

IN THE SUPREME COURT OF THE STATE OF NEVADA

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,

Appellants,

vs.

THE STATE OF NEVADA, *ex rel.*,
STATE BOARD OF EQUALIZATION;
WASHOE COUNTY; AND BILL BERRUM,
Washoe County Treasurer,

Respondents.

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Second Judicial District Court
Case No. CV03-06922

RESPONDENT'S ANSWERING BRIEF

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1 The STATE BOARD OF EQUALIZATION (hereinafter the "State Board"), by and
2 through its counsel, CATHERINE CORTEZ MASTO, Attorney General, by Deputy Attorney
3 General, DEONNE E. CONTINE, hereby submits, pursuant to Nevada Rules of Appellate
4 Procedure ("NRAP") 28, Respondent's Answering Brief.

5 **I. ISSUE ON REVIEW**

6 A. Whether a Writ of Mandamus was available to compel the State Board of
7 Equalization to return the land values of residential real property located in the area of
8 Incline Village/Crystal Bay for the 2003-2004 and 2004-2005 tax years to the 2002-
9 2003 levels for both years.

10 **II. STATEMENT OF FACTS**

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

22 On March 19, 2009, the Nevada Supreme Court issued an Order Affirming in Part,
23 Reversing In Part and Remanding ("Remand Order") for further proceedings on the
24 equalization claim. While agreeing with the District Court's determination that the Village
25 League was required to exhaust administrative remedies prior to bringing suit, in its Remand
26 Order, the Court noted that, "It is not clear, however, that Village League had available any
27 means to administratively challenge the State Board of Equalization's alleged failures to carry
28 out its equalization duties." Vol. I, Jt.App. 33.

1 Based on the perceived lack of an administrative remedy by the Supreme Court, this
2 case was remanded as the Court's order states that, "insofar as Village League alleged that
3 the State Board failed to perform an act required by law and sought an order directing that
4 act's performance, such was appropriately raised in its District Court Complaint." Regarding
5 equalization, the Court stated, "the district court should have proceeded to determine whether
6 Village League's claim for injunctive relief was viable." Vol. I, Jt.App. 35.

7 The District Court held a status hearing on April 21, 2009 following which the District
8 Court issued Minutes on the Status Hearing After Remand in which the Court Ordered that
9 Plaintiffs could amend their Complaint and that the parties would submit simultaneous briefs
10 on the scope of the issues before the District Court. On June 19, 2009, Village League
11 amended its Complaint by way of an Amended Complaint/Petition for Writ of Mandamus. In
12 the prayer for relief in its Amended Complaint Village League asks, "That the Court issue a
13 peremptory writ of mandamus requiring the State Board of Equalization to equalize the land
14 portion of residential real property at Incline Village and Crystal Bay to 2002-2003 values . . ."
15 and to "direct the payment of refunds" Vol. I, Jt.App.196, I. 20. Its next prayer for relief
16 also seeks an order directing a refund. Vol. I, Jt.App. 196, I. 26.

17 September 25, 2009, the District Court held a status hearing to discuss the scope of
18 issues. On October 15, 2009, Defendants filed their respective motions to dismiss Village
19 League's Amended Complaint/Petition for Writ of Mandamus. Based on the Supreme Court's
20 Remand Order, the sole issue for determination by the District Court was whether injunctive or
21 mandamus relief was a viable remedy for Village League for any alleged failure to equalize by
22 the State Board related to properties in Douglas and Washoe Counties.

23 III. SUMMARY OF ARGUMENT

24 The District Court did not abuse its discretion in determining that the Village League
25 is not entitled to a mandamus order to compel the State Board of Equalization to return the
26 land values of residential real property located in the area of Incline Village/Crystal Bay for the
27 2003-2004 and 2004-2005 tax years to the 2002-2003 levels for both years.

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1 Mandamus cannot issue in this case because Village League cannot show that it has a
2 clear legal right to the relief request. Indeed, an order in mandamus to roll back property
3 values and refund taxes paid as requested by Village League is not possible because courts
4 do not have the authority to exercise their own discretion for that of the public body being
5 compelled to perform its duty. Accordingly, because the mandamus relief requested by
6 Village League is not authorized by any statute of law, the District Court did not abuse its
7 discretion in denying Village League's Petition for Mandamus Relief and dismissing its
8 Amended Complaint.

9 IV. ARGUMENT

10 A. The District Court Did Not Abuse Its Discretion In Denying Village
11 League's Petition for Writ of Mandamus Because Village League is Not
12 Entitled to The Relief It Requested

13 1. Overview of Nevada's Property Tax System

14 Although there is general mention of equalization in NRS 361.395, that the State Board
15 must "Equalize property valuations in the State,"¹ the State Board equalizes primarily pursuant
16 to several other provisions in NRS and NAC Chapter 361. Indeed, sections other than
17 NRS 361.395 provide the State Board with the authority and direction to value property and
18 achieve appropriate taxable values through hearing individual taxpayer appeals, comparing
19 taxable value to full cash value and determining if the proper appraisal methods were applied
20 by the assessors. A brief overview of those sections is provided. Initially, County Assessors
21 are required to appraise "all real property at least once every five years." NRS 361.260(6).
22 "The computed taxable value [of land and improvements] must not exceed its full cash value."

23 ¹ NRS 361.395 Equalization of property values and review of tax rolls by State Board of Equalization;
24 notice of proposed increase in valuation.

25 1. During the annual session of the State Board of Equalization beginning on the
26 fourth Monday in March of each year, the State Board of Equalization shall:

27 (a) Equalize property valuations in the State.

28 (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.

1 NRS 361.227(5). "Full cash value" is defined as "the most probable price which property
2 would bring in a competitive and open market under all conditions requisite to a
3 fair sale." NRS 361.025. In determining whether the taxable value of a property exceeds its
4 full cash value, an assessor may use, as applicable, one or more of the following: (1) an
5 analysis of comparative sales; (2) a summation of land and improvement values; and (3) a
6 capitalization of the income generated by the use of the property. NRS 361.227(5). If the
7 taxable value of a property exceeds its full cash value, the taxable value must be reduced
8 accordingly. *Id.* If the land is properly valued, then the reduction must be applied to the
9 improvements. NAC 361.131.

10 Pursuant to NRS 361.345(1), the County Board of Equalization "may change and
11 correct any valuation found to be incorrect either by adding thereto or by deducting therefrom
12 such sum as is necessary to make it conform to the taxable value of the property
13 assessed" Finally, a taxpayer who disagrees with the County Assessor's valuation may
14 appeal to the County Board of Equalization, which is required to "make an independent
15 determination of the valuation of the property assessed." NAC 361.627. *See also,*
16 NRS 361.355, a property owner "claiming overvaluation or excessive valuation of its real or
17 secured property . . . shall appear before the county board of equalization" If the
18 taxpayer is aggrieved by the decision rendered by the County Board of Equalization, the
19 taxpayer may appeal to the State Board of Equalization. *See,* NRS 361.356 concerning
20 appeals to the County Board of Equalization. Pursuant to NRS 361.360, should a taxpayer
21 be aggrieved by a decision of the County Board, he can appeal to the State Board of
22 Equalization. NRS 361.400 mandates that the State Board of Equalization "hear
23 and determine all appeals from the action of each county board of equalization"

24 NRS 361.410(1) states, in part, as follows:

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1 No taxpayer may be deprived of any remedy or redress in a court of
2 law relating to the payment of taxes, but all such actions must be
3 for redress from the findings of the State Board of Equalization, and
4 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

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

12 The State Board has equalized as provided above and has equalized certain areas
13 when it appears during an individual appeal that other properties are subject to similar factors
14 that would influence values. When the State Board has applied its broad equalization powers
15 to an area, it usually hears a specific case and determines that the property is over assessed,
16 over valued. The State Board then applies the same reduction to those properties that are
17 similarly situated. For example in the Trujillo case, the Trujillos presented evidence that "the
18 subject property has been inequitably treated . . . because of various detriments . . . not given
19 proper consideration." See, Attached Notice of Decision, In the Matter of Ernest and Grace
20 Trujillo, Incline Village. The detriments were the adjacent commercial property had noise,
21 bright parking lights, and trespassers entered on their way to the commercial property. *Id.*
22 The State Board reduced the Trujillo's land value based on the evidence of the individual
23 detriments to the land. The State Board's reduction of the base lot value was also predicated
24 on the evidence in the record of comparable land sales from the same area and the
25 Assessor's testimony. See, Attached State Board Equalization Order. This Court may base
26 its decision on facts of which judicial notice shall or may be taken. 138 A.L.R. Fed. 393
27 (1997). See also, NRS 47.130 and 47.140. The State board requests that this Court take

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1 judicial notice of the attached equalization decisions as State Board's Addendum.
2 (SBA) pp. 1-11.

3 **2. Standard for Mandamus Relief**

4 While the Nevada Supreme Court remanded this case on the issue of whether the
5 lower court should have proceeded to determine whether Village League's claim for injunctive
6 relief was viable, the Supreme Court cited to NRS 34.160, which seems to suggest, although
7 a writ was not requested with respect to the instant matter until Village League filed its
8 Amended Complaint on June 19, 2009, that the Supreme Court may have intended that a writ
9 standard apply. Indeed, the Amended Complaint includes a Petition for Writ of Mandamus.
10 NRS 34.160 states in pertinent part: "The writ may be issued by the Supreme Court, a district
11 court or a judge of the district court, to compel the performance of an act which the law
12 especially enjoins as a duty resulting from an office, trust or station"

13 Mandamus relief, like injunctive relief, is an extraordinary remedy and mandamus will
14 issue only when the right to the relief requested is clear and the petitioners have no plain,
15 speedy, and adequate remedy in the ordinary course of law. *Gumm ex rel. Gumm v. Nevada*
16 *Dep't of Education*, 113 P.3d 853, 856, 121 Nev. 371, 375 (2005).

17 **a. Clear Duty Requirement**

18 Prior to 2008 and this Court's decision in *State ex rel. State Board of Equalization v.*
19 *Barta*, 124 Nev. 58, 188 P.3d 1092 (2008) it was unclear that there was some separate or
20 different duty to equalize than what the equalization proceedings required by the provisions
21 discussed in Section A1. above and the State Board had historically equalized as required by
22 those specific provisions of NRS Chapter 361 using its broad equalization power under
23 NRS 361.395 when it realized that properties were subject to similar factors that would
24 influence values.

25 Furthermore, while a general duty to equalize is provided in NRS 361.395, most
26 recently this Court has noted that "Although the statutes clearly provide that the State Board
27 has a duty to equalize, there appears to be a lack of certainty in the procedures for the
28 equalization process" in *Marvin v. Fitch*, 126 Nev. 18, ___, 232 P.3d 425, 430 (2010).

1 NRS Chapter 361, the Court stated "lacks clarity as to the processes and procedures that the
2 State Board undertakes in determining to equalize property valuations, equalization methods,
3 and the relevant sequence of events." *Id.*

4 Nevertheless, since the duty was clarified in *Barta*, that the State Board had a more
5 general or broad duty to equalize which involved something other than hearing appeals or
6 responding to issues as brought to it by the County Assessors or taxpayers, the State Board,
7 which at the time of the *Barta* decision consisted of a majority of newly appointed members
8 worked diligently to review and digest the relevant statutory provisions and case law. The
9 State Board began the regulatory process to develop regulations on general equalization
10 pursuant to NRS 361.395. Ultimately, those regulations were adopted by the State Board and
11 became fully effective on October 1, 2010. See LCB File No. R153-09, p. 8 of Village
12 League's Addendum to its Opening Brief. Additionally, the State Board met on March 22,
13 2010 to consider statewide equalization pursuant to NRS

14 Additionally, the State Board met on March 22, 2010, to discuss statewide
15 equalization. The State Board's posted Agenda for the March 22, 2010 meeting provided in
16 Item B as follows:

17 ***Review of tax rolls of the various counties; review of valuation methods***
18 ***used by each county assessor and consideration of possible equalization***
19 ***action for tax years 2008-2009 and 2009-2010 pursuant to NRS 361.395.***

20 The Agenda also listed the County Assessors scheduled to appear at the March 22, 2010
21 State Board meeting. The State Board convened on March 22, 2010, at 8:09 a.m. and after
22 opening remarks and introduction of Board Members, the Board considered Agenda Item B.
23 The State Board proceeded to a lengthy discussion and heard from assessors from each of
24 the 17 counties about the methods and process used by them in performing their duties. The

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1 Agenda of the State Board's March 22, 2010 is contained in the attached SBA, pp. 12.²

2 Finally, with respect to the clear duty requirement, in its Remand Order, this Court
3 cited, *Fondren v. State Tax Commission*, 350 So.2d 1329 (Miss. 1977), in which case a
4 private person (Fondren) sought an injunction effectively barring collection of the assessed
5 taxes, by enjoining recapitulation of the rolls, until they are in compliance with statutory law
6 requiring equalization. The Mississippi Supreme Court found that *Fondren* had stated a cause
7 of action, pursuant to a statute that conferred jurisdiction on courts over suits by taxpayers to
8 restrain collection of taxes "levied or attempted to be collected without authority of law." The
9 duty of the Tax Commission, the breach of which was found could be a basis for such an
10 injunction, was as follows (as stated in the Mississippi court's opinion):

11 The Legislature has imposed the duty of enforcing this section on
12 the State Tax Commission. Mississippi Code Annotated section
27-35-113(1972) reads in part:

13 It shall be the duty of the tax commission to carefully examine the
14 recapitulations of the assessment rolls of the counties, when
15 received, to compare the assessed valuation of the various classes
16 of property in the respective counties, to investigate and determine
17 if the assessed valuation of any classes of property in any one or
18 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.

19 The same section goes on to give the Commission the authority to equalize
20 assessments among the counties. The next section, Miss. Code Ann. § 27-35-115 (1972),
21 instructs the Commission to report its determinations to the various boards of supervisors.
22 The following section, Miss. Code Ann. § 27-35-117 (1972), provides a method for the boards
23 of supervisors and for affected individuals to contest the determination of the State Tax
24 Commission. However, the final authority for determining assessments rests with
25 the Commission.

26
27 ² The State Board respectfully requests that this Court take judicial notice of the March 22, 2010,
28 proceedings before the State Board at which it met to consider its statutory duty under NRS 361.395 to review
the rolls of the various counties and consider possible equalization statewide for the 2008-2009 and 2009-2010
tax years. A court may take judicial notice of facts that 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." See, NRS 47.130(2)(b).

1 Similarly, in Nevada the final administrative authority for determining equalization lies
2 with the State Board. However, unlike the duty to equalize found in NRS 361.395, which
3 simply states that the State Board shall "Equalize property valuations in the State," the duty
4 articulated in the Mississippi statute is very clear and defined. Additionally, compared with the
5 provisions in NRS 361.333³ which contains the process for the Department and the Tax

6
7 ³ **NRS 361.333 Procedure.**

8 1. Not later than May 1 of each year, the Department shall:

9 (a) Determine the ratio of the assessed value of each type or class of property for which the
10 county assessor has the responsibility of assessing in each county to:

11 (1) The assessed value of comparable property in the remaining counties.

12 (2) The taxable value of that type or class of property within that county.

13 (b) Publish and deliver to the county assessors and the boards of county commissioners of
14 the counties of this state:

15 (1) A comparison of the latest median ratio, overall ratio and coefficient of dispersion of
16 the median for:

17 (I) The total property for each of the 17 counties; and

18 (II) Each major class of property within each county.

19 (2) A determination whether each county has adequate procedures to ensure that all
20 property subject to taxation is being assessed in a correct and timely manner.

21 (3) A summary for each county of any deficiencies that were discovered in carrying out
22 the study of those ratios.

23 2. The Nevada Tax Commission shall allocate the counties into three groups such that the
24 work of conducting the study is approximately the same for each group. The Department shall
25 conduct the study in one group each year. The Commission may from time to time reallocate
26 counties among the groups, but each county must be studied at least once in every 3 years.

27 3. In conducting the study the Department shall include an adequate sample of each major
28 class of property and may use any statistical criteria that will indicate an accurate ratio of taxable
value to assessed value and an accurate measure of equality in assessment.

4. During the month of May of each year, the board of county commissioners, or a
representative designated by the board's chair, and the county assessor, or a representative
designated by the assessor, of each county in which the study was conducted shall meet with the
Nevada Tax Commission. The board of county commissioners and the county assessor, or their
representatives, shall:

(a) Present evidence to the Nevada Tax Commission of the steps taken to ensure that all
property subject to taxation within the county has been assessed as required by law.

(b) Demonstrate to the Nevada Tax Commission that any adjustments in assessments
ordered in the preceding year as a result of the procedure provided in paragraph (c) of subsection
5 have been complied with.

5. At the conclusion of each meeting with the board of county commissioners and the county
assessor, or their representatives, the Nevada Tax Commission may:

(a) If it finds that all property subject to taxation within the county has been assessed at the
proper percentage, take no further action.

(b) If it finds that any class of property is assessed at less or more than the proper
percentage, and if the board of county commissioners approves, order a specified percentage
increase or decrease in the assessed valuation of that class on the succeeding tax list and
assessment roll.

(c) If it finds the existence of underassessment or overassessment wherein the ratio of
assessed value to taxable value is less than 32 percent or more than 36 percent in any of the
following classes:

(1) Improvement values for the reappraisal area;

(2) Land values for the reappraisal area; and

(3) Total property values for each of the following use categories in the reappraisal area:

Commission to equalize assessments among the several counties, the duty articulated in NRS 361.395 is not specific, clear or well defined. What is now clear with respect to NRS 361.395 is that there is a duty to equalize statewide. What is equally clear is that the State Board has discretion in carrying out that duty and cannot be compelled to perform its duty as requested by Village League. *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.")

b. Requested Writ Relief

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 realtors show a clear legal right to the relief demanded"). It is clear from the proceedings on remand that Village League is not seeking

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

of the county which are required by law to be assessed at 35 percent of their taxable value, if in the nonreappraisal area the approved land and improvement factors are not being correctly applied or new construction is not being added to the assessment roll in a timely manner, or if the board of county commissioners does not agree to an increase or decrease in assessed value as provided in paragraph (b), order the board of county commissioners to employ forthwith one or more qualified appraisers approved by the Department. The payment of those appraisers' fees is a proper charge against the county notwithstanding that the amount of such fees has not been budgeted in accordance with law. The appraisers shall determine whether or not the county assessor has assessed all real and personal property in the county subject to taxation at the rate of assessment required by law. The appraisers may cooperate with the Department in making their determination if so agreed by the appraisers and the Department, and shall cooperate with the Department in preparing a report to the Nevada Tax Commission. The report to the Nevada Tax Commission must be made on or before October 1 following the date of the order. If the report indicates that any real or personal property in the county subject to taxation has not been assessed at the rate required by law, a copy of the report must be transmitted to the board of county commissioners by the Department before November 1. The board of county commissioners shall then order the county assessor to raise or lower the assessment of such property to the rate required by law on the succeeding tax list and assessment roll.

6. The Nevada Tax Commission may adopt regulations reasonably necessary to carry out the provisions of this section.

7. Any county assessor who refuses to increase or decrease the assessment of any property pursuant to an order of the Nevada Tax Commission or the board of county commissioners as provided in this section is guilty of malfeasance in office.

1 NRS 361.395 equalization by the State Board, nor is it seeking the original relief it sought with
2 respect to Lake Tahoe property in both Douglas and Washoe Counties. What it has sought
3 here is to have values reduced and it does not really care about general equalization as it
4 believes general equalization is the same as rolling back the values. This is clear from the
5 following request in its Scope of Issues brief: "The State Board of Equalization must be
6 directed to *equalize* all of Incline Village and Crystal Bay for the 2003-2004 tax year *by*
7 *returning the land values to their 2002-2003 levels . . .*" (Emphasis added). Furthermore
8 in its prayer for relief in its Amended Complaint Village League asks "That the Court issue a
9 peremptory writ of mandamus requiring the State Board of Equalization to equalize the land
10 portion of residential real property at Incline Village and Crystal Bay to 2002-2003 values . . ."
11 and to "direct the payment of refunds . . ." Amended Complaint, Vol. I, Jt.App.196, I. 20. Its
12 next prayer for relief also seeks an order directing a refund. Amended Complaint, Vol. I,
13 Jt.App.196, I. 26.

14 Moreover, for the first time since this case was remanded, Village League asserts in its
15 Opening Brief that it is entitled to an order compelling the State Board to equalize statewide.
16 Assuming, *arguendo*, that Village League would be entitled to a Writ of Mandamus compelling
17 the State Board to equalize statewide pursuant to NRS 361.395, Village League has never
18 requested such relief nor did it seek that relief in any of the documents it filed with the District
19 Court on remand, it did not argue for such relief below. In fact, Village League it submitted a
20 proposed order to the District Court that specifically requested an order for the following:

21 4. A peremptory writ of mandate shall be issued from this Court directing and
22 commanding the respondent State Board of Equalization to equalize within the
23 geographical area of Incline Village/Crystal Bay for the 2003-2004 and 2004-
24 2005 tax years by returning the land values of residential real property at Incline
25 Village and Crystal Bay to their 2002-2003 levels for both years . . .

26 6. A peremptory writ of mandate shall be issued from this Court directing and
27 commanding the respondents Washoe County and the Washoe County
28 Treasurer to conform the assessment rolls for the 2003-2004 and 2004-2005 tax

1 years and to return to taxpayers any taxes paid in excess of the amounts
2 properly due on the properties as equalized. ⁴

3 SBA pp.13-25.

4 Simply put, Village League did not and does not want any equalization statewide as
5 provided in NRS 361.395. In fact, Village League would not support equalization that does not
6 include a tax rollback and refund. Village League is not entitled to such requested relief in
7 mandamus because such an order would eviscerate the discretion of the State Board in
8 fulfilling its duty under NRS 361.395. Accordingly, even if there was authority to issue a writ to
9 compel the State Board to equalize, there is no authority for this Court to mandate specific
10 directions for the Board to follow as requested by Village League. Although mandamus could
11 lie to compel a public body to perform a duty, mandamus cannot issue to control the exercise
12 of the body's discretion while carrying out such duty. *State v. Boerlin*, 98 P. 402, 30 Nev. 473
13 (1908); see also, *Gragson v. Toco*, 90 Nev. 131, 133 520 P.2d 616, 617 (1974) ("As a general
14 rule, while mandamus will lie to enforce ministerial acts or duties and to require the exercise of
15 discretion, it will not serve to control the discretion.") Accordingly, the District Court did not
16 abuse its discretion when it determined that mandamus relief as requested by Village League
17 is not permitted in this case.

18 **V. CONCLUSION**

19 Mandamus cannot issue in this case because Village League cannot show that it has a
20 clear legal right to the relief request. Indeed, an order in mandamus to refund taxes paid as
21 requested by Village League is not possible because courts do not have the authority to
22 exercise its own discretion for that of the public body being compelled to perform its duty.

23 ///

24 ///

25 ///

26
27 ⁴ The State Board respectfully requests that this Court take judicial notice of the Proposed Order
28 submitted to the District Court and the requested relief contained therein. A court may take judicial notice of facts
that 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." See, NRS 47.130(2)(b).

1 Because Village League is not entitled to the relief requested the District Court did not abuse
2 its discretion in denying Village League's Petition and dismissing its Amended Complaint and
3 the District Court's Order should be affirmed.

4 DATED this 3rd day of November.

5 CATHERINE CORTEZ MASTO
6 Attorney General

7
8 By: /s/ Deonne E. Contine
9 DEONNE E. CONTINE
10 Nevada Bar No. 9552
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Nevada Office of the Attorney General
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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 3rd day of November 2010.

CATHERINE CORTEZ MASTO
Attorney General

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this answering brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that pursuant to NRS 233B.133(5), this answering brief complies with Rule 28 of the Nevada Rules of Appellate Procedure ("NRAP"), and in particular NRAP 28(e), which requires that every assertion in the opening brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of NRS 233B.133 and NRAP 28.

DATED this 3RD day of November 2010.

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ Deonne E. Contine
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 3rd day of November 2010, I served a copy of the foregoing **RESPONDENT'S ANSWERING BRIEF**, by electronic transmission a true copy to the following:

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David Creekman
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Reno, Nevada 89520-3083
Attorney for Respondent Washoe County/Washoe County Assessor

/s/ Sally A. Bullard

Sally A. Bullard

An employee of the State Attorney General's Office

APR -6 2010

BUREAU OF PUBLIC AFFAIRS
BUSINESS & LICENSING DIVISION

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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; et al.,

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

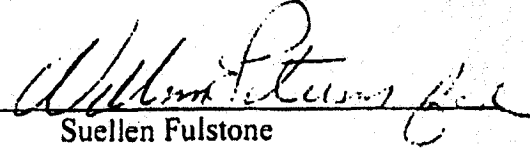
Dept. No. 7

PROPOSED ORDER

During the oral argument on the pending motions in this matter, the Court asked counsel for petitioners how a potential order might be framed granting the relief requested by petitioners. Counsel submits the attached for the Court's consideration.

Dated April 2, 2010.

MORRIS PETERSON

By 
Suellen Fulstone
Attorneys for Petitioners

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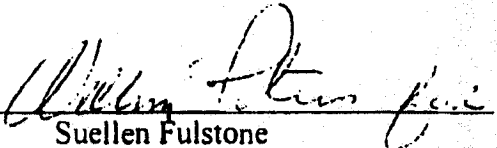
AFFIRMATION

Pursuant to NRS 239B.030

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

DATED this 2nd day of April, 2010.

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 upon the following via e-mail transmission and by depositing the same in the U.S. Postal Service addressed to:

Dennis L. Belcourt @ DBelcourt@ag.nv.gov
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Carson City, NV 89701

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

DATED this 2nd day of April, 2010.

By *Claine K. Bates*
Employee of Morris Peterson

INDEX OF EXHIBITS

Exhibit 1: Order (8 pages)

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EXHIBIT 1

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

ORDER

This matter is before this Court on remand from the Supreme Court for a determination of the viability of petitioners' injunctive relief (mandamus) claim for equalization. Order Affirming in Part, Reversing in Part and Remanding (March 19, 2009) (Appeal No. 43441). As permitted by this Court, petitioners have amended their original petition. Respondents have filed motions to dismiss and/or strike the amended petition. Petitioners have opposed the respondents' motions. With those motions fully briefed and submitted for decision, the Court heard oral argument.

1 Being fully advised in the premises, the Court makes its findings of fact and
2 conclusions of law as set forth below:

3 **FINDINGS OF FACT**

4 1. The individual petitioners owned residential real property in Incline Village and
5 Crystal Bay in Washoe County, Nevada, for the tax years 2003-2004 and 2004-2005.

6 2. The petitioner Village League to Save Incline Assets, Inc. is a Nevada non-profit
7 membership corporation whose members are residential real property owners at Incline Village
8 and Crystal Bay in Washoe County, Nevada, and who owned such property in the 2003-2004
9 and 2004-2005 tax years.

10 3. The respondent State Board of Equalization is a Nevada state agency created by
11 the Nevada Legislature as set forth in NRS 361.375.

12 4. The respondent State Board of Equalization has the powers and duties vested in
13 it by statute including the annual duty of statewide equalization under NRS 361.395 and the
14 duty to determine all appeals from County Boards of Equalization under NRS 361.400.

15 5. The duty of statewide equalization includes the duty to equalize within as well
16 as between counties throughout the State of Nevada.

17 6. The respondent Washoe County is a political subdivision of the State of Nevada
18 which has and exercises the power to levy taxes on the assessed value of real property. NRS
19 244.150.

20 7. Under NRS 361.445, the only basis for property taxation is the assessment of
21 locally assessed property by the county assessor and centrally assessed property by the
22 Department of Taxation, as equalized by the State Board of Equalization.

23 8. Respondent Bill Berrum was the duly elected County Treasurer of Washoe
24 County at the time of the filing of the initial and amended petitions in this matter and is named
25 and sued only in his official capacity in this matter. Respondent Berrum has now resigned and
26 been replaced as County Treasurer by Tammi Davis.

27 9. Under NRS 361.475, the Washoe County Treasurer is the ex officio tax receiver
28 for Washoe County and receives all taxes assessed upon real property in the County. As the tax

1 receiver, the Washoe County Treasurer is required by law to record every tax payment with the
2 date, the name of the taxpayer or the parcel number of the property liable for the taxes. NRS
3 361.485. Except for de minimus overpayments which are paid into the county treasury, the
4 County Treasurer must return overpayments of taxes paid on real property to the taxpayer who
5 made the overpayment. Id.

6 10. Tax years 2003-2004 and 2004-2005 are before this Court. The issues of
7 statewide equalization with respect to tax years 2005-2006, 2006-2007, 2007-2008 and
8 subsequent years are before other courts and agencies.

9 11. For purposes of the determination of land value for the 2003-2004 and 2004-
10 2005 tax years, the Washoe County Assessor reappraised properties on a 5-year cycle.
11 Petitioners' residential properties at Incline Village and Crystal Bay were reappraised for the
12 2003-2004 tax year. The 2004-2005 tax year was a factor year. The factor approved for land
13 was 1, meaning that land values remained the same for the 2004-2005 tax year as they were for
14 the 2003-2004 tax year.¹ See State ex rel. State Bd. of Equalization v. Bakst, 122 Nev. 1403,
15 148 P.3d 717 (2006), and State ex rel. State Bd. of Equalization v. Barta, 124 Nev. 58, 188 P.3d
16 1092 (2008),

17 12. Valuation issues with respect to Washoe County residential real property for the
18 2003-2004 and 2004-2005 tax years have been litigated to conclusion. See, State ex rel. State
19 Bd. of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006); State ex rel. State Bd. of
20 Equalization v. Barta, 124 Nev. 58, 188 P.3d 1092 (2008).

21 13. The respondent State Board of Equalization failed its affirmative statutory duty
22 of statewide equalization for the 2003-2004 and 2004-2005 tax years.

23 14. The performance of ratio studies by the Department of Taxation on a three-year

24 ¹ As noted by the Supreme Court in State ex rel. State Bd. of Equalization v. Barta, 124
25 Nev. 58, 188 P.3d 1092 (2008), the Washoe County Assessor made individual adjustments on
26 some properties for the 2004-2005 tax year specifically related to view or beach classification.
27 Since the Supreme Court determined that both the view and beach classification methodologies
28 used by the Washoe County Assessor were unauthorized by Tax Commission regulation, the
resulting individually adjusted valuations were as unconstitutional as the original valuations
and do not affect the application of the Bakst/Barta analysis to this case.

1 cycle does not satisfy the State Board of Equalization's affirmative statutory duty of annual
2 statewide equalization.

3 15. None of NRS 361.355, NRS 361.356, NRS 361.420, or other Nevada tax
4 statutes provides a remedy at law for the State Board of Equalization's failure to satisfy its
5 affirmative statutory duty of statewide equalization.

6 16. The regulation for annual statewide equalization adopted by the State Board of
7 Equalization in March of 2010 is not final. That regulation furthermore makes no provision for
8 equalization for years prior to 2008-2009 and provides no remedy to petitioners for the State
9 Board's failure of statewide equalization for the 2003-2004 and 2004-2005 tax years.

10 17. Because of the passage of time among other reasons, it is both cost prohibitive
11 and unduly disruptive to effect statewide equalization at this time for the 2003-2004 and/or
12 2004-2005 tax years.

13 18. Because of the passage of time and because it would require the reappraisal of
14 properties in both counties involving both substantial time and resources, it is cost prohibitive
15 to effect equalization between residential properties at Lake Tahoe in both Douglas and
16 Washoe Counties for the 2003-2004 and/or 2004-2005 tax years.

17 19. Petitioners, however, filed a timely action seeking equalization and it would be
18 unjust to deny petitioners any kind of relief. The passage of time cannot excuse the respondent
19 State Board of Equalization's failure to perform its affirmative statutory duty of statewide
20 equalization.

21 20. The Supreme Court has determined that, in the mass appraisal of residential real
22 property at Incline Village and Crystal Bay for the 2003-2004 and 2004-2005 tax years, the
23 Washoe County Assessor used valuation methods for the land that were unauthorized by Tax
24 Commission regulation and that the resulting valuations were unconstitutional, null and void.
25 State ex rel. State Bd. of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006); State ex
26 rel. State Bd. of Equalization v. Barta, 124 Nev. 58, 188 P.3d 1092 (2008).

27 21. The Supreme Court has determined that the appropriate remedy in the
28 circumstances of unconstitutional and void valuations for the 2003-2004 and 2004-2005 is to

1 direct that land values be reset to the uncontested 2002-2003 levels, that taxes be recalculated
2 based on those adjusted values, and that tax overpayments be returned to taxpayers. State ex
3 rel. State Bd. of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006); State ex rel. State
4 Bd. of Equalization v. Barta, 124 Nev. 58, 188 P.3d 1092 (2008).

5 22. Because of the record created in the Bakst and Barta decisions, the limited scope
6 of the remedy, and the detailed records that the Treasurer is required to keep by statute,
7 geographic equalization of the Incline Village/Crystal Bay residential properties for the 2003-
8 2004 and 2004-2005 tax years can and should be effected and is neither cost prohibitive nor
9 otherwise impractical.

10 CONCLUSIONS OF LAW

11 1. To the extent they involve mixed issues of law and fact, the foregoing findings
12 of fact are also adopted as conclusions of law.

13 2. Petitioners have standing to bring this action.

14 3. Petitioners amended their 2003 complaint with the permission of the Court.

15 4. Douglas County is not an indispensable party to this action as presently pending
16 in this Court.

17 5. Tax years 2003-2004 and 2004-2005 are before this Court. The issues of
18 statewide equalization with respect to tax years 2005-2006, 2006-2007, 2007-2008 and
19 subsequent years are before other courts and agencies.

20 6. The respondent State Board of Equalization has a clear legal duty under NRS
21 361.395 to equalize property statewide by raising or lowering the taxable value of property in
22 whole or in part in any county.

23 7. The respondent Washoe County has a clear legal duty to conform the assessment
24 roll for the tax year to the equalization determinations of the State Board of Equalization for
25 that year.

26 8. Under NRS §361.445, the only basis for property taxation is the assessment
27 made by the county assessor and by the Department as equalized by the State Board of
28 Equalization.

1 9. When the Washoe County assessment roll for 2003-2004 is finalized by reason
2 of equalization performed by the State Board of Equalization, the Washoe County Treasurer
3 has a clear legal duty to conform tax collections for that year accordingly -- either billing
4 taxpayers for additional taxes or returning to taxpayers excess taxes previously collected.

5 10. When the Washoe County assessment roll for 2004-2005 is finalized by reason
6 of equalization performed by the State Board of Equalization, the Washoe County Treasurer
7 has a clear legal duty to conform tax collections for that year accordingly -- either billing
8 taxpayers for additional taxes or returning to taxpayers excess taxes previously collected.

9 11. A writ of mandamus is available to compel the performance of an act that the
10 law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or
11 capricious exercise of discretion. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev.
12 601, 637 P.2d 534 (1981).

13 12. A writ of mandamus will not issue, however, if petitioner has a plain, speedy
14 and adequate remedy in the ordinary course of law. NRS 34.170.

15 13. Petitioners have no plain, speedy or adequate remedy at law from the State
16 Board of Equalization's failure to equalize properties for the 2003-2004 and 2004-2005 tax
17 years.

18 14. By law, the writ of mandamus must be either alternative or peremptory. NRS
19 34.190. The peremptory writ shall be in a form similar to the alternative writ, except that the
20 words requiring the party to show cause why the party has not done as commanded shall be
21 omitted, and a return day shall be inserted. Id.

22 15. Upon notice, the peremptory may be issued in the first instance if the right to
23 require the performance is clear and it is apparent that the respondent cannot give any valid
24 excuse for the lack of performance. NRS 34.200.

25 16. The respondents, the State Board of Equalization, Washoe County, and the
26 Washoe County Treasurer, have had notice of this mandamus proceeding and have had and
27 have taken the opportunity to present and argue their objections and putative defenses to
28 mandamus relief to the Court.

1 17. The Court, being satisfied that petitioners' right to equalization as prayed for in
2 the petition is clear and that no valid excuse has been or can be given by or on behalf of the
3 State Board of Equalization for having failed that duty of equalization.

4 18. Mandamus is a matter for the Court's discretion. In the exercise of that
5 discretion, balancing the rights and interests of the parties and the public, and finding no reason
6 or ground for further delay, the Court concludes that petitioners are entitled to the issuance of a
7 peremptory writ of mandamus requiring and commanding equalization of land values of
8 residential property within the geographic area of Incline Village/Crystal Bay in Washoe
9 County for the 2003-2004 and 2004-2005 tax years to their 2002-2003 values and the return to
10 taxpayers of the resultant overpayments of taxes.

11 Accordingly, based on the foregoing findings of fact and conclusions of law, the Court
12 enters its order as follows:

13 1. The motion to strike the amended petition brought by the respondents Washoe
14 County and the Washoe County Treasurer is DENIED.

15 2. The motion to dismiss brought by the respondents Washoe County and the
16 Washoe County Treasurer is DENIED.

17 3. The motion to dismiss brought by the respondent State Board of Equalization is
18 DENIED.

19 4. A peremptory writ of mandate shall be issued from this Court directing and
20 commanding the respondent State Board of Equalization to equalize within the geographical
21 area of Incline Village/Crystal Bay for the 2003-2004 and 2004-2005 tax years by returning the
22 land values of residential real property at Incline Village and Crystal Bay to their 2002-2003
23 levels for both years consistent with the determinations of the Supreme Court in State ex rel.
24 State Bd. of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006); State ex rel. State Bd.
25 of Equalization v. Barta, 124 Nev. 58, 188 P.3d 1092 (2008).

26 5. The return date for such peremptory writ of mandate shall be 30 days after
27 service of the writ upon the State Board of Equalization upon which return date the State Board
28 shall report on its compliance with the writ.

6. A further peremptory writ of mandate shall be issued from this Court directing and commanding the respondents Washoe County and the Washoe County Treasurer to conform the assessment rolls for the 2003-2004 and 2004-2005 tax years to the equalization order of the State Board of Equalization and to return to taxpayers any taxes paid in excess of the amounts properly due on the properties as equalized.

7. The return date for such peremptory writ of mandate shall be 60 days after service of the writ upon the respondents Washoe County and the Washoe County Treasurer upon which return date the respondents shall report on their compliance with the writ.

8. Petitioners shall recover their taxable costs of this action pursuant to law.

DATED this ____ day of _____, 2010.

DISTRICT JUDGE

Respondent
John L. Baker
39506 N. Daisy Mountain
Ste 122-271
Phoenix, Arizona 85086
(808) 781-8255

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

201 South Carson Street
Carson City, Nevada 89701-4702

GOEBEL FIXTURE COMPANY,)
)
Appellant,)
)
Vs.)
)
John L. Baker,)
)
Respondent,)
)
_____)

Supreme Court Docket No.: 56998
District Court Case No. 10A613862

**PROPER PERSON
RECEIVED/ENTERED**

DEC 0 / 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

**OBJECTION OF NOTICE OF APPEAL
TO THE NEVADA SUPREME COURT**

Come now the Respondent John L. Baker, in the above name case and number, Mr. Balkenbush file a Notice Of Appeal, to this Court. I feel this Court should refuse to hear it, because it is without merit.

Mr. Balkenbush filed a notice of intent to participate, and never followed up. Not by just a day, a week, but several months. Correspondence was sent by Certified Mail, and though out the whole process, he never responded. Then after the Decision was reached he files an Appeal.

Respondent feels to allow him to Appeal the ruling of the lower court, without participating would open this Court To any lawyer (in the yellow pages) if he/she did not agree with a Judge's Decision, could Appeal any case to a higher Court, whether they participated or not, creating utter chaos in the Judicial

System

Signed: This 1st Day of December 2010

John L. Baker

John L. Baker

DEC 05 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

10-31807

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the date shown below, a true and correct copy of the fore going was mailed postage prepaid, in a sealed envelope, at Phoenix, Arizona, to the following interested parties:

Robert F. Balkenbush Esq.
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509
775-786-2882

DATED this 1st day of DECEMBER, 2010

By: JOHN L. BAKER

Signature

John L. Baker