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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 their 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; BILL  
BERRUM, Washoe County Treasurer;

Respondents.

Case No. 56030

**OBJECTIONS TO STATE BOARD'S REQUESTS FOR JUDICIAL NOTICE**

Without making a formal motion, the respondent State Board of Equalization asks  
this Court to take judicial notice under NRS §47.130 of the following:

1. "The March 22, 2010 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." State Board Answering Brief, p. 8, fn. 2.
2. The July 2004 Notice of Decision and Equalization Order in the Matter of Ernest and Grace Trujillo, Incline Village. Id., p. 5, ln.

19 - p. 6, ln. 2 and Addendum, SBA 1-4.

3. A Proposed Order submitted to the District Court by taxpayers.  
Id., p. 12, fn. 4 and Addendum, SBA 18-25.

Pursuant to NRS §47.160, taxpayers object to the Board's requests on the grounds that they fail to satisfy the requirements of NRS §47.130 and §47.150(2). Taxpayers respectfully submit that, as set forth in full below, the State's requests must be denied and the portions of the State's brief which rely on those requests must be disregarded.

**A. The March 22, 2010 Proceedings Before the State Board of Equalization**

NRS §47.130 authorizes the Court to take "judicial notice" of "facts in issue or facts from which [facts in issue] may be inferred." Under NRS §47.150, the party requesting judicial notice must provide the Court with "the necessary information."

The State Board asks this Court to take judicial notice of the March 22, 2010 proceedings before the Board. State Answering Brief, p. 8, fn. 2. All the Board attaches to its brief, however, is a copy of a Board agenda. The only "fact" that the Court could "judicially notice" based on the agenda is that a particular matter was agendized for hearing on a particular date. If the Board wants the Court to take judicial notice of the substance of the actual hearing, it has to provide the Court with a copy of the transcript of the proceedings. The transcript, in this case, would show that the Board excluded taxpayers wholly from any participation in the proceedings, even refusing to ask questions of assessors submitted by taxpayers.

In any event, and perhaps more importantly, under NRS §47.130, judicial notice is limited to "facts in issue or facts from which [facts in issue] may be inferred." The Board makes no pretense even of identifying any such fact here. This case arises from

1 the failure of the Board in 2003-2004 and subsequent tax years to perform its affirmative  
2 statutory duty of statewide equalization. Nothing in the agenda for March 22, 2010,  
3 addresses that failure. The current State Board of Equalization apparently wants the  
4 Court to think that it is now making an effort to meet its statutory duty of statewide  
5 equalization. Whatever that effort, it has nothing to do with the issues in this case and  
6 "judicial notice" must be denied.  
7

8 **B. The Trujillo Notice of Decision and Equalization Order**  
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10 The Board also asks this Court to take judicial notice of a taxpayer valuation  
11 appeal and a resulting "equalization" order in 2004. State Answering Brief, p. 5, ln. 27 -  
12 p. 6, ln. 2 and Addendum, SBA 1-11. The taxpayer is named Trujillo. Again, however,  
13 the Board fails totally to identify any "fact in issue" or any "fact" from which a fact in  
14 issue "may be inferred" that is the subject of this request for judicial notice.  
15

16 Taxpayers have never denied or disputed that the State Board has occasionally  
17 extended a determination in a valuation appeal to other, similarly situated properties.  
18 The Trujillo case is an example. Having looked at three taxpayer valuation appeals from  
19 the Tiller Drive area in Incline Village including the Trujillo residence, the Board  
20 ordered reductions in land value and then extended those reductions to approximately 30  
21 additional Tiller Drive area residential properties. Engaging in infrequent taxpayer  
22 appeal-driven equalization is not related to the Board's duty of annual statewide  
23 equalization under NRS 361.395. Trujillo is not a named party. Thirty-three or thirty-  
24 four properties do not begin to address equalization of the thousands of properties just at  
25 Lake Tahoe let alone throughout the state. The State Board proceedings involving the  
26 Trujillo and similarly situated properties are separate and unrelated. As a general rule,  
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1 this Court does not take judicial notice of records in a separate case. Occhiuto v.  
2 Occhiuto, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981) (citing Giannopoulos v. Chachas,  
3 50 Nev. 269, 270, 257 P. 618, 618 (1927)). No ground for exception can be argued here.  
4

5 The State Board has failed to identify any issue of fact or law presented in the  
6 case on appeal with regard to taxpayer appeal-driven equalization by the State Board.  
7 The absence of any such issue is undoubtedly why the State Board never asked the court  
8 below to take judicial notice of the Trujillo proceedings, creating another reason why  
9 such notice should be denied on this appeal. See, e.g., Marvin v. Fitch, 126 Nev. 18, 232  
10 P.3d 425, 427, fn.3 (2010); Kelly v. Tahoe Regional Planning Agency, 109 Nev. 638,  
11 653, fn. 18, 855 P.2d 1027, 1037, fn. 18 (1993).  
12

13 In support of its request for judicial notice, the State Board states that the  
14 Supreme Court "may base its decision on facts of which judicial notice shall or may be  
15 taken." State Board Answering Brief, p. 5, lns. 25-26. As support for this proposition,  
16 the State Board cites an Annotation at 138 ALR Fed 393. Id. The full citation to the  
17 Annotation would include the title, which is "What Matters Not Contained in Pleadings  
18 may be Considered in Ruling on a Motion to Dismiss under Rule 12(b)(6) of the Federal  
19 Rules of Civil Procedure or Motion for Judgment on the Pleadings under Rule 12(c)  
20 without Conversion to Motion for Summary Judgment." The Annotation, in fact, is  
21 addressed to a different subject, contains only a very small portion which discusses  
22 judicial notice, and even that small portion does not address judicial notice on appeal.  
23 There is no authority for the Board's argument that this Court should or could base a  
24 decision on matters of judicial notice not presented to the court below. As this Court  
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1 itself has recognized, "judicial notice" has a limited role to play on appeal. See, e.g.,  
2 Marvin v. Fitch, supra.

3 **C. Taxpayers' "Proposed Order"**

4 The State Board also asks the Court to take judicial notice of a "proposed order"  
5 submitted by taxpayers' counsel. State Board Answering Brief, p. 12, fn. 4. Although  
6 this proposed order was served on the parties and submitted to the court, it was never  
7 filed as part of the actual record of the case. For that reason, the copy included with the  
8 State Board's Addendum reflects only its receipt by the Attorney General's office. State  
9 Board's Addendum, SBA 13. Cf., NRAP Rule 30(c)(1).  
10

11 Again the State Board fails to identify the "fact in issue" ostensibly established by  
12 the proposed order. There is no evidence that the trial court itself ever looked at the  
13 document. Certainly the fact that taxpayers submitted a proposed order is not a "fact in  
14 issue." Nor will the relief sought in the proposed order support a finding by "judicial  
15 notice" that taxpayers "never requested" statewide equalization relief and failed to seek  
16 such relief "in any of the documents it filed with the District Court." State Board  
17 Answering Brief, p. 11, lns. 14-19. As indicated at the time of submission, this eight  
18 page proposed order was a specific response to an inquiry from the court at oral  
19 argument as to how an order for less than total statewide equalization might be framed.  
20 State Board's Addendum, SBA 13. This document simply has no bearing on whether  
21 taxpayers sought relief in the form of statewide equalization. If the trial court has asked  
22 in oral argument how to frame an order granting statewide equalization, taxpayers would  
23 have submitted such an order.  
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1 In any event, the State Board is mistaken on the fundamental question.  
2 Taxpayers' entitlement to statewide equalization was raised in the taxpayers' petition for  
3 mandamus, was argued in response to the State and County motions to dismiss, and was  
4 discussed at length in the oral argument before the Court. Joint Appendix to Opening  
5 Brief (APX), Vol. I, pp. 191, 192, 194 and 195; Vol. II, pp. 321-325, 371 and 375-376;  
6 Vol. IV, pp. 658, 661, 666, 672, 674, 702 and 713-714. Taxpayers never "waived" heir  
7 claim to statewide equalization; they simply offered as a more pragmatic remedy, a  
8 limited equalization order that encompassed only the similarly situated areas at Lake  
9 Tahoe. In any event, in addition to relief limited to the Lake Tahoe area, taxpayers'  
10 amended petition for mandamus sought "such other and further relief" as taxpayers  
11 might be entitled to, encompassing any claim for statewide equalization. APX, Vol. I, p.  
12 197. The State Board and County respondents cannot claim that they were not on notice  
13 of the possibility of an order for statewide equalization. See, e.g., Sprouse v. Wentz,  
14 105 Nev. 597, 603-604; 781 P.2d 1136, 1140 (1989); Humboldt Basin Newspapers,  
15 Inc. v. Sunderland, 95 Nev. 794, 797-798, 603 P.2d 278, 280-281 (1979).

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20 The proposed order is not a public record, fails to establish any "fact in issue,"  
21 and will not support judicial notice under NRS §47.130 or NRS §47.140. The State  
22 Board's request for judicial notice of the proposed order must be denied as a matter of  
23 law.

## 24 CONCLUSION

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26 The State Board's requests for judicial notice do not satisfy the statutory  
27 requirements and cannot be granted. Those requests must be denied and all portions of  
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1 the State Board's Answering Brief reciting or relying on those requests must be  
2 disregarded.

3 Respectfully submitted this 20th day of January, 2011.

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5 MORRIS PETERSON

6 By /s/Suellen Fulstone

7 Suellen Fulstone  
8 Attorneys for Appellants  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this document was filed electronically with the Nevada  
3 Supreme court on January 20, 2011. Electronic service of the foregoing document shall  
4 be made in accordance with the Master Service List as follows:  
5

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14 Reno, NV 89520

15 DATED this 20<sup>th</sup> day of January, 2011.

16 /s/ Elaine K. Bates  
17 Employee of Morris Peterson  
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