IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.
_____/

CASE NO. 59063

Appeal from Order Denying Petition for Judicial Review
First Judicial District Court of the State of Nevada

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 2

A. Standard of Review 2

B. Under Step 1 of the Process, Respondents' Interpretation and Application of NRS 361.227(2)(b) Is Flawed. 3

1. The Statutory Language Supports an Interpretation in Appellant's Favor. 4
2. The Legislative History Supports an Interpretation in Appellant's Favor. 4
3. The SBE's Reliance On Uneffective Regulations Is Not Justified. 6

C. Under Step 2 of the Process, Respondents' Interpretation and Application of NRS 361.227(5) is Flawed. 8

1. AGO 87-8 and the Legislative History Reflects that the SBE Can Apply Discounted Cash Flow At Step 2 of the Process. 9
2. The Principles in the *Canyon Villas* Case Apply. 11
3. The County Assessor's Deductions for Obsolescence Failed To Ensure That Computed Taxable Value Did Not Exceed Full Cash Value 14
4. The Subdivision Discount to Land is Not the "Functional Equivalent" of Discounted Cash Flow Under NRS 361.224(5)(c) 15

D. Application of the Discounted Cash Flow Valuation Does Not Result in a "Pandora's Box" of Unconstitutional Problems. 18

III. CONCLUSION 21

TABLE OF AUTHORITIES

Cases

Canyon Villas Apartments Corp. v. State of Nevada Tax Comm'n,
124 Nev.Adv.Op. 72, 192 P.3d 746 (2008) 8, 11, 12, 13
Chevron, U.S.A., Inc. v. Natural Resources Defense Council,
467 U.S. 837, 844 (1984) 6
City of Reno v. Reno Police Protective Ass'n,
118 Nev. 889, 900, 59 P.3d 1212 (2002) 6
State Bd. of Equalization v. Bakst,
122 Nev. 1403, 1409, 148 P.3d 717 (2006) 3, 7, 18
State Bd. of Equalization v. Barta,
124 Nev. 58, 188 P.3d 1092 (2008) 7, 18

Statutes

1999 Nev. Stat. 1029-1031 10
NRS 361.227 ..... passim
NRS 361.227(1)(b) 14
NRS 361.227(2)(b) ..... passim
NRS 361.227(5) ..... passim
NRS 361.320 9
NRS 361.357 ..... 2, 17

Regulations

NAC 361.129 3
NAC 361.129(1)(a) 19
NAC 361.1295 ..... 3, 15, 16, 17
NAC 361.316 13

Other Authorities

AB 291 ..... 5, 20
AB 601 10
AGO 87-8 ..... passim
Minutes of Assembly Comm. on Taxation (April 7, 1987) 5, 20
Minutes of the Assembly Comm. on Taxation (April 8, 1999) 10, 21

Constitutional Provisions

Article 10, Section 1 of the Nevada Constitution 18

I. INTRODUCTION

Respondents assert that the issue on appeal is whether the District Court correctly concluded that the evidence upon which the State Board of Equalization ("SBE") relied supported its decisions with respect to valuation of the taxpayer Appellant's properties. Answering Brief at 1:19-23. Such a characterization is overly simplistic. The SBE accepted the County Assessor's view that Appellant's unsold condominiums should be taxed based on list retail prices instead of wholesale value. In this regard, Appellant contends that as a matter of law the unsold condominiums should be taxed based on wholesale values. Therefore, contrary to Respondents' suggestion, this is not a simple case of an administrative agency selecting the evidence which it believed was more credible. Indeed, the SBE Chairman's characterization of the legal issue is more on point: "the question is discounted cash flow to a single buyer, is it an appropriate methodology for tax purposes?" 2 JA, Tab 8, DCT-0414.

Under the two-part system in Nevada, Step 1 is for the Assessor to compute a taxable value pursuant to the applicable statutes and regulations. This appeal implicates Step 1 due to the Assessor's interpretation and application of NRS 361.227(2)(b), including the undisputed fact that Appellant's unsold condominiums qualified as a subdivision for purposes of subpart (2)(b).

Step 2 involves the taxpayer's right to establish that the full cash value is less than the computed taxable value, notwithstanding a legally proper method of assessment by the Assessor. See NRS 361.357. This appeal implicates Step 2 in light of the requirement under NRS 361.227(5) that taxable value not exceed full cash value, and the express statutory language in NRS 361.227(5)(c) authorizing the use of discounted cash flow to equalize the values. The Assessor applied obsolescence to reduce the computed taxable value to approximate retail list price. However, as a matter of law, the SBE should have applied discounted cash flow to reduce the taxable value to the wholesale values as specifically contemplated under subpart (5)(c).

As set forth below, Respondents' arguments addressing subsections (2) and (5) of NRS 361.227 are flawed and simply do not support their position that the unsold condominiums should be taxed based on retail instead of wholesale values. Respondents also raise a "Pandora's Box" scenario, which as set forth below, is completely baseless.

II. ARGUMENT

A. Standard of Review.

As an initial threshold matter, in Part IV.A. of their Brief, Respondents suggest that the SBE is entitled to deference that should not be disturbed if

supported by substantial evidence. See Answering Brief at 3:10-4:6. However, this is not a case where competing appraisers simply disagree on the figures used in valuation. As stated by this Court in a case overruling an SBE decision, "[a]gency decisions that are based on statutory construction, however, are questions of law, which this court reviews *de novo*." State Bd. of Equalization v. Bakst, 122 Nev. 1403, 1409, 148 P.3d 717 (2006). Therefore, neither the SBE nor the Assessor can be accorded deference in this matter.

B. Under Step 1 of the Process, Respondents' Interpretation and Application of NRS 361.227(2)(b) Is Flawed.

Part IV.C. of Respondents' Brief sets forth a roadmap of the Assessor's valuation method in an attempt to comply with Step 1 of the process. See Answering Brief at 7:22-15:23. In a nutshell, Respondents contend that by following NAC 361.129 and NAC 361.1295, the Assessor properly appraised the unsold condominiums as individual units. However, Respondents' interpretation and application of NRS 361.227(2)(b) is superficial. In particular, Respondents (1) barely acknowledge the statutory language; (2) altogether ignore the legislative history; and (3) shamelessly attempt to justify the SBE's application of non-applicable regulations.

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1. The Statutory Language Supports an Interpretation in Appellant's Favor.

Respondents' Brief barely mentions the statutory language in NRS 361.227(2)(b). The exact language in Subsection 2 of NRS 361.227 states:

> 2. The unit of appraisal ***must be a single*** parcel ***unless***:
>
> (a) The location of the improvements causes two or more parcels to function as a single parcel;
>
> (b) The parcel is one of a group of contiguous parcels ***which qualifies for valuation as a subdivision*** pursuant to the regulations of the Nevada Tax Commission; or
>
> (c) In the professional judgment of the person determining the taxable value, the parcel is one of a group of parcels which should be valued as a collective unit. (Emphasis added).

Respondents admit that the "unit of appraisal" pertains to appraising the entire real property, not merely the land. Cf. Answering Brief at 9:13-16. However, Respondents conveniently omit any reference to the word "unless." That is, the unit of appraisal must be a single parcel "unless" subparts (a), (b) or (c) apply. Because of the crucial word, "unless," the unit of appraisal *must not* be a single parcel if either subparts (a), (b) or (c) apply. Consequently, the plain language dictates that parcels which qualify as a subdivision be appraised collectively.

2. The Legislative History Supports an Interpretation in Appellant's Favor.

Respondents completely ignore the legislative history cited in Appellant's

Opening Brief, in particular, former SBE Chairman Johnson's testimony in support of AB 291. Chairman Johnson explained in layperson terms why unsold lots in a subdivision are not of equal value to the retail value of sold lots because of holding costs and uncertainty in the time of sale. See Minutes of Assembly Comm. on Taxation (April 7, 1987) at 19. "A present worth calculation is applied over the absorption rate to arrive at present value." Id. at 18. That is, a discounted cash flow is applied to determine present value. Importantly, Chairman Johnson described subdivision appraisal methods, and the appraisal unit being the "entire subdivision":

> The Federal Home Loan Board has published appraisal requirements that force the appraiser today to address ***the value of the appraisal unit, the entire subdivision.*** The lending is now based upon the value of the entire unit, not the gross potential sales of that subdivision. Id. at 17 (emphasis added).

Thus, both the collective valuation of the entire subdivision of unsold lots and the discounted cash flow analysis were rationales for the adoption of NRS 361.227(2)(b).

Respondents also ignore AGO 87-8, which was a significant opinion leading up to the passage of AB 291. Again, in plain English, AGO 87-8 explained the "subdivision analysis theory" and application of discounted cash flow to appraise unsold lots in a subdivision collectively. See generally AGO 87-8 (April 15, 1987)

at 29-30; see also id. at 28 ("Cannot this same concept of a flexible appraisal unit [as a collective unit] be applied in analyzing and appraising a subdivision?").

Respondents' omission of this legislative history is glaring and further undermines their arguments that NRS 361.227(2)(b) does not require the collective appraisal of the unsold condominiums.

3. The SBE's Reliance On Uneffective Regulations Is Not Justified.

In Part IV.D. of their Brief, Respondents attempt to justify or explain the SBE's rationale in citing to the regulations in LCB File No. R039-10 which on their face cannot apply until the fiscal year beginning July 1, 2012. See Answering Brief at 15:24-18:7. In light of the express prohibition in Section 62 of these regulations, Respondents assert that the Assessor and SBE did not need to rely on these regulations because they merely confirm the SBE's interpretation of the statutes. Such a position is ludicrous.

The cases cited by Respondents, at most, stand for the basic proposition that the interpretation of an administrative agency charged with administering an act should be given deference. See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 844 (1984); see also City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 900, 59 P.3d 1212 (2002). However, there is no

legal authority to support the notion that an agency can unilaterally apply a regulation retroactively under the guise of supposedly codifying existing law, especially when the effective date of that regulation is expressly stated to apply two years in the future. Cf. Answering Brief at 17:20-23. These regulations are not long-standing or even short-standing, but instead are future regulations which were adopted in response to this Court's holdings in State Bd. of Equalization v. Barta, 124 Nev. 58, 188 P.3d 1092 (2008) and State Bd. of Equalization v. Bakst, 122 Nev. 1403, 1409, 148 P.3d 717 (2006). As highlighted in Appellant's Opening Brief, the SBE treated the future regulations as if currently applicable in a manner similar to Barta. See Barta, 188 P.3d at 1099 ("Regulations, like statutes, operate prospectively, unless an intent to apply them retroactively is clearly manifested"). Therefore, the SBE's application of future regulations in LCB File No. R039-10 is completely unjustified. More importantly, the plain language of NRS 361.227(2)(b) required the appraisal unit of the unsold subdivision condominiums to be collectively appraised as one.

Even if this Court determines that the Assessor's methods of appraisal were proper under Step 1 of the process, all roads lead to the inevitable conclusion that taxable value exceeded full cash value in violation of NRS 361.227(5).

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C. Under Step 2 of the Process, Respondents' Interpretation and Application of NRS 361.227(5) is Flawed.

Even if this Court were to determine that the Assessor's initial method of appraisal of the individual units of the subdivision were correct under Step 1, the SBE's Decisions were nevertheless unjust and inequitable under NRS 361.227(5) at Step 2 of the process. In particular, the SBE ignored the discounted cash flow analysis which was needed to ensure that the computed taxable value did not exceed full cash value under NRS 361.227(5)(c).

Respondents cite to NRS 361.227(5) only once in their Brief. See Answering Brief at 13:8-10. Their approach is threefold: (1) that the principles in Canyon Villas Apartments Corp. v. State of Nevada Tax Comm'n, 124 Nev.Adv.Op. 72, 192 P.3d 746 (2008) regarding the income capitalization approach under NRS 361.227(5)(c) do not apply, id. at 4:7-6:23; (2) in ensuring that computed taxable value not exceed full cash value, "the Assessor had no option but to exercise his judgment in applying obsolescence to those individual units," id. at 13:4-8; and (3) by applying a 50% subdivision discount to land at Step 1, Appellant received the "functional equivalent" of a discounted cash flow analysis, id. at 14:2-15:23. As set forth below, such arguments are completely without merit and ignore AGO 87-8, the legislative history, and the established

practice by appraisers in the real world who apply a discounted cash flow analysis in appraising subdivisions.

1. AGO 87-8 and the Legislative History Reflects that the SBE Can Apply Discounted Cash Flow At Step 2 of the Process.

It is important to remember that the question presented in AGO 87-8, as requested by the Nevada Department of Taxation and the SBE, was as follows.

> May the Nevada Department of Taxation and ***State Board of Equalization***, as well as the county assessors and local boards of equalization, utilize the concepts set forth in the ***subdivision analysis theory of appraisal*** when appraising and equalizing property in Nevada? See AGO 87-8 at 28 (emphasis added).

Thus, the question involved the SBE's valuation methods at Step 2 of the process to ensure taxable value does not exceed full cash value in violation of NRS 361.227(5). Before answering "yes" to the question, the Attorney General described the commonly accepted method of applying a discounted cash flow analysis to appraise subdivision lots collectively to determine wholesale value. Id. at 29. The Attorney General then discussed the flexibility given to the appraiser in describing the appraisal unit and noted that NRS 361.320 provides the State Tax Commission with authority to appraise property of certain companies as a collective unit. Id. at 30. The Attorney General also cited an example of the SBE appraising unsold lots in a commercial subdivision collectively and applying

discounted cash flow in concluding that the practice was legally allowed. Id. at 31-32.

The concepts of flexible unit appraisal and discounted cash flow approved by the Attorney General were later codified by the 1999 Nevada Legislature by the passage of AB 601. See 1999 Nev. Stat. 1029-1031. Tim Morse, then chairman of the Clark County Board of Equalization, and Mark Schofield, then Clark County Assessor, both testified in support of the legislation. See Minutes of the Assembly Comm. on Taxation (April 8, 1999). Regarding discounted cash flow, Chairman Morse stated that it was "recognized within the industry as an appropriate way to value property" and indicated that at least four or five examples came before the Clark County Board where it was appropriate. Id. Assessor Schofield clarified that discounted cash flow was already being used at a Step 2 appeal: "Historically, *the board in Clark County had employed discounted cash flow as a methodology for many years.*" Id. (emphasis added). The addition of the words, "discounted cash flow," to subpart 5(c) essentially codified existing practices because it was "a derivative of the income approach":

> Mr. Schofield said it was more or less a clarification as it related to discounted cash flow. It stated in NRS 361.227 that the capitalization of the fair economic income expectancy or fair economic rent could be used, and it added to that an analysis of the discounted cash flow. However, what he interpreted that statute to mean was: "***You could***

> ***indeed use the discounted cash flow analysis because it is part of the income approach***.["] Id. (emphasis added).

Mr. Schofield reiterated that discounted cash flow is used "to test whether or not the taxable value that we [the Assessor's office] place on property under the law exceeds what the owner of that property can get on the open market." Id.

This historical background completely undermines Respondents' interpretation of NRS 361.227(5). Plain and simple, the SBE has historically utilized discounted cash flow in subdivision valuation and since 1999 has been expressly vested with the authority under subpart 5(c).

2. The Principles in the *Canyon Villas* Case Apply.

Canyon Villas is an important case involving this Court's interpretation of subpart 5(c) of NRS 361.227 and the income capitalization method. The statutory language in subpart 5(c) provides that in determining whether computed taxable value exceeds full cash value, a person may consider:

> (c) Capitalization of the fair economic income expectancy or fair economic rent, ***or an analysis of the discounted cash flow***. (Emphasis added).

The Canyon Villas Court generically referred to subpart 5(c) as the "income capitalization method." Id. at 749-750 ("the Assessor determined the properties' full cash values using one of three alternative valuation methods provided by

subsection 5 of that statute - the income capitalization method").

Against this backdrop, Respondents attempt to distinguish Canyon Villas by narrowly limiting its holding to properties which receive annual income in the form of rent. See Answering Brief at 4:18-10; 5:6-8. Aside from Respondents' erroneous reading of the holding in Canyon Villas,[1] such a false distinction ignores this Court's broad proclamation: "[w]hen ... the property produces an income, *the income capitalization approach is usually the best method*" in determining the property's full cash value." Canyon Villas, 192 P.3d at 753 (emphasis added). The Court's description of the income capitalization approach further undermines Respondents' position:

> The income capitalization approach to valuing real property is based on two factors: (1) the annual income that a buyer expects to receive from the property, ***usually in the form of rents***; and (2) the rate at which a buyer could expect a return on his investment. Thus, this method takes into account both ***the property's income-generating potential and the time-value of money*** in determining its current value. Id. at 753-754 (emphasis added).

Thus, while income is "usually in the form of rents," the Canyon Villas

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[1]Respondents assert that the Canyon Villas Court held that the County Assessor and SBE *erred* by not applying the income capitalization method. See Answering Brief at 4:20-26. In reality, the Court *affirmed* the County Assessor's application of the income capitalization method and the SBE's adjustment of the capitalization rate to account for construction defects. Canyon Villas, 192 P.3d at 756.

holding is not limited to rental income properties. Indeed, Respondent admits that Appellant "expects to make money from the condominium project." See Answering Brief at 6:11-12. "Income" is not restricted to annually recurring rental income, but instead is defined as "*money or other benefits* stemming from the ownership of property, *generally* received on a regular monthly or annual basis." NAC 361.316 (emphasis added).

To remove any doubt that Canyon Villas applies, the Assessor's own evidence contained the obvious fact of the taxpayer's intent is to earn income:

> 06/13/2006 - Condominium list prices established by L3 Development
> 1. ***Projected income on complete sell out*** = $188,689,947
> . . .
> 01/15/09 - Corus Bank reduces list prices by 33%
> 1. ***Projected income on complete sell out*** = $127,622,161

See 1 JA, Tab 6, DCT-0179 to DCT180 (emphasis added); 2 JA, Tab 8, DCT-0294 to DCT-0295 (emphasis added).

The inescapable conclusion is that under Canyon Villas, the income capitalization approach is not limited to rental income property. Instead, when considering "the property's income-generating potential and the time-value of money," NRS 361.227(5)(c) provides the Assessor and SBE with the flexibility of considering capitalization of fair economic income expectancy, capitalization of fair economic rent, and discounted cash flow to ensure that taxable value does not

exceed full cash value. The Assessor applied obsolescence instead, and the SBE committed legal error by ignoring Appellant's discounted cash flow evidence.

3. The County Assessor's Deductions for Obsolescence Failed To Ensure That Computed Taxable Value Did Not Exceed Full Cash Value.

Respondents explain that the Assessor "had no option" but to apply obsolescence to the improvements under NRS 361.227(1)(b) to ensure that computed taxable value did not exceed full cash value. Answering Brief at 13:4-8. The legislative history described above and plain language of NRS 361.227(5)(c) undermine such an inflexible position. More importantly, at Step 2, the SBE's refusal to consider discounted cash flow resulted in the unjust and inequitable result of the unsold subdivision condominiums being taxed above full cash value.

The Assessor calculated obsolescence essentially as the difference between the computed taxable value and the list or sales price. See 1 JA, Tab 6, DCT-0181; DCT-0222 (2009-10: "By applying obsolescence we have reduced the appraised taxable value to 90% of the adjusted list prices. . . . list - 10%"); 2 JA, Tab 8, DCT-0293 (2010-11: obsolescence was applied so that total taxable value equaled the "estimated sale price"). By tying obsolescence to the list or sales price, the end result was to tax Appellant based on gross sell-out of the entire project, or in the case of the 2009-10 tax year, gross sell-out minus 10%. See 1 JA, Tab 6, DCT-

0179 to DCT180; 2 JA (figures for "Projected income on complete sell out"); Tab 8, DCT-0294 to DCT-0295 (same).

The SBE erred by allowing the project to be taxed based on gross sell-out of the units and failing to recognize that obsolescence was not sufficient to prevent taxable value from exceeding full cash value in violation of NRS 361.227(5). The conclusion AGO 87-8 is fully applicable and appropriate in this case:

> The primary concern is that ***the taxpayer should not pay taxes on the aggregate of individual retail lot prices. Using the gross sell-out figure would result in the taxable value greatly exceeding market value***, a result specifically prohibited by statute." AGO 87-8 at 32 (emphasis added).

4. The Subdivision Discount to Land is Not the "Functional Equivalent" of Discounted Cash Flow Under NRS 361.227(5)(c).

Part IV.C.4. of Respondents' Brief argues that the 50% subdivision discount to land under NAC 361.1295 is the "functional equivalent" to a discounted cash flow analysis under NRS 361.227(5)(c). See Answering Brief at 14:2-15:23. Such argument is specious at multiple levels.

First, the 50% subdivision discount to land resulted in no real discount. The Assessor determined land values to be 25% of the median sales price. JA, Tab 6, DCT-0178; 2 JA, Tab 8, DCT-0292. However, even with the 50% discount to land (effectively reducing the land value to 12.5% of the median sales price), the

calculated taxable value still exceeded full cash value, as admitted by Respondents, which resulted in the application of obsolescence. Cf. Answering Brief at 14:4-8.

Second, as reflected in AGO 87-8 and the legislative histories quoted above, discounted cash flow is used in subdivision valuation to ascertain the true value based on holding costs and absorption – a wholesale value. While a subdivision discount to land pursuant to NAC 361.1295 might be a "functional equivalent" to discounted cash flow in subdivisions of raw land, the hefty $105 million replacement cost new figure regarding the improvements prevented any such "functional equivalent" reduction akin to a discounted cash flow analysis. The 50% discount to land did not even reduce the values to retail prices, let alone the wholesale value that discounted cash flow achieves. Therefore, Respondents' assertion that Appellant received the "functional equivalent" of a discounted cash flow analysis is ludicrous.

Finally, Respondents boldly state, "it is the Assessor, not the taxpayer, who decides how property within Washoe County is best appraised under the statutory and regulatory framework." See Answering Brief at 15:19-23. Such statement is based on NAC 361.1295(1), which expressly provides that "*the county assessor* shall use" certain information in determining the taxable value of land in a subdivision. See Answering Brief at 11:2-13. The limitation of this regulation to

county assessors is extremely significant. In essence, NAC 361.1295 only governs the subdivision valuations methods by *the county assessor* at Step 1. However, in a Step 2 appeal pursuant to NRS 361.357, the County Board and/or SBE is not legally required to apply NAC 361.1295 when appraising a subdivision. Instead, NRS 361.227(5) more broadly applies to any "*person* determining whether taxable value exceeds that full cash value," such as the County Board or SBE at Step 2, and further vests such "person" with the legal authority to consider more accurate subdivision valuation methods, such as discounted cash flow. Therefore, the SBE was neither bound to apply the supposedly "functional equivalent" subdivision valuation methodology under NAC 361.1295, nor was it required to accept *carte blanche* the County Assessor's valuation when applying that regulation.

The record is clear that the SBE Chairman understood the purpose of applying discounted cash flow:

> I definitely understand it. And it's what the property owner, if they're going to sell it to another investor, how they would look at it. See 2 JA Tab 8, DCT-0433.

However, the SBE Chairman insisted, absent any legal support, that the only way to value the condominiums collectively was for the taxpayer to "go down to the courthouse and rerecord it as a single fee simple apartment building." 2 JA, Tab 8, DCT-0425. Having the legal power to consider discounted cash flow at

Step 2 under NRS 361.227(5)(c), but instead choosing to accept the Assessor's mechanical application of the regulation resulted in the fundamental inequity of taxable value exceeding full cash value in violation of NRS 361.227(5).

D. Application of the Discounted Cash Flow Valuation Does Not Result in a "Pandora's Box" of Unconstitutional Problems.

Finally, Section IV.E. of Respondents' Brief asserts that a ruling in favor of the taxpayer Appellant will result in a violation of the right to a uniform and equal rate of assessment and taxation granted in Article 10, Section 1 of the Nevada Constitution. See Answering Brief at 18:8-19:22. Respondents suggest that this Court will open "Pandora's Box" due to the different valuations between Appellant's unsold condominiums and those which have already been sold to individual purchasers. Id. at 18:18-22. While it is understandable why Respondents might be extra sensitive to this constitutional issue in light of the Assessor's errors depicted in Bakst and Barta, the "Pandora's Box" argument fails at multiple levels.

Initially, it is absurd for Respondents to suggest that a taxpayer whose arguments are legally valid should nevertheless be denied relief because others who own similar properties will not receive the same economic benefit. In this regard, the appealing taxpayer takes the risk and receives the benefits, if any, of its

appeal, while the non-appealing taxpayer takes no risk and receives no benefit. Taken to its logical extreme, under Respondents' view no taxpayer could ever prevail if the result is a benefit to the appealing taxpayer that is different from the tax burdens imposed on similarly situated property owners who chose not to appeal.

The more obvious flaw in Respondents' argument is that the individual condominium purchasers do not own multiple parcels for investment purposes which qualify for valuation as a subdivision under NRS 361.227(2)(b). In particular, because the individual purchasers' condominiums are not "one of a group of 10 or more contiguous parcels held under common ownership" as required under NAC 361.129(1)(a), the method of valuation for those purchasers is entirely different.

Next, from an appraiser's standpoint, the true value of an unsold condominium owned by Appellant is not the same as the value of the individually sold units. As succinctly explained in AGO 87-8 in using the hypothetical situation involving a large subdivision with few lots sold and a $25,000 asking price per lot:

> A single-lot owner, by paying $25,000 for his lot, has established his own market value; he should be prepared to pay taxes on that figure, and he derives benefit from the services he is provided by paying

> those taxes. ***However, the present value of a lot which is not to be sold for another four or five years is today worth nowhere near the future sales price of $25,000. . . .*** Thus, ***taxing the subdivision owner today on the gross sell-out figure would be taxing him in contravention to the statute which prohibits taxable value from exceeding full cash value.*** NRS 361.227. See AGO 87-8 at 29 (emphasis added).

Finally, Respondents' inequity argument perpetuates arguments made by the Assessor's Association in 1987 when opposing AB 291, which were rejected by the Legislature. In particular, Dick Franklin, representative of the Assessor's Association, "urged that discounting for developers not be allowed," stating:

> The [Assessors] association feels that although such procedures may be appropriate in fee lenders and borrowers, they are not appropriate when valuing property for purposes of taxation. ***This practice would require one value to the average homeowner and lower values to the owner of many lot[s].***" See Minutes of the Assembly Comm. on Taxation (April 7, 1987) at 16.

Later in his testimony, Mr. Franklin stated, "if you've got two identical pieces of property, they get the same assessment regardless of who owns it. And this discounting would change that." Id. at 23. Of course, the 1987 Legislature rejected the Assessor's Association's argument in favor of the principle and statutory mandate that "the computed taxable value of any property must not exceed its full cash value." See id. at 17 (Johnson testimony) and 21 (retired SBE member's testimony). And as described above, the 1999 Legislature codified the

already existing practice of applying discounted cash flow to test whether or not the taxable value exceeds "what the owner of that property can get on the open market." See Minutes of the Assembly Comm. on Taxation (April 8, 1999). By advancing an argument that was previously rejected in 1987, and choosing to ignore the well accepted discounted cash flow method to ensure that computed taxable value did not exceed full cash value, the SBE affirmed unjust and inequitable valuations by the Assessor in violation of NRS 361.227(5).

III. CONCLUSION

For the reasons set forth above, the District Court's Order should be reversed. Appellant respectfully requests this Court to remand the case to the District Court with instructions to set aside the SBE's decisions in their entirety and to further remand the matter to the SBE with instructions as the Court deems just and proper, including to order Respondent Washoe County to issue tax refunds to Appellant based on the wholesale values presented by Appellant for the 2009-10 and 2010-11 tax years.

NRS 239B.030 CERTIFICATION

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

///

Dated this 22d day of March, 2012.

MAUPIN, COX & LeGOY

By: _____

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that I have read this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is

(X) Proportionally spaced, has a typeface of 14 points or more and contains 4,694 words;

( ) Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text; or

( ) Does not exceed 30 pages.

3. Finally, I certify that I have read this appellate 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 this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a

reference to the page and volume number, if any, 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 the Nevada Rules of Appellate Procedure.

Dated this 22nd day of March, 2012.

MAUPIN, COX & LeGOY

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CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I am an employee of MAUPIN, COX & LeGOY, Attorneys at Law, and in such capacity and on the date indicated below, I deposited for mailing from a point within the State of Nevada a sealed envelope which had enclosed within a true and correct copy of the within document, which envelope had postage fully prepaid thereon, and was addressed as follows:

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Dated this 22nd day of March, 2012.

EMPLOYEE