

1 Case No. 11 OC 00063 1B

2 Dept. No. I

REC'D & FILED

2011 AUG -9 AM 11:17

ALAN GLOVER

BY ALAN GLOVER CLERK
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR CARSON CITY

8 * * *

9 MONTAGE MARKETING, LLC, formerly
10 known as MONTAGE MARKETING
11 CORPORATION, a Delaware limited
12 liability company,

11 Petitioner,

12 vs.

13 STATE OF NEVADA ex. rel. STATE
14 BOARD OF EQUALIZATION; WASHOE
15 COUNTY, ex. rel. WASHOE COUNTY
16 BOARD OF EQUALIZATION; and
17 WASHOE COUNTY ASSESSOR JOSH
18 WILSON,

17 Respondents.

19 NOTICE OF ENTRY OF ORDER

20 TO: Petitioners, and their attorneys of record,
21 Rick Hsu, Esq., and Debra Waggoner, Esq.

22 Please take notice that an Order was entered on July 28,
23 2011. A copy of that Order is attached hereto.

24 AFFIRMATION PURSUANT TO NRS 239B.030

25 The undersigned does hereby affirm that the preceding

26 ///

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

3 Dated this 5th day of August, 2011.

4 RICHARD A. GAMMICK
5 District Attorney

6 By David C. Creekman

7 DAVID C. CREEKMAN
8 Chief Deputy District Attorney
9 P. O. Box 30083
10 Reno, NV 89520-3083
11 (775) 337-5700

12 ATTORNEYS FOR WASHOE COUNTY AND
13 WASHOE COUNTY ASSESSOR
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Rick Hsu, Esq.
Debra Waggoner, Esq.
Maupin, Cox & LeGoy
P.O. Box 30000
Reno, NV 89520

Michelle Jt

1 DAVID C. CREEKMAN
Deputy District Attorney
2 Nevada State Bar Number 4580
P. O. Box 30083
3 Reno, NV 89520-3083
(775) 337-5700
4 ATTORNEY FOR WASHOE COUNTY

REC'D & FILED

2011 JUL 28 PM 3:41

ALAN GLOVER

J. HARKLER
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR CARSON CITY

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10 CORPORATION, a Delaware limited
liability company,

Case No. 11 OC 00063 1B

Dept. No. I

11 Petitioner,

12 vs.

ORDER DENYING PETITION
FOR JUDICIAL REVIEW

13 STATE OF NEVADA ex. rel. STATE BOARD
14 OF EQUALIZATION; WASHOE COUNTY, ex.
rel. WASHOE COUNTY BOARD OF
15 EQUALIZATION; and WASHOE COUNTY
ASSESSOR JOSH WILSON.

16 Respondents.

17 _____/
18
19 On May 12, 2011, Petitioner Montage Marketing, LLC filed its
20 "Memorandum of Points and Authorities in Support of Petition for
21 Judicial Review" in this proceeding. Respondent Washoe County
22 and Washoe County Assessor Josh Wilson replied to Petitioner's
23 Memorandum of Points and Authorities on June 10, 2011.
24 Petitioner next filed its "Reply Memorandum of Points and
25 Authorities in Support of Petition for Judicial Review" on July

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1 6, 2011. On the same date, Petitioner requested that the case be
2 submitted for decision.

3 The Court, having reviewed the above-mentioned pleadings and
4 documents, along with the "Administrative Record on Appeal and
5 Agency Certification" filed by the State Board of Equalization in
6 this case, finds that the decision of the State Board of
7 Equalization subject to challenge should be upheld as primarily a
8 factual decision made the State Board of Equalization, and
9 earlier by the Washoe County Board of Equalization. The dispute
10 in this case centers on the proper methodology for appraising,
11 for ad valorem taxation purposes, a multi-unit condominium
12 project in downtown Reno, Nevada. At the heart of this case is
13 the question of whether the Washoe County Assessor, as confirmed
14 by both the County and State Boards of Equalization, arrived at
15 his valuation in a manner authorized by law, by first bifurcating
16 the land from the improvements, and then by viewing the
17 condominium units as a series of individually marketed units.
18 Or, as contended by Montage, should the Assessor have employed a
19 valuation method which, in the opinion of Montage's expert,
20 viewed the condominium project as a single unit, despite its
21 status as a series of individual condominium units for sale?

22 The factual findings of an agency which are supported by
23 evidence are conclusive. State, Employment Security Dep't v.
24 Nacheff, 104 Nev. 347, 757 P.2d 787 (1988). In the context of
25 judicial review of the actions of an administrative board,
26 "substantial evidence" is that which a reasonable mind might

1 accept as adequate to support a conclusion. Nevada Employment
2 Security Dep't v. Hilton Hotels Corp., 102 Nev. 606, 729 P.2d 497
3 (1986). Additionally, the deferential standard of review
4 normally applied to factual findings of an administrative agency
5 is not modified, under the facts of this case, by the standard
6 set forth in Canyon Villas Apartments Corp. v. State of Nevada
7 Tax Comm'n., 124 Nev. Adv. Op. 72, 192 P.3d 746 (2008)
8 Petitioner argues for the Canyon Villas proposition that the
9 Assessor applied a "fundamentally wrong principle" to his
10 valuation of the Montage condominium project, resulting in an
11 "unjust and inequitable" valuation by both the Assessor and the
12 State Board of Equalization. But Canyon Villas is inapplicable
13 here because it applied to the taxable value of income-producing
14 real property in the form of apartment units, not individually
15 for-sale condominium units as is the case here.

16 The record establishes that the Assessor followed the
17 mandate of NRS 361.227(1)(a) which directs the Assessor to
18 appraise two components of property in determining its taxable
19 value: the land and any improvements on the land. With respect
20 to appraising improvements on the land, NRS 361.277(1)(b) directs
21 the Assessor to use the cost approach, providing that the value
22 of any improvements must be appraised by subtracting any
23 applicable obsolescence, or "impairment to property," NAC
24 361.116, and other depreciation from the cost of replacing the
25 improvements. The record establishes that the State Board
26 confirmed the propriety of the Assessor's valuation of the

1 Montage land and its condominium units. Although differences of
2 opinion may exist as to the Assessor's valuation methodologies,
3 the record supports the Assessor's value determinations and must
4 be upheld.

5 In this regard, the record contains substantial evidence to
6 support the State Board of Equalization's determination to uphold
7 the Assessor's inability to use the comparable sales approach to
8 determine the land value. As such, NAC 361.119 permitted the
9 Assessor to use alternate methods, including the "allocation
10 method" to ascertain the ratio of the land's value to the total
11 value of the property in order to determine the value that the
12 land contributes to the total value of the property. NAC
13 369.119(1)(e); NAC 361.109. The record next establishes that the
14 Assessor then turned to NRS 361.227(2)(b) in determining the
15 taxable value of the property as a single unit, to which an
16 exception may exist if "[t]he parcel is one of a group of
17 contiguous parcels which qualifies for valuation as a subdivision
18 pursuant to the regulations of the Nevada Tax Commission..." NRS
19 361.227(b)(2)(c). The Assessor determined that the Petitioner's
20 property qualified as such a "subdivision," it being located on
21 what was formerly a single parcel, but one which was subsequently
22 subdivided. The Assessor next determined that the subdivision
23 exception to the single parcel rule applied to only the land
24 portion of the Petitioner's property, thus permitting the
25 Assessor to apply a discount of 50%, based on the land's status

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1 as part of a subdivision, and its expected absorption in the
2 market of 10 or more years.

3 The record next contains substantial evidence supporting the
4 State Board of Equalization's determination to uphold the
5 Assessor's decision to assign a value to each individual
6 condominium unit within the Montage project by assigning the
7 taxable value of the improvements based on the size of the
8 condominium unit as a percentage of the entire building, with the
9 same calculation performed for each unsold unit within the
10 Petitioner's condominium project. Then, because the computed
11 taxable value exceeded the full cash value of the individual
12 units, the Assessor properly applied the concept of external
13 obsolescence to the property in concluding that economic
14 conditions required a lessening of value.

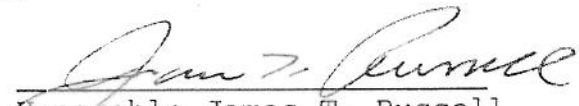
15 To the extent legal issues are involved in the resolution of
16 this dispute, this Court recognizes that it may independently
17 review the construction of statutes, American Int'l. Vacations v.
18 MacBride, 99 Nev. 324, 661 P.2d 1301 (1983), although such an
19 independent review is tempered by an agency's conclusions of law
20 which are entitled to deference and will not be disturbed if they
21 are supported by substantial evidence, because those conclusions
22 are closely related to the agency's view of the facts. Jones v.
23 Rosner, 102 Nev. 215, 719 P.2d 805 (1986). Additionally, in
24 interpreting statutes, the Court is guided by principles set
25 forth by the United States Supreme Court in a 1984 case known as
26 Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,

1 467 U.S. 837 (1984). In that case, the United States Supreme
2 Court held that the legal test for determining whether to grant
3 deference to a government agency's interpretation of its
4 statutory authority involves a two-step analysis. The first step
5 requires the Court to determine whether the law being implemented
6 is ambiguous or whether the law contains a gap that the
7 legislature intended the government agency to fill. If such an
8 ambiguity or gap exists, the Court next determines whether the
9 government agency's interpretation of the statute, through the
10 regulations and policies it adopts, is reasonable or permissible.
11 If it is, the Court is bound to defer to the agency's
12 interpretation of its statutory responsibilities. Id. Similar
13 to the United States Supreme Court, Nevada's Supreme Court has
14 adopted Chevron's "deference" standard. It did so in a case
15 known as Thomas v. City of North Las Vegas, 122 Nev. 82, 127 P.3d
16 1057 (2006), a case in which the Court clearly, and simply,
17 concluded "[w]e give deference to administrative
18 interpretations," and cited to the Chevron case. Thomas, 122
19 Nev. at 101 - 102, 127 P.3d at 1070, f. 50 (2006). Nevada
20 adheres to the Chevron standard when reviewing administrative
21 agency interpretations of the agency's statutory obligations. In
22 this regard, the Court finds that the Assessor, as confirmed by
23 the State Board of Equalization, reasonably interpreted governing
24 statutes and regulations in the performance of his duty to
25 appraise the Petitioner's property. The Court declines to
26 substitute its judgment for that of the Assessor and the State

1 Board of Equalization in the interpretation of statutes and
2 regulations governing a field as highly specialized as is
3 property valuation.

4 For the foregoing reasons, IT IS HEREBY ORDERED that
5 Petitioner Montage Marketing, LLC's petition for judicial review
6 is DENIED.

7 Dated this 28th day of July, 2011.

8
9 
10 Honorable James T. Russell
District Court Judge

11 Submitted to the Court by:
12 DAVID C. CREEKMAN
13 Nevada State Bar Number 4580
Chief Deputy District Attorney
14 P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700

REC'D & FILED

2011 AUG 23 PM 4:36

ALAN GLOVER

BY ALAN GLOVER CLERK
DEPUTY

Rick R. Hsu, Esq., NV Bar #5374
Debra O. Waggoner, NV Bar #5808
Maupin, Cox & LeGoy
4785 Caughlin Parkway
P. O. Box 30000
Reno, NV 89520
(775) 827-2000
Attorneys for Petitioner

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

MONTAGE MARKETING, LLC, formerly known
as MONTAGE MARKETING CORPORATION, a
Delaware limited liability company,

Petitioner,

CASE NO. 11 OC 00063 1B

vs.

DEPT. NO. I

STATE OF NEVADA *ex rel.* STATE BOARD OF
EQUALIZATION; WASHOE COUNTY *ex rel.*
WASHOE COUNTY BOARD OF
EQUALIZATION; and WASHOE COUNTY
ASSESSOR JOSH WILSON.

Respondents.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Montage Marketing, LLC.

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

The Honorable James T. Russell
First Judicial District Court
Carson City, Nevada.

1 3. Identify each appellant and the name and address of counsel for each appellant:

2
3 Montage Marketing, LLC, formerly known Rick R. Hsu, Esq., NV Bar #5374
4 as Montage Marketing Corporation, a Debra O. Waggoner, NV Bar #5808
5 Delaware limited liability company Maupin, Cox & LeGoy
6 4785 Caughlin Parkway
7 P. O. Box 30000
8 Reno, NV 89520

9 4. Identify each respondent and the name and address of appellate counsel, if known,
10 for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much
11 and provide the name and address of that respondent's trial counsel):

12 State of Nevada *ex rel.* State Board of Did not file Notice of Intent to
13 Equalization Participate below
14 Washoe County *ex rel.* Washoe County David C. Creekman, Esq.
15 Board of Equalization; and Washoe Washoe County District Attorney
16 County Assessor Josh Wilson P.O. Box 30083
17 Reno, NV 89520-3083

18 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
19 licensed to practice law in Nevada and, if so, whether the district court granted that attorney
20 permission to appear under SCR 42 (attach a copy of any district court order granting such
21 permission):

22 No.

23 6. Indicate whether appellant was represented by appointed or retained counsel in the
24 district court:

25 Retained.

26 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

 Retained.

1 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the
2 date of entry of the district court order granting such leave:

3 No.

4 9. Indicate the date the proceedings commenced in the district court (e.g., date
5 complaint, indictment, information, or petition was filed):

6 The Petition for Judicial Review was filed on January 18, 2011 in the First Judicial
7 District Court, Storey County. By Stipulation to Change Venue to Carson City filed on February 14,
8 2011, venue was changed to the First Judicial District Court, Carson City.

9 10. Provide a brief description of the nature of the action and result in the district court,
10 including the type of judgment or order being appealed and the relief granted by the district court:

11 This is a judicial review of decisions by the State Board of Equalization affirming decisions
12 of the Washoe County Board of Equalization approving the valuations of Washoe County Assessor
13 Josh Wilson. The valuations concern unsold condominiums owned and marketed for sale by
14 Petitioner. After properly determining that each unsold condominium was in a group of parcels
15 which qualified as a subdivision, the Assessor refused to value the group of parcels collectively as
16 one unit under NRS 361.227(2)(b), and consequently refused to apply a bulk discount using a
17 discounted cash flow analysis under NRS 361.227(5)(c). Instead, despite qualifying as a subdivision,
18 the Assessor appraised each condominium unit *individually* based on retail sale prices. In doing so,
19 the Assessor applied a fundamentally wrong principle which contradicts the intent of NRS
20 361.227(2)(b) and caused the collective value of the unsold condominiums to exceed full cash value
21 in violation of NRS 361.227(5), which is plainly unjust and inequitable.

22 11. Indicate whether the case has previously been the subject of an appeal to or original
23
24
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26

1 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of
2 the prior proceeding:

3 No.

4
5 12. Indicate whether this appeal involves child custody or visitation:

6 No.

7 13. If this is a civil case, indicate whether this appeal involves the possibility of
8 settlement:

9 No.

10 **NRS 239B.030 CERTIFICATION**

11 Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does not
12 contain the Social Security Number of any person.

13
14 Dated this 23 of August, 2011.

15 MAUPIN, COX & LeGOY

16 By: 

17 Rick R. Hsu, Esq.
18 Debra O. Waggoner, Esq.
19 4785 Caughlin Parkway
20 Reno, Nevada 89519
21 Telephone: (775) 827-2000
22 Facsimile: (775) 827-2185
23 Attorneys for Petitioner
24
25
26

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David C. Creekman, Esq.
Washoe County District Attorney
P.O. Box 30083
Reno, NV 89520-3083

1. 

EMPLOYEE

Judge: RUSSELL, JUDGE JAMES
TODD

Case No. 11 OC 00063 1B

Ticket No.
CTN:

MONTAGE MARKETING LLC

By:

STATE OF NEVADA

DRSPND

-vs-

By:

Dob: Sex:
Lic: Sid:

Plate#: Accident:
Make:
Year: Type:
Venue: Location:

MONTAGE MARKETING LLC PLNTPET Bond: Set:
Type: Posted:

Charges:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	08/23/11	CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
2	08/23/11	NOTICE OF APPEAL Receipt: 18748 Date: 08/23/2011	1BCCOOPER	24.00	0.00
3	08/09/11	NOTICE OF ENTRY OF ORDER	1BJHIGGINS	0.00	0.00
4	07/28/11	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
5	07/28/11	ORDER DENYING PETITION FOR JUDICIAL REVIEW	1BCCOOPER	0.00	0.00
6	07/06/11	REQUEST FOR SUBMISSION	1BJULIEH	0.00	0.00
7	07/06/11	PETITIONER MONTAGE MARKETING, LLC.'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPOR TO FPETITION FOR JUDICIAL REVIEW	1BJULIEH	0.00	0.00
8	06/10/11	WASHOE COUNTY'S REPLY TO PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITES	1BJULIEH	0.00	0.00
9	05/12/11	PETITIONER MONTAGE MARKETING, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR JUDICIAL REVIEW	1BMKALE	0.00	0.00
10	04/18/11	NOTICE OF ENTRY OF ORDER	1BCFRANZ	0.00	0.00
11	04/11/11	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BMKALE	0.00	0.00
12	04/11/11	ORDER AMENDING BRIEFING SCHEDULE	1BMKALE	0.00	0.00
13	04/08/11	STIPULATION TO AMEND BRIEFING SCHEDULE	1BJHIGGINS	0.00	0.00
14	03/23/11	PETITIONER'S REQUEST FOR JUDICIAL NOTICE	1BJHIGGINS	0.00	0.00
15	03/21/11	SUMMONS	1BCFRANZ	0.00	0.00
16	03/15/11	NOTICE OF FILING ADMINISTRATIVE RECORD ON APPEAL	1BJULIEH	0.00	0.00
17	03/15/11	DEFENDANT'S/RESPONDENT'S INITIAL APPEARANCE AFFIRMATION PURSUANT TO NRS 239.030	1BJULIEH	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
18	03/15/11	ADMINISTRATIVE RECORD ON APPEAL AND AGENCY CERTIFICATION - VOLUMES I - VI	1BJULIEH	0.00	0.00
19	03/14/11	NOTICE OF ENTRY OF ORDER	1BJHIGGINS	0.00	0.00
20	03/11/11	ISSUING SUMMONS	1BCCOOPER	0.00	0.00
21	03/11/11	ORDER CHANGING VENUE Receipt: 16292 Date: 03/11/2011	1BCCOOPER	155.00	0.00
Total:				179.00	0.00
Totals By: COST				179.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

1 DAVID C. CREEKMAN
2 Deputy District Attorney
3 Nevada State Bar Number 4580
4 P. O. Box 30083
5 Reno, NV 89520-3083
6 (775) 337-5700
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ALAN GLOVER
BY *Handwritten Signature*
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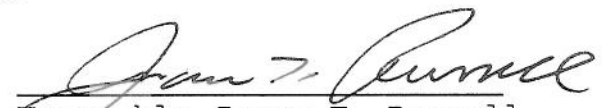
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24 interpreting statutes, the Court is guided by principles set
25 forth by the United States Supreme Court in a 1984 case known as
26 Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,

1 467 U.S. 837 (1984). In that case, the United States Supreme
2 Court held that the legal test for determining whether to grant
3 deference to a government agency's interpretation of its
4 statutory authority involves a two-step analysis. The first step
5 requires the Court to determine whether the law being implemented
6 is ambiguous or whether the law contains a gap that the
7 legislature intended the government agency to fill. If such an
8 ambiguity or gap exists, the Court next determines whether the
9 government agency's interpretation of the statute, through the
10 regulations and policies it adopts, is reasonable or permissible.
11 If it is, the Court is bound to defer to the agency's
12 interpretation of its statutory responsibilities. Id. Similar
13 to the United States Supreme Court, Nevada's Supreme Court has
14 adopted Chevron's "deference" standard. It did so in a case
15 known as Thomas v. City of North Las Vegas, 122 Nev. 82, 127 P.3d
16 1057 (2006), a case in which the Court clearly, and simply,
17 concluded "[w]e give deference to administrative
18 interpretations," and cited to the Chevron case. Thomas, 122
19 Nev. at 101 - 102, 127 P.3d at 1070, f. 50 (2006). Nevada
20 adheres to the Chevron standard when reviewing administrative
21 agency interpretations of the agency's statutory obligations. In
22 this regard, the Court finds that the Assessor, as confirmed by
23 the State Board of Equalization, reasonably interpreted governing
24 statutes and regulations in the performance of his duty to
25 appraise the Petitioner's property. The Court declines to
26 substitute its judgment for that of the Assessor and the State

1 Board of Equalization in the interpretation of statutes and
2 regulations governing a field as highly specialized as is
3 property valuation.

4 For the foregoing reasons, IT IS HEREBY ORDERED that
5 Petitioner Montage Marketing, LLC's petition for judicial review
6 is DENIED.

7 Dated this 28th day of July, 2011.


8
9 
10 Honorable James T. Russell
District Court Judge

11 Submitted to the Court by:
12 DAVID C. CREEKMAN
13 Nevada State Bar Number 4580
Chief Deputy District Attorney
14 P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700

REC'D & FILED

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ALAN GLOVER

BY  Electronically Filed
Aug 24 2011 11:08 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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8 Attorneys for Petitioner

9
10 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR CARSON CITY

12 MONTAGE MARKETING, LLC, formerly known
13 as MONTAGE MARKETING CORPORATION, a
14 Delaware limited liability company,

15 Petitioner,

CASE NO. 11 OC 00063 1B

16 vs.

DEPT. NO. I

17 STATE OF NEVADA *ex rel.* STATE BOARD OF
18 EQUALIZATION; WASHOE COUNTY *ex rel.*
19 WASHOE COUNTY BOARD OF
20 EQUALIZATION; and WASHOE COUNTY
21 ASSESSOR JOSH WILSON.

22 Respondents.
23 _____/

24 **NOTICE OF APPEAL**

25 Petitioner Montage Marketing, LLC, appeals to the Supreme Court of the State of Nevada
26 from the Order Denying Petition for Judicial Review dated July 28, 2011, attached hereto as Exhibit
1.

NRS 239B.030 CERTIFICATION

Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does not

1 contain the Social Security Number of any person.

2 Dated this 23rd of August, 2011.

3 MAUPIN, COX & LeGOY

4 By: 

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6 Debra O. Waggoner, Esq.
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MONTAGE MARKETING, LLC		
vs.		
STATE OF NEVADA <i>ex rel.</i>		
IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CARSON CITY		
CASE NO. 11 OC 00063 1B		
INDEX TO NOTICE OF APPEAL		
Exhibit	Document	No. Of Pages
1	Order Denying Petition for Judicial Review	7

Forestry Stewardship
Product group: Forest management
Forest: managed forests and
managed woodlands

Cert No. SW-COC-004731
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7 ATTORNEY FOR WASHOE COUNTY

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ALAN GLOVER

J. HARKLEBOSCH

8 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR CARSON CITY

10 * * *

11 MONTAGE MARKETING, LLC, formerly
12 known as MONTAGE MARKETING
13 CORPORATION, a Delaware limited
14 liability company,

Case No. 11 OC 00063 1B

Dept. No. I

15 Petitioner,

16 vs.

ORDER DENYING PETITION
FOR JUDICIAL REVIEW

17 STATE OF NEVADA ex. rel. STATE BOARD
18 OF EQUALIZATION; WASHOE COUNTY, ex.
19 rel. WASHOE COUNTY BOARD OF
20 EQUALIZATION; and WASHOE COUNTY
21 ASSESSOR JOSH WILSON.

22 Respondents.

23 On May 12, 2011, Petitioner Montage Marketing, LLC filed its
24 "Memorandum of Points and Authorities in Support of Petition for
25 Judicial Review" in this proceeding. Respondent Washoe County
26 and Washoe County Assessor Josh Wilson replied to Petitioner's
Memorandum of Points and Authorities on June 10, 2011.
Petitioner next filed its "Reply Memorandum of Points and
Authorities in Support of Petition for Judicial Review" on July

//

1 6, 2011. On the same date, Petitioner requested that the case be
2 submitted for decision.

3 The Court, having reviewed the above-mentioned pleadings and
4 documents, along with the "Administrative Record on Appeal and
5 Agency Certification" filed by the State Board of Equalization in
6 this case, finds that the decision of the State Board of
7 Equalization subject to challenge should be upheld as primarily a
8 factual decision made the State Board of Equalization, and
9 earlier by the Washoe County Board of Equalization. The dispute
10 in this case centers on the proper methodology for appraising,
11 for ad valorem taxation purposes, a multi-unit condominium
12 project in downtown Reno, Nevada. At the heart of this case is
13 the question of whether the Washoe County Assessor, as confirmed
14 by both the County and State Boards of Equalization, arrived at
15 his valuation in a manner authorized by law, by first bifurcating
16 the land from the improvements, and then by viewing the
17 condominium units as a series of individually marketed units.
18 Or, as contended by Montage, should the Assessor have employed a
19 valuation method which, in the opinion of Montage's expert,
20 viewed the condominium project as a single unit, despite its
21 status as a series of individual condominium units for sale?

22 The factual findings of an agency which are supported by
23 evidence are conclusive. State, Employment Security Dep't v.
24 Nacheff, 104 Nev. 347, 757 P.2d 787 (1988). In the context of
25 judicial review of the actions of an administrative board,
26 "substantial evidence" is that which a reasonable mind might

1 accept as adequate to support a conclusion. Nevada Employment
2 Security Dep't v. Hilton Hotels Corp., 102 Nev. 606, 729 P.2d 497
3 (1986). Additionally, the deferential standard of review
4 normally applied to factual findings of an administrative agency
5 is not modified, under the facts of this case, by the standard
6 set forth in Canyon Villas Apartments Corp. v. State of Nevada
7 Tax Comm'n., 124 Nev. Adv. Op. 72, 192 P.3d 746 (2008)
8 Petitioner argues for the Canyon Villas proposition that the
9 Assessor applied a "fundamentally wrong principle" to his
10 valuation of the Montage condominium project, resulting in an
11 "unjust and inequitable" valuation by both the Assessor and the
12 State Board of Equalization. But Canyon Villas is inapplicable
13 here because it applied to the taxable value of income-producing
14 real property in the form of apartment units, not individually
15 for-sale condominium units as is the case here.

16 The record establishes that the Assessor followed the
17 mandate of NRS 361.227(1)(a) which directs the Assessor to
18 appraise two components of property in determining its taxable
19 value: the land and any improvements on the land. With respect
20 to appraising improvements on the land, NRS 361.277(1)(b) directs
21 the Assessor to use the cost approach, providing that the value
22 of any improvements must be appraised by subtracting any
23 applicable obsolescence, or "impairment to property," NAC
24 361.116, and other depreciation from the cost of replacing the
25 improvements. The record establishes that the State Board
26 confirmed the propriety of the Assessor's valuation of the

1 Montage land and its condominium units. Although differences of
2 opinion may exist as to the Assessor's valuation methodologies,
3 the record supports the Assessor's value determinations and must
4 be upheld.

5 In this regard, the record contains substantial evidence to
6 support the State Board of Equalization's determination to uphold
7 the Assessor's inability to use the comparable sales approach to
8 determine the land value. As such, NAC 361.119 permitted the
9 Assessor to use alternate methods, including the "allocation
10 method" to ascertain the ratio of the land's value to the total
11 value of the property in order to determine the value that the
12 land contributes to the total value of the property. NAC
13 369.119(1)(e); NAC 361.109. The record next establishes that the
14 Assessor then turned to NRS 361.227(2)(b) in determining the
15 taxable value of the property as a single unit, to which an
16 exception may exist if "[t]he parcel is one of a group of
17 contiguous parcels which qualifies for valuation as a subdivision
18 pursuant to the regulations of the Nevada Tax Commission...." NRS
19 361.227(b)(2)(c). The Assessor determined that the Petitioner's
20 property qualified as such a "subdivision," it being located on
21 what was formerly a single parcel, but one which was subsequently
22 subdivided. The Assessor next determined that the subdivision
23 exception to the single parcel rule applied to only the land
24 portion of the Petitioner's property, thus permitting the
25 Assessor to apply a discount of 50%, based on the land's status
26 //

1 as part of a subdivision, and its expected absorption in the
2 market of 10 or more years.

3 The record next contains substantial evidence supporting the
4 State Board of Equalization's determination to uphold the
5 Assessor's decision to assign a value to each individual
6 condominium unit within the Montage project by assigning the
7 taxable value of the improvements based on the size of the
8 condominium unit as a percentage of the entire building, with the
9 same calculation performed for each unsold unit within the
10 Petitioner's condominium project. Then, because the computed
11 taxable value exceeded the full cash value of the individual
12 units, the Assessor properly applied the concept of external
13 obsolescence to the property in concluding that economic
14 conditions required a lessening of value.

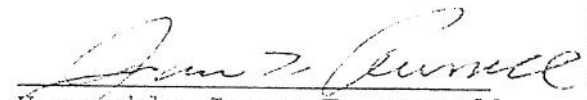
15 To the extent legal issues are involved in the resolution of
16 this dispute, this Court recognizes that it may independently
17 review the construction of statutes, American Int'l. Vacations v.
18 MacBride, 99 Nev. 324, 661 P.2d 1301 (1983), although such an
19 independent review is tempered by an agency's conclusions of law
20 which are entitled to deference and will not be disturbed if they
21 are supported by substantial evidence, because those conclusions
22 are closely related to the agency's view of the facts. Jones v.
23 Rosner, 102 Nev. 215, 719 P.2d 305 (1986). Additionally, in
24 interpreting statutes, the Court is guided by principles set
25 forth by the United States Supreme Court in a 1984 case known as
26 Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,

1 467 U.S. 837 (1984). In that case, the United States Supreme
2 Court held that the legal test for determining whether to grant
3 deference to a government agency's interpretation of its
4 statutory authority involves a two-step analysis. The first step
5 requires the Court to determine whether the law being implemented
6 is ambiguous or whether the law contains a gap that the
7 legislature intended the government agency to fill. If such an
8 ambiguity or gap exists, the Court next determines whether the
9 government agency's interpretation of the statute, through the
10 regulations and policies it adopts, is reasonable or permissible.
11 If it is, the Court is bound to defer to the agency's
12 interpretation of its statutory responsibilities. Id. Similar
13 to the United States Supreme Court, Nevada's Supreme Court has
14 adopted Chevron's "deference" standard. It did so in a case
15 known as Thomas v. City of North Las Vegas, 122 Nev. 82, 127 P.3d
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17 concluded "[w]e give deference to administrative
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19 Nev. at 101 - 102, 127 P.3d at 1070, f. 50 (2006). Nevada
20 adheres to the Chevron standard when reviewing administrative
21 agency interpretations of the agency's statutory obligations. In
22 this regard, the Court finds that the Assessor, as confirmed by
23 the State Board of Equalization, reasonably interpreted governing
24 statutes and regulations in the performance of his duty to
25 appraise the Petitioner's property. The Court declines to
26 substitute its judgment for that of the Assessor and the State

1 Board of Equalization in the interpretation of statutes and
2 regulations governing a field as highly specialized as is
3 property valuation.

4 For the foregoing reasons, IT IS HEREBY ORDERED that
5 Petitioner Montage Marketing, LLC's petition for judicial review
6 is DENIED.

7 Dated this 28th day of July, 2011.

8
9 
10 Honorable James T. Russell
District Court Judge

11 Submitted to the Court by:
12 DAVID C. CREEKMAN
13 Nevada State Bar Number 4580
14 Chief Deputy District Attorney
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