The ratio study, as you know, is a statistical analysis designed to study and perform the assessment.

And so I would like to note for your record that the record does contain the ratio studies for each year between 2001-2 and 2010-11 and that's on the third disk of the three disks labeled one, two and three.

And in the 2002-2003 ratio study, the sample of properties for Washoe County indicated an overall median assessment level of 34.5, which is slightly below the level of assessment of 35 percent.

It would be my recommendation that if you intend to revise any valuations that were derived using unconstitutional methodologies that you also ensure that the level of assessment for the area be measured through an additional ratio study so that these properties are at the same level of assessment as the rest of the county. This will ensure that the Incline Village properties have the same relationship to taxable value as all other properties in the county.

I've already mentioned to you about the performance audit that we've conducted and the methodologies that the assessor now uses and how there were no exceptions of particular note in how they performed the sales ratio or how they performed the approach to value.

And just to reiterate, the other assessors do use

market adjustments. They might not be the same variety.

And finally, I just wanted to reiterate the importance of NAC 361.652, which is your regulation that defined equalization. It says that equalized property valuation means to ensure that the property in this state is assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law. It's a two-part requirement. I know you've heard me say this before. But the methodology and the relationship to taxable value which in itself consists of fair market value for land and replacement costing statutory depreciation from improvements must be uniform among similarly-situated properties. If a method is not uniform and is struck down, as has happened, the property still has to reach the parameters outlined in NRS 361.333 to meet the statutory level of assessment.

MEMBER JOHNSON: Could you say that one more time?

MS. RUBALD: If a method is not uniform and is struck down as the Supreme Court struck down methodologies, those properties still have to reach the parameters that are outlined in NRS 361.333, which is for land, for instance, has to be within 32 to 36 percent. The level of assessment has to be between 32 and 36 percent of the taxable value. And taxable value for land is defined as fair market value.

CHAIRMAN WREN: Questions?

MEMBER JOHNSON: I want to explore just a little bit more if a method is struck down what stands afterwards and is it where a reappraisal is required because you're using the method that's been struck down or if in the end the value still falls within that range the level of assessment required it can stay in because it meets that second test.

MS. RUBALD: Yes, I would agree with that. If a method is struck down but it's still reaching the proper level of assessment, you don't need to do anything else. But if it's not within that level of assessment, then you're going to have to -- That's why I was talking about what did the 2003-4 ratios say for all of Washoe County. The level assessment for the sample, the median level was 34.5. So should any subsection of Washoe County be any less or any more than that? If they are to a significant statistical degree, then I think that you would have to correct that.

CHAIRMAN WREN: Yes, Dawn.

MS. BUONCRISTIANI: Terry, just to clarify the record, you're saying it would need to be corrected. Is that for purposes of equalization?

MS. RUBALD: Yes. That's because your regulation and I think the effects of NRS 361.333 indicate equalization of a similarly-situated properties are treated similarly and they should all arrive at the statistical level of assessment

and an equal amount.

MEMBER JOHNSON: I've got a question there. My understanding is we're referring to a 2005 ratio study that found a ratio of 34.4 percent for all of Washoe County. And I want to understand if it was all of Washoe County, number two, if any ratio studies were done specifically for Incline Village/Crystal Bay area.

MS. RUBALD: The sample that was taken for that year was a randomly-selected sample. And it may or may not have included properties from Incline Village because we try to -- when we take a random selection of properties, that means that our staff goes out and performs an appraisal and compares their appraisal analysis to the assessors to come up with a ratio. In a sales ratio, I would compare the assessor's work to the sales of properties in the area. That's the difference between the department's ratio study and sales ratio. And that's what I'm recommending at this point.

The problem is with land and since land can be -- must be valued at fair market value, it seems to me that a sales ratio study would be an appropriate method at this point to ensure equalization.

MEMBER JOHNSON: Thank you.

MS. RUBALD: And as for a specific analysis, we did do a specific analysis in 2005. It was a fairly big

study just on Incline Village and the results of that study are also in your record.

CHAIRMAN WREN: Okay. Any other questions for Terry? Okay. Who wants to go next?

MS. FULSTONE: Suellen Fulstone on behalf of Village League and the residential property taxpayers of Incline Village and Crystal Bay.

I would like to reserve some right to perhaps rebut what Mr. Creekman may be presenting after he presents it. He did ask that I go first and I'm happy to accommodate him.

CHAIRMAN WREN: I'll make sure you get that time if you need it.

MS. FULSTONE: Thank you. I want to thank, first of all, Ms. Rubald for providing the additional materials that we had indicated in our grievance should be a part of this record.

And then I want to address some of the statements by Mr. Wilson and some of the -- in his statement as well as in his response to questions from the board.

It's -- What we seem to be doing here is not equalizing but looking at reassessing Incline Village and Crystal Bay residential property for the 2002 year.

The Supreme Court in its Bakst and Barta decisions rejected the assessor's at that time request for

the ability to reassess. It determined that the methods used were unconstitutional. It really is not within this board's purview to decide now that those methods were constitutional. The Supreme Court also said that the methods used at Incline Village and Crystal Bay were unconstitutional in part because they were not used elsewhere in Washoe County and not used, at least the record did not indicate any use elsewhere in the state.

Appraisal for purposes of property tax assessment is not exactly like appraising for purposes of borrowing money or selling your house or a house by house appraisal. It is a mass appraisal. The land portion is based on comparable sales of vacant land.

At Incline Village and Crystal Bay in 2002 for the 2003-4 tax year, the assessor determined that there were inadequate sales of -- inadequate comparable sales of vacant land. What he did in developing his methodologies was not to look at factors and adjust them but to essentially create comparable sales through the process of time adjustment, tear downs, views and so on. And then use those created comparable sales as the basis for the valuation of property.

The Supreme Court found this unconstitutional because it -- because none of that methodology or those methodologies had been approved by the Tax Commission.

In a uniformed system, particularly in a system

that is not based on market value, which is Nevada -- As I was saying, in a taxable value system, the uniformity of regulations and uniformity of assessors in following those regulations is the only basis for assuring constitutional valuation.

And that's, you know, the Supreme Court realized that and invalidated, determined in its language that assessments based on those unconstitutional validations are unconstitutional methodologies were null and void.

It doesn't make logical sense to try to compare what happened in an audit 2012 going back to 2006 in part apparently or the methods used by the Washoe County assessors or other assessors in the county to value the land portion of residential property in the current year because the regulations have extensively developed as they became effective I think in 2009. An earlier set of revised regulations became effective in 2004. But at that time the Washoe County assessor did not go back and revalue Incline Village/Crystal Bay in light of those updated regulations.

As Mr. Wilson himself acknowledged, under the current regulations, there is a process for using tear downs as comparable sales. I won't go in to it in detail. Many of you are familiar with it. It is a long, drawn-out process of findings that have to be made before tear downs can be used. That was not the case in 2003. It was certainly not the way

it was used in 2003. The same thing is true for time adjustments, to the extent they can be used at all.

So really, it doesn't advance the issue before the board to look at what happens with assessors around the State of Nevada in 2012. If nothing else, the Supreme Court and its Bakst and Barta decisions put assessors in the Tax Commission on notice that there needed to be regulations to cover these circumstances of a lack of comparable sales and to assure uniformity.

If you look at the audits that were done in the time frame that we're dealing with here, 2003 to 2006 -- 2005-6, they didn't even ask the question about methodologies. There wasn't did you use tear downs, are you using time adjustments. So what assessors were using around the state, there's only the record before the Supreme Court which established for purposes of our work here that the methods, the unconstitutional methods used by Washoe County assessor were not used elsewhere in the state.

In looking at the factor -- And as the board knows, we have settled, we being the Incline Village taxpayer, residential real property taxpayers, have settled individual cases for 05-06, 06-07, 07-08 on the basis of resetting the values at 2002 and applying the factor approved by the commission.

But the factor approved by the commission was

developed by the Washoe County assessor, in the same manner used the same unconstitutional methodology. So in the context of those lawsuits, we have certainly challenged the factor. And, you know, not challenging the factor is only for purposes of resolving cases.

Mr. Wilson did acknowledge that in fact these unconstitutional methods were used to develop factor for Incline Village/Crystal Bay for the 2002-2003 tax year. That was the factor year. In some places at Incline the factor was 50 percent. In other areas 35 percent. That factor -- That doesn't validate the use of those methodologies in 2003-4.

As I think it's pointed out in the Bakst decision, taxpayers were not aware of what the assessor was doing in the 2002 year when he established the factor. The factor is not something that is publically noticed within the contested hearing that taxpayers would come in to challenge.

In any event, the fact that, you know, the 2002 values may also have been unconstitutional just haven't been determined to be so doesn't change the reality that for purposes of the board's decision here those values have been deemed to be constitutional by the Supreme Court and as the basis -- because they weren't unchallenged and become the basis for resetting the unconstitutional valuations of 2,000 -- as determined by the courts of 2003-4.

Mr. Wilson did point out that there are certain properties that were actually decreased in land value by the 2003-4 appraisal. It's a little misleading, because as presented on his charts, those 2003-4 values are to some extent where they are decreased are values established by the county board, the County Board of Equalization in the 2003-4 year when there were challenges, certain challenges were abolished, accepted and properties reduced.

So there are, you know, by my count, and it could be off by one or two, there are about 145 properties on the 2003-4 as provided by the Washoe County assessor where values go down between 2002-3 and 2003-4 where those are not decreased by reason of county board decisions. They are -- They're decreased by reason of the fact that the 50 percent factor applied in 2002 was too large, possibly because the unconstitutional methods used.

Our proposal would be that the board exclude from any resetting of values to 02-03 any of the values that by reason of county board decision or otherwise are actually lower in 2003-4. This is what was done, I believe, for the 2006-7 equalization cases. I think it's fair to the taxpayers. There's no constitutional harm when taxpayers are not assessed in excess of the constitutional assessment. When those values go down rather than up, there's no excess assessment.

Is there a pitcher of water here or something?

MS. MOORE: I can get you some.

CHAIRMAN WREN: Let's take a short break because I'd like some water too. So let's take about five minutes.

(Recess was taken)

CHAIRMAN WREN: Okay. Giving everybody a chance to get back to their seats and then we will proceed. Okay. Whenever you're ready.

MS. FULSTONE: Thank you. Ms. Rubald quoted the definition of equalization as included in the regulations adopted by this board I believe in 2010. First of all, those regulations are not being applied in this proceeding. We're not following those regulations because they were adopted in 2010. They do not reply retroactively to the 2003 to 2006 tax years that are addressed here.

CHAIRMAN WREN: Can I stop you right there? Do we have the actual 2002-2003 regs that were in effect for when we're talking about?

MS. RUBALD: For the equalization process?

CHAIRMAN WREN: Yeah.

MS. RUBALD: The regulation that Ms. Fulstone refers to as she says was adopted 2010. So for equalization process there was not a regulation in place.

CHAIRMAN WREN: So we had no regulation for the appraisers at all?

MS. RUBALD: For equalization. But there was certainly a regulation in place for what methodologies that the assessors could use.

CHAIRMAN WREN: Yeah. Can I get that?

MS. RUBALD: Yeah. The principal one that I want to bring to your attention is for R031-03.

CHAIRMAN WREN: Hold on. What disk is that on?

MS. RUBALD: It's not in your record, but you can call it up on the legislative website at www.leg.statenv.us and look in the register. They have the statutes and then they have the regulations and then they have the browser for the regulation as it was adopted at the time.

CHAIRMAN WREN: Okay. That's fine. I'll have Dawn, if you'll look that up for me so I don't have to interrupt you. I'm sorry. Go ahead.

MS. FULSTONE: Just to clarify, there were no equalization regulations until 2010 for the process of equalization conducted by this board. The only reference to equalization in the regulations at all had to do with authorizing the county board to equalize or directing the county board to equalize on the basis of geographic area.

With respect to valuation regulations, the regulation as existed in 2002-3 is in the record. I can't point exactly where it is. But it was the regulation that was considered in the Bakst and Barta cases. It essentially

provided for the valuation of properties primarily by comparable sales or in the absence of sufficient comparable sales by processes of allocation, extraction, I think one -- I think allocation extraction was one category and there was a third category for cost. But I'm sure Dawn will find it for you.

Whatever the definition of equalization, and there was none in 2002-3. The Supreme Court in its Barta decision said, and I'm quoting now, the Barta decision is also in your record, but it talks specifically about the duties and obligations of the State Board of Equalization. "Nevada's constitution guarantees," and I quote, "a uniform and equal rate of assessment and taxation."

"That guarantee of equality should be the board of equalization predominant concern and that concern is not satisfied by merely ensuring that a property's taxable value does not exceed its full cash value.

Under Bakst, a valuation developed in violation of a taxpayer's constitutional right to a uniform and equal rate of assessment and taxation is an unjust valuation. And upholding an assessor's unconstitutional methodologies the state board applies a fundamentally wrong principle." And that's the end of the quote from the Barta case.

But what the Supreme Court has directly told this board and taxpayers is that you can't fix unconstitutional

valuation by ratio studies. You can't fix unconstitutional valuation by factoring. You can't fix valuation done pursuant to unconstitutional methodologies.

The assessor has provided this board with a list for each year in question, three-four, four-five, five-six, of properties that the assessor himself has identified as properties that were valued using the methodologies determined to be unconstitutional by the Supreme Court. Those valuations are unjust by the language of the Supreme Court. Those valuations are what this board decided in November, in its November 5th hearing, that it would reset to their 2002-2003 values and apply the definition of approved factors.

Looking at the properties that are self-identified by the assessor as having valuations for those three years that are in the language of the Supreme Court null and void because they are unjust, they are not uniform, they were created pursuant to unconstitutional methodologies and fixing those is the proper duty and obligation of this board.

As I said at the outset, I do think that it is appropriate to reset values as previously done by excluding any values that went down by virtue of county board decision or otherwise between 2002 and 2003.

The harm that is caused by unconstitutional

methodologies and resulting in unconstitutional valuations is and cannot -- is not and cannot be remedied by this board taking the speculations from Mr. Wilson or Ms. Rubald as to what market value would have been or might have been in 2003-4 or going back and doing ratio studies for that period of time. Nothing takes away from the fact that the assessor used unconstitutional methodologies to reach these values and that as a consequence the values are null, void and unjust and inequitable.

Are there any questions?

CHAIRMAN WREN: Quite a few actually. I've always agreed with you that if something -- if it needs to be fixed, it needs to be fixed. But would you agree that it needs to be fixed to values that are germane or values of 2003-2004?

MS. FULSTONE: I think -- I think the -- in keeping with what the Supreme Court has done and what the other courts have done, the unconstitutional valuations need to be reset to their 2002-3 values, that that's the fix. That's the remedy for the wrong committed by the assessor.

CHAIRMAN WREN: Okay. So you don't think that those individuals in Washoe County should have an increase in value because of the terminology that the assessor used even though he used market information because it was a reappraisal year?

MS. FULSTONE: I'm sorry. You'll have to ask me that again. I don't think what?

CHAIRMAN WREN: Okay. The value should increase in '03 and '04 even though that was a reappraisal year and there is ample market evidence that values had increased significantly during that period of time?

MS. FULSTONE: No, I don't. And partly that's a matter of policy and partly that's just a matter of equalization to what this Supreme Court has decided. The Supreme Court could have said Washoe County, go back and do these following the regulations. They didn't.

When the assessor uses unconstitutional, unauthorized methodologies to value property, a do-over by the assessor is not, from a policy standpoint, an appropriate remedy. What the Supreme Court said is we're not going to allow a do-over. We're going to take these back to 2002, the last year that was not challenged by the taxpayers.

And that I think in fairness and as a matter of policy is where all of these values -- Again, as a matter of fairness and policy that's where all of these values that the assessor has himself identified as being developed using unconstitutional methodologies should be reset with the exception obviously of the ones that go down.

CHAIRMAN WREN: So what do you think -- What is your opinion? If this goes back to 2002-2003 using 1.8

factor, they're going to be excessively below full cash value. We'll be at the equalization if we do that.

MS. FULSTONE: You -- I don't know about you. The properties at Incline Village will not be out of equalization if they are returned or reset at 2002-3 values. They will be an equalization with the properties that have already been reset to those values by the courts. And that's the grievance that's before the board and that's the decision for the board to make.

CHAIRMAN WREN: Okay. Other questions? Aileen, are you out there? Any questions?

MEMBER MARTIN: Not yet. Thank you.

CHAIRMAN WREN: Okay. Anthony.

MEMBER MARNELL: Mr. Chairman, I apologize. I'm a little confused. I thought we already made this motion and we're here today to decide -- to look at what Mr. Wilson has presented. I believe my motion was to roll back to 02-03 with a 1.08 factor and for Mr. Wilson to go run the list so we could confirm the numbers. Are we rehearing this again or are we -- Correct me where I'm wrong.

CHAIRMAN WREN: No. I think that you are correct. But I'm taking as much testimony as possible because I'm concerned that the numbers -- what we wanted to do when we saw what we wanted with your motion was to have the assessor bring it back to us so we can see exactly what

the effect is. And my concern at this point looking at the numbers is that with the numbers that he's presented it throws it out of equalization and it's not fair and equitable values for 03-04, in my opinion.

MEMBER MARNELL: Okay. I don't have any questions. Thank you.

MEMBER MESERVY: Mr. Chairman, I have some questions if that's okay.

CHAIRMAN WREN: Yes.

MEMBER MESERVY: One is, you know, Ms. Fulstone is challenging the factoring and it seems like aren't we doing something with factoring instead of the decision? I'm a little confused on that. And maybe she can explain why this is a form of factoring in.

MS. FULSTONE: What I have said is that in the lawsuits we have challenged the -- Incline Village/Crystal Bay taxpayers have challenged the development and application of the factor. What I've also said is that in terms of the settlements that we have reached we have accepted the factor. And in the discussion we had in November, I believe I indicated that the acceptance of the factor approved by the commission was an accommodation we could make.

MEMBER MESERVY: Okay. Another one is how do you know that by using or not using these methodologies will change or not change the total market value of the properties

in Incline Village or elsewhere in Washoe County or elsewhere throughout Nevada?

MS. FULSTONE: I think the valuation, the ultimate valuation is a function of the methodologies used. But more importantly, I think what the Supreme Court has said and said more than once is that it's the use of the methodologies that's the issue. It's not the valuation. They have deemed the use of unconstitutional values to result in an unjust valuation. They have not said okay, we can -- we'll do a ratio study and see what these valuations look like in compared to other valuations. They have said when the assessor uses unconstitutional methodologies, the resulting valuations are, you know, without any further study or inquiry unjust, null and void.

MEMBER MESERVY: So I guess you're saying they're unjust, but if the valuation should be similar with or without them, I mean, I think that's the question we're asking you is --

CHAIRMAN WREN: Dennis, the court reporter can't hear you or understand you, so start over.

MEMBER MESERVY: You know, if the -- if this requires that we raise, lower or leave unchanged the taxable value of the property, I think is what I've been told is part of what we're trying to resolve and if we're thinking that the methodologies may or may not change that even though

they're wrong, that to me is a big question I need to understand. Because I thought total value was pretty important in this question.

I guess I need some more clarification in your understanding why we need to consider that fully there.

MS. FULSTONE: Let me try to address that. A valuation reached with use of constitutional methodologies is not just unjust but it is null and void based on the decision of the Supreme Court. What we are looking at here and what was the focus of the decision at the November hearing was identifying all of those valuations at Incline Village and Crystal Bay that were developed for the years 03-04, 04-05, and 05-06 using the unconstitutional methodologies. Because all of those valuations are not just unjust but they're inequitable, they're out of equalization, they're null, they're void.

Again, in Bakst what the Court said was it's the guarantee of equality that should be the Board of Equalization's predominant concern. And that concern is not satisfied just by looking at value but also by looking at the taxpayer -- the methodologies. The taxpayer has a constitutional right to a uniform and equal rate of assessment, which by virtue of -- which according to the court means the taxpayer has a right to a valuation determined using constitutional methodologies. And having

failed that for the properties that the assessor has identified, those values all should be reset to 2002-3 in keeping with the Supreme Court decision, which is the law.

MEMBER MESERVY: I have a concern there and I guess I need to ask legal counsel or our chairman, somebody to tell me as this board I thought our jurisdiction was on value. And if we're not worried about value here, what are we supposed to be worrying about? I'm a little concerned. I'm not understanding where we have any jurisdiction if it's anything but value. First, we know it's unconstitutional methodologies and when it comes right down to it aren't we supposed to be coming up with whether this is equalized or not equalized under valuation issues? When we ignore value, I'm getting concerned here.

CHAIRMAN WREN: Dawn.

MS. BUONCRISTIANI: I think you might have to listen to the arguments of both parties. What your regulation says is equalization as to methods and to values. And I can get that out and read it for you again. The board at this point in time hasn't determined whether they're going to follow that as a guideline because it wasn't in effect during the tax years at issue. And so would you like me to read that regulation again?

MEMBER MESERVY: Absolutely. Absolutely.

MS. BUONCRISTIANI: It is found at NAC 361.652,

equalized property valuations. This is the definition. Equalized property valuations means to ensure that the property in this state is assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law.

MEMBER MESERVY: You read it so quick. Did we use the word "value" in there?

MS. BUONCRISTIANI: It says means to ensure that property in this state is assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law.

MEMBER MESERVY: Because I didn't hear the word "values," but I guess --

MS. BUONCRISTIANI: The level of assessment would result in value. And Ms. Rubald can explain, possibly explain that to you.

MEMBER MESERVY: That might be helpful.

MS. RUBALD: Mr. Chairman, Mr. Meservy, Terry Rubald for the record. The level of assessment required by statute is 35 percent of taxable value. And then we have to refer to NRS 361.227 to find out what taxable value means. And for land, taxable value means fair market value. With the exception of highest and best use, we have to look at actual use rather than highest and best use. And for the improvements, we have to look to replacement costs less

depreciation.

MEMBER MESERVY: Thank you very much.

CHAIRMAN WREN: Okay. Ben.

MEMBER JOHNSON: First question, Dawn, is NAC 361.652, it's my understanding was adopted subsequent to the tax years at stake here. I'm curious what governs our decision making here. Is it the regulation just quoted or is there something that we should be considering?

MS. BUONCRISTIANI: In terms of -- You have it correct. In terms of -- This regulation was adopted subsequent to these cases. And so your -- the writ says that you must equalize. And perhaps if I reread that it would help you as to give you some direction as to where you are right now. The board is going to -- it's going to be up to the board to interpret what that means. Because there was no regulation at the time.

MEMBER JOHNSON: Okay. How is -- So --

MS. BUONCRISTIANI: I'll pull the writ up.

MEMBER JOHNSON: Okay. I'm just curious if equalization was just undefined at that point.

MS. BUONCRISTIANI: Equalization in terms -- at that particular point in time what the board did, this won't come any closer, I'm wondering -- At that particular time way back in 2003 what the state board -- the defined use or the defined actions and the valuing responsibilities and

authority established in the regulations and in the statutes dealt with contested cases. So the state board heard contested cases and made decisions as to value. And when a property was -- other properties were similarly situated, for example, the one I think of most routinely is one where there was traffic impacting one property and the taxpayer came before the state board. The state board assessed that property and said but look at all of these other houses right down next to it to be in either direction. They are impacted by the same, the same settlement. And so they would equalize all of those properties and treat them all the same and reduce them because of that same negative influence.

And that was the extent of how the state board equalized until the Bakst and Barta cases when they were directed to equalize in other ways and that they had to look at the methods that were used.

And then the department developed regulations at the direction of the state board and the state board adopted these regulations just a couple of years ago in regard to equalization. And that's when you -- this equalization definition was adopted.

MS. RUBALD: Mr. Chairman, may I supplement that?

CHAIRMAN WREN: Yes.

MS. RUBALD: I think it's important to note that NRS 361.333, which is styled, I believe, as equalization

among jurisdictions, has been in existence for -- as it's styled equalization assessment among the several counties. That statute has been in existence for quite a long time, since at least 1967. And that did provide a process for equalization as I described whereby the tax commission had the authority to either request reappraisal or to apply factor to ensure that the level of assessment was at an equal rate.

Mr. Meservy.

MEMBER MESERVY: Has this board always been called the Board of Equalization, State Board of Equalization?

MS. BUONCRISTIANI: I can answer that. This board has been called the Board of Equalization. However, this board has not always been an independent board. And in -- if you want the exact date I can look it --

MEMBER MESERVY: I mean, was it prior to this period in question that it became independent?

MS. BUONCRISTIANI: I'm not sure I understand that second question.

MEMBER MESERVY: You said it hasn't always been an independent board and you --

MS. BUONCRISTIANI: The Tax Commission was also the Board of Equalization from the early years on. And then some time during the 20th century the state board became

independent of the Tax Commission. I had my --

MEMBER MESERVY: So it's been well before 2002?

MS. BUONCRISTIANI: That the Tax Commission and the state board became separate bodies, yes.

MEMBER MESERVY: Okay. Thank you.

MEMBER JOHNSON: I have a question for you, Ms. Fulstone. And that is any part of what you're alleging do you include taxable value exceeding market value?

MS. FULSTONE: I don't -- I don't think taxable value exceeding market value is raised as an issue in any of the proceedings with which I am familiar. But I'm not clear how, Member Johnson, you think that it might apply here.

MEMBER JOHNSON: I just wanted to narrow down the issues that were before us and make sure there wasn't any evidence to support taxable value being an excessive market and what you just said because there was no evidence and that wasn't something that was considered.

MS. FULSTONE: No. Again, I think the issue is the use of unconstitutional methodologies and the courts having deemed the resultant value to be null and void. I don't think the Court went back and said -- and measured against any particular valuation number. Again, it is a function of methodology that the valuations are unconstitutional.

MEMBER JOHNSON: Thank you.

CHAIRMAN WREN: Okay. Any other questions for Ms. Fulstone?

Okay. Mr. Creekman.

MS. FULSTONE: If I can address Mr. Meservy's question in a little bit more detail, because I think in looking at him I think he's not yet persuaded.

In the 2006-7 when the county board equalized to 02-03 values and that decision was subsequently affirmed by this board, that was on a basis of geographic equalization for Incline Village and Crystal Bay. That decision is now final. And it is that decision that is the model, I think, for what this board needs to look at and should do, whether it looks at geography or the use of unconstitutional methodologies. The baseline is 02-03. I mean for 05-06, for instance, and I'm not sure this is reflected in Mr. Wilson's list, I think it's close to a thousand taxpayers have already been rolled back to 02-03 and factored forward by the .08 and paid refunds on that basis.

So to the extent you're equalizing to what has been done and what the Supreme Court has said must be done at Incline Village and Crystal Bay, it is to go back to 02-03 as this board has decided in November and then apply the factor as approved by the commission.

CHAIRMAN WREN: Okay. Thank you.

Mr. Creekman.

MR. CREEKMAN: Thank you, Mr. Chair and members of the State Board of Equalization. For the record my name is David Creekman, C-r-e-e-k-m-a-n, on behalf of the Washoe County parties. I don't need to -- I think that the assessor did an outstanding job, so I'm speaking primarily on behalf of the Washoe County board of county commissioners and the Washoe County treasurer today.

What the state board has accomplished thus far in my estimation is not statewide equalization. I'm concerned that in this statewide proceeding there has been no analysis of valuation methods used elsewhere within the State of Nevada. The focus has been entirely on Washoe County. Member Johnson came very close and was circling around that issue with his questions to the county assessor.

In the Bakst case, the Supreme Court case that initiated all of this, the Court reviewed four methodologies. There was no focus on any other methodology because they weren't at issue in that case. This board has no way of knowing without examining all of Nevada's county assessors the validity of the methodologies used elsewhere within the State of Nevada.

I do agree with Ms. Rubald and her definition of equalizing property values. And I wanted to point out to Member Meservy that the word "value" is what is being defined in the regulation read to the board and to this proceeding

today by both Ms. Rubald and by the deputy attorney general. The regulation itself defines the phrase "equalized property values." And I suspect that's why the regulation does not contain the word "value" itself, not wanting to confuse the definition with the phrase that's being defined by the regulation.

Ms. Fulstone objects to the use of the regulation, the definition of the regulation, the two-prong definition of the regulation in this proceeding. I object to Ms. Fulstone's objection because what it is the regulation is defining is this board's statutory duty to equalize property valuations in the State of Nevada, a statutory obligation that hasn't been modified in decades by the legislature, which in turn defines or gives meaning to the constitution's guarantee of a uniform and equal rate of assessment and taxation to Nevada's taxpayers. Again, that provision has been in effect since it was first inserted in to the constitution.

I find it incomprehensible to -- I have no ability to understand the arguments that the definition of equalization changes or varies over the years, particularly a relatively short time period that we're talking about here, between the year 2002 and the date that the regulations were adopted.

So in regard to the definition of equalizing

property value, the two-prong definition to ensure property is assessed uniformly with methods of appraisal and at the level of assessment required by law, I would concur with Ms. Rubald's analysis that at a minimum before the state board takes any final action it needs to conduct a ratio study to ascertain whether the new values fall within the allowable range both within Washoe County and as compared to the remainder of the State of Nevada, lending further support to my belief that the new regulation or the new regulations definition applies today, to today's proceeding is the fact of the public notice given of today's proceeding, which clearly states that the board is operating for the purpose of equalization pursuant to NAC 361.650 through NAC 361.667.

You have obligated yourselves in the public notice of today's proceeding to apply those regulations. When those regulations are applied, not only does the two-prong definition of equalized property values apply, but the board today is faced with four alternatives that from -- amongst which it can choose. It can do nothing. It can refer this matter to the Tax Commission. It can order a reappraisal. Or it can adjust values up or down, but only can do so based on an effective ratio study if the board orders. So those seem to be your options today. I'll be happy to take any questions if you've got any. Otherwise, that's it for Washoe County's position.

CHAIRMAN WREN: Okay. Thank you very much. Questions of Mr. Creekman?

MEMBER MESERVY: Don't you think that if we chose to leave it unchanged that that's making a decision?

MR. CREEKMAN: Yes, I do. And that is one of your options under the regulations. The first option is to do nothing.

MEMBER MESERVY: Yeah. Basically doing something like leaving it unchanged isn't just doing nothing. That's my interpretation.

MR. CREEKMAN: I would agree.

CHAIRMAN WREN: Okay. Thank you very much.

MR. CREEKMAN: Thank you.

CHAIRMAN WREN: Ms. Fulstone.

MS. FULSTONE: Thank you, Mr. Chairman. This is I think the third hearing in this matter and to this hearing there's been no -- until this hearing there's been no application of the 2010 equalization regulations, which establish a much different process. The writ of mandamus does not direct the board to apply those regulations in part because those regulations, one, don't even provide for taxpayers to be parties. And two, you know, those regulations have never been found to be constitutional by the Supreme Court. The definition of equalization and how you equalize for purposes of this proceeding is in the Supreme

Court decisions.

I would point out, however, if you want to look at NAC 361.652, which is the definition that we've been talking about, what it says is that equalized property valuation defined means to ensure that the property in this state is assessed uniformly and in accordance with the methods of appraisal, and we have established that it is not, and at the level of assessment required by law.

Level of assessment is not a reference to valuation. The level of assessment required by law is the assessment percentage, which is the 35 percent. The level of assessment is not going to validate unconstitutional methodologies.

Again, based on the Supreme Court decisions, you cannot validate those methodologies with ratio studies. You cannot validate them with reappraisals. You cannot validate them with assessment levels. The only way to remedy unconstitutional methodologies and the valuations that they produce is to set aside those valuations and return to the -- and return to the previously last unchallenged value.

Mr. Creekman suggested this board is required to look at the methodologies used by assessors elsewhere in Nevada for those years in question. That simply is not the case. This board is required to determine the grievance brought by Incline Village/Crystal Bay taxpayers. Whatever

else we know, we know by virtue of the report made by the assessor today that the properties he has identified were valued using unconstitutional methodologies. There is no reason to go looking to other counties. That's all I have, unless there are other questions.

CHAIRMAN WREN: Questions? Okay. Anybody else want to say anything? Mr. Wilson, anything else? Terry.

MS. RUBALD: Thank you, Mr. Chairman. I guess I just need to point out that you can't isolate NAC 361.652 from all the other definitions and the regulations that you have about equalization. For instance, NAC 361.654, which defines the ratio study, means an evaluation of the quality and level of assessment of a class or group. So it isn't just 35 percent, just a mathematical thing. We're looking for the quality and uniformity of assessment through statistical analysis.

CHAIRMAN WREN: Okay.

MS. FULSTONE: Mr. Chairman, if I might respond briefly. As indicated in the brief that, rebuttal brief that I had filed with this board, the ratio studies, the statistical ratio studies that were done at the -- for the years 03-04 through 05-06 do not address equalization at Incline Village, as Ms. Rubald herself admitted earlier. To the extent that the 05-06 ratio studies even address Washoe County, it's not clear that there is a single Incline Village

parcel included in it.

Whatever improvements may have been made in the ratio studies over the years, the ratio studies for the years in question certainly offer no validation for the unconstitutional methodologies.

Again, you simply can't fix -- you're not looking at value. The Supreme Court has said when the assessor uses -- And this, again, is from the Barta decision, when the assessor uses unconstitutional methods to determine taxable values, it doesn't matter whether the taxable value exceeds the full cash value or not. It says by failing to recognize that a taxable value may be unjust and inequitable despite being less than the full cash value of the property, the state board erred. The state board followed the wrong principle. And that's why the district court set that aside and the Supreme Court affirmed the district court. Thank you.

MS. RUBALD: Mr. Chairman, I'm sorry to prolong the agony here. I'll just make one more short comment. The -- If the removal of the unconstitutional methodologies results in a value so low or so high, then I think it's part of the equalization process to remove those unjust valuations.

And I also did want to point out one more thing that for your consideration, and perhaps the attorney general

is going to mention to you as well that these regulations that the LCB File R031-03 was adopted August 4th 2004 and all of those unconstitutional methodologies are now provided for when they were adopted in 2004. So I do wonder whether the 05-06 years even subject to this because those regulations were in place.

MS. FULSTONE: Mr. Chairman, I apologize for prolonging the agony here as well. But what Ms. Rubald has said is it is likely to mislead the board if I don't correct it.

This issue of the 2004 regulation was directly addressed in the Barta case. And because the 2003-4 appraisal was the base year for both 04-05 and 05-06, what the Court said was it doesn't matter that the regulations have changed. These earlier and this appraisal was done in 03-04 before the regulations were changed. So the appraisal done by the Washoe County assessor for 03-04 is unconstitutional for 04-05 and 05-06 as well, per the decisions of the Supreme Court.

CHAIRMAN WREN: Okay. Anything else before I close the hearing? Because once I close the hearing, I'm not going to accept anymore testimony today. Okay. So the hearing is closed.

Anthony, I want to go back to you. It was your motion that got us here. But I told you my concern and I'm

going to reiterate it for everybody though is that, you know, I agree that with all the testimony and all the things we've heard through all of these years now that given all the arguments that perhaps we need to start with the basis of 2002-2003 and then move the values forward.

With the information the assessor brought us, I don't think that they're representative of what the full cash value should be on those and I'm not sure with the testimony that I've heard that you use a percentage or you can do a ratio study or there's any way to go back this many years and be equitable to everybody, including the people, the property owners on his list.

However, one of the things that we've heard time after time after time after time is that there really has never been any argument that these weren't, values did not exceed full cash value.

And as the appraiser, and there may be another appraiser on this -- As an appraiser, I keep going back to that thought that if they weren't, if they didn't exceed full cash value and if we were doing this back in 2004 and five instead of 2012-2013, we probably would have done a couple different things. We would have said, listen, you used methods or used techniques that weren't codified, redo them and tell us what the value would be. And I've asked that question of the assessor several times now and what the

answer has always been is that the values probably would be similar or the same as what you put on the values to start off with, which are the best I can tell what they would have been given similarly-situated properties.

So those are my thoughts, Anthony, and I'll let you go from there and then I'll give everybody else a chance.

MEMBER MARNELL: Okay. Mr. Chairman, I will try to be as clear as possible with what I've heard today and my opinion. First of all, with all due respect to all of my fellow board members, I think that this issue is so complicated and so deep, it sounds to me like regardless of what we do this is going to go to a higher place to be decided. And I think that the Washoe County's paper is a clear position of that. And we already know where Ms. Fulstone sits because she's already in the court.

So in saying that though, I still feel obligated to do the best I can with my fiduciary duty as a member. And so, therefore, I will give you my following comments based on the testimony.

At this point in time, based on what I've heard today, I don't see any reason to change the motion that I made back in November and I will tell you why. It is clear to me that unconstitutional methods were used for the years in discussion. It is also clear we had discussion about what I see is the other alternative, which is to go back and

reappraise in those particular three tax years without using the unconstitutional methods.

But in saying that, it's also clear to me that the Supreme Court has already said, no, you can't do that. So that takes that option off the table. I believe, as Ms. Fulstone said, "no do-overs."

So that was the option if we recall from the record in November that I had originally thought about going down is let's go back and do it right and remove the unconstitutional methods. But it's clear to me that if the Supreme Court wanted that done, they probably would have done that, and they did not, and probably for legal reasons that are far beyond my capacity.

So again, staying on the road of the Supreme Court -- Hold on one second here. So for whatever legal reasons in tying that up and looking at my notes, they went back to the last year that they felt was constitutional and hence the discussion that we're having here today. I also --

If I understand all of the Supreme Court decisions right, I do not see this making the rest of Washoe County or the entire state out of equalization. And the big reason for that is, one, there is no evidence provided in any of these court cases or any cases before us or any cases on appeal that other parts of the state were using unconstitutional methods. So therefore, the way I look at it

right now is that we're not dealing with full cash value and all of the other things. We're dealing with, again, unconstitutional methods.

And then in the brief provided by the county by Mr. Creekman talks about in our September hearing that we heard other grievances. And that's exactly what they were. They were grievances that were investigated and still are being investigated. And I believe Terry is still going to be doing work on the other people that testified before us. But there is no convicting evidence of any unconstitutional method or anything illegal in the September testimony of 2012 that we took.

So to say that we did not take action there, I do not agree with. We heard evidence or we heard people's testimony where they felt there may be some things that are unjust and some of those things are still being investigated. And if we find that, I guess it would be fair to say we would take the appropriate action at the time when we had that concluded. But right now that's not concluded and/or it was found to be not accurate.

So the Washoe County, Incline Village/Crystal Bay specific issue is the one that is before us, it has an enormous case file as it sits right in front of your desk today and it has an enormous record all the way up to the highest court in the State of Nevada. And that's the issue

that has come back before us as well as investigating the others. But the others don't have any conclusive evidence.

So I sit today in the same spot I sat in September and the spot that I made the motion in November that while this is -- this is not a financially fun issue to deal with and it's on a massive scale, the facts I think are clearly laid out from the perspective of what the Supreme Court did. And I put in my notes whether we agree with it or not. And I know that there are many board members that do not agree with the decision that the Supreme Court made. I in part can be, because I'm not an educated appraiser like yourself, I kind of sit on the fence about what they did and the approach that they took. But irregardless, that's what they did.

And so in following the path and following what they said, that was why I made the motion that I made in moving forward. And I don't hear anything today that gets me to want to change my mind. And again, I understand that we're talking about a combination, an aggregate of about a billion and a half dollars worth of assessed property value over a three-year period and I understand the scale of the decision is large.

So that doesn't lead me to want to be able to just go "I'd rather take no action because I don't want to wear this one on my shoulders." I don't have a problem

sticking with my motion based on the evidence provided and I have no doubt that -- Or I shouldn't say I have no doubt. If it's not appealed then I'm going to sleep at night thinking I made the right decision. If it is appealed -- If it is appealed, which it sounds like it will be, then so be it. Let it be decided by a higher court. But that's my eight minute or less conclusion based on everything I've heard since we've been on this board in March of '09 together.

CHAIRMAN WREN: Okay. Thank you.

Dennis.

MEMBER MARNELL: Or sorry. Ten.

CHAIRMAN WREN: I wasn't going to correct you. That's okay.

MEMBER MESERVY: After what I've heard and -- Is it okay to talk?

CHAIRMAN WREN: Yes.

MEMBER MESERVY: Okay. After I've heard what I've heard today and what I've seen of the -- it doesn't make sense it would be -- it seems like in that era the prices were going up. And I think I did the wrong thing by seconding this motion last round. And I personally think we should make it an accident to leave unchanged the values.

Personally I do not believe that we've addressed fully whether if their values would have changed or not. And I guess if we're here to not worry about the total taxable

values or the value then maybe what we're doing is some sort of a punitive measure against -- or a factor that was made against these people to give them back some regs. But I don't think that's my jurisdiction as a board member to go that direction. But that's what I'm thinking that it seems to be heading if we're looking at just because of the factoring issue. I'm having a hard time seeing why we want to go otherwise. And I was hesitant last round, as you can read the minutes. But I think I'm even more hesitant this round to support where we go. That's my comments. I'm sure Mr. Marnell might have more he wants to say on that.

MEMBER MARNELL: I just have one piece of feedback for Dennis. I don't disagree. I completely concur that the taxable value, "value", is kind of what we've done for four years. And that was why in November my original inclination was to try to do what I thought was the right thing and to have it be reappraised, remove the unconstitutional methods and go reappraise it for all three years. That to me feels like the absolute right thing to do. So we would hit the number spot on the money and we would know and forget all of the studies and all of the other stuff, just go redo it.

But the Supreme Court has already said you can't do that. And so that's the piece to me that says, well, then what is the only other alternative. Because that would be

the route, even to this day I think should be the appropriate route to know exactly what it is and that way it's just fair across the board and we would have very accurate data. But they would not let them do that the last time. That's the only reason, Dennis, that I've gone this direction.

MEMBER MESERVY: And I agree with what he's saying other than I think under my opinion that I don't see a need to change the values. And that's probably just my gut response. It's an opinion. But that's really -- I would have loved to have seen that too. But I agree, based on the results and based on the testimony, I think we both agree we could have got a better approach, but he comes out different than me. I personally -- My thoughts are we should leave unchanged the taxable value.

CHAIRMAN WREN: Dennis, I agree with Anthony. I've told you my concerns. But as I said in my comments, I'm not sure we can get it right. In other cases and other hearings, you know, we've split the baby and come up with a number that we like and it worked. But in this case, this thing keeps going back and forth and has got a life of its own. Regardless of what we do, it's going to end up in the court system, I'm pretty sure. I'm like Anthony. I don't care one way or the other. My thought process in September and November both that it's time that we made a decision and let it get down the road. And the only decision that has

gone to the court system is to do exactly what Anthony's motion was and roll back. And if the court system disagrees with that, then maybe they can come up with that magical answer that we don't have.

So even though I disagree with it, I'm taking -- I'm trying not to consider what the impact is, what the number of impact is because the Court system keeps saying that it doesn't matter. So that's just for thought.

MEMBER MESERVY: My other thought with that is I think we're opening ourselves up to a ton of other lawsuits for anyone to say that we're equalizing by doing this. But you know, this to me I think it's going to go beyond because we haven't done the research. So obviously we've got the opportunity because the courts have given it to us. But I personally think that it's not going to go the right direction because I don't think that we can say yay or nay that we've equalized properly. And I thought that's what were most in the commission for. I feel more comfortable that we are in an equalized position. But just based on testimony and based on what Ms. Fulstone was talking about and based on value, and again, value seems to not be an issue on one side of the table.

MEMBER MARTIN: Mr. Chairman, I have one other comment and then I'm done. And I agree with a lot of what Dennis is saying. In the alternative of once the Supreme

Court said you can't do over it leaves you with really a couple of options, right. You can stay the same or you can go towards the motion that I have looked at.

And the only reason that I was not supporting to stay the same is because I think it's clear and factual that we have unconstitutional methods that were used in the Crystal Bay and Incline Village. Those are facts. They've been decided, whether we like them or not. And I believe it's our obligation to deal with that in those particular tax years that we're discussing.

And the only other thing is I'm not really -- I don't share the same concern that this will open up the door for unconstitutional methods for these years because any other party that would come forward has not followed its administrative remedy and process for this as these people did. And if that was the case in the Supreme Court case, and maybe I don't understand this, but they would have made that decision for the entire state. They would have made it for all of Washoe County. They didn't. They were very specific about the people that were before them, the research and the evidence that was provided and they made this decision for that particular group who they think are unconstitutional.

We still have zero evidence anywhere else in the state that any unconstitutional methods have ever been used, the way I understand it. And I believe that was also the

testimony that was given again today.

Again, why all of that -- those thoughts of thinking what you're saying, Dennis, going, you know, is there another alternative, is there another alternative. Each one of them seems as if the door has been closed by the Supreme Court, that they have said this is the track that we're going down. If it's unconstitutional, you have to go back to the last time. You can't leave it the same. You can't reappraise it. You've got to stay on that path. And so that was basically the motion of staying down the path, unless I completely misunderstood.

MEMBER MESERVY: No. I misspoke then because I didn't mean that there would be unconstitutional methodologies. I'm talking about equalization of valuation. That's what the lawsuits and where all the changes will be is because right now we've never ever really pushed to the issue that those, even though there's totally fallacious methodologies at the time and they weren't allowed, they don't have the issue that, oh, that would have changed the total tax market value of this property. And because of that, that's really my thought process. It isn't about oh, they were wrong methodologies elsewhere. It's about equalization of the valuations that I am thinking is minor and a real issue. Even what we're doing is we're changing taxable value. We're not giving some recommendation because

we did that methodology. We're changing the valuations. And because of that we're actually restating that and now we got to say well, why didn't we see how that really is in relation to the rest of it. And that's where all of these ratio studies and all of that should be in there.

And so I still don't feel good. And I've misspoke if I meant that it's because of methodologies. It's because of equalization values.

MEMBER MARNELL: And I don't disagree with you. And this is all I have to say, Tony, is that the Supreme Court one, that's not us. They made decisions to roll back the constitutional years, overriding all the equalization concerns that they could or should have had for the entire state when they made that decision. They basically said that unconstitutional methods trump everything because they did the same thing that my motion was made on. They overrode all of that concern, value, equalization, the entire state, even within the same darn county. It just doesn't matter. Unconstitutional methods go back to the last constitutional method.

So they're the ones that have already set the precedent. The Supreme Court has set the precedent that the value and taxable value and exceeding full cash value doesn't matter when it's unconstitutional. That's their decision. Because I don't disagree with you at all. It's the same. A

billion and a half dollar reduction is a lot of money ten years after the fact. But they made that call. So we're not deviating from the call that they made at all.

MEMBER MESERVY: We actually gave, they gave the call but they also gave us the call to raise, lower or leave unchanged and so that's our call. And I don't think the way that we've done it is going to do that. But anyhow, that's fine. We all have our opinions on the board and I appreciate you have some great ideas.

MEMBER MARNELL: You too. Tony, we're done so we're going to go to Starbucks. We'll see you.

CHAIRMAN WREN: Not yet. Just hang right there.

Aileen, comments.

MEMBER MARTIN: No comments, Mr. Chairman. Thank you.

CHAIRMAN WREN: Thank you, Aileen.

Ben.

MEMBER JOHNSON: Yeah. I really appreciate the discussion you guys have already had. I think a lot of very pertinent facts have been discussed.

My question, what I would like to explore a little bit and hopefully with the help of Dawn is this idea of reappraisal. Would we have -- Can we order one? I've heard Ms. Fulstone's testimony that's something we can't do because the Supreme Court told us we can't. What can we or

can't we do as a board?

MS. BUONCRISTIANI: I think if you look at your writ of mandate, I agree with what Dennis was saying in that it leaves it pretty open as to what you can do. I'm not sure, and I couldn't tell you that I agree with Ms. Fulstone in terms of you are limited to what the Supreme Court has said in Bakst or Barta. Because you have the opportunity. This is very similar properties, but these, this is a hearing where you're taking information. And for you to ignore information that you take or that you could take there wouldn't be a purpose to the hearing. Does that answer your question?

MEMBER JOHNSON: It does. When I look at the writ I see we can take actions as it required to modify the values for equalization. So I read that the same way you do. What I struggle with is its equalization is a two-prong approach and here we do have methods of appraisal we use that are deemed to be unconstitutional. But in changing that, the level of assessment also has to be what's required by law.

And what I struggle with is I think Ms. Fulstone would have raised the issue that if the current values exceeded, current taxable values exceeded market they would be raising that issue before us and we would hear all about it. So therefore, I'm led to believe that in the current condition taxable value is not exceeding market value. And

we're coming back to a solution that's going to reduce the taxable rolls in Washoe County by 1.9 billion dollars and I struggle with that. That leads me to believe that's going to cause us to be out of conformance with the level of assessment required by law.

And I see a couple options here. One, that's just my thought based on the actions. We don't know for sure so we could order a sales ratio study to find out if we are or are not in compliance with the level of assessment required by law under the motion that Anthony made last time, which I thought was a good one. Or second, where I tend to want to go here, is let's get a reappraisal. It doesn't sound like we can't. So I would be in the camp of let's get it right. We have the ability to. This writ doesn't tell us that we can't. I want to see it right and we have the ability now to go back and use methods that were correct at the time. And that's where my head is if it were not -- I wouldn't mind seeing a reappraisal.

MEMBER MARNELL: Mr. Chairman.

CHAIRMAN WREN: Yes.

MEMBER MARNELL: Was my first thoughts when we had this meeting in November. I do believe in my heart that it is absolute the 100 percent way to guarantee that this is right for everybody and all parties, you know, removing the unconstitutional methods and using the methods that were --

removing the unconstitutional methods and using the methods that were approved at the time. I'm not sure if the county has the ability to even do that with how their technology and their systems have evolved to the new regulations and laws. But if it was doable, it's certainly one that I could support if the rest of the board feels strongly about the reappraisal of those three years. And I didn't really hear from Dawn that she felt we couldn't do it. But she was also very cautious in not confirming that we hundred percent could do it. But I don't have any problem moving forward with what she said if that's the direction that you all would like to take. It also sounds like something that would make Dennis feel pretty comfortable as well, but I won't speak for him.

MEMBER MESERVY: Much happier.

CHAIRMAN WREN: Yeah. That is one of the things that we've talked about several times now and it is the only fair way to look at this situation, I think that would I would entertain is a motion that we direct the assessor to reevaluate the parcels that he has identified as having been appraised using unconstitutional techniques to reappraise those or reassess those for the appropriate years, but a couple things probably need to happen if we have them do that. I've said this before. There's a likelihood that when you go back and reappraise the property that it will be higher than what it was assessed for to start off with. So

it seems to me to be fair to everybody that if in fact the assessor found by reappraising these properties that any exceeded the values that they had on originally, that the original values would be maintained and not increased.

MEMBER MARNELL: Mr. Chairman, I don't believe that's the -- in the writ from the judge on page two, I believe it is number three, that if the board proposes to increase the valuation of any property on the assessed roll of any county that we should comply with provisions of NRS 361.395(2).

So I guess all I would throw in is that if we're going to do this, in my opinion, and the board can chime in, it is what it is. If it comes back and it goes up, then it goes up. If it goes down, then it goes up. If it goes up, then it needs to comply with this section according to what the judge told us to do.

CHAIRMAN WREN: Okay.

MEMBER MARNELL: I don't think we can get in a game that well, if it goes up we don't want it to go up so we're sorry. And if it goes down then that's good for the taxpayer. I think if we're going to do this right, remove the unconstitutional methods, do the reappraisal and it is what it is. And then the ones that do go up, make sure it doesn't -- make sure it doesn't violate NRS 361.395(2). Just my opinion.

CHAIRMAN WREN: I agree.

MEMBER MESERVY: I really like what Mr. Marnell is saying and I agree with what he's saying. And again, it will just strictly be those that are related to this issue because they're the ones in part of the suit.

CHAIRMAN WREN: Okay. Anthony, do you want to -- As it is right now, we have a motion that if we don't do anything, we stand, we can reaffirm that motion. Or Anthony, if you wanted to make a new motion that would supercede your previous motion.

MEMBER MARNELL: Okay, Mr. Chairman, I'm happy to make a motion. Dawn or Terry, could you rejog my memory on exactly what the case number is here that we're dealing with or is this just the --

MS. BUONCRISTIANI: This is subject to the writ of mandamus from the Second Judicial District Court of the State of Nevada, County of Washoe, that was known as Case Number CV-003-0922. Is that enough?

MEMBER MARNELL: 06922?

MS. BUONCRISTIANI: Yes. CV --

MEMBER MARNELL: Okay. So Mr. Chairman, on CV-03-06922, based on all the evidence again that has been provided and all the testimony and in the brief discussion that we've had with our counsel and it seems like in concurrence with what all board members feel is the

appropriate correct action to make sure that we ensure that this is 100 percent correctly done with constitutional methods and at the same time equalizing across the area of Incline Village and Crystal Bay. The motion would be to Washoe County assessor's office to reappraise all properties for the 03-04, 05-06 and 0 -- I'm sorry. 03-04, 04-05 and 05-06 to reappraise all properties in those three tax years that were unconstitutionally appraised or identified as unconstitutionally appraised and to determine the new taxable value. And in the event that any of those valuations increase, to assure that we comply with NRS 363.395(2).

And I would also include in my motion that they use all necessary means to accomplish this goal. And I'm assuming that that's going to cost them some money. But I'm sure it's far better than a 1.5 billion dollar property tax drop. So they're going to need to go figure out within their coffers and their budgets on how to accomplish that goal.

But I think it's appropriate that that not be an excuse to be able to not do it and that they may need some technological assistance and also maybe some people assistance in order to go do this. And I don't have a time frame because I have no idea how complicated that is. So I would look to you for a time frame in which we would like this done.

MEMBER MESERVY: I'll second that long motion.

CHAIRMAN WREN: Ben.

MEMBER JOHNSON: The only part that I don't know if it's possible to augment the motion is we need to deal with the level of assessment required by law. So what we're going to have here in the end is we'll have values that are using the methodologies required by law, but we have no way then to determine if those new values are at the level of assessment required by law.

So I would like to augment it and ask that based on whatever the results are from the Washoe County assessor's office that Terry prepare a sales ratio study on those to determine if they're at the level of assessment required by law.

CHAIRMAN WREN: Would you include that in your motion?

MEMBER MARNELL: I don't have a problem with that.

MEMBER MESERVY: And I'll second that addition.

CHAIRMAN WREN: Okay. Any other comments?

MEMBER MARNELL: Mr. Chairman, do you have a time frame that you think that this should be done by? Maybe in the next decade.

CHAIRMAN WREN: Yeah, that's kind of what I was thinking.

MS. BUONCRISTIANI: That was the statement that I

was going to make after you finished your motion is that I have a response to make to the court by somewhere around mid-February. But I could ask for an extension based on what you're proposing to do.

MEMBER MARNELL: I really don't know if you want to open it back up for testimony to hear what Mr. Wilson would like to say or not or maybe you just have a good feeling, Mr. Chairman, on how long this will take.

CHAIRMAN WREN: You know, I don't. It would be a guess on my part and it would appear to be a guess on his part also. I think it would be reasonable to say to have it accomplished within the next 12 months. I'm not sure that it needs to be done any sooner than that. It is going to be somewhat complicated. I think that the Court will be answered by our decisions that we make. What the final action is really doesn't matter as far as the coming court dates. So I would say that we have everything accomplished within a 12-month period.

And I'll also state that if it gets to a point where the assessor requires more time then he can come -- he can ask us for it.

MEMBER JOHNSON: I just want to speak to that briefly. On page number 16 of Mr. Creekman's response, he indicates that the assessor's office could reappraise the properties at issue -- Where does he say it? He says -- It's

the first paragraph on that page. But based on this it seems to indicate that Washoe County would be able to accomplish it. They would want, need a little bit of time but that they could do it.

MEMBER MARNELL: Yeah. I think within six months to one year is fair, appropriate and -- So I think we should leave it, Mr. Chairman, and six months to no later than one year.

CHAIRMAN WREN: Okay. Very good. Dennis, do you agree with that in your second?

MEMBER MESERVY: I second that too, the addition.

CHAIRMAN WREN: Okay. All right. I have a motion and second. Any other comments? Okay. All in favor say aye.

(The vote was unanimously in favor of the motion)

CHAIRMAN WREN: Opposed? Okay. It carries unanimously. All right. Thank you very much, members.

Okay. Terry.

MS. RUBALD: Mr. Chairman, that takes us to Item D, possible action statewide equalization.

MEMBER MARNELL: Mr. Chairman, I would throw my comments in. I think I've already said this in the prior comments, but I did not see any evidence whatsoever anywhere in any of the testimony since I've been on this board that requires any statewide action of equalization. I don't think

there's been any evidence provided that we have any -- anything other than what the assessors were supposed to do and when we do get that information from Terry I think we've made the -- taken the appropriate actions throughout the years. And I think that we should continue our investigations on the grievances that were brought before us in September like we asked and that the department and that those local assessors continue to look in to those particular grievances by those very few property owners across the state.

CHAIRMAN WREN: Okay. And for the record, I also want to point out that we did have our September hearing. That was in accordance with the Court's order that we have a hearing for the taxpayers for the State of Nevada. That hearing was amply addressed throughout the State of Nevada and the taxpayers had the opportunity to come before us and very few did. So I agree with Anthony. But I don't see where we have any other obligation for equalization.

Ben.

MEMBER JOHNSON: I agree with what you guys are saying. I want to ask Dawn if she felt we met the obligation of the writ and equalizing on a statewide basis based on our actions that have been aforementioned?

MS. BUONCRISTIANI: I would say that the interpretation of the writ as to what you needed to do would

be what the board determines that it needs to do and also as to equalization your view of the State Board of Equalization and what the evidence has been presented to you and the issues have been presented to you and that you have acted on those to -- for purposes of equalization to the extent that you find it necessary then that would be what I would report to the Court.

CHAIRMAN WREN: Okay. Anything else on statewide equalization for the members?

Okay. Terry.

MS. RUBALD: Mr. Chairman, that brings us to Item E, briefing to and from the board and the secretary and staff on briefing schedules and hearing schedules. And I have nothing to report to you on that matter. The next time we would probably meet would be March.

CHAIRMAN WREN: Okay. Fifth Monday of March. Okay.

Public comment? Okay. This hearing is adjourned. Thank you.

(Hearing concluded at 11:37 a.m.)

STATE OF NEVADA)
) ss.
CARSON CITY)

I, CHRISTY Y. JOYCE, Official Court Reporter for the State of Nevada, Department of Taxation, do hereby certify:

That on Monday, the 3rd day of December, 2012, I was present at State Board of Equalization for the purpose of reporting in verbatim stenotype notes the within-entitled public meeting;

That the foregoing transcript, consisting of pages 1 through 82, inclusive, includes a full, true and correct transcription of my stenotype notes of said public meeting.

Dated at Reno, Nevada, this 30th day of December, 2012.

CHRISTY Y. JOYCE, NV CCR #625

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100 North Carson Street
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IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., a Nevada non-profit corporation, on behalf of their members, and others similarly situated; MARYANNE INGEMANSON, trustee of the LARRY D. AND MARYANNE B. INGEMANSON TRUST; DEAN R. INGEMANSON, individually and as trustee of the DEAN R. INGEMANSON TRUST; J. ROBERT ANDERSON; and LES BARTA, on behalf of themselves and others similarly situated,

Plaintiffs,

vs.

THE STATE OF NEVADA, on relation of the STATE BOARD OF EQUALIZATION; WASHOE COUNTY; and BILL BERRUM, WASHOE COUNTY TREASURER,

Defendants.

Case No. CV03-06922

Department No. 7

STATE BOARD OF EQUALIZATION'S NOTICE OF EQUALIZATION ORDER

Respondent, State of Nevada ex rel. State Board of Equalization (State Board), through its counsel Catherine Cortez Masto, Attorney General, by Dawn Buoncristiani, Deputy Attorney General, hereby submits its Notice of State Board of Equalization's Equalization Order (Notice). *See* Exhibit 1. Such Notice is made in response to this Court's Writ of Mandamus (Writ) dated August 21, 2012. The Writ orders the State Board to report how the Writ has been executed within 180 days after the issuance of the Writ. The Notice

is timely made.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned hereby affirms that this document filed in the above-entitled matter does not contain the social security number of any person.

Respectfully submitted this 8th day of February, 2013.

CATHERINE CORTEZ MASTO
Attorney General

By: Dawn Buoncristiani

DAWN BUONCRISTIANI
Deputy Attorney General
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100 N. Carson Street
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Nevada Office of the Attorney General
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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on February 8, 2013, I served the foregoing **STATE BOARD OF EQUALIZATION'S NOTICE OF EQUALIZATION ORDER**, by depositing a true and correct copy for mailing at Carson City, Nevada, first class mail, postage prepaid, fully addressed as follows:

Suellen Fulstone, Esq.
Snell & Wilmer L.L.P.
50 West Liberty Street, Suite 510
Reno, Nevada 89501

David Creekman
Chief Deputy District Attorney
Washoe County District Attorney's Office
Civil Division
Post Office Box 30083
Reno, Nevada 89520

Mary C. Wilson
An Employee of the Office of the Attorney General

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

INDEX OF EXHIBIT TO STATE BOARD OF EQUALIZATION'S NOTICE OF EQUALIZATION ORDER

Exhibit No.	Description of Exhibit
1	State Board of Equalization's Order

EXHIBIT 1

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

EXHIBIT 1

STATE OF NEVADA
STATE BOARD OF EQUALIZATION
1550 College Parkway, Suite 115
Carson City, Nevada 89706-7921
Telephone (775) 684-2160
Fax (775) 684-2020

BRIAN SANDOVAL
Governor

CHRISTOPHER G. NIELSEN
Secretary

In the Matter of: **Proceedings Regarding Equalization Of Real Property throughout the State of Nevada From 2003-2004 Tax Year through 2010-2011 Tax Year**	**Equalization Order 12-001**

EQUALIZATION ORDER

Appearances

No one appeared on behalf of Louise Modarelli, a Clark County Taxpayer.

William J. McKean, Esq. of Lionel, Sawyer and Collins appeared on behalf of City Hall, LLC, a Clark County Taxpayer (City Hall).

Jeff Payson and Rocky Steele of the Clark County Assessor's Office and Paul Johnson, Clark County Deputy District Attorney, appeared on behalf of the Clark County Assessor (Clark County Assessor).

William Brooks appeared on behalf of himself, a Douglas County Taxpayer.

Douglas Sonnemann, Douglas County Assessor, appeared on behalf of the Douglas County Assessor (Douglas County Assessor).

Paul Rupp and Dehnert Queen appeared on behalf of Paul Rupp, an Esmeralda County Taxpayer.

Ruth Lee, Esmeralda County Assessor, appeared on behalf of the Esmeralda County Assessor (Esmeralda County Assessor).

Suellen Fulstone, Esq., of the Reno office of Snell and Wilmer, appeared on behalf of the Village League to Save Incline Assets, Inc., et al. (Fulstone)

Joshua G. Wilson, Washoe County Assessor, appeared on behalf of the Washoe County Assessor (Washoe County Assessor).

Terry Rubald appeared on behalf of the Department of Taxation (Department).

Summary

Hearings Held September 18, 2012, November 5, 2012, and December 3, 2012

Notice, Agendas, and Attendance

This equalization action came before the State Board of Equalization (State Board) as a result of a Writ of Mandamus filed on August 21, 2012, Village League to Save Incline Assets, Inc. v. State Board of Equalization, et al. In case number CV-03-06922, the Second Judicial District Court of the State of Nevada, Department 7, commanded the State Board to take such actions as are required to notice and hold a public hearing or hearings, to hear and determine the grievances of property owner taxpayers regarding the failure, or lack, of equalization of real property valuations throughout the State of Nevada for the 2003-2004 tax year and each subsequent tax year to and including the 2010-2011 tax year; and to raise, lower or leave unchanged the taxable value of any property for the purpose of equalization. The first public equalization hearing under the Writ of Mandamus was to be held not more than 60 days after the Writ was issued. *See Record, Writ of Mandamus; Tr. 9-18-12, p. 5, l. 12 through p. 6, l.8.*

Accordingly, the State Board noticed the public that it would hold an equalization hearing. The notice was placed in 21 newspapers of general circulation throughout the State of Nevada during the week of September 2, 2012, through the Nevada Press Association which has six members that publish daily and 28 members that publish non-daily newspapers. The notice advised that the State Board would hold a public hearing to hear and consider evidence of property owner taxpayers regarding the equalization of real property valuations in Nevada for the period 2003-2004 tax year through 2010-2011 on September 18, 2012 at 1 p.m. in the Legislative Building, Room 3137 in Carson City, Nevada. The notice also advised that video conferencing would be available in Las Vegas, Elko, Winnemucca, Ely, Pahrump, Caliente, Eureka, Battle Mountain, and Lovelock, as well as on the internet. Interested parties could also participate by telephone. *See Tr., 9-18-12, p. 10, ll. 2-18; Record, Affidavit of Publication dated September 11, 2012.* In addition to the published notice, certified hearing notices were sent to Suellen Fulstone, the representative of the Village League to Save Incline Assets, Inc., et al; Richard Gammick, Washoe County District Attorney; and Joshua G. Wilson, Washoe County Assessor.

For the November 5, 2012 hearing, certified notices were sent to all county assessors, as well as the taxpayers or their representatives who presented grievances at the September 18, 2012 hearing. In addition, the State Board posted a notice of hearing on the Department of Taxation's website and sent a general notice to a list of all interested parties maintained by the Department. The notice advised that the purpose of the second hearing was to take information and testimony from county assessors in response to the grievances made by property owner taxpayers regarding the equalization of property valuations in Nevada for the 2003-2004 tax year through 2010-2011. In particular, the State Board requested the Clark, Douglas, Esmeralda, or Washoe County Assessors to respond on the following matters:

1.) Classification procedures for agricultural property, with particular information on the classification and valuation of APN 1319-09-02-020 and surrounding properties 1319-09-801-028, 1319-09-702-019, and 119-09-801-004, and in general, the valuation of properties in the Town of Genoa, Douglas County;
2.) Valuation procedures used on APN 162-24-811-82 including information regarding the comparable sales used to establish the base lot value of the neighborhood and whether any adjustments were made to the base lot value for this property (Modarelli property In Clark County);
3.) Valuation procedures used to value exempt properties and in particular APN 139-34-501-

003, owned by City Hall LLC in Clark County;
4.) Property tax system in Nevada (Esmeralda County); and
5.) Use of unconstitutional valuation methodologies for properties in Incline Village and Crystal Bay in Washoe County.

The November 5th agenda recited that responses were not limited to the itemized topics

For the December 3rd hearing, the State Board placed notices in the Reno Gazette Journal and the Incline Bonanza newspapers. In addition, certified notices of the hearing were sent to Suellen Fulstone on behalf of Village League and the Washoe County Assessor, and Washoe County district attorneys for the Washoe County Board of Equalization and Washoe County. A general notice was also sent to the interested parties list of the State Board and placed on the Department of Taxation website. The notice advised that the purpose of the December 3rd hearing was to take information and testimony from the Washoe County Assessor in response to the direction of the State Board made at the hearing held on November 5, 2012 regarding equalization for the Incline Village and Crystal Bay area.

At the September 18, 2012 hearing, 95 persons attended the hearing in Carson City, and 7 persons attended from other areas of the state. Twenty-two persons attended the November 5, 2012 hearing; and 17 persons attended the December 3, 2012 hearing. *See Record, Sign-in sheets.*

At the September 18, 2012 hearing, the State Board called upon taxpayers from each county to come forward to bring evidence of inequity. No taxpayers came forward from Carson City, Churchill, Elko, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey, or White Pine counties. Grievances were received from Clark, Douglas, Esmeralda, and Washoe counties. At the November 5 and December 3, 2012 hearings, responses from assessors were heard, as well as additional remarks from petitioners.

Clark County Grievances and Responses

City Hall, LLC Grievance

The first grievance heard on September 18, 2012 was from City Hall, LLC. City Hall, LLC asserted that the property it purchased had been incorrectly valued for property tax purposes for many years prior to the purchase. Prior to purchase, the property had been exempt. City Hall, LLC asserted that the valuation was based on the 1973 permit value and used as a place holder during the years it was exempt rather than based on the methodologies required by statute and regulation. The taxpayer asked the State Board to order the Clark County Assessor to set up an appropriate value for its parcel and any similarly situated parcels; and to allow the taxpayer an opportunity to appeal the value in January, 2013. *See Tr., 9-18-12, p. 11, l. 16 through p. 14, l. 12.*

Response to City Hall, LLC grievance

At the November 5, 2012 hearing, the Department recommended dismissal of the petition of the particular property of City Hall LLC, because the taxpayer requested the value for the 2012-2013 tax year be declared an illegal and unconstitutional valuation methodology. The year in question was outside the scope of this equalization action; the request appeared to be an attempt to file an individual appeal that would otherwise be considered late, and the State Board would be without jurisdiction to hear the appeal. *See Tr., 11-5-12, p. 12, ll. 1-18.*

The Clark County Assessor responded that City Hall LLC did not own the property until 2012 and the grievance was not covered by the Writ issued by the Court. The Assessor also responded that an individual appeal for the current tax year would have been late and questioned whether the State

Board had jurisdiction if this was an individual appeal. *See Tr., 11-5-12, p. 13, l. 16 through p. 14, l. 8.*

The State Board ordered the Department to schedule a performance audit investigation to determine whether and how county assessors value property that is exempt. *See Tr., 11-5-12, p. 12, l. 21 through p. 13, l. 4; p. 14, l. 9 through p. 15, l. 10.*

Louise Modarelli Grievance

Louise Modarelli by telephone call to staff asked the State Board to review the value established for her residential property. Ms. Modarelli had previously appeared before the State Board in case number 11-502, in which she appealed the values established for the years 2007-2012. *See Tr., 9-18-12, p. 16, ll. 12-17; Record, SBE page 1, case no. 11-502.*

Response to Modarelli grievance.

At the November 5, 2012 hearing, the State Board noted that Ms. Modarelli's appeal had previously appeared on the State Board's agenda in September 2011; the State Board at that time found it was without jurisdiction to hear the appeal because it was late filed to the State Board and because it was for prior years, and the taxpayer did not provide a legal basis for the State Board to take jurisdiction. *See Tr., 11-5-12, p. 6, ll. 7-13.* In addition, Ms. Modarelli sought relief from payment of penalty and interest for failure to pay the tax from the Nevada Tax Commission and received such relief. *See Tr., 11-5-12, p. 6, ll. 14-25.*

The State Board requested the Clark County Assessor to provide information regarding the comparable sales used to establish the base lot value of the neighborhood and whether any adjustments were made to the base lot value for the subject property. The Clark County Assessor responded by describing how the property was valued; that each lot in the subject property's neighborhood had a land value of $20,000 per lot and there were no other adjustments to the subject property. The improvement value of $59,654 was based on replacement cost new less statutory depreciation. The total value of $79,654 was reduced by the Clark County Board of Equalization to $50,000. The Clark County Assessor did not find anything in the valuation that was inequitable and recommended dismissal. *See Tr., 11-5-12, p. 9, l. 7 through p. 11, l. 1.* The Department also recommended dismissal because there was no indication provided by the Taxpayer of inequitable treatment compared to neighboring properties. *See Tr., 11-5-12, p.7, ll. 1-4.*

The State Board accepted the Clark County Assessor and the Department's recommendations to dismiss the matter from further consideration for equalization action. *See Tr., 11-5-12, p. 11, ll. 2-14.*

Douglas County Grievances and Responses

William Brooks Grievance

On September 18, 2012, William Brooks grieved that parcels in the Town of Genoa, Douglas County, suffered from massive disparity of valuations, citing in particular a subject property, APN 1319-09-702-020 and properties surrounding the subject. The Department noted that one of the parcels in question was classified as agricultural property, which was why the parcel was significantly lower in value than other parcels. The Department also noted that a special study had been done on this specific grievance with legislators as part of the reviewing committee in 2004. The study was made part of the record of this equalization hearing. *See Record, William Brooks evidence, page 1 and Record, 2004 Special Study; Tr., 9-18-12, p. 17, l. 8 through p.21, l.14.*

Response to Brooks Grievance

At the November 5, 2012 hearing, the Douglas County Assessor responded that the four parcels referenced by Mr. Brooks are located in Genoa, Nevada and all are zoned neighborhood commercial. The zoning affects only one of the four parcels with regard to value. Parcel 1319-09-801-028 is vacant, with no established use. The value is therefore based on its neighborhood commercial zoning. Parcels 1319-09-709-019 and 1319-09-801-004 are both used as residential properties and are valued accordingly, even with the allowed zoning, noting that there is not a lot of valuation difference between commercial and residential valuation in the Genoa Town. Finally, parcel 1319-09-702-0200 is used for grazing as part of a large family ranch. The parcel is not contiguous with the rest of the ranch, which consists of approximately 750 acres in agricultural use, primarily cattle and hay production. The parcel is valued as required by NRS Chapter 361A regarding agricultural properties. *See Tr., 11-5-12, p. 16, l. 20 through p. 17, l. 13.*

The Assessor further responded that the differences in valuation are primarily the result of differences in use, as well as adjustments for shape and size. In particular, agricultural use property is based on an income approach and the values per acre are established by the Nevada Tax Commission in its *Agricultural Bulletin.* Differences in taxes are also due to the application of the abatement, which is 3 percent for residential property and up to 8 percent for all other property. *See Tr., 11-5-12, p. 17, l. 14 through p. 18, l. 7.*

The Department further described how the values are established for the *Agricultural Bulletin. See Tr., 11-5-12, p. 18, l. 22 through p. 20, l. 11.*

Mr. Brooks replied that the non-contiguous parcel valued as agricultural land is not owned by the same ranch entity and that as a stand-alone parcel, could not sustain an agricultural use and should not be classified as eligible for agricultural valuation. As a result, adjoining parcels similarly situated are not being treated uniformly. *See Tr., 11-5-12, p. 22, l. 20 through p. 23, l. 8; p. 26, l. 11.*

The Department recommended that the matter be referred to the Department to be included in a future performance audit regarding the proper classification of agricultural lands. The State Board directed the Department to conduct a performance audit of assessors with regard to the procedures used to properly qualify and classify lands used for agricultural purposes. *See Tr., 11-5-12, p. 27, l. 16 through p. 29, l. 6.*

Esmeralda County Grievances and Responses

Queen/Rupp Grievance

Dehnert Queen grieved that the actual tax due has nothing to do with the assessment value. Mr. Queen proposed an alternative property tax system based on acquisition cost to each taxpayer. *See Tr., 9-18-12, p. 24, l. 24 through p.28, l. 2.*

Response to Queen/Rupp Grievance

At the November 5, 2012 hearing, the Esmeralda County assessor noted that Mr. Queen owns no property in Esmeralda County and filed no agent authorization to represent Mr. Rupp. She had no response to Mr. Queen's proposal to go to a fair market value system. *See Tr., 11-5-12, p.29, ll. 18-25.* Mr. Queen replied that he and Mr. Rupp had found discrepancies in the listing of Mr. Rupp's property; the actual taxes fluctuate significantly from year to year; and the actual tax has little relationship to assessed value. He briefly described again an alternative property tax system. *See Tr., 11-5-12, p. 31, l. 3 through p. 34, l. 2.* Mr. Rupp grieved about the county board of equalization process and how his

property valuation was derived. *See Tr., 11-5-12, p. 35, l. 13 through p. 36, p. 15.*

The State Board requested the Esmeralda County Assessor to inspect the property to ensure the improvements are correctly listed. The State Board took no further action on the grievance because it would require changes in the law. *See Tr., 11-5-12, p. 36, ll. 2-25.* The Department offered to provide training to the county board of equalization. *See Tr., 11-5-12, p. 38, ll. 1-9.*

Washoe County Grievances and Responses

Village League Grievance

Suellen Fulstone on behalf of Village League to Save Incline Assets, Inc., representing approximately 1350 taxpayers, grieved that all residential property valuations in Incline Village and Crystal Bay be set at constitutional levels for the 2003-2004 tax year and subsequent years through 2006-2007, based on the results of a Supreme Court case where the Court determined the 2002 re-appraisal of certain properties at Incline Village used methods of valuation that were null, void, and unconstitutional. *See Tr., 9-18-12, p. 31, l. 1 through p. 40, l. 24.*

Response to Village League Grievance

The State Board asked the Washoe County Assessor to respond to the Village League assertion that unconstitutional valuation methodologies were used for properties in Incline Village and Crystal Bay in Washoe County. The Assessor responded that teardown properties were included in the sales comparison approach for many, but not all, properties. In addition, when determining the land value for some properties, one or more adjustments were made for time, view, and or beach type. Similarly, there were many parcels whose land value was determined without the use of teardowns in the sales analysis and without adjustments for time, view, or beach type. *See Tr., 11-5-12, p. 39, ll.6-15.*

The Assessor further responded that for the 2006-2007 and 2007-2008 tax years, the State Board previously held hearings to address matters of equalization. The Assessor also responded that the Court's Writ does not require revisiting land valuation at Incline Village and Crystal Bay nearly a decade after the values were established, but rather to correct the failure to conduct a public hearing as it relates to the equalization process pursuant to NRS 361.395. *See Tr., 11-5-12, p. 40, l. 6 through p. 43, l. 21.*

Fulstone replied that she objected to the characterization of this matter as having to do with the methodologies; the matter is about equalization and not about methodologies. She also objected to the denial of a proper rebuttal; and failure of the department to provide a proper record to the State Board, which she asserted would show a failure of equalization at Incline Village for the 2003-2004; 2004-2005; and 2005-2006 tax years. *See Tr., 11-5-12, p. 44, l. 8 through p. 45, l. 15.*

The Department commented that NAC 361.652 defines "equalized property," which means to "ensure that the property in this state is assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law." The Department further commented that there is insufficient information in the record to determine whether the methods of appraisal used on all the properties at Incline Village were or were not uniform. In addition, the Department recommended the State Board examine the effects of removing the unconstitutional methodologies to determine the resulting value and whether the resulting value complies with the level of assessment required by law. *See Tr., 11-5-12, p. 55, l. 10 through p. 56. l. 3.*

For the December 3, 2012 hearing, the Department brought approximately 24 banker boxes containing the record of cases heard by the State Board for properties at Incline Village and Crystal Bay

for prior years. The Department responded to the complaint of Fulstone that the full record was not before the State Board by stating that the record in the boxes had not been reduced to digital records due to a lack of resources in preparing for this hearing, but nevertheless the full record was available to the State Board and to the parties. The Department also stated that the *Bakst* and *Barta* case histories would be included in the record upon receipt from the Attorney General's office. *See Tr., 12-3-12, p. 4, ll. 12-25.*

At the December 3, 2012 hearing, the Washoe County Assessor provided lists of properties for the 2003-2004, 2004-2005, and 2005-2006 fiscal years, showing those properties which were subject to one of the four methodologies deemed unconstitutional by the Nevada Supreme Court. *See Tr., 12-3-12, p. 6, l. 1 through p. 7, l.12.*

The Department recommended that the State Board measure the level of assessment through an additional sales ratio study after the valuations at Incline Village and Crystal Bay are revised, in order to ensure the Incline Village properties have the same relationship to taxable value as all other properties in Washoe County. *See Tr., 12-3-12, p. 24, l. 6 through p. 27, l.15.*

Fulstone rebutted the notion that a sales ratio study should be performed. Fulstone stated that for purposes of equalization, the Supreme Court's decision in *Bakst* to roll back values established for the 2002-2003 fiscal year should be determinative for the current equalization action. Further, the State Board should exclude any value that by virtue of resetting values to 2002-2003 would result in an increase. Fulstone asserted the values of those properties are already not in excess of the constitutional assessment. *See Tr., 12-3-12, p. 32, l. 10 through p. 33, l. 17.* Fulstone also argued the regulations adopted by the State Board in 2010 regarding equalization do not apply, and the roll-back procedures adopted by the Supreme Court do apply for purposes of equalization. *See Tr., 12-3-12, p. 35, l. 8 through p. 37, l. 24; p. 41, l. 18 through p. 42, l. 4.*

The State Board discussed the meaning of equalization at length and whether regulations governing equalization adopted in 2010 could be used as a guideline for purposes of equalizing values in 2003-04, 2004-05, and 2005-06. *See Tr., 12-3-12, p. 42, l. 12 through p. 47, l. 22.* The Washoe County District Attorney concurred with the Department that a sales ratio study should be performed to ensure property values are fully equalized and reminded the State Board that the current regulations provide for several alternatives, including doing nothing, referring the matter to the Tax Commission, order a reappraisal or adjust values up or down, based on an effective ratio study. *See Tr., 12-3-12, p. 50, l. 21 through p. 53, l. 12.* The Deputy Attorney General advised the State Board the writ of mandate does not limit the State Board to the roll-back procedures used by the Nevada Supreme Court to effect equalization. *See Tr., 12-3-12, p.71, ll. 2-21.*

The State Board, having considered all evidence, documents and testimony pertaining to the equalization of properties in accordance with NRS 361.227 and 361.395, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

1) The State Board is an administrative body created pursuant to NRS 361.375.

2) The State Board is mandated to equalize property valuations in the state pursuant to NRS 361.395.

3) The State Board found there was insufficient evidence to show a broad-based equalization action was necessary to equalize the taxable value of residential property in Clark County that was the subject of a grievance brought forward by Louise Modarelli. The State Board dismissed

the grievance from further action. *See Tr., 11-5-12, p. 11, ll. 2-14.*

4) The State Board found there was insufficient evidence to show a broad-based equalization action was necessary to equalize the valuation of exempt property in Clark County that was the subject of a grievance brought forward by City Hall, LLC. The State Board dismissed the grievance from further action. The State Board, however, directed the Department to conduct a performance audit of the work practices of county assessors with regard to how value is established for exempt properties. *See Tr., 11-5-12, p. 12, l. 21 through p. 13, l. 4; p. 14, l. 9 through p. 15, l. 10.*

5) The State Board did not make a finding with regard to a broad-based equalization action on agricultural property in Douglas County, however, the State Board directed the Department to conduct a performance audit of the work practices of county assessors in the proper classification of agricultural lands. *See Tr., 11-5-12, p. 27, l. 16 through p. 29, l. 3.*

6) The State Board found the grievance brought forward by Dehnert Queen and Paul Rupp, Esmeralda County, with regard to the property tax system required statutory changes. The State Board dismissed the grievance from further action. *See Tr., 11-5-12, p. 34, l. 25 through p. 35, l. 4.*

7) The State Board found there was sufficient evidence to support a finding that some properties located in Incline Village and Crystal Bay, Washoe County, were valued in 2003-2004, 2004-2005, and 2005-2006 using methodologies that were subsequently found to be unconstitutional by the Nevada Supreme Court. See *Tr., 11-5-12, p. 92, l. 19 through p. 94, l. 24; p. 98, l. 1-9; p. 100, ll. 3-23; State Board of Equalization v. Bakst,* 122 Nev. 1403, 148 P.3d 717 (2006).

8) The State Board found there was no evidence to show methods found to be unconstitutional by the Nevada Supreme Court in the *Bakst* decision were used outside of the Incline Village and Crystal Bay area. *See Tr., 11-5-12, p. 94, l. 15 through p. 95, l. 7; p. 106, l. 7 through p. 108, l. 2; Tr., 12-3-12, p. 61, ll. 3-21.*

9) The State Board found that equalization of the Incline Village and Crystal Bay area which might result in an increase in value to individual properties requires separate notification by the State Board of Equalization pursuant to NRS 361.395(2). *See Tr., 11-5-12, p. 103, ll. 12-21; Tr., 12-3-12, p. 74, l. 12 through p. 75, l. 9.*

10) Any finding of fact above construed to constitute a conclusion of law is adopted as such to the same extent as if originally so denominated.

CONCLUSIONS OF LAW

1) The State Board has the authority to determine the taxable values in the State and to equalize property pursuant to the requirements of NRS 361.395.

2) County assessors are subject to the jurisdiction of the State Board.

3) The Writ of Mandamus issued in Case No. CV-03-06922 requires the State Board to take such actions as are required to notice and hold public hearings, determine the grievances of property owner taxpayers regarding the failure or lack of equalization for 2003-2004 and subsequent years to and including the 2010-2011 tax year, and to raise, lower, or leave unchanged the taxable value of any property for the purpose of equalization. *See Writ of Mandamus issued August 21, 2012.* The State Board found the Writ did not limit the type of equalization action to

be taken. *See Tr., 12-3-12, p. 71, l. 11 through p. 73, l. 25.*

4) Except for NRS 361.333 which is equalization by the Nevada Tax Commission, there were no statutes or regulations defining equalization by the State Board prior to 2010. As a result, the State Board for the current matter relied on the definition of equalization provided in NAC 361.652 and current equalization regulations for guidance in how to equalize the property values in Incline Village and Crystal Bay, Washoe County, Nevada. The State Board found the Incline Village and Crystal Bay properties to which unconstitutional methodologies were applied to establish taxable value in 2003-2004, 2004-2005, and 2005-2006 should be reappraised using the constitutional methodologies available in those years; and further, that the taxable values resulting from said reappraisal should be tested to ensure the level of assessment required by law has been attained, by using a sales ratio study conducted by the Department. *See Tr., 12-3-12, p. 76, l. 2 through p. 79, l. 21.*

5) The standard for the conduct of a sales ratio study is the IAAO *Standard on Ratio Studies (2007). See NAC 361.658 and NAC 361.662.*

6) The Nevada Supreme Court defined unconstitutional methodologies used on properties located at Incline Village and Crystal Bay as: classification of properties based on a rating system of view; classification of properties based on a rating system of quality of beachfront; time adjustments and use of teardown sales as comparable sales. *See State Board of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006).

7) NAC 361.663 provides that the State Board require the Department to conduct a systematic investigation and evaluation of the procedures and operations of the county assessor before making any determination concerning whether the property in a county has been assessed uniformly in accordance with the methods of appraisal required by law.

8) Any conclusion of law above construed to constitute a finding of fact is adopted as such to the same extent as if originally so denominated.

ORDER

Based on the Findings of Fact and Conclusions of Law above, the State Board determined that no statewide equalization was required. *See Tr., 12-3-12, p. 80, l. 1 through p. 81, l. 10.* However, based on the Findings of Fact and Conclusions of Law above, the State Board determined certain regional or property type equalization action was required. The State Board hereby orders the following actions:

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.

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.

6) The Department is directed to conduct a performance audit of the work practices of all county assessors with regard to the valuation of exempt properties, and to report the results of the audit to the State Board no later than the 2014-15 session of the State Board. All county assessors are directed to cooperate with the Department in supplying such information the Department finds necessary to review in order to conduct the audit; and to supply the information in the format required by the Department. *See Finding of Fact #5.*

7) The Department is directed to conduct a performance audit of the work practices of all county assessors with regard to the proper qualification and classification of lands having an agricultural use, and to include in the audit the specific properties brought forward in the Brooks grievance. The Department is directed to report the results of the audit to the State Board no later than the 2014-15 session of the State Board. All county assessors are directed to cooperate with the Department in supplying such information the Department finds necessary to review in order to conduct the audit; and to supply the information in the format required by the Department. *See Finding of Fact #6.*

BY THE STATE BOARD OF EQUALIZATION THIS 8 DAY OF FEBRUARY, 2013.

Christopher G. Nielsen, Secretary

CGF/ter

CERTIFICATE OF SERVICE
Equalization Order 12-001

I hereby certify on the 8 day of February, 2013 I served the foregoing Findings of Fact, Conclusions of Law, and Decision by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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State Board of Equalization

IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC.; MARYANNE INGEMANSON, TRUSTEE OF THE LARRY D. & MARYANNE B. INGEMANSON TRUST; ET AL.,	)	Supreme Court Case No. 63581
	)	
	)	District Court No. CV03-00922
Appellants,	)	
vs.	)	
THE STATE OF NEVADA, BOARD OF EQUALIZATION; ET AL.,	)	
Respondents.	)	

JOINT APPENDIX – VOLUME 2

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BEFORE THE NEVADA STATE BOARD OF EQUALIZATION

WASHOE COUNTY'S BRIEF TO THE NEVADA STATE BOARD OF EQUALIZATION REGARDING STATEWIDE EQUALIZATION

Washoe County provides the following brief in connection with the continued statewide equalization hearings for the years 2003-2004 through 2010-2011. The next hearing on this matter is scheduled for December 3, 2012. This brief is authorized, and timely, pursuant to the SBOE's "Notice of Equalization Hearing" dated November 16, 2012.

I. Introduction and Summary

The SBOE has a duty to equalize statewide. In the course of the hearings conducted beginning in September 2012, the SBOE has failed to consider statewide equalization, choosing instead to focus on a specific claim brought by the Incline Village/Crystal Bay property owners for equalization.

The basis for the request by the Incline Village/Crystal Bay property owners for "equalization" is the application of unconstitutional methodologies to those properties for the years in question. However, that relief has been specifically precluded, as the Nevada Supreme Court has recognized the need for each individual property owner to have exhausted administrative remedies in petitioning to the county board of equalization regarding that claim.

Moreover, the SBOE has previously rejected jurisdiction of the very same claim in 2007, which ultimately resulted in the Nevada Supreme Court's opinion in *Marvin v. Fitch*, 232 P.3d 425, 126 Nev. Adv. Op. 18 (May 17, 2010).

Despite the foregoing, it appears that the SBOE is poised to take action to "equalize" the Incline Village/Crystal Bay values by reducing the same based upon the use of the unconstitutional methodologies on those properties.

The SBOE's individualized focus on only the Incline Village/Crystal Bay properties, based on improper property valuations, is precisely of the type which the Supreme Court stated, in this very case in its March 19, 2000 Order, that "should have been raised before the county board." As a result, if the individual property owners failed to pursue their claim through the administrative process, namely the county board of equalization, they are precluded from seeking "equalization" based on the application of unconstitutional methodologies.

Moreover, equalization on a statewide basis has already occurred annually through the ratio studies provided for by NRS 361.333. The only element missing from that process was a public hearing.

Furthermore, Washoe County, and each of the taxing entities within Washoe County, will suffer long-lasting and immediate harm if the SBOE continues down the path it has already embarked upon. If the values of properties in Incline Village/Crystal Bay are in fact reduced as the SBOE appears inclined to do, the resulting refunds would be for taxes paid and spent nearly a decade ago. It is unclear at this point whether any of those individuals paid their taxes under protest, which is one of the mechanisms put in place to put the governmental entities on notice that those taxes are in dispute. It is the mechanism that allows for governmental entities to have some certainty as to the funds to which each has access for budgeting purposes. Another such

mechanism is the provision requiring the SBOE to notice, no later than April 30, each local government if a proposed equalization action is likely to have a substantial effect on tax revenues. NRS 361.380(1). If there is proposed action to equalize, such as the Incline Village/Crystal Bay property owners are suggesting, Washoe County should have received notice of such proposed equalization no later than April 30, 2003, to allow the County to plan and budget accordingly. No such notice was ever provided. The result is that the budgets of the relevant taxing entities, nearly a decade after the taxes were collected and spent, would presently be depleted to pay the refunds without sufficient notice of the proposed action. These are budgets already severely impaired based on the current economic situation. That result must be avoided.

At the very least, if the SBOE continues down the path it is now on, the next step must be taken in having a ratio study performed based on the adjusted values to ensure that the result does not in itself create an equalization problem. If that is done, the equalization issue that will be created will be obvious, as the Incline Village/Crystal Bay property owners will then be paying an unequal share of taxes than the remainder of Washoe County and the remainder of the State of Nevada. That is not equal. It is not just. It certainly is not equalization.

In reality, the only proper course of action would be for the SBOE to recognize no equalization problem that needs to be addressed and the grievance of the Incline Village/Crystal Bay property owners result in no action, as those property owners failed to properly avail themselves of the administrative process of challenging the valuations through the county board of equalization.

II. A Brief History of the Litigation

In November of 2003, the Village League petitioned the Court for Declaratory and

Related Relief, including claims based on the use of unconstitutional methodologies on properties located in Incline Village/Crystal Bay. The District Court on June 2, 2004, granted motions to dismiss based upon the Court's perception that the Village League had failed to exhaust administrative remedies. The Village League appealed the dismissal to the Nevada Supreme Court.

On March 19, 2009, the Supreme Court issued its "Order Affirming in Part, Reversing in Part and Remanding." The Supreme Court upheld the dismissal of the claims asserted in connection with the application of unconstitutional methodologies, holding that the individuals had an administrative remedy for those claims by virtue of the process afforded through the County Board of Equalization. The Supreme Court instructed that the District Court "should have proceeded to determine whether Village League's claim for injunctive relief [to compel the State Board of Equalization to perform its statewide equalization function] was viable."

Following the Supreme Court's remand to the District Court of the one remaining cause of action, the Village League filed an amended complaint to seek a Writ of Mandamus, alleging that the SBOE failed to equalize valuations throughout the State of Nevada, as well as between Washoe and Douglas Counties, for the 2003/2004 tax year, and that writ relief was warranted to compel it to do so. The district court dismissed that amended complaint and another appeal to the Supreme Court followed.

On February 24, 2012, the Supreme Court issued an unpublished Order in which it again remanded the case to this Court, stating that "[t]he State Board's failure to conduct public hearings with regard to statewide equalization has denied Village League an adequate remedy at law." According to the Supreme Court, the District Court erred in determining that the Village League had an adequate remedy at law. Throughout its Order, the Supreme Court emphasized

time and time again that "the State Board had a duty ... to equalize property valuations in the state," and that Nevada law "obligates the State Board to equalize property valuations throughout the state," in direct response to the Village League's assertions, in the amended complaint, that the SBOE "failed to equalize valuations throughout the state, as well as between Washoe and Douglas counties, for the 2003-2004 tax year...."

On remand, the District Court issued its Writ of Mandamus on August 21, 2012. The Writ directed the SBOE to "take such actions as are required to notice and hold a public hearing, or hearings as may be necessary, to hear and determine the grievances of property owner taxpayers regarding the failure, or lack, of equalization of real property valuations throughout the State of Nevada for the 2003-2004 tax year and each subsequent tax year to and including the 2010-2011 tax year and to raise, lower or leave unchanged the taxable value of any property for the purpose of equalization."

III. SBOE Action Since Writ of Mandamus Issued

On September 18, 2012, the SBOE conducted a hearing, teleconferenced across the State of Nevada, during which it was to "hear and determine grievances of property owner taxpayers regarding the equalization of real property valuations in Nevada for the 2003 - 2004 tax year through each subsequent tax year to and including 2010 - 2011...." The hearing resulted in taxpayer comments/grievances from individuals residing in a few of Nevada's counties.

On November 5, 2012, the SBOE held a second hearing, at which it directed the County Assessors to respond to those taxpayer comments/grievances. Of particular concern to Washoe County was the portion of the notice relative to Washoe County which stated that the issue for Washoe County was the "[u]se of unconstitutional valuation methodologies for properties in Incline Village and Crystal Bay."

At this November 5, 2012 hearing, the other individuals who had presented grievances were denied relief by the SBOE based for the most part on jurisdictional grounds. During the portion of the hearing regarding the Incline Village/Crystal Bay grievance, the SBOE appeared to determine that any use of an unconstitutional valuation methodology necessarily results in non-equalization. The SBOE limited its focus to Incline Village and Crystal Bay, not looking outside of that area within Washoe County or outside of Washoe County. The SBOE queried only the Washoe County Assessor as to his ability to identify Incline Village and Crystal Bay properties where one of the four methodologies invalidated by the Supreme Court in *State, State Board of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006), was used. Despite the intended statewide focus of this equalization hearing, the SBOE made no such similar inquiry of any of Nevada's other county assessors. In the end, the SBOE appeared to be granting relief to those property owners in the Incline Village/Crystal Bay area based on the use of unconstitutional methodologies in assessing their properties. The SBOE requested the Washoe County Assessor to provide it with a list of properties upon which any of the unconstitutional methodologies was utilized.

The SBOE has now set another hearing for December 3, 2012. The stated purpose of this hearing "is to take information and testimony from the Washoe County Assessor in response to the direction of the State Board made at the hearing on November 5, 2012, regarding equalization for the Incline Village and Crystal Bay area."

IV. Legal Concerns Regarding "Equalization" Proceedings

A. Focus on Use of Unconstitutional Methodologies Precluded

In the course of the presentation of the grievance of the Incline Village/Crystal Bay property owners, and in the discussion by the SBOE at the November 5, 2012 meeting, it was

clear that the SBOE considered only the use of the unconstitutional methodologies as the basis for the proposed action to reduce values at Incline Village/Crystal Bay.

The Nevada Legislature has taken great efforts to provide a system in which individuals may contest their property assessments. Within that system there exists a county board of equalization and a state board of equalization.

The county boards derive their powers by statute. NRS 361.345. The Nevada Legislature has provided specific authority for individuals to petition the county boards of equalization. An individual property owner may petition to the county board based on the following: 1) alleged overvaluation or excessive valuation by reason of undervaluation or nonassessment of other property, NRS 361.355; 2) his or her property allegedly being assessed at a higher value than another property whose use is identical and whose location is comparable, NRS 361.356; or, 3) the full cash value of his or her property allegedly being less than the taxable value computed for the property in the current assessment year, NRS 361.357.

Individuals aggrieved by the action taken by the county board are then authorized to petition the SBOE in an appellate capacity. NRS 361.360. The SBOE is required to convene on the fourth Monday in March of each year. NRS 361.380(1). "If a proposed equalization affects local governmental entities in more than one county and the equalization, in the opinion of the State Board of Equalization, is likely to have a substantial effect on tax revenues, the State Board of Equalization shall notify each affected local governmental entity of the proposed equalization on or before April 30."[1]

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[1]NRS 361.380(1) was revised in 2011. The provision previously provided that "The State Board of Equalization shall conclude the business of equalization on cases that in its opinion have a substantial effect on tax revenues on or before April 15."

NRS 361.395 provides that the SBOE also has another function, aside from it's appellate function; specifically, the SBOE is required to equalize property valuations throughout the State. NRS 361.395; *State, Bd. Of Equalization v. Barta*, 124 Nev. 612, 188 P.3d 1092, 1102 (2008). The SBOE, in performing statewide equalization, is presented with evidence of property valuations from the county tax rolls or from interested property owners, and is required to make findings and issue decisions regarding the necessity and method of equalization. *Marvin v. Fitch*, 232 P.3d 425, 126 Nev. Adv. Op. 18 (May 17, 2010). However, the SBOE does not have jurisdiction to equalize the values of interested property owners unless the individual has first adhered to the administrative procedures for equalization relief by petitioning to the county board. As the Nevada Supreme Court clearly stated in its March 19, 2009 Order Affirming in Part, Reversing in Part and Remanding:

> Failure to exhaust available administrative remedies renders the matter unripe for district court review and, thus, nonjusticiable. *Allstate Ins. Co. v. Thorpe*, 123 Nev. , , 170 P.3d 989, 993-94 (2007); see also *Baldonado v. Wynn Las Vegas*, 124 Nev. , , 194 P.3d 96, 105(2008) (noting that declaratory relief actions generally are inappropriate when an administrative remedy exists). As we have noted before, "[t]he exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and conserves judicial resources, so its purpose is valuable; requiring exhaustion of administrative remedies often resolves disputes without the need for judicial involvement." *Allstate*, 123 Nev. at , 170 P.3d at 993-94. [W]e conclude that Village League was required to exhaust administrative remedies with respect to its assertions regarding the Assessor's methods and the state agencies' failures to standardize those methodologies . . .
> In this matter, any challenges to tax assessments based on improper property valuations should have been raised before the county board. In the context of challenging those assessments, the parties could have raised their constitutional challenges to the County Assessor's methods, including whether those methods were properly applied to the properties at issue despite their alleged nonstandardization statewide. Accordingly, the district court properly dismissed the complaint with respect to those claims for failure to exhaust administrative remedies.

See March 19, 2009 Order Affirming in Part, Reversing in Part and Remanding attached hereto.

The SBOE's individualized focus on only Incline Village/Crystal Bay properties, despite the District Court case being initiated (and re-initiated in the amended complaint) as based upon the Village League's perception that equalization problems exist in Incline Village/Crystal Bay, at least as between those properties and similarly situated Douglas County properties. This individualized focus, this individualized challenge to tax assessments based on improper property valuations, is precisely of the type which the Supreme Court stated, in this very case in its March 19, 2000 Order, that "should have been raised before the county board." As a result, if the individual property owners failed to pursue their claim through the administrative process, namely the county board of equalization, they are precluded from seeking "equalization" based on the application of unconstitutional methodologies.

In fact, this is not the first time Incline Village/Crystal Bay property owners have pursued this very issue. In 2007-2008, several individual property owners petitioned the SBOE to have their properties equalized despite the fact that they had failed to petition the county board of equalization. *Marvin v. Fitch*, 232 P.3d 425, 126 Nev. Adv. Op. 18 (May 17, 2010). That case was based on the fact that the county board of equalization had granted a number of taxpayers relief for the 2007/2008 tax year based on the use of unconstitutional methodologies. The complaint sought relief based on the county board and the SBOE failing to equalize all properties in the Incline Village/Crystal Bay area based on the reduction granted to those property owners who had petitioned the county board. Specific to the SBOE, it was alleged that it had failed to perform equalization as is required by NRS 361.395. In that case, the petitioners bypassed the county board and petitioned directly to the SBOE for relief. The SBOE properly denied those petitions for lack of jurisdiction, as the property owners had failed to exhaust their administrative remedies. The district court, in addressing the subsequent complaint filed by the Incline

Village/Crystal Bay property owners, dismissed the complaint for failure to exhaust administrative remedies.

If the facts of the *Marvin* case sound familiar, that is because the SBOE heard in August 2012 substantially the same story–the same story that was properly rejected by the SBOE in 2009 for failure to exhaust administrative remedies.

Simply put, the use of unconstitutional methodologies cannot be the basis for equalization in the Incline Village/Crystal Bay area.

B. Equalization Has Been Performed

Further, the SBOE is straying from its equalization duty in this case in other significant ways.

First, the only deficiency noted by the Supreme Court as to the SBOE's equalization function was that it had "repeatedly stated in its motions and briefs that no hearings have been held to equalize all property values in the state" and that it "has not held a public hearing during which taxpayers could air their grievances with the equalization process, nor has it affirmatively acted to equalize property values." A hearing was the only missing "element" in the equalization process, a process which Washoe County respectfully submits was completed many years ago, and is completed annually all across the State of Nevada.

Second, the SBOE was advised by its own staff from the Department of Taxation that equalizing property valuations is a two-step process involving not only an analysis of whether property is assessed uniformly, but also whether it is assessed at the level of assessment required by law.

In performing the first part its equalization function under NRS 361.395(1), the SBOE performs this function in association with the Nevada Department of Taxation's efforts to test a

variety of information using applied statistics to determine if inequity or assessment bias exists. The Department of Taxation surveys and analyzes assessor work practices to ensure the uniform application of valuation and assessment methodologies by Nevada's county assessors. If inequity or bias exists, the Nevada Tax Commission has independent statutory authority to correct inequitable conditions and if the Nevada Tax Commission fails in its duty, the SBOE may step up to the plate and perform this function, pursuant to its authority to equalize under NRS 361.395(1).

As for the second step in the two-step process of equalizing property valuations, Nevada law, at NRS 361.225, requires that "[a]ll property subject to taxation must be assessed at 35% of its taxable value," known as the assessment ratio. The Department of Taxation, acting under authority of NRS 361.333, conducts a ratio study annually. This ratio study is designed to measure the level of appraisal accuracy of Nevada's local county assessors. Generally speaking, a ratio study is designed to evaluate appraisal performance to determine taxable value through a comparison of appraised or assessed values estimated for tax purposes with independent estimates of value based on either sales prices or independent appraisals. The comparison of the estimate of assessed value produced by the assessor on each parcel in the sample to the estimate of taxable value produced by the Department of Taxation is called a "ratio." The ratio study involves the determination of assessment levels by computing the central tendencies (the mean, median and aggregate ratios) of assessment ratios. Nevada specifies the use of the median ratio, the aggregate ratio, and the coefficient of dispersion of the median to evaluate both the total property assessments and the assessments of each major property class.

NRS 361.333(2) permits the Department of Taxation to conduct a ratio study on smaller groups of counties instead of the entire state in one year. The 2005 - 2006 ratio study included

three-year statistics for all of Nevada's counties and is the study most relevant to this Washoe County status report and motion for injunctive relief, with immediate temporary restraining order. Prior to the 2005 - 2006 ratio study, Washoe County was last reviewed in 2002, a review which occurred before the 2003 - 2004 valuations which prompted this action in the first place back in 2003 when the Village League initiated this case. In performing the ratio study, the Department of Taxation calculates the overall, or aggregate, ratio by dividing the total assessed value of all the parcels in the sample by the total taxable value of all the parcels in the sample. This produces a ratio weighted by dollar value. Because parcels with higher values exert more influence than do parcels with lower values, all of the ratios are arrayed in order of magnitude and the median, a statistic describing the measure of central tendency of the sample, divides the sample into two equal parts. The median is the most widely used measure of central tendency by equalization agencies because it is less affected by extreme measures and it is therefore the preferred measure for monitoring appraisal performance or evaluating the need for a reappraisal. See International Association of Assessing Officers, Standard on Ratio Studies (1999), p. 23.

NRS 361.333(5)(c) states that over- or under-assessment may exist, under the ratio study, if the median of the ratios falls in a range of less than 32% or more than 36%. As established, the median of individual ratios for all property in Washoe County, in the 2005 - 2005 ratio study, fell at 34.40%. For the major classes of properties, as enumerated in NRS 361.333(5)9(c), Washoe County's ratios varied between 33.50% and 34.90%, all well within the statutorily-permissible median ratio of assessed value to taxable value. But most significantly, the 2005 - 2006 ratio study consistently concluded that the Washoe County Assessor's discovery and valuation work practices met all of the applicable standards of the Nevada Department of Taxation, in all areas of the Washoe County Assessor's valuation responsibilities.

Because the ratios fell within the permissible statutory range, it is reasonably concluded that no over- or under-assessment existed in either Washoe or any other county subject to that review, thus permitting the further conclusion that property valuations were, in fact, equalized "at the level of assessment required by law." NAC 361.652. The only missing link, according to the Supreme Court, was the SBOE's failure to give taxpayers an opportunity to air their grievances about the valuation process during the course of a public hearing. Washoe County suspects that the SBOE at the time thought their equalization work had been completed, and that the SBOE simply overlooked this step of the process where comments from the public should have been permitted.

Nothing further need be done in terms of equalization. In fact, if anything, the equalization problem that exists is that the Incline Village/Crystal Bay property owners are paying less taxes than the rest of Washoe County and the State of Nevada. Further reducing the Incline Village/Crystal Bay property taxes will in fact create an equalization problem, if not exacerbate an already existing one. At the very least, if the SBOE is considering reducing values at Incline Village/Crystal Bay, a ratio study based on the new values must be conducted to determine if those values fall within the allowable range.

V. Equitable Concerns

Washoe County, and each of the taxing entities within Washoe County, will suffer long-lasting and immediate harm if the SBOE is permitted to continue down the path it has already embarked upon.

The SBOE has indicated they will direct the Washoe County Assessor to modify the tax rolls, by rolling values of Incline Village/Crystal Bay properties back to their 2002/2003 levels for the 2003/2004 tax year, and by rolling back values for the subsequent tax years of 2004/2005

and 2005/2006 to an amount not different from that achieved by multiplying the rolled back 2003/2004 values by factors previously approved by the Nevada Tax Commission.

The Writ of Mandamus then goes on to obligate the Washoe County Treasurer to issue modified tax bills and any corresponding refunds.

The financial impact of the SBOE's direction causes Washoe County grave concern. The litigation that resulted in the Writ was commenced over nine years ago. The District Court disposed of the matter promptly. But the case languished in the Nevada Supreme Court for about another four years. Then, just short of another three years elapsed before the case was resolved a second time by the Nevada Supreme Court. Its progress since that date through the District Court, and into the SBOE, has been relatively fast as only about another nine months have now elapsed since the Supreme Court's February 24, 2012 Order was issued. But during this entire period, from the time the case was initially filed through today, nine individual tax years have come, and gone, with the tax revenues raised during those tax years having now been fully committed to (and spent under) nine different budgets approved by the Washoe County Board of County Commissioners.

Although the precise dollar amount involved in this litigation is, as of now, impossible to develop, the Washoe County Assessor roughly estimates that the SBOE's action will remove in excess of $1.5 Billion in assessed valuation from the Washoe County tax rolls for the years in question, and the Washoe County Treasurer roughly estimates that the cost of lost tax revenues associated with this litigation may be in the range of in excess of $20 Million. Again, these are only rough estimates but here at issue are taxes that were collected, distributed and spent by the various taxing agencies nearly a decade ago.

Washoe County owes most of its existence to property tax revenues. Police protection, library and park services, road repair and maintenance, capital improvements and even support for day-to-day operations of such essential, but often hidden, functions like human resources, personnel and other administrative services, are all funded, at least in part, by property tax revenues. As one of Washoe County's largest employers, the salaries of thousands of Washoe County employees are funded through property tax collections. But the impact of the course being taken by the SBOE does not stop with Washoe County's operations. The property tax revenue involved in this case is of critical importance to other taxing jurisdictions here in Washoe County who share in the combined tax rate, and the resulting tax collections, which are impacted by the SBOE's action. Among those taxing jurisdictions are the already hard-hit North Lake Tahoe Fire Protection District, the Incline Village General Improvement District, the Washoe County School District and the State of Nevada. And the fact that the revenue involved was collected, and spent, nearly a decade ago, by Washoe County and the other taxing jurisdictions, further illustrates the need to consider the financial impact of such a decision.

The orderly, efficient and continuing administration of local government, including the provision of local governmental services, here in Washoe County is at stake in this matter. The public policy being served is one which prevents the taxing entity from using public funds paid by taxpayers in a given budget year from having to refund those taxes, especially when the collection of those taxes occurred through no fault of the taxing entity and when the taxpayers involved did not timely pursue their once-available remedies to retrieve those taxes.

In the alternative to the previously discussed remedy of rolling values back to the 2002/2003 values, for which there is no legal basis, there are other remedies also available. For instance, the SBOE discussed the possibility of reappraisal of the subject properties. While this

would be at a very bad time for the Assessor's Office to reappraise the properties at issue, as that office is currently in the throws of the annual process required by statute, Washoe County believes that it could still be accomplished and is, in fact, even envisioned as a possible method of resolving equalization issues found to exist statewide, under the SBOE's relatively new (as of 2010) equalization regulations found in the Nevada Administrative Code.

VI. Conclusion

The SBOE's "equalization" function is to "address statewide, county-by-county equalization issues." The SBOE, in conducting the hearings since the issuance of the Writ, has "failed to equalize valuations throughout the state, as well as between Washoe and Douglas counties, for the 2003-2004 tax year."

It was the SBOE's "failure to conduct public hearings with regard to statewide equalization" that was determined to have denied the Village League of an adequate remedy at law, and that failure resulted in this Court's issuance of the Writ of Mandamus to perform its statewide function. Despite soliciting public comments on the issue of equalization from around the state, the SBOE is focused exclusively on only the portion of Washoe County which includes Incline Village/Crystal Bay.

How can it possibly be determined that valuation inequality may exist when only a small, limited, area of the state is focused upon? How is it possible to equalize statewide when the SBOE's attention is exclusively focused on a narrow group of properties in one small corner of a very large state? How is it possible to compare Washoe County's methodologies with those used by any other of Nevada's counties when not a single one of the other county assessors are examined as to their assessment techniques?

Washoe County respectfully submits that such a narrow focus can only have been initially raised before the Washoe County Board of Equalization, but that such an action is now long-since barred by the passage of time. The Incline Village/Crystal Bay property owners failed to exhaust their administrative remedies with respect to the methods utilized by the Assessor. Despite being told by the Supreme Court that they were so precluded, that is exactly the basis, and the only basis, upon which they seek "equalization."

There is nothing in the record to support a finding that there is an equalization issue to be addressed. The Nevada Constitution requires an uniform and equal rate of assessment and taxation. Any action to reduce the values of Incline Village/Crystal Bay properties will actually create an equalization issue in that the remainder of Washoe County, and possibly the remainder of the State of Nevada, as they will then be paying taxes at a much higher rate than those individuals located at Incline Village/Crystal Bay. Such a result must be avoided.

Respectfully submitted this 28th day of November, 2012.

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District Attorney

By David C. Creekman

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ATTORNEYS FOR WASHOE COUNTY

ATTACHMENT

ATTACHMENT

IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., A NEVADA NON-PROFIT CORPORATION, ON BEHALF OF ITS MEMBERS AND OTHERS SIMILARLY SITUATED,
Appellant,
vs.
THE STATE OF NEVADA ON RELATION OF ITS DEPARTMENT OF TAXATION, THE NEVADA STATE TAX COMMISSION, AND THE STATE BOARD OF EQUALIZATION; WASHOE COUNTY; ROBERT MCGOWAN, WASHOE COUNTY ASSESSOR; AND BILL BERRUM, WASHOE COUNTY TREASURER,
Respondents.

No. 43441

FILED
MAR 19 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order dismissing a declaratory and injunctive relief action in a real property tax assessment dispute.[1] Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

FACTS

On behalf of its members, appellant Village League to Save Incline Assets, Inc., filed a district court complaint concerning property

[1]The Honorable Kristina Pickering, Justice, voluntarily recused herself from participation in the decision of this matter.

tax assessments against respondents—namely, the State of Nevada, on relation of its Department of Taxation, Tax Commission, and State Board of Equalization; the Washoe County Assessor; and the Washoe County Treasurer. In its complaint, Village League contended that the property assessment methods and tax-related notice procedures used by the Washoe County Assessor were constitutionally invalid and that the State Board of Equalization had failed to carry out its constitutional obligation to equalize property valuations. In addition to declaratory and injunctive relief, Village League sought property tax refunds. Because neither Village League nor its members had first exhausted their administrative remedies, however, the district court dismissed the complaint. Village League timely appealed.

DISCUSSION

Failure to exhaust available administrative remedies renders the matter unripe for district court review and, thus, nonjusticiable. Allstate Ins. Co. v. Thorpe, 123 Nev. ___, ___, 170 P.3d 989, 993-94 (2007); see also Baldonado v. Wynn Las Vegas, 124 Nev. ___, ___, 194 P.3d 96, 105 (2008) (noting that declaratory relief actions generally are inappropriate when an administrative remedy exists). As we have noted before, "[t]he exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and conserves judicial resources, so its purpose is valuable; requiring exhaustion of administrative remedies often resolves disputes without the need for judicial involvement." Allstate, 123 Nev. at ___, 170 P.3d at 993-94. District court orders dismissing an action for failure to exhaust administrative remedies typically are reviewed de novo. See id. at ___, 170 P.3d at 993 (noting that this court reviews de novo whether the statutory scheme requires exhaustion of administrative

remedies); Wyatt v. Terhune, 315 F.3d 1108, 1117 (9th Cir. 2003) (explaining that courts generally review de novo orders dismissing complaints for failure to exhaust administrative remedies, unless the court makes factual determinations, which are reviewed for clear error).

Regarding exhaustion, NRS 361.410(1) provides, in relevant part,

> No taxpayer may be deprived of any remedy or redress in a court of law relating to the payment of taxes, but all such actions must be for redress from the findings of the State Board of Equalization, and no action may be instituted upon the act of a county assessor or of a county board of equalization or the Nevada Tax Commission until the State Board of Equalization has denied complainant relief.[2]

Because the majority of Village League's complaint "related to" the payment of property taxes—as exemplified by its requests for refunds—its failure to first seek redress from the State Board of Equalization rendered those issues nonjudiciable. First Am. Title Co. v. State of Nevada, 91 Nev. 804, 543 P.2d 1344 (1975).

Exceptions to the exhaustion doctrine

Nevertheless, Village League asserts that exceptions to the exhaustion doctrine apply here, such that despite NRS 361.410(1)'s clear terms, it was not required to first exhaust administrative remedies. We

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[2]Correspondingly, NRS 361.420(2) provides in relevant part that "[t]he property owner, having protested the payment of taxes . . . and having been denied relief by the State Board of Equalization, may commence a suit in any court of competent jurisdiction in the State of Nevada against the State and county in which the taxes were paid."

have recognized that exhaustion is not required when the issues "'relate solely to the interpretation or [facial] constitutionality of a statute.'" Malecon Tobacco v. State, Dep't of Taxation, 118 Nev. 837, 839, 59 P.3d 474, 476 (2002) (quoting State of Nevada v. Glusman, 98 Nev. 412, 419, 651 P.2d 639, 644 (1982)). Additionally, exhaustion is excepted when resort to administrative remedies would serve no useful purpose or is futile. Id.; Engelmann v. Westergard, 98 Nev. 348, 353, 647 P.2d 385, 388-89 (1982) (explaining that requiring exhaustion would be futile when administrative remedies are not viable, when no fair opportunity to exhaust administrative remedies exists, or when the agency clearly lacks jurisdiction).

Here, Village League contends that its challenge to the County Assessor's methods is analogous to a constitutional challenge to a statute's or ordinance's facial validity and, thus, not subject to the exhaustion requirement. Further, while Village League acknowledges that NRS 361.345 allows the county board of equalization to determine property values and modify an assessor's incorrect valuation, it nonetheless argues that no administrative process exists to review several of its assertions. In particular, Village League insists that no administrative body can properly review its assertions that (1) the assessment methodologies used were invalid de facto regulations, (2) the Department of Taxation and Tax Commission failed to standardize assessment methods and procedures statewide, and (3) the State Board of Equalization and Department of Taxation failed to carry out their equalization duties. Although we conclude that Village League was required to exhaust administrative remedies with respect to its assertions regarding the Assessor's methods and the state agencies' failures to standardize those methodologies, we

agree with Village League that no administrative process exists by which it could challenge the State Board's compliance with its equalization duties.

In Malecon Tobacco v. State, Department of Taxation, we recognized that, while an administrative agency has no authority to determine whether a statute, on its face, is unconstitutional, when resolving the constitutional challenge involves a factual evaluation, that evaluation is best left to the administrative agency, which can use "its specialized skill and knowledge to inquire into the facts of the case." 118 Nev. 837, 841, 59 P.3d 474, 477 (2002). Accordingly, exhaustion is required for "as applied" constitutional challenges. Similarly addressing the constitutional challenge exception to the exhaustion doctrine, the Tennessee Supreme Court has explained that, like with "as applied" challenges, the administrative agency can use its skill to determine constitutional challenges to an agency rule or procedure, including reviewing due process concerns. Richardson v. Tennessee Bd. of Dentistry, 913 S.W.2d 446, 455, 457 (Tenn. 1995). Presenting such issues to the agency helps create a complete record, allows the agency to correct any errors, and promotes judicial efficiency. Id.[3]

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[3]While the Tennessee court determined that parties must follow the administrative process before seeking judicial review, it also determined that, under Tennessee's legal system, failure to raise constitutional challenges during the administrative process does not necessarily preclude judicial review of those issues. Richardson, 913 S.W.2d at 457-58. We need not determine whether failure to raise constitutional challenges during the administrative process in Nevada precludes judicial review of those issues here because Village League failed to exhaust administrative remedies in the first instance.

In this matter, any challenges to tax assessments based on improper property valuations should have been raised before the county board. In the context of challenging those assessments, the parties could have raised their constitutional challenges to the County Assessor's methods, including whether those methods were properly applied to the properties at issue despite their alleged nonstandardization statewide. Accordingly, the district court properly dismissed the complaint with respect to those claims for failure to exhaust administrative remedies.

It is not clear, however, that Village League had available any means to administratively challenge the State Board of Equalization's alleged failures to carry out its equalization duties. While NRS 361.356 allows a property owner to raise equalization issues regarding properties with comparable locations before the county board, and while NRS 361.360 allows taxpayers to challenge the county board's failure to equalize, those statutes do not address statewide, county-by-county equalization issues. And in State, Board of Equalization v. Barta, 124 Nev. ___, ___, 188 P.3d 1092, 1102 (2008), we recognized that a property taxpayer suffers injury when properties are not valued in accordance with the constitutional right to a uniform and equal rate of assessment, which the equalization processes are intended to ensure.

Village League's complaint alleged that, despite taxable valuation disparities between Washoe and Douglas Counties in the 2003/04 tax year and prior tax years, the State Board failed to equalize those valuations. As a remedy therefore, Village League sought a declaration that the property valuation disparity between Washoe and Douglas Counties violated the Nevada Constitution and a mandatory

injunction directing the State Board to redress that disparity by equalizing property valuations.

As no statute provides for an administrative process to remedy the State Board's failure to equalize county valuations, insofar as Village League alleged that the State Board failed to perform an act required by law and sought an order directing that act's performance, such was appropriately raised in its district court complaint.[4] See, e.g., NRS 34.160; Idaho State Tax Com'n v. Staker, 663 P.2d 270 (Idaho 1982); Fondren v. State Tax Commission, 350 So. 2d 1329 (Miss. 1977); reaffirmed in State Tax Commission v. Fondren, 387 So. 2d 712, 723-24 (Miss. 1980), abrogated on other grounds by Marx v. Truck Renting & Leasing Ass'n, 520 So. 2d 1333, 1346 (Miss. 1987); 84 C.J.S. Taxation § 654 (2001). Accordingly, we reverse the portion of the district court's order dismissing the equalization claim, and we remand this matter for further proceedings on that claim.[5]

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[4]Village League has not pointed to any authority for requesting the court to "declare" a disparity in property valuations, and nothing in Nevada's declaratory relief statues, NRS Chapter 30, appears to so authorize. Accordingly, the district court properly dismissed the declaratory relief portion of the equalization claim.

[5]Having considered respondents' argument that Village League lacks standing to raise the equalization claim, we conclude that it is without merit; in light of this order, standing with respect to the remainder of Village League's claims need not be reached.

CONCLUSION

The district court properly dismissed the action below, except for the equalization claim, because Village League failed to exhaust its administrative remedies prior to seeking judicial review. Regarding the equalization claim, the district court should have proceeded to determine whether Village League's claim for injunctive relief was viable. Therefore, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.

_____, C.J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: Second Judicial District Court Dept. 7, District Judge
Cathy Valenta Weise, Settlement Judge
Morris Peterson/Reno
Attorney General Catherine Cortez Masto/Carson City

Attorney General Catherine Cortez Masto/Las Vegas
Washoe County District Attorney Richard A. Gammick/Civil Division
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BEFORE THE NEVADA STATE BOARD OF EQUALIZATION

REBUTTAL BRIEF

This brief is submitted in connection with matters C and D as set forth on the revised agenda for the State Board of Equalization meeting on December 3, 2012.

At the conclusion of the November 5, 2012 hearing in this equalization docket, this Board made a decision with respect to the equalization grievances of taxpayers at Incline Village and Crystal Bay for the tax years 2003-2004 through 2010-2011. As reflected in the transcript, the Board unanimously approved the motion made by Member Marnell and seconded by Member Meservy to reset land values for residential properties at Incline Village and Crystal Bay which were subject to unconstitutional valuation methodologies at their 2002-2003 levels plus the applicable Tax Commission approved factor for the 2003-2004, 2004-2005, and 2005-2006 tax years. *See Transcript, pp.100-113 attached as Exhibit 1.* The Board directed Washoe County Assessor Wilson to identify the properties that had been valued using the unconstitutional methodologies and bring that information back to the board for approval. *Id.*

Washoe County now wants the Board to revisit that decision. Taxpayers respond to specific arguments made by the Washoe County attorney below:

1. **This Board has not "failed to consider statewide equalization."**

This Board has acted to consider statewide equalization in full and express compliance with the writ of mandate directed to this Board by the District Court to:

> take such actions as are required to notice and hold a public hearing, or hearings as may be necessary, to hear and determine the grievances of property owner taxpayers regarding the failure,

> or lack, of equalization of real property valuations throughout the State of Nevada for the 2003-2004 tax year and each subsequent tax year to and including the 2010-2011 tax year and to raise, lower or leave unchanged the taxable value of any property for the purpose of equalization. *Writ of Mandamus, issued August 21, 2012, attached as Exhibit 2.*

This Board has not "focused" on the claims of Incline Village/Crystal Bay taxpayers but rather has heard and determined the equalization grievances of taxpayers throughout the state as required by the writ.

2. Equalization relief based on unconstitutional methodologies has not been "specifically precluded."

The County argues that equalization relief based on unconstitutional methodologies has been "specifically precluded" by the Supreme Court. County counsel is mistaken. The Supreme Court has never ruled on what this Board may or may not consider as a basis for equalization because that issue has never been before the Supreme Court. This Board did not even adopt a process for statewide equalization until 2010.

In 2003, taxpayers filed the court action that ultimately resulted in the writ of mandate. Taxpayers made two kinds of claims. One set of claims challenged the valuation of individual properties at Incline Village and Crystal Bay on constitutional grounds and argued that, because those claims alleged constitutional infirmities, they were not subject to the requirement of exhaustion of administrative remedies. The District Court disagreed and dismissed those claims. The Supreme Court agreed with the District Court in the language quoted by the County. That language about the exhaustion requirement, however, only applied to the claims challenging individual property valuations.

The second kind of claim brought by taxpayers in 2003 sought to compel this Board to perform its statutory duty of equalization. That claim was also dismissed by the District Court. The Supreme Court, however, **reversed** the District Court specifically as to the equalization claim. No "exhaustion of administrative remedies" requirement applied to that claim, according to the Supreme Court, because no administrative process for equalization existed. The Supreme Court noted that in the *Barta* case, it had "recognized that a property

taxpayer suffers injury when properties are not valued in accordance with the constitutional right to a uniform and equal rate of assessment, **which the equalization processes are intended to ensure.**" *Order Affirming in Part, Reversing in Part and Remanding attached to County Brief, p. 6, lns. 16-20 (Emphasis added.); see also State ex rel. State Bd. of Equalization v. Barta 124 Nev. 58, 188 P.3d 1092 (2008)(Barta).* In the *Barta* case, the Supreme Court articulated the two "separate" functions of this Board as established by statute, reviewing County Board decisions (NRS 361.400) and equalization (NRS 361.395).

The only other Supreme Court decision addressing equalization is *Village League v. State, Bd. of Equalization, 124 Nev. 1079, 1082, 194 P.3d 1254, 1257 (2008).* That case arose as a review by this Board from a County Board geographic equalization decision. In directing this Board to review the County Board decision on the record made before the County Board, the Supreme Court did not rule or even comment on what this Board could look to as the basis for an original Board equalization decision.

This Board subsequently affirmed the County Board's geographic equalization decision. Clearly, this Board could base an equalization decision on geography. Taxpayers have proposed that it do so in this case, resetting land values for all residential property at Incline Village/Crystal Bay. Just as clearly, however, this Board could base its equalization decision, as it has, on the use of unconstitutional methodologies. There is existing Board precedent for such a decision. When this Board has, for example, reduced the Assessor's valuations on properties along the Tahoe lakefront or in Mill Creek, it has, as a function of its equalization power, extended those reductions to all similarly situated properties, without regard to whether individual taxpayers pursued relief before the County Board. If this Board has the power to equalize when unconstitutional methodologies are **not** involved, surely it has the power to equalize when the constitutional issues are at the forefront.

3. The equalization issue in *Marvin* has not been decided.

The County alleges that this Board "previously rejected jurisdiction of the very same claim in 2007" and that the 2007 case was "dismissed for failure to exhaust administrative

remedies." The County has misstated the facts on both counts. For shorthand purposes, the 2007 case in question can be referenced as the "Marvin" case. The Marvin case did **not** involve a claim that this Board should equalize based on the County's use of unconstitutional methodologies. Furthermore, the equalization claim in the Marvin case has, in fact, **not** been dismissed.

In Marvin, taxpayers sought relief from the failure of the Washoe County Board of Equalization to equalize within the "geographic vicinity" of Incline Village and Crystal Bay pursuant to NAC 361.624. This Board declined on the grounds that it did not have jurisdiction to review the County Board's failure to equalize unless taxpayers had first taken that issue to the County Board. Taxpayers filed a petition for judicial review in district court to reverse the decision by this Board.

In addition to the petition for judicial review, taxpayers brought a claim under federal law against the Board and its members. The members claimed immunity from liability under the federal law. The immunity issue went to the Supreme Court where it was upheld in the reported decision of *Marvin v. Fitch*, 126 Nev. Adv. Opn. 18, 232 P. 3d 425 (2010). A copy of the opinion as issued by the Court is attached as Exhibit 3. In discussing the procedural background of the case, the Supreme Court noted that it was determining **only** the immunity issue and that the petition for judicial review was **not** before the Court. With respect to the petition for judicial review portion of the case, the Supreme Court wrote as follows:

> The district court **granted** the petition for judicial review and (1) remanded the matter to the State Board and/or the County Board to determine whether the Taxpayers had complied with the provisions of NRS 361.420, (2) remanded the matter to the State Board to establish a record as to whether the Department of Taxation had complied with the requirement to ensure equalization throughout the state, and (3) ordered the State Board to comply with its duty to equalize property valuations throughout the state. Exh. 3, p. 4, Ins. 1-8 (Emphasis added.)

In September of 2009, this Board held a hearing on the remand from the district court and, in February of 2010, issued its written report to the First Judicial District Court. A copy of the first page of that decision is attached as Exhibit 4. The Marvin case remains pending in the First

Judicial District Court to this date. The equalization issue presented by the Marvin case has not been finally determined.

4. This Board's statutory equalization duties have not been performed for the tax years encompassed by the Writ of Mandate.

The County argues that equalization has already "been performed" by the Department's preparation of ratio studies under NRS 361.333. It is, however, both logically and realistically impossible for ratio studies done by the Department on only a third of the state's counties in any given year to satisfy this Board's statutory obligation under NRS 361.395 to equalize statewide on an annual basis. NRS 361.333 never mentions the State Board of Equalization. The State Board's statutory mandate for equalization is NRS 361.395 which never mentions ratio studies or equalization by thirds. As stated by the Supreme Court, "[u]nder NRS 361.395(1), the State Board clearly has a duty to equalize property valuations throughout the state." *Barta, supra.*

Ratio studies were developed in market value jurisdictions to look at properties that have been sold and compare the market price with the assessor's valuation as a measure of the assessor's performance. Ratio studies present significant issues in a non-market, "taxable" value jurisdiction such as Nevada. Without belaboring those issues, however, taxpayers note several facts about the Department's "ratio studies" for the three tax years involved here -- 2003-2004, 2004-2005, and 2005-2006.

The County finds it "most significant" that the "2005-2006 ratio study consistently concluded that the Washoe County Assessor's discovery and valuation work practices met all of the applicable standards of the Nevada Department of Taxation." *Washoe County Brief, p. 12, lns. 20-23.* The 2005-2006 ratio study was issued in May of 2005. The reappraisal area of Washoe County for the 2005-2006 tax year was the Reno Central Core. Whether "valuation work practices" used in reappraising the Reno Central Core "met applicable standards" has **no significance whatsoever** in this matter. The "valuation work practices" that matter were those used for the reappraisal of Incline Village/Crystal Bay for the 2003-2004 tax

year. The Department's 2003-2004 ratio studies did not include Washoe County. The "valuation work practices" used for the reappraisal of Incline Village/Crystal Bay for the 2003-2004 tax year, however, have been reviewed by the courts and found not to meet constitutional standards because of the use of unconstitutional methodologies. *State ex rel. State Bd. of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006) (Bakst); Barta, supra.* Since the 2003-2004 reappraisal established base valuations for Incline Village/Crystal Bay for the 2004-2005 and 2005-2006 tax years as well, those tax year valuations also fail to meet constitutional standards. *Bakst, supra; Barta, supra.*

The failure of the 2003-2004 ratio study to address valuation issues at Incline Village/Crystal Bay was directly addressed by the Deputy Attorney General assigned to the Tax Commission. *See Memorandum (October 6, 2003) attached as Exhibit 5.* The Deputy Attorney General wrote:

> Likewise, **the ratio study has not adequately served to allow the Department and/or the Commission to monitor the appraisal practices of the various county assessors.** Consider, for example, the recent property tax revolt at Incline Village. A sample of Incline Village properties was not included in the most recent ratio study for Washoe County, primarily because Incline Village was not within the reappraisal area at the time the Department conducted the ratio study. Had the ratio study included a sample of properties from Incline Village, it may have alerted the Department and/or the Commission to a potential problem, thus affording an opportunity to facilitate an early resolution of the problem.

The Deputy Attorney General further noted that, as ratio studies were conducted in 2003, "with respect to a particular reappraisal area within a county (*i.e.*, Incline Village), the ratio study generally only addresses that area once every fifteen years." *Exhibit 5, p. 3.* Although the Department's ratio studies have been improved since 2003, for purposes of this matter, no credible argument can be made that this Board's equalization duty or that "equalization" of any kind was effected through the ratio studies in the years at issue.

5. The financial impact of the Board's decision is an improper consideration.

The County claims that the Board's equalization decision under the Writ of Mandate will have an adverse financial impact on County services. Equalization, however, is both a constitutional and, in this case, a judicial mandate. It is not subject to exceptions based on financial impact. The County cannot fairly complain that it lacked notice of the potential impact. Taxpayers filed the underlying action for equalization in 2003. The County has been aware of taxpayer equalization claims since that time. The equities between the County which asks this Board to sustain admittedly unconstitutional assessments and the taxpayers who suffered those assessments necessarily lie with taxpayers.

CONCLUSION

The County's erroneous arguments aside, the issue here is whether this Board can equalize based on unconstitutional methodologies. The answer is and must be an unequivocal "yes." As described by the Nevada Supreme Court in a ruling in this very matter, the "equalization processes" are "intended to ensure" that properties are "valued in accordance with the constitutional right to a uniform and equal rate of assessment." *Order Affirming in Part, Reversing in Part and Remanding attached to County Brief, p. 6, lns. 16-20.* In materials provided to this Board, the Washoe County Assessor has identified over 5000 parcels that were admittedly valued using the unconstitutional valuation methodologies. If this Board had recognized in 2003, when the individual Incline Village/Crystal Bay taxpayer appeals came before it, that unconstitutional methodologies were being used by the Washoe County Assessor, it would have reversed the County Board determinations and set aside those unconstitutional valuations. In keeping with its own precedent, it would also, as an exercise of its power of equalization, have extended that decision to all properties similarly valued whether those properties were before the Board on appeals or otherwise. Five thousand individual taxpayers would not have to seek relief before the County Board of Equalization in order to hold the Assessor accountable for the use of unconstitutional methodologies.

The purpose of the equalization process is to ensure constitutional valuation and

assessment. To achieve that purpose, this Board decided in its November 5, 2012 meeting to reset land values for residential properties at Incline Village and Crystal Bay which were subject to unconstitutional valuation methodologies at their 2002-2003 levels plus the applicable Tax Commission approved factor for the 2003-2004, 2004-2005, and 2005-2006 tax years. *Exhibit 1, pp. 100-113.* That decision is not only consistent with this Board's precedent but also necessary to satisfy the purposes of equalization to ensure constitutional valuation, hold public officials accountable and afford justice to taxpayers.

Respectfully submitted this 30th day of November, 2012.

Suellen Fulstone
Snell & Wilmer
6100 Neil Road, Suite 555
Reno, Nevada 89511
Attorneys for Village League to Save Incline Assets and Incline Village/Crystal Bay Residential Property Owner/Taxpayers

EXHIBIT 1

EXHIBIT 1

STATE BOARD OF EQUALIZATION

STATE OF NEVADA

-o0o-

PUBLIC HEARING

AGENDA ITEM L5 (Writ of Mandamus Hearing)

Monday, November 5, 2012

Nevada Legislative Building, Room 4100

Carson City, Nevada

REPORTED BY:

CAPITOL REPORTERS
Certified Court Reporters
BY: CARRIE HEWERDINE, RDR
Nevada CCR #820
California CSR #4579
Carson City, Nevada
775-882-5322

that before I make my motion?

CHAIRMAN WREN: No, make your motion.

MEMBER MARNELL: I guess that's a no.

Well, Mr. Chairman, based on all the evidence provided, I don't believe in my heart there's any perfect solution to this, and if anybody wants a perfect solution to this, that they probably need to go to the alter, and there they might have a hard time find it.

So I'm going to do the best I can with the information that I've been given to me, and I'm going to make a motion that we -- for the -- I want to be specific here -- for any taxpayer within Incline and Crystal Bay that was unconstitutionally assessed for the '03-'04, '04-'05 and '05-'06 years -- and I'll be specific about those that were testified to, and I believe that would be all single-family residences and approximately the 902 that were subject to unconstitutional methods -- that, number one, my motion would be first that the assessor confirm that that data is accurate, and those people who were unconstitutionally assessed.

Part two is that we would go back to the last constitutional year, which I believe is the '02-'03 years; is that correct?

JOSH WILSON: (Nodding)

CHAIRMAN WREN: I believe so.

MEMBER MARNELL: Okay. And from there, on those particular parcels, we would -- would have the Nevada Tax Commission apply the factor, so this is an objective factor of increase to those particular parcels starting from the '02-'03 year, and each year they would apply that factor going forward for the next three years.

MEMBER MESERVY: What factor?

MEMBER MARNELL: Whatever the factor is. They know it. They know exactly -- they should know what it is.

CHAIRMAN WREN: They -- they will have to do a sales -- they'll have to do a sales ratio study.

MEMBER MARNELL: Then could --

MS. BUONCRISTIANI: Could I cut in just for a second. There's a factor -- there was a factor, as Josh mentioned, I think, approved by the Tax Commission, was that used on the settlements?

JOSH WILSON: Yes, it was, for '04-'05 the factor was 1.0, and on '05-'06 the factor was 8 percent.

SUELLEN FULSTONE: 8?

JOSH WILSON: Thank you.

MEMBER MARNELL: Was there a percent for '03-'04?

JOSH WILSON: '03-'04 would be established as '02-'03, so that was a reappraisal year. That's what

we're discussing now is that '03-'04 reappraisal.

MEMBER MESERVY: Which means --

JOSH WILSON: So essentially the way I see it, under the motion, if I understand it correctly, and if you followed the manner in which it was settled for '06-'07 and '07-'08, you roll back '03-'04 to '02-'03.

And then for '04-'05 you would apply a 1.0 to the already- rolled-back prior year.

And then for '05-'06 you would apply the 8 percent factor, approved by the Commission, to those properties that were subject to one of the four contested methodologies, which I think '05-'06 is -- that's how we already have adjudicated '05-'06.

But I think what's pending in count -- well, there's an interesting case, but I think it's those condominiums that weren't subject to one of the four have continued to move forward through the process, but as you -- okay.

MEMBER MARNELL: Then again -- go ahead.

MEMBER MESERVY: Before you do your motion, I -- I just want to be clear. So he's talking about that area -- when did you '06-'07, was it just these ones he's talking about or was it the full area of Incline Village and --

JOSH WILSON: It was for any individual

petition filed to this Board.

MEMBER MESERVY: Just the petition?

JOSH WILSON: Just the petition.

MEMBER MESERVY: Not anyone else. I want to make sure I'm clear on that.

JOSH WILSON: Right.

MEMBER MARNELL: So anyway in -- in saying all of that, the '03-'04 year, then, the factor would be the '02-'03 year.

The '04-'05 factor would be 1 percent.

And the '05-'06 factor would be 8 percent.

I also would like to include, per the directive of Judge Flanagan -- I believe it's in the writ on page 2, where it says, "that if the Board proposes to increase the valuation of any property on the assessed role of any county, it shall comply with the provisions of NRS 361.3952."

So I just want to make sure that as we go through this, that if there are increases to anybody's taxes in those years, that we comply with this provision as we were directed.

Does anybody have a problem with anything that I've said, before I say "that's my motion"?

MEMBER MESERVY: Before you do, when he says 1.0, is that 1 percent? I didn't think so.

JOSH WILSON: It's a -- it's a 1.0 which is --

MEMBER MESERVY: Yeah, 1 -- so no change.

JOSH WILSON: Correct.

MEMBER MESERVY: Not 1 percent. So I would --

MEMBER JOHNSON: I would -- I want to understand how, between '02 and '04, property values didn't increase at all. In the lake portion of the Washoe County I've seen a lot of evidence to the contrary to that that would bother me. I don't know what it's based on.

JOSH WILSON: It was based on the land factors approved by the Nevada Tax Commission through the Land Factor Analysis provided in 361.260.

MEMBER JOHNSON: Okay.

MEMBER MARNELL: And I agree with you on your concern there. I'm just going off a basis that's already been established by the Tax Commission.

So the next time Ms. Fulstone has a problem, maybe she can go see them on their factor problems. I'm just kidding. So that -- I guess if I can summarize that, Mr. Chairman, at the end of the day, my motion is -- is to -- and I'll try to be as clear as I can -- approximately 900 multi-family residences, which Mr. Wilson will go take a look at to confirm that they -- one of the four methods were used, same thing on all the single-family residences in Incline and Crystal Bay.

If that is the case, he will role them back to the '02-'03, which is the last constitutional year, and provide the factors that we've stated by the Nevada Tax Commission, and we will follow the Judge's writ per the NRS 361.3952, that if anybody's taxes are increased we will follow that Nevada Revised Statute.

And that's my motion.

CHAIRMAN WREN: What for the years -- for the years up through and including '05-'06.

MEMBER MARNELL: Yes, I don't believe that there's any reason to go beyond '05-'06.

CHAIRMAN WREN: Right. Okay.

MEMBER MARNELL: Those have been settled. I think there have been changes to the law since then. All kinds of things have happened, and I don't believe that's what's on the table in this request.

MEMBER MESERVY: So just so I'm clear -- just so I'm clear, it's not just those who -- who appealed, then, is what you're saying?

MEMBER MARNELL: What I -- I -- I want this to be equal for all those who had an unconstitutional appraisal. That's what -- that's what my motion is based on.

I originally was -- like I said, originally, I was going down the path of only the people that were

before us, that followed their due process rights, and went through this lengthy process to be here until today.

But with feedback and comments from all of you, I think it's better that we clean this across the board, once -- for anybody who had this. It's the best I can do with what I understand.

MEMBER MESERVY: And I -- and I like what you're saying. One last thought, though, is -- then will this backfire if it goes outside of -- to other people outside of the area of just -- of just Incline Village and Crystal Bay?

MEMBER MARNELL: I don't think it does, and I think that Mr. Wilson's testimony is -- is accurate, because a large portion of these, if not all of these, the view form was used.

And if you don't have a view of the lake or you're not -- I don't believe -- none of those people have been here before us, ever, on any of these issues. I'm not going to be arrogant enough to assume that they've had these issues.

I can't make that assumption today, that other people in Reno, or Sparks, or any place else had had unconstitutional methods or not.

All I know is that the people before us, representing a large portion of the taxpayers in that very

particular geographic area, are here stating that, and they've been here stating that ever since the first day we came here.

And I would not feel comfortable jumping outside of that boundary line unless I had some other evidence, any shred of evidence to say that that was something that happened.

And if that's something that somebody else wants to look into, then maybe so, Dennis, but I think that -- I think that we're putting this in a box in which it's been brought to us where the issue lies, and I think that we are, at least right now, making a motion to put the years that are in front of us, that are in question on the table until a lot of this law has been amended and clarified about what could and could not be done, and hopefully come up to an applicable resolution for both parties that puts this behind us. So that's ...

MEMBER MESERVY: And I'll -- I'll be willing to second that and -- the motion, but I also want -- my thought is that -- I'm hoping that we're just making it clear that we believe that was where the equalization issue is, and that even if people came later expecting to -- because some of the methodologies were used in other areas, that we don't think there's an equalization issue, that's the question in my mind, and that's kind of what

we're stating here.

And that's what I've been saying.

MEMBER JOHNSON: And my question is: Do we need a ratio study of these new values, however they turn out to make sure they are fair and equalized or is that not something that needs to be done?

MEMBER MESERVY: I don't believe we need to go there. I think it's just a cost to everyone.

MEMBER JOHNSON: Oh.

MEMBER MESERVY: I don't think it's going to create much of a difference here.

MEMBER MARNELL: I think the only that that -- I think that would be good, in my opinion. I think your suggestion is great, given a different context.

I think that this -- again, I don't think there's a perfect solution to this. From -- from my history here trying to understand this, I think that this -- this ends it or maybe it doesn't. But hopefully it ends it, and then the parties can build upon a new day here with new law and more clarification as we go forward.

But if we ask for different studies to continue to happen, then I think that we'll never have a resolution. There's an issue with the study. It wasn't done right. Terry's going to have to run 5,000 workshops over the next decade, and we might get to this into the

2020 timeframe.

At least it just doesn't seem like those studies or those analyses ever go very quickly. It's not a quick process. That's my only concern with giving further information to come into the mix.

I think it's very clear. I think, what we've said -- at least in my motion. It's been very objective. Josh has a task to do. He knows those properties. He can confirm, and then they have a very -- very set base line to go back to, and they have a set matrix to follow, and they have a conclusion, and there's no deviation from the path.

CHAIRMAN WREN: Okay. And --

JOSH WILSON: And, Mr. Chairman, just one point that I want to add if the Board goes in this direction, I'm not comfortable changing these values in my system.

I think the Board can make any motion they want to direct me for information, but I did -- if the values get altered by this Board, I want them to be presented to this Board, so that it's clear what action was taken as the basis for me to change any value in my system, just making a motion, saying, "the assessor, go do this," I'm very uncomfortable with.

And I have no problem preparing all the

information and having it approved by this Board.

CHAIRMAN WREN: That makes sense.

MEMBER MARNELL: Let me amend that in my motion, that you can put together a summary analysis for each property with this information, and bring it, and send it back to us, and maybe it's a consent agenda item that we can see it all, and go through and make a final motion to approve, so you have what you need for cover, to go do what you're saying, and it's not just you doing it and then we start other sets of issues.

At least at that point the responsibility falls on the Board. I'm more than happy to take that responsibility. I am, anyway. I don't speak for --

CHAIRMAN WREN: Okay. Do we have a friendly --

MEMBER MESERVY: I have a second.

CHAIRMAN WREN: Okay. Amendment to the second.

And how much time will you need to do this? Six years? Seven years? What?

JOSH WILSON: You could direct me to have it available at your most practical noticed next meeting, and it will be done.

CHAIRMAN WREN: Okay. Because we have to report back to the judge in February.

MS. BUONCRISTIANI: Yes, and we don't have a hearing before then.

CHAIRMAN WREN: But -- which is fine, I think. I think that if we've held the meetings. We made a decision. You can report back what we've done.

What -- it doesn't have to all be accomplished, I don't think, in that 90 days. The hearings had to, and the decision -- we've made -- we're getting ready to make a decision.

MEMBER MARNELL: I think the decision, unless -- if the motion passes, in my mind, the decision has been made.

Now the work needs to get done, and all the Board's asked for is a confirmation in order to -- what I believe is appropriate, which is to give Mr. Wilson the confidence and the record that allows him to go make changes to his system, so he's not just doing it without us knowing that any of these values.

CHAIRMAN WREN: Okay. Dawn?

MS. BUONCRISTIANI: I'm -- I'm not really sure that -- of your role. There are other things in here that talk about you having the hearing and take the action -- you will have taken the actions. You know, you won't have taken that final action, though, I mean, in terms of the values by then.

MEMBER MESERVY: Well, also my question is: Do we have to notify people whose values even go down and there's no reason?

MS. BUONCRISTIANI: There's nothing to do if they go down.

MEMBER MESERVY: I just want to make sure.

CHAIRMAN WREN: So. In your motion, we'll direct Josh to have it completed by -- what was the --

MS. BUONCRISTIANI: It's in February, but so -- I'm not sure when you'll want to have a hearing. You can probably do this by telephonic conference if you want to do something like that.

CHAIRMAN WREN: So the first part of February, and what we'll do is have Terry agendize a -- a hearing for us, for you to present this information some time the beginning of February.

JOSH WILSON: Is there any way to move that into closer to -- we're in county board all month of February.

MS. BUONCRISTIANI: January would be better for me, because I have to write a brief for the court.

JOSH WILSON: Or in two weeks or three weeks or whatever we need.

MEMBER MESERVY: That's fine.

CHAIRMAN WREN: Okay.

MEMBER MARNELL: I think as fast as Josh feels he can do it, it's appropriate, Mr. Chairman, and maybe we don't have need to the convened Board. Maybe we can have a video conferencing where we can go through the data on our own, like we always do, and come together, and we all can say we either agree with the data or we don't.

If we don't, there might be some more work to do. If we do, we can finish this motion, and we can be done.

CHAIRMAN WREN: First week -- some time the first week of December then?

JOSH WILSON: That would be fine.

CHAIRMAN WREN: Okay. I've amended your motion to include that, and you've agreed to second it?

MEMBER MESERVY: Second.

MEMBER MARNELL: Thank you, Mr. Chairman. The pressure was unbelievable. I'm glad you're now a part of that.

CHAIRMAN WREN: I feel better, too.

Okay. All in favor say "Aye."

("Aye" responses)

CHAIRMAN: Opposed?

Motion carries unanimously.

(Vote on the motion carried unanimously)

CHAIRMAN WREN: Thank you very much.

EXHIBIT 2

EXHIBIT 2

FILED
Electronically
08-21-2012:04:37:23 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3166671

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., et al., Petitioners, vs. STATE OF NEVADA on relation of the State Board of Equalization; WASHOE COUNTY COUNTY; BILL BERRUM, Washoe County Treasurer; Respondents	Case No.: CV-03-06922 Dept. No. 7

WRIT OF MANDAMUS

TO THE NEVADA STATE BOARD OF EQUALIZATION, ACTING BY AND THROUGH THE CHAIRMAN AND MEMBERS OF SAID BOARD:

AND TO WASHOE COUNTY AND THE WASHOE COUNTY TREASURER:

YOU ARE COMMANDED BY THIS COURT AS FOLLOWS:

(1) The Nevada State Board of Equalization ("the Board")shall take such actions as are required to notice and hold a public hearing, or hearings as may be necessary, to hear and determine the grievances of property owner taxpayers regarding the failure, or lack, of equalization of real property valuations throughout the State of Nevada for the 2003-2004 tax year and each subsequent tax year to and including the 2010-2011 tax year and to raise, lower or leave unchanged the taxable value of any property for the purpose of equalization.

(2) The Board shall take such actions as are required to hold the first public

EXHIBIT 3

EXHIBIT 3

126 Nev., Advance Opinion 18

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES MARVIN; GARY TAYLOR; AND 400 TUSCARORA ROAD, LLC, FOR THEMSELVES AND ON BEHALF OF A CLASS OF SIMILARLY SITUATED TAXPAYERS,
Appellants,
vs.
CLAY FITCH; STEPHEN R. JOHNSON; RICHARD MASON; AND MICHAEL CHESHIRE, INDIVIDUAL MEMBERS OF THE STATE BOARD OF EQUALIZATION,
Respondents.

No. 52447

FILED

MAY 27 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

Appeal from a district court order of dismissal, certified as final under NRCP 54(b), in a 42 U.S.C. § 1983 action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Affirmed.

Morris Peterson and Suellen Fulstone, Reno,
for Appellants.

Catherine Cortez Masto, Attorney General, Keith D. Marcher, Senior Deputy Attorney General, and Dennis L. Belcourt, Deputy Attorney General, Carson City,
for Respondents.

2/3/10: Forwarded new letter to Publishers. DP

ID - 13159

BEFORE THE COURT EN BANC.[1]

OPINION

By the Court, HARDESTY, J.:

In this appeal, we consider the application of absolute immunity to individual members of the State Board of Equalization (State Board). Absolute immunity is a broad immunity that is granted sparingly to individuals performing judicial or quasi-judicial functions. State of Nevada v. Dist. Ct. (Ducharm), 118 Nev. 609, 615-16, 55 P.3d 420, 423-24 (2002). On appeal, appellants Charles Marvin, Gary Taylor, and 400 Tuscarora Road, LLC (collectively, the Taxpayers), argue that the members of the State Board do not qualify for absolute immunity because the State Board refused to perform its duty of equalizing property valuations throughout the state pursuant to NRS 361.395.[2] We disagree and conclude that the State Board is performing a quasi-judicial function when determining whether to equalize property valuations, and its members therefore have absolute immunity.

FACTS

The Taxpayers own residential property located in the Incline Village and Crystal Bay areas of Washoe County, Nevada. In 2007, the Washoe County Board of Equalization (County Board) determined that the

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[1]The Honorable Kristina Pickering, Justice, did not participate in the decision of this matter.

[2]This appeal is limited to the liability of the individual members of the State Board pursuant to the district court's certification of the judgment pertaining to the individual members under NRCP 54(b).

county assessor had utilized improper and unconstitutional methods of appraising real property and, consequently, the County Board reduced the value of various properties in Washoe County. Allegedly, the County Board did not adjust or equalize the assessed value of the Taxpayers' properties.

In March 2007, the Taxpayers petitioned the State Board for relief from the County Board's failure to equalize the assessed value of their properties. The State Board conducted a hearing on the matter and determined that it lacked jurisdiction because the Taxpayers had failed to first petition the County Board, as required by NRS 361.360.[3] The Taxpayers subsequently filed a petition for judicial review of the State Board's decision and, within the same pleading, asserted a separate claim under 42 U.S.C. § 1983, alleging that their civil rights had been violated by the State Board's failure to perform its statutory duty to equalize property valuations pursuant to NRS 361.395. The § 1983 claim was also brought against Clay Fitch, Stephen Johnson, Richard Mason, and Michael Cheshire, individual members of the State Board.

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[3]On appeal, the members of the State Board made a motion to supplement the appellate record with a transcript of the hearing before the State Board wherein the State Board determined that it lacked jurisdiction. The Taxpayers filed an opposition to the State Board member's motion, as well as their own motion that this court take judicial notice that the matter of statewide equalization did not appear on any State Board agenda for the relevant term. We denied the requested relief and do not consider the supplemental material from either party because neither the transcript nor the subject of the request for judicial notice were presented to or considered by the district court.

The district court granted the petition for judicial review and (1) remanded the matter to the State Board and/or the County Board to determine whether the Taxpayers had complied with the provisions of NRS 361.420, (2) remanded the matter to the State Board to establish a record as to whether the Department of Taxation had complied with the requirement to ensure equalization throughout the state, and (3) ordered the State Board to comply with its duty to equalize property valuations throughout the state.

The individual members of the State Board moved to dismiss the § 1983 claim against them under NRCP 12(b)(5), arguing that they are entitled to absolute immunity. The district court granted the motion and dismissed the § 1983 claim against the individual members reasoning that "expos[ing] individual State Board [m]embers to civil rights claims based on their decision to raise values, lower values, or take no action when determining the equalization of values is inappropriate."[4] The Taxpayers appeal this decision.

DISCUSSION

For clarity, we recognize that although the Taxpayers filed both a petition for judicial review and a § 1983 civil rights claim in the court below, this appeal is confined to the application of absolute

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[4]We recognize that the district court may have commingled the petition for judicial review and the § 1983 civil rights claim when it reasoned that the State Board's determination that it did not have jurisdiction over the Taxpayers' petition was a quasi-judicial function. Regardless, we affirm the district court's outcome that absolute immunity is applicable. See Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (noting that this court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason).

immunity to the ~~Taxpayer's~~ Taxpayers' § 1983 civil rights claim alleging that individual State Board members are liable because they refused to equalize property valuations pursuant to NRS 361.395. The Taxpayers contend that their § 1983 claim rests on the State Board's refusal to undertake its statutory duty to equalize property valuations under NRS 361.395. However, the record before the district court and this court shows that the State Board refused to equalize property valuations because the Taxpayers failed to adhere to the administrative procedures for review. Although the State Board's decision to not equalize the Taxpayers' property valuations based on administrative procedures may have been erroneous according to the district court, the State Board engaged in an equalization decision-making process and did not simply fail to equalize as the Taxpayers contend. In resolving this appeal, we must first examine when absolute immunity is applicable and then analyze whether the State Board's process of equalizing property valuations is a quasi-judicial function subject to such immunity. Finally, we address the policy considerations supporting our conclusion that the equalization process is quasi-judicial and the State Board members are afforded absolute immunity.

Standard of review

This court rigorously reviews a district court order granting a motion to dismiss pursuant to NRCP 12(b)(5). Sanchez v. Wal-Mart Stores, 125 Nev. ___, ___, 221 P.3d 1276, 1280 (2009). And we will accept the factual allegations of the pleading as true while construing those facts in favor of the nonmoving party. Id. Whether absolute immunity is an appropriate defense for the members of the State Board is a question of law. Duff v. Lewis, 114 Nev. 564, 568, 958 P.2d 82, 85 (1998). We review

questions of law de novo. Citizens for Cold Springs v. City of Reno, 125 Nev. ___, ___, 218 P.3d 847, 850 (2009).

Judicial record

The record before the district court and this court indicates that the Taxpayers brought an appeal before the State Board complaining that the County Board failed to perform its duty of equalizing property valuations. However, the State Board declined to undertake any equalization process because the Taxpayers had neglected to file a petition for review with the County Board and, therefore, failed to adhere to the administrative procedures for equalization relief. As such, the State Board determined that it lacked jurisdiction to hear the Taxpayers' appeal or to proceed with the equalization process. While the Taxpayers claim the § 1983 action is based upon the State Board's refusal to equalize, nothing in the record supports that conclusion. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (concluding that appellant bears the burden to make an adequate appellate record and noting that this court may not consider matters outside of the district court record on appeal); Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (stating that "appellants are responsible for making an adequate appellate record" and "[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision").

In its written decision, the State Board stated that it "found no record that the Taxpayer[s] requested the County Board for equalization relief or that the County Board took action to grant or deny equalization relief to the subject property as required by NRS 361.360(1)." Accordingly, the State Board concluded that, "[b]ased on the lack of a

record made to or by the County Board with regard to request for relief, or that the County Board took action to grant or deny relief, the State Board did not accept jurisdiction to determine this matter." Even though the district court found that the State Board's decision to not equalize the Taxpayers' property valuations was incorrect, it was nevertheless a decision regarding the equalization process. Therefore, we must determine whether that decision and the equalization process in general are afforded absolute immunity.

Absolute immunity

On appeal, the Taxpayers challenge whether the individual members of the State Board are entitled to absolute immunity. Immunity "'is a matter of public policy that balances the social utility of the immunity against the social loss of being unable to attack the immune defendant.'" Ducharm, 118 Nev. at 614-15, 55 P.3d at 423 (quoting James L. Knoll, Protecting Participants in the Mediation Process: The Role of Privilege and Immunity, 34 Tort & Ins. L.J. 115, 122 (1998)). Absolute immunity protects judicial officers from collateral attack and recognizes that appellate procedures are the appropriate method of correcting judicial error. Id. at 615, 55 P.3d at 424.

Generally, qualified immunity,[5] rather than absolute immunity, is sufficient to protect nonjudicial officers in the performance of

[5]Qualified immunity and absolute immunity are distinguishable. Ducharm, 118 Nev. at 615 n.9, 55 P.3d at 423 n.9. "[A]bsolute immunity defeats a suit at the outset of litigation as long as the official's actions were within the scope of the immunity." Id. Qualified immunity may also provide immunity from suit so long as the defendant's actions were not in violation of clearly established law. See Mitchell v. Forsyth, 472 U.S. 511, 525-27 (1985).

their duties, id. at 617, 55 P.3d at 425 (quoting Burns v. Reed, 500 U.S. 478, 486-87 (1991)); however, in Butz v. Economou, the United States Supreme Court extended the application of absolute immunity to include various nonjudicial officers who participate in the judicial process. 438 U.S. 478, 513 (1978) (determining that the role of an administrative hearing examiner is "'functionally comparable' to that of a judge"). Following Butz, courts have applied absolute immunity to individuals who perform quasi-judicial functions. Mishler v. Clift, 191 F.3d 998, 1007 (9th Cir. 1999) (concluding that individual members of the Nevada Board of Medical Examiners are entitled to absolute immunity for their quasi-judicial acts); Ducharm, 118 Nev. at 617, 55 P.3d at 425; Duff, 114 Nev. at 571, 958 P.2d at 87 (holding that a court-appointed psychologist was entitled to absolute immunity because he was acting as an extension of the court).

To determine whether an individual is entitled to absolute immunity, the Supreme Court has adopted a "functional approach," which "'looks to the nature of the function performed, not the identity of the [individual] who performed it.'" Romano v. Bible, 169 F.3d, 1182, 1186 (9th Cir. 1999) (quoting Buckley v. Fitzsimmons, 509 U.S. 259, 269 (1993) (internal quotation omitted)). The "functional approach" takes into consideration various factors including: whether the individual is performing many of the same functions as a judicial officer, whether there are procedural safeguards in place similar to a traditional court, whether the process or proceeding is adversarial, the ability to correct errors on appeal, and whether there are any protective measures to ensure the constitutionality of the individual's conduct and to guard against political

influences. Id. at 1186-87; see also Ducharm, 118 Nev. at 616, 55 P.3d at 424-25.

Applying the "functional approach" to this case, and following our further analysis below, we determine that the State Board and its individual members perform a quasi-judicial function when deciding to equalize property valuations. Accordingly, we conclude that the individual members are entitled to absolute immunity in their performance of this quasi-judicial act.

The State Board's duty to equalize property valuations is a quasi-judicial function

The Nevada Constitution mandates that "[t]he [L]egislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory." Nev. Const. art. 10, § 1(1). The State Board is governed by NRS Chapter 361, which obligates the State Board to equalize property valuations throughout the state:

> [T]he [State Board] shall:
>
> (a) Equalize property valuations in the State.
>
> (b) Review the tax rolls of the various counties as corrected by the county boards of equalization thereof and raise or lower, equalizing and establishing the taxable value of the property.

NRS 361.395(1). We previously determined that, under the statutes, the State Board has two separate functions: "equalizing property valuations throughout the state and hearing appeals from the county boards." State, Bd. of Equalization v. Barta, 124 Nev. 612, 628, 188 P.3d 1092, 1102

(2008). The State Board's predominant concern, however, should be the guarantee of a uniform and equal rate of taxation. Id.

Although the statutes clearly provide that the State Board has a duty to equalize property valuations throughout the state, there appears to be a lack of certainty in the procedures for the equalization process that has resulted in an ambiguity as to whether the process is an administrative or a quasi-judicial function. NRS 361.395(1) obligates the State Board to equalize property valuations, and NRS 361.395(2) and 361.405(1) require notice be given to property owners when equalization results in a proposed or actual increase to a property's valuation. However, NRS Chapter 361 lacks clarity as to the processes and procedures that the State Board undertakes in determining to equalize property valuations, equalization methods, and the relevant sequence of events. When the Legislature has addressed a particular matter with imperfect clarity, this court will consider the statutory scheme as a whole and any underlying policy in order to interpret the law. See In re Orpheus Trust, 124 Nev. 170, 174-75, 179 P.3d 562, 565 (2008).

The Taxpayers argue that the duty to equalize property valuations is an administrative function that does not incorporate the traditional attributes of a judicial proceeding and, therefore, absolute immunity should not apply. We disagree and conclude that the State Board's equalization process is a quasi-judicial function. Considering the factors in the "functional approach," the members of the State Board perform quasi-judicial functions because the equalization process requires the members to perform functions (fact-finding and making legal conclusions) similar to judicial officers, the process is adversarial, it applies procedural safeguards similar to a court, errors can be corrected on

appeal, and the statutory scheme retains State Board members' independence from political influences.

State Board members perform functions similar to judicial officers

Judicial officers exercise independent judgment to "issue subpoenas, rule on proffers of evidence, regulate the course of . . . hearing[s], and make or recommend decisions." Butz, 438 U.S. at 513. The State Board is presented with evidence of property valuations from the county tax rolls or from interested property owners, and is required to make findings and issue decisions regarding the necessity and method of equalization. See NRS 361.395(1); NRS 361.385(1). Evaluating the necessity of equalization, State Board members have the ability to issue subpoenas and require witness testimony, NAC 361.712, as well as the authority to regulate the course of hearings and "hold such number of [hearings] as may be necessary to care for the business of equalization presented to it." NRS 361.380(1). Because State Board members receive evidence, render decisions, and regulate hearings, we conclude that members of the State Board function like judicial officers.

The equalization process is adversarial

Proceedings that are quasi-judicial "are usually adversarial in nature and provide many of the same features and safeguards that are provided in court." Romano, 169 F.3d at 1186. The State Board's annual meetings are open to the public and permit individuals to participate in person or be represented by an attorney. NRS 361.385(1). At the meetings, an individual may challenge a property's valuation recorded on the county tax rolls and submit evidence for the State Board's consideration "with respect to the valuation of his or her property or the property of others." Id.; see NRS 361.355. We conclude that the ability to contest the assessed value of one's own property or present evidence

questioning the value of the property of others is a quintessential indication of the adversarial nature of the equalization process. Thus, we deem the State Board's equalization process to be adversarial in nature and "functionally comparable" to an adjudicatory proceeding. See Butz, 438 U.S. at 513.

Procedural safeguards applied to the equalization process

Notice is a fundamental requisite of due process that is employed as a procedural safeguard in any judicial action. See Browning v. Dixon, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998). Nevada's statutory scheme regulating the equalization process safeguards a person's due process rights by requiring that public notice be given for the State Board's annual meeting, at which the State Board considers increases to property valuations. NRS 361.380(2). The public notice requirement is accomplished through "publication in the statutes of the . . . time, place and purpose of [the annual meeting]," see id., by posting notices at the Department of Taxation offices in Carson City, Reno, Las Vegas, and Elko, see NAC 361.686(1); and in accordance with statutory public meeting notice requirements, see NRS 241.020. In the event that the State Board proposes to increase the valuation of any property, the State Board is required to give specific notice to the interested property owner detailing when and where the property owner may appear and submit evidence of the property's value. NRS 361.395(2). If the State Board does increase the property's valuation, the property owner is entitled to another notice of the increased value. NRS 361.405(1). We conclude that NRS Chapter 361's notice requirements are sufficient procedural safeguards to ensure that the public is afforded due process throughout the State Board's equalization process.

Ability to correct errors on appeal

Additionally, the "correctability of error on appeal" is another procedural "safeguard[] built into the judicial process [that] tend[s] to reduce the need for private damages actions." Butz, 438 U.S. at 512. Recognizing that the State Board's equalization process is adversarial, the Legislature provided that a taxpayer may seek judicial review of a State Board's determination or bring a lawsuit "in any court of competent jurisdiction in the State." NRS 361.420(2). "No taxpayer may be deprived of any remedy or redress in a court of law" for wrongs or deprivations resulting from the findings of the State Board. NRS 361.410(1). In such a case, a taxpayer may bring a lawsuit claiming that the property value assessment is "discriminatory in that it is not in accordance with a uniform and equal rate of assessment and taxation, but is at a higher rate of the taxable value of the property so assessed than that at which the other property in the State is assessed." NRS 361.420(4)(g). We determine that a taxpayer's ability to appeal the State Board's decisions and findings provides the appropriate remedy to correct errors and is indicative of a quasi-judicial proceeding.

Protective measures to guard against political influences

Furthermore, a judge or quasi-judicial adjudicator should not allow political influences to affect his or her judicial conduct or judgment. NCJC Canon 2, Rule 2.4. The Legislature has attempted to protect the State Board members from the influence of political forces by creating strict membership qualifications. The State Board members are appointed by the governor and serve four-year terms. NRS 361.375(1) and (5). The State Board's membership must consist of one certified public accountant, one property appraiser, one member "versed in the valuation of centrally assessed properties," and two members "versed in business

generally." NRS 361.375(2). Membership is further limited to no more than three members affiliated with the same political party, and no more than two members residing in the same county. NRS 361.375(3). No elected official or employee of an elected official may be appointed to serve, and no member can serve more than two full consecutive terms. NRS 361.375(4)-(5). We determine that the structure of the State Board's membership adequately shields its collective membership from political influence and allows them to function as neutral adjudicators.

Based on the foregoing, we conclude that the State Board performs a quasi-judicial function when deciding to equalize property valuations and, as such, its individual members are afforded absolute immunity from lawsuits based on their performance of this quasi-judicial act. See Steinhart v. County of Los Angeles, 223 P.3d 57, 63 (Cal. 2010) (recognizing that the board of equalization exercises quasi-judicial powers); County of Adams v. Bd. of Equal., 566 N.W.2d 392, 397 (Neb. 1997) (stating that the actions of equalizing property values between counties is quasi-judicial in nature); Fayetteville Independent Sch. Dist. v. Crowley, 528 S.W.2d 344, 347 (Tex. Civ. App. 1975) (affirming that "a board of equalization is a quasi-judicial body, charged with . . . equalization . . . of assessments").

Policy considerations

In addition to the application of the "functional approach," our conclusion that the State Board members are entitled to absolute immunity is also supported by policy considerations, specifically, it facilitates the process and abides by legislative intent. "The discretion which . . . officials exercise with respect to the initiation of . . . proceedings might be distorted if their immunity from damages arising from that decision was less than complete." Butz, 438 U.S. at 515. The State Board

members should be permitted to "make the decisions to move forward with a[] . . . proceeding free from intimidation or harassment." Id. at 516. The prospect of individual State Board members being subjected to litigation from every disgruntled property owner is likely to result in having State Board members who are reluctant or unable to perform their duties and will hinder the state's ability to recruit and retain qualified members.

Additionally, NRS Chapter 361 clearly demonstrates the Legislature's intent that the equalization process be open to the public and that the individual taxpayer be given notice of and the opportunity to participate in the State Board's valuation of his or her property. To conclude that the State Board's equalization process is a purely administrative function rather than a quasi-judicial function may preclude a taxpayer's ability to participate in this process.[6] If the equalization process was determined to be administrative, Nevada's taxpayers in general would not be assured of their adversarial right to participate in the meetings, present evidence, provide testimony, or seek judicial review. By concluding that the State Board's equalization process is quasi-judicial, we honor the Legislature's intent and safeguard every taxpayer's right to meaningfully participate in the annual equalization process.

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[6]We do not address in this opinion whether Nevada's Administrative Procedure Act, codified in NRS Chapter 233B, permits judicial review of purely administrative functions.

Accordingly, we affirm the district court's order dismissing the Taxpayers' § 1983 civil rights claim.

_____, J.
Hardesty

We concur:

_____, C.J.
Parraguirre

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

EXHIBIT 4

EXHIBIT 4

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STATE OF NEVADA
STATE BOARD OF EQUALIZATION

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DINO DICIANNO
Secretary

In the Matter of:

Charles Marvin, Gary Taylor and 400 Tuscarora Road, LLC
Plaintiffs

vs.

State Board of Equalization et al
Respondents

First Judicial District Court of the State of Nevada
Order of Remand as to Petition for Judicial Review
Case No. 08 OC 00020 1B
Department 1

State Board Hearing on Remand from First Judicial District Court

Summary

This matter came before the State Board of Equalization (State Board) on order of remand dated August 5, 2008, from the First Judicial District Court of the State of Nevada, Department 1 (Court). The Court remanded pursuant to NRS 233B.135 to the State Board and/or the Washoe County Board of Equalization (County Board) for a determination as to whether the Petitioners have complied with the provisions of NRS 361.420(1) and (2); and to the State Board for the establishment of a record as to whether or not there has been compliance by the Department of Taxation with the requirements of NRS 361.333 to insure equalization of assessments among the counties of the State and compliance with its duty to equalize property valuation throughout the State. The matter came before the State Board for hearing on September 30, 2009 after due notice to the Taxpayers and the Assessor.

Taxpayers through Suellen Fulstone entered an objection that the proceeding was not noticed as a contested hearing and therefore the State Board was precluded from making any findings. Taxpayers asserted there was no opportunity to brief the matters required by the remand order or to present evidence. The Deputy Attorney General (DAG) responded that the Court was asking for information and an establishment of a record; further, the State Board does not have the authority to determine whether the Department and the Nevada Tax Commission have complied with the requirements of NRS 361.333. The State Board has no role in the NRS 361.333 procedures. *See Tr., 9-30-09, p. 187, l. 24 through p. 190, l. 23; Record, SBE pages 1497 through 1503.*

The Department of Taxation (Department) reported that it had received a summary sheet from the Washoe County Treasurer, Bill Berrum, listing taxpayers by name and the letters received indicating payment under protest in the year received. In addition, Washoe County delivered a copy of

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Writer's Direct Dial (775) 684-1223 Fax (775) 684-1108

MEMORANDUM

DATE: October 6, 2003
TO: Nevada Tax Commission
FROM: Gregory L. Zunino, Senior Deputy Attorney General
SUBJECT: Proposed Change to Design and Scope of Ratio Study

INTRODUCTION

On May 5, 2003, the Department requested the Commission's guidance concerning a proposed change to the manner in which the Department conducts the ratio study. NRS 361.333(1) requires the Department each year to conduct a ratio study so that it may:

> (a) Determine the ratio of the assessed value of each type or class of property for which the county assessor has the responsibility of assessing in each county to:
>
> (1) The assessed value of comparable property in the remaining counties.
>
> (2) The taxable value of that type or class of property within that county.
>
> (b) Publish and deliver to the county assessors and the boards of county commissioners of the counties of this state:
>
> (1) A comparison of the latest median ratio, overall ratio and coefficient of dispersion of the median for:
> (I) The total property for each of the 17 counties; and
> (II) Each major class of property within each county.
>
> (2) A determination whether each county had adequate procedures to ensure that **all property subject to taxation** is being assessed in a correct and timely manner.
>
> (3) A summary for each county of any deficiencies that were discovered in carrying out the studies of those ratios.

In conducting the ratio study, the Department is required to "include an **adequate sample of each major class of property** and may use any statistical criteria that will indicate an accurate ratio of taxable value to assessed value an accurate measure of

provided an adequate basis for the Commission to conclude that "all property subject to taxation within the county has been assessed at the proper percentage."

Likewise, the ratio study has not adequately served to allow the Department and/or the Commission to monitor the appraisal practices of the various county assessors. Consider, for example, the recent property tax revolt at Incline Village. A sample of Incline Village properties was not included in the most recent ratio study for Washoe County, primarily because Incline Village was not within the reappraisal area at the time the Department conducted the ratio study. Had the ratio study included a sample of properties from Incline Village, it may have alerted the Department and/or the Commission to a potential problem, thus affording an opportunity to facilitate an early resolution of the problem

CONCLUSION

Currently, the Department's annual ratio study addresses each county only once every three years. This occurs because the counties have been divided into three separate groups. See NRS 361.333(2). Furthermore, with respect to a particular reappraisal area within a county (i.e., Incline Village), the ratio study generally only addresses that area once every fifteen years. This occurs because each county assessor, excluding the Clark County assessor, has divided his county into five separate reappraisal areas. The ratio study, as currently conducted, does not permit the Commission to fulfill its statutory duty to insure that "all property" is being taxed appropriately. Accordingly, with respect to any county that is subject of the ratio study, I recommend that the scope of the ratio study be expanded to include a sampling of properties from the entire county.

STATE OF NEVADA

DEPARTMENT OF TAXATION

STATE BOARD OF EQUALIZATION

TRANSCRIPT OF PROCEEDINGS

PUBLIC MEETING

MONDAY, DECEMBER 3, 2012

THE BOARD:	TONY WREN, Chairman AILEEN MARTIN, Member DENNIS MESERVY, Member ANTHONY MARNELL III, Member BENJAMIN JOHNSON, Member
FOR THE BOARD:	DAWN BUONCRISTIANI, Esq. Deputy Attorney General
FOR THE DEPARTMENT:	TERRY RUBALD, Chief, Division of Assessment Standards ANITA MOORE, Division of Assessment Standards
REPORTED BY:	CAPITOL REPORTERS BY: CHRISTY JOYCE, Nevada CCR #625 515 West Fourth Street, Ste. B Carson City, Nevada 89703 (775) 882-5322

AGENDA/INDEX

MONDAY, DECEMBER 3, 2012, 9:03 A.M.

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CHAIRMAN WREN: Good morning. This is the time and place for the State Board of Equalization. Today is December 3rd 2012. I am Tony Wren. I'm the Chair. With me in Carson City this morning is Ben Johnson. Good morning, Ben. On the telephone is Aileen Martin. Good morning, Aileen. In Las Vegas, we have Dennis Meservy. And some place running around down there is Anthony Marnell. Good morning, Gentlemen. Thank you, Anthony.

MEMBER MESERVY: Good morning.

CHAIRMAN WREN: Good to you have you guys this morning. We have a full board so we will conduct business this morning. Counsel is Dawn Buoncristiani. Good morning, Dawn. Good to have you. Good morning, Terry. If you could please introduce yourself and staff please.

MS. RUBALD: Good morning, Mr. Chair. I'm Terry Rubald. I'm chief of the Local Government Services Division. And with me today is your coordinator, Anita Moore, and her staff, Janie Ware and Keri Gransbery.

CHAIRMAN WREN: Okay. Thank you very much. Again, we'll be reporting this. And Christy is typing down everything we say today, so I want to remind everybody that we can only speak one at a time. I will try not to interrupt each other and you not to interrupt us so we can get a good

record today.

Dawn, if I can have you swear in everybody.

MS. BUONCRISTIANI: Please stand and raise your right hand if you intend to testify today, please.

(Witnesses were sworn in)

MS. BUONCRISTIANI: Be seated.

CHAIRMAN WREN: Okay. First thing, according to law, I need to ask if we have any public comments. Would anybody like to give public comment first thing this morning? None. Okay. Good.

Terry, do you want to call our agenda?

MS. RUBALD: Certainly, Mr. Chairman. The first item is under Section C, Sub A -- And before we get to that actually I wanted to point out to you the purpose of all these boxes. This is the complete record as we know it for the Department of Taxation. There have been requests by Ms. Fulstone for the record and she asserted that we didn't provide the record to her. As you can see, these are all the boxes from the prior years with the case history. Unfortunately we don't have the resources to reduce them to a CD for convenience, but we would be happy to work with any party to provide whatever portion of this record that they need to see. What is not in this record yet is the Bakst and Barta case histories from the attorney general, and I understand that that office is working to provide us that.

But I think that we need a little more information on the case number is my understanding.

MS. BUONCRISTIANI: I believe my assistant was wanting to know exactly which case -- which cases they wanted. I'm thinking it is probably the two Supreme Court cases, but we need confirmation on that.

MS. RUBALD: I will try to obtain that from the parties so that we have a complete record for you.

CHAIRMAN WREN: Okay. I'm kind of thinking since Ben is our newest member maybe we should have him start reading through it today and then we'll proceed.

MEMBER JOHNSON: I'd love to.

CHAIRMAN WREN: Yeah. That's what I thought. I think I've read every piece of it six times over the last six years. Thank you very much, Terry.

MS. RUBALD: Okay. So anyway on your agenda, first up is the report from the Washoe County assessor regarding the revised valuations of properties located in Incline Village and Crystal Bay for the 2003-4, 2004-5 and 2005-6 tax years pursuant to the direction that this board gave at your hearing on November 5th 2012.

CHAIRMAN WREN: Okay. Good. Good morning, Mr. Wilson.

MR. WILSON: Good morning, Mr. Chairman. Josh Wilson, Washoe County Assessor. Pursuant to your request

made on November 5th, I was asked to compile a list of parcels in the Incline Village and Crystal Bay area which were subject to one of the four methodologies deemed unconstitutional by the Nevada Supreme Court. Those lists were provided to the Department of Taxation as well as a Village League member who requested them on November 28th. Those lists contained three separate files: One for the 2003, 2004 fiscal year, one for the 2004-2005 fiscal year and one for the 2005-2006 fiscal year. The lists include the assessor's parcel number, the current 2003-2004 taxable land value on the roll or applicable year based on which file you're looking at, a column representing a land rollback to the 2002-2003 level for the 03-04 list as well as for the 04-05 list. And the 05-06 list has that rollback land value factored by 1.08, which represents the land factor approved by the Nevada Tax Commission for that year in area one.

As you can see from the lists, the total reduction in value for the first year equates to 698 million dollars and some change. For the 04-05 year the difference is minus 657 million dollars and some change. And for the 05-06 year, the difference in value equates to roughly 564 million dollars. That is the total reduction in value.

You will see some of those parcels contained within each of the lists actually saw their values increased. While it was a small majority, not all the values were lower

in 2002 and 2003. So I'm not sure how the board would like to handle those.

And we've also listed on each of the files the owner that the assessor had of record in each of the corresponding years. I don't know if any of these or all the owners are the current owners or not. Typically properties transferred at the lake, so I would assume that this does not represent the list of current owners for the associated parcels on each of the lists.

With that, Mr. Chairman, I would be happy to answer any questions you might have regarding the list or anything else.

CHAIRMAN WREN: It seems -- It looks to me like doing the math is a pretty big disparity between 2002 -- I'm sorry. 2,000 -- Yeah, 2002-2003, 2003-2004. If you can, explain to us the difference between a 1.8 percent increase and what your actual market indicators were that you adjusted up for that year.

MR. WILSON: Well, the eight percent land factor was derived analyzing the non-rollback land values, assessed land values to the land sales that took place within the given factor year. So what the eight percent factor represents is the factor required to bring the median land factor ratio to .3 percent for area one in Washoe County.

CHAIRMAN WREN: Okay. So 2003 -- 2,000 --

2003-2004 was the reappraisal year?

MR. WILSON: That's correct.

CHAIRMAN WREN: And I normally ask this before and I'm asking it as an appraiser because it doesn't make sense to me to roll everything back in 2002 values when we know that the market was increasing dramatically but not as dramatically as it did in '03, '04, '05. The market was increasing back then.

My concern in just saying these are the right values is it makes more sense to me to ask you, utilizing this information what would the percentage increase be during that period and/or if you had utilized other adjusting techniques in your reappraisal would your value still have been similar to what you actually had on them in 03-04?

MR. WILSON: My answer would be yes. During the 2006-7 hearing before the State Board of Equalization as well as the 2007-8 hearings before the State Board of Equalization, which all occurred in 2007 for the most part because of the pending stay by the Supreme Court, there was a lot of information in the record which said or articulated what the factor would have been if we would have applied it to the rollback number versus the non-rollback number.

And clearly, if you look at this on a value basis, none of the properties at the lake ever were excessive as measured by the taxable value exceeding their market

value. There were many ratio studies ran during those years in question, which clearly demonstrated there was not excessive valuation. It's the most troubling part of the Bakst decision that I've had to deal with is the demonstration or perhaps not the demonstration but the conclusion that there was harm as measured by the traditional measure of a hundred years of case law would have indicated.

The traditional measure of harm when it came to assessment was whether the taxable value exceeded the market value and then you could measure.

What the Court concluded in the Bakst decision was improper application of methodology created excessive valuation because of the lack of regulation being promulgated by the Nevada Tax Commission.

I understand your quandary, Mr. Chairman. You're an appraiser. You're looking at the taxable value, land value as it relates to the market value. In this particular case there was never an excessive valuation determined through that analysis. However, our values were deemed unconstitutional because the generally accepted appraisal methodologies that we utilized were not codified by the Nevada Tax Commission.

CHAIRMAN WREN: Okay. And the other thing that I want to put on the record again is I have a problem with that, you know, what's codified and what's not codified. You

as the assessor are charged with assessing, appraising the properties. Two of the things that were ruled unconstitutional are time adjustments or marketing adjustments and/or parasales analysis. Parasales analysis by its definition is the basis of direct sales and parasales approach. Parasales analysis you can't appraise without looking at parasales analysis is the basis. Would you agree with that?

MR. WILSON: In an appraisal, the sales are the only answers you have and you need to adjust those sales to arrive at the subject's indication of value. And so yes, the sales drive everything in an appraisal.

CHAIRMAN WREN: Regardless of what you call it? In other words, starting with parasales analysis, if you have two properties that are identical with the exception of one item, the typical explanation is a three-bedroom, two-bathroom, 1200 square foot house. The one next door is exactly the same house except the one next door has a fireplace. The one next door sells for $105,000. The one without a fireplace sells for a hundred thousand dollars. The parasales analysis tells you that a fireplace is worth $5,000. So I'm assuming you and all of the other assessors go to the market and look at what the property sells for and analyze why they sell for that price and what the differences are; correct?

MR. WILSON: That's correct.

CHAIRMAN WREN: So regardless of whether you call it, a time adjustment or a tear down adjustment or whatever other name you give to it, there is reasons that properties sell; is that correct?

MR. WILSON: That's correct.

CHAIRMAN WREN: And it's your job to make adjustments for those differences?

MR. WILSON: Yes.

CHAIRMAN WREN: Okay. All right. I'm not going to ask any other questions, but I'll open it up to the other members. Do you want me to start in Vegas? Dennis.

MEMBER MESERVY: Mr. Chairman, yeah, I guess my concern has always been whether that changes the market value even though they did use certain methodologies that maybe the Supreme Court didn't approve at the time in the regs. And I guess my question would be considering what you just asked and it sounds like is it -- would the market value then be pretty close to what it would have been originally appraised or not and what would have been the difference based on that?

CHAIRMAN WREN: Okay.

MEMBER MESERVY: This is for Josh, the assessor in Washoe County.

MR. WILSON: Yes. Member Meservy, as I indicated, the recommended factor to the Nevada Tax

Commission of a percent justifies that the land value was in -- within acceptable tolerances pursuant to the range provided for in statute of .3 to .35 percent. In fact, we generally -- When we were developing land factors for Washoe County, we always targeted the lower end of the range at .3 and not the middle of the range. But I feel it still validates that the non-rollback land value was within acceptable tolerance and that land -- that recommended land factor was reviewed by the Department of Taxation and ultimately approved by the Nevada Tax Commission for that fiscal year.

MEMBER MESERVY: I'll leave more comments for later.

MEMBER MARNELL: Good morning, Mr. Chairman. I don't have any questions at this time.

CHAIRMAN WREN: Okay. Aileen, are you out there?

MEMBER MARTIN: Yes, I'm here.

CHAIRMAN WREN: Do you have any questions?

MEMBER MARTIN: Not yet. Thank you.

CHAIRMAN WREN: Okay. Ben.

MEMBER JOHNSON: Yeah, I do. My apologies of the board as I went through these. I'm new. Let me know if these are already in the record. I'm curious of the methodologies that were used to deem that constitutional. First, if you know what were the other assessors in the state

doing to value properties. I imagine they had to have been using parasales analyses or similar studies, they had to be taking view in to account. I'm curious if you know what the other assessors in the state were doing and if your office was following similar practices as them or if you guys were doing something different.

MR. WILSON: Well, ultimately I don't know exactly what all the other assessors were doing in their counties. But I would certainly assume that they were analyzing the comparable sales similarly and were valuing the attributes of property such as view accordingly.

I don't know if this is fair or not, but perhaps that question might be better directed at the Department of Taxation because they do once every three years through the ratio study do an in-depth analysis of the work practices of each assessor throughout the state and perhaps they would be better to answer that particular question.

MEMBER JOHNSON: Okay. Terry, is that a fair question to ask?

MS. RUBALD: It certainly is. And I'm prepared to respond. Although it's actually I wanted to address that as part of my rebuttal in this next section, but I'd be happy to answer it for you now.

MEMBER MESERVY: We can't hear anything.

MS. RUBALD: Okay.

MEMBER MESERVY: Now we can.

MS. RUBALD: Basically I wanted to refer you to the performance audit in your record. It's number 1,001 on land valuation methodologies used by county assessors. Now, this audit was approved by the Nevada Tax Commission on March 9th 2012. You might ask how is this relevant to prior years. And it's my belief that the methodologies that we talked about in this performance audit are the same types of methodologies that had been used in the prior years.

And I wanted to specifically refer you to the audit of Washoe County, which is contained in Section 20 of the report. And that audit was based on interviews of the assessor and the staff as well as review of state laws and regulations, policies and procedures, significant to land valuation, documented specific work flows related to land valuation. We discussed the types of properties classified in each major land use code used in the county. We documented and assessed the internal controls in the assessor's office over land valuation practices and procedures. We tested controls designed to capture all the relevant documents to check input and to control access for change to records. We also traced 59 deeds randomly selected from the Washoe County recorder's records to a sales database maintained by the county assessor which stems from July 2006 through June 2009.

And after doing all of that, our findings were that there were no exceptions. It's an audit term, meaning there were no problems found in the procedures.

To determine the effectiveness of the assessor's office processes for verifying sales data, we calculated the ratio of the assessed value at the time of sale for the sale price for each of the 59 deeds referred to above and we discussed with the assessor the sales with ratios either less than 20 percent or more than 40 percent with their staff. We also looked up the notes in Washoe County's computerized appraisal system documenting verification processes undertaken for the 59 deeds. We also tested the controls for input in to the system and controls to access and to change records. Again, there were no exceptions.

To evaluate whether the market stratum used by the assessor's office were appropriated, we obtained maps and listings of market areas defined by the assessor's office. We also interviewed personnel on the use of the defining market areas. The sales comparison approach was used in each of the market areas selected. We reviewed the documentation for ten market areas and the results of the analysis. For example, baseline value compared to unit value and site adjustments particular to that particular market.

Cross-referenced to parcel numbers included in the market areas were available on the maps and listing. We

evaluated whether the size and types of the defined market were appropriate. We also reviewed the sales extracted to analyze the market area and any further sales verification processes undertaken.

Finally, we reviewed adjustments to sales prices and market analysis supporting site adjustments. There were no exceptions.

So I would urge you to consider the entire performance audit report, not only on Washoe County but for the rest of the state.

And one of the things that you might observe is that all of the assessors make adjustments to value to reflect the effect of a property characteristic that has significance in the local market. They might not make few adjustments or beach adjustments or time adjustments. But they do make adjustments that are relevant to their market.

And I think I will just leave the rest of my comments for the rebuttal. But the audit, the performance audit was probably the most in-depth study we've ever done for procedures in assessor's offices.

The ratio studies that we annually do, and it's also in your record, we also looked at work practices during those years. But this -- In this performance audit we had all of the typical procedures that you would find in, for instance, performance audits performed by the Legislative

Council Bureau. So it was very thorough.

MEMBER JOHNSON: Thank you very much for that. And what years were covered by the performance audit?

MS. RUBALD: Well, as I stated, it was approved in 2012 and it was performed over a period from 2010 to 2011 and this, for instance, in the Washoe County case we looked at sales back to 2006.

MEMBER JOHNSON: Question for you, Josh, is have you -- there's these methodologies which have been deemed unconstitutional. I'm curious what's happened subsequently. You guys are obviously still assessing property at the Lake Tahoe basin. You're still trying to take in to account all of the individual elements of comparisons, difference and attributes of properties. Have you changed anything in how you're doing your work at the lake since 02-03 in order to comply with --

MR. WILSON: Well, an awful lot of work has been done, not only in our office but through the Department of Taxation and the Nevada Tax Commission with updating those regulations that govern the assessment of land in Washoe County.

There was some substantial revisions that took place over 33 workshops, I believe, and were ultimately codified in 2004, if I recall correctly. And then those regulations were further ratified and updated in 2007, I

believe, if I recall correctly, and ultimately approved some time in 2008 or so.

To answer your question, an assessor or any appraiser's job is to determine those factors that drive value and ultimately use those in estimating a land value. So do we still consider the view of Lake Tahoe in our assessment of Incline Village and Crystal Bay? Absolutely. View increases the land value at the lake. Are we still doing parasales analysis? Yes. By law we have to have verifiable market evidence pursuant to the newly adopted regulations before we can make any sort of adjustment. And the regulation provides for parasales analysis being one of those techniques we can utilize to estimate the difference that a certain attribute may either increase the value or perhaps decrease the value if it's a negative attribute. Are we still looking at tear downs as an indication of land value? Yes. The regulations authorize it. We have to follow those methods. The regulations refer to those as complete obsolescence of an improvement.

But when an approved property reaches the end of its economic life and it is more profitable for the investor to tear down the improvement and rebuild it to the property's highest and best use, tear downs will occur. It's happening significantly in the downtown area. Again, it's economics. It may happen in not so old of a neighborhood if it makes

sense from a highest and best use standpoint.

So yes, those sales that are torn down and we acknowledge the contributory value of the improvement when we analyze the sale, yes, we are still looking at tear downs.

And the type of lake frontage does affect the land value based on our analysis of comparable sales. So yes, the generally accepted appraisal practices, techniques that were utilized at the 2003 reappraisal are currently still being utilized. Are they utilized exactly in the same manner? No. Why? Because we've had further clarification from the Nevada Tax Commission as to utilize those techniques.

But if those attributes affect value, it is our job to account for them pursuant to 361.228, which clearly says in the case of view that it's not an intangible and must be considered in the value of the land if appropriate.

CHAIRMAN WREN: In your 2002-2003 analysis and prior -- I understand that you weren't the assessor then but if you can answer this, please do -- you still had to analyze values in Washoe County and make adjustments for differences between them; is that correct?

MR. WILSON: Yes.

CHAIRMAN WREN: So regardless of what they were called, you still had to analyze the market and if you will make adjustments for what were considered relevant and

characteristics between properties?

MR. WILSON: Yes.

CHAIRMAN WREN: And that's exactly the same thing you did in 2003-2004, you just gave them names that deem it unconstitutional?

MR. WILSON: I guess that's a way of putting it, yes.

CHAIRMAN WREN: I think it's very important. Because you weren't doing anything different. Everybody keeps going back to 2002-2003 saying this is the constitutional way of doing it. Were you doing it any different then?

MR. WILSON: No. 2002 values I utilized view classification systems and other analysis of land sales. The difference with '02 is it was a lower value. Those practices were acknowledged by the Department of Taxation in our, again, if I recall correctly, '93 ratio study of Washoe County. The view classification system was noted. In fact not applauded but they said it was a good way to try to consistently analyze the view influence of Lake Tahoe. I'm paraphrasing it, of course, but that's what I recall reading from that study, which again was conducted before I was even in the office. But I did review it back when all of this was very -- being reviewed by this board in '06 and '07.

CHAIRMAN WREN: And then my last question is did

differential in values between 2002-2003 and 2003-2004 were those value differences due to market changes or the way the assessors appraised the properties?

MR. WILSON: It was probably a combination of both. Certainly you have the dot com boom which really influenced the Lake Tahoe valuation in the early 2000s. Prior to 2003, our land values were determined through a factor analysis and so the last reappraisal we had conducted at Lake Tahoe was for the 98-99 fiscal year. And then there were factors approved in the intermittent years until we did the full reappraisal for the 03-04 fiscal year.

CHAIRMAN WREN: Okay.

MR. WILSON: So I think the properties were looked at more closely during a reappraisal year and that might lead to the -- my response that the methodologies were different. 03-04 was a reappraisal. Prior to that, every year leading back to 98-99 was a factor year.

CHAIRMAN WREN: Okay. And I guess -- Let me just clarify my question. I think it's important to put on the record that there was a dramatic change in the economy in values, an increase in values in all of Nevada and all of Washoe County between those years.

MR. WILSON: Yes, that would be correct.

CHAIRMAN WREN: All right. Any other questions? Ben.

MEMBER JOHNSON: I just wanted to understand the factor of 1.08. And I'll start with what is area one, what geographic area does that include?

MR. WILSON: Basically that was our reappraisal area, which was the entire --

CHAIRMAN WREN: And in case we didn't tell you, the audience, that they have a new phone system here so every 15 minutes that's going to happen. So we're just going to cut it off and let them fix it.

MR. WILSON: Yeah. We're all going through phone changes. Hopefully this isn't voip because I'm scared of voip in my office.

Where was I in what was I saying?

MEMBER JOHNSON: You were on area one.

MR. WILSON: Okay. Area one represents our traditional reappraisal areas whereby which we cut the county in to fifths. So area one is the southern most portion of the county, which includes Incline Village and Crystal Bay and goes up to probably very roughly Foothill Road kind of, for lack of a -- I mean the line isn't just a straight line. Area two starts right around there somewhere.

MEMBER JOHNSON: So it includes areas outside of the Lake Tahoe basin?

MR. WILSON: Yes, that's correct.

CHAIRMAN WREN: Okay. Anything else? Okay.

Seeing none, Josh, I'm going to ask to you stick around. We might recall you.

MR. WILSON: Thank you, Mr. Chairman.

CHAIRMAN WREN: Okay. Terry.

MS. RUBALD: Mr. Chairman, the next item is under Section C Sub B, rebuttal of any affected party to the report of the Washoe County assessor and to any proposed equalization action. And I guess before anybody steps up I'll make my remarks if I may.

CHAIRMAN WREN: You may.

MS. RUBALD: I just wanted -- And I've really given you the bulk of my remarks, but I wanted you to know that as chief of the Local Government Services Division I serve not only as your staff but I'm responsible for a number of programs administered by the division. For example, the locally assessed section of the division is a group of appraisers which perform appraisals on a sample of properties throughout the state on a county rotational basis for the purpose of preparing what is known as the ratio study.

And we have a newly created audit section which now does performance audits as well as the practices of county assessors.

So the ratio study is performed according to NRS 361.333 and the purpose is to assist the Tax Commission in determining whether the property has been assessed equitably.