloudemans, Jacobs & Denne, Property Taxation and Assessment Consultants, and I have been advising the League on land valuation and assessment matters.)

The meeting was convened at the behest of the League, which believed that there was a need to reappraise residential land near Lake Tahoe (and which had technical concerns about the special study of land values in Incline Village that the Department had been making). The League had concluded that deficiencies in the existing land appraisals were so great that they could not be cured by factoring, which was the usual vehicle that the Nevada Tax Commission uses to correct inequities among classes of property.

At the outset of the meeting, Ms Rubald of the Department stated that the Department had reached the conclusion that a reappraisal was needed. She was joined by Mr. Bixby, who stated that the underlying land appraisals were so inaccurate that factoring would be inappropriate. (The discussion then turned to how a reappraisal would be organized and paid for.)

In discussing the nature of the appraisal problem, Mr. Bixby took two surprising positions. First, land value for tax purposes in Nevada (*LV*) essentially was equal to full cash value (*FCV*) minus the replacement cost developed by applying the Marshall & Swift Residential Cost Handbook (*RCN*) plus statutory depreciation (*D*). (Open-market, arm's length sales are used as surrogates for *FCVs*.) The usual way of expressing this relationship algebraically is:

$$LV = FCV - (RCN - D).$$

*RCN – D* is improvement (building) value, and usually is shortened to *RCNLD*. This contention of Mr. Bixby was surprising because it seemed to ignore the plain meaning of "taxable value" under Nevada statutes and regulations. Essentially this formulation assigns to *LV* any location premium properly ascribed to the *FCV* of the improvements, any construction costs not recognized in the Marshall & Swift handbook, and any additional depreciation allowable under the regulations. Thus, the formulation could overstate the taxable value, and indeed the FCV, of land.

Second, Mr. Bixby contended that *LV* essentially is proportional to *RCNLD*. He said that if three essentially equal land plots had progressively more valuable houses on them, their land values would increase proportionately. (This apparently was a defense for using a secondary land valuation technique that is known as the allocation method. Professional standards consider the method defensible only when the improved properties are homogeneous, a position that is reflected in the regulations.)

Richard Almy

Richard Almy

16 December 2005

Date

Subscribed and sworn to before me this 16th day of December 2005.

"OFFICIAL SEAL"
BEVERLY J. NELSON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 3-23-2008

Beverly J. Nelson

(65)

00133

NEVADA POLICY RESEARCH INSTITUTE

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www.NPRI.org March 3, 2010

# State Board of Equalization adopts controversial property-tax regulation

## Critics call new rule unconstitutional and expensive

John Dougherty

LAS VEGAS — The state Board of Equalization voted 4-to-1 Monday to adopt a controversial regulation, saying it would ensure property taxes are assessed fairly and equitably across the state.

Appearing to be in a rush to fill a gaping hole in state property-tax law, the board ignored warnings from Incline Village taxpayers and their attorney that the regulations are illegal and fall far short of their intended purpose.

"We are taking steps as fast as we can to do our job," said Tony Wren, a Reno appraiser who serves as chairman of the five-member board.

Wren brushed aside criticism from Reno attorney Suellen Fulstone, who called the proposal a "bad regulation, unconstitutional regulation and expensive regulation."

The centerpiece of the rule is a statistical tool called "ratio studies," which the board is offering as a way to determine whether the state's 17 county assessors are valuing similar property equally across the state.

State law has long required that regulations ensuring statewide equalization be written, but neither the state Board nor the Nevada Tax Commission ever actually produced such rules until Monday.

Critics say ratio studies were developed for market-based property-tax systems, used in every state but Nevada. The Silver State abandoned a market-based assessment system in 1981.

Under Nevada's unique taxable-value system, land is valued at market price while improvements are valued at the replacement cost of the structure as specified by a commercial construction-costing service manual, less depreciation based on the age of the structure.

Property tax expert Richard Almy, the former executive director of the International Association of Assessing Officers, last week criticized Nevada's planned adoption of ratio studies, saying they would be ineffective and expensive for taxpayers.

The new regulation calls for ratio studies to compare the tax department's determination of taxable value of a sample of properties with a county assessor's determination of assessed values of the same properties.

In market-based property-tax systems, however, ratio studies are used to compare the assessed values determined by tax authorities to market sales. A consistent ratio would indicate that property taxes are being assessed equally across political jurisdictions.

In Nevada, the proposed state Board regulation would merely have ratio studies used to compare the tax department's determination of taxable value of a sample of properties with a county assessor's determination of assessed values of the same properties.

By law, county assessors first determine the taxable value of a property, and multiply it by 35 percent to determine assessed value. In ratio studies conducted in the past for the Nevada Tax Commission, the tax department routinely used county assessors' appraisals rather than doing its own.

Under such a scenario, said Almy, the tax department's application of the ratio studies

accomplishes little more than checking the math of the county assessors.

Wren acknowledged the regulation is "less than perfect" and said it likely will be amended.

He noted that the state's 17 elected county assessors were in support of the regulation. There was no comment from any of the county assessors about the proposed regulation during Monday's two-hour meeting.

"I think we need to move forward with the best system as we see it," Wren said.

Incline Village resident Todd Lowe urged the Board to delay adopting the regulation and to instead ask Almy to meet with the Board to develop a statistical analysis and other methods that would be appropriate for Nevada's taxable-value system.

The board rejected his request, but member Anthony Marnell suggested that Lowe and Fulstone submit their version of a regulation that the board could review at a later date.

"There were some things that were brought up today that I would like to learn more about," he said, referring to the comments to the board by Lowe and Fulstone.

Lowe said the ratio studies would be useful for determining whether assessors were valuing similar land equally across the state. That's because land is valued at full cash value in Nevada.

But, said Lowe, the ratio studies would be useless in determining whether Nevada's assessors are valuing improvements fairly and equitably, since structures are assessed at their replacement cost less depreciation.

He said adopting ratio studies as the centerpiece of the board's equalization regulation will leave the board exposed to legal challenges from taxpayers. Lowe has been intimately involved in the eight-year legal battle between Incline Village residents and the Washoe County assessor, the Board and the Nevada Tax Commission.

"This will just be the beginning of a new wave of lawsuits," he said.

Fulstone said the board is continuing to ignore Supreme Court rulings in 2006 and 2008 that require assessors to only use appraisal methodologies expressly approved by the Nevada Tax Commission.

Until the state Board and the Tax Commission take action to ensure that assessors are indeed using the same appraisal methodology on similar properties, she said, taxpayers cannot be assured that property is being fairly and equitably assessed as required by the Nevada Constitution.

"Making statistical analysis the driving force in the determination of equalization takes the taxpayer out of the determination and insulates the department and the assessor from any meaningful accountability," Fulstone said.

Taxation Department Executive Director Dino DiCianno dismissed Fulstone's criticism that assessors were manipulating the state Board and Department of Taxation to pass regulations that fall short of the requirement in Supreme Court rulings that assessors only use appraisal methodologies approved by the commission.

He said the new regulation is part of a series of reforms that the state Board and Tax Commission are implementing to meet the Supreme Court rulings in the cases Bakst vs. the State Board of Equalization and the State Board of Equalization vs. Barta.

"We do not want to see further litigation," DiCianno said.

The Board's adoption of ratio studies as the basis for determining equalization makes it unlikely DiCianno's wish will come to pass.

*John Dougherty is the principal of InvestigativeMedia.com and has long been one of America's leading investigative reporters. He has been retained by the Nevada Policy Research Institute to report on critical issues of Nevada governance.*

## Read More

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# EXHIBIT 4

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www.NPRI.org March 3, 2010

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# # #

3790
DAVID C. CREEKMAN
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(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,

Plaintiffs,

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.
_____/

Case No. CV03-06922

Dept. No. 7

**WASHOE COUNTY DEFENDANTS' REPLY TO PETITIONERS' RESPONSE TO STATEMENT OF NEW AUTHORITY**

Defendants Washoe County, along with the Washoe County Assessor and Treasurer, by and through their counsel of record, Richard A. Gammick, District Attorney of Washoe County, Nevada, and David Creekman, Chief Deputy District Attorney, herein submit this "Reply to Petitioners' 'Response to Statement of New

Authority'." This Reply is supported by the following "Statement of Points and Authorities", along with all the papers, pleadings and documents on file with the Court in this matter.

**STATEMENT OF POINTS AND AUTHORITIES**

The Respondents in this case have responded to Washoe County's Statement of New Authority. They do not deny the existence or relevance of this new authority. Instead, they provide four exhibits which they contend "reflect a fuller and more accurate record" of the new authority provided to this Court by Washoe County.

A close examination of the four exhibits establishes that Exhibits 2 and 4 are opinion-based statements of a lay-person reporter, or analyst of some sort, made in opposition before, and after, the State Board of Equalization's action which occurred on March 1, 2010. Not only is there no relevance to these statements in relation to Washoe County's point that the State Board of Equalization acted on March 1, 2010,[1] and in relation to the substance of the State Board of Equalization's action,[2] it appears that the Respondents may be asking the Court to rely upon these statements of opinion as if their author were somehow qualified to testify in this proceeding as an expert witness. In Hallmark v. Eldridge, ___ Nev. ___, 189 P.3d 646 (2008), Nevada's Supreme Court advised that to testify as an expert witness, the

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[1] The fact of the State Board of Equalization's action may properly be judicially noticed pursuant to NRS 47.130.

[2] The substance of the State Board of Equalization's action may properly be judicially noticed pursuant to NRS 47.140.

witness must satisfy the following three requirements:

> (1) he or she must be qualified in an area of scientific, technical or other specialized knowledge;
> (2) his or her specialized knowledge must assist the trier of fact to understand the evidence or to determine a fact in issue; and
> (3) his or her testimony must be limited to matters within the scope of his or her specialized knowledge. Id.

None of the requirements set forth in Hallmark has been met with respect to Exhibits 2 and 4. These exhibits should be disregarded by the Court. Both are irrelevant and both are impermissible expert testimony, and neither of them is subject to any form of cross-examination, and thus objectionable as hearsay.

As for Exhibit 3, a nearly five-year old affidavit of a hired hand of the Respondents named Richard Almy, it has nothing to do with Washoe County's point, supported by the State Board of Equalization's March 1, 2010 action and such point made by Washoe County in arguments contained in June 1, 2009 and October 15, 2009 pleadings on file in this case, that NRS 361.333's ratio studies adequately protect against any inequities which might exist in Nevada's system of real property assessment. Exhibit 3 is not only irrelevant, there is no authenticity to it, nor is there any particular showing that its author satisfies the above-stated requirements from the Hallmark case. Similar to Exhibits 2 and 4, the maker of the statement contained in Exhibit 3 is also not subject to any form of cross-examination, thus making this statement objectionable as hearsay, also.[3]

---

[3] Each of Washoe County's objections to the Respondents exhibits should also be viewed in light of Nevada's "waste of time" right to exclude evidence at NRS 48.035.

As for Exhibit 1, the transcript of the State Board of Equalization's March 1, 2010 proceeding, it establishes the extent of the work, thought and analysis undertaken by both the State Board of Equalization and staff of the Nevada Department of Taxation, in arriving at the result achieved at that proceeding. More importantly, however, it also establishes the fact of the Board of Equalization's action, and should be read in relation to, and with reference to, the new authority provided to this Court in Washoe County's Statement of New Authority.

But of greatest import here is the fact that the State Board of Equalization's action, in interpreting its statutory authority, as it did on March 1, 2010, is governed by principles set forth by the United States Supreme Court in a 1984 case known as Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). In that case, the United States Supreme Court held that the legal test for determining whether to grant deference to a government agency's interpretation of its statutory authority involves a two-step analysis. The first step requires the Court to determine whether the law being implemented is ambiguous or whether the law contains a gap that the legislature intended the government agency to fill. If such an ambiguity or gap exists, the Court next determines whether the government agency's interpretation of the statute, through the regulations and policies it adopts, is reasonable or permissible. If it is, the Court is bound to defer to the agency's interpretation of its statutory responsibilities. Id.

Similar to the United States Supreme Court, Nevada's Supreme Court has adopted Chevron's "deference" standard. It did so in a case known as Thomas v. City of North Las Vegas, 122 Nev. 82, 127 P.3d 1057 (2006), a case in which the Court had the opportunity to review an administrative interpretation of the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes," In determining the validity of an interpretation of that code, our Supreme Court clearly, and simply, concluded "[w]e give deference to administrative interpretations," and cited to the Chevron case. Thomas, 122 Nev. at 101 - 102, 127 P.3d at 1070, f. 50 (2006). Nevada adheres to the Chevron standard when reviewing administrative agency interpretations of the agency's statutory obligations.

Washoe County has previously advised the Court that the newly-adopted regulations to not take effect *until* October 1, 2010, and the Respondents have correctly advised the Court of a statutory right to bring a challenge to the newly-adopted regulations in the courts pursuant to NRS 233B.110. Nonetheless, it is Washoe County's belief that the State Board of Equalization has merely recognized that which has always been the case with respect to "equalization of assessments among the several counties,"[4] at least since NRS 361.333's original adoption back

---

[4] NRS 361.333 is headed by, in the Nevada Revised Statutes, the following language: "Equalization of Assessments *Among* the Several Counties." This language is not without significance to Washoe County nor, apparently, to the State Board of Equalization.

in 1967. They have merely confirmed existing law, pursuant to authority contained in Welfare Division v. Maynard, 84 Nev. 525, 529, 445 P.2d 153 (1968). The State Board of Equalization's recognition is entitled to Chevron deference, at this point-in-time, as the only demonstrated expression of Washoe County's belief, as previously set forth more fully in Washoe County's June 1, 2009 and October 15, 2009 pleadings filed in this case, of the legitimacy of the relationship between NRS 361.333 and the State Board of Equalization's duty to "[e]qualize property valuations in the State" under NRS 361.395(1)(a).

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 12th day of March, 2010.

RICHARD A. GAMMICK
District Attorney

By David C. Creekman

DAVID C. CREEKMAN
Chief Deputy District Attorney
P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700

ATTORNEYS FOR WASHOE COUNTY
WASHOE COUNTY ASSESSOR AND
WASHOE COUNTY TREASURER

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, I deposited for mailing in the U. S. Mails, with postage fully prepaid, a true and correct copy of the foregoing WASHOE COUNTY DEFENDANT'S REPLY TO PETITIONERS' RESPONSE TO STATEMENT OF NEW AUTHORITY in an envelope addressed to the following:

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

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

Dated this 12 day of March, 2010.

MICHELLE FOSTER

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondents.

_____/

Case No. 56030

# JOINT APPENDIX

# VOLUME IV


Suellen Fulstone
Nevada State Bar #1615
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6100 Neil Rd., Suite 555
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(775) 337-5700
Attorneys for Respondents
Washoe County
and Bill Berrum

## APPENDIX INDEX

4185

STEPHANIE KOETTING

CCR #207

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

--oOo--

| | | |
|---|---|---|
| VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., Plaintiffs, vs. NEVADA DEPARTMENT OF TAXATION, et al., Defendants. | ) | Case No. CV03-06922 Department 7 |

TRANSCRIPT OF PROCEEDINGS

ORAL ARGUMENTS

March 25th, 2010

2:30 p.m.

Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

APPEARANCES:

For the Plaintiff:

MORRIS PETERSON
By: SUELLEN FULSTONE, ESQ.
6100 Neil Rd.
Reno, Nevada

For the Defendant:

DAVID CREEKMAN, ESQ.
Chief Deputy District Attorney
One S. Sierra
Reno, Nevada

DEONNE CONTINE, ESQ.
Deputy Attorney General
100 N. Carson Street
Carson City, Nevada

RENO, NEVADA, March 25th, 2010, 2:30 p.m.

--oOo--

THE CLERK: CV03-06922, Village League to Save Incline Assets, Incorporated, versus the Nevada Department of Taxation. This matter set for oral arguments. Counsel, please state your appearances.

MS. FULSTONE: Suellen Fulstone of Morris Peterson on behalf of the petitioners.

MR. CREEKMAN: David Creekman on behalf of the named Washoe County defendants.

MS. CONTINE: Deonne Contine on behalf of the state board from the Attorney General's Office.

MR. BELCOURT: Dennis Belcourt also on behalf of the state board.

THE COURT: Thank you very much. I asked for this hearing in order to keep this case on track. This case predated my election to the bench, but this Court has a responsibility to make sure that these matters are concluded.

As you know, this complaint was filed back in May of 2003. We have a lot of rules, we have a lot of laws and we have a lot of statutes and sometimes I think we forget the first rule and it's codified in the code of civil procedure and it simply says that these rules shall be interpreted to

affect the speedy, just and inexpensive resolution of all disputes.

Now, after this suit was filed in this department, Judge Breen dismissed it, claiming that the plaintiffs had failed to exhaust their administrative remedies. That was appealed back in 2004. And in March of 2009, the Nevada Supreme Court issued its opinion affirming in part Judge Breen's order and reversing in part and remanding it back to this District Court in accordance with their order.

It says here, the conclusion, the District Court properly dismissed the action below except for the equalization claim. Because the Village League failed to exhaust its administrative remedies prior to seeking judicial review regarding the equalization claim, the District Court should have proceeded to determine whether the Village League's claim for injunctive relief was viable. This was March 19th.

And in April, we ordered the parties to appear to get this case back on track. I invited the attorneys to brief the issue as to what they thought was remaining to be decided by this Court and I want to compliment the attorneys here in this case. The attorneys have done an outstanding job on behalf of their clients. The Court appreciates all of the pleadings. I know that the plaintiff asked to file an amended

complaint, which this Court granted and filed the amended complaint in June 19th of last year.

That engendered a flurry of motions to dismiss, opposition to motions to dismiss, replies to the oppositions to the motions to dismiss. And the Court appreciates all the hard work the attorneys have put into this.

Just as we were about to resolve and synthesize these issues, a long comes a curve ball. In a hearing held on March 1st, the Court has received and reviewed the transcript of the hearing and would appreciate, I know this might come probably not as a surprise, but the Court would appreciate the parties' view of how this Court should proceed in light of that administrative hearing.

So before we get to there, let's address injunctive relief as directed by the Supreme Court. So, Ms. Fulstone, do you want to lead it off or shall we just start with the motions to dismiss? Let's start with the motions to dismiss. Mr. Creekman, why don't you give us your best shot.

MR. CREEKMAN: Thank you, your Honor. I appreciate the historical recitation of the facts. I'm David Creekman with the Office of the District Attorney Civil Division representing the named Washoe County defendants in the matter before the Court today with respect to the named Washoe County defendants' motion to dismiss.

I'm going to try to make this as simple, as organized and straightforward as possible, although I will tell you in advance, your Honor, that I'm the type of guy who will tell you when I've got but one argument or one issue that I'm dealing with. There is a multitude of legal arguments, very complicated legal arguments arising from the Nevada tax laws in this case and associated legal arguments that flow from the tax laws that really do require some substantial thought and analysis, again, arising out of the Chapter 361, which I find in my experience to be one of the more complicated chapters of the Nevada Revised Statutes.

But to try to simplify this, my motion to dismiss on behalf of Washoe County clients is submitted to the Court --

THE COURT: This is just a portion of Chapter 361.

MR. CREEKMAN: You needn't tell me, your Honor. My motion to dismiss is submitted in furtherance of Washoe County's goal to obtain stability, finality and revenue predictability not only for logical governments in this region, not only for local taxing districts, but also for every resident of Washoe County. And here I'm talking about anyone who uses a public park, anyone who uses a public library, anyone who depends on the quality of the Washoe County School System, which happens to be the recipient of about $0.35 out of every ad valorem tax dollar collected in

this region and anyone in this county who goes to bed at night secure in the knowledge that there is a local police department or a fire department upon whom they can call in the event of an emergency. These are the policies and these are the folks I'm representing in today's proceeding.

The goal of stability, finality and revenue predictability is not unique in this tax context. It appears throughout the law. It appears in statutes of limitations, it appears in certain legal doctrines, including the doctrine of res gestae, collateral estoppel issue preclusion, it appears in the doctrine of stare decisis, it appears elsewhere in the law. The goal of stability, finality and revenue predictability is also furthered by an adherence to certain rules, rules which arise in Chapter 361 and arise in the law of mandamus.

I suggest we take a look at some of those rules, starting first with Chapter 361 and Nevada's system of taxable value, the system that the legislature has imposed upon the various counties and the county assessors and called a taxable value system. It has its foundation in article ten, section one of the Constitution, which establishes that the legislature shall provide by law for a uniform and equal system of assessment and taxation. We're not talking about taxation in this case. We're talking about assessments. The

process followed --

THE COURT: The methodologies.

MR. CREEKMAN: Methodologies, that's correct. Taxable value is ascertained by discerning two elements with respect to a property's value, the land value consistent with its use based on an analysis of comparable sales if they exist or an analysis of other prescribed factors that are authorized by the tax commission.

THE COURT: But the real problem with that is that you were using vacant land and there was an insufficient pool of vacant land to make comparable values which led to an inequitable assessment.

MR. CREEKMAN: It led to inequitable assessments with respect to and only with respect to the 17 plaintiffs in the Bakst case and the 30-some plaintiffs in the Barta case.

THE COURT: We've got 8700 waiting in the wings.

MR. CREEKMAN: You might have 8700 waiting in the wings, but that is 8700 potential plaintiffs who in my estimation are time-barred and who have not followed the proper statutory procedures as those set forth in NRS Chapter 361, one of which is particularly important.

THE COURT: Let's deal with the ones that are here.

MR. CREEKMAN: Okay. Anyway, once you have the taxable value, which is the sum of the land value and any

improvements, minus allowable depreciation, that becomes the taxable value. It's multiplied by the statutorily prescribed rate of assessment, which is set forth in 361.225 at 35 percent.

THE COURT: 35 percent.

MR. CREEKMAN: Exactly. And that results in a new number, which is called the property's assessed value. The assessed value is then multiplied by whatever the taxing jurisdiction's applicable rate happens to be and from there you have an actual tax amount that is mailed out to the taxpayer and constitutes the taxpayers's bill. That's the work of the assessor's office and the treasurer's office, both of whom are named as parties in this case. But the work doesn't stop there under the statutory structure created by the legislature to assume uniformity and equity with respect to these assessments.

Of particular relevance to this proceeding are nine provisions of NRS -- nine sections of NRS Chapter 361. Only four of the nine are of what I would call exceptional relevance to today's proceedings and I'm going to point those out to you. The first of them is one of those exceptionally important provisions found in NRS 361.333. That's the provision for ratio studies, which are designed to ascertain whether an assessor's assessed valuation falls within a proper

ratio to taxable value.

Three other sections of relevance, but not super relevance to this proceeding, are NRS 361.355, 356 and 357. Each of those sections permit a taxpayer to invoke a county board of equalization's jurisdiction with respect to their displeasure over an assessor's valuation of their property.

Three more sections are relevant, one of which rises to the level of great importance in this proceeding, 361.360, 361.395 and 361.400. Each of those three statutes invoke the jurisdiction of the State Board of Equalization. The one of the three that is of the greatest relevance here is 361.395.

Two more statutes are important and they rise to the level of exceptional importance to this proceeding are 361.405 and 420. Both of those statutes and only those statutes in Chapter 361 establish the procedures that need to be followed by a taxpayer seeking -- by a taxpayer who hopes to obtain refund relief.

The first of those two statutes, 405, allows for the State Board of Equalization to order refunds. The second is Nevada's -- what's called Nevada's payment under protest statute.

But right now, I want to focus first on the relationship between 333, that's the ratio study provision, and 395, that's the statute which obligates the State Board of

Equalization to, quote, equalize property valuations within the state. And this went to one of your Honor's early comments or introductory comments about the action taken by the state board.

The Supreme Court's October 30th, 2008 opinion in Village League versus the State Board of Equalization, that is found at 194 P.3d 1254 and that's the case in which the Supreme Court told us that when a board of equalization equalizes, it's got two options. It can raise the value of properties that it believes to be too low, or it can lower the values of properties which it believes to be too high.

Beyond that, we didn't have much guidance as to what 495 meant. I mean, it's not a statute that has been subject to much judicial interpretation, much any judicial interpretation that I've been able to find. But we didn't have much until that date you mentioned, that date of March the 1st when the state board took action with respect to adopting procedural regulations defining their procedure with respect to their duty to perform this equalization function under 395.

When the State board did so, I believe it's a recognition of the state board's acknowledgment of 333's ratio studies, the applicability of those ratio studies in this whole as yet undefined process called equalization.

The adoption of those regulations furthers my client's goal, Washoe County's goal of stability, finality and revenue predictability. Those regulations rely on the ratio studies and they nowhere provide, I don't know if your Honor noticed this in the supplemental authority that I provided, but nowhere do those regulations provide any possibility of refund relief.

Particular attention should be paid to section 17 of those regulations. The purpose of the ratio study statute is to provide an external check on the assessors to determine if assessed valuations to taxable valuations fall within the permissible statutory range. That statute was first enacted in 1967, your Honor. And it was interesting in looking into the statutory history, apparently school funding was a big issue back in 1967 and it occurred to me, man, history repeats itself continuously.

But in 1967, in the original enactment of NRS 361.333 ratio studies, the legislature found that the taxation of property is an important element of local financing and an exterior equalization force is required notwithstanding apparent obedience to the legislative mandate declared in NRS 361.225 to affect some measure of uniformity.

Now, that statement of legislative intent isn't found in the bound volume of NRS. It's only found in the copy

of the session laws as they were enacted in -- initially enacted in 1967.

The statute was amended in 1975 to include a permissible range of target ratios, ranging from a low of 30 percent, again, this is assessed valuation to what at the time was full cash value. That changed in 1981. I'll talk about that in a minute. A low of 30 percent to a high of 37.5 percent. Meanwhile, during that same period, that goal, that 35 percent assessed value goal was already in existence in 361.225.

So in '75, you had this range, permissible range as a result of the ratio studies of between 30 and 37.5 percent. In '81, Nevada switched to the taxable value system that I just explained to the Court where you take the land and improvements and come up with taxable value.

How was this accomplished? It was accomplished by some modifications elsewhere in Chapter 361, but primarily it was accomplished by a modification to 333 in which the words "full cash value" were deleted or repealed and substituted with the words "taxable value." So that now, as of 1981, the ratio studies analyzed assessed value to taxable value.

In 1989, the legislature amended the statute again to add authority to impose a factor to correct imbalances if imbalances were found to exist between the assessed ratio and

the taxable value. In 1991, they modified the statute to narrow that target range. Again, your Honor, that range was from 30 to 37.5. They narrowed that range to 32 to 36 percent. That range remains in affect today.

In 1999, the last time the statute was modified, they changed the permissible interval for conducting ratio studies on a county-by-county basis from two to three years and the three-year interval remains in affect today.

When property is found to not be an equalization, 333 goes on and it provides a detailed and elaborate methodology for adjusting assessments. It says nothing of providing refunds just as the state board's new regulations say nothing about refund availability. That's because it's not available.

Each of these statutory provisions combine to provide a check on the work of the assessors in furtherance of the goal of stability, finality and revenue predictability, which in turn is the result of the legislature's compliance with the constitutional mandate at article ten, section one, to provide for a uniform and equal method and rate of assessment and taxation.

The ratio study statute and the state board regulations say nothing, again, about providing for refunds, because of the next two most important statutes out of that

laundry list of nine statutes I mentioned. Those two statutes are 361.405 and 361.420.

405 gives the state board authority to order a county to do one of three things; adjust the assessment roll, adjust a tax statement, or order a refund. But 405's refund possibility must be viewed in association with NRS 361.420. That is the statute which adopts officially in the ad valorum property tax context the voluntary payment rule. It's a common doctrine that says, when you make a voluntary payment, you can't make a later claim for a refund of that voluntary payment.

It establishes that refunds are only available to those who have paid under protest and in a manner provided for in the statute. Payment under protest is an essential prerequisite to obtaining ad valorem tax relief in the form of a refund, the type of relief that's sought in this action. It's a quintessential legal remedy, which results in monetary damages.

The existence of this doctrine as codified at 420 bars this action. Nothing in the plaintiff's complaint establishes any compliance with this requirement nor does anything in the plaintiff's complaint even mention 420. The statute permits, and I'm quoting here, quote, a property owner whose taxes are in excess of the amount which the owner claims

justly to be due to pay each installment in taxes as it becomes due under protest in writing. The protest must be in the form of a separate signed statement and filed with the tax receipt.

The statute goes on to permit a lawsuit for precisely the relief now being sought based upon the taxpayer's belief, again, this is a quote, that the assessment complained of is discriminatory in that it is not in accordance with a uniform and equal rate of assessment and taxation.

In other words, that the rate of assessment and taxation aren't an equalization with somebody else's rate of assessment and taxation. The plain language of 420 links it to 395 and any refund availability. It must travel through the NRS 361.420 path.

361.405 and 420 combined when viewed in association with one another to further Washoe County's goal of stability, finality and revenue predictability, compliance with these statutes is obligatory and it has not occurred in this case under the facts set forth.

Now that we looked at what I consider, Washoe County considers to be the most relevant issues and statutes contained within the tax code, we need to jump to another set of rules that kind of hang over this proceeding in a sort of

umbrella-type fashion. And those are the rules related to the law of mandamus. Mandamus is an extraordinary equitable remedy. It's what the plaintiffs in this case have requested. It's used only in the rarest of circumstances. And it's always -- should be always cautiously and judiciously used.

It can compel the exercise of discretion where that discretion has not been exercised, but it cannot compel any particular result as a result -- in response to the exercise of that discretion. Doing so, compelling a particular result, your Honor, would be a violation of the separation of powers doctrine as an impermissible infringement by your Honor and by the Second Judicial District Court system on a coordinate branch of state government to compel the performance of a duty, and then once that duty is performed, to further compel a particularized result or outcome.

Just like the tax rules, the rules governing mandamus further the goal of stability, finality and revenue predictability that Washoe County is arguing in favor of in this case. If the rules aren't followed, the system will turn into chaos. These tax amounts, your Honor, were collected in this case, seven, eight years ago. They were spent seven or eight years ago.

Washoe County was not on notice, the notice required by the payment under protest statute at 420 of the possibility

that it needed to make accommodation for this. That is the only provision of Nevada's tax law that allows consideration of the refund relief these plaintiffs are seeking.

THE COURT: The passage of time doesn't make a wrong act right, does it?

MR. CREEKMAN: No, it doesn't, but I'm not conceding there was a wrong act.

THE COURT: I understand that.

MR. CREEKMAN: There's nothing in the record with respect to 8700 people there was a wrong here.

THE COURT: Okay.

MR. CREEKMAN: The passage of time doesn't eliminate the need for statutory compliance. It doesn't eliminate the need for in an equitable proceeding for these plaintiffs to arrive in court with clean hands. He who seeks equity must do equity or she, they, whoever.

Next, I think it's appropriate to move into the plain language of the plaintiffs' amended complaint to see exactly who these plaintiffs are and what they're asking for. In the framework, the plaintiffs here are looking for equitable relief, but they're doing so in the long shadow of a statutory scheme, a tax code found at 361 that is filled with legal avenues, possible legal avenues for relief.

The existence, the mere existence of the possibility

of having pursued any one of those legal avenues of relief precludes the refund, this Court's consideration of issuing the requested equitable relief.

There are four taxpaying plaintiffs in this case, one tax exempt entity. Interestingly, each of the four individuals in this case were plaintiffs in what's called the Barta case. They were plaintiffs in the second of the two big cases that have gone up to the Supreme Court. The first was Bakst, the second was Barta or the property which is involved in this case was involved in that case. As a result of that case, each of these taxpaying plaintiffs received tax relief in the form of refunds with interest.

These folks have established how well the tax codes legal forms of relief work and it is improper for this Court to be considering to go any further with this case than to grant Washoe County's motion to dismiss.

The plaintiffs seek a particularized form of equitable relief. They're not only seeking the Court's order directing the State Board of Equalization to equalize, they're seeking your assistance in controlling the exercise of the state board's discretion in lowering their property values relative to the property values of others and subsequently in issuing refund relief.

The goal of stability, finality and certainty is not

furthered by these plaintiffs in their complaint. They fall outside the tax code, they fall outside the rules relating to mandamus.

My legal arguments fall into three basic categories. As your Honor has mentioned, each of those arguments is fully and exhaustively briefed. I think you've got, I'll tell you, among the lawyers in the room, probably among the more prolific writers in Washoe County. Each of the arguments is fully briefed. I will just touch on the three areas with a couple of bullet points under each.

First, these plaintiffs lack standing. I fully expect that Ms. Fulstone in her arguments will say, but Mr. Creekman argues about complying with rules and complying with this, that and the other, what about the law of this case where the Supreme Court in its remand order in footnote number five said that the plaintiffs have standing to pursue the equalization claim.

THE COURT: The footnote of the Supreme Court says that the argument that they didn't have standing is without merit.

MR. CREEKMAN: It was without merit, your Honor, with regard to the matter before the Supreme Court. Anyone who is -- any plaintiff whose case is dismissed by a District Court on whatever grounds the dismissal occurs has a right to

go to the Supreme Court, has standing before the Supreme Court to appeal that dismissal.

That footnote five needs to be viewed in conjunction with a case, the October 30th, 2008 decision of the Supreme Court reported at 194 P.3d 1254 in which the Supreme Court questioned the propriety of the state board having allowed the Village League to argue on behalf of the taxpayers. Equally cryptic, if you will, footnote. We don't know based on the comparison of the two footnotes precisely what the Supreme Court meant.

But I will tell you, the Village League is a nonprofit corporation. It owns no property. It pays no taxes. The tax codes remedies throughout 361 are specific to taxpayers and to property owners. They make no mention of representative standing or associational standing.

THE COURT: How can you distinguish this case from Deal versus 999 Lakeshore Association where the Supreme Court said, and in this particular case, much like this particular case, in the amended complaint, which this Court permitted to be filed, they named not only the Village League Association, but the individual landowners, the individual property owners here. And in Deal, while then Supreme Court Justice Gunderson said the association didn't have standing, because it didn't own any property, the inclusion of property owners cured that

standing, and, therefore, the Supreme Court allowed that action to go forward. Can you distinguish?

MR. CREEKMAN: I can easily distinguish it away with a September 2009 case of the Nevada Supreme Court called D.R. Horton versus the Eighth Judicial District Court. That's reported -- it's not yet in the Nevada Reporters, but it's at 215 P.3d 697.

In the land and property context, the Supreme Court noted that an express statutory grant to bring suit on behalf of property owners is necessary in order to authorize a class action. That was a construction defect case.

THE COURT: Condominiums.

MR. CREEKMAN: Condominiums. The common interest community statutes, those that are found at Chapter 116 allow those lawsuits to be brought by the association on behalf of --

THE COURT: The board of directors on behalf of the common interest community.

MR. CREEKMAN: The Supreme Court went further, though. They had some very interesting language towards the end of that opinion in which they, I don't know if warned is right, they told the District Court judge in the Eighth JD, whoever that judge was, you need to be very, very cautious with this lawsuit. You need to be very cautious with this

lawsuit and you need to be very cautious with this class action. You need to monitor it closely, you need to be careful. Why do you need to be careful? Because of that first rule, I bet you learned in law school property class, the first one I learned, the first one any of us lawyers learned, every piece of property is unique and different.

And with individualized issues of -- individualized issues of fact and property related litigation, because of the uniqueness of every piece of property, and this in this regard, I will assure you that there is not one assessor's parcel number in Washoe County that duplicates any other APN. They're all different in some aspect. Every taxpayer's factual situation is different. Every taxpayer's tax bill is different. The value of every taxpayer's property is somewhat different based on the unique characteristics of that property that are taken into account by the assessor as the assessor follows approved methodologies in arriving at the value of the property.

So I think the Nevada law is clear under Deal and under the D.R. Horton case, absent express statutory grant to bring suit on behalf of property owners, only the owners have standing to sue.

It's also, those cases are also consistent with the tax code at 361, which only in one section allows

representation by another and that is with respect to a taxpayer's desire to be represented by an agent before the county -- before the county board of equalization.

NRCP 23, these folks have asked for class certification. That implicates NRCP 23, the class action rule of civil procedure. It requires common questions of fact. They don't exist in this action because of the uniqueness of property. The resolution of this case in the manner requested by these plaintiffs is entirely factual dependant.

The relief sought by these plaintiffs depends on whether the taxes were paid under protest and any refund ultimately determined to be due varies. Tax related class actions are particularly inappropriate whether there's been a failure to pursue statutory remedies for protesting property valuations.

Rule 23 requires typicality among members of a classes. There's no typicality here with the Village League if the Village League is purporting to represent these plaintiffs, because the Village League doesn't own any property and pays no taxes.

As required of class actions, there's no indication that any notice has been provided to the purported class members. And that would be, I think, at least 8700 of them. Such notice provided to assure that these folks are informed

about the case, they can have input into the case, and so that they can opt out of the case if they're inclined to do so.

Just like with class actions, principles of associational standing as those principles have been set forth by the Supreme Court in the Hunt versus Washington State Apple Advertising Commission case haven't been -- can't be met. The individual participation of the members of the association is required in this tax related litigation.

Because of these standing defects, your Honor, Washoe County cannot be subjected to this litigation. It's litigation which has no finality, it has no certainty, it threatens the stability and revenue predictability of the county along with the county's corresponding ability to provide essential public services.

The rules of mandamus also can't be met in this case. They by the express terms of their complaint, these folks are seeking a particularized result. They're looking for a writ of mandamus to compel the state board to act to reduce their property values and to issue refunds.

Another fault with that sort of particularized result is that it presupposes that the action of the State Board of Equalization will be in lowering their property values in derogation of Washoe County's recognized right to have -- to be subject to the possibility that property values

will actually be raised to bring them into equilibrium. That is a right recognized by the Supreme Court in the Village League versus State Board of Equalization case I cited to a few minutes ago at 194 P.3d 1254.

Mandamus is not available to compel a result in such a micro-managed fashion, especially in a fashion or in a manner that ignores other possible outcomes of an equalization action to the detriment of the local government that's been collecting the taxes and will be responsible for any liability.

Additionally, barring mandamus relief, the existence of legal remedies once available to these plaintiffs to achieve the result they're seeking bars mandamus relief in this action. Those legal remedies are found at 355, 356, 357. They are all quintessential legal remedies starting with the complaint to a State Board of Equalization set forth in statute with the resulting possibility of a diminution in property taxes sought by these plaintiffs.

Now, I know that the Supreme Court has told us there's no exhaustion requirement associated with equalization. That's not the point here. The point here is these folks are seeking mandamus relief to compel equalization in light of all these otherwise or formerly available legal remedies that they failed to pursue. The mere existence of

those remedies precludes your Honor's issuance of the requested equitable relief.

Another legal remedy, and this is an important legal remedy, the payment under protest provisions of 420 bars the relief they now seek. Once again, this is the law of voluntary payments. Voluntary payment doctrine has been recognized by the United States Supreme Court and at least the courts of the states of Illinois, Texas, Oklahoma, Arkansas, New York and New Jersey. It's also been recognized as applicable in the tax context in two opinions issued by the Nevada Office of the Attorney General as long ago as 1920. The first of those is AGO 132 dated May the 7th, 1920. The second was AGO 139 dated May 25th, 1920.

Nevada does have statutes in some areas that I need to point out to your Honor that abrogate the voluntary payment doctrine. In fact, it has statutes that abrogate that doctrine in the tax context, not the property tax context, but in the context of sales and use tax. There's a specific statute, 372.630, that the Supreme Court has interpreted, the Nevada Supreme Court, in a case known as State v. Obexer, O-b-e-x-e-r, reported at 99 Nevada 233, it's a 1983 case that expressly abrogates the voluntary payment doctrine and resulted in a decision from the court that denied a defense mounted by the State of Alaska -- excuse me -- the State of

Nevada to having to make refunds, but that doesn't exist in the property tax context.

Because so many of the rules -- yet another, another factor here, legal remedy, the existence of 361.333 ratio studies constitutes yet another effective legal remedy that bars the requested mandamus relief. In the June 1st brief I filed with the Court, I pointed out that Washoe County was examined in the 2005, 2006 ratio study and the county's ratios fell between 33.5 and 34.9. Douglas County was analyzed in the 2004 ratio study with their major classes of property values falling between 33.2 and 35.

As such, it was logical to conclude that equalization occurred within and between both Washoe County and Douglas County. Because of the rules of mandamus can't be met in this case just like the rules established in Nevada's tax code can't be met here, Washoe County's goals of stability, finality and revenue predictability can't be met without this case being dismissed.

My third area of legal argument is that Douglas County is a necessary and indispensable party to the action to the extent this case involves equalization between counties as is set forth in the plaintiffs' amended complaint prayer for relief.

It's important, this is an important concept, your

Honor. In the tax context, judgments are not binding on counties which are not parties. That proposition is founded in a case known as State Board of Equalization versus Sierra Pacific Power Company reported at 97 Nevada 461. It was a 1981 case.

Douglas County to the extent this case involves issues of equalization as between Lake Tahoe property located in Washoe County and Lake Tahoe property related in Douglas County, it is fundamentally unfair to subject Washoe County and Washoe County alone to the jurisdiction of the State Board of Equalization without -- and knowing that Washoe County's values could be raised or could be lowered, the same way Douglas County values could be raised or lowered without the involvement of Douglas County as a necessary party, which becomes an indispensable party by virtue of the passage of time and the venue rules that exist in this state.

Douglas County is a necessary and indispensable party which obligates dismissal of the county-to-county equalization claim contained in the plaintiff's amended complaint.

Finally, I'm finally at the end, Washoe County's goal and the public's goals of stability, finality and revenue predictability for the provision of essential governmental services can only be served by following the rules, whether

these rules are set forth in the tax code or whether they're set forth in the law of mandamus or whether they are derived out of the case law.

Don't be fooled into believing this case rises to one of constitutional dimensions. Article ten, section one only requires that the legislature provide by law for a uniform and equal method of assessment and taxation. The legislature has done their job. It might not be the most perfect job, but they've done their job. That 361 is loaded with provisions to you assure uniformity and equality with respect to real property assessments.

My arguments today are solidly founded in the law. Mine is the only plausible explanation, your Honor, of how this system can operate if the Court shares Washoe County's goal of achieving stability, finality and certainty, predictability with respect to its revenues in providing essential public services to all of the county's residents and I would submit all of these people who might actually consider themselves more aligned with the plaintiff in this case.

I stand by my motion to dismiss, I stand by all the legal principles, and I'm happy to answer any questions.

THE COURT: Thank you, Mr. Creekman. Ms. Fulstone, I'll give you your choice. You want to respond individually, ad ceratum or in sum?

MS. FULSTONE: You know, I think it makes more sense to respond to the county's arguments when they're being made rather than trying to do it later after the state has made their arguments.

THE COURT: That's fine.

MS. FULSTONE: Although it might take longer and that may be a concern to the Court.

THE COURT: Ms. Contine.

MS. CONTINE: I think Mr. Creekman did an excellent job. I won't talk for as long as he did. I have just to crystallize the writ argument. I mean, I would be five or ten minutes. You can go if you want to.

MS. FULSTONE: No, that's fine.

THE COURT: Let's go ahead.

MS. CONTINE: I don't -- there's not going to be anything new and exciting from me.

Good afternoon, Deonne Contine, Deputy Attorney General for the record. I'm just going to followup on the writ arguments made by Mr. Creekman and I would also like to say that the state, the state board joins in and supports all of the arguments made by the county defendants today.

I just want to turn to the requirements of 361.395 sub one, A, which says that the state board has the duty to equalize property valuations in this state. With that

background, with that very simple but yet complex statement, I would like to turn to the relief that the plaintiffs or petitioners seek in this case with respect to the writ.

And just to followup on what Mr. Creekman said is that in their -- in the Village League's scope of issues brief and also in their complaint, they specifically ask that the state board be directed to equalize all of Incline Village and Crystal Bay for the 2003, 2004 tax year by returning the land values to their 2002, 2003 levels.

In their prayer for relief, in their amended complaint, they asked this Court to issue a writ of mandamus requiring the state board to equalize the land portion of residential real property at Incline Village and Crystal Bay to 2002 and 2003 values and to direct the payment of refunds.

I don't think that there is anything more clear under mandamus that relief is not allowed to be granted to the petitioners in this case. If the state board has a general duty to equalize, and I'm not going to go through the history that's in the brief, talking about the 361.395 and the general duty, I think it was talked about by Mr. Creekman and also in the brief, but the remedy that they seek on mandamus against the state board simply cannot be given to them under mandamus relief, and because of that, the state board requests that their writ be dismissed.

Now, if in 2003 we would have, the question would have been in 2003, is a writ available at this -- in this case in 2003, it's kind of hard as we've gone through the seven years, because a lot has happened in that time, and prior to the Barta case, the state board equalized by cases and there wasn't an overall general sense that some other general duty was required by 395 that wasn't part of 361.333, which was the ratio studies.

So I think since the Barta case has come out and since there is this overall general duty as in NRS 361.395, the state board is attempting to develop a process to make sure that they're complying with that and they are doing that in adopting the regulations. And I would argue that this remedy is simply not available in mandamus. It wouldn't have been available in 2003. It's not available now. And because of that, the state board would request that the writ and the complaint be dismissed.

THE COURT: Thank you, Ms. Contine.

MS. CONTINE: Thank you.

THE COURT: Go ahead, Ms. Fulstone.

MS. FULSTONE: Good afternoon, your Honor. Suellen Fulstone on behalf of the petitioners. I'm going to try to respond to everything and so this may be a bit disjointed. I have to start with where Mr. Creekman started, only because I

know I've heard this argument and I find it offensive. The interest of the county or anyone else in stability, finality and predictability of revenues does not and cannot under any circumstances trump the requirement of --

THE COURT: Under the Constitution.

MS. FULSTONE: -- uniform and equal valuation and taxation. It doesn't justify an uneven burden imposed on some taxpayers and not others. The Court understands that, but I'm going to say it for the record.

I also want to say, deal with three things quickly and get them out of the way. Ms. Contine addressed the relief that we asked for, and I think Mr. Creekman did as well, the particularized relief that we sought in our amended complaint is not available in mandamus. And by that, I understand them to mean what we say that the Court can direct, you know, equalization within Washoe County for 2003, 2004 tax year to conform with the Bakst decision and constitutional taxation.

We know for that year and the assessor has admitted in other contexts that, you know, with mass appraisal, that all of the residential properties at Incline Village were valued using these determined by the Supreme Court to be unconstitutional methodologies.

So, you know, in a pragmatic sense and to avoid any further delay, we've argued that the Court can simply direct

that that equalization to '02, '03, which is where the Court took all the '03, '04 valuations back can be ordered and I believe that to be true under the circumstances.

Now, there's additional arguments about that, which I can go into, but the point I want to make to start with is we're here on a motion to dismiss a complaint. The Court is to look at whether under any set of facts we can prevail on that complaint. That's the standard on a motion to dismiss. Whether we're entitled to particular relief or not is not part of the discussion on a motion to dismiss.

Certainly, you know, we've also asked simply for what we asked for initially, which was essentially make the state board do its job. It's required by statute to equalize, you know, make it equalized, make it equalized between and amongst and within the counties of Nevada. You know, that's not particularized relief, that's straightforward provided in NRS 361.395 itself. In any event, the quick argument is, relief is not an issue on a motion to dismiss.

Secondly, standing is not an issue here. We've been through this associational standing issue many times over with the county. That's why when I did the amended complaint, I put in individual taxpayers. I think there's associational standard, I think the Supreme Court thinks there's associational standing, but I don't want to litigate that

issue. We have plaintiffs, individual plaintiffs, property owners in Incline Village and Crystal Bay.

The same thing in terms of what's at issue today argument applies to class certification. We've pled this in a class action. Whether it needs to be a class action or doesn't need to be a class action is something we can argue on a motion for class certification. Again, we're not talking about that today. We're talking about does the complaint state a claim for relief and I would submit that it does.

The attorney for the county has a very technical approach to this issue of fair to exhaustive administrative remedies. The county argued the first time around that the requirement of exhaustion of administrative remedies apply to all our claims. The Supreme Court said, no, there's no administrative process for the state board's obligation of statewide equalization, so no exhaustion requirement can be imposed.

Now they want to back around and argue those same administrative statutes. And I believe Mr. Creekman unintentionally misspoke when he said that NRS .355 and 365, and 357 allow for complaints to state boards. They don't. They're complaints to the county board. That's the administrative process. That's the administrative process that applies when taxpayers have a complaint about the

valuation of their property that they raise. It has nothing to do with the state board's independent and affirmative statutory duty of statewide equalization.

So you can't back those back into the analysis, you know, because maybe they think they didn't argue them effectively enough the first time, but they don't belong there. This case is about the state board's duty, not the taxpayer's duty. The taxpayer has no duty to do anything with respect to the state board's obligation of statewide equalization.

Nothing in 361.395, which imposes that duty, says, you know, the taxpayer has to do this or when asked to by the taxpayer or requires anything of the taxpayer. It is an affirmative duty of the State Board of Equalization and only the State Board of Equalization.

So trying to turn this back on the taxpayer and say, well, you didn't do this or you didn't do that or you didn't do the third thing, those statutes don't apply, the ones that apply to when a taxpayer pursues this administrative process. They don't apply. The Supreme Court said they don't apply. You can't back them into the analysis. You can't recycle those arguments.

I want to talk a bit about the ratio studies. I think there's a great misunderstanding about ratio studies.

As Mr. Creekman pointed out, the ratio study statute was enacted in 1967. And it was enacted in the course of a school, and the Court I'm sure knows this, you know, but if it does not, in the course of a school appropriation statute. And they wanted to make sure that notwithstanding compliance with NRS 361.225, which is the 35 percent assessment ratio statute, they wanted these additional ratio studies done.

And, you know, ratio studies were kind of a coming thing in 1967. The International Association of Appraisers had, you know, ratio studies and they were being adopted in other states as well. And what a ratio study does, as it's designed, is it tests the assessor's valuation of property by measuring it against actual sales. It works in a full cash value system, in a market value system and that's what Nevada had in 1967.

And so you take, you know, the assessor values this property at $100,000. That's it's taxable value and our system, you know, and if that was in a full market value system, that would be its full market value. If the property sells and it sells at $200,000, the assessor is off. If it's down to $50,000, the assessor is off. You put enough of those sales together and you do a ratio study and you see just, you know -- I mean, you don't test one sale and say the assessor isn't doing his job. You test all the sales over a period of

time. You match the sales prices to the assessor's valuation and you have a ratio. That's what a ratio is, like a fraction, one number over another.

It doesn't work the same way if you don't have a full market value system. The IAAO has tried to modify it to some degree to make it work in a system which doesn't use full market value, although Nevada is now the only state which did not use full market value as a standard. And says, well, you can do it if you match against the assessor's valuations an independent appraisal of the property.

But that's not what Nevada does. That's not what the department of taxation did in 2002, 2003. It's not what it does today. It's not even possible to do an independent appraisal.

THE COURT: It's cost-prohibitive.

MS. FULSTONE: It's certainly cost-prohibitive. You can't go out and independently, but it's also -- the department's ratio studies people go to the counties, they get the information used by the county, they get the sales used by the county. They're basically auditing what the county does, but that's not an independent appraisal.

So the ratio studies just doesn't really work in a taxable value system as a test of the equalization of properties. It works to test equalization, because if this

assessor is at, you know, 35 percent of full market value and this assessor is at 34 percent of full market value, you say, okay, close enough. If one is at 50 percent and one is at 35 percent, you say maybe not close enough and you make some adjustments. But it doesn't work, it just doesn't work in a taxable value system and it can't work.

And so to argue somehow that ratio studies are a remedy here for the taxpayer seeking equalization is simply, you know, not an argument that you can find any real factual support for. It's not an argument that can withstand any kind of analysis. You can say there's a ratio study statute, fine, we'll just go with that, but if you start analyzing it, it falls apart.

The other thing and maybe I should have started with this, because it's the most -- it's a bit oversimplified, perhaps, but it also makes the point. Ratio studies are done on counties every three years. There's just no way that you can do statewide equalization on an annual basis with ratio studies that are done every three years. Mathematically, it doesn't compute.

So even if ratio studies could be done, they can't be done as they are done now in Nevada on an every three-year basis and accomplish the state board's duty of annual statewide equalization.

THE COURT: Is there any statistical method that Nevada regulators can use to test statewide equalization under Nevada's taxable value system?

MS. FULSTONE: I'm not a statistician. I don't believe so, because it is a taxable value system, because it simply doesn't really translate to a statistical analysis. That's why I think the Supreme Court says equalization begins, maybe it isn't only a matter of methodology, but it certainly begins with an assurance that everybody, all the assessors are using the same methodologies to value the same kind of property.

To me that's the key to equalization. That you really can't measure the value of a residence in Clark County against a residence in Washoe County. But if you can determine that both properties are valued using a land portions, both properties are valued using comparable sales, and, similarly, a property in Lyon County and a property in Elko County and they're all valued, the land portion, using comparable sales, then I think you have a comfort level that we're achieving equalization. The methodology is the key to equalization in my understanding of it.

The problem is, of course, as you pointed out when we started, when you don't have the vacant land sales and you have to go to some other method, there simply, you know, are

no studies except the Tahoe study, which suggests that it doesn't work, to say that, you know, the alternative methods, at least the alternative methods in 2003, 2004, which is the year we're dealing here to comparable sales were sort of -- well, abstraction slash parenthesis allocation or allocation parenthesis abstraction. It was a strange combination of the two and I don't think anybody really knew what it meant. And then a third thing, which had to do with income which was inapplicable.

But even now, when they, you know, the tax commission and the department have developed additional regulations, there still are absolutely no studies to say that if you're going to value the land portion of a residence in an area where there aren't vacant land sales using abstraction or using allocation or using some other standard sort of appraisal method, that you're going to come up with the same kinds of numbers.

You know, the only study that has been done is something that is called the Tahoe study and what that determined was that they don't come up with the same numbers. And to the extent that the Washoe County Assessor has actually done some looking at, you know, appraising a land value of properties at Incline Village using abstraction. Abstraction, which the Court may or may not know, but abstraction is a

method where you take out the improvement and related values and then what's left is the residual land value.

To the extent that Washoe County has tried to use abstraction in some ways, their numbers -- their land numbers always come out higher, as you would kind of expect, because they've had difficulty trying to extract the or even determine the full contributory value of improvements.

So if you can't take it all out, you're going to end up with a bigger number at the bottom. They start with market value and take and then subtract from that rather than just looking at vacant land sales. So the likelihood is you end up with a bigger number.

But there's no studies to show how much bigger that number is or, you know, how the two numbers relate, which makes it very difficult to argue that if you're doing properties by abstraction, whether it's by abstraction in Washoe County or abstraction in Clark County or somewhere else, that you're actually valuing them in the same, you know, getting the same, equalized to valuing the evaluation that is done through comparable sales. Which is, again, why you've got to restrict the methods that are used in order to achieve equalization.

THE COURT: But isn't that part of your relief? Isn't that what you're asking the Court to do, essentially

tell the State Board of Equalization to adopt certain procedures or regulations that take into account these variables which really don't help.

MS. FULSTONE: No. Yes. When we, you know, started this case in 2003, it started out as the Court pointed out as an injunctive relief case. Basically, we wanted to prevent the collection of taxes. And, you know, now we're here, whatever it is, seven years later, and, you know, injunction is obviously not where we're failing. Injunction against the collection of taxes is not what we're looking at now. Injunction mandating or, you know, mandamus enjoining the state board to perform equalization. In order to perform equalization, they do need to, you know, it's a --

THE COURT: And aren't they already doing it?

MS. FULSTONE: They have attempted.

THE COURT: They're on the path to doing it.

MS. FULSTONE: They have attempted to develop a regulation. Again, as the Court knows in some of the materials that have been provided, we think as the taxpayers at Incline Village and Crystal Bay that they're on the wrong path in terms of how to achieve equalization.

I think the present board is absolutely be commended for making this effort and through the process of developing regulations and having those regulations challenged and

dealing with all of that, at the end of the day, you know, I think that there will be a process in Nevada for equalization, and I think that is a good thing.

THE COURT: Does that moot this suit?

MS. FULSTONE: No. I mean, this suit is over 2003, over the failure of their equalization in 2003 and requiring them to go back and, you know, if that's -- you know, that's why we said, you know, let's try this alternate relief. We know because the county assessor has said so that all of these properties at Incline Village were valued using unconstitutional methodologies. So why don't we focus on getting equalization in and within Incline Village and not try to reinvent the 2003, 2004 wheel statewide because of what that means and the difficulty of it.

I mean, you know, it's not mooted and it's certainly not the taxpayer's fault that we're in 2010 and not 2003 nor the Court. It's just the way that the process, you know, sometimes works. Trying to get to the right result takes a certain amount of time.

But, then, going back to redo 2003, 2004 in terms of statewide equalization is relief to which the taxpayers at Incline Village may be entitled to, but it may not be the most pragmatic relief, which is kind of where we were going with let's just make these adjustments within Washoe County. We

can make those adjustments. We know about that now. Mr. Creekman says, well, you know, equalization, you can raise taxes, raise valuations as well as lower them, but I don't think that you can raise unconstitutional valuation, you know, raise constitutional valuations to an unconstitutional level. I mean, if he's talking about raising valuations within Incline Village, he's talking about the 17 people who obtained relief going back and now revaluing their property back to its unconstitutional levels so it matches the unconstitutional levels of everybody else in Incline Village in 2003, 2004.

I don't think that's the kind of decision that would be affirmed in the courts if the state board were to do that. So I think what we're talking about is, you know, as I said, a more pragmatic approach, which is let's look at Washoe County. We know, because the assessor has acknowledged it, that the properties, at least, as I said, there are some issues with that, and I don't want -- I mean, I would be remiss if I didn't address them. Initially, there was really no issue and I think the Judge in Carson.

THE COURT: Griffin.

MS. FULSTONE: Griffin -- Maddox. Thank you. I'm getting old and losing my memory. Judge Maddox made a finding that this unconstitutionality of methodology applied to all the properties at Incline Village, you know, not a finding,

because there's only 17 plaintiffs. But at that time, the assessor wasn't really splitting hairs and trying to distinguish between properties.

As we've progressed in the '05 tax years, in '06, '07, in '07, '08, the assessor has acknowledged, admitted, not disputed as far as single-family residences go at Incline Village and Crystal Bay, they were valued at '03, '04 using the unconstitutional methods identified by the Court.

I think the assessor would say there remains an argument about condominiums. I think if we were going to go forward with any kind of continuing case here, it would be to look at the condominiums. I think if you look at the condominiums and the way they were valued, you would find that they were also valued in a method, using a method that was not articulated in the regulations and was not constitutional.

Condominiums are a slightly different form of property that are difficult to value in a system that separates land from improvements, because technically they don't have land. So you have to kind of construct a land value and then, you know, and there aren't comparable sales. There are different ways of valuing the land portion of condominiums.

In 2003, 2004, there were no regulations on the valuation of condominiums. I think that the method used by

the Washoe County Assessor, you would find, if we go there, it was not used elsewhere. It was not -- you know, isn't going to match anything that is done anywhere else, so it's going to be unconstitutional.

But technically there were no condominiums involved in the Bakst case and the Court did not make in the Bakst decision on the valuation of the land portion of condominiums.

THE COURT: Any condominiums involved in this case?

MS. FULSTONE: Yes. Because this case -- well, the named plaintiff Anderson owns a condominium. But, you know, in terms of statewide, you know, of equalization for all of Incline Village, Crystal Bay, you know, there are, you know, several thousand condominiums involved, as well as several thousand single-family residences. That's the condominium issue as it stands.

THE COURT: All right.

MS. FULSTONE: I want to talk briefly, again, about although today we're not about the remedy, to the extent that at the end of the day here, the relief that's going to be involved, you know, counsel for the county argues that there's nothing about refunds in 361.395 and there's nothing about refunds in the ratio studies provisions in 361.333 and that's true, of course. But we're not really talking about refunds here. We're not talking about, you know, the taxpayer who is

challenging his valuation and pursuing a claim with the State Board of Equalization and paying under protest and all of that. That's the valuation issue. The Supreme Court has separated valuation from equalization.

Of course, there's nothing about refunds in 361.395 361.395 presupposes and directs that the state board perform its statewide equalization duties on an annual basis before the assessment rolls are finalized. So that when the, you know, when the state board does its equalization and then, you know, moves them up or down or whatever it does in terms of equalization, that then those goes to the county and they adjust their assessment rolls and they send out their tax bills based on their assessment rolls.

And so, you know, so the taxes are never collected in the first place so there's no refunds to be pursued. You know, to argue as the county tries to do that, well, you know, the passage of time here and the taxes have been paid and so now, Kings X, we get to keep the money. That's not -- certainly, that's not the way the statute were written and it's not a fair way to enforce them.

If in fact the state board failed its duty of equalization, as I think is in fact, I think it's much an established fact, counsel for the state says, well, they used to do equalization just by hearing individual cases. There's

simply no evidence of that. That's an argument they make. But there's no evidence that they ever considered the three cases they had from Washoe County on a certain year to be statewide equalization. I mean, it doesn't make any logical sense. You can't affect statewide equalization by hearing individual cases. And, you know, they really understand that.

It's a legal argument. It's not something the state board has ever come out and say, well, that's the way we did it and I don't think they would.

Basically, you know, the state board is a group of appointees who meet, you know, once or twice or three times a month during a period of time. And, you know, they do their public service in terms of trying to listen to taxpayers and trying to make decisions. And when it comes to valuation issues like, you know, should there be an adjustment because there's a rock in front of my picture window or, you know, those kinds of valuation issues, the state board is good at what it does.

When it comes to legal issues or unconstitutional methodologies and that kind of thing, the state board really is out of its element. And when it comes to whether or not they're doing equalization, I mean, I think they view their job, they didn't read the statutes, they took the appointment.

They, you know, when somebody brought a case to them, they heard it, they decided it, but they weren't really doing statewide equalization and, you know, just kind of let it slip until this issue with Incline Village brought it to the fore.

You know, you can't fix maybe what was done or not done many years ago, but the statutory duty is absolutely clear. It says they will perform statewide equalization on an annual basis. And it's been in the statute since it was written, and I think at one time they did do a sort of statewide equalization.

Part of the problem here, of course, is how will the makeup of things changes over time. There was a time when the tax commission and the State Board of Equalization and the county assessors were all one and the same. The assessors made up the tax commission and the tax commission sat as the State Board of Equalization. So that, you know, we have all of these different entities, but the statute, which requires the State Board of Equalization to equalize statewide on an annual basis hasn't changed.

The State Attorney General argues, well, the duty wasn't clear. But that, again, you know, is kind of their approach, which is they always get two whacks at everything. You know, we bring an action in 2003 because we think the duty is clear, we think the Supreme Court has now said the duty is

clear and was clear, and they're saying, well, now that we know the duty is clear, you step aside, dismiss this case and let us try to write a regulation going forward, but that's not the way the system works.

I mean, we thought the duty was clear. We brought a lawsuit saying the duty was clear, you know, in 2003. The court said, yeah, the duty is clear. It's written straightforward in the statute. Now, you know, we're entitled to relief based upon that claim. We don't have to wait and do it again now that we've done everybody the benefit of establishing that the duty is clear.

Let me see if there's anything. Does the Court have any questions while I'm skimming this through?

THE COURT: Yes.

MS. FULSTONE: Oh, good. Okay.

THE COURT: But go ahead.

MS. FULSTONE: I was going to finish up on, you know, this notion -- I don't mean to argue class certification at this point. This notion of the uniqueness of property means you can't have a class case, it's a knee jerk reaction. Yes, property is unique, but the issues here aren't unique. The legal issues that apply to everybody that's a residential taxpayer, homeowner at Incline Village are the same issues, identical issues, which will support a class action when we

get there.

And the other thing would be this notion that Douglas County is an indispensable party. If in fact the Court says you're entitled to statewide equalization for 2003, 2004, send it back to the State Board of Equalization to affect that equalization process, they have all the power they need to call in Douglas County and make them a part of that process, which is where they belong in the process. If the issue is going to be Douglas County versus Washoe County, then it's going to be before the state board.

I don't think this Court wants to undertake -- I'm sure you could and maybe it would be more efficient for this Court to undertake equalization between Douglas County and Washoe County, and if that's the Court's inclination, you know, we'll certainly support that. But I think the process would be to send it back to the administrative agency to perform that. Although everyone behind me may say, don't say that, don't say that. You know, we don't want another 10 years in this particular suit. So, anyway, if the Court has questions, I'll answer them.

THE COURT: If you look at the standards by which this Court issues writs of mandamus, one is an extraordinary remedy, which means it just isn't given out because somebody asks for it.

Second, the Nevada Supreme Court said a writ of mandamus will not issue if the parties have a plain, speedy, legal remedy available to them. And clearly it's designed to force or enforce a mandatory requirement upon a public official to do their job.

And I invite everybody to weigh in on this, this concern. There is pending now before the State Board of Equalization these rules and regulations that were enacted March 1st, but they won't take affect until October 1st just so that they can take in more public comments. I think it goes back to the Legislative Counsel Bureau for some vetting. I noticed in the transcript they invited Mr. Lowe and yourself to submit comments. Member Martell was quite complimentary about the presentation you made on behalf of the taxpayers.

I wonder whether or not that isn't that plain, speedy legal remedy that the Court says is available to you that gets you your relief short of the extraordinary writ of mandamus. That's A.

B is what does this writ of mandamus look like if there is no admitted statistical methodology that Nevada regulators can employ to effectively measure statewide equalization and that comes from the experts? How is this poor country judge supposed to divine such a method and tell them, State Board of Equalization, use this methodology to

affect it.

I notice in your pleadings, you had said, well, if you give us some limited discovery, say six months' worth and we'll go and we'll take the depositions of Douglas County Assessors and we'll find out how they do it and then we'll be able to come up with some directions for the Court to give the state board. That puts you about the same time frame as this rule and regulation will be adopted on October 1st and how does that, once again, how is that any speedier or less expensive than letting the process run its natural course?

Wouldn't this Court be more conservative in its approach if it didn't inject its own value system on to an independent board under the executive branch of government who is tasked with doing these very important and technical duties? I invite your comments.

MS. FULSTONE: Well, I have several.

THE COURT: I had several questions.

MS. FULSTONE: First of all, you know, you have to view this case as it was filed, which was in 2003. At which time and I would argue still today, but certainly at which time there was no available remedy at law.

THE COURT: And you're absolutely correct. But what I'm stuck with is a Supreme Court order that just came out a couple of months ago with a very limited mandate to this Court

and that's to determine whether or not injunctive relief is even viable. And so I'm kind of looking prospectively, but maybe I'm wrong.

MS. FULSTONE: But the Supreme Court when it talked about injunctive relief, which was the way the initial complaint was characterized did refer to the mandamus statute.

THE COURT: That's true.

MS. FULSTONE: We were talking about mandamus in terms of the remand to the Court.

THE COURT: What do you want me to do?

MS. FULSTONE: I'm trying to get there. I think it's a misnomer to say that these regulations as they presently exist for equalization will be effective October 1st and I say this for a number of reasons. They have to be approved by the legislative commission. They don't have to be vetted -- they may have to be vetted again by the Legislative Counsel Bureau, but they have to be approved by the legislative commission. That will certainly be some opposition there.

The state board itself, as you pointed out, has said that they will look at additional proposals. Even if that were true, even if they go into affect just the way they're written on October 1st, the critical factor is, in my mind, and I argued this before the board, is they provide -- they

have no provision for participation by the property owner. You know, the property owner isn't a party. This is all done between the assessors and the department with the ratio studies and, you know, and the state board. But in order to become a party, the taxpayer would have to seek to intervene. Intervention would be entirely discretionary, which means that they could say no, they could say yes. But there's certainly no right, no right of intervention, no right to participate in the equalization process as those regulations are developed.

THE COURT: I read the regulations and you're right.

MS. FULSTONE: That's the problem. There's still no legal remedy for the taxpayer.

THE COURT: As they're presently constituted.

MS. FULSTONE: As they're presently written.

THE COURT: Which could change.

MS. FULSTONE: Which could change, right.

THE COURT: Okay.

MS. FULSTONE: I think that they were written at least some degree in anticipation of a remand from this, the potential of a remand from this Court. Not just because the board wants to be able to do this going forward, and as I said earlier, this is a board to be commended. They're saying, we got this duty, let's figure out how to do it.

And so they're looking at trying to apply this

regulation, perhaps, to a remand or a mandate from this Court to equalize at least as between Incline -- as between Douglas and Washoe at the Lake for the '03, '04 time frame. I don't think that you would want to issue a mandate requiring statewide equalization for '03, '04. I think it would be biting off more than anyone wants to chew here. I think any mandate ordered directed at the state board should be limited to the areas at the Lake.

The problem with the regulation is in part it's substantive and to the extent that it's substantive, it can't be applied retroactively. And to the extent that it's substantive, it's invalid anyway, because the state board has the authority under the statutes only to adopt procedural regulations. So, you know, I mean, the tax commission may have to come in behind them and adopt the substantive regulations with respect to equalization, how it's defined, what it means and so on and what the standard ought to be.

I mean, the state board can't set the standard for equalization. They can only say, this is how we're going to do it. We're going to look at this, we're going to look at that, we're going to bring people in, whatever it is they're going to do. They can define the process they want to use to get there. They can't define equalization or set the standard. That has to be done by the tax commission.

THE COURT: Correct.

MS. FULSTONE: Or by the legislature. So, I mean, let's get to it is what it is I want you to do.

THE COURT: I'm all ears.

MS. FULSTONE: Again, as I argued earlier, the pragmatic thing, I think, is to equalize within Washoe County and do it through the vehicle of the state board and tell them how to do that, which is to equalize -- which is essentially to equalize residential property owners at Incline, condominiums or residential or single-family residences back to '02, '03 to remedy the constitutional issue.

And as I said there may be an argument to look condos, but I don't think you even have to look at condos, because the standard as articulated by the Supreme Court is not that everybody goes back where unconstitutional methods were used, it's that everybody goes back, because unconstitutional methods were used. Everybody goes back to the same level.

It isn't, you know, there's no equalization in having some people in '02, '03 and some people in '03, '04. Even if you can argue that the '03, '04 are constitutional, there's still a lack of geographical uniformity within Incline Village, Crystal Bay and the geographical uniformity is an obligation of the county board and of the state board.

So that's, you know, I think, the simplest thing that the Court can do and the most pragmatic and the least expensive and the least cumbersome.

I mean, if you go back and say, okay, they're going to develop a regulation and maybe it's going to provide the taxpayer with an avenue of relief, which it doesn't now, but maybe it will, maybe they'll change it to do that. They still have to go back and basically reinvent the wheel for '02, '03, because if you look at the ratio studies that were actually done for '02, '03, they were doing them quite differently in those days. They have improved the way they do ratio studies.

In 02, '03, you know, there's one for '02, one for '03, I think '03 involved Washoe County, but it only involved the, you know, a part of -- '02 involved Washoe County, I'm sorry. But it only involved the part of Washoe County that was being reappraised in that year and then Washoe County was on a five-year cycle. So the only portion of the county they did a ratio study for was the North Valleys or something. It didn't touch on the Incline Village area.

What the department is trying to do now is to do a ratio study that hits all the areas in the county, not just an area that is being reappraised where there's a five-year reappraisal. That's an improvement. It doesn't solve the basic problem, but it's an improvement. That wasn't true.

So they basically have to go back and do new ratio studies at least under that regulation, because there's nothing else there. And so I just don't think that's, as I said, I think the pragmatic solution is to do the equalization that we can be fairly certain of within the Incline Village, Crystal Bay area of Washoe County. And know that the state board is developing a regulation that it will use going forward.

Technically with our complaint going back to '03, '04, then they're going to, what, equalize for '04, '05? Continue to look at all those intervening years today, because certainly we filed this case in '03. You know, we're entitled to equalization, I guess, for all those years. Again, it gets to be too big a task pragmatically.

THE COURT: Won't you come back and say, okay, now that you've done it for '02, '03, we want to do for it for '03, '04, '04, '05? I take that as a yes.

MS. FULSTONE: That, I think, is perhaps the virtue of certifying a class here.

THE COURT: Yes.

MS. FULSTONE: The Court understands that.

THE COURT: Yeah. Your vision of this mandamus is just one of those, go forth and do right? You don't want me to do --

MS. FULSTONE: No.

THE COURT: If I just say, go forth and equalize the -- issue a writ of mandamus to the State Board of Equalization to equalize the property values of Lake Tahoe, Incline Village, Crystal Bay residents back in the '02, '03 time period without giving them any direction, what's to say that they won't do it using an unconstitutional method and we'll be back here again without giving them a framework, a template, saying this is --

MS. FULSTONE: I think you make findings to the affect that, you know, based on the Supreme Court decisions and other material you can be provided is that, you know, these unconstitutional methods were used throughout Incline Village and Crystal Bay for the '03, '04 tax year. That the Supreme Court has said that valuations using unconstitutional methods are void and, therefore, you know, state board, we're going to direct you to equalize the land values of all of those residential Incline Village, Crystal Bay residential properties for the '03, '04 tax year. You know, adjust those, redetermine the land values and reset them at their '02, '03 levels.

And, you know, then that goes to the -- you know, the state board does that, you know, pursuant to the Court's order. And that goes to the assessor and then the assessor --

actually, I think it goes to the auditor, it goes to the treasurer, it goes to the assessment roll. And then the treasurer recalculates what was due based on those adjusted values and give the excess taxes paid back to the people who paid them. I think the Court can do that.

If what the Court is talking about, the specifics of an order requiring equalization between Douglas and Incline, you know, and Washoe County at the Lake, then you basically direct them to, you know, to look at the methodologies. If the methodologies are different, again, then I think that they have to then, you know, I guess they can try to adjust Douglas County up, or if that's -- you know, I think the evidence we have is that Douglas County is lower. I don't think we would be here if that weren't the case. Rather than, you know, go to some fantasy land here. They either adjust the Douglas up, if that's their determination, I guess, or they adjust Incline Village down, but they bring them together.

If the methodologies used are not the same, then they bring them together. I mean, I think that kind of mandamus order can be written.

THE COURT: Doesn't that bring Douglas County into the mix?

MS. FULSTONE: It does, but it does at the state board level. It doesn't have to be here. But, I mean, as I

said in my papers, if you think Douglas County should be joined, there's no reason they can't be joined. You know, as I said, they're not dead, they don't not exist, they're still out there. They can be named and served and brought into this action in the court.

You know, it's to the extent that we're talking about a rule ten issue, a relation back issue, I mean, we made, you know, we pled for statewide equalization, we pled the Douglas County, Washoe County issue from the get-go. If they're an indispensable party, maybe that issue should have come up earlier on, but whatever it is, there's no, you know, there's no failure of us to name them. This is not a late filed claim of some kind.

THE COURT: Uh-huh.

MS. FULSTONE: Okay? There was probably more to say and they probably know what it should be. I'm going to sit down.

THE COURT: Thank you, Ms. Fulstone. Mr. Belcourt?

MR. BELCOURT: Your Honor must have been reading my mind or something, I could tell you realized I had something to say.

THE COURT: The sun will not set until everybody has a chance to tell me everything they want to say.

MR. BELCOURT: Well, I think as Ms. Contine and

Mr. Creekman articulated, this remedy cannot be limited. I mean, by the rules of mandamus cannot be limited to just a decision about one property owner versus another property owner or within the county. Statewide equalization is statewide equalization.

The duty is not a contested case matter. It's a duty that exists outside of a contested case. That's what the Supreme Court said. That's why they said failure to exhaust is not an issue. It's really something that the state board, you know, under statute that was, you know, rather sketchy in detail, but it's pretty clear that it's, you know, in the sense that it's not, you know, limited to two parties against each other.

Given that respect, I mean, the Court cannot fashion a writ that just limits a discussion between Washoe County and Douglas. And for that matter, it shouldn't for other reasons. One of the reasons is Clark County, big county in Nevada, right, 70 percent of the population, the land value of Clark County is probably, you know, dwarfs the rest of the State of Nevada. Yet when you say we're going to equalize between Washoe County and Douglas, because Douglas, you know, needs to be raised up or lowered and -- you're omitting all the other counties involved.

And if the fact that you're applying different

methodologies to people in one area than to others, who is discriminated against? Hypothetically, either party can be. You can't say this is only about, you know, the 8700 or 9,000 parcels on the Lakeshore in Washoe County or it's about the, you know, the Lakeshore parcels in Douglas. The duty as defined in the statute is a statewide duty and pragmatism doesn't change mandamus. I mean, pragmatism doesn't change it. Let's go back to the legislature to change this Court's authority if that's what -- if the remedy at issue requested is what this Court would like to. I mean, there's no way to do it right now.

I would like to answer the Court's question on statistical methods to equalize. I think the state's board regulations envision the ratio studies as a statistical method to identify when there's equalization problems. It's really problematic to equalize. If a person has one parcel, you know, between counties, if a person has one parcel in Clark County and one parcel in Washoe County, to compare them and say, well, they're out of equalization in the abstract just because they're not valued the same, that doesn't work. We know that. It's different markets.

We have a taxable value system, which is -- you know, it's not exactly a fair market value system, but it approximates that. It doesn't -- it works out at the values

relative to the market, not the values relative to each other. That's what we're talking about.

The state board can look at ratio studies and get a gauge of where the properties are valued relative to, you know, by the assessors relative to their actual value and the market and can't approximate taxable value. Hypothetically, and you know, I'm not a statistician either, but they can predict taxable value based on market value using, you know, regression analysis or other statistical methods.

I can't tell you, it's not for me to say, but frankly speaking, it's not for that Court, I believe, to say that the state board cannot use statistical methods to enable it to equalize.

The alternative is to go look at the methods being used, but I don't -- frankly, I don't think a roundtable discussion of how one county values this and another county values that is going to equalize the property.

Now, in terms of ratio studies, the state board did look at equalization through ratio studies. I mean, I was reviewing a transcript recently in 2007 and what they found is Clark County was significantly higher, closer to the ratio of an assessed value to -- excuse me -- taxable value as determined by the assessor to the market, you know, in other words, to the sale was much closer to one than any other

county. In fact, Douglas County was higher valued in that year as a ratio to sales than was Washoe County, not much higher, and probably not, you know, something you couldn't attribute to an anomaly. But, I mean, statistics have their flaws, but Clark County was and Storey County was lower than those two in terms of the valuation.

You know, it's really not, you know -- I mean, but, anyway, that indicates that this is really a statewide issue, it's not just about equalizing. I mean, the goal of equalization is not to just equalize to be treating two properties. That's what 395 is about, it's equalize statewide. And I would suggest that this Court cannot limit the remedy to that.

I'd also suggest that there is an assumption that's not in evidence that Douglas County has constitutional valuations and Washoe County doesn't or that Clark County does or Washoe County doesn't. That's got to be up to somebody else other than this Court to decide.

But when it comes to equalization to set things right, I don't think that, you know, 395 precludes a possibility that if hypothetically the Supreme Court mistakenly reduced the values of 17 parcels for '02, '03 that they were wrong as applies to the whole district of Crystal Bay and Incline Village. If you look at what the Supreme

Court had to decide, they really had no evidence of values that would result in that conclusion that all of Incline Village and Crystal Bay was unconstitutionally valued or that they were undervalued. I mean, the fact that you're applying a wrong methodology, I doubt that a different methodology is the problem. They're applying the different methodologies.

THE COURT: That was not approved by the tax commission.

MR. BELCOURT: That was not approved by the tax commission, certainly. But when it comes to equalization, we're looking at, how do they stand with respect to each other? Not how they stand with respect to, you know, methodology. I mean, I would say that the Supreme Court could have followed the statute in 361, I'm trying to remember the number, where it says that they should look at the excess value and peel off the excess value. Instead, they returned to '02, '03. I think they did that because of the World Corp decision.

They were looking at, you know, the prior precedent The World Corp decision was a sales tax case, mind you. But it said if there's a unconstitutional law, you've got to give a refund. The only thing they had before the Supreme Court was a contention by the taxpayers that '02, '03 was somewhat okay. And I heard Ms. Fulstone say on numerous occasions that

she even doubts that. But that was really just a decision they made absent any other thing available to prove that there was another refund that could be given. I mean, it was a refund prayed for. It wasn't the refund that was substantiated.

So in term of equalization, I don't think we're limited to was '02, '03 the magic year that worked for everybody, that we're pristine, halcion, go back to the days gone by. I'm nostalgic for that year, too, because I did buy a house in that year. But, anyway, it's not the magic year.

So I think the whole notion that a writ of mandamus can issue for the specific relief requested in the complaint is wrong. I do think that mandamus is different from different actions. It's all about the relief. It's ordering a public officer to do something. It's not saying there's an injury, a tortious injury or a contractual breach and we'll figure out down the road what the remedy is. It's about the relief. There are cases out there, I was able to find one in Ohio, but there are cases that dismiss because of the wrong remedy in mandamus and I think that this Court can do that.

Anyway, as far as, you know, the state board's authority to you adopt regulations, I think that's probably not -- I mean, unless this Court wants me to address it, I think they have every authority to do so. That equalization

is their perimeters or their domain. The tax commission's domain is valuation. The tax commission defines taxable value. The state board decides when you have a lack of equalization based on looking at that taxable value.

I mean, the state board has to cede the decision-making power as to what is taxable value to the tax commission. That's their bailiwick. But the state board in its regulations did not define taxable value. It just defines how it does the equalization process. It's been given a duty by the Supreme Court, by the state legislature, rather, to equalize and it's saying that duty doesn't spell out how it's done, what the methodology is to be use for accomplishing equalization and that's all the regulations did. So I don't think they're invalid. I think that they're entirely within the authority of the state board to issue. With that, if you have any questions.

THE COURT: No, I don't. Thank you.

MR. BELCOURT: Thank you. Ms. Contine?

MS. CONTINE: I don't have anything.

THE COURT: Mr. Creekman?

MR. CREEKMAN: Yes, sir. Just some followup on your questions, your Honor, and to some points made by Ms. Fulstone.

You asked Ms. Fulstone if the adoption of regs

constitutes a plain, adequate and speedy remedy. The adoption of regs is the equivalent -- is the administrative agency equivalent of law making. It's the quintessential form of legal relief, law making. So the answer to that question is, yes, the adoption of those regs constitutes a plain, adequate and speedy remedy, which precludes the requested mandamus relief.

You next asked, how am I posed to word this writ? The answer, your Honor, you can't word the writ. It is a legal impossibility, because the rules of mandamus and the rules set forth in the tax code can't be met. It is impossible to issue a legally defensible in this case writ.

The question of appropriate wording, your Honor's question of appropriate wording of this writ goes to the inherent wrongness of subjecting Washoe County to this type of liability outside the tax code, the tax code that we, my clients and my clients on behalf of every resident of Washoe County have been dependent upon.

Ms. Fulstone mentioned that she's offended by the county's recitation of its goals in this litigation and that the county goals do not trump constitutional protections. I would never stand here or in any other department of this second JD or across the street in the federal court and suggest that the county's goals that were violative of

individual constitutional rights when those rights are properly and timely asserted trump those constitutional rights.

But as in other areas of the law, there must be some finality. I cannot expect or should not have to expect as a government lawyer someone to come in with a claim of First Amendment, for instance, violation waged against them or lodged against them by some official of Washoe County in 1967 now. Those claims are barred by the statute of limitations, as are these constitutional claims in this case.

Ms. Fulstone indicated that particularized relief is not part of a motion to dismiss. I disagree entirely. When the requested relief, the relief requested by the plaintiffs themselves in this case, in their amended complaint in part serves as the basis for depriving the Court of subject matter jurisdiction under the applicable law.

Ms. Fulstone objected to my approach to exhaustion, saying that exhaustion has nothing to do with this case. Actually, I didn't say that exhaustion has anything to do with this case, and I mentioned three statutes, 355, 356 and 357. I thank Ms. Fulstone for correcting me. If I said that those statutes provide the state board with jurisdiction, she's correct, I meant that the statute provides the county board with jurisdiction.

I'm not saying that the taxpayers needed to exhaust those remedies. What I'm saying is that the mere existence of those remedies, the mere existence, the fact that they're spelled out in our tax code, the simple fact of their existence bars the request for extraordinary writ relief. That constitutes the existence of an adequate legal remedy, your Honor, that makes their request, their requests for mandamus relief impossible for you to grant under the law of mandamus.

Ms. Fulstone contended that the ratio studies were a coming thing in 1967. Well, apparently, they're a coming thing in 2010, at least with the State Board of Equalization, because that state board just adopted them in the context of our taxable value system as a basis for relying on in determining if property in this state is in assessment equalization with other property.

She criticizes the ratio studies as having no application to our taxable value system. Yet as I pointed out during my opening remarks, in 1981 when Nevada switched from a full cash value system to a taxable value system, the legislature went to the trouble of amending 361.333 to delete that reference to full cash value and insert a reference to taxable value with the full intention and knowledge of what a taxable value system was and I can't help but think with the

full intention of making these ratio studies applicable, contrary to Ms. Fulstone's representation, to our tax valuable system. I have never contended nor will I that that is a perfect system, but it's the system we have to deal with.

I also remind you that 333, the ratio study section of the NRS falls under the section of the statutes headed or initiated with the heading called equalization between counties. Whoever puts these statutes together characterized 333 as the procedure for providing the equalization between county exists. And I tell you what, your Honor, when they perform those ratio studies, they initially look to questions of equalization and assessment, assessed valuation to taxable value within a county and then they make comparisons as between counties.

The statute specifically permits the department of taxation to divvy up the state, to divide the state into groups of counties each of which is analyzed once every three years. That was a modification to the statute in the '90s sometime.

The taxpayers don't like the ratio studies for the simple reason that they don't meet their needs. The taxpayers and the plaintiffs in this case never have any suggestions for improvement, only complaints about how the system unfairly burdens them and how the system doesn't work. The approach

that I've suggested today, my interpretation of the statutory scheme here as spelled out more fully in writing in my June 1st brief, coupled with my October 15th motion to dismiss, gives meaning and dimension to every aspect, every section of NRS Chapter 361. It's a logical explanation of the interrelatedness of all of these sections and how it all fits together.

But most importantly, my approach serves the public policy of stability, finality and revenue certainty or surety. The state board has acted. It adopted 333's ratio studies as part of the standard for equalization. This administrative action is entitled to deference under U.S. Supreme Court case, Chevron versus Natural Resources Defense Council, as that case was adopted by the Nevada Supreme Court in a case called Thomas versus the City of North Las Vegas at 122 Nevada, 82.

The state board's action on March 1st, even though I will concede, clearly, it doesn't take affect until October 1st, assuming they make it through all the hurdles, merely acknowledged exactly what has been the case in the State of Nevada since 1967's first adoption of that statute as it was modified throughout time.

I'm also surprised to learn that the lawsuit applies only to the 2003 tax year. It's directly contrary to the language contained within the lawsuit and contained within her

prayer for relief in the amended complaint. They seek relief for all subsequent tax years here.

These constant references to unconstitutional valuations are also somewhat annoying. Never have all the values in Lake Tahoe or Incline Village and Crystal Bay been determined to be unconstitutional. It's now too late to do so. The values that were determined by the court system to be have been unconstitutionally valued or assigned were those associated with the plaintiffs in Barta -- excuse me -- in the Bakst case and in the Barta case.

Those who sleep on their rights, lose their rights, your Honor. I am not here to argue about valuation rights or wrongs. There is no evidence in any record that definitively establishes that those values were unconstitutionally assigned with regard to the remainder of the properties up there. The assessor's values as they were assigned should be given deference, especially we're talking 2003, seven, eight years after the fact.

Washoe County, no jurisdiction in America can be expected to operate with this level of continuing uncertainty with respect to its revenues and its expenditures. It's absolutely unacceptable in the scheme of things. I mean, Washoe County is providing essential governmental services. It can't be subject to liability for that which occurred, in

some cases -- what would be so illogical about, if you allow Washoe County to be subject for liability for the 2002, 2003, 2004 tax years, what would be so illogical about coming in here and arguing that property values in 1892 were unconstitutionally assessed? I mean, what would stop someone from doing so, your Honor?

The only thing that stops people from doing that is the application of applicable statutes of limitations. And the longest possible statute of limitation that exists on any of this is found in Title 11 somewhere and it's one year for bringing an action on a tax matter. That's the longest.

If you rely on 420 statute of limitations, I believe the payment under protest provision allows an action to be brought, it's either 60 or 90 days. Doggone it. I don't see it here.

THE COURT: It's in your pleadings. I read it.

MR. CREEKMAN: Within three months after the date of the payment of the last installment of taxes and if not so commenced is forever barred. Forever barred. That's the certainty that you have to acknowledge on before of Washoe County and all of the residents.

Ms. Fulstone says she's not talking about refunds. Wrong. The amended complaint specifically pleads their right to refunds. It specifically requests in their prayer for

relief refunds. I don't know where she's coming from. I don't understand it.

Ms. Fulstone then said, you have to view this case as it was filed in 2003. It now bears no resemblance to the 2003 case. She's right there. This case has expanded exponentially from what it was in 2003. If we're to look at it as it was filed in 2003, we have to drop these individual plaintiffs, go back to the Village League versus all the named defendants and set the clock back and look at their prayer for -- their original prayer for injunctive relief, which coincidentally was all the Supreme Court remanded back to your Honor.

This is not a proceeding to challenge the validity of the state board's regulations. That sort of challenge is provided for and can only be mounted under NRS Chapter 233 B, under the regulation adoption process of the Nevada Administrative Procedures Act. This is not the forum. The fact, the simple fact is the state board acted, the state board adopted regulations. Those regulations include a provision or reference to and reliance upon 333's ratio studies. That's the extent of your Honor's involvement at least until another case is filed, which I suspect will be coming in the future at some point. That's the extent of your Honor's involvement with questioning the underlying validity

of those regulations.

I will tell you, 395's provision requiring, I agree with Mr. Belcourt on this, requiring equalization by the State Board of Equalization to equalize valuations within the state doesn't stop at Incline Village. It doesn't stop at Crystal Bay. It doesn't stop at Douglas County. Granting these taxpayers in this case the relief they want necessarily will put Incline Village and Crystal Bay out of equilibrium with the rest of Washoe County.

And if your Honor is willing to ignore the traditional rules, tax rules set forth in the tax law, the rules applicable to writs of mandamus, you will be in part responsible for allowing a chaotic situation to develop, not only here in Washoe County, but as Mr. Belcourt pointed out, throughout the state.

The statute requires equalization of valuations within the state. It doesn't limit it to Washoe County. It doesn't limit it to Incline Village. It doesn't limit to it Crystal Bay. Any questions, your Honor?

THE COURT: No. Thank you, Mr. Creekman. All right. Well, I certainly want to allow Ms. Fulstone to have a few more words.

MS. FULSTONE: I certainly appreciate that, your Honor. I'll try not to go on for too long, although I can go

on sometimes. Both the county and the state argue now that the remedy fashioned by the Court cannot be limited. It has to require statewide equalization. And so it can't be ordered, because that's just too much, I guess.

You know, it seems to me that's nicely convenient for them. I mean, they don't want to do equalization statewide or even on a smaller basis. I think this Court can fashion a limited order based on the complaint, based on the fact that it's the taxpayers at Incline Village and Crystal Bay that have raised this issue. I don't think the Court needs to necessarily say that the state board must equalize statewide for '03, '04 and all subsequent years.

If the Court chooses to do that, I'm not offended by that, because I think they had a duty, the board had a duty to do that, but I don't think that the Court's remedy is limited. It's like an injunction remedy, you know, you can fashion the remedy that's appropriate to the claims that are before the Court.

I want to talk again about ratio studies and I'll be quick. Now they're saying, well, it's a method to identify equalization issues. The state board can look at the ratio studies and get an idea. I tell you, we looked at the ratio studies as they were actually done in more recent years when they were better done by the department in the case that we

had the challenge, the changes in the land regulations or some of those changes.

And what we found was that they would go to a rural county and they would simply adopt the land value used by the assessor.

THE COURT: County assessor.

MS. FULSTONE: So that, amazingly enough, that particular assessor was found to have come out at 35 percent or close thereto. I mean, if you're going to use the assessor's numbers, you're going to go get the same, and then you're going to match your version of the assessor's numbers with the assessor's version of the assessor's numbers, you're going to get pretty close.

And the same thing is true in Washoe County, except for Incline Village, which they were then trying to do differently, all of Washoe County's appraisals as done by the department had the exact same land value as the Washoe County Assessor did. You cannot get to the exact same land value doing independent appraisals.

And when you don't do independent appraisal, you don't have a ratio study you can rely on for anything, let alone telling you whether or not there's equalization or a lack of equalization.

He's saying, Mr. Belcourt says, well, the Supreme

Court in the Bakst case had no evidence of value and rather than just remove the excess value which is provided in the statute, they went back to '02, '03. Well, you know, the Supreme Court in the Bakst case went back to '02, '03 or took the county assessor's values back to '02, '03 as a policy matter.

If the assessor is going to value property using unconstitutional methods, then the assessor doesn't get the benefit of, oh, well, let's just take off the excess, whatever that may be. The assessor doesn't get a do-over. You know, what the Court said is the assessor gets to go -- you know, the taxpayer gets to go back to '02, '03, because the assessor used unconstitutional methods. And so it's a policy decision which I think applies here as well.

You know, they're saying, well, how can you compare Douglas and Incline, because we don't know if Douglas' methods are unconstitutional or not. That's not the issue. We don't care whether Douglas' methods are unconstitutional or not. That was for somebody in Douglas to challenge when they were doing valuation challenges. What matters for equalization is that the two methods are different. And if the methods are different, then, you know, you have to adjust the values.

In terms of, you know, the suggested relief we have, which is just within Incline Village and Crystal Bay, the

geographical equalization, you know, again, that's a requirement that the state board imposed on the county boards. In this case, you know, when the adjustment is made for the 17 taxpayers, you know, they say, well -- Mr. Creekman says, there's been no determination that the other values are unconstitutional. That is simply flying in the face of reality.

Not only has there been essentially a determination of that, there's been an acknowledgment of that by the county assessors more than once, I mean, to the state board, to the court and in the case that Judge McGee is handling.

So it isn't as though we can all of a sudden give some deference to the assessor's valuations in the 8700 done in precisely the same -- using precisely the same unconstitutional methodologies.

Mr. Creekman again says that it's not that the taxpayer is required to exhaust 355, 356 and 357 or 360, but the availability of those remedies. In the first place, and the Court may know this, and if you do, just tell me you do and I will not make the argument, but those statutes provide no remedy whatsoever for statewide equalization. They don't provide any remedy for any kind of equalization. They are valuation statutes. The taxpayer comes in to challenge his value before the county board under each of those statutes.

355 provides that a taxpayer can actually go to a separate county board, but only to argue that the property in that other county is undervalued.

THE COURT: Undervalued.

MS. FULSTONE: There's no provision in any of those three statutes for the taxpayer to come in and say that the property in Douglas County was properly valued and my property is overvalued and you have to equalize. County boards don't equalize between counties. Only the state board equalizes between counties. Those statutes provided no remedy whatsoever for anybody seeking equalization between the counties.

Let's go back to the ratio studies. Mr. Creekman says that in 1981 when the legislature adopted the tax shift and went to the taxable value system, it specifically amended 361.333 to substitute taxable value for full cash value.

THE COURT: Just a minute. I want to give everybody an opportunity. I know there will be some response as well. Because Washoe County is under a budget, in a budget crisis, we're not allowed to have overtime.

MS. FULSTONE: Okay.

THE COURT: I have to close up at 5:00, unless I make a phone call. Now, if you give me a minute, I'd make a phone call and you can have a little more time. But I have to

get overtime authorized. If not, what I suggest is we can come back tomorrow or sometime next week and finish up the argument. Like I said, I want to give all sides a fair opportunity to tell me everything they think I have to know before I make a decision. So if you want to give me a few minutes, I'll make a phone call.

MS. FULSTONE: I would suggest that you make the phone call. I would be happy to come back tomorrow, but I don't want to bring people back tomorrow.

THE COURT: I understand.

MS. FULSTONE: I think we should finish today, as long as we're all in the mood.

THE COURT: That's what I'd like to do. I don't want to incur the wrath of my chief judge if I don't get permission. We'll be in recess for a few minutes.

(A short break was taken.)

THE COURT: All right. I've put another quarter in the meter. Ms. Fulstone.

MS. FULSTONE: Thank you, your Honor. As I was saying --

THE COURT: Talking about ratio studies.

MS. FULSTONE: Yes. Mr. Creekman made the argument that in 1981 when the taxable value system was adopted that the legislature amended 361.333 to substitute taxable value

for full cash value, I'm quoting here, with the full intention and knowledge of a taxable value system. And I would submit to the Court that in fact if you look at the legislative history of what they did in 1981, there's no mention whatsoever of ratio studies or how they might be applicable or not applicable in a taxable value system.

What the legislature did or probably the Legislative Counsel Bureau is simply go through the statutes. I mean, you can see this if you look at the session and see what they did, every time the full cash value shows up in the statute, it's deleted and put in taxable value. That's included in 361.333 on ratio studies. There's nothing in the legislative history that suggests any kind of thought process went into substituting taxable value for full cash value in the ratio studies.

One thing that is clear is that neither in the tax shift statute of 1981 or any other time that they have amended the ratio studies statute, which has been several times, they never, ever touched the obligation of the State Board of Equalization under 361.395 to affect annual statewide equalization.

They never connected the two and they never, you know, when the ratio study statute went first to two years and then to three years, never said, okay, well, somehow we're

going to make this constitutional with this obligation of annual equalization. Never. So the idea that there's some thought into including taxable value in 361.333, again, just is not supported by the record.

Mr. Creekman also made reference to the headache, I think, in some versions of the statute, it may be West and it may be NICHE, I don't know, there's a heading above 361.333, which says equalization between counties.

I think the Court understands that whoever put headings in the bound volumes of the statutes isn't the legislature and didn't make the heading legally significant. Mr. Creekman also said that taxpayers don't like ratio studies. Taxpayers, Incline Village taxpayers that I represent at least don't like ratio studies because, one, they don't work; two, they're misleading; three, they have nothing to do with the methodology. They don't in any sense address the issue of unconstitutional methodologies. They don't even effectively address issues of valuation or equalization.

If you go back to, again, the year we're talking about is '03, '04. There's ratio studies publication from the department for '02, '03. There's another one for '03, '04. '02, '03 has Washoe County but only a narrow part of Washoe County. '03, '04 doesn't have either Washoe County or Douglas County. Nothing they did back then could be used in

connection with what was the current regulation and it's proposed use of ratio studies. Which means if they were going to do it, they would have to now go out and reappraise properties with so-called independent appraisals to do new ratio studies.

And, again, ratio studies are not the answer to equalization either for '03 or for '09, '10. But particularly in '03, there's nothing in the exiting ratio studies that would allow the state board or a court or any entity to compare the two parts of Douglas and Washoe County at Lake Tahoe. The material simply isn't there.

And that period of time between the five-year reappraisal cycle and the three-year cycle for ratio studies, Incline Village, again, it was looked at once every 15 years. Glenbrook in that area of Douglas County similarly and not the same 15 years. So trying to bring those two together with any existing information produced by the department in the way of ratio studies would just be impossible.

Counsel also said that the taxpayers have never made any suggestions. We simply are negative. We don't like things. We don't things we don't like and that we think don't work, absolutely. But it is quite untrue to say that taxpayers have never made a suggestion. I personally went to I think all but one of the workshops on the equalization

regulation, made my suggestions, made my comments repeatedly, as did Mr. Barta, as did others from Incline Village. Same thing is true of the land regulations. I think in the 2004 land regulations, they had 35, 36, 38 meetings attended -- everyone of them attended by at least some representatives from Incline Village. It's not as though taxpayers here haven't tried to make a difference in how things get articulated and how regulations get drafted.

Another thing Mr. Creekman said was that what would stop people from arguing that 1892 values were unconstitutional? Well, it's kind of making a mockery of the whole thing we're doing here. You know, we're not talking about 1892 values and we're not talking about something for the very first time here today or even in 2009.

To the extent that the county has this right to rely on, you know, the taxes that it collects, it's put on notice when we file a lawsuit that we're making a claim. And the taxpayers filed this lawsuit in 2003 and the allegations about the failure of equalization were in the lawsuit at that time.

So it isn't as -- he talks about a statute of limitation, but the statute of limitations applies from when the complaint was filed. This complaint was filed in 2003. The taxpayers can't be blamed or disadvantaged or have their claim rejected because it's now 2010 and we're still trying to

get past the motion to dismiss stage. What would stop people from arguing that 1892 values are unconstitutional? Nobody filed on 1892 values. We filed on 2003 equalization. And everybody, including Washoe County, was on notice from the date of that filing that Incline Village taxpayers were pursuing equalization.

He says he's confused because of -- talking about refunds, not talking about refunds. When I say I'm not talking about refunds, I'm trying to draw a distinction between a taxpayer action, which under the statutes requires, you know, follow the administrative process, file your petition before the county board. If you lose there, you go to the state board. If you lose there, you go to court. You pay under protest test and at the end of the day, if you win, you get your money back.

We're not here seeking that kind of refund. We're here as taxpayers to seek to have money that was collected not because of taxpayers doing or not doing anything, but because of the state board's failure to perform its duty of equalization and so the state board performs that duty.

The taxpayer is not required to pay under protest. The pay under protest provision specifically says it applies only to -- and that's 361.420 -- only where there's an adverse decision by the state board. The state board can't suddenly

say, well, not making a decision, not doing what we're supposed to do is an adverse decision, so, you know, you could have done something different here and you should be paying under protest. I mean, we filed in 2003 to get them to do their duty of statewide equalization.

For the monies, excess monies that have been collected since that time, under the law, those are obligated to be refunded. The assessment roll under the statute, the assessment roll is the sole basis for taxation. If the State Board of Equalization changes the assessment roll, then taxes have to be adjusted to reflect the corrected assessment roll and excess taxes returned to taxpayers. That's the goal here.

Again, in terms of how a mandamus order is fashioned, I would go back to my suggestion that the pragmatic solution here is to affect equalization within Washoe County. There is the basis for that within the Incline Village, Crystal Bay geographic area for Washoe County. There's a basis for that in the facts. There's a basis for that in the law. That is a result which may not be, you know, a complete compliance with the state board's affirmative duty of statewide equalization, but it does afford relief to taxpayers. It addresses the issue of unconstitutional methodologies, it addresses the issue of a lack of equalization within that geographic area and it is a solution

that can be affected.

Just as, you know, the county -- I never understood this about the county, because it isn't just '03, it's the following year. Because they were doing a five-year cycle, the unconstitutional valuations that are done in '03, '04 are unconstitutional for the following five years.

But their approach is that if a Court doesn't order us to do it, we're not obligated. We can continue to violate the constitutional rights of taxpayers, we can continue to, you know, with our unconstitutional assessments, which we know are unconstitutional valuations because the Supreme Court has told us so, but never change them, in that five-year period, never changed them, never went back and reassessed or changed anything. And their position was, you know, make the taxpayers sue us.

As long as we can get this windfall of excess taxation for maybe -- you know, where there were 30 plaintiffs one year, the other 8900 and something, you know, they got to collect the taxes. When there were 300 plaintiffs, they got to. You know, again, their view is that they should be able to unconstitutionally assess and collect taxes on anybody that doesn't take a petition to the county board of equalization and that just can't be the law. There needs to be a remedy class wide, whether it's class wide, area wide, the use of

unconstitutional methodologies, there should be an area wide remedy in equalization. I think that's everything, I hope.

THE COURT: Thank you, Ms. Fulstone.

MR. CREEKMAN: Your Honor, I have a very fast response here to Ms. Fulstone's comment that the county was on notice upon the filing of the lawsuit. In response to that comment, I have to tell you that it's Washoe County's position that the only appropriate notice is that found in 361.420. That statute, that's the payment under protest statute, other jurisdictions have interpreted it have held that similar statutes are an obligatory prerequisite to the refund of even unconstitutionally or unlawfully assessed property taxes. It's fully briefed on pages 17 and 18 of my motion to dismiss.

The same statute says that any property owner whose taxes are in excess of the amount which the owner claims justly to be due may pay each installment of taxes as it becomes due under protest in writing contrary to Ms. Fulstone's representation that you need some sort of a decision from the State Board of Equalization.

The statute does say the property owner having protested the payment of taxes and having been denied relief by the State Board of Equalization, well, that can occur simply by virtue of a letter from these taxpayers to the state board asking that they perform -- that it perform its

equalization function. An unresponded to letter, in my book, would constitute a denial from the State Board of Equalization.

These taxpayers came to this court first seeking this relief. They, as far as I know, have never gone to the State Board of Equalization with respect to this tax year that we're talking about here, assuming it's limited to 2003, with the request that that board perform its statutory duty under 395. They chose to come here first.

And I will tell you that 420 also specifically provides the jurisdictional basis for a District Court lawsuit for a complaint that the assessment complained of is discriminatory and not in accord with the uniform and equal rate of assessment and taxation, but is at a higher rate of the taxable value of property so assessed than at which the other property in the state is assessed.

That's the heart of this lawsuit. It's only available to them after following 420's provisions. This is a situation directly analogous, your Honor, to the situation that arose a few years back in the land use planning and zoning context under NRS Chapter 278.

It used to be that lawyers, especially up here, would go into court when they had a dispute with the local government over a planning and zoning issue with a request for

extraordinary relief. The Supreme Court and I don't have the citation for you, but I do have the name of the case. It was Kay, K-a-y, v. Nunez, N-u-n-e-z. It was Justice Hardesty who wrote the opinion a few years ago, analyzed the statutory structure in 278 as against the law of extraordinary writ relief and said, wait a minute, all this that has been going on in the past, all these requests for extraordinary writ relief, no more. You need to follow the prescribed available legal remedy in the Chapter 278 context and that is to file a petition for judicial review.

That is an analogous situation to this situation. These folks have come in here requesting extraordinary writ relief and cherry-picking the statutes that they want to see compliance with and asking that your Honor disregard those that they don't want to see compliance with.

I stand by my motion to dismiss, the other points that I've made and I urge your Honor to dismiss this case as against Washoe County and the State of Nevada. Thank you.

THE COURT: All right. Thank you, Mr. Creekman. Mr. Belcourt. Ms. Contine.

MS. CONTINE: No.

MR. BELCOURT: Nothing further, your Honor.

THE COURT: I've paid for the lights.

MS. FULSTONE: Just for a matter of clarification,

just because Mr. Creekman says there's no reference in 361.420 as to the decision of the state board, and I would say in 361.420, paragraph three, it specifically references the issuance of the decision of the State Board of Equalization denying relief, so there is a reference to the decision. There is also a provision that limits any review under 361.420 to the record made before the State Board of Equalization.

We're not talking about a letter and there is no provision in the statutes, so I'm not cherry-picking, that allows -- the two provisions we're going to the state board. One is there's an appeal from the tax commission, which obviously we don't have. The other is an appeal from the county board. Neither one addresses the obligation under 361.395 of statewide equalization. Thank you.

THE COURT: Thank you. Well, what I'd like to do is first let me compliment the attorneys here, they did, as expected, an outstanding job on behalf of their clients. One of the benefits to this job is the opportunity to work with good lawyers. Not that it makes it any easier, but it certainly is -- certainly helps.

Counsel have brought up a couple of cases. I want to look at this Kay versus Nunez case as well as some of the other cases. We will try to get a written order out the best I can say is soon. I'll try to get it out in just a couple of

weeks. That's all we need to do here. I may have misspoke. I know I did when I said that I paid for the lights. We all have paid for the lights.

Certainly appreciate it, but I felt it was important for all sides to have an opportunity in one hearing and it certainly has helped and I appreciate that. Ms. Fulstone, anything further?

MS. FULSTONE: No, I agree with the Court's comments about the additional time and I thank the Court.

THE COURT: That's quite all right. Mr. Creekman.

MR. CREEKMAN: I thank you, too, for continuing this today and getting the chief judge's permission to do so.

THE COURT: That's all right. I'll pay for it, believe me, but not monetarily. Go ahead, Ms. Contine.

MS. CONTINE: No, your Honor.

MR. BELCOURT: No, thank you, your Honor.

--oOo--

STATE OF NEVADA )
) ss.
County of Washoe )

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 7 of the above-entitled Court on March 25th, 2010, at the hour of 2:30 p.m., and took verbatim stenotype notes of the proceedings had upon the oral arguments in the matter of VILLAGE LEAGUE, et al., Plaintiff, vs. NEVADA DEPARTMENT OF TAXATION, et al., Defendant, Case No. CV03-06922, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 99, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

DATED: At Reno, Nevada, this 6th day of May, 2010.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

| | |
|---|---|
| VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., a Nevada non-profit corporation, on behalf of their members and others similarly situated; *et al.;*<br><br>Petitioners,<br><br>vs.<br><br>STATE OF NEVADA *ex rel* State Board of Equalization; WASHOE COUNTY; BILL BERRUM, Washoe County Treasurer;<br><br>Respondents | Case No. CV03-06922<br><br>Dept. No. 7 |

**REQUEST FOR JUDICIAL NOTICE**

Petitioners, Village League to Save Incline Assets, Inc., Maryanne Ingemanson, Dean R. Ingemanson, J. Robert Anderson and Les Barta, request that this Court take judicial notice that respondent Bill Berrum, Washoe County Treasurer, is no longer the Washoe County Treasurer. Mr. Berrum retired in January, 2010. The Washoe County Commission appointed Tammi Davis to fulfill Mr. Berrum's unexpired term. (Exhibit 1, Washoe Country Press Release).

DATED this 6th day of April, 2009.

MORRIS PETERSON

By _____
Suellen Fulstone
Attorneys for Petitioners

MORRIS PETERSON
ATTORNEYS AT LAW
6100 NEIL ROAD, SUITE 555
RENO, NEVADA 89511
775/829-6000
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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 6th day of April, 2010.

Suellen Fulstone

Suellen Fulstone

MORRIS PETERSON
ATTORNEYS AT LAW
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**CERTIFICATE OF SERVICE**

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

Gina Session/Dennis L. Belcourt

Office of the Attorney General
100 North Carson St.
Carson City, NV 89701

and that I deposited in the U.S. Postal Service, a true copy of the foregoing addressed to:

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

DATED this 6th day of April, 2010.

Elaine K. Bates
Employee of Morris Peterson

MORRIS PETERSON
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## INDEX OF EXHIBITS

Exhibit 1: Washoe County Press Release (1 page)

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# EXHIBIT 1

**WASHOE COUNTY**
*"Dedicated to Excellence in Public Service"*

OFFICE OF THE COUNTY MANAGER
1001 E. 9th Street
PO Box 11130
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Phone: (775) 328-2000
Fax: (775) 328-2037
www.co.washoe.nv.us

PRESS RELEASE
For Immediate Release
website: http://www.washoecounty.us

Media Contact: Kathy Carter
tel. 775.328.6169
10-002

## LONG-TIME WASHOE COUNTY TREASURER BILL BERRUM RETIRES; COUNTY COMMISSION APPOINTS TAMMI DAVIS AS TREASURER

In recognizing the Treasurer's 15 years of public service as the county's elected Treasurer, the County Commission and numerous county staff noted Mr. Berrum's commitment to compassionate public service. Many noted that while the County Treasurer's function is not often the most popular among taxpayers, Mr. Berrum's self-described role to serve as "your friendly tax collector" made it easier for staff and the public to work with the Treasurer's office during his administration. The Commission also noted the many accomplishments he has made over the years resulting in office efficiencies and helping to make Washoe County's bond ratings one of the highest in the country for a local government. Mr. Berrum plans to enjoy more time with his family during his retirement.

Chief Deputy Tammi Davis was sworn in as Treasurer after the Board accepted Mr. Berrum's resignation. Ms. Davis, a 12 year veteran of the Treasurer's Office, will fulfill Mr. Berrum's unexpired term, and plans to run for the office in this year's election.

**FILED**
Electronically
04-13-2010:12:56:37 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1428093

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Petitioners,

vs.

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

Respondents.
_____/

Case No.: CV03-06922

Dept. No.: 7

**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).

Factual Background

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

Procedural History (Nevada Supreme Court)

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

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Procedural History (District Court)

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

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

The Parties

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

[1] Washoe County argues that Village League lacks to raise the equalization claims. This court rejects 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.

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

Legal Arguments

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

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

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

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

Writ of Mandamus

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

"Taxable Value" Property Tax System

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

Market Value Property Tax System

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

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

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

Ratio Study

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

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

The District Court Mandate

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

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

for those excess over the prior constitutional valuation, pursuant to the Supreme Court Bakst[3] and Barta[4] decisions." *Amended Complaint,* p. 6. If Village League has no "plain, just and speedy remedy at law," the writ of mandamus should issue.

Legal Analysis

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

Village League seeks injunctive relief directing the State Board of Equalization to employ a specific statistical method which will equalize property values statewide and (hopefully) lower its members' property taxes resulting in a refund to its members. Village League argues that only a writ of mandamus directing the State Board to employ a specific statistical method can avoid the application of the methods found to be unconstitutional in Barta and Bakst. However, Village League's own expert admits there is no statistical method that Nevada regulators can adopt that would effectively measure whether state-wide equalization is occurring given state's "taxable-value" property assessment system. *See,* Plaintiff Response to Statement of New Authority, Ex. 2.[5]

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

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

[5] In an interview with Plaintiff expert Richard Almy, he was asked whether there was "any statistical 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 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.

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

Adoption and Amendment of Permanent Regulations of State Board

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

While there appears to have been no regulations or procedures pertaining to the process of equalization of property values for property tax purposes in 2003, that procedural deficit has been remedied by the recent promulgation of rules, procedures and regulations by the State Board of Equalization. These procedures provide aggrieved citizens like Incline Village and

Crystal Bay residents a forum to vet the tax valuation of their property before the State Board of Equalization.[6] This is precisely the relief sought by Village League in its *Amended Complaint.*

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

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

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

Conclusion

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

**IT IS HEREBY ORDERED**

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

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

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

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

Patrick Flanagan

PATRICK FLANAGAN
District Judge

**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 13th 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

Maureen Conway

**FILED**
Electronically
04-13-2010:04:23:58 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1429203

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Petitioners,

vs.

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

Respondents.
_____/

Case No.: CV03-06922

Dept. No.: 7

**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).

Factual Background

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

Procedural History (Nevada Supreme Court)

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

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Procedural History (District Court)

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

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

The Parties

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

[1] Washoe County argues that Village League lacks to raise the equalization claims. This court rejects 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.

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

Legal Arguments

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

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

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

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

Writ of Mandamus

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

"Taxable Value" Property Tax System

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

Market Value Property Tax System

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

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

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

Ratio Study

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

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

The District Court Mandate

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

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

for those excess over the prior constitutional valuation, pursuant to the Supreme Court Bakst[3] and Barta[4] decisions." *Amended Complaint,* p. 6. If Village League has no "plain, just and speedy remedy at law," the writ of mandamus should issue.

Legal Analysis

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

Village League seeks injunctive relief directing the State Board of Equalization to employ a specific statistical method which will equalize property values statewide and (hopefully) lower its members' property taxes resulting in a refund to its members. Village League argues that only a writ of mandamus directing the State Board to employ a specific statistical method can avoid the application of the methods found to be unconstitutional in Barta and Bakst. However, Village League's own expert admits there is no statistical method that Nevada regulators can adopt that would effectively measure whether state-wide equalization is occurring given state's "taxable-value" property assessment system. *See,* Plaintiff Response to Statement of New Authority, Ex. 2.[5] Nor is this district court the appropriate forum to argue for an adjustment of taxable property valuation. That proper forum is before the State Board of Equalization. While such a procedure did not exist in 2003, it does now.

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

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

[5] In an interview with Petitioners' expert Richard Almy, he was asked whether there was "any statistical 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.

Adoption and Amendment of Permanent Regulations of State Board

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

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

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

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

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

Conclusion

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

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

**IT IS HEREBY ORDERED**

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

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

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

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

Patrick Flanagan

PATRICK FLANAGAN
District Judge

## 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 13th 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:

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Petitioners,

vs.

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Respondents.
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Case No.: CV03-06922

Dept. No.: 7

**SECOND AMENDED ORDER**

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**Factual Background**

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**Procedural History (Nevada Supreme Court)**

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**Legal Arguments**

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

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

[5] In an interview with Petitioners' expert Richard Almy, he was asked whether there was "any statistical 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.

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

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

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

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

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

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

**Conclusion**

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

**IT IS HEREBY ORDERED**

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

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

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

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

Patrick Flanagan

PATRICK FLANAGAN
District Judge

## 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 20TH 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

2540
~~3790~~

FILED
2010 APR 21 PM 3:51
HOWARD W. CONYERS
BY
DEPUTY

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; 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;

Plaintiffs,

vs.

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

Defendants.
_____/

Case No. CV03-06922

Dept. No. 7

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

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

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 21st day of April, 2010.

RICHARD A. GAMMICK
District Attorney

By David C. Creekman

DAVID C. CREEKMAN
Chief Deputy District Attorney
P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700

ATTORNEYS FOR WASHOE COUNTY
AND WASHOE COUNTY TREASURER

**CERTIFICATE OF SERVICE**

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

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

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

Dated this 21st day of April, 2010.

MICHELLE FOSTER

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**SECOND AMENDED ORDER**

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

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**Factual Background**

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

**Procedural History (Nevada Supreme Court)**

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

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**Procedural History (District Court)**

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

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

**The Parties**

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

[1] Washoe County argues that Village League lacks to raise the equalization claims. This court rejects 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.

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

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Village League seeks injunctive relief directing the State Board of Equalization to employ a specific statistical method which will equalize property values statewide and (hopefully) lower its members' property taxes resulting in a refund to its members. Village League argues that only a writ of mandamus directing the State Board to employ a specific statistical method can avoid the application of the methods found to be unconstitutional in Barta and Bakst. However, Village League's own expert admits there is no statistical method that Nevada regulators can adopt that would effectively measure whether state-wide equalization is occurring given state's "taxable-value" property assessment system. *See,* Plaintiff Response to Statement of New Authority, Ex. 2.[5] Nor is this district court the appropriate forum to argue for an adjustment of taxable property valuation. That proper forum is before the State Board of Equalization. While such a procedure did not exist in 2003, it does now.

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

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

[5] In an interview with Petitioners' expert Richard Almy, he was asked whether there was "any statistical 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.

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

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

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

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

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

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

**Conclusion**

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

**IT IS HEREBY ORDERED**

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

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

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

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

Patrick Flanagan

PATRICK FLANAGAN
District Judge

**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 20TH 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

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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, et al,<br><br>Petitioners,<br><br>vs.<br><br>STATE OF NEVADA *ex rel* State Board of Equalization; WASHOE COUNTY; BILL BERRUM, Washoe County Treasurer;<br><br>Respondents. | Case No. CV03-06922<br><br>Dept. No. 7 |

**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

By: Suellen Fulstone
Suellen Fulstone
Attorneys for Petitioners

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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

Suellen Fulstone

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## CERTIFICATE OF SERVICE

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

Dennis Belcourt
Deonne Contine
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Carson City, NV 89701

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

DATED this 12th day of May, 2010.

Employee of Morris Peterson

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