

IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE
INCLINE ASSETS, INC., et al.

Appellants

vs.

THE STATE OF NEVADA ex rel
STATE BOARD OF EQUALIZATION,
et al.,

Respondents.

Electronically Filed
Sep 11 2013 11:39 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
Supreme Court Case No. 63581
District Court Case No. CV03-06922

**MOTION FOR STAY OF JULY 1, 2013 ORDER AND REINSTATEMENT
OF PARTIAL STAY OF FEBRUARY 8, 2013 STATE BOARD OF
EQUALIZATION DECISION PENDING RESOLUTION OF THIS
APPEAL; SUPPORTING POINTS AND AUTHORITIES**

Appellants Village League to Save Incline Assets, Inc.; Maryanne Ingemanson, Trustee of the Larry D. & Maryanne B. Ingemanson Trust; Dean R. Ingemanson, Individually and as Trustee of the Dean R. Ingemanson Trust; J. Robert Anderson; Les Barta; Kathy Nelson, Trustee of the Kathy Nelson Trust and Andrew Whyman ("Village League appellants"), move the Court, pursuant to Rule 8(b) of the Nevada Rules of Appellate Procedure to stay the July 1, 2013 Order entered by the Second Judicial District Court dismissing consolidated case, CV03-06922, and thereby to reinstate the previously entered and unopposed partial stay of the underlying decision of the State Board of Equalization ("the SBOE

decision"). The partial stay had put on hold any implementation of the SBOE decision to the extent that it directed the Washoe County Assessor to conduct reappraisals of residential properties at Incline Village/Crystal Bay for the tax years 2003-2004, 2004-2005 and 2005-2006 and related actions. A copy of the order for partial stay is attached as Exhibit 1.

On July 3, 2013, Village League appellants filed their notice of appeal of the July 1, 2013 order. On July 19, 2013, the remaining appellants ("the Bakst appellants") filed their notice of appeal of that order. Both appeals have now been docketed in this Court as a single appeal.

On July 19, 2013, appellants filed in the District Court their motion for reconsideration or, in the alternative, for a stay of the July 1, 2013 order and the reinstatement of the previously ordered partial stay of the SBOE decision. A copy of the motion is attached as Exhibit 2. Although both the Washoe County and the SBOE opposed reconsideration, neither of them opposed the alternative request for stay or the reinstatement of the partial stay.¹

On September 4, 2013, the District Court denied the motion for reconsideration without addressing the unopposed alternative motion to stay.

¹ The County Assessors of Pershing and Churchill Counties are nominal parties to the judicial review case below. Neither the District Court's order of dismissal nor the SBOE decision is directed at either Assessor. Both were parties of record, however, to the agency proceeding and necessarily named for jurisdictional purposes in the petition for judicial review. Neither opposed either reconsideration of the Court's order or the request for stay.

Since the District Court "failed to afford the relief requested," the Village League appellants now ask this Court, pursuant to NRAP Rule 8, to stay, pending the determination of this appeal, the July 1, 2013 order. A stay of the July 1, 2013 order will effectively reinstate the partial stay of the SBOE decision. This motion for stay will be unopposed in this Court as it was unopposed in the court below. Copies of email exchanges with counsel for Washoe County and the SBOE agreeing to the stay are attached as Exhibit 3. Respondent County Assessors of Churchill and Pershing County did not oppose the stay in the court below and have no grounds to oppose it in this Court.

Under NRAP Rule 8(c), the Court generally considers the following factors in determining a motion for stay:

- (1) Whether the object of the appeal will be defeated if a stay is denied;
- (2) Whether the appellant will suffer irreparable injury if a stay is denied;
- (3) Whether the respondent will suffer irreparable or serious injury if the stay is granted; and

- (4) Whether the appellant is likely to prevail on the merits in the appeal.

See also Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). All of these factors favor the entry of an order both staying the District Court order and reinstating the partial stay of the SBOE decision.

A. The Object of the Appeal Will Be Defeated if a Stay Is Denied.

The object of this appeal is to have the threshold issues of the State

Board of Equalization's jurisdiction to order mass reappraisals of residential properties dating back ten years determined prior to the actual performance of such appraisals. This object will clearly be defeated if the Order is not stayed and the partial stay of the SBOE decision reinstated.

B. Appellants Will Suffer Irreparable Harm Absent A Stay.

If the July 1, 2013 Order is not stayed and the partial stay of the SBOE decision reinstated, Village League appellants will be subject to unconstitutional reappraisals of their properties without effective recourse, possible additional tax assessments and liens, and interference with property values and marketability before the appeal can be determined. Even if the July 1, 2013 Order is ultimately reversed, the Village League appellants will have been irrevocably injured in the absence of a stay.

C. Respondents Will Not Suffer Injury if the Order Is Stayed.

Respondents will not suffer any injury if the District Court's July 1, 2013 Order is stayed and the previously entered partial stay reinstated. The absence of any harm to respondents is demonstrated in their decision not to oppose the stay in the District Court and their willingness to stipulate to a stay here. *See* email exchange attached as Exhibit 3. In fact, the County and State respondents themselves will be benefited by a decision on the threshold issues of jurisdiction before expending limited public funds on what may well be ineffective and unnecessary reappraisals and related actions.

D. Village League Appellants Are Likely to Prevail on the Merits.

The Village League appellants believe that they are likely to prevail on the merits of this appeal. As an agency created by the Legislature, the SBOE has limited jurisdiction. It has only those powers expressly granted by statute or necessarily implied. The power to order reappraisals meets neither criteria. The enabling statutes make no mention of reappraisals and it cannot credibly be argued that the power to order reappraisals is "necessary" inasmuch as the SBOE has been in existence for approximately 100 years without ever ordering a single reappraisal let alone the mass reappraisals of thousands of properties going back ten years.

Furthermore, in ordering reappraisals, the SBOE applied its regulations both piecemeal and retroactively, violating both those regulations themselves and the prohibition against retroactive application. In addition, neither the statutes nor the SBOE decision contain the necessary due process protections for challenging the reappraised values. Although the District Court based its ruling on the grounds that the "normal and standard process" for challenging assessments was available as taxpayers' remedy from unlawful reappraisals in this case, both the SBOE and Washoe County have admitted that the "normal and standard process" would not be available to homeowner taxpayers here. Under the circumstances of the SBOE decision, taxpayers have no remedy at law to challenge new valuations to be made upon new appraisals by the Washoe County Assessor. Finally, at the time of the SBOE decision, the SBOE itself was unlawfully

constituted in violation of its enabling statutes, rendering that decision unlawful.

Even if the Court did not find that appellants are likely to prevail on the merits of this appeal, the mere possibility of their prevailing justifies a stay of the District Court's July 1, 2013 Order and the reinstatement of the partial stay of the SBOE decision. *Mikohn Gaming Corp. v. McCrea*, *supra*, 120 Nev. at 251, 89 P.3d at 38 (2004); *see also Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005) (when determining conditions for stay pending appeal, the focus is properly on what will "maintain the status quo"). It makes no sense to expend limited public funds complying with an order for reappraisals that may be outside the SBOE's jurisdiction or otherwise unlawful.

Based on the foregoing, the Village League appellants respectfully request that this Court stay the District Court's July 1, 2013 Order and reinstate the partial stay of the SBOE decision pending the resolution of this appeal.

Dated this 11th day of September, 2013.

SNELL & WILMER

by 

Suellen Fulstone, Bar No. 1615
50 W. Liberty Street, Suite 510
Reno, Nevada 89501
(775) 785-5440

Attorneys for Village League Appellants

CERTIFICATE OF SERVICE

This document was filed electronically with the Nevada Supreme Court on September 11, 2013. Electronic service of this document shall be made in accordance with the Service List as follows:

Dawn Buoncristiani
Office of the Attorney General
100 North Carson St.
Carson City, NV 89701

David Creekman
Washoe County District Attorney's Office
Civil Division
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Reno, NV 89520

Arthur E. Mallory
Churchill County District Attorney
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Fallon, NV 89406

Jim C. Shirley
Pershing County District Attorney
400 Main Street
P.O. Box 934
Lovelock, NV 89419

And mailed a copy to the following:

Norman J. Azevedo
405 N. Nevada Street
Carson City, NV 89703

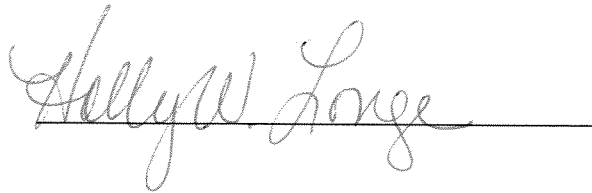
A handwritten signature in cursive script, reading "Shelly W. Lange", is written over a horizontal line.

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)	Case No.	CV03-06922
ASSETS, INC., et al.,)		
)	Dept. No.	7
Petitioners,)		
)		
vs.)		
)		
STATE OF NEVADA on relation of the State)		
Board of Equalization; WASHOE COUNTY;)		
BILL BERRUM, Washoe County Treasurer,)		
)		
Respondents.)		

**ORDER TO STAY IMPLEMENTATION OF PARAGRAPHS 1 THROUGH 5,
INCLUSIVE, OF FEBRUARY 8, 2013 STATE BOARD OF EQUALIZATION ORDER**

Petitioners have moved the Court to stay the implementation of paragraphs 1 through 5, inclusive, of the Equalization Order 12-001 entered by the State Board of Equalization on February 8, 2013, pending determination of Petitioners' Objections to the Order, filed on February 22, 2013. Paragraphs 1 through 5 provide as follows:

- 1) The Washoe County Assessor is directed to reappraise all residential properties located in Incline Village and Crystal Bay to which an unconstitutional methodology was applied to derive taxable value during the tax years 2003-2004, 2004-2005, and 2005-2006. The reappraisal must be conducted using methodologies consistent with Nevada Revised Statutes and regulations approved by the Nevada tax Commission in existence during each of the fiscal years being reappraised. The reappraisal must result in a taxable value for land for each affected property for the tax years 2003-2004; 2004-2005; and 2005-2006.

- 1
- 2) The Washoe County Assessor must complete the reappraisal and report the results to the State Board no later than one year from the date of this Notice of Decision. The report shall include a list for each year, of each property by APN, the name of the taxpayer owning the property during the relevant years, the original taxable value and assessed value and the reappraised taxable value and assessed value. The report shall also include a narrative and discussion of the processes and methodologies used to reappraise the affected properties. The Washoe County Assessor may request an extension if necessary. *See Tr., p. 78, l. 14 through p. 79, l. 1.* The Washoe County Assessor may not change any tax roll based on the results of the reappraisal until directed to do so by the State Board after additional hearing(s) to consider the results of the reappraisal and the sales ratio study conducted by the Department.
- 3) The Department is directed to conduct a sales ratio study consistent with NAC 361.658 and NAC 361.662 to determine whether the reappraised taxable values of each affected residential property in Incline Village and Crystal Bay meets the level of assessment required by law; and to report the results of the study to the State Board prior to any change being applied to the 2003-2004, 2004-2005, or 2005-2006 tax rolls. The Washoe County Assessor is directed to cooperate with the Department in providing all sales from the Incline Village and Crystal Bay area occurring between July 1, 1999 to June 30, 2004, along with such information necessary and in a format to be identified by the Department, for the Department to perform the ratio study.
- 4) The Washoe County Assessor shall separately identify any parcel for which the reappraised taxable value is greater than the original taxable value, along with the names and addresses of the taxpayer owning such parcels to enable the State Board to notify said taxpayers of any proposed increase in value.
- 5) The Washoe County Assessor shall send a progress report to the State Board on the status of the reappraisal activities six months from the date of this Equalization Order including the estimated date of completion, unless the reappraisal is already completed.

The State Board of Equalization filed its "Non-Opposition To Plaintiffs' Motion To Stay State Board Of Equalization's Order" on March 8, 2013. The County respondents filed their "Notice of Non-Aversion to Requested Stay and Response to Objections" on March 22, 2013. Respondents having consented to the granting of the motion to stay under Rule 13 of the Rules of the District Courts of Nevada, and good cause appearing,

1 IT IS ORDERED:

2 1. Petitioners' motion to stay is granted.

3 2. Items 1 through 5, inclusive, of the February 8, 2013 Equalization Order 12-001, as
4 set forth above, are stayed and neither the Washoe County Assessor nor the State Department of
5 Taxation shall take any further action in the implementation of items 1 through 5 from the date of
6 service of this order until such action is expressly permitted by further order of this Court.
7

8 3. Neither the Washoe County Assessor nor the State Department of Taxation is a
9 party to this action although both are subject to Equalization Order 12-001. Upon entry of this
10 Order, petitioners shall promptly serve a copy upon both the Washoe County Assessor and the
11 Executive Director of the State Department of Taxation by delivery to their respective offices.

12 Dated this 1ST day of APRIL, 2013.

13
14
15 Darick Flanagan
16 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 1ST day of ~~March~~ ^{APRIL}, 2013, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Suellen Fulstone, Esq. for Village League to Save Incline Assets, Inc.;

Dawn Buoncristiani, Esq. for State Board of Equalization; and

David Creekman, Esq. for Washoe County

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

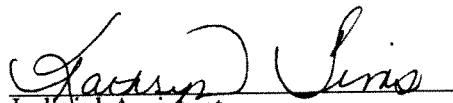

Judicial Assistant

EXHIBIT 2

FILED

Electronically
07-19-2013:02:24:05 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3867097

1 **2175**
2 SNELL & WILMER L.L.P.
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5 Reno, Nevada 89501
6 Telephone: (775) 785-5440

7 Attorneys for Petitioners

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 VILLAGE LEAGUE TO SAVE INCLINE)
12 ASSETS, INC., ET AL,)

13 Petitioners,)

14 ELLEN BAKST, JANE BARNHART,)
15 CAROL BUCK, DANIEL SCHWARTZ,)
16 LILLIAN WATKINS, DON AND)
17 PATRICIA WILSON, AND AGNIESZKA)
18 WINKLER,)

19 Petitioners-in-Intervention)

20 vs.)

21 STATE OF NEVADA on relation of the STATE)
22 BOARD OF EQUALIZATION, ET AL,)

23 Respondents.)

24
25 VILLAGE LEAGUE TO SAVE INCLINE)
26 ASSETS, INC. ET AL,)

27 Petitioners,)

28 vs.)

STATE OF NEVADA on relation of the STATE)
BOARD OF EQUALIZATION, ET AL,)

Respondents.)

Case No. CV03-06922

Dept. No. 7

Consolidated with

Case No. CV13-00522

formerly assigned to Dept. No. 3

Snell & Wilmer

L.L.P.
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**MOTION FOR LEAVE TO SEEK RECONSIDERATION OR,
IN THE ALTERNATIVE, FOR STAY OF JULY 1, 2013 ORDER AND
REINSTATEMENT OF STAY OF FEBRUARY 8, 2013 STATE BOARD OF
EQUALIZATION DECISION PENDING APPEAL**

Taxpayer-petitioners move the Court for leave to seek reconsideration of its Order of July 1, 2013, and, upon reconsideration to certify to the Supreme Court its intent to vacate the Order so that the Court may remand for that purpose. In the alternative, Taxpayer-petitioners move the Court to stay its July 1, 2013 order and reinstate the stay previously entered of the February 8, 2013 State Board of Equalization decision pending the resolution of the appeal of the July 1, 2013 decision. This motion is made and based on pleadings on file with the Court, the Nevada Rules of Civil Procedure, the District Court Rules, the Second Judicial District Court Local Rules, and the other authorities cited in the points and authorities which follow.

Respectfully submitted this 19th day of July, 2013.

SNELL & WILMER L.L.P.

By: 

Suellen Fulstone, No. 1615
50 West Liberty Street, Suite 510
Reno, Nevada 89501
Attorneys for Petitioners

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO SEEK
RECONSIDERATION OR, IN THE ALTERNATIVE, FOR STAY OF JULY 1, 2013
ORDER AND REINSTATEMENT OF STAY OF FEBRUARY 8, 2013 STATE BOARD

I. The Court Should Reconsider The Basis For Its July 1, 2013 Order.

Taxpayers move for leave to seek reconsideration on the grounds that the Court has misapprehended the State Board of Equalization's February 8, 2013 decision and has issued its ruling based on that misunderstanding. In its July 1, 2013 Order, the Court writes:

There is no current valid assessment of any of the properties in question. Once the assessments are completed, the Board may then seek additional taxes or refund taxes to the homeowners based upon the new valuation of their property for the years in question. **At that point, any homeowners who disagree with the valuations of their property have an adequate remedy at law by challenging those valuations through the normal and standard process for challenging tax assessments.** Order (July 1, 2013), p. 3, Ins. 17-22. (Emphasis added.)

It is simply not true that "any homeowners who disagree with the valuations of their property . . . [may] challeng[e] those valuations through the normal and standard process for challenging tax assessments."

The State Board of Equalization February 8, 2013 decision contains no provisions whatsoever for homeowners to challenge the new property valuations of the assessor **unless** those new valuations are at levels greater than the previous unconstitutional valuations. **SBOE February 8, 2013 Equalization Order, p. 10, para. 4.** Even though, as the Court pointed out, previous valuations of Incline Village/Crystal Bay properties are unconstitutional, null and void and of no validity whatsoever, the SBOE decision treats those valuations as baselines or standards.¹ On a completely arbitrary basis, the SBOE decision provides for notice and a hearing **only** to taxpayers whose new valuations are above those invalid baselines. Taxpayers whose new valuations fall below those baselines have no opportunity whatsoever to challenge those

¹ If a "baseline" were appropriate, it would have to be the 2002-2003 valuation, the last constitutional valuation of the various properties, and the valuation used by the Supreme Court as the lawful replacement of the invalid 2003-2004, 2004-2005 and subsequent year valuations. See *State Board of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006); *State Board of Equalization v. Barta*, 124 Nev. 58, 188 P.3d 1092 (2008).

1 valuations. There is no requirement that taxpayers even be advised of new valuations that are
2 lower than the previous, unconstitutional valuations. The Assessor is directed to report those
3 valuations only to the SBOE. **SBOE February 8, 2013 Equalization Order, pp. 9-10, para. 2.**
4 Since the SBOE has also now decided that its equalization decisions are administrative rather
5 than adjudicative, taxpayers whose valuations are lower will get no individual notice at all, only
6 the three-day published and posted open meeting law notice of any hearing.

7 The SBOE's February 8, 2013 "equalization" order not only delegates the decision
8 as to which properties were previously valued using unconstitutional methodologies to the
9 Assessor, it also simply "assumes" that new valuations will be constitutional. Accordingly, the
10 SBOE omits any provision for review other than that specifically mandated by the Writ. The
11 SBOE does not reject the previous valuations. This Court, however, has recognized that those
12 previous valuations are totally void and of no effect. On that basis, the Court has determined that
13 the SBOE-ordered new valuations are not truly "reappraisals" but rather, for all practical
14 purposes, the initial valuations done on these properties. As such, the Court, however, apparently
15 believes that property owners will have the "normal and standard processes for challenging those
16 [new] valuations." The Court is mistaken. In fact, just as there **no** provision in the SBOE
17 decision for challenges to new, lower valuations, there is also **no** provision in the statutes for
18 hearings on new valuations applicable to prior fiscal years or for reopening closed tax rolls for
19 prior years on the basis that prior valuations were unconstitutional, void and invalid. *See NRS*
20 *361.300; 361.310.*

21 Under NRS 361.300, every property owner is provided by December 18 with a notice of
22 the valuation of his property on the secured tax roll for the upcoming fiscal year. The property
23 owner then has approximately 30 days to file an appeal with the County Board of Equalization.
24 During those 30 days, the property owner can obtain a copy of the basis for the valuation, can
25 meet with the Assessor's Office to discuss the valuation, can make an investigation of property
26 values, or can retain an appraiser to make an independent valuation. The secured tax roll is
27 closed on January 1 and may be reopened only pursuant to NRS 361.310. Nothing in the statutes
28 provides for, or even allows, taxpayer challenges to be made to new valuations done for prior tax

years, whether or not those new valuations are characterized as “reappraisals.”

Under the SBOE February 2013 “equalization” order, taxpayers whose proposed new property valuations are **greater** than the invalid, void, unconstitutional initial valuations do get a hearing. It should be noted, however, that even those taxpayers are not afforded the “normal and standard process for challenging tax assessments.” Taxpayers whose proposed new property valuations are higher get a hearing before the State Board of Equalization on a 10-day notice (pursuant to the Writ of Mandate and NRS 361.395(2)). A 10-day notice provides no realistic opportunity to contest the Assessor’s valuation. Taxpayers whose proposed new valuations are greater than the previous unconstitutional values do not get a hearing before the County Board of Equalization let alone the more than a month’s notice of the valuation, the opportunity to review the basis for the valuation, or the time to retain an appraiser to do an independent valuation.

Under the February 2013 SBOE “equalization” order, taxpayers whose new valuations are lower than the prior, unconstitutional valuations get no hearing at all. Taxpayers whose new valuations are higher than the prior, unconstitutional valuations get, at best, an inadequate hearing. There is nothing “unripe” or “less than final” about the provisions of the SBOE order that deny taxpayers their constitutional, due process rights to challenge the valuation of their properties for property tax purposes. The “adequate remedy” described by the Court in its July 1, 2013 Order as the basis for denying taxpayers an immediate judicial review of the SBOE decision simply does not exist.

Taxpayer-petitioners also have no adequate remedy for the negative impact on both completed as well as potential transactions involving their property, on property values, on title insurance and related issues involving the purchase, sale and transfer of property rights resulting from an order for reappraisals dating back eight to ten years. The “adequate” remedy described by the Court in its July 1, 2013 Order does not exist. Even if it did, however, taxpayers have no adequate remedy for the adverse impacts on their property rights if they are denied the right to immediate judicial review.

Taxpayer-petitioners have taken an appeal from the Court’s July 1, 2013 Order. If the Court determines that it is appropriate to reconsider and vacate its July 1, 2013 Order, it may

certify its intent to do so to the Supreme Court. At that point, Taxpayer-petitioners can move the Supreme Court to remand the matter to this Court for the purpose of granting such relief. *See Honeycutt v. Honeycutt*, 94 Nev. 79, 575 P.2d 585, 585-586, *disapproved on other grounds*, *Foster v. Dingwall*, 126 Nev. ___, 228 P.3d 453 (2010); *Foster v. Dingwall*, 126 Nev. ___, 228 P.3d 453, 455-456.

II. In the Absence of Reconsideration, the Court Should Stay Its Order and Reinstate the Stay of the SBOE Decision Pending the Determination of the Appeal.

If this Court does not reconsider and vacate its July 1, 2013 Order, it should at least stay that order and reinstate the stay of the SBOE decision in order to preserve the status quo pending appeal. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004); *see also Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005) (when determining conditions for stay pending appeal, the focus is properly on what will "maintain the status quo"). In determining whether to stay a non-money judgment, the court must weigh the following factors:

- (1) Whether the object of the appeal will be defeated if a stay is denied;
- (2) Whether the appellant will suffer irreparable injury if a stay is denied;
- (3) Whether the respondent will suffer irreparable or serious injury if the stay is granted; and
- (4) Whether the appellant is likely to prevail on the merits in the appeal. *Mikohn Gaming Corp. v. McCrea*, *supra*; NRAP 8(c). All of these factors favor the entry of an order both staying the December 1, 2013 order of the District Court and reinstating the stay of the February 8, 2013 State Board of Equalization order.

A. The Object of the Appeal Will Be Defeated if a Stay Is Denied.

The object of taxpayers' appeal is to have the threshold issues of the State Board of Equalization's jurisdiction to order mass reappraisals of residential properties dating back ten years determined prior to the actual performance of such appraisals. This object will clearly be defeated if the Order is not stayed and the stay of the SBOE decision reinstated.

B. Taxpayers Will Suffer Irreparable Injury if the Order Is Not Stayed.

If the July 1, 2013 Order is not stayed and the stay of the SBOE decision

1 reinstated, taxpayers will be subject to unconstitutional reappraisals of their properties without
2 effective recourse, possible additional tax assessments and liens, and interference with property
3 values and marketability before the appeal can be determined. Even if taxpayers are completely
4 vindicated on appeal and the July 1, 2013 Order is eventually reversed, they will have been
5 irrevocably injured in the absence of a stay.

6 **C. Respondents Will Not Suffer Injury if the Order Is Stayed.**

7 Respondents will not suffer any injury in this case if the district court's July 1,
8 2013 Order is stayed pending appeal reinstating the previously entered order for stay of the State
9 Board of Equalization's February 8, 2013 order. In fact, the County and State respondents will be
10 benefited just as taxpayers will be by a decision on the threshold issues of jurisdiction before
11 expending limited public funds on what is likely to be ineffective and unnecessary reappraisals
12 and related actions. For that reason presumably, neither the State Board of Equalization nor the
13 County opposed the previous entry of a stay of the SBOE decision.

14 **D. Taxpayers Are Likely to Prevail on the Merits.**

15 As set forth in the argument for reconsideration, the Court misapprehended the
16 availability of the "normal and standard process" for challenging assessments as taxpayers'
17 remedy in this case. On the indisputable facts and law, under the language of the SBOE
18 Equalization Order and the statutes, taxpayers have no effective recourse to challenge the new
19 valuations to be made by the Washoe County Assessor. If this Court does not reconsider,
20 determine to vacate its July 1, 2013 Order, and certify that intention to the Supreme Court so that
21 the matter may be remanded, the Supreme Court will likely reverse that order on appeal.

22 Under the circumstances, even if this Court does not reconsider, determine to
23 vacate its July 1, 2013 Order and certify that intention to the Supreme Court, it should allow a
24 meaningful appeal and preserve the status quo by staying the Order and reinstating the stay of the
25 SBOE decision. The purpose of the appeal will be defeated in the absence of a stay. *Mikohn*
26 *Gaming Corp. v. McCrea*, *supra*, 89 P.3d at 38; *Nelson v. Heer*, *supra*, 122 P.3d at 1254.

27 **III. Conclusion.**

28 Taxpayers respectfully submit that the Court should reconsider and determine to vacate its

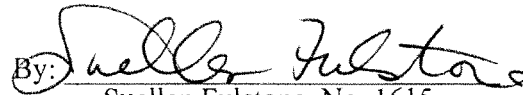
1 July 1, 2013 Order and certify that intention to the Supreme Court. In the alternative, this Court
2 should stay the July 1, 2013 Order and reinstate the stay of the February 2013 SBOE Equalization
3 Order pending the resolution of the appeal of the July 1, 2013 Order.

4 **AFFIRMATION**

5 The undersigned affirms that this document does not contain the social security number of
6 any person.

7 Dated this 19th day of July, 2013.

8 SNELL & WILMER L.L.P.

9
10 By: 

11 Suellen Fulstone, No. 1615
12 50 West Liberty Street, Suite 510
13 Reno, Nevada 89501
14 Attorneys for Petitioners
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of SNELL & WILMER L.L.P., and I served the foregoing document via the Court's e-flex filing system on the date and to the addressee(s) shown below:

Dawn Buoncristiani
Office of the Attorney General
100 North Carson St.
Carson City, NV 89701

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

And mailed a copy to the following:

Norman J. Azevedo
405 N. Nevada Street
Carson City, NV 89703

Arthur E. Mallory
Churchill County District Attorney
165 N. Ada Street
Fallon, NV 89406

Jim C. Shirley
Pershing County District Attorney
400 Main Street
P.O. Box 934
Lovelock, NV 89419

DATED this 19th day of July, 2013.



Employee of Snell & Wilmer L.L.P.

EXHIBIT 3

From: Creekman, David [dcreekman@da.washoecounty.us]
Sent: Thursday, September 05, 2013 3:42 PM
To: Fulstone, Suellen; DBuoncristiani@ag.nv.gov
Subject: RE: Equalization case

From Washoe County's perspective, no problem.

David Creekman

-----Original Message-----

From: Fulstone, Suellen [<mailto:sfulstone@swlaw.com>]
Sent: Wednesday, September 04, 2013 3:37 PM
To: DBuoncristiani@ag.nv.gov; Creekman, David
Subject: Equalization case

Dawn and David -- Judge Flanagan did not address the motion to stay which, under the circumstances, I guess operates as a denial. Neither of you opposed the stay as applied to the Court's order or the portions of the SBOE order concerning Washoe County. Will you check with your clients and let me know if you will stipulate to a stay of Judge Flanagan's order and a reinstatement of the partial stay of the SBOE order, or, alternatively, if, in my motion to the Supreme Court for a stay, I can represent that you will not oppose? My thanks to you both.

Suellen Fulstone

From: Dawn Buoncristiani [DBuoncristiani@ag.nv.gov]
Sent: Thursday, September 05, 2013 10:21 AM
To: Fulstone, Suellen
Cc: Creekman, David (dcreekman@da.washoecounty.us)
Subject: RE: Equalization case

Suellen,

Just to confirm our telephone conversation today: the State will stipulate to a stay of the Court's July 3, 2013 order and a partial stay of the State Board's equalization order.

-----Original Message-----

From: Fulstone, Suellen [<mailto:sfulstone@swlaw.com>]
Sent: Wednesday, September 04, 2013 3:37 PM
To: Dawn Buoncristiani; dcreekman@da.washoecounty.us
Subject: Equalization case

Dawn and David -- Judge Flanagan did not address the motion to stay which, under the circumstances, I guess operates as a denial. Neither of you opposed the stay as applied to the Court's order or the portions of the SBOE order concerning Washoe County. Will you check with your clients and let me know if you will stipulate to a stay of Judge Flanagan's order and a reinstatement of the partial stay of the SBOE order, or, alternatively, if, in my motion to the Supreme Court for a stay, I can represent that you will not oppose? My thanks to you both.

Suellen Fulstone