

IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE	)	Supreme Court Case No. 63581	Electronically Filed
ASSETS, INC.; MARYANNE	)		Nov 27 2013 03:47 p.m.
INGEMANSON, TRUSTEE OF THE	)	District Court No. CV03-0922	Tracie K. Lindeman
LARRY D. & MARYANNE B.	)		Clerk of Supreme Court
INGEMANSON TRUST; ET AL.,	)		
	)		
Appellants,	)		
	)		
vs.	)		
	)		
THE STATE OF NEVADA, BOARD	)		
OF EQUALIZATION; ET AL.,	)		
	)		
Respondents.	)		
_____	)		

**JOINT APPENDIX – VOLUME 4**

Suellen Fulstone, No. 1615  
SNELL & WILMER L.L.P.  
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Reno, Nevada 89501  
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Assets, Inc.; Maryanne Ingemanson, Dean Ingemanson,  
J. Robert Anderson, Les Barta,  
Kathy Nelson and Andrew Whyman

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**FILED**

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3580159

1 **\$3550**  
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8 **Attorneys for Petitioners**

9  
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12 **VILLAGE LEAGUE TO SAVE INCLINE ASSETS,**  
13 **INC., a Nevada non-profit corporation, as authorized**  
14 **representative of the owners of more than 1300 residential**  
15 **properties at Incline Village/Crystal Bay; MARYANNE**  
16 **INGEMANSON, Trustee of the Larry D. and Maryanne**  
17 **B. Ingemanson Trust; KATHY NELSON, Trustee of the**  
18 **Kathy Nelson Trust; ANDREW WHYMAN; on behalf**  
19 **of themselves and others similarly situated,**

20 **Petitioners,**

21 **vs.**

22 **STATE OF NEVADA on relation of the STATE BOARD**  
23 **OF EQUALIZATION; WASHOE COUNTY; TAMMI**  
24 **DAVID, Washoe County Treasurer; JOSH WILSON,**  
25 **Washoe County Assessor; LOUISE H. MODARELLI;**  
26 **WILLIAM BROOKS; CITY HALL, LLC; PAUL RUPP;**  
27 **DAVE DAWLEY, Carson City Assessor; NORMA**  
28 **GREEN, Churchill County Assessor; MICHELE SHAFE,**  
**Clark County Assessor; DOUGLAS SONNEMANN,**  
**Douglas County Assessor; KATRINKA RUSSELL, Elko**  
**County Assessor; RUTH LEE, Esmeralda County**  
**Assessor; MIKE MEARS, Eureka County Assessor; JEFF**  
**JOHNSON, Humboldt County Assessor; LURA DUVAL**  
**Lander County Assessor; MELANIE MCBRIDE, Lincoln**  
**County Assessor; LINDA WHALIN, Lyon County**  
**Assessor; DOROTHY FOWLER, Mineral County**  
**Assessor; SHIRLEY MATSON, Nye County Assessor;**  
**CELESTE HAMILTON, Pershing County Assessor;**  
**JANA SNEDDON, Storey County Assessor; ROBERT**  
**BISHOP, White Pine County Assessor;**

**Respondents.**

Case No.:

Dept. No.

**PETITION FOR**  
**JUDICIAL REVIEW**

**Snell & Wilmer**

**LAW OFFICES**  
**50 WEST LIBERTY STREET, SUITE 510**  
**RENO, NEVADA 89501**  
**(775) 785-5440**

APX00652

1           Petitioners petition this Court to review the decision of the State Board of Equalization  
2 issued on February 8, 2013, attached as Exhibit 1; and, in support of this petition, state as follows:

3                                   GENERAL ALLEGATIONS

4           1.       Petitioner Village League To Save Incline Assets, Inc. ("Village League") is a  
5 nonprofit membership corporation organized and existing under the laws of the State of Nevada,  
6 whose members own residential real property at Crystal Bay and/or Incline Village, in Washoe  
7 County, Nevada, and pay taxes on that property as assessed, imposed and collected by the  
8 defendant Washoe County. Village League was authorized to and did represent the taxpayer  
9 owners of more than 1300 residential properties at Incline Village/Crystal Bay who filed  
10 grievance petitions with the State Board in this equalization grievance proceeding, as well as all  
11 taxpayer owners of all residential properties at Incline Village/Crystal Bay. The Village League  
12 brings this action on behalf of the taxpayer owners of those 1300+ properties and all those who  
13 are similarly situated, including taxpayer owners of all residential property at Incline Village and  
14 Crystal Bay, Washoe County, Nevada.

15       2.       Petitioners Maryanne Ingemanson, Kathy Nelson, and Andrew Whyman are  
16 citizens and residents of Washoe County, Nevada, who owned either directly or beneficially and  
17 paid property taxes on residential real property at Incline Village, Washoe County, Nevada,  
18 during the years encompassed by the SBOE decision under review. Petitioners Ingemanson,  
19 Nelson, and Whyman filed equalization grievances in the proceeding under review and were  
20 represented in that proceeding by the Village League.

21       3.       The respondent State Board of Equalization, established by the Nevada Legis-  
22 lature as codified in Nevada Revised Statutes §361.375, is an agency of the State of Nevada  
23 vested with the statutory responsibility and mandate under NRS 361.395 annually to equalize real  
24 property valuations throughout the State. Having failed to perform that statutory equalization  
25 mandate for the tax years from 2003-2004 through 2010-2011, the district court in "Village  
26 League to Save Incline Assets, et al, petitioners, v. State of Nevada ex rel State Board of  
27 Equalization, et al, respondents," Case No. CV-03-06922, in Department No. 7 of the Second  
28 Judicial District, issued a writ of mandate directing the State Board of Equalization to "hear and

determine" equalization grievances of property owner taxpayers throughout the state for each of the tax years 2003-2004 through 2010-2011, inclusive. A copy of the Writ of Mandate is attached as Exhibit 2.

4. The respondent Washoe County is and was, at all relevant times, a political subdivision of the State of Nevada and a party to the district court case in which the Writ of Mandate was issued. The respondent Tammi Davis, is the elected Washoe County Treasurer and successor-in-interest to Bill Berrum as a party to the district court case in which the Writ of Mandate was issued. The respondent Josh Wilson is the elected Washoe County Assessor, ordered by the SBOE in the decision under review to reappraise all Incline Village/Crystal Bay residential properties.

5. The respondents Modarelli, Brooks, Rupp and City Hall, LLC., are residents and/or property owners in Nevada counties other than Washoe County and who filed equalization grievances which were heard and determined in the writ equalization proceeding and who are each required to be named respondents in this petition for judicial review pursuant to NRS 233B.130(2)(a). Petitioners seek no relief on behalf of or against said respondents.

6. The respondent county assessors from each of the remaining sixteen Nevada counties are named as parties to the equalization proceeding who are each required to be named respondents in this petition for judicial review pursuant to NRS 233B.130(2)(a). Petitioners seek no relief on behalf of or against respondent county assessors other than the Washoe County Assessor.

7. Petitioners represent a class of residential real property taxpayers in Incline Village or Crystal Bay, in Washoe County, Nevada, who have paid real property taxes to Washoe County based on erroneous and non-equalized property valuations, whose equalization grievances were presented to the SBOE in the administrative proceedings below, and whose rights were violated by the SBOE decision under review.

8. The petitioner class consists of the owners of approximately 9000 parcels of residential real property at Incline Village and Crystal Bay, in Washoe County, Nevada; said class is so numerous that the joinder of each individual member of the class is impracticable.

1           9.       The claims of class members for review and reversal of the SBOE decision involve  
2 common questions of law and fact including, without limitation, the actions of the SBOE outside  
3 its statutory authority, the denial of taxpayers' constitutional rights, the unlawful make-up of the  
4 SBOE, and the SBOE's unlawful retroactive application of 2010 regulations.

5           10.      The claims of the individual petitioners and of property owner taxpayers  
6 represented by the Village League are representative and typical of the claims of the class. The  
7 claims of all members of the class arise from the same acts and omissions of the respondent  
8 SBOE.

9           11.      Petitioners as representatives of the class, are able to, and will, fairly and  
10 adequately protect the interests of the class.

11           12.      This action is properly maintained as a class action because the respondent SBOE  
12 has acted or refused or failed to act on grounds which are applicable to the class and have by  
13 reason of such conduct made appropriate and necessary relief with respect to the entire class as  
14 sought in this action.

15           13.      The SBOE decision was issued on February 8, 2013. This petition for judicial  
16 review of that decision is timely as filed within 30 days of service of the SBOE decision as  
17 provided by NRS 233B.130(2)(c).

18           14.      As more fully set forth in the Objections to SBOE Decision filed in the writ of  
19 mandamus action, "Village League to Save Incline Assets, et al, petitioners, v. State of Nevada ex  
20 rel State Board of Equalization, et al, respondents," Case No. CV-03-06922, in Department No. 7,  
21 (see Exhibits 3 and 4 attached), the substantial rights of Incline Village/Crystal Bay residential  
22 property owners have been prejudiced by the February 8, 2013 SBOE decision and that decision  
23 must be set aside because it:

- 24                   (1)       violates constitutional and statutory provisions
- 25                   (2)       exceeds the statutory authority of the SBOE
- 26                   (3)       is made upon improper procedure and other invalidated by error of law in
- 27 that, *inter alia*, the SBOE was unlawfully constituted, the SBOE improperly applied its 2010
- 28 regulations retroactively, and the SBOE decision is contrary to rulings of the Nevada Supreme

1 Court;

2 (4) is clearly erroneous in view of the reliable, probative and substantial  
3 evidence on the whole record;

4 (5) is arbitrary, capricious and, to the extent it involved the exercise of the  
5 SBOE's discretion, constitutes an abuse of that discretion.

6 15. The February 8, 2013 SBOE decision is not a final decision. Judicial review is  
7 sought here under the 233B.130(1)(b) which provides for review of an intermediate agency order  
8 if review of the final decision of the agency would not provide an adequate remedy. The  
9 February 8, 2013 SBOE decision calls for the reappraisal of all residential property at Incline  
10 Village/Crystal Bay, subsequent hearings on any increase in property values, and the preparation  
11 of ratio studies, all of which actions are outside the law. A remedy delayed until all these  
12 unlawful actions have been completed is, on its face, an inadequate remedy.

13 WHEREFORE PETITIONERS PRAY AS FOLLOWS:

14 1. That the Court certify that this action may be maintained as a class action.

15 2. That the Court review, reverse and set aside the February 8, 2013 decision of the  
16 State Board of Equalization and remand this matter to the SBOE with instructions for the lawful  
17 determination of petitioners' equalization grievances.

18 3. That petitioners recover their costs of suit and be awarded such other and further  
19 relief as the members of the petitioner class may be adjudged entitled to in the premises.

20 DATED this 8th day of March, 2013.

21  
22 SUELLEN FULSTONE  
23 SNELL & WILMER L.L.P.  
24 50 West Liberty Street, Suite 510  
25 Reno, Nevada 89501

26 by   
27 Attorneys for petitioners  
28

AFFIRMATION

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

Dated this 8th day of March, 2013.

By:



Suellen Fulstone, No. 1615

Attorneys for Petitioners



INDEX TO EXHIBITS

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# EXHIBIT 1

# EXHIBIT 1



STATE OF NEVADA  
STATE BOARD OF EQUALIZATION

BRIAN SANDOVAL  
*Governor*

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

CHRISTOPHER G.  
NIELSEN  
*Secretary*

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

**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 5<sup>th</sup> agenda recited that responses were not limited to the itemized topics

For the December 3<sup>rd</sup> 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 3<sup>rd</sup> 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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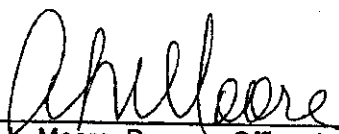
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Anita L. Moore, Program Officer I  
State Board of Equalization

# EXHIBIT 2

**FILED**  
Electronically  
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Joey Orduna Hastings  
Clerk of the Court  
Transaction # 3580159

EXHIBIT 2

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.,	)	Case No.: CV-03-06922
	)	
	)	Dept. No. 7
	)	
Petitioners,	)	
	)	
vs.	)	
	)	
STATE OF NEVADA on relation of the State Board of Equalization; WASHOE COUNTY COUNTY; BILL BERRUM, Washoe County Treasurer;	)	
	)	
Respondents	)	

**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



equalization hearing under this writ of mandamus on a date not more than 60 days after the date of the writ's issuance.

(3) If, in the course of the equalization hearings held pursuant to this writ of mandamus, the Board proposes to increase the valuation of any property on the assessment roll of any county, the Board shall take such actions as are required to comply with the provisions of NRS §361.395(2).

(4) The Board shall take such actions as are required to certify any changes made by the Board in the valuation of any property to the county assessor and county tax receiver/treasurer of the county where the property is assessed.

(5) Upon the receipt of a certification from the Board of any change made in the valuation of any property within Washoe County for any tax year, Washoe County and the Washoe County Treasurer (collectively "the County") shall issue such additional tax statement(s) or tax refund(s) as the changed valuation may require to satisfy the statutory provisions for the collection of property taxes.

(6) The Board and the County shall report and make known to the Court how this writ of mandamus has been executed no later than 180 days after the date of its issuance and on such further dates as may be ordered by the Court.

ISSUED by the Court this 21 day of August, 2012.

By Patrick Flanagan  
District Judge

# EXHIBIT 3

# EXHIBIT 3

**FILED**

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Joey Orduna Hastings

Clerk of the Court

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

9 IN AND FOR THE COUNTY OF WASHOE

10 VILLAGE LEAGUE TO SAVE INCLINE )

11 ASSETS, INC., a Nevada non-profit )

12 corporation, on behalf of their members and )

13 others similarly situated; MARYANNE )

14 INGEMANSON, Trustee of the Larry D. and )

15 Maryanne B. Ingemanson Trust; DEAN R. )

16 INGEMANSON, individually and as Trustee )

17 of the Dean R. Ingemanson; J. ROBERT )

18 ANDERSON; and LES BARTA; on behalf of )

19 themselves and others similarly situated; )

20 Petitioners, )

21 vs. )

22 STATE OF NEVADA on relation of the State )

23 Board of Equalization; WASHOE COUNTY; )

24 BILL BERRUM, Washoe County Treasurer, )

25 Respondents. )

26 **OBJECTIONS TO STATE BOARD OF EQUALIZATION REPORT AND ORDER**

27 In response to this Court's equalization writ of mandate, the State Board of Equalization  
28 has directed the Washoe County Assessor's Office to reappraise the land portion of all residential  
properties at Incline Village and Crystal Bay for each of the tax years 2003-2004, 2004-2005 and  
2005-2006. For themselves and all residential property taxpayers at Incline Village/Crystal Bay,

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petitioners object on the grounds that the SBOE decision exceeds the Board's statutory jurisdiction, denies the constitutional rights of taxpayers to due process, equal protection and uniformity of property taxation, and violates the terms of the writ of mandate. The SBOE decision must be vacated and this matter remanded to the SBOE for a decision in compliance with the Board's jurisdiction, the law and the writ issued by this Court.

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## OBJECTIONS

## I. Introduction

The SBOE has ordered the Washoe County Assessor "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." *Equalization Order (February 8, 2013)*, p. 9, (Exhibit 1 to the State Board of Equalization's Notice of Equalization Order filed February 8, 2013) (Emphasis added). Under the Order, the Assessor must reappraise approximately 9000 parcels for each of the three years because every residential property at Incline Village/Crystal Bay was appraised using unconstitutional methodologies for the tax years in issue. Since mass appraisal was not approved as a methodology by Tax Commission regulation until 2008, each of those new appraisals would have to be an individual appraisal. This "Equalization Order" would impose an enormous burden on the Washoe County Assessor (and on all Washoe County taxpayers who would have to pay for these reappraisals) to no purpose. The SBOE does not have the jurisdiction to order "reappraisals" by county assessors. Even if it did have that jurisdiction, reappraisals satisfying constitutional standards are impossible, given the state of valuation regulations during the tax years at issue.

Furthermore, the SBOE's "Equalization Order" is drafted so broadly that it requires the Washoe County Assessor to reappraise the hundreds of properties whose valuations were established for the tax years in issue by the Nevada Supreme Court in *State ex rel. State Board of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006), and *State ex rel. State Board of Equalization v. Barta*, 124 Nev. 612, 188 P.3d 1092 (2008), and by the district court, applying the *Bakst* and *Barta* precedents, in *Village League to Save Incline Assets, Inc., et al, Petitioners, vs. State ex rel State Board of Equalization, et al, Respondents, Case No. 05-01451A in the First*

Judicial District Court, Carson City, Nevada, and as to which refunds in substantial amounts were paid to taxpayers some years ago. Having openly admitted their disagreement with the Supreme Court rulings *Transcript (November 5), p. 56 (Exhibit 1); Transcript (December 3), pp. 62-63 (Exhibit 2)*<sup>1</sup>, the SBOE has decided to exercise powers not granted to it by the Nevada Legislature to nullify those Court rulings. The SBOE decision and order for "reappraisal" cannot stand.

## II. State Board of Equalization (SBOE) Proceedings And Order

The SBOE held three sets of hearings pursuant to the writ issued by this Court. At the first hearing date, September 18, 2012, taxpayers, including Incline Village/Crystal Bay residential property owners, presented their equalization grievances. A second set of hearings was noticed for November 5, 2012, to allow the assessors to respond to the several grievances. As each grievance was addressed by the respective county assessor, the SBOE ruled on that grievance.

The Washoe County Assessor addressed the Incline Village/Crystal Bay grievances and admitted that the land portion<sup>2</sup> of all single family residential properties and some of the condominium properties at Incline Village/Crystal Bay had been appraised for the 2003-2004, 2004-2005, and 2005-2006 tax years using one or more of the four unconstitutional methods identified by the Supreme Court in the *Bakst* decision. *Exhibit 1, pp. 93-94*. Based on the Assessor's subsequent reports, the number of properties admittedly valued unconstitutionally for

<sup>1</sup> The complete transcripts for all three hearings held by the SBOE have been filed with the court in the Record for Writ of Mandamus Hearing filed December 12, 2013 and the Second Supplement to Record for Writ of Mandamus Hearing filed February 12, 2013.

<sup>2</sup> Under Nevada's taxable value system, the land and improvements on improved residential property are valued separately. Since the land is to be valued as though it were vacant, a comparable sales analysis can only be used to determine value if there are a sufficient number of relatively current sales of comparable vacant land. There was a lack of comparable vacant land sales in the Incline Village/Crystal Bay area for the tax years in question.

1 the tax years in question exceeded 5000, many of them with multiple owners.<sup>3</sup>

2 The Assessor, however, claimed that none of the four methods identified in *Bakst* had  
3 been used in the appraisals of the remaining Incline Village/Crystal Bay residential properties, all  
4 of which were condominiums. *Exhibit 1, pp. 93-94*. The SBOE made no further inquiry of the  
5 Assessor with regard to the methodology or methodologies used to value the "land" portion of  
6 condominiums, whether any such methodology was contained in a Tax Commission approved  
7 regulation, and whether the same methodology was used for condominiums in other areas of  
8 Washoe County. The SBOE also made no inquiry of its Department staff as to what  
9 methodologies were used elsewhere in the State of Nevada for the valuation of condominiums in  
10 the tax years in question.  
11

12 Without any such further inquiry, the SBOE voted unanimously to re-set the land values  
13 of properties that the Assessor admitted having previously valued unconstitutionally to their  
14 2002-2003 levels as the Supreme Court had done in both the *Bakst* and *Barta* cases. *Exhibit 1,*  
15 *pp. 104-113*. The values for each year were to be further adjusted by the application of the factor  
16 that had been approved for the respective year by the Tax Commission. *Id.* The SBOE decision  
17 applied only to those properties that the Assessor had admitted were previously valued using the  
18 methods held unconstitutional in *Bakst* and *Barta*. The SBOE directed the Assessor to provide a  
19 list of the affected properties by early December. *Id.*  
20  
21

22 The Board's November 5 decision was described as final, subject only to a ministerial  
23 review of the properties identified by the County Assessor. *Exhibit 1, pp. 111-113*. The hearing  
24 on December 3, 2012, however, inexplicably took place as though the November 5 determination  
25 had never been made. *See, e.g., Exhibit 2, p. 40*. Instead of reviewing the Assessor's lists of  
26

27 <sup>3</sup> The Assessor's listing of properties for the 2003-2004, 2004-2005, and 2005-2006 tax  
28 years are included as Item No. 4 to Supplement to Record for Writ of Mandamus Hearing filed  
December 13, 2012. Each of the three lists consists of 180+ pages with approximately 30  
properties to a page.

1 affected properties, the SBOE ignored its November 12 decision and instead directed the  
2 Assessor to reappraise all those properties for the three tax years in issue. *Exhibit 2, pp. 77-80.*

3 Under SBOE regulations, the Department staff has 60 days to prepare and serve the  
4 SBOE's final written decision. *NAC 361.747.* That decision was issued here on February 8,  
5 2013, as Equalization Order 12-001. The Order provides as follows:  
6

7 The State Board hereby orders the following actions:

8 1) The Washoe County Assessor is directed to reappraise all  
9 residential properties located in Incline Village and Crystal Bay to  
10 which an unconstitutional methodology was applied to derive  
11 taxable value during the tax years 2003-2004, 2004-2005, and  
12 2005-2006. The reappraisal must be conducted using  
13 methodologies consistent with Nevada Revised Statutes and  
14 regulations approved by the Nevada Tax Commission in existence  
15 during each of the fiscal years being reappraised. The reappraisal  
16 must result in a taxable value for land for each affected property for  
17 the tax years 2003-2004, 2004-2005, and 2005-2006. *Equalization*  
18 *Order 12-001, p. 9.*

19 The Order further requires the Department to conduct a "ratio study" on the reappraised values  
20 and the Board to hold unspecified "additional hearing(s)" to consider both the results of the  
21 reappraisals and the sales ratio study. *Id., pp. 9-10.*

22 Under the express terms of the final written decision, the Washoe County Assessor must  
23 reappraise all residential properties at Incline Village/Crystal Bay for the 2003-2004, 2004-2005  
24 and 2005-2006 tax years "to which an unconstitutional methodology was applied to derive  
25 taxable value" for those tax years. That description includes all the condominium properties at  
26 Incline Village/Crystal Bay. Without regard to the specific methodologies found unconstitutional  
27 in *Bakst* and *Barta*, the methodology used by the Washoe County Assessor to value Incline  
28 Village/Crystal Bay condominiums met the *Bakst/Barta* criteria for unconstitutionality. That  
methodology was not reflected in any Tax Commission regulation for uniform use throughout the  
state. Furthermore, assessors in other counties used other methodologies to value condominiums.



1 The direction to reappraise "all residential properties located in Incline Village and Crystal  
2 Bay to which an unconstitutional methodology was applied to derive taxable value during the tax  
3 years 2003-204, 2004-2005 and 2005-2006," also requires the Washoe County Assessor to  
4 reappraise those properties whose valuations were at issue and set aside as unconstitutional and  
5 void in the *Bakst* and *Barta* cases as well as the approximately 1000 properties whose 2005-2006  
6 values were adjudicated and refunds paid to taxpayers in the matter of *Village League to Save*  
7 *Incline Assets, Inc., et al, Petitioners, vs. State ex rel State Board of Equalization, et al,*  
8 *Respondents, Case No. 05-01451A in the First Judicial District Court, Carson City, Nevada.*  
9 Although the legal principles expressed in *Bakst* and *Barta* remain operative, Equalization Order  
10 12-001 would set aside the valuations established by the Supreme Court in those cases as well as  
11 the adjudicated values in the District Court case.  
12

### 13 **III. The Reappraisal Order Is Beyond The SBOE's Statutory Jurisdiction.**

#### 14 **A. The SBOE Lacks The Jurisdiction To Order Reappraisal.**

15 The SBOE was created by the Nevada Legislature and its jurisdiction is  
16 determined by its enabling statute. The SBOE did not exist at common law and it has no  
17 inherent, common law powers. *See, e.g., Nevada Power Co. v. District Court*, 120 Nev. 948,  
18 955-956, 102 P.3d 578, 583 (Nev., 2004) (a statutory agency "has only those powers and  
19 jurisdiction as are expressly or 'by necessary or fair implication' conferred by statute"); *see also,*  
20 *Andrews v. Nevada State Board of Cosmetology*, 86 Nev. 207, 467 P.2d 96 (1970); *Clark County*  
21 *v. State, Equal Rights Commission*, 107 Nev. 489, 492, 813 P.2d 1006, 1007 (1991). Any action  
22 by the SBOE in excess of its jurisdiction as determined by statute is void *per se*. *See, e.g.,*  
23 *Diageo-Guinness USA, Inc. v. State Bd. of Equalization*, 140 Cal.Rptr.3d 358, 364  
24 (Cal.App.2012) (Board's attempt to redefine Flavored Malt Beverages for purposes of excise  
25 taxes was outside its authority and void); *see also, Security National Guaranty, Inc. v. California*  
26  
27  
28

1 *Coastal Commission*, 71 Cal.Rptr.3d (Cal.App.2008) (action taken in excess of statutory authority  
2 was invalid).

3 The SBOE's statutory equalization duties and powers are set forth in NRS 361.395  
4 in their entirety as follows:

5  
6 1. During the annual session of the State Board of  
7 Equalization beginning on the fourth Monday in March of each  
8 year, the State Board of Equalization shall:

9 (a) Equalize property valuations in the State.

10 (b) **Review the tax rolls of the various counties as corrected**  
11 **by the county boards of equalization thereof and raise or lower,**  
12 **equalizing and establishing the taxable value of the property,**  
13 for the purpose of the valuations therein established by all the  
14 county assessors and county boards of equalization and the Nevada  
15 Tax Commission, of any class or piece of property in whole or in  
16 part in any county, including those classes of property enumerated  
17 in NRS 361.320. (Emphasis added.)

18 Under the statute, the mandated equalization is to be done annually for the current tax year not  
19 years after the fact. The SBOE's failure of annual statewide equalization has made this long  
20 overdue equalization proceeding necessary.

21 NRS 361.395 specifically authorizes the SBOE to review the tax rolls and raise or  
22 lower taxable values for purposes of equalization. The Legislature did not empower the SBOE to  
23 order the reappraisal of property by county assessors.<sup>4</sup> When a statute gives specific powers to  
24 any agency, those specific powers establish the limits of the agency's jurisdiction. *See, e.g., Clark*  
25 *County v. State, Equal Rights Commission, supra*, 107 Nev. at 492, 813 P.2d at 1007 (authority to  
26 issue subpoenas for hearings meant no authority to issue subpoenas for investigation purposes);  
27 *see also, Hi-Country Estates Homeowners Association v. Bagley & Co.*, 901 P.2d 1017, 1021  
(Utah 1995) (PSC did not have power to determine value of property other than for rate-making

28 <sup>4</sup> Certainly the Legislature never anticipated an order to reappraise properties appraised  
ten years earlier.

1 purposes); *In re Board of Psychologist Examiners' Final Order Case No. PSY-P4B-01-010-002*,  
2 224 P.3d 1131, 1137 (Idaho 2010) (sanctions specifically authorized by statute preclude  
3 imposition of other sanctions); *People v. Harter Packing Co.*, 325 P.2d 519, 521 (Cal.App. 1958)  
4 (agency cannot expand upon statutory enumerated penalties).  
5

6 The statutes contain no express authorization for the SBOE to order the reappraisal  
7 of property by county assessors. Nor may any such authority be either necessarily or fairly  
8 implied. Nothing in the statutory language, the legislative history of the statute, or the historical  
9 experience under the statute supports the implied authority to order reappraisal. In all its history,  
10 the SBOE has never previously issued an order for the reappraisal of property. *See, e.g., Heber*  
11 *Light & Power Co. v. Utah Public Service Commission*, 231 P.3d 1203, 1208 (Utah 2010)  
12 ("Accordingly, to ensure that the administrative powers of the [Commission] are not  
13 overextended, any reasonable doubt of the existence of any power must be resolved against the  
14 exercise thereof.")<sup>5</sup>  
15

16 **B. The SBOE's Attempt To Extend Its Jurisdiction By Regulation Must**  
17 **Be Rejected As A Matter Of Law.**

18 Effective in October of 2010, the SBOE adopted regulations for equalization,  
19 including arrogating to itself under certain circumstances, the "authority" to order county  
20 assessors to reappraise property. NAC 361.650--361.669; NAC 361.665. The law, however,  
21 does not permit the SBOE to extend its jurisdiction by regulation. First of all, the SBOE's  
22 authority to adopt regulations is expressly limited to regulations governing the conduct of its  
23 business. *NRS 361.375(9)*. In other words, the SBOE only has the authority to adopt procedural  
24 regulations. The plenary regulation-making authority for the tax system lies with the Tax  
25 Commission. *See, e.g., NRS 360.090; 360.250*.  
26

27 <sup>5</sup> There is similarly no grant of authority, express or implied, for the SBOE to order ratio  
28 studies. Ratio studies are provided for in NRS 361.333 which specifies roles for both the  
Department and the Tax Commission. NRS 361.333 makes no mention whatsoever of the SBOE.

1 Even if the SBOE's authority to adopt regulations were not limited to procedure,  
2 however, that authority could not be exercised to expand its jurisdiction beyond that provided by  
3 statute. *See, e.g., Morris v. Williams*, 433 P.2d 697, 708 (Cal.1967) ("Administrative regulations  
4 that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but  
5 it is their obligation to strike down such regulations.") The reappraisal order is in excess of the  
6 SBOE's jurisdiction and cannot be sustained.  
7

8 In any event, the SBOE does not purport to act under its 2010 equalization  
9 regulations in ordering the reappraisals of Incline Village/Crystal Bay property. The retroactive  
10 application of the 2010 equalization regulations to equalization grievances for the tax years 2003-  
11 2004 through 2005-2006 is prohibited. *See, e.g., Barta, supra*, 124 Nev. at 621-622, 188 P.3d at  
12 1099. Furthermore, an order for reappraisal under NAC 361.665 requires not only specific  
13 preliminary findings based on the SBOE's review of particular information from throughout  
14 Nevada but specific direction from the SBOE as to the "particular methods" of reappraisal to be  
15 used and their authority in Commission regulations. *NAC 361.665*. Neither those preliminary  
16 findings nor the specification of reappraisal methods can be found in Equalization Order 12-001.  
17

18 **C. Nevada's Property Tax Statutes Do Not Authorize A Reappraisal Remedy.**  
19

20 The Nevada Legislature has not vested the SBOE with the jurisdiction to order  
21 county assessors to reappraise property. In fact, not even the Tax Commission has the  
22 jurisdiction to order reappraisals. Nevada's property tax system does not permit orders for the  
23 "reappraisal" of property already appraised for a particular tax year. The only references to  
24 "reappraisal" in the entire Nevada property tax code are to the annual or cyclical "reappraisal" of  
25 property for ad valorem tax purposes. *See, e.g., NRS 361.260; 361.261*. "Reappraisal" is a  
26 reference only to the current year's appraisal of property that was appraised in prior years.  
27

28 The imposition and collection of property taxes in Nevada follows a relatively

1 strict timeline. The tax year runs from July 1 to June 30. The property valuation process starts in  
2 the preceding year. For the tax year 2003-2004, for example, the initial property valuation by the  
3 county assessor took place in 2002. By statute, the assessor is required to use only "comparable  
4 sales of land before July 1 of the year before the lien date." *NRS 361.260(7)*. In valuing the land  
5 portion of residential property for the 2003-2004 tax year, for example, the assessor could only  
6 consider comparable vacant land sales that occurred prior to July 1, 2002.

7  
8 For the 2003-2004 tax year, the property owner received notice of the Assessor's  
9 determination of value in November or December of 2002. The last day to appeal a  
10 determination of value was January 15, 2003. *NRS 361.340*. The County Board of Equalization  
11 sat until the end of February 2003 to hear and determine the property owner/taxpayer appeals.  
12 *NRS 361.340*. Taxpayers who were unsatisfied with the County Board determinations had until  
13 March 10, 2003, to appeal to the SBOE. *NRS 361.360*. The SBOE convened on the last Monday  
14 in March of 2003 and remained in session until November 1, 2003. *NRS 361.380*.

15  
16 Tax bills for the 2003-2004 tax year were sent by August 1, 2003, and taxes were  
17 due on August 20, 2003, although taxes could be paid in four installments with the last  
18 installment in March of 2004. Property taxes are a perpetual lien against the property and take  
19 priority over other encumbrances. *NRS 361.450*. The lien date for 2003-2004 property taxes was  
20 July 1, 2003, the first day of the tax year. Although the SBOE may have remained in session  
21 until November 1, 2003, by that time, county assessors were almost finished with the next tax  
22 year's (2004-2005) valuation process and the preparation of notices of 2004-2005 valuations that  
23 went to taxpayers in November or December of 2003.

24  
25 There is no place in Nevada's property tax system for the "reappraisal" of property  
26 already appraised for the tax year in question. Not only do the statutes make no reference to an  
27 order for reappraisal as an available remedy for improper valuation by county assessors, those  
28

1 statutes also fail to create any process whatsoever by which taxpayers could challenge the values  
2 obtained in a reappraisal. When the government assigns a value to property and proposes to tax  
3 the owner based on that valuation, the property owner has an undisputed and indisputable  
4 constitutional right to notice and the opportunity to be heard to challenge that value. The  
5 taxpayer's due process rights would have to be protected with respect to a reappraisal just as they  
6 are in the existing system with the assessor's initial appraisal.  
7

8 A reappraisal remedy is inconsistent with both the language of the property tax  
9 statutes and the public policies they are intended to promote. A mass reappraisal remedy created  
10 and applied retroactively more than ten years after the initial appraisals were done and multiple  
11 properties will have been transferred, in some cases, more than once, creates further problems.  
12 The potential higher valuations and increased assessments could wreak havoc with the lien  
13 system, title policy guarantees, and ultimate collection of additional taxes.  
14

15 Furthermore, the county assessor and the taxpayer are adversary parties with  
16 respect to property taxes. Ordering the county assessor to reappraise property after the assessor  
17 has acknowledged the use of unconstitutional methodologies in the original appraisal is like  
18 finding the defendant liable and then letting the defendant determine the plaintiff's damages. It is  
19 the proverbial fox guarding the henhouse. Giving the assessor a "do-over" would remove any  
20 effective disincentive for improper or unconstitutional appraisal practices. It also would add  
21 further insult to existing injury in terms of a property tax system already heavily weighted against  
22 the taxpayer. The *Barta* case presented a similar issue involving similarly invalid valuations  
23 based on the use of unconstitutional valuation methodologies. The SBOE and the Washoe  
24 County Assessor both proposed a "remand" not to the Assessor for reappraisal, but instead to the  
25 SBOE itself for the establishment of new values. *124 Nev. at 627; 188 P.3d at 1102*. The  
26 Supreme Court rejected the SBOE's proposed remand for new valuations in favor of resetting the  
27  
28

1 properties to their most recent constitutionally valid valuations. *Id.*

2 **IV. The SBOE Decision Must Be Set Aside As Void Because**  
3 **The Board Was Unlawfully Constituted And Had No Jurisdiction.**

4 Under NRS 361.375, the SBOE is to be composed of five members appointed by the  
5 Governor. Only one of those five members is to be a property appraiser with a professional  
6 designation. The Legislature purposely limited the Board to one fee appraiser in order to have the  
7 appraisal expertise without having appraisal considerations dominate.

8 The Board that heard and determined the equalization grievances under the writ of  
9 mandate, however, had two members, Chairman Anthony Wren and Member Ben Johnson, who  
10 were "property appraisers with professional designations." *See Exhibits 3 and 4.* Mr. Johnson  
11 was recently appointed to the Board, replacing Russ Hofland who had been the Board Member  
12 "versed in the valuation of centrally assessed properties." *See Exhibit 5.* The statute also requires  
13 that one member of the Board be "versed in the valuation of centrally assessed properties." *NRS*  
14 *361.375.* Even if Mr. Johnson has experience with centrally assessed properties not reflected in  
15 his biography or resume, his appointment created a Board with two fee appraisers in violation of  
16 both the letter and the spirit of NRS 361.375. That appointment deprived the Board of  
17 jurisdiction in this matter. *See, e.g., Kaemmerer v. St. Clair County Electoral Board*, 776 N.E.2d  
18 900, 902 (Ill.App. 2002); *Vuagniaux v. Dept. of Professional Regulation*, 802 N.E.2d 1156, 1164-  
19 1165 (Ill.App. 2003); *DuBaldo v. Dept. of Consumer Protection*, 522 A.2d 813, 815 (Conn.  
20 1989); *Davis v. Rhode Island Bd. of Regents*, 399 A.2d 1247, 1250 (R.I. 1979).

21 The influence of the two appraiser members on the unlawfully constituted Board was  
22 apparent. Chairman Wren was frank in his disagreement with the Supreme Court rulings. *Exhibit*  
23 *1, p. 56.* Both the Chairman and Member Johnson expressed their support for reappraisals  
24 because the unconstitutionally obtained values did not exceed market or "full cash" value.  
25 *Exhibit 2, pp. 8, 36, 39, 49, 58-60, 72.* The SBOE was reminded to no avail that the *Barta* Court  
26  
27  
28

1 had expressly rejected both the SBOE's "full cash value" argument and its request for a remand  
2 for the determination of new values. *Id.*, pp. 28-30, 36, 57-58.

3 **V. The SBOE Decision Must Be Set Aside Because Of The Board's Selective**  
4 **And Unlawful Retroactive Application Of The 2010 Equalization Regulations.**

5 After acknowledging that no contemporaneous equalization regulations existed during the  
6 tax years at issue, the SBOE made numerous references in its decision to the equalization  
7 regulations adopted in 2010. In Conclusion of Law Number 4, for example, the Equalization  
8 Order states as follows:  
9

10 [The Board] relied on the definition of equalization provided in  
11 NAC 361.652 and current equalization regulations for guidance in  
12 how to equalize the property values in Incline Village and Crystal  
13 Bay. *Equalization Order*, p. 9.

14 NAC 361.652 was adopted as part of the 2010 regulations.

15 In Conclusion of Law Number 5, the Equalization Order references the "standard for the  
16 conduct of a sales ratio study is the IAAO Standard on Ratio Studies (2007)," citing NAC  
17 361.658 and NAC 361.662, also adopted in 2010. *Equalization Order*, p. 9. In Conclusion of  
18 Law Number 7, the Equalization Order references another of the 2010 regulations, stating, as  
19 follows:

20 NAC 361.663 provides that the State Board require the Department  
21 to conduct a systematic investigation and evaluation of the  
22 procedures and operations of the county assessor before making any  
23 determination concerning whether the property in a county has been  
24 assessed uniformly in accordance with the methods of appraisal  
25 required by law. *Equalization Order*, p. 9.

26 The Order further directs the Department "to conduct a sales ratio study consistent with NAC  
27 361.658 and NAC 361.662 . . . ." *Equalization Order*, p. 10.

28 The SBOE's 2010 equalization regulations were expressly made prospective, to be  
effective October 1, 2010. Nothing in the language or history of the regulations remotely suggest



1 a retroactive intent of any kind. The retroactive application of the 2010 equalization regulations  
2 is prohibited as a matter of law. *See, e.g., Barta, supra*, 124 Nev. at 621-622, 188 P.3d at 1099.  
3 In any event, as drafted, the 2010 equalization regulations apply only to the SBOE's annual  
4 mandate for statewide equalization in a current tax year. *NAC 361.650-361.669*. With no  
5 provisions for the review of prior year equalization issues, those 2010 regulations could not  
6 govern the SBOE proceedings under the writ of mandate. To follow the 2010 regulations, the  
7 SBOE here would have reviewed the tax rolls of each county for the tax years from 2003-2004 to  
8 2009-2010, reviewed the rolls of centrally assessed property for each of those years, reviewed  
9 ratio studies and performance audits of assessor practices conducted in each of those years, made  
10 preliminary findings and held hearings on those preliminary findings, and so on. *NAC 361.659,*  
11 *361.660, 361.664*. None of those actions were taken or could lawfully have been taken. The  
12 2010 regulations were simply not in effect in any of the tax years at issue before the SBOE on the  
13 writ of mandate.  
14

15  
16 Furthermore, under the 2010 equalization regulations, taxpayers are relegated to the status  
17 of "interested persons" rather than parties to the proceedings with all the rights of parties. The  
18 hearings mandated by the writ of mandate were for the express purpose of resolving taxpayer  
19 equalization grievances from the tax years 2003-2004 through 2009-2010. The SBOE had no  
20 equalization regulation applicable to those tax years and it has no regulation whatsoever, to date,  
21 addressing taxpayer equalization grievances. Nothing in the 2010 equalization regulations deals  
22 with taxpayer equalization grievances.  
23

24 The Department/SBOE attempt to avoid the prohibited retroactive application of the 2010  
25 equalization regulations by characterizing certain cherry-picked provisions merely as "guidance."  
26 For example, the SBOE is said to have been "guided" by the definition of equalization adopted as  
27 part of the 2010 regulations. The use of this definition was primarily urged by the Department of  
28

1 Taxation representative Terry Rubald. *Exhibit 1, pp. 55; Exhibit 2, pp. 25, 45.* As argued by  
2 Rubald and by new appraiser member Johnson, satisfying the 2010 definition of equalization  
3 required a ratio study to determine that Incline Village/Crystal Bay residential property owners  
4 were being assessed the same as other property owners in Washoe County. *Exhibit 1, pp. 98-99;*  
5 *Exhibit 2, pp. 56, 78.* The effect, and true purpose, of a ratio study here (performed "of course"  
6 by the Department) is to ensure valuation levels established by unconstitutional methodologies  
7 are maintained. The intent is to nullify the Supreme Court *Bakst* and *Barta* rulings and restore  
8 unconstitutional valuations under the guise of reappraisal validated by a ratio study.  
9

10 Taxpayers are entitled to have their equalization grievances for the tax years 2003-2004,  
11 2004-2005, and 2005-2006 determined by the law in effect during those years not years later. In  
12 2003-2004, 2004-2005, and 2005-2006, equalization was geographical. When the SBOE  
13 approved a 10% reduction along the lakeshore in Incline Village, no "ratio study" was performed.  
14 When the SBOE affirmed the County Board 2006-2007 tax year equalization decision resetting  
15 all residential property at Incline Village/Crystal Bay to 2002-2003 levels, no "ratio study" was  
16 performed.  
17

18 This Court must reject the obvious subterfuge. The retroactive use of the 2010  
19 equalization provisions as "guidance" is no less prohibited than their straightforward application.  
20 The Equalization Order based on that "guidance" is unlawful and must be vacated. If anything,  
21 the SBOE's selective use of certain provisions of the 2010 regulations without any attempt at  
22 actual compliance with those regulations is even more egregious. If the SBOE is serious about  
23 using the 2010 regulation as "guidance," it should direct the reappraisal of the entire state using  
24 constitutional methodologies and the preparation of ratio studies that encompass the entire state  
25 for the tax years in question, including the comparable Lake Tahoe properties in Douglas County.  
26  
27  
28

**VI. The Reappraisal Order Is Void Because It Denies Taxpayers Their Constitutional Rights To Due Process And Equal Protection.**

**A. The Reappraisal Order Denies Taxpayers Their Rights To Due Process And Equal Protection.**

The Equalization Order addresses the equalization of residential property at Incline Village/Crystal Bay for the tax years 2003-2004, 2004-2005, and 2005-2006. In those years, the Washoe County Assessor's office appraised property on a five-year cycle as permitted by law. The portion of Washoe County which encompassed Incline Village/Crystal Bay was reappraised in 2002 for the 2003-2004 tax year. The properties in that portion of Washoe County were not appraised again until 2007 for the 2008-2009 tax year. The value of the land portion of residential properties for the 2004-2005 and 2005-2006 tax years was determined by applying a factor to the land value established by the 2002 appraisal. The property owner/taxpayer had the rights outlined in Section III(C) above to challenge each year's valuation before the County Board of Equalization and, if necessary, the SBOE and the court system.

The "reappraisals" ordered by the SBOE alter this scenario in several particulars. Instead of a single appraisal done in 2002 serving as the base appraisal for all three tax years, the identified properties are to be reappraised separately each year for a total of three appraisals on each property. Rather than the valuation regulations as they existed in 2002, the Equalization Order specifically directs the Assessor to use the regulations "in existence during each of the fiscal years being reappraised." *Equalization Order*, p. 9. The Tax Commission adopted revised temporary valuation regulations in December of 2002. In August 2004, the Commission adopted additional revisions as permanent regulations.<sup>6</sup> By requiring reappraisals to be performed under the respective current tax year regulations, the SBOE was presumably looking to avoid the 2002 regulations which the Supreme Court found constitutionally inadequate in *Bakst* and *Barta* and

<sup>6</sup> The Tax Commission revised the valuation regulations again in 2008 and 2010, effective in 2012.

1 allow the Assessor to take advantage of the December 2002 and/or August 2004 revised  
2 regulations.

3 By limiting the Assessor to valuation methodologies reflected in regulations  
4 approved by the Tax Commission in existence in the tax year being reappraised, the SBOE has  
5 also required individual appraisals of all affected properties. Although mass appraisal was, in  
6 fact, used in the tax years in question, it was not approved as a methodology by Tax Commission  
7 regulation until 2008. Finally, and contrary to the established statutory process for challenging  
8 the initial valuation, no process whatsoever is provided by which property owners/taxpayers can  
9 challenge the reappraisal valuation of their property unless it is greater than the prior  
10 unconstitutional valuation.  
11

12 The Equalization Order is not entirely clear on which regulations the Washoe  
13 County Assessor is to follow. The Order describes the "regulations approved by the Nevada Tax  
14 Commission in existence during each of the fiscal years being reappraised." The first affected  
15 fiscal year – 2003-2004 – began July 1, 2003 and ended June 30, 2004. The December 2002  
16 temporary regulations were in effect for four months of that year, expiring by law on November  
17 1, 2003. *NRS 233B.063*. The original 2002 regulations were in effect for the remaining eight  
18 months of that year. No express direction is provided to the Assessor in the Equalization Order  
19 whether to use the December 2002 temporary regulations or the original 2002 regulations that  
20 were in effect for the most of the 2003-2004 tax year. In any event, other than as now directed  
21 under Equalization Order 12-001, no properties at Incline Village or elsewhere in Nevada were  
22 appraised for purposes of 2003-2004 tax assessments under the December 2002 temporary  
23 regulations.  
24

25  
26 The 2004 permanent regulations became effective on August 4, 2004,  
27 approximately a month into the 2004-2005 fiscal year. Since the 2004-2005 tax bills went out  
28

1 before August 1, 2004, no properties at Incline Village or elsewhere in Nevada were appraised for  
2 purposes of the 2004-2005 assessments under the 2004 permanent regulations. The 2004  
3 permanent regulations were in effect for the entirety of the 2005-2006 fiscal year and, depending  
4 on the 5-year appraisal cycle, would have governed the valuation of properties in Washoe County  
5 and elsewhere in Nevada for that year. The section of Washoe County that was appraised for the  
6 2005-2006 fiscal year was the Reno Central Core. No properties at Incline Village were  
7 appraised under the 2004 permanent regulations.

8  
9 Consistent with NRS 361.395 and the writ of mandate, the SBOE's order for  
10 reappraisal provides for a further hearing on any reappraised value that represents an increase  
11 from the previous unconstitutionally appraised value. Both the law and the writ, however,  
12 reference increases by the SBOE, not increases based on new appraisals. In fact, however, there  
13 is no reason to assume that valuations reached in new appraisals will satisfy constitutional  
14 requirements without regard to whether the valuation is more or less than the previous  
15 unconstitutional value. The Assessor has notably failed in the past to value property in  
16 accordance with constitutional requirements. The constraints of due process necessitate that the  
17 taxpayer owners of the properties being reappraised have the same right to challenge any new  
18 appraisal as the original appraisal. *Barta, supra*, 188 P.3d at 1095.

19  
20  
21 By ordering annual reappraisals and requiring the Assessor to use current year  
22 regulations in these reappraisals, the SBOE has mandated non-uniform treatment of Incline  
23 Village/Crystal Bay taxpayers. Incline Village/Crystal Bay taxpayers will be the only property  
24 owners in Nevada whose 2003-2004 tax year property values were determined under the 2002  
25 temporary regulations. Incline Village/Crystal Bay will also be the only property owners in  
26 Nevada whose 2004-2005 tax year property values were determined under the 2004 revised  
27 regulations. The Equalization Order violates the constitutional mandate of uniformity and denies  
28

1 taxpayers their rights to both due process and equal protection.

2 **B. "Constitutional" Reappraisals Cannot Be Performed.**

3 The SBOE's reappraisal directive fails of its essential purpose. Under the  
4 standards established by the Supreme Court in *Bakst*, reappraisals passing constitutional muster  
5 cannot be performed under either the original 2002 regulations or those regulations as revised in  
6 December of 2002 and/or August of 2004.

7  
8 **1. The Incline Village/Crystal Bay Properties Cannot Be**  
9 **Constitutionally Reappraised Under The Original 2002 Regulations.**

10 In its 2002 appraisals of residential property at Incline Village/Crystal Bay, the  
11 Washoe County Assessor used four methodologies primarily to accommodate for the lack of  
12 available comparable vacant land sales. Establishing standards by which all valuation  
13 methodologies are to be evaluated by other courts and administrative agencies to determine  
14 whether they meet constitutional muster, the *Bakst* Court found all four methodologies  
15 unconstitutional because

16 (1) "they were not consistent with the methods used throughout Washoe  
17 County."

18 (2) "they were not the same as the methods used by assessors in other counties."  
19

20 (3) "county assessors in other counties appear to have used methodologies that  
21 were not uniform with those used by Washoe County for Incline Village and  
22 Crystal Bay." *Bakst, supra*, 122 Nev. at 1416, 148 P.3d at 726.

23 The *Bakst* Court placed the responsibility upon the Tax Commission for having  
24 failed to comply "with its statutory duty to establish regulations that the county assessors could  
25 adopt for circumstances in which comparable rates might be difficult to determine." *Id.*, 122 Nev.  
26 at 1414, 148 P.2d at 724.

27 As the Supreme Court wrote:

28 By using the mandatory term "shall," the Constitution  
clearly and unambiguously requires that the methods used for

1 assessing taxes throughout the state must be "uniform." \* \* \* Thus,  
2 county assessors must use uniform standards and methodologies for  
3 assessing property values throughout the state. 122 Nev. at 1413,  
148 P.3d at 724.

4 The lack of adequate Tax Commission regulations forced the assessors in 2002 to develop  
5 individualized valuation methodologies which were necessarily unconstitutional because they  
6 were not promulgated for uniform use throughout the state. *Id.* The valuation regulations as they  
7 existed in 2002 simply do not permit the constitutional valuation of residential properties at  
8 Incline Village/Crystal Bay. The SBOE/Department of Taxation has effectively admitted as  
9 much by directing that reappraisals be done using the subsequent revised regulations.  
10

11 **2. The Incline Village/Crystal Bay Properties Cannot Be**  
12 **Constitutionally Reappraised Under The 2002 Temporary Regulations**  
13 **Or The August 2004 Permanent Regulations.**

14 The "appraisal problem" at Incline Village and Crystal Bay is the lack of vacant  
15 land sales to support a comparable sales analysis to determine the value of the land portion of  
16 improved residential property. Accordingly, any reappraisal of Incline Village/Crystal Bay  
17 properties requires the use of alternative valuation methodologies. The original 2002 valuation  
18 regulations merely identified those alternatives as

19 Allocation (abstraction) procedure: An allocation of the appraised  
20 total value of the property between the land and any improvements  
added to the land.

21 In the absence of further regulatory direction, county assessors were forced to develop their own  
22 individualized approaches for implementing the alternative methodologies, necessarily  
23 unconstitutional under *Bakst.* The Tax Commission attempted to clarify their regulatory direction  
24 with respect to alternative methodologies first in the December 2002 temporary regulations and,  
25 to a greater extent, subsequently in the August 2004 permanent regulations.  
26

27 It is unnecessary to discuss the "clarified" alternative methodology provisions of  
28 either the December 2002 temporary regulations or the August 2004 permanent regulations. In

1 order to establish allocation or abstraction as a valuation methodology meeting constitutional  
2 standards under *Bakst*, the Assessor must demonstrate, first of all, that the results of applying  
3 either alternative methodology at Incline Village/Crystal Bay are "consistent" with the results of  
4 other valuation methods used in other parts of the County. To do that, the Assessor must show  
5 that the same results are obtained for land values whether the allocation, abstraction, or the  
6 comparable sales methods are used. Even if that could be done, the Assessor would then have to  
7 establish that the allocation and/or abstraction methods were used in the same way by assessors in  
8 the other 16 counties in Nevada. That particular pre-requisite to constitutional valuation cannot  
9 be met. The Department of Taxation itself, in its 2008-2009 land factor report, stated the  
10 following:  
11

12 [T] here is **no consensus model in existence** for the  
13 application of the alternative methodologies (abstraction or  
14 allocation) in the absence of a sufficient vacant land sales analysis.  
15 *2008-2009 Land Factor Report, p. 11 (Exhibit 6).*

16 The lack of a "consensus model" means that assessors in different counties applied  
17 the allocation and abstraction methodologies differently, undeniably destroying the  
18 constitutionally mandated uniformity of application. If there was still "no consensus model in  
19 existence" in 2008, there clearly was no single condominium valuation methodology used in all  
20 seventeen Nevada counties from 2003-2006. As a matter of both law and fact, no constitutional  
21 reappraisal of Incline Village/Crystal Bay residential properties can be performed for the 2003-  
22 2004, 2004-2005 and 2005-2006 tax years.

23 **VII. The Reappraisal Order Violates The Writ Of Mandate And Must Be Set Aside.**  
24

25 The Writ of Mandate issued by this Court required the State Board of Equalization to  
26 "hear and determine" the equalization grievances of property owner taxpayers throughout the  
27 State of Nevada for the tax years from 2003-2004 to 2010-2011 and to "raise, lower or leave  
28



1 unchanged the taxable value of any property for the purposes of equalization." The SBOE has  
2 failed to comply with those directives.

3 When the Washoe County Assessor admitted to having used the unconstitutional  
4 methodologies identified in *Bakst* in the valuation of all single family residential and some  
5 condominium properties at Incline Village/Crystal Bay, the SBOE determined to equalize by  
6 correcting those unconstitutional valuations. The SBOE is to be commended for its determination  
7 not to leave unconstitutionally determined valuations unchanged. Its inquiry, however, did not go  
8 far enough.  
9

10 The SBOE simply assumed, in the absence of any evidence whatsoever, that the  
11 remaining condominium properties at Incline Village/Crystal Bay had been valued  
12 constitutionally. The SBOE made its decision here as though, in *Bakst*, the Supreme Court had  
13 looked at *all* of the valuation methodologies used by the Washoe County Assessor in the 2002  
14 appraisal, found just four of them to violate the Constitutional mandate of uniformity, and  
15 implicitly validated all the remaining valuation methodologies in use. *Nothing could be more*  
16 *inaccurate*. In fact, the *Bakst* Court looked only at four methodologies and found them *all*  
17 lacking the essential attributes of constitutionality. Although it did not at any other specific  
18 methodologies including any methodology used to value the "land" portion of condominium  
19 properties, the *Bakst* Court clearly did not limit its ruling to the four identified methodologies.  
20  
21

22 If, instead of blindly assuming the Assessor's constitutional compliance, the SBOE had  
23 looked at the valuation of condominiums<sup>7</sup> at Incline Village/Crystal Bay for the 2003-2004, 2004-  
24 2005, and 2005-2006 tax years and had pursued that inquiry with assessors from other counties, it  
25

26 <sup>7</sup> In Nevada's taxable value system where the "land" and the "improvements" on improved  
27 residential parcels are valued separately, condominiums obviously present valuation methodology  
28 issues. As defined in NRS 117.010(2), a condominium consists of "an undivided interest in  
common in portions of a parcel of real property together with. . . [a] separate interest in *space* in a  
residential, industrial or commercial building. . . ."

1 would have found that the *Bakst* criteria for a finding of unconstitutionality were satisfied. There  
2 was no Tax Commission approved regulation for the uniform valuation of condominiums  
3 throughout Nevada in any of the tax years in question. Furthermore, condominiums were valued  
4 differently in Washoe County than in Douglas County or other Nevada counties.

5  
6 Accordingly, for all practical purposes, the SBOE never even heard the equalization  
7 grievances of the bulk of the condominium owner taxpayers at Incline Village and Crystal Bay.  
8 If the Board had heard those grievances, it would have found that all the condominiums like all  
9 the single family residences at Incline Village/Crystal Bay were valued using unconstitutional  
10 methodologies and that, under the law, all such valuations were void and all taxpayers were  
11 entitled to relief.

12  
13 Incline Village/Crystal Bay taxpayers proposed geographic equalization per the paradigm  
14 set by the Supreme Court in the *Bakst* and *Barta* cases and per the historically geographical basis  
15 of equalization reflected in prior SBOE decisions, including the 2006-2007 tax year decision  
16 resetting all residential values at Incline Village/Crystal Bay to their 2002-2003 levels as well as  
17 more localized decisions reducing valuations along Mill Creek and the lakefront at Incline  
18 Village. The historically geographical basis of equalization is also reflected in the regulation  
19 adopted years ago by the SBOE imposing a duty of geographic equalization upon county boards  
20 of equalization. NAC 361.624.<sup>8</sup>

21  
22 Geographic equalization for the 2003-2004, 2004-2005 and 2005-2006 tax years would  
23 require resetting the land values of all residential property at Incline Village/Crystal Bay for those  
24 years to their 2002-2003 levels, the last established constitutional levels. The SBOE instead  
25 focused on the Assessor's admitted use of unconstitutional methodologies. With that focus, the  
26 SBOE unanimously voted to reset to their 2002-2003 adjusted values those properties that the  
27

28 <sup>8</sup> By law, the SBOE prescribes the regulations for county boards. NRS 361.340(11).

1 Assessor admitted to having previously valued unconstitutionally. Because this analysis relied  
2 solely on the Assessor's admission, it was inadequate and incomplete. In any event, in the third  
3 hearing in this matter, the SBOE abandoned this approach entirely, reversed its earlier decision,  
4 and ordered the Assessor to reappraise the unconstitutionally valued properties for the three tax  
5 years in issue.  
6

7 Although the specific implementation of the writ was left to the SBOE, the Court clearly  
8 did not intend and could not have intended that the SBOE should fail even to hear the  
9 condominium owners' grievances, that it should attempt to expand its statutory jurisdiction to  
10 include reappraisal, that it should unlawfully apply its 2010 equalization regulations retroactively,  
11 or that it should make a determination that violated the constitutional mandate of uniformity as  
12 well as the due process and equal protection rights of taxpayers. The Court must reject the  
13 SBOE's report for failure to comply with the terms of the Writ of Mandate, set aside the SBOE  
14 Equalization Order, and return this matter once more to the SBOE for equalization action in  
15 conformance with the terms of the Writ, the statutory jurisdiction of the Board, and the  
16 requirements of the Nevada and Federal Constitutions.  
17

18 Respectfully submitted this 21st day of February 2013.

19 SNELL & WILMER L.L.P.

20 By:   
21

22 Suellen Fulstone, No. 1615  
23 50 West Liberty Street, Suite 510  
24 Reno, Nevada 89501

Attorneys for Petitioners

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

27   
28 Suellen Fulstone

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**CERTIFICATE OF SERVICE**

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

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

DATED this 21st day of February, 2013.

  
Employee of Snell & Wilmer L.L.P.

INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Title of Exhibit</u>	<u>No. of Pages</u>
1.	Portions of November 5, 2012 SBOE transcript	17
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3.	Biographies of SBOE Board from Department of Taxation website	2
4.	Resume of Benjamin Q. Johnson	2
5.	Biography of Russ Hofland as prior Member of SBOE Board	3
6.	2008-2009 Land Factor Report, Department of Taxation, Division of Assessment Standard	3

EXHIBIT 1

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Clerk of the Court  
Transaction # 3547722

EXHIBIT 1

STATE BOARD OF EQUALIZATION

STATE OF NEVADA

-000-

PUBLIC HEARING

AGENDA ITEM L5 (Writ of Mandamus Hearing)

Monday, November 5, 2012

Nevada Legislative Building, Room 4100

Carson City, Nevada

REPORTED BY:

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1                   MEMBER MESERVY: So, I mean, what -- why are  
2 we asking for that here?

3                   CHAIRMAN WREN: We're not. I'm just taking  
4 the testimony for the record.

5                   Okay. Thank you. And let the record reflect,  
6 with our discussions with you, it was much longer than  
7 five minutes.

8                   Terry, do you have recommendations for us?  
9 No? You know, one --

10                  MS. RUBALD: I guess I would like to just add,  
11 for the record, that -- that I would like, that NAC  
12 361.652 is the definition of "equalized property," and it  
13 means "to ensure that the property in this state is  
14 assessed uniformly in accordance with the methods of  
15 appraisal and at the level of assessment required by law."

16                  And if the assertion is that the methods of  
17 assessment or the methods of appraisal were not uniform  
18 then I think that there isn't enough information in the  
19 record. As the assessor testified, we don't know which  
20 properties had the four methodologies applied to them and  
21 which did not.

22                  And if they -- if they were  
23 unconstitutional -- they are unconstitutional, but  
24 whichever properties had that, you know, you might want to  
25 explore what happens when you remove those methodologies.



1           If you remove those methodologies, what's the  
2     resulting value and is that resulting value then at a  
3     level of assessment that does not comply with law?

4           CHAIRMAN WREN: Well, and that's -- that --  
5     that is my -- my concern through all the testimony, for  
6     all the years I've been listening to this, is that by law  
7     the assessor has to assess the land, and that's the only  
8     thing that we've been talking about. There hasn't been  
9     any testimony as to misuse or the wrong use of Marshall  
10    and Swift for the improvements.

11           So when the assessor has to look at the land  
12    and look at the market value of the land, he has to make  
13    comparisons between sales and/or comparisons between  
14    improved properties through the extraction method  
15    appropriately.

16           So regardless of what it's called, and -- you  
17    know, you get into -- and I've said this before, that I  
18    disagree with the Supreme Court, as far as their decision  
19    because of the use of the terminology that they're using.  
20    These -- these aren't -- you know, time adjustments and  
21    view adjustments are not methodologies.

22           They're units of measurement, which the  
23    assessor has to -- all property is not identical. Okay?  
24    A lot next door can be different than the lot on the other  
25    side of it. Okay? So the -- it's the assessor's job to

1 I believe that we could provide the  
2 neighborhoods that the -- the neighborhood and condominium  
3 complexes, which would show whether one of the four  
4 contested methodologies was used.

5 CHAIRMAN WREN: Okay.

6 MEMBER MARNELL: My followup question to  
7 Mr. Wilson is: What kind of effort is involved in that?

8 JOSH WILSON: It would certainly be some  
9 effort, but at the same time this was the exercise that we  
10 took up -- took -- that we utilized for settling the  
11 individual '06-'07 and '07-'08.

12 So we could certainly to -- to do that. I  
13 think, what you may hear from the other side is: Well,  
14 you still have some at this level and some at here. Is  
15 that equalization?

16 But I -- I don't know. So -- but, yes, we  
17 could certainly provide that information to this Board.

18 CHAIRMAN WREN: You asked for it. Okay.  
19 Thank you.

20 MS. RUBALD: Mr. Chairman, could I just ask:  
21 Are we -- you mentioned condominiums specifically. Does  
22 that mean every single-family residence and commercial  
23 property used one of the four methodologies?

24 JOSH WILSON: Umm, I don't believe the Bakst  
25 decision was -- was application to any commercial

1 property. What it would be is -- and I can tell you off  
2 had top of my head, every free-standing single-family  
3 residential neighborhood in Incline Village and Crystal  
4 Bay, free-standing -- not a condominium, free-standing.  
5 Those neighborhoods utilized one of the four contested  
6 methodologies. So those are the 2500 or so tax-paying  
7 parcels, because the majority -- there's a lot of that  
8 that is owned by the State of Nevada.

9 When you move over to the condominium side,  
10 what you'll find is, I think, there was roughly 4,000  
11 condominiums up there, and there was a little bit over  
12 3100 -- 4,000 parcels of condominium, and roughly a little  
13 over 3100 of those were not valued using one of the four  
14 contested methodologies.

15 MEMBER MESERVY: My concern is, though, what  
16 about Reno and other areas? What -- how many do we have  
17 over there? Do we even know?

18 JOSH WILSON: You won't have any with a view  
19 classification system of Lake Tahoe, because you can't see  
20 the lake from anywhere in the valley. That's why we  
21 developed that view classification.

22 And actually I don't know even know if I  
23 should have answered that. I'm not sure any of those  
24 people are here before you, so I -- I can't talk.

25 MEMBER MARNELL: I have some thoughts on that.

1                   MEMBER MARNELL: Well, what I guess I want to  
2     make sure is that -- I thought I heard Josh say that there  
3     was about 1,000 condominium people involved in this, as  
4     well, that -- where it was not equally assessed, 4,000.  
5     4,000 parcels -- can you -- can I get that reclarified?  
6                   JOSH WILSON: Yes. There was roughly 4,060  
7     total condominiums up at the lake. 3158 of those were not  
8     subject to one of the four methods, and I'm showing 902  
9     condominiums were subject to one of the four methods.  
10                  MEMBER MARNELL: Okay.  
11                  MS. RUBALD: Mr. Chairman? Could I add one  
12     thought.  
13                  CHAIRMAN WREN: Okay.  
14                  MS. RUBALD: After you find out which  
15     properties had one of the four methodologies applied to  
16     them, and then whatever you decide to do with them, do you  
17     still then have an equalization problem with those that  
18     did not have any of those methodologies applied?  
19                  And that's where a sales ratio study comes in,  
20     so that you can measure, by area, whether they're within  
21     the range that is provided for in 361.333. It's a  
22     two-part process.  
23                  MEMBER MARNELL: But let me ask a question on  
24     that. That's a good point, Terry. That will round out  
25     the remainder of this, at least in my head, is that if

1 they weren't done with one of the unfour [sic]  
2 unconstitutional methods, then I would have to assume that  
3 they were done constitutionally, and those property tax  
4 people -- those property taxpayers did not appeal, and  
5 their dues -- due process rights have passed. That would  
6 be the counter to that.

7 MS. RUBALD: Except I'm still going on what  
8 your regulation says about what the definition of  
9 "equalization" says, and it's not only the methods used  
10 but whether it reaches the proper level of assessment.

11 Because if you remove some of those methods,  
12 you could result in a value that's either too high or too  
13 low.

14 MEMBER MARNELL: So it wouldn't be removing  
15 methods from people who had constitutional assessments.

16 MS. RUBALD: Well, that's true. So they're  
17 going to -- they're going to presumably be already within  
18 the range.

19 But what about those that had these  
20 unconstitutional methods applied? You remove the effect  
21 of that, you come up with a new value. Is that value  
22 within the range of the level of assessment? And the only  
23 way you can do that for land for market value is to do a  
24 sales ratio study.

25 MEMBER MARNELL: Do you have any thoughts on

1 JOSH WILSON: It's a -- it's a 1.0 which is --  
2 MEMBER MESERVY: Yeah, 1 -- so no change.  
3 JOSH WILSON: Correct.  
4 MEMBER MESERVY: Not 1 percent. So I would --  
5 MEMBER JOHNSON: I would -- I want to  
6 understand how, between '02 and '04, property values  
7 didn't increase at all. In the lake portion of the Washoe  
8 County I've seen a lot of evidence to the contrary to that  
9 that would bother me. I don't know what it's based on.  
10 JOSH WILSON: It was based on the land factors  
11 approved by the Nevada Tax Commission through the Land  
12 Factor Analysis provided in 361.260.  
13 MEMBER JOHNSON: Okay.  
14 MEMBER MARNELL: And I agree with you on your  
15 concern there. I'm just going off a basis that's already  
16 been established by the Tax Commission.  
17 So the next time Ms. Fulstone has a problem,  
18 maybe she can go see them on their factor problems. I'm  
19 just kidding. So that -- I guess if I can summarize that,  
20 Mr. Chairman, at the end of the day, my motion is -- is  
21 to -- and I'll try to be as clear as I can --  
22 approximately 900 multi-family residences, which  
23 Mr. Wilson will go take a look at to confirm that they --  
24 one of the four methods were used, same thing on all the  
25 single-family residences in Incline and Crystal Bay.

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

7           And that's my motion.

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

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

12          CHAIRMAN WREN: Right. Okay.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

1 we're stating here.

2 And that's what I've been saying.

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

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

9 MEMBER JOHNSON: Oh.

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

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

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

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

1 2020 timeframe.

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

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

13 CHAIRMAN WREN: Okay. And --

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

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

25 And I have no problem preparing all the

1 information and having it approved by this Board.

2 CHAIRMAN WREN: That makes sense.

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

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

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

16 MEMBER MESERVY: I have a second.

17 CHAIRMAN WREN: Okay. Amendment to the  
18 second.

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

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

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

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

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

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

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

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

19 CHAIRMAN WREN: Okay. Dawn?

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

1 MEMBER MESERVY: Well, also my question is:  
2 Do we have to notify people whose values even go down and  
3 there's no reason?  
4 MS. BUONCRISTIANI: There's nothing to do if  
5 they go down.  
6 MEMBER MESERVY: I just want to make sure.  
7 CHAIRMAN WREN: So. In your motion, we'll  
8 direct Josh to have it completed by -- what was the --  
9 MS. BUONCRISTIANI: It's in February, but  
10 so -- I'm not sure when you'll want to have a hearing.  
11 You can probably do this by telephonic conference if you  
12 want to do something like that.  
13 CHAIRMAN WREN: So the first part of February,  
14 and what we'll do is have Terry agendize a -- a hearing  
15 for us, for you to present this information some time the  
16 beginning of February.  
17 JOSH WILSON: Is there any way to move that  
18 into closer to -- we're in county board all month of  
19 February.  
20 MS. BUONCRISTIANI: January would be better  
21 for me, because I have to write a brief for the court.  
22 JOSH WILSON: Or in two weeks or three weeks  
23 or whatever we need.  
24 MEMBER MESERVY: That's fine.  
25 CHAIRMAN WREN: Okay.

1           MEMBER MARNELL: I think as fast as Josh feels  
2 he can do it, it's appropriate, Mr. Chairman, and maybe we  
3 don't have need to the convened Board. Maybe we can have  
4 a video conferencing where we can go through the data on  
5 our own, like we always do, and come together, and we all  
6 can say we either agree with the data or we don't.  
7           If we don't, there might be some more work to  
8 do. If we do, we can finish this motion, and we can be  
9 done.  
10           CHAIRMAN WREN: First week -- some time the  
11 first week of December then?  
12           JOSH WILSON: That would be fine.  
13           CHAIRMAN WREN: Okay. I've amended your  
14 motion to include that, and you've agreed to second it?  
15           MEMBER MESERVY: Second.  
16           MEMBER MARNELL: Thank you, Mr. Chairman. The  
17 pressure was unbelievable. I'm glad you're now a part of  
18 that.  
19           CHAIRMAN WREN: I feel better, too.  
20           Okay. All in favor say "Aye."  
21           ("Aye" responses)  
22           CHAIRMAN: Opposed?  
23           Motion carries unanimously.  
24           (Vote on the motion carried unanimously)  
25           CHAIRMAN WREN: Thank you very much.

# EXHIBIT 2

**FILED**

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3547722

# EXHIBIT 2



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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

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

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.

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

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

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

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.



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

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

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.

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

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

# EXHIBIT 3

**FILED**

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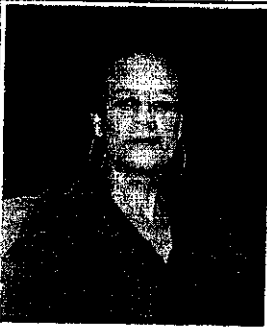

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3547722

# EXHIBIT 3

 Appeal Form	
<b>AGENT AUTHORIZATION FORM</b> If you have already completed the Agent Authorization form on one of the appeal forms, you do not need to complete this form. If you decide to have someone represent you after you have already submitted the appeal form, you may still appoint an agent to represent you if you first notify the State Board by using the Agent Authorization form. Please download, fill out and sign this form. <div style="text-align: center;">  Agent Authorization Form         </div>	
<b>WITHDRAWAL FORM</b> If you would like to withdraw your appeal, please fill out the form below and return it to the State Board of Equalization either by fax or mail. <div style="text-align: center;">  Withdrawal Form         </div>	
<b>Board Dates</b> There are no details at this time.	
<b>AGENDA</b> Details of the next meeting of the State Board of Equalization can be located here, along with the most current agenda, if available.	
<b>MEMBERS</b>	
 <p><b>Chairman Anthony (Tony) Wren</b></p>	<p>Mr. Anthony (Tony) Wren is an independent fee appraiser with 32 years of experience. He has been in the Reno/Sparks area for over 24 years. A native of Wyoming, Mr. Wren relocated to Reno/Sparks in 1984. At that time, he had just earned the SRA-Senior Residential Appraiser designation from the Society of Real Estate Appraisers. In 1987, he received the SRPA-Senior Real Property Appraiser designation. In 1991, he received the MAI designation from the Appraisal Institute.</p> <p>Mr. Wren has been active in the Reno-Carson-Tahoe Chapter of the Appraisal Institute. He served as a member of the Board of Directors for the chapter and served as its president in 1988 and 1989 and 2000. He has served on several national committees of the Appraisal Institute including the Faculty committee and was a national reviewer for several courses. Mr. Wren teaches real estate appraisal courses and is also a real estate broker. He has taught the Principles course and the Income Valuation course at Truckee Meadows Community College. He has also instructed Standards and Ethics, as well as Principles and Procedures and other courses and seminars, for the Appraisal Institute.</p> <p>Mr. Wren is a nationally Certified USPAP (Uniform Standards of Professional Appraisal Practice) instructor. He was instrumental in the writing of the appraiser licensing/certification law for Nevada. He has been appointed twice by the Governor of Nevada to serve on the Nevada Commission of Appraisers (9/94 to 6/97) and (7/97 to 6/00) and served twice as President of that Commission. Mr. Wren was appointed to the Nevada State Board of Equalization by Governor Jim Gibbons (3/08 to 3/12).</p>
 <p><b>Aileen Martin</b></p>	<p>Ms. Aileen Martin - biography forthcoming</p>
	<p>Mr. Dennis K. Meservy is a Certified Public Accountant (CPA) in Las Vegas. He owns and operates his own CPA firm. He is a member of the American Institute of CPAs and is a past-Chairman of the Nevada Society of CPAs.</p>

# EXHIBIT 4

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Transaction # 3547722

EXHIBIT 4

**QUALIFICATIONS OF APPRAISER  
BENJAMIN Q. JOHNSON**

**Professional Designations**

MAI – Member Appraisal Institute 2009

**State Licensing and Certification**

Certified General Appraiser – State of California  
License Number AG043925  
(Certified through April 29, 2014)

Certified General Appraiser – State of Nevada  
License Number A.0205542-CG  
(Certified through November 30, 2014)

**Professional Experience**

Johnson-Perkins & Associates, Inc. 2005-Present

General Electric 2002-2004  
Finance Intern (Summers Only)

**Formal Education**

Santa Clara University – Santa Clara, CA 2005  
Bachelor of Science in Commerce; Majoring in Economics

**Qualified as an Expert Witness**

Nevada District Courts  
U.S. Bankruptcy Court – District of Nevada  
Washoe County Board of Equalization  
Nevada State Board of Equalization

**Offices Held**

Reno-Carson-Tahoe Chapter of the Appraisal Institute  
Director 2011  
Secretary 2012  
Vice President 2013  
President (elect) 2014

**Association Memberships and Affiliations**

Nevada State Board of Equalization – Board Member 2012-Present  
(Appointed by Nevada Governor Brian Sandoval)  
Leadership Development and Advisory Council (LDAC) 2010  
Executives Association of Reno (EAR) 2009 - 2012

**QUALIFICATIONS OF APPRAISER**  
**BENJAMIN Q. JOHNSON (contd.)**

**Appraisal Education**




Appraisal Institute

Basic Appraisal Principles	2006
Basic Appraisal Procedures	2006
15 Hour National USPAP Course	2006
Business Practices and Ethics	2007
Advanced Income Capitalization	2007
General Market Analysis and Highest & Best Use	2007
Advanced Sales Comparison & Cost Approaches	2007
Report Writing and Valuation Analysis	2007
Advanced Applications	2007
7 Hour National USPAP Update Course	2011

Kaplan Professional Schools

Nevada Appraisal Law	2006
7 Hour National USPAP Update Course	2008



 <p><b>Dennis K. Meservy</b></p>	
 <p><b>Anthony Marnell, III</b></p>	<p><b>Mr. Anthony Marnell, III</b> is the Founder, Chairman and Chief Executive Officer of M Resort Spa Casino. Born and raised in Las Vegas, Anthony earned his Bachelor of Science degree in Hospitality Administration at the University of Nevada Las Vegas. He began his career in the gaming industry in 1995 and held the position of Corporate Vice President of Marketing for the Rio All-Suite Hotel Casino and served as a Corporate Vice President of Marketing for Harrah's Entertainment, Inc. until 1999.</p> <p>He is also acting Chairman of Saddle West Investors, LLC and Chief Executive Officer of Aces High Management, LLC and the Founder and Chairman of TRJIGA, Inc., the global leader in the Integrated Workplace Management System market.</p> <p>Anthony also enjoys serving on the board of the following organizations:</p> <ul style="list-style-type: none"> <li>Board Member of the Marnell Foundation</li> <li>Board Member of Marnell Corrao Associates</li> <li>Board Member of Tuscany Research Institute</li> <li>Board Member of the Henderson Boys and Girls Club</li> </ul> <p>Anthony lives in Las Vegas with his wife Lyndy and their three beautiful children.</p>
 <p><b>Benjamin Q. Johnson</b></p>	<p><b>Mr. Benjamin Q. Johnson</b> is an Independent fee appraiser. He is a fourth generation Nevadan and lifelong resident of Lake Tahoe. He earned the MAI designation from the Appraisal Institute, becoming the youngest in the organizations history to earn its highest designation. Ben has served in various leadership roles for the Reno-Carson-Tahoe Chapter of the Appraisal Institute. He currently serves as the chapter's Vice President.</p> <p>Ben graduated from Santa Clara University with a bachelor's degree in commerce majoring in economics. Community endeavors include having served as a "Big" for Big Brothers/Big Sisters of Northern Nevada and various leadership roles with Lake Tahoe Track Club and AD Sports Tahoe. Ben lives in Zephyr Cove with his fiancée, Cathy.</p>

## CONTACT US:

Nevada Department of Taxation  
Division of Local Government Services  
1550 College Parkway, Suite 115  
Carson City, Nevada 89706  
(775) 684-2100 Fax: (775) 684-2020

State Agency Online Privacy Policy

# EXHIBIT 5

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3547722

# EXHIBIT 5

rely to support the claim that a change in the taxable value or classification of subject property is necessary. 2) A copy of the tax assessment notice for the tax year in question, if applicable. 3) a copy of any evidence upon which the petition is based currently in your possession. Evidence not yet available may be sent to the State Board no later than 15 days prior to the scheduled hearing.

You may appeal your case directly to State Board of Equalization if your issue fits one of the descriptions below:

- NRS 361.360(1); NRS 361.400(2): Failure of County Board to equalize; undervaluation or nonassessment of other property. *(Appeal must be received on or before March 10)*
- NRS 361.360(3): Real or personal property placed on unsecured tax roll after December 15; appeal could not be heard by County Board of equalization. *(Appeal must be received on or before May 15)*
- NRS 361.403: Undervaluation, overvaluation or nonassessment of property by Nevada Tax Commission. *(Appeal must be received on or before January 15)*
- NRS 361A.240(2)(b): Under-or-over valuation of open-space use assessment. *(Appeal must be received on or before March 10)*
- NRS 361A.273(2): Determination that agricultural property has been converted to a higher use; valuations for deferred tax years; Notice of conversion from assessor received after December 16 and before July 1. *(Appeal must be received on or before July 15)*
- NRS 362.135: Net Proceeds of Minerals Tax certification. *(Appeal must be filed within 30 days after certification is sent to taxpayer [usually about May 20])*

#### Assessor/Department Direct Appeal Form

This appeal form is for use ONLY by Assessors or the Department of Taxation for the following reasons:



- NRS 361.360(1): Aggrieved at the action of the County Board in equalizing or failing to equalize.
- NRS 361.395(1): Request for equalization of neighborhood or market area.
- NRS 361.403: Centrally assessed property.
- NRS 361.769(3)(b): Property escaping taxation.
- NRS 361A.240(2)(b): Under-or-over valuation of open-space use assessment.
- NRS 362.135: Net Proceeds of Minerals Tax certification.

#### Agent Authorization Form

If you have already completed the Agent Authorization form on one of the appeal forms, you do not need to complete this form. If you decide to have someone represent you after you have already submitted the appeal form, you may still appoint an agent to represent you if you first notify the State Board by using the Agent Authorization form. Please download, fill out and sign this form.



#### Withdrawal Form

If you would like to withdraw your appeal, please fill out the form below and return it to the State Board of Equalization either by fax or mail.



#### AGENDA

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Details of the next meeting of the State Board of Equalization can be found on the Departments Public Meetings page, along with the most current agenda, if available.

#### MEMBERS OF THE STATE BOARD OF EQUALIZATION

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#### Mr. Anthony (Tony) Wren - Chairman

*Term: March, 2008 - March, 2012*

Mr. Anthony (Tony) Wren is an independent fee appraiser with 32 years of experience. He has been in the Reno/Sparks area for over 24 years. A native of Wyoming, Mr. Wren relocated to Reno/Sparks in 1984. At that time, he had just earned the SRA-Senior Residential Appraiser designation from the Society of Real Estate Appraisers. In 1987, he received the SRPA-Senior Real Property Appraiser designation. In 1991, he received the MAI designation from the Appraisal Institute.

Mr. Wren has been active in the Reno-Carson-Tahoe Chapter of the Appraisal Institute. He served as a member of the Board of Directors for the chapter and served as its president in 1988 and 1989 and 2000. He has served on several national committees of the Appraisal Institute including the Faculty committee and was a national reviewer for several courses. Mr. Wren teaches real estate appraisal courses and is also a real estate broker. He has taught the Principles course and the Income Valuation course at Truckee Meadows Community College. He has also instructed Standards and Ethics, as well as Principles and Procedures and other courses

and seminars, for the Appraisal Institute.

Mr. Wren is a nationally Certified USPAP (Uniform Standards of Professional Appraisal Practice) instructor. He was instrumental in the writing of the appraiser licensing/certification law for Nevada. He has been appointed twice by the Governor of Nevada to serve on the Nevada Commission of Appraisers (9/94 to 6/97) and (7/97 to 6/00) and served twice as President of that Commission. Mr. Wren was appointed to the Nevada State Board of Equalization by Governor Jim Gibbons (3/08 to 3/12).



**Mr. James Russell (Russ) Hofland**

*Term: October, 2008 - September, 2012*

Mr. James Russell Hofland earned his Bachelor of Science degree in Agricultural Business at Montana State University in 1987 and his Masters in Business Administration at the University of Nevada Reno in 2003.

Mr. Hofland has been a Nevada resident since June 1998. He was formerly a licensed insurance agent and certified general real estate appraiser in the State of Montana.

Mr. Hofland has seven years experience in mine accounting with Barrick Gold and is currently Project Manager – Accounting for the North American Region. He was previously Accounting Supervisor for Nevada dealing with capital, royalties, net proceeds and property taxes and also Senior Accountant for

Barrick Goldstrike Mines Inc.

Mr. Hofland has eleven years experience in the Farm Credit System; three years as branch manager in Elko, Nevada, and eight years in various positions in Montana including three years as Senior Appraiser.

Mr. Hofland served three years as Vice President and Agricultural Loan Officer for Stockman Bank in the Commercial Banking field.



**Ms. Aileen Martin**

*Term: November, 2008 - October, 2011*

Ms. Aileen Martin's biography is forthcoming.



**Mr. Dennis K. Meservy**

*Term: March, 2009 - October, 2011*

Mr. Dennis K. Meservy is a Certified Public Accountant (CPA) in Las Vegas. He owns and operates his own CPA firm. He is a member of the American Institute of CPAs and is a past-Chairman of the Nevada Society of CPAs.

**Mr. Anthony Marnell, III*****Term: March, 2009 - March, 2013***

Mr. Anthony Marnell, III Anthony is the Founder, Chairman and Chief Executive Officer of M Resort Spa Casino. Born and raised in Las Vegas, Anthony earned his Bachelor of Science degree in Hospitality Administration at the University of Nevada Las Vegas. He began his career in the gaming industry in 1995 and held the position of Corporate Vice President of Marketing for the Rio All-Suite Hotel Casino and served as a Corporate Vice President of Marketing for Harrah's Entertainment, Inc. until 1999.

He is also acting Chairman of Saddle West Investors, LLC and Chief Executive Officer of Aces High Management, LLC and the Founder and Chairman of TRIRIGA, Inc., the global leader in the Integrated Workplace Management System market.

Anthony also enjoys serving on the board of The Marnell Foundation, Marnell Corrao Associates, Tuscany Research Institute, and The Henderson Boys and Girls Club.

Anthony lives in Las Vegas with his wife Lyndy and their three beautiful children.



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EXHIBIT 4

EXHIBIT 4

**1020**  
**SNELL & WILMER L.L.P.**  
Suellen Fulstone, No. 1615  
50 West Liberty Street, Suite 510  
Reno, Nevada 89501  
Telephone: (775) 785-5440

Attorneys for Petitioners

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

VILLAGE LEAGUE TO SAVE INCLINE	)	Case No.	CV03-06922
ASSETS, INC., a Nevada non-profit	)		
corporation, on behalf of their members and	)	Dept. No.	7
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; J. ROBERT	)		
ANDERSON; and LES BARTA; on behalf of	)		
themselves and others similarly situated;	)		

Petitioners,

vs.

STATE OF NEVADA on relation of the State  
Board of Equalization; WASHOE COUNTY;  
BILL BERRUM, Washoe County Treasurer,

Respondents.

**ADDENDUM TO OBJECTIONS TO  
STATE BOARD OF EQUALIZATION REPORT AND ORDER**

Attached is Exhibit 6 (2008-2009 Land Factor Report, Department of Taxation, Division  
of Assessment Standard) which was inadvertently omitted from the Objections to State Board and  
Equalization Report and Order filed with this court on February 22, 2013.

Snell & Wilmer

LLP  
LAW OFFICES  
50 WEST LIBERTY STREET, SUITE 510  
RENO, NEVADA 89501  
(775) 783-5440

1 Respectfully submitted this 22nd day of February 2013.

2 SNELL & WILMER L.L.P.

3 /s/ Suellen Fulstone

4 By:

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

Attorneys for Petitioners

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

9 /s/ Suellen Fulstone

10 Suellen Fulstone



**CERTIFICATE OF SERVICE**

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

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

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

DATED this 22nd day of February, 2013.

/s/ Holly W. Longe

Employee of Snell & Wilmer L.L.P.

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<u>Exhibit No.</u>	<u>Title of Exhibit</u>	<u>No. of Pages</u>
6.	2008-2009 Land Factor Report, Department of Taxation, Division of Assessment Standard	3

# EXHIBIT 6

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02-22-2013:11:25:03 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3548767

# EXHIBIT 6



DEPARTMENT OF TAXATION

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Division of Assessment Standards

# 2008-2009 Land Factor Report

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## **Douglas County Land Factors**

### **Note 1**

**Portion of Book 1220-08, 09, & 17 (described as Montana at Genoa Lakes Golf Resort):**  
The Assessor developed a factor of 1.20 using an abstraction methodology to derive a value for land. Using 13 improved sales, the Assessor found the factor resulted in a median ratio of 32.4%, with a lower confidence interval of 22.1% and an upper confidence level of 29.8%, which suggests that the true median may or may not be within the statutory range. The COD is 17.3% which is within IAAO guidelines. While the median ratio is within statutory guidelines, reappraisal of the described area is preferred over factoring since there is no consensus model in existence for the application of the alternative methodologies (abstraction or allocation) in the absence of a sufficient vacant land sale analysis.

**THE TAX COMMISSION VOTED TO ACCEPT THE LAND FACTOR RECOMMENDED BY ASSESSOR.**