

# AFFIDAVIT OF SERVICE

State of Nevada

County of Washoe

Washoe County District Court

Case Number: CV13-00522

Petitioner:

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

vs.

Respondent:

STATE OF NEVADA, et al.,

For:

Snell & Wilmer L.L.P.

50 West Liberty Street

Suite 510

Reno, NV 89501

Received by Legal Express on the 11th day of April, 2013 at 10:30 am to be served on Churchill County Assessor, 155 North Taylor Street, Fallon, NV 89406.

I, Nicholas DiFraia, being duly sworn, depose and say that on the 11th day of April, 2013 at 1:25 pm, I:

SERVED an authorized entity by delivering a true copy of the Summons, Petition for Judicial Review, Motion to Consolidate Cases to Erinn Thomas as Clerical Specialist.

Said service was made at the address of: 155 North Taylor Street, Fallon, NV 89406.

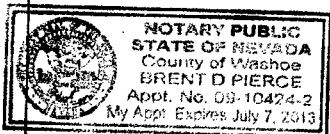
Affiant is, and was, a citizen of the United States, over 18 years of age, and not a party to, nor interested in, the proceeding in which this affidavit is made.

SIGNED and SWORN TO before me on the 16th  
day of April, 2013 by the affiant who  
is personally known to me.

Brent D. Pierce  
NOTARY PUBLIC

Nicholas DiFraia  
Process Server

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Summons

(Title of Document)

filed in case number: CV13-00522



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 16, 2015

/s/ Suellen Fulstone  
(Signature)

Suellen Fulstone  
(Print Name)

Petitioners  
(Attorney for)

FILED

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04-16-2013:01:38:17 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3663735

CODE 4085

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.,

Petitioner(s)/Plaintiff(s),

vs.

Case No. CV13-00522

STATE OF NEVADA, et al.,

Respondent(s)/Defendant(s).

Dept. No. 3

**SUMMONS**

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU **RESPOND IN WRITING** WITHIN 20 DAYS.  
READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).  
The object of this action is:

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons, exclusive of the day of service:

- File with the Clerk of the Court, whose address is shown below, a formal written answer to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
- Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.

2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 12 day of March, 2013

Issued on behalf of Plaintiff(s):

Name: Suellen Fulstone  
Address: 50 W. Liberty St., Ste. 510  
Reno, NV 89501  
Phone Number: (775) 785-5440

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By: *[Signature]*  
Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

## AFFIDAVIT OF SERVICE

State of Nevada

County of Washoe

Washoe County District Court

Case Number: CV13-00522

Petitioner:

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

vs.

Respondent:

STATE OF NEVADA, et al.,

For:

Snell & Wilmer L.L.P.  
50 West Liberty Street  
Suite 510  
Reno, NV 89501

Received by Legal Express on the 2nd day of April, 2013 at 11:42 am to be served on William Brooks, 2268 Main Street, Genoa, NV 89411.

I, Nicholas DiFraia, being duly sworn, depose and say that on the 6th day of April, 2013 at 1:50 pm, I:

SERVED by personally delivering a true copy of the Summons, Petition for Judicial Review, Motion to Consolidate Cases to Joan Stephens a person of suitable age and discretion residing at 2268 Main Street, Genoa, NV 89411.

Affiant is, and was, a citizen of the United States, over 18 years of age, and not a party to, nor interested in, the proceeding in which this affidavit is made.

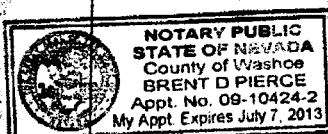
SIGNED and SWORN TO before me on the 16th  
day of April, 2013 by the affiant who  
is personally known to me.

  
NOTARY PUBLIC

  
Nicholas DiFraia  
Process Server

Legal Express  
Nevada License #99/999a  
911 South 1st Street  
Las Vegas, NV 89101  
(702) 877-0200  
Our Job Serial Number: 2013000615

Service Fee: \$93.50



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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Summons

(Title of Document)

filed in case number: CV13-00522



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 16, 2015

/s/ Suellen Fulstone  
(Signature)

Suellen Fulstone  
(Print Name)

Petitioners  
(Attorney for)

FILED

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3666832

1 CODE 4085

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

7 VILLAGE LEAGUE TO SAVE INCLINE

8 ASSETS, INC., et al.,

Petitioner(s)/Plaintiff(s),

9 vs.

Case No. CV13-00522

10 STATE OF NEVADA, et al.,

Dept. No. 3

Respondent(s)/Defendant(s).

11  
12 **SUMMONS**

13 TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
14 WITHOUT YOUR BEING HEARD UNLESS YOU **RESPOND IN WRITING** WITHIN 20 DAYS.  
15 READ THE INFORMATION BELOW VERY CAREFULLY.

16 A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that  
17 document (see complaint or petition). When service is by publication, add a brief statement of the object of the  
18 action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is: \_\_\_\_\_

- 19 1. If you intend to defend this lawsuit, you must do the following within 20 days after service of  
20 this summons, exclusive of the day of service:
- 21 a. File with the Clerk of the Court, whose address is shown below, a formal written  
22 answer to the complaint or petition, along with the appropriate filing fees, in  
23 accordance with the rules of the Court, and;
  - 24 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address  
25 is shown below.
- 26 2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may  
27 enter a judgment against you for the relief demanded in the complaint or petition.

28 Dated this 12 day of March, 2013

Issued on behalf of Plaintiff(s):

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By: [Signature]  
Deputy Clerk

Name: Suellen Fulstone

Address: 50 W. Liberty St., Ste. 510  
Reno, NV 89501

Phone Number: (775) 785-5440

Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

13NY00693

**DECLARATION OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF NEVADA

COUNTY OF NYE

I, ROLAND BENTON, declare:  
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the Summons and the following documents:

DISPOSITION: ACT

upon MANULA CHASE - ASST. ASSESSOR, at the following  
(Name of Respondent/Defendant who was served)

address: 160 N. FLOYD DR. PAHRUMP, NV

on the 10 day of APRIL, 2013.  
(Month) (Year)

This document does not contain the Social Security Number of any Person.

I declare, under penalty of perjury under the law of then State of Nevada, that the foregoing is true and correct.

Roland Benton  
(Signature of person who completed service)

ROLAND BENTON  
# 21711

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**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION  
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Summon

\_\_\_\_\_  
(Title of Document)

filed in case number: CV13-00522



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 17, 2013

/s/ Suellen Fülstone  
(Signature)

Suellen Fülstone  
(Print Name)

Petitioners  
(Attorney for)



**FILED**

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04-18-2013:10:22:25 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3669359

1 2610  
2 DAVID C. CREEKMAN  
3 Chief Deputy District Attorney  
4 Nevada State Bar Number 4580  
5 P. O. Box 30083  
6 Reno, NV 89520-3083  
7 (775) 337-5700  
8 ATTORNEYS FOR WASHOE COUNTY

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

10 IN AND FOR THE COUNTY OF WASHOE

11 \* \* \*

12 VILLAGE LEAGUE TO SAVE INCLINE  
13 ASSETS, INC., a Nevada non-profit  
14 corporation, on behalf of its  
15 members, and others similarly  
16 situated,

Case No. CV03-06922

17 Plaintiffs,

Dept. No. 7

18 vs.

19 THE STATE OF NEVADA, on relation  
20 of the STATE BOARD OF  
21 EQUALIZATION; WASHOE COUNTY; and  
22 BILL BERRUM, WASHOE COUNTY  
23 TREASURER,

24 Defendants.

25 NOTICE OF JOINDER IN "STATE BOARD'S OPPOSITION TO MOTION FOR  
26 LEAVE OF COURT TO FILE MOTION TO INTERVENE"

27 Notice is hereby given that the Washoe County parties in  
28 this case join in the State Board of Equalization's Opposition  
29 to Motion for Leave of Court to File Motion to Intervene.

30 AFFIRMATION PURSUANT TO NRS 239B.030

31 The undersigned do hereby affirm that the preceding

32 ///

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

3 Dated this 18th day of April, 2013.

4 RICHARD A. GAMMICK  
5 District Attorney

6 By: /s/ DAVID C. CREEKMAN  
7 DAVID C. CREEKMAN  
8 Chief Deputy District Attorney  
9 ATTORNEYS FOR WASHOE COUNTY  
10 AND WASHOE COUNTY TREASURER  
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SUELLEN FULSTONE, ESQ. for VILLAGE LEAGUE TO SAVE INCLINE  
ASSETS, INC.

DAWN BUONCRISTIANI, ESQ. for STATE BOARD OF EQUALIZATION

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

/s/ MICHELLE FOSTER  
Michelle Foster

**FILED**

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3678474

**2645**  
**SNELL & WILMER L.L.P.**  
Suellen Fulstone, No. 1615  
50 West Liberty Street, Suite 510  
Reno, Nevada 89501  
Telephone: (775) 785-5440  
Facsimile: (775) 785-5441

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 ASSETS,  
INC., a Nevada non-profit corporation, as authorized  
representative of the owners of more than 1300 residential  
properties at Incline Village/Crystal Bay; et al,

Petitioners,

vs.

STATE OF NEVADA on relation of the STATE BOARD  
OF EQUALIZATION; WASHOE COUNTY; TAMMI  
DAVIS, Washoe County Treasurer; JOSH WILSON,  
Washoe County Assessor,

Respondents.

Case No.: CV13-00522

Dept. No. 3

**POINTS AND AUTHORITIES IN OPPOSITION TO  
COUNTY RESPONDENTS' MOTION TO DISMISS**

The County respondents ("the County") make several arguments for the dismissal of this judicial review proceeding. The County argues, first, that the issues are not "ripe" for review. The common law doctrine of "ripeness," however, cannot and does not override the specific statutory provision in Nevada's Administrative Procedure Act for the review of interlocutory agency decisions in certain circumstances. Petitioners have alleged those circumstances and invoked that provision. The County does not dispute those allegations, which, in any event, must be taken as true for purposes of a motion to dismiss.

The County also argues that the administrative matter below was not a "contested case" so judicial review is unavailable. That argument is defeated by the very definition of "contested

1 case." Under NRS 233B.032, a "contested case" is "a proceeding . . . in which the legal rights,  
2 duties or privileges (**equalization rights**) of a party (**taxpayers**) are required by law (**writ of**  
3 **mandamus**) to be determined by an agency (**SBOE**) after an opportunity for hearing (**writ of**  
4 **mandamus specifically requires a public hearing or hearings to allow taxpayers the**  
5 **opportunity to present their equalization grievances. . . .**"). The argument that the  
6 equalization proceeding was not a "contested case" simply ignores the facts.

7 The County further argues that there is no "obligation" under Nevada law for the SBOE  
8 "to hold a hearing to equalize property valuations in the State of Nevada." That argument is a non  
9 sequitur. This court does not have to decide whether, as a matter of general tax law, the SBOE  
10 must hold hearings on equalization. The decision under review here was not made under the  
11 general tax law but rather in accordance with a court-issued writ of mandate to hold a hearing to  
12 determine the equalization grievances of taxpayers.

13 The County also argues that the petition for judicial review must be dismissed because  
14 petitioners have failed to "name all the parties to the State Board of Equalization's action."  
15 According to the County, petitioners were required to name individually every property taxpayer  
16 in the State of Nevada and their failure to do so requires this court to dismiss this case. It is a  
17 preposterous argument on its face. NRS 233B.130(2)(a) requires petitioners to name as  
18 respondents the agency and all parties of record. Under NAC 361.747, the Department of  
19 Taxation, in its capacity as the staff of the SBOE, must serve a copy of a SBOE decision on all  
20 parties of record. The Petitioners here have named all the parties of record identified by the  
21 SBOE in its Certificate of Service.

22 The County also makes various arguments against certification of a class action in this  
23 case, including the argument that the Village League lacks standing. Class actions arguments are  
24 not properly raised on a motion to dismiss but rather should be advanced in response to a motion  
25 for class certification or a motion to reject class certification. The Village League was recognized  
26 by the SBOE as a party of record to the administrative proceeding as the designated  
27 representative of the taxpayer owners of approximately 1350 Incline Village/Crystal Bay  
28 residential properties who submitted grievance petitions. It has standing to bring this petition for

1 judicial review.

2 Finally, the County argues that this matter must be dismissed because petitioners have  
3 failed to name and serve the remaining 16 counties in Nevada not just the County Assessors.  
4 According to the County, the other counties are "indispensable" parties. The "indispensable"  
5 parties to a judicial review action, however, are defined by statute as the parties of record. The  
6 other 16 counties were not parties of record to the administrative proceeding before the SBOE.  
7 The place to make the argument that the other counties are indispensable parties was before the  
8 SBOE where those other counties could have been joined as parties of record if the SBOE so  
9 determined. Failing that determination, however, the counties are not indispensable parties to this  
10 judicial review proceeding.

11 **I. THE JURISDICTIONAL AND CONSTITUTIONAL ISSUES RAISED**  
12 **BY THE SBOE'S FEBRUARY 2013 EQUALIZATION DECISION**  
13 **ARE "RIPE" FOR REVIEW BY THIS COURT.**

14 Petitioners have acknowledged and alleged in their petition for judicial review that the  
15 SBOE's February 2013 "Equalization" Order is not final. That Order requires the Washoe County  
16 Assessor to appraise approximately 8700 properties for each of the three tax years 2003-2004,  
17 2004-2005, and 2005-2006 and then report back to the SBOE which presumably will then take  
18 action on such reappraisals. Under NRS 233B.130(1)(b), an interlocutory agency decision may  
19 be subject to judicial review as follows:

20 Any preliminary, procedural or intermediate act or ruling by an  
21 agency in a contested case is reviewable if review of the final  
22 decision of the agency would not provide an adequate remedy.

23 Petitioners here expressly seek judicial review under the interlocutory order review provision of  
24 NRS 233B.130(1)(b), alleging as follows:

25 The February 8, 2013 SBOE decision calls for the reappraisal of all  
26 residential property at Incline Village/Crystal Bay, subsequent  
27 hearings on any increase in property values, and the preparation of  
28 ratio studies, all of which actions are outside the law. A remedy  
delayed until all these unlawful actions have been completed is, on  
its face, an inadequate remedy. *Petition for Judicial Review, para.*  
*15.*

For purposes of a Rule 12(b)(5) motion to dismiss, the allegations of the petition are taken as true.

1 See, e.g., *Vacation Village v. Hitachi America*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994);  
2 *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 226, 181 P.3d 670, 672 (2008). The  
3 County does not dispute those allegations. Rather the County argues that the Petition for Judicial  
4 Review is premature "because the State Board of Equalization has not yet acted with finality,  
5 there is no concrete application of state law." *County Motion to Dismiss*, p. 9, *Ins.* 2-3.

6 The County is plainly mistaken. The SBOE has directed a process involving massive  
7 reappraisal of properties that is allegedly both outside the jurisdiction of the SBOE and  
8 unconstitutional. The Washoe County District Attorney argues that the court should let the  
9 process go forward because the court can always decide when the process is completed that it was  
10 a complete waste because the SBOE does not have the statutory jurisdiction to order the mass  
11 reappraisal of property. Historically in these Incline Village/Crystal Bay property tax cases, the  
12 County has been more than willing to spend the taxpayers' money on fool's errands. In their  
13 Petition for Judicial Review, taxpayers ask the court to be a better steward of public funds and  
14 decide the jurisdictional and constitutional issues before allowing the assessor to proceed. The  
15 issues raised by the Petition are "ripe" for review by the court.

## 16 II. THE EQUALIZATION DECISION WAS MADE IN A CONTESTED CASE.

17 The County claims that the equalization matter was not a "contested case" and thus  
18 judicial review is unavailable. For purposes of judicial review, a "contested case" is defined as  
19 follows:

20 a proceeding, including but not restricted to rate making and  
21 licensing, in which the legal rights, duties or privileges of a party  
22 are required by law to be determined by an agency after an  
23 opportunity for hearing, or in which an administrative penalty may  
24 be imposed. *NRS 233B.032*

25 In this case, the writ of mandamus issued by the Second Judicial District Court expressly  
26 directed the SBOE "to notice and hold a public hearing, or hearings as may be necessary, to hear  
27 and determine the grievances of property owner taxpayers regarding the failure, or lack, of  
28 equalization of real property valuations throughout the State of Nevada for the 2003-2004 tax  
year and each subsequent ax year to and including the 2010-2011 tax year. . . ." *Petition for*

1 *Judicial Review, Exhibit 2.* All aspects of the definition of "contested case" are satisfied. The  
2 SBOE was required by law to hold public hearings on the equalization grievances submitted by  
3 individual taxpayers and to determine those grievances.

4 As part of its argument that taxpayer equalization grievances were not heard in a  
5 "contested case," the County also argues that the SBOE is not required under NRS 361.395,  
6 which creates its statutory duty of statewide equalization, to hold hearings on equalization.  
7 *County Motion to Dismiss, pp. 13-14.* The County acknowledges, however, that the hearing on  
8 taxpayer equalization grievances was not held on the SBOE's initiative under its statutory duty of  
9 statewide equalization but rather it was held under the District Court's Writ of Mandate which  
10 was issued under the direction of the Supreme Court. *Id.* The SBOE makes similar arguments on  
11 the absence of a "contested case" and the consequent unavailability of an action for judicial  
12 review in its parallel Motion to Dismiss. Without repeating the arguments here, petitioners  
13 incorporate by reference as though fully set forth in this Opposition, the arguments made in the  
14 Opposition filed by petitioners to the SBOE's Motion to Dismiss.

15 **III. PETITIONERS HAVE NAMED ALL THE PARTIES OF RECORD.**

16 The County argues that the Petition for Judicial Review must be dismissed because  
17 petitioners have not named every individual taxpayer in the State of Nevada as a respondent. The  
18 cited authority for this proposition is footnote 10 of the Supreme Court's opinion in *Washoe*  
19 *County v. Otto*, 128 Nev. Adv. Opn. 40, 282 P.3d 719 (2012). The Supreme Court does not put its  
20 holdings in the footnotes to its opinions. The issue before the Court in *Washoe County v. Otto*,  
21 was compliance with the requirement of NRS 233B.130(2)(a) that the petitioner name all "parties  
22 of record." In *Washoe County v. Otto*, the petitioner, Washoe County, in its petition for judicial  
23 review failed to name the 8700 taxpayers that the State Board of Equalization had identified as  
24 parties of record to the proceeding. As the Court noted:

25 At the hearing, Fulstone, as well as David Creekman, counsel to the  
26 Assessor and Washoe County, discussed the party status of the  
27 taxpayers with the State Board. Creekman agreed with Fulstone that  
28 this court "could[ not] have been any clearer in its characterization  
of the 8700 [taxpayers] as [r]espondents in [the] case," and that  
"they should be named as [r]espondents." 282 P.3d at 722.



1 The Court continued as follows:

2           Importantly, the State Board named the taxpayers as respondents to  
3 the proceeding in "Exhibit A" to its agenda, an exhibit that listed  
4 the names of all the taxpayers that would be affected by the Board's  
decision and which of those taxpayers were represented by counsel.  
*282 P.3d at 722.*

5 The Court also noted that:

6           The State Board's decision specified that "Certain Taxpayers" had  
7 appeared in the matter through counsel and referenced "Exhibit A"  
8 to its decision, which, like Exhibit A to the State Board's agenda,  
9 listed the names of all the individual taxpayers affected by the  
decision and indicated which of those taxpayers were represented at  
10 the hearing by counsel. The State Board also instructed "[t]he  
Washoe County Comptroller ... to certify the assessment roll of the  
county consistent with this decision, using Exhibit A as [a] list of  
Taxpayers that are affected by this Decision." *282 P.3d at 723.*

11           On these facts, the Supreme Court interpreted NRS 233B.130(2)(a) as requiring the  
12 County to name as respondents all the individual taxpayers identified in the SBOE's Exhibit A as  
13 parties of record. *282 P.3d at 726.* The Court wrote that the "taxpayers were both admitted and  
14 named as parties to the administrative proceedings before the State Board, making them 'parties  
15 of record.'" *Id.* In footnote 10 to that statement, the Court explained that although not all of the  
16 approximately 9000 taxpayers identified as "parties of record" on the SBOE Exhibit A either  
17 appeared or participated in the proceeding, they were still parties of record because they satisfied  
18 the definition of "party" in the SBOE regulations governing contested cases before the Board.  
19 The Court said nothing about all taxpayers in the State being parties of record to the  
20 administrative proceeding at issue in *Washoe County v. Otto* or in any other administrative  
21 proceeding. All the Court said was that, given the definition of "party" in NAC 361.684(11),  
22 taxpayers identified as parties of record to equalization proceedings were not disqualified from  
23 that status by a failure to appear and participate in the proceeding.

24           In *Washoe County v. Otto*, *supra*, Washoe County's petition for judicial review failed  
25 because Washoe County failed to name as respondents the parties of record identified by the  
26 SBOE. In the present case, petitioners have named and served every party of record identified by  
27 the SBOE and served by the Department with the February 2013 Equalization Order. The  
28 Petition for Judicial Review is not subject to dismissal on the grounds of failing to name all

1 parties of record.

2 **IV. THE PROPRIETY OF CLASS CERTIFICATION IS NOT AN ISSUE FOR**  
3 **DETERMINATION UNDER MOTIONS FOR FAILURE TO STATE A CLAIM**  
4 **OR TO NAME INDISPENSABLE PARTIES.**

5 The County devotes a substantial portion of its brief to arguing the issues related to class  
6 certification. The County's motion to dismiss, however, is at least ostensibly brought under  
7 NRCP 12(b)(5) which is for the failure to state a claim and NRCP 12(b)(6) which is for the  
8 failure to name an indispensable party. Class certification has nothing to do with either the failure  
9 to state a claim or the failure to name an indispensable party. In any events, the allegations of a  
10 class action are included in the Petition for Judicial Review. In any event, there is no argument as  
11 to numerosity. The issues of jurisdiction and constitutionality are common to all residential real  
12 property taxpayers of Incline Village and Crystal Bay. The Village League is the expressly  
13 designated representative of the taxpayer owners of some 1350 residential properties at Incline  
14 Village and Crystal Bay. The issues of class certification can be fully articulated and argued on a  
15 motion to certify which will enable the court to make an informed decision.

16 **V. THE OTHER SIXTEEN COUNTIES ARE NOT INDISPENSABLE PARTIES.**

17 In *Washoe County v. Otto, supra*, the Supreme Court wrote as follows:

18 Generally, "[c]ourts have no inherent appellate jurisdiction over  
19 official acts of administrative agencies except where the legislature  
20 has made some statutory provision for judicial review." [Citation]  
21 Thus, "[w]hen the legislature creates a specific procedure for  
22 review of administrative agency decisions, such procedure is  
23 controlling." [Citations] 282 P.3d 724.

24 The Administrative Procedure Act, NRS Chapter 233B, identifies the "indispensable" parties to a  
25 petition for judicial review as the "parties of record" to the administrative proceeding. The  
26 County Assessors of all seventeen Nevada counties were parties of record to the proceeding  
27 below in this case and were named and served in this Petition for Judicial Review. Washoe  
28 County was a party of record to the administrative proceeding and was named and served. The  
other sixteen counties were not parties of record to the administrative proceeding below and  
cannot be added as parties after the fact for purposes of judicial review.

1       **CONCLUSION**

2       The County Motion to Dismiss is without merit under the law and must be denied.

3               DATED: April 22, 2013.

4                               SUELLEN FULSTONE  
5                               SNELL & WILMER L.L.P.  
6                               50 West Liberty Street, Suite 510  
7                               Reno, Nevada 89501

8                               by Suellen Fulstone  
9                               Attorneys for petitioners

10  
11                               **AFFIRMATION**

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

14               DATED: April 22, 2013.

15                               By: Suellen Fulstone  
16                               Suellen Fulstone, No. 1615  
17                               Attorneys for Petitioners

**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 April, 2013.

Holly Longe  
Employee of Snell & Wilmer L.L.P.

1 **Jim C. Shirley**  
2 Pershing County District Attorney  
3 Attorney for Celeste Hamilton  
4 Pershing County Courthouse  
5 400 Main Street  
6 P.O. Box 934  
7 Lovelock, Nevada 89419  
8 (775) 273 2613  
9 Facsimile (775) 273 7058  
10 Email [JShirley@pershingcounty.net](mailto:JShirley@pershingcounty.net)

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

13 VILLAGE LEGAUE TO SAVE INCLINE  
14 ASSETS, INC, *et. al.*

15 Petitioners,

16 v.

17 State of Nevada on relation of the State Board  
18 of Equalization: Celeste Hamilton, in her  
19 capacity as Pershing County Assessor, *et al.*

20 Respondents.

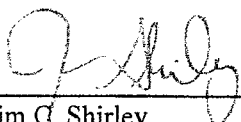
Case No. CV13-00522

DEPT. NO. 3

RESPONDENT CELESTE HAMILTON'S  
MOTION TO DISMISS

21 COMES NOW Defendant, Jim C. Shirley, Esq., In His Official Capacity as District  
22 Attorney, and does hereby, pursuant N.R.C.P. 12(b)(6), submit this Motion to Dismiss for failure  
23 to state a claim upon which relief can or should be granted. This Motion is based upon the  
24 record before the Court.

25 Dated this 22<sup>nd</sup> day of April, 2013.

26   
27 \_\_\_\_\_  
28 Jim C. Shirley  
Pershing County District Attorney

1 **POINTS AND AUTHORITIES**

2 **I. FACTS**

3 The above-entitled matter came before the Court on Petitioners Petition for  
4 Judicial Relief. The Petition seeks review of a Board of Equalization order from  
5 February 8, 2013. *See* Petition for Judicial Relief Page 2, lines 1-3. The Petition  
6 indicates that Ms. Hamilton has been made a party to these proceedings because she is  
7 “required to be named” as a respondent pursuant to NRS 233B.130(2)(a). Nothing in the  
8 underlying February 8, 2013 decision indicates that Ms. Hamilton was a named party to  
9 the Board of Equalization proceeding. *See* Petition, Exhibit 1 attached thereto.

10 **II. Preliminary Issues**

11 **A. Standard: Rule 12(b)(6) Motion to Dismiss:** A dismissal for failure to  
12 state a claim pursuant to Nevada Rule of Civil Procedure 12(b)(6) is limited to the  
13 contents of the complaint and the documents attached to the complaint. the Motion to  
14 Dismiss should be treated as a Motion for Summary Judgment<sup>1</sup> and that material issues of  
15 fact exist which should preclude dismissal<sup>2</sup>. A complaint should be dismissed under Rule  
16 12(b)(6) if it appears beyond doubt that plaintiff can prove no set of facts in support of  
17 his claim which would entitle him to relief. For purposes of the Rule 12(b)(6) Motion to  
18 Dismiss, all allegations of material fact are taken as true and construed in the light most  
19 favorable to the non-moving party. Dismissal under Rule 12(b)(6) may be based on  
20 either: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable  
21 legal theory.

22 **B. Plaintiff's Burden In Drafting Complaint:** The Plaintiff has the burden  
23 of production to come forward with facts in their Complaint establishing a *prima facie*  
24 case.<sup>3</sup> Plaintiff may not rely on “mulled allegations,” “legal conclusions masquerading as  
25 factual conclusions,” or unwarranted deductions” to defeat a motion to dismiss.<sup>4</sup> The  
26

27 <sup>1</sup> *Citing to Cumings v. City of Las Vegas Municipal Corp.*, 88 Nev. 479, 481, 499 P.2d 650 (1972).

28 <sup>2</sup> *Citing to Posadas v. City of Reno*, 109 Nev. 448, 452 (1993).

<sup>3</sup> *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993).

<sup>4</sup> *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, (2007).

1 complaint must be sufficiently pled factually such that it "state[s] a claim to relief that is  
2 plausible on its face."<sup>5</sup> Facial plausibility occurs when the facts pled by the plaintiff  
3 "allow[] the court to draw the reasonable inference that the defendant is liable for the  
4 misconduct alleged."<sup>6</sup>

5 **III. ARGUMENT**

6 NRS 233B.130 clearly provides that two requirements the Petition only involves  
7 those individuals who are identified as a party of record in the administrative proceeding.  
8 A party of record is one who is "served with process or enter[s] an appearance."<sup>7</sup> In their  
9 Petition, the Petitioners have failed to show that Celeste Hamilton was named as a party  
10 of record in the proceedings below or that she was served with process or entered an  
11 appearance. A review of Exhibit 1, attached to the Petition, reveals that Ms. Hamilton is  
12 not referenced anywhere within that document. Accordingly, she is not a party to the  
13 administrative proceeding. Furthermore, she is not a party to the proceeding as it relates  
14 to taxes issues in Washoe County. Therefore, as a matter of law, she should be dismissed  
15 from the action with prejudice and the action should not be binding upon her or her  
16 duties.

17 DATED this 22<sup>nd</sup> day of April, 2013.

18 

19  
20 JIM C. SHIRLEY  
21 PERSHING COUNTY DISTRICT ATTORNEY  
22 Attorney for Celeste Hamilton  
23 P.O. Box 299  
24 Lovelock, Nevada 89419  
(775) 273-2613  
Facsimile (775) 273 7058  
Email: [JShirley@pershingcounty.net](mailto:JShirley@pershingcounty.net)

25 <sup>5</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
26 544, 570 (2007) (Internal Quotations omitted).

27 <sup>6</sup> *Id.* at 678.

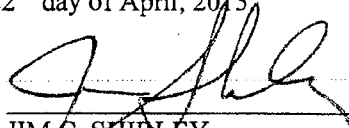
28 <sup>7</sup> In Nevada, the Supreme Court has long held that in order to become a party, for purposes of  
appeal, an entity must become a party to the record. In order to become such a party, an appearance must  
be entered or service of process must be had. See *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 447-  
48, 874 P.2d 729, 734-35, (1994) citing to *State ex rel. Garaventa Land & Livestock Co. v. Second Judicial*  
*Dist.*, 61 Nev 350, 354, 128 P.2d 266, 267-68, (1942).

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**AFFIRMATION**

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

DATED this 22<sup>nd</sup> day of April, 2013,



JIM C. SHIRLEY  
PERSHING COUNTY DISTRICT ATTORNEY  
Attorney for Celeste Hamilton  
P.O. Box 299  
Lovelock, Nevada 89419  
(775) 273-2613  
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Email: [JShirley@pershingcounty.net](mailto:JShirley@pershingcounty.net)



CERTIFICATE OF MAILING

I certify that I am an employee of the Pershing County District Attorney's Office and that I  
duly deposited at Lovelock, Nevada, postage prepaid, a true copy of the RESPONDENT CELESTE  
HAMILTON'S MOTION TO DISMISS in the above-entitled matter addressed as follows:

Snell & Wilmer L.L.P.  
Suellen Fulstone, No. 1615  
50 West Liberty Street, Suite 510  
Reno, NV 89501

Louise H. Modarelli  
4746 E. Montara Circle  
Las Vegas, NV 89121  
Petitioner

William Brooks  
P.O. Box 64  
Genoa, NV 89411  
Petitioner

City Hall, LLC (Tax Payer)  
Represented by: William J. McKean, ESQ  
Lionel Sawyer and Collins  
Attorneys at Law  
50 West Liberty Street, Suite 1100  
Reno, NV 89501  
Petitioner

Paul Rupp  
P.O. Box 125  
Silver Peak, NV 89047  
Petitioner

Village League to Save Incline  
Assets, INC. ET AL  
Represented by:  
Suellen Fulstone  
Snell and Wilmer  
6100 Neil Road, #555  
Reno, NV 89511  
Petitioner

Dave Dawley  
Carson City Assessor  
201 N. Carson Street, #6  
Carson City, NV 89701  
Respondent

Norma Green  
Churchill County Assessor  
155 N. Taylor Street, # 200  
Fallon, NV 89406  
Respondent

Ms. Michelle Shafe  
Clark County Assessor  
500 South Grand Central Parkway  
2<sup>ND</sup> Floor  
Las Vegas, NV 89106  
Respondent

Douglas Sonnemann  
Douglas County Assessor  
P.O. Box 218  
Minden, NV 89423  
Respondent

Katrinka Russell  
Elko County Assessor  
571 Idaho  
Elko, NV 89801  
Respondent

Ms. Ruth Lee  
Esmeralda County Assessor  
P.O. Box 471  
Goldfield, NV 89013  
Respondent

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Mike Mears  
Eureka County Assessor  
P.O. Box 88  
Eureka, NV 89316  
Respondent

Lura Duvall  
Lander County Assessor  
315 South Humboldt Street  
Battle Mountain, NV 89820  
Respondent

Linda Whalin  
Lyon County Assessor  
27 South Main Street  
Yerington, NV 89447  
Respondent

Shirley Matson  
Nye County Assessor  
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Pahrump, NV 89060  
Respondent

Jana Seddon  
Storey County Assessor  
P.O. Box 494  
Virginia City, NV 89440  
Respondent

Joshua G. Wilson  
Washoe County Assessor  
P.O. Box 11130  
Reno, NV 89520-0027  
Respondent

Jeff Johnson  
Humboldt County Assessor  
50 W. Fifth Street  
Winnemucca, NV 89445  
Respondent

Melanie McBride  
Lincoln County Assessor  
P.O. Box 420  
Pioche, NV 89043  
Respondent

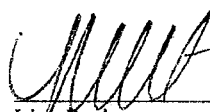
Dorothy Fowler  
Mineral County Assessor  
P.O. Box 400  
Hawthorne, NV 89415  
Respondent

Celeste Hamilton  
Pershing County Assessor  
P.O. Box 89  
Lovelock, NV 89419  
Respondent

Robert Bishop  
White Pine County Assessor  
955 Campton Street  
Ely, NV 89301  
Respondent

Richard Gammick  
Washoe County District Attorney  
P.O. Box 30083  
Reno, NV 89520-3083

Dated this 23<sup>rd</sup> day of April, 2013.



Lisa Pruitt  
Administrative Clerk II

**FILED**

Electronically

04-23-2013:09:31:58 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3678951

1 **2645**

2 SNELL & WILMER L.L.P.  
3 Suellen Fulstone, No. 1615  
4 50 West Liberty Street, Suite 510  
5 Reno, Nevada 89501  
6 Telephone: (775) 785-5440  
7 Facsimile: (775) 785-5441

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; et al,

16 Petitioners,

17 vs.

18 STATE OF NEVADA on relation of the STATE BOARD  
19 OF EQUALIZATION; WASHOE COUNTY; TAMMI  
20 DAVIS, Washoe County Treasurer; JOSH WILSON,  
21 Washoe County Assessor,

22 Respondents.

Case No.: CV13-00522

Dept. No. 3

23 **POINTS AND AUTHORITIES IN OPPOSITION TO STATE BOARD OF**  
24 **EQUALIZATION MOTION TO DISMISS**

25 The SBOE makes three arguments:

26 (1) That the SBOE's equalization decision was not a quasi-judicial act but rather a  
27 "legislative" act not subject to review by judicial review.

28 (2) That the equalization matter before the SBOE was not a "contested case" depriving  
this court of jurisdiction over the petition for judicial review.

(3) That there is no appeal from an equalization determination by the SBOE.

The first argument is refuted by a Nevada Supreme Court case directly on point, *Marvin v. Fitch*, 126 Nev. Adv. Op. 18, 232 P.3d 425, 430 (2010), in which the Supreme Court held that

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1 members of the SBOE were immune from civil liability under the federal Civil Rights Act from a  
2 refusal to equalize because equalization decisions were quasi-judicial actions subject to judicial  
3 review. In moving to dismiss this case, the SBOE makes no attempt to distinguish the *Marvin*  
4 decision. The SBOE fails even to cite *Marvin*.

5 The second argument is defeated by the definition of "contested case" itself. A "contested  
6 case" is "a proceeding . . . in which the legal rights, duties or privileges (**equalization rights**) of a  
7 party (**taxpayers**) are required by law (**writ of mandamus**) to be determined by an agency  
8 (**SBOE**) after an opportunity for hearing (**writ of mandamus specifically requires a public**  
9 **hearing or hearings to allow taxpayers the opportunity to present their equalization**  
10 **grievances. . . .**" The argument that the equalization proceeding was not a "contested case"  
11 ignores the indisputable facts.

12 The third argument is both erroneous and offensive. Neither the SBOE nor the  
13 Department of Taxation is above the law. It is undisputed that the state's power to tax is broad  
14 and formidable. The enormity of that power, however, does not make taxation decisions  
15 unreviewable. In fact, it is the enormity of the power to tax that makes review of taxation  
16 decisions essential. An SBOE decision that exceeds its statutory jurisdiction and violates the  
17 constitutional rights of taxpayers is undeniably reviewable by the District Court.<sup>1</sup>

18 The essence of the SBOE's motion to dismiss is that SBOE equalization decisions are not  
19 reviewable under judicial review, NRS 361.410, extraordinary writ or any other action.  
20 According to the SBOE, its equalization power is unlimited and its equalization decisions are  
21 untouchable by the courts. That cannot be, and is not, the law. If SBOE equalization decisions  
22 were beyond the reach of the courts, the parties would not be before the court in this very matter.  
23 The SBOE acted here to "equalize" only after two Supreme Court decisions and a writ of mandate  
24 issued by the district court compelling it to equalize. The SBOE is demonstrably **neither** above  
25 nor beyond the law. Whether the SBOE equalization decision is reviewable on judicial review,  
26

27 <sup>1</sup> Taxpayers' opposition does not address the misstatements made by the SBOE regarding  
28 the history of the equalization proceeding or the positions taken by taxpayers. This opposition is  
directed only at the SBOE's legal arguments.

1 civil action, or extraordinary writ is of no concern to taxpayers. If this court should decide that  
2 the Supreme Court erred in its *Marvin* decision, taxpayers will seek leave to amend their pleading  
3 here to seek relief in mandamus or prohibition. The SBOE does not have the "discretion" to  
4 violate either its governing statutes or the state or federal constitutions.

5 **I. THE EQUALIZATION DECISION IS REVIEWABLE ON JUDICIAL REVIEW**  
6 **AS ARGUED BY THE ATTORNEY GENERAL AND HELD BY THE SUPREME**  
7 **COURT IN MARVIN V. FITCH, 126 NEV.ADV.OP. 18, 232 P.3D 425 (2010).**

8 In *Marvin v. Fitch, supra*, the Supreme Court held that the State Board of Equalization  
9 was "performing a quasi-judicial function when determining whether to equalize property  
10 valuations." 232 P.3d at 425. In *Marvin*, taxpayers brought both a petition for judicial review  
11 and an action for damages under the federal civil rights laws. As noted by the Supreme Court, the  
12 district court granted the petition for judicial review and remanded the matter to the SBOE for  
13 further findings. 232 P.3d at 427-428. The district court dismissed the civil rights action on  
14 grounds of judicial immunity. Taxpayers appealed.

15 On appeal, the Attorney General argued that "the actions contemplated for the State Board  
16 under NRS 361.395(1)(a) and (b) . . . qualify for judicial immunity because they are in part . . .  
17 quasi-judicial. . . ." *Respondents' Answering Brief (attached as Exhibit 1), p. 13, lns. 7-10.*  
18 Further according to the Attorney General, "the State Board operates in an adversarial context  
19 and . . . decisions of the State Board are reviewable by the District Court, either under NRS  
20 chapter 361 or 233B." *Id., p. 12, lns. 10-14.* Recognizing that an important factor in determining  
21 quasi-judicial immunity is the presence of "safeguards" that make private damages actions  
22 unnecessary, the Attorney General also argued that "[t]he ultimate safeguard [for matters before  
23 the SBOE] is judicial review of decisions to ensure correctness of the law and observance of due  
24 process. [Citation omitted.]" *Id., p. 11, lns. 9-11.*

25 The Supreme Court agreed with the argument made by the Attorney General, holding that  
26 "the State Board's duty to equalize property valuations is a quasi-judicial function." *Marvin,*  
*supra*, 232 P.3d at 430. The Supreme Court wrote as follows:

27 Considering the factors in the 'functional approach,' the members of  
28 the State Board perform quasi-judicial functions because the  
equalization process requires the members to perform functions

(fact-finding and making legal conclusions) similar to judicial officers, the process is adversarial, it applies procedural safeguards similar to a court, errors can be corrected on appeal, and the statutory scheme retains State Board members' independence from political influences. *Id.*, 232 P.3d at 430.

Thus, according to the Court, the SBOE's "equalization process [was] adversarial in nature and 'functionally comparable' to an adjudicatory proceeding. *Id.*, 232 P.3d at 431. The Supreme Court continued as follows:

Recognizing that the State Board's equalization process is adversarial, the Legislature provided that a taxpayer may seek judicial review of a State Board's determination or bring a lawsuit "in any court of competent jurisdiction in the State." NRS 361.420(2). "No taxpayer may be deprived of any remedy or redress in a court of law" for wrongs or deprivations resulting from the findings of the State Board. NRS 361.410(1). *Id.*, 232 P.3d at 431.

The issue in *Marvin* turned on whether the equalization actions of the SBOE were administrative or quasi-judicial. The Attorney General in the present case, however, argues that the equalization actions of the SBOE are "legislative" rather than either administrative or quasi-judicial, presumably with the goal of substituting quasi-legislative immunity for quasi-judicial immunity for individual Board members. "Legislative" is clearly a misnomer. The SBOE in this matter did not make any "generally applicable" decision comparable to legislation. As required by the Writ of Mandamus, the SBOE decided specific taxpayer equalization grievances. As set forth in the notice sent out on behalf of the SBOE:

The purpose of the hearing is to hear and determine the grievances of property owner taxpayers regarding the equalization of real property valuations in Nevada for the 2003-2004 tax year through each subsequent tax year to and including 2010-2011; and to raise, lower or leave unchanged the taxable value of any property for the purpose of equalization.

Evidence regarding these matters must be received in Department of Taxation offices no later than 5 p.m., September 13, 2012. Please send **your** evidence along with a brief or letter explaining **your** grievance to the attention of Christopher G. Nielsen, Secretary to the State Board at 1550 College Parkway, Carson City, NV 89706. *See Exhibit 2 attached.*

The SBOE noticed and held hearings on the equalization grievances of individual taxpayers. There was nothing "legislative" about this equalization decision.

1 In any event, the SBOE makes no attempt here to distinguish *Marvin*. In fact, it never  
2 even cites to the *Marvin* opinion. The Attorney General's approach to legal argument is plainly  
3 opportunistic rather than principled. In *Marvin*, the Attorney General argued that SBOE's  
4 equalization decisions were quasi-judicial, entitling the individual members of the Board to  
5 judicial immunity. Here, however, the Attorney General argues that those equalization decisions  
6 are "legislative" and not subject to any sort of review at all. If, in fact, however, taxpayers had  
7 not filed the instant petition for judicial review, the Attorney General would surely be "kitty at the  
8 rat hole" to argue that any further action was barred by the failure to seek judicial review.

9 The SBOE apparently does not believe it is bound by previous positions under the  
10 doctrine of judicial estoppel. Without regard to judicial estoppel, however, this court is bound by  
11 Supreme Court precedent. Under *Marvin*, the instant matter is reviewable on judicial review.

## 12 II. THE EQUALIZATION DECISION WAS MADE IN A CONTESTED CASE.

13 Under NRS 233B.130(1) of Nevada's Administrative Procedure Act, NRS Chapter 233B,  
14 "any party who is . . . [i]dentified as a party of record by an agency in an administrative  
15 proceeding and [a]ggrieved by a final decision in a contested case is entitled to judicial review of  
16 the decision." There is no dispute that petitioners are parties of record. The SBOE, however,  
17 claims that the equalization matter was not a "contested case" and thus judicial review is  
18 unavailable. For purposes of judicial review, a "contested case" is defined as follows:

19 a proceeding, including but not restricted to rate making and  
20 licensing, in which the legal rights, duties or privileges of a party  
21 are required by law to be determined by an agency after an  
opportunity for hearing, or in which an administrative penalty may  
be imposed. *NRS 233B.032*

22 In this case, the writ of mandamus issued by the Second Judicial District Court expressly  
23 directed the SBOE "to notice and hold a public hearing, or hearings as may be necessary, to hear  
24 and determine the grievances of property owner taxpayers regarding the failure, or lack, of  
25 equalization of real property valuations throughout the State of Nevada for the 2003-2004 tax  
26 year and each subsequent ax year to and including the 2010-2011 tax year. . . ." *Petition for*  
27 *Judicial Review, Exhibit 2*. All aspects of the definition of "contested case" are satisfied. The  
28

1 SBOE was required by law to hold public hearings on the equalization grievances submitted by  
2 individual taxpayers and to determine those grievances.

3 The SBOE argues that there was no "contested case" here as though this equalization  
4 proceeding was generated not by the writ of mandamus but under the auspices of the equalization  
5 regulations adopted in 2010 and expressly made effective beginning with the 2011-2012 tax year.  
6 The equalization regulations which became effective in 2011 do not provide for individual  
7 taxpayer equalization grievances. Those regulations provide for equalization hearings to be held  
8 on the SBOE's initiative with information to be provided by the Department and by County  
9 Assessors. A copy of the equalization regulations effective with the 2011-2012 tax year is  
10 attached as Exhibit 3. Under those regulations, the taxpayer is not a party to the equalization  
11 proceeding, just an "interested person" who is allowed to "give testimony" only if the SBOE first  
12 makes a finding of a lack of equalization. Absent such a finding, the taxpayer is limited to the  
13 role of observer.

14 This Court need not determine whether an equalization decision made under the  
15 equalization regulations which became effective in 2011 is a contested case or any of the other  
16 issues raised by those regulations. The writ of mandamus which governs the equalization hearing  
17 at issue in this action does not direct the SBOE to equalize for the tax years 2003-2004 to 2010-  
18 2011 using the equalization regulations that were adopted in 2010 and expressly made effective  
19 prospectively with the 2011-2012 tax year. To equalize for eight prior years using the  
20 equalization regulations would have been a truly enormous undertaking with potentially  
21 devastating consequences upsetting almost a decade of tax collections throughout the state.  
22 Instead, the writ of mandamus specifically directs the SBOE to hear and determine individual  
23 taxpayer equalization grievances. The "contested case" is created here by the writ of mandate.  
24 By their own terms, the equalization regulations are inapplicable.

25 The SBOE also argues that the equalization hearing was not a "contested case" because it  
26 was not an evidentiary hearing. *SBOE Motion to Dismiss, p. 19, ln. 13*. According to the SBOE,  
27 it merely received "advice" from County Assessors and taxpayers before rendering its decision.  
28 *Id., lns. 14-15*. The facts are otherwise. The SBOE notice of the equalization hearing specifically



1 solicited "evidence" and "testimony" from taxpayers with equalization grievances. *Exhibit 2*.<sup>2</sup>  
2 Taxpayers responded to that notice with filed grievances to be followed by testimony,  
3 documentary evidence and argument at the hearings. A copy of the Certification of the Record in  
4 this matter prepared and filed by the SBOE as required by law is attached as Exhibit 4. The  
5 record of this allegedly "non-evidentiary" hearing consists of 3 CDs. A copy of the brief of the  
6 Incline Village/Crystal Bay taxpayer grievants and their designation of evidence is located in Item  
7 12 on the first CD. A copy is attached for the court's convenience as Exhibit 5. All the indicia of  
8 a contested case were present. The notice complied with NRS 233B.120. Witnesses were sworn  
9 in keeping with NRS 233B.123. Evidence was solicited and accepted. NRS 233B.123. An oral  
10 decision was made, followed by a written decision expressly based on the SBOE's consideration  
11 of "all the evidence, documents and testimony pertaining to the equalization of properties."  
12 Decision, p. 7. The decision included "findings of fact and conclusions of law, separately  
13 stated." NRS 233B.125.

14 The equalization hearing under the writ of mandate was a "contested case" until the SBOE  
15 decided that it could attempt to avoid review by the court if it could argue otherwise. To argue  
16 that this equalization decision was not made in a contested case, however, is simply to deny  
17 reality. The SBOE's after-the-fact attempt to turn a silk purse into a sow's ear must be rejected.

### 18 **III. THE SBOE CANNOT AVOID REVIEW OF ITS EQUALIZATION DECISION.**

19 The SBOE argues that its equalization decision cannot be "appealed" because the  
20 Legislature has not provided a right of appeal. The supporting citations are to cases involving the  
21 scope of NRAP 3A(b). The right to "appeal" to the Supreme Court is not at issue here and  
22 NRAP 3A(b) cases are completely inapposite. The SBOE is apparently attempting, albeit  
23 inartfully, to argue that there is no right whatsoever to district court review of its equalization  
24 decisions. Just a few years ago, of course, in the *Marvin* case, in order to support judicial  
25

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26 <sup>2</sup> That notice, in fact, satisfied all of the requirements of NRS 233B.121(2) for notice in  
27 contested cases. It included a statement of the time, place and nature of the hearing, a statement  
28 of the legal authority and jurisdiction under which the hearing is to be held, a reference to the  
particular sections of the statutes and regulations involved, and a short and plain statement of the  
matters asserted.

immunity for individual members of the Board, the Attorney General argued to the contrary. At that time, according to the Respondents' Answering Brief,

Generally, decisions of the State Board are reviewable by the District Court, either under NRS chapter 361 or 233B. \*\*\*. In the event that the State Board does not propose an increase in values or does not choose to meet at all, its failure in either regard is reviewable by mandamus. *Exhibit 1, p. 12, lns. 12-13, 19-20.*

The Supreme Court agreed, writing:

Recognizing that the State Board's equalization process is adversarial, the Legislature provided that a taxpayer may seek judicial review of a State Board's determination or bring a lawsuit "in any court of competent jurisdiction in the State." NRS 361.420(2). "No taxpayer may be deprived of any remedy or redress in a court of law" for wrongs or deprivations resulting from the findings of the State Board. NRS 361.410(1). *Marvin, supra, 232 P.3d at 431.*

The Court continued, discussing the policy considerations underlying the issue as follows:

Additionally, NRS Chapter 361 clearly demonstrates the Legislature's intent that the equalization process be open to the public and that the individual taxpayer be given notice of and the opportunity to participate in the State Board's valuation of his or her property. To conclude that the State Board's equalization process is a purely administrative function rather than a quasi-judicial function may preclude a taxpayer's ability to participate in this process. If the equalization process was determined to be administrative, Nevada's taxpayers in general would not be assured of their adversarial right to participate in the meetings, present evidence, provide testimony, or seek judicial review. By concluding that the State Board's equalization process is quasi-judicial, we honor the Legislature's intent and safeguard every taxpayer's right to meaningfully participate in the annual equalization process. *Marvin, supra, 232 P.3d at 432-433.*

The SBOE has ignored those considerations in adopting regulations that virtually exclude the taxpayer from any participation at all, let alone meaningful participation. The SBOE continues to ignore those considerations in now arguing that their equalization decisions are not subject to court review. However, whether the equalization regulations adopted in 2010 are valid and whether the issue of quasi-judicial immunity for individual members of the Board is reopened by the adoption of those regulations are issues for another day. This equalization proceeding was governed by the writ of mandamus which clearly directed an adversarial proceeding including the

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right to court review either in the mandamus action or on judicial review.

**IV. CONCLUSION**

The SBOE Motion to Dismiss is without merit under the law and must be denied.

Dated: April 22, 2013

SUELLEN FULSTONE  
SNELL & WILMER L.L.P.  
50 West Liberty Street, Suite 510  
Reno, Nevada 89501

/s/ Suellen Fulstone  
by \_\_\_\_\_  
Attorneys for petitioners

**AFFIRMATION**

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

Dated: April 22, 2013

/s/ Suellen Fulstone  
By: \_\_\_\_\_  
Suellen Fulstone, No. 1615  
Attorneys for Petitioners

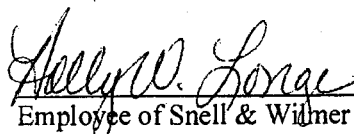
CERTIFICATE OF SERVICE

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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DATED this 22nd day of April, 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>
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2.	SBOE Notice of Equalization Hearing	3
3.	Equalization regulations effective with the 2011-2012 tax year	14
4.	Certification of the Record	2
5.	Incline Village/Crystal Bay Taxpayer Grievants	10

# EXHIBIT 1

**FILED**

Electronically

04-23-2013:09:31:58 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3678951

# EXHIBIT 1

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3 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

4 **CHARLES MARVIN, GARY TAYLOR, and**  
5 **400 TUSCARORA ROAD, LLC, for themselves**  
6 **and on behalf of a class of similarly situated**  
7 **taxpayers,**

8 **Appellants,**

9 **v.**

10 **CLAY FITCH, STEPHEN R. JOHNSON,**  
11 **RICHARD MASON, and MICHAEL CHESHIRE,**  
12 **Individual members of the State Board of**  
13 **Equalization,**

14 **Respondents.**

**Supreme Court Case No. 52447**

**District Court No. 08 OC 00020-1B**

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22 **RESPONDENTS' ANSWERING BRIEF**

23 **Gatherne Cortez Masto**  
24 **Attorney General**  
25 **Dennis L. Balcourt**  
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4 CHARLES MARVIN; GARY TAYLOR; and  
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8 Appellants,

9 v.

10 CLAY FITCH, STEPHEN R. JOHNSON,  
11 RICHARD MASON, and MICHAEL CHESHIRE;  
12 individual members of the State Board of  
13 Equalization;

14 Respondents.

) **Supreme Court Case No. 52447**

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**RESPONDENTS' ANSWERING BRIEF**

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

1 Respondents CLAY FITCH, STEPHEN R. JOHNSON, RICHARD MASON, and  
2 MICHAEL CHESHIRE, former members of the State Board of Equalization, (hereafter "Board  
3 Members"), through their counsel Catherine Cortez Masto, Attorney General, by Dennis L.  
4 Belcourt, Deputy Attorney General, pursuant to NRAP 28(b), hereby submit their answering  
5 brief as follows:

6 **I. BOARD MEMBERS' STATEMENT OF THE ISSUE**

7 Do Board Members have absolute immunity from personal liability for federal civil rights  
8 claims arising from an alleged failure to increase or lower property tax values to remedy  
9 claimed disparities in values between property owners?

10 **II. BOARD MEMBERS' SUPPLEMENTAL STATEMENT OF THE CASE**

11 **A. The Nature of the Case, Course of Proceedings and Disposition Below**

12 The complaint by Appellants CHARLES MARVIN; GARY TAYLOR; 400 TUSCARORA  
13 ROAD, LLC ("Taxpayers")<sup>1</sup> alleges that the State Board of Equalization, acting through Board  
14 Members,

15 failed and refused to perform its and their statutory duties and  
16 obligations with respect to the review of the tax rolls of all seventeen  
17 counties and adjust and equalize property valuations within and  
18 between and among the various counties, causing the property of  
19 plaintiff/petitioners and all other owners of residential real property  
20 at Incline Village/Crystal Bay to be required to pay real property  
21 taxes that violate the requirement of the Nevada Constitution for  
22 uniform and equal taxation as well as the requirement of the U.S.  
23 Constitution guaranteeing the equal protection of the laws as well as  
the federal rights statutes, including but not limited to, 42 U.S.C.  
§1983, all to the harm, loss and damage to plaintiff/petitioners and  
those similarly situated in the amount in excess of \$10,000, and for  
which no administrative review, process or remedy is provided by  
law (sic).

24 Joint Appendix, ("ROA") 6.

25 Defendants Department of Taxation and State Board of Equalization brought a motion  
26 to dismiss on February 21, 2008, and the Washoe County Defendants filed a suggestion of  
27 lack of jurisdiction. The District Court, finding that Plaintiffs did not exhaust their administrative  
28

<sup>1</sup> While the complaint was filed as a class action, class certification has not yet taken place.

1 remedies, dismissed the claim for refund and remanded the balance of the complaint for  
2 further administrative action. ROA 88-92.

3 Board Members were subsequently served with the complaint and then brought the  
4 motion to dismiss, the granting of which is on appeal herein. ROA 12, 14, 21 and 28.

5 In rendering its decision on the above motions, the District Court specifically noted that  
6 NRS 361.355—.356 "provide an adequate legal remedy for property owners who are unhappy  
7 with the valuation of their property. NRS 361.355 provides for a means whereby a property  
8 owner may complain about the lack of statewide equalization." ROA 91, lines 8-11. The  
9 District Court opinion further stated that "(t)o expose individual State Board Members to civil  
10 rights claims based on their decision to raise values, lower values, or take no action when  
11 determining the equalization of values is inappropriate, especially here where they determined  
12 Plaintiffs had failed to follow the statutory procedures." ROA 92, lines 20-3.

13 **B. Statement of Facts**

14 On appeal from a motion to dismiss, the facts of the complaint are assumed true. *Buzz*  
15 *v. City of Las Vegas*, 124 Nev. \_\_\_\_ at pp. 4-5, 181 P.3d 670, 672 (Adv. Op. 21,  
16 April 17, 2008).

17 In addition to the allegations of the Complaint, this Court may base its decision on facts  
18 of which judicial notice shall or may be taken. 138 A.L.R. Fed. 393 (1997). Authority exists to  
19 take judicial notice of matters of fact and law pursuant to NRS 47.130 and .140. Board  
20 Members have requested this Court take notice of the fact that there are in excess of one  
21 million parcels and nearly 300,000 personal property assessments in the State of Nevada.  
22 Respondent's Appendix, 1-2. Additionally, Board Members request that this Court take notice  
23 of the laws concerning the structure, function, makeup and procedures of the State Board as  
24 described as follows pursuant to NRS 47.140.

25 ///

26 ///

27 ///

28 ///

1                   1. Makeup, Functions and Operations of the Board

2                   The Board consists of five governor-appointed members.<sup>2</sup> As constituted by law, the  
3 Board consists of a certified registered public accountant, a property appraiser with a  
4 professional designation, a member who is versed in the valuation of centrally assessed  
5 properties, and two members who are versed in business generally. Members serve  
6 staggered four-year terms, and the Governor may remove a Board member if, "in his opinion,  
7 that member is guilty of malfeasance in office or neglect of duty." Only three of the members  
8 may be of the same political party and no more than two may be from the same county. State  
9 Board members receive a maximum salary of \$80 per day while on the business of the Board.  
10 The State Board may adopt regulations governing the conduct of business before it. The staff  
11 of the State Board must be provided by the department and the executive director is the  
12 secretary of the board. The State Board is required to comply with any applicable regulation  
13 adopted by the Nevada Tax Commission. NRS 361.375.

14                  At proceedings before the Board, any person may appear in person or through an  
15 attorney or may file a statement. NRS 361.380. Procedures before the board permit, *inter*  
16 *alia*, subpoena of witnesses, testimony under oath, and admission of documentary evidence.  
17 NAC 361.712, .714, .721 and .723.

18                  A taxpayer may seek judicial redress from the findings of the Board. NRS 361.410—  
19 .420. Actions of the Board may also be subject to the procedures for judicial review set forth in  
20 NRS chapter 233B to the extent consistent with NRS chapter 361. *Mineral County v. State Bd.*  
21 *of Equalization*, 121 Nev. 533, 119 P.3d 706 (2005).

22                  The Board hears appeals from the county boards of equalization, hears appeals of  
23 centrally assessed properties, equalizes property valuations in the State; reviews the tax rolls  
24 of the various counties as corrected by the county boards of equalization thereof and raises or  
25 lowers, equalizing and establishing the taxable value of the property, for the purpose of the  
26 valuations therein established by all the county assessors and county boards of equalization  
27

28                  <sup>2</sup> For reasons that have not been explained by Appellants, only four of the five members who were sitting on  
the State Board of Equalization during the annual term in question are made party to this action.



1 and the Nevada Tax Commission, of any class or piece of property in whole or in part in any  
2 county, including those classes of property enumerated in NRS 361.320. NRS 361.395(1) and  
3 NRS 361.400(1). There are procedures that property owners challenging equalization follow in  
4 front of the respective county boards of equalization before reaching the State Board of  
5 Equalization. NRS 361.355 and .356.

6 Additionally, NRS 361.710 makes applicable to proceedings of the State Board provisions  
7 of title 2 of the Nevada Revised Statutes, the Nevada Rules of Civil Procedure, and the Nevada  
8 Rules of Appellate Procedure.

9 2. Equalization by the State Board

10 There is no definition of equalization in the Nevada Revised Statutes. It has been  
11 defined elsewhere as follows:

12 Equalizing property means making sure that similarly situated  
13 taxpayers are treated the same, that a uniform and equal rate of  
14 assessment and taxation, and a just valuation for taxation of all  
15 property, real, personal and possessory, is provided NEV. CONST.  
16 art. 10, § 1. Just principles of valuation are those which, in their  
application, will result in distributing the burden of taxation in due  
proportion among owners of all different kinds of property.

17 Op. Nev. Att'y Gen. No. 99-32 (September 13, 1999).

18 This Court has identified two essential, separate functions for the State Board: an appeal  
19 function and an equalization function. *State, ex rel. State Bd. of Equalization v. Barta*, 124 Nev.  
20 58, 188 P.3d 1092, 1102 (2008).  
21

22 NRS 361.395, under a lead line that reads "Equalization of property values and review  
23 of tax rolls by State Board of Equalization; notice of proposed increase in valuation," provides  
24 in pertinent part that the State Board, during its annual term, shall

25 (a) Equalize property valuations in the State.

26 (b) Review the tax rolls of the various counties as corrected by the  
27 county boards of equalization thereof and raise or lower,  
28 equalizing and establishing the taxable value of the property, for  
the purpose of the valuations therein established by all the

1 county assessors and county boards of equalization and the  
2 Nevada Tax Commission, of any class or piece of property in  
3 whole or in part in any county, including those classes of  
4 property enumerated in NRS 361.320.

5 Under ordinary rules of statutory construction, the duty under paragraph (a) must be  
6 assumed to be different from the duty under (b). In fact, prior to codification in NRS 361.395,  
7 the provision in paragraph (a) was found in section 4 of the 1917 revenue act ("1917 Act"), as  
8 amended, while paragraph (b) was found in section 6 of that act. See Act of March 28, 1953,  
9 ch. 336, §§ 1 and 3, 1953 Nev. Stat. 576-580 (Respondents' Appendix, 003-007). Section 4 of  
10 the 1917 Act dealt with equalization by appeal, including from challenges based on  
11 undervaluation or nonassessment of parcels, and section 6 dealt with equalization by review of  
12 the completed roll.

13 NRS 361.395(1), read against its legislative genesis in the form of the 1917 Act,<sup>3</sup>  
14 therefore provides that there are two triggers for equalization by the State Board: (1) by  
15 appeals and (2) by review of the rolls. NRS 361.395 does not provide standards for  
16 determining whether properties are equalized.<sup>4</sup>

17 The appeal at issue is based not on the failure of the State Board to equalize in the  
18 appeals process, but on the alleged failure of the State Board to adjust values after reviewing  
19 the rolls. ROA 6, lines 14-23.

20 The terrain on which the equalization is to take place consists of over one million  
21 parcels of developed and undeveloped land and nearly three hundred thousand personal  
22 property assessments. Respondent's Appendix, 001-002.

### 23 III. ARGUMENT

#### 24 A. Introduction and Summary

25 Allowing property owners to sue individual State Board members for civil rights claims  
26 for alleged failure to raise or lower values in equalization would at the very least chill or distort  
27

28 <sup>3</sup> See NRS 220.170(3)(codification doesn't change intent of law).

<sup>4</sup> Compare NRS 361.333.

1 decision making by the State Board and could well hinder the State of Nevada in its efforts to  
2 recruit and retain State Board members with the requisite qualifications as spelled out in  
3 NRS 361.375.

4 Actions by the State Board to raise values, whether under NRS 361.395(1)(a) or its  
5 review of the rolls pursuant to its duties under NRS 361.395(1)(b), require a quasi-judicial  
6 hearing, pursuant to NRS 361.395(2) and NRS chapter 233B, and are therefore subject to  
7 absolute immunity. A determination by the State Board to not raise values, i.e., to lower  
8 values or do nothing at all, is an action either of a judicial or prosecutorial nature, or is so  
9 "closely associated" with the judicial proceeding that it partakes of that immunity.

10 Although Taxpayers seem to allege that their civil rights claim has a basis in the NEV.  
11 CONST. art. 10, § 1,<sup>5</sup> they cite no legal authority to support that basis, instead relying  
12 exclusively on authority concerning civil rights claims grounded in federal law, principally if not  
13 exclusively 42 U.S.C. §1983.<sup>6</sup> The elements of a §1983 action are (1) an act under color of  
14 law<sup>7</sup>, (2) that is not merely negligent and<sup>8</sup>, 3) that proximately causes<sup>9</sup>, (4) a deprivation of a  
15 federal constitutional or statutory right.<sup>10</sup>

16 The U.S. Supreme Court has stated that equal protection in land valuation for taxation  
17 purposes requires only a "seasonable attainment of a rough equality in tax treatment of  
18 similarly situated property owners," does "not require immediate general adjustment on the  
19 basis of the latest market developments," and only forbids "intentional systematic  
20 undervaluation" of a discriminatory nature. *Allegheny Pittsburgh Coal Company v. County*  
21 *Comm'n of Webster County, W. VA.*, 488 U.S. 336, 343-345 (1989)(distinguished in *Nordlinger*  
22 *v. Hahn*, 505 U.S. 1 (1992)).

23  
24 <sup>5</sup> ROA p. 6, lines 18-20.

25 <sup>6</sup> See, e.g., Appellants' Opening Brief, pp. 3-4.

26 <sup>7</sup> *Roe v. Humke*, 128 F.3d 1213 (8<sup>th</sup> Cir. 1997).

27 <sup>8</sup> *Bingue v. Prunchak*, 512 F.3d 1169 (9<sup>th</sup> Cir. 2008).

28 <sup>9</sup> *Martinez v. California*, 444 U.S. 277 (1980).

<sup>10</sup> *Lecranski Bros., Inc. v. Johnson*, 312 F.Supp.2d 117, 120 (D.Mass. 2004); *Pyles v. Raisor*, 60 F.3d 1211,  
1213 (6<sup>th</sup> Cir. 1995)(arrest in violation of State law not unconstitutional).

1           **B. State Board of Equalization Actions Pursuant to NRS 361.395 Are**  
2           **Entitled to Absolute Immunity**

3           1. Absolute Immunity Under Federal Law Applies to Actions of Administrative  
4           Agencies That Are Quasi-Prosecutorial or Quasi-Judicial in Nature

5           As stated in *Romano v. Bible*, 169 F.3d 1182, 1186 (9<sup>th</sup> Cir. 1999),

6           Absolute immunity extends to agency officials when they preside  
7           over hearings, **initiate agency adjudication**, or otherwise perform  
8           functions analogous to judges and prosecutors. *Butz v. Economou*,  
9           438 U.S. 478, 514-15, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978).

9           (Emphasis added.)

10          In *Romano*, the court held that current and former members of the Nevada Gaming  
11          Commission and the Nevada Gaming Control Board and the Nevada Attorney General had  
12          absolute immunity from suit for personal liability for damages based on deprivation of a gaming  
13          license. *Id.* at p. 1184.

14          In *Mishler v. Clift*, 191 F.3d 998,1007 (9<sup>th</sup> Cir., 1999), the court found that the members  
15          of the Nevada State Board of Medical Examiners were absolutely immune from personal  
16          liability arising from matters of a disciplinary proceeding against their members, since in that  
17          role they were functioning as prosecutors and judges.

18          Quasi-prosecutorial immunity applies not only to the conduct of the person in the role of  
19          the prosecutor, but also that person's decision to initiate a prosecution. "The decision to  
20          initiate administrative proceedings against an individual or corporation is very much like the  
21          prosecutor's decision to initiate or move forward with a criminal prosecution." *Butz v.*  
22          *Economou*, 438 U.S. 478, 515 (1978).

23          2. Factors for Determining Absolute Immunity for Members of  
24          Administrative Agencies

25          Six nonexclusive factors have been identified for determining whether a member of an  
26          administrative agency of the executive branch has absolute immunity for an action of a  
27          prosecutorial or judicial nature:

28          ///

1 (a) the need to assure that the individual can perform his functions  
2 without harassment or intimidation; (b) the presence of safeguards  
3 that reduce the need for private damages actions as a means of  
4 controlling unconstitutional conduct; (c) insulation from political  
influence; (d) the importance of precedent; (e) the adversary nature  
of the process; and (f) the correctability of error on appeal.

5 *Mishler, supra*, 191 F.3d at 1004.

6 In *Mishler*, the Ninth Circuit, examining procedures before the Nevada State Board of  
7 Medical Examiners, noted that there was a "strong need" to make certain that Board Members  
8 can perform (their) disciplinary functions without the threat of harassment or intimidation." *Id.* at  
9 1005. The *Mishler* Court noted the safeguards in place with respect to that Board that  
10 rendered damage actions unnecessary, such as the division of responsibility for investigation  
11 and prosecution. *Id.* at 1005-1006.

12 The *Mishler* Court found that the Board was sufficiently insulated from political influence  
13 (again, obviating the need for private rights of action) by virtue of the appointment process,  
14 terms of office and the circumscribed ability of the Governor to remove them (i.e., for good  
15 cause). *Id.* at 1007. The *Mishler* Court then looked at the other factors, and, while precedent  
16 was not clearly established as a matter of principle in procedures before the Board, the  
17 proceedings were clearly adversary in nature, permitting legal representation, and decisions  
18 were correctable on appeal. *Id.*

19 Finally, the *Mishler* Court analyzed the Board of Medical Examiners' actions in order to  
20 make a determination as to *which* actions by the board members would be clothed with  
21 absolute quasi-judicial immunity, stating that "the protections of absolute immunity reach only  
22 those actions that are judicial or closely associated with the judicial process." *Id.* The court  
23 found those acts in the disciplinary process were clearly within the scope of immunity, while  
24 ministerial acts such as responding to another board's inquiry as to a licensee's status, were  
25 not of a judicial nature and were therefore not absolutely immunized. *Id.* at 1008.

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1                   3. Applying the Factors

2                   The foregoing nonexclusive factors apply to proceedings before the State Board as  
3 follows:

4                   a. Need For Board Members to Be Free From Harassment or Intimidation

5                   As indicated above, the members of the State Board of Equalization are appointed for  
6 their professional expertise and paid a salary of \$80 per day while on the business of the  
7 Board. They are called upon to make complex decisions of valuation or equalization in an  
8 atmosphere that has become steadily more litigious, as this and the other numerous cases  
9 recently before this Court demonstrate. Nevada has in excess of one million parcels of real  
10 property under assessment, and the number of separate assessments of personal property  
11 made by the county assessors and the Nevada Tax Commission (which handles centrally  
12 assessed properties) is nearly 300,000. Exposing the State Board members to suit involving  
13 potential personal liability would dissuade capable persons from agreeing to serve in what is  
14 for all practical purposes a voluntary endeavor.

15                   As stated in *Butz v. Economou*, 438 U.S. 478, 515 (1978),

16                   The discretion which executive officials exercise with respect to the  
17 initiation of administrative proceedings might be distorted if their  
18 immunity from damages arising from that decision was less than  
19 complete. *Cf. Imbler v. Pachtman*, 424 U.S. at 426 n.24, 96 S.Ct. at  
20 993 n.24. While there is not likely to be anyone willing and legally able  
21 to seek damages from the officials if they do not authorize the  
22 administrative proceeding, *cf. id.* at 438, 96 S.Ct. at 998 (WHITE, J.,  
23 concurring in judgment), there is a serious danger that the decision to  
24 authorize proceedings will provoke a retaliatory response. An  
individual targeted by an administrative proceeding will react angrily  
and may seek vengeance in the courts. A corporation will muster all of  
its financial and legal resources in an effort to prevent administrative  
sanctions. "When millions may turn on regulatory decisions, there is a  
strong incentive to counter-attack."

25                   The instant litigation involves taxes, not regulations, but there exist the same incentives,  
26 and the same risks, that persons affected by the State Boards' decisions would resort to  
27 offensive litigation in the courts. If even a small percentage of the sizable number of property

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1 owners were to follow Taxpayers' lead by bringing civil rights claims, the strongest of wills  
2 among any potential board member could be brought to heel.<sup>11</sup>

3 b. Safeguards That Reduce the Need For Private Damages Actions

4 As provided in regulations adopted by the State Board, the State Board receives  
5 witnesses and takes testimony under oath (NAC 361.714 and .729), and affords to parties  
6 access to the subpoena power (NAC 361.712). A petitioner before the Board may be  
7 represented at the hearing. NAC 361.7018. The Board operates under a comprehensive set  
8 of regulations under NRS chapter 233B and elsewhere (e.g., conflict of interest  
9 requirements—see, e.g., NRS 281.501). The ultimate safeguard is judicial review of decisions  
10 to ensure correctness of the law and observance of due process. See, e.g., *Gilman v. Nevada*  
11 *State Bd. Of Veterinary Medical Examiners*, 120 Nev. 263, 89 P.3d 1000 (2004).

12 The statewide equalization called for under NRS 361.395(1)(a) and (b) provides for  
13 notice and an opportunity to be heard to interested persons whenever the State Board  
14 proposes to raise a valuation. NRS 361.395(2). That proceeding would be governed by the  
15 rules set forth in NAC Chapter 361 or the rules referred to in NRS 361.710. In its function of  
16 reviewing the roll pursuant to NRS 361.395(1)(b), even if the State Board does not propose to  
17 raise any values, as a public body it must make its decision in that regard in an open meeting,  
18 complying with notice requirements under NRS 241.020.

19 Property owners have the wherewithal to assist the process by presenting information  
20 to the relevant county board of equalization information about undervaluation or  
21 nonassessment of other property. NRS 361.355; see Op. Nev. Att'y Gen. No. 99-32  
22 (September 13, 1999). If the property owners learn that information too late, they can bring it  
23 directly to the State Board. NRS 361.355(5). Upon being so apprised, the county board or the

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26  
27 <sup>11</sup> The potential for mischievous use of such litigation is illustrated by this case, in which Appellants, without  
28 explanation, only chose to sue four of the five State Board members, although they contend that the entire Board  
has the equalization duty.



1 State Board can then rectify any discrimination against the property owners, preventing any  
2 constitutional violation and obviating the need for damage actions.<sup>12</sup>

3 c. Insulation From Political Influences

4 NRS 361.375 sets qualifications, requirements and restrictions on who will be on the  
5 Board that are designed to insulate it from outside influences. These are the kinds of  
6 safeguards that courts look as protections against political influence. See, e.g., *Yoonessi v.*  
7 *Albany Medical Center*, 352 F.Supp.2d 1096, 1101-2 (CD Cal 2005).

8 d. Precedence, Adversary Nature and Correctability

9 While the statutes and regulations do not assign precedential value to decisions of the  
10 State Board, the State Board operates in an adversarial context in allowing parties before it—  
11 property owners, county assessors, and interveners, to be represented, subpoena and put on  
12 witnesses. Generally, decisions of the State Board are reviewable by the District Court, either  
13 under NRS chapter 361 or 233B.

14 Specifically, a decision to raise the valuation of a property is an action for which a  
15 hearing is required by law. NRS 361.395(2). A "proceeding . . . in which the legal rights,  
16 duties or privileges of a party are required by law to be determined by an agency after an  
17 opportunity for hearing" is a "contested case" to which procedures of NRS chapter 233B apply.  
18 See NRS 233B.032 and .121.

19 In the event that the State Board does not propose an increase in values or does not  
20 choose to meet at all, its failure in either regard is reviewable by mandamus. See, e.g.,  
21 NRS 34.160; *Idaho State Tax Comm'n v. Staker*, 104 Idaho 734, 740, 663 P.2d 270, 276  
22 (Idaho 1982).

23 e. Quasi-Judicial Nature of Actions

24 As noted in *Mishler, supra*, once it is determined that an official or body is quasi-judicial,  
25 the challenged actions must be examined as to whether they are judicial in nature or closely

26 <sup>12</sup> If Appellants' true concern is not that the Douglas County properties are undervalued but rather that Incline  
27 Village and Crystal Bay properties are overvalued, as seems to be the import of footnote 1, page 7 of Appellants'  
28 Opening Brief, they properly should have pursued their remedies under NRS 361.357 and .360, which afford  
them a quasi-judicial remedy that contemplates reductions in values.

1 associated therewith. Appellants' complaint is that the Board members refused to exercise  
2 their statutory duty to review the property rolls and equalize all of the property values in the  
3 seventeen counties. In other words, the essence of the complaint is that properties were out  
4 of equalization (*i.e.*, properties were not valued in equal proportion to their taxable value) and  
5 the State Board refused either to reduce or raise values, as necessary to put them at taxable  
6 value or at an equal proportion thereto.

7 The actions contemplated for the State Board under NRS 361.395(1)(a) and (b) in  
8 determining whether it needs to raise or lower values, or leave them as they were set by the  
9 county boards, qualifies for judicial immunity because they are in part quasi-prosecutorial, in  
10 part quasi-judicial, or are "closely associated" to a process that is judicial in nature. *Mishler*,  
11 *supra*, 191 F.3d at 1007. If the Board determines that values of individual or classes of  
12 properties need to be raised, notice and an opportunity to be heard must be provided. Thus  
13 there is a quasi-judicial proceeding. A decision to refuse to equalize, as is alleged in this  
14 complaint, is akin to a refusal to exercise jurisdiction, a quintessentially judicial action. See,  
15 *e.g.*, *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-5 (1998); and *Mullis v.*  
16 *U.S. Bankruptcy Court for the District of Nevada*, 828 F.2d 1385, 1389 (9<sup>th</sup> Cir. 1987). A  
17 decision to lower values or keep them the same, while requiring relatively less notice,<sup>13</sup> is  
18 merely the flip-side of the coin to the decision to raise values. To immunize the decision to  
19 raise values while not immunizing the decision to lower values or keep them the same would  
20 have a distortive effect contrary to the very purpose for immunity, which is to preserve the  
21 integrity of the agency's decision-making process.

22 **C. Absolute Immunity from Civil Rights Claims is Necessary to the**  
23 **Proper Function of the State Board**

24 As detailed above, the State Board has within its equalization authority in excess of one  
25 million parcels of real property and nearly 300,000 assessments of personal property.  
26 Qualified immunity applies on a case-by-case basis, and in some cases would entail that the  
27

28 <sup>13</sup> The public meeting notice requirements of NRS 241.020—posting 3 business days in advance—would apply.

1 plaintiffs be afforded the opportunity for discovery.<sup>14</sup> Qualified Immunity would still leave the  
2 individual board members vulnerable to suits of a sufficient number that would leave them  
3 chastened, over-cautious, and tending to be disproportionately "accountable" to those who  
4 were willing to sue or even threaten suit. *Butz v. Economou*, *supra*, 438 U.S. at 515.

5 In tasking public servants to do their duty, a balance must be struck when determining  
6 whether and when to expose them to personal liability. Public servants cannot be asked to be  
7 courageous in doing their duty and to then be so exposed to individual jeopardy that no  
8 sensible person would be willing to do that duty. As Justice Learned Hand stated in finding  
9 that absolute immunity attached to prosecutorial conduct:

10 As is so often the case, the answer must be found in a balance  
11 between the evils inevitable in either alternative. In this instance it  
12 has been thought in the end, better to leave unredressed the  
13 wrongs done by dishonest officers than to subject those who try to  
14 do their duty to the constant dread of retaliation.

15 *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949) (upholding application of absolute  
16 immunity concerning prosecutorial action).

17 Taxpayers would have this Court strike the balance in such a way that would render the  
18 State Board of Equalization timed at best, or unable to function at all at worst. Ample legal  
19 authority supports finding absolute immunity instead.

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28 <sup>14</sup> *Anderson v. Creighton*, 483 U.S. 635, 646, fn.6 (1987).

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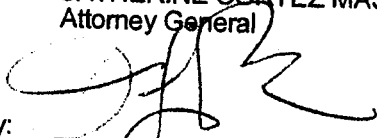
IV. CONCLUSION

The State Board is a quasi-judicial entity. The alleged failure to act by the Board Members of which Taxpayers complain occurs in a process of a prosecutorial or judicial nature. The integrity of the State Board's process as a quasi-judicial body requires that its members be afforded absolute immunity, including in the functions of which Taxpayers complain. The First Judicial District Court of the State of Nevada, the Honorable James T. Russell presiding, correctly found that Board Members are absolutely immune, and the dismissal on appeal herein should therefore be affirmed.

Respectfully submitted this 29th day of May, 2009.

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Attorney General

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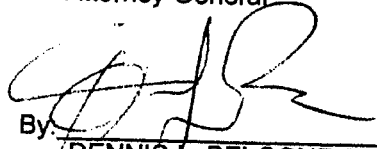
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**CERTIFICATE OF COMPLIANCE**

I hereby certify that I have read this reply brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 29<sup>th</sup> day of May, 2009.

CATHERINE CORTEZ MASTO  
Attorney General

By 

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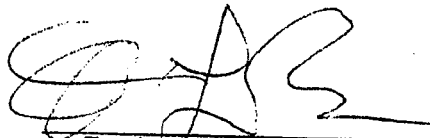
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General and on this 29th day of May, 2009, I served a copy of the foregoing **RESPONDENTS' ANSWERING BRIEF** by personal service to:

Suellen Fulstone, Esq.  
Morris Peterson  
6100 Neil Road, Suite 555  
Reno, Nevada 89511



\_\_\_\_\_  
An Employee of the Office of the Attorney General

# EXHIBIT 2

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04-23-2013:09:31:58 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3678951

# EXHIBIT 2



**BRIAN SANDOVAL**  
*Governor*

**STATE OF NEVADA  
STATE BOARD OF EQUALIZATION**

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

**CHRISTOPHER G.  
NIELSEN**  
*Secretary*

**NOTICE OF EQUALIZATION HEARING**

August 28, 2012

**CERTIFIED:** 7009 2250 0004 3574 5146

SUEELLEN FULSTONE  
SNELL AND WILMER  
6100 NEIL ROAD #555  
RENO, NV 89511

**Date and Time:** September 18, 2012, 1:00 p.m.

**Location:** Carson City  
State Legislative Building  
401 South Carson Street, Room 3137  
Carson City, Nevada

**Video-Conferencing will also be available to the following Locations:**

Legislative Counsel Bureau  
Grant Sawyer State Office Building  
Room 4412E  
555 E. Washington Avenue  
Las Vegas, Nevada

**In addition, the Department is currently waiting confirmation of video-conferencing locations in Elko, Winnemucca, Ely, Pahrump, Caliente, Eureka, Battle Mountain, and Lovelock. Please call (775) 684-2160 for precise locations.**

This meeting will also be available on the internet via the Legislative website at <http://leg.state.nv.us> then select Live meetings and then State Board of Equalization. You may call in your comments by telephone to the meeting. Please call the Department at (775) 684-2160 for the call-in number and reservation to speak.

**Legal Authority and Jurisdiction of the State Board of Equalization:** Writ of Mandamus dated August 21, 2012 and NRS 361.395, NAC 360.732, and NAC 361.659.

The purpose of the hearing is to hear and determine the grievances of property owner taxpayers regarding the equalization of real property valuations in Nevada for the 2003-2004 tax year through each subsequent tax year to and including 2010-2011; and to raise, lower or leave unchanged the taxable value of any property for the purpose of equalization.

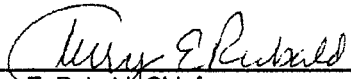
Evidence regarding these matters must be received in Department of Taxation offices no later than 5 p.m., September 13, 2012. Please send your evidence along with a brief or letter explaining your



grievance to the attention of Christopher G. Nielsen, Secretary to the State Board at 1550 College Parkway, Carson City, NV 89706.

Based on the evidence and testimony taken at this hearing, the State Board may request a response from county officials at future hearings before taking any equalization action. You will be notified if additional hearings will be held.

If you have any questions, please call me at 775-684-2095 or Anita Moore at 775-684-2160.

  
Terry E. Rubald, Chief  
Division of Local Government Standards

cc: State Board of Equalization  
Christopher G. Nielsen, Department of Taxation Executive Director  
Dawn Buoncristiani, Senior Deputy Attorney General  
Gina Session, Chief Deputy Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify on the 28 day of August 2012 I served the foregoing Notice of Equalization Hearing by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

**CERTIFIED:** 7009 2250 0004 3574 5146

SUEELLEN FULSTONE  
SNELL AND WILMER  
6100 NEIL ROAD #555  
RENO, NV 89511

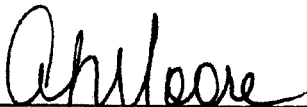
**CERTIFIED:** 7009 2250 0004 3574 5160

RICHARD GAMMICK  
WASHOE COUNTY DISTRICT ATTORNEY  
PO BOX 30083  
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**CERTIFIED:** 7009 2250 0004 3574 5153

JOSHUA G WILSON  
WASHOE COUNTY ASSESSOR  
PO BOX 11130  
RENO NV 89520-0027

Copy: State Board of Equalization  
Christopher G. Nielsen, Department of Taxation Executive Director  
Dawn Buoncristiani, Senior Deputy Attorney General  
Gina Session, Chief Deputy Attorney General

  
\_\_\_\_\_  
Anita L. Moore, Program Officer, Boards and Commissions  
State Board of Equalization

# EXHIBIT 3

**FILED**

Electronically

04-23-2013:09:31:58 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3678951

# EXHIBIT 3

**ADOPTED REGULATION OF THE  
STATE BOARD OF EQUALIZATION**

**LCB File No. R153-09**

§§2, 8, 10 and 23 effective April 20, 2010  
§§1, 3 to 7, inclusive, 9 and 11 to 22, inclusive, effective October 1, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

AUTHORITY: §§1-23, NRS 361.375 and 361.395.

A REGULATION relating to taxation; establishing procedures for the equalization of property valuations by the State Board of Equalization; and providing other matters properly relating thereto.

**Section 1.** Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 21, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“County board” means a county board of equalization.*

**Sec. 4.** *“Equalize 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.*

**Sec. 5.** *“Interested person” means an owner of any relevant property, as indicated in the records of the county assessor of the county in which the property is located or, if the Commission establishes the valuation of the property, as indicated in the records of the Department.*

**Sec. 6.** *"Ratio study" means an evaluation of the quality and level of assessment of a class or group of properties in a county which compares the assessed valuation established by the county assessor for a sampling of those properties to:*

*1. An estimate of the taxable value of the property by the Department or an independent appraiser; or*

*2. The sales price of the property,*

*as appropriate.*

**Sec. 7.** *"Secretary" means the Secretary of the State Board.*

**Sec. 8.** *"State Board" means the State Board of Equalization.*

**Sec. 9.** *The provisions of sections 2 to 21, inclusive, of this regulation govern the practice and procedure for proceedings before the State Board to carry out the provisions of NRS 361.395.*

**Sec. 10.** *1. The State Board hereby adopts by reference the Standard on Ratio Studies, July 2007 edition, published by the International Association of Assessing Officers. The Standard on Ratio Studies may be obtained from the International Association of Assessing Officers, 314 West 10th Street, Kansas City, Missouri 64105-1616, or on the Internet at <http://www.iaao.org/store>, for the price of \$10.*

*2. If the publication adopted by reference in subsection 1 is revised, the State Board will review the revision to determine its suitability for this State. If the State Board determines that the revision is not suitable for this State, the State Board will hold a public hearing to review its determination and give notice of that hearing within 30 days after the date of the publication of the revision. If, after the hearing, the State Board does not revise its determination, the State Board will give notice that the revision is not suitable for this State*

*within 30 days after the hearing. If the State Board does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.*

**Sec. 11.** *1. During each annual session of the State Board, the State Board will hold one or more hearings to:*

- (a) Review the tax roll of each county, as corrected by the county board;*
- (b) Determine whether the property in this State has been assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law;*
- (c) Determine whether the taxable values specified in the tax roll of any county must be increased or decreased to equalize property valuations in this State; and*
- (d) Take such additional actions as it deems necessary to carry out the provisions of NRS 361.395.*

*2. Subject to the time limitations specified in NRS 361.380, the State Board may adjourn its annual session from time to time until it has completed its duties pursuant to NRS 361.395 for the applicable fiscal year.*

**Sec. 12.** *In determining whether the property in this State has been assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law, the State Board will consider:*

- 1. The tax roll of each county, as corrected by the county board and filed with the Secretary pursuant to NRS 361.390;*
- 2. The central assessment roll prepared pursuant to NRS 361.3205;*
- 3. The results of any relevant ratio study conducted by the Department pursuant to NRS 361.333;*

4. *The results of any relevant audit of the work practices of a county assessor performed by the Department pursuant to NRS 361.333 to determine whether a county has adequate procedures to ensure that all property subject to taxation is being assessed in a correct and timely manner;*

5. *Any relevant evidence submitted to a county board or the State Board pursuant to NRS 361.355;*

6. *Any information provided to the State Board pursuant to sections 13, 14 and 15 of this regulation; and*

7. *Any other information the State Board deems relevant.*

**Sec. 13. 1.** *In addition to the information contained in the tax roll filed with the Secretary pursuant to NRS 361.390, a county assessor shall, upon the request of the State Board, provide any information the State Board deems necessary to carry out the provisions of NRS 361.395, including, without limitation:*

*(a) The assessor's parcel number for any parcel of property.*

*(b) The taxable value and assessed value determined for any land, improvements or personal property before and after any adjustments to those values by the county board.*

*(c) The value per unit determined for any land or personal property before and after any adjustments to that value by the county board.*

*(d) Land use codes for the county.*

*(e) Market areas in the county.*

*(f) The year in which any improvements were built.*

*(g) The classification of quality for any improvements.*

*(h) The size of any improvements.*

- (i) The size of any lot.*
- (j) The zoning of any property.*
- (k) The date of the most recent sale of any property and the sales price of the property.*
- (l) Summary statistics concerning taxable values and assessed values for tax districts, market areas, neighborhoods and land use codes, including, without limitation, the applicable medians and modes.*

*2. If the State Board desires a county assessor to provide any information pursuant to this section, the State Board will require the Department to send to the county assessor by regular mail a notice of the request which describes the information requested and the format and type of media in which the information is requested. The county assessor shall submit the information to the State Board, in the format and type of media requested, within 10 business days after the date of the postmark on the notice of the request or such a longer period as the State Board, upon the request of the county assessor, may allow.*

*Sec. 14. 1. Upon the request of the State Board, the Department or county assessor shall perform and submit to the State Board any ratio study or other statistical analysis that the State Board deems appropriate to assist it in determining the quality and level of assessment of any class or group of properties in a county.*

*2. Each ratio study or other statistical analysis requested by the State Board pursuant to this section must:*

- (a) Be performed in accordance with the provisions of the Standard on Ratio Studies adopted by reference in section 10 of this regulation, except any specific provision of the Standard on Ratio Studies that conflicts or is inconsistent with the laws of this State or any regulations adopted by the State Board or the Commission;*



*(b) Identify the statistical population that is the subject of the ratio study or statistical analysis, which may be divided into two or more strata according to neighborhood, age, type of construction or any other appropriate criterion or set of criteria; and*

*(c) Include an adequate sampling of each stratum into which the statistical population that is the subject of the ratio study or statistical analysis is divided, and such statistical criteria as may be required, to indicate an accurate ratio of assessed value to taxable value and an accurate measure of equality in assessment.*

*3. The State Board will determine the appropriate time frame from which sales of property may be considered in any ratio study or statistical analysis requested pursuant to this section. If the State Board determines that the appropriate time frame is any period other than the 36 months immediately preceding July 1 of the year before the applicable lien date, the State Board will provide the reasons for that determination to the Department or county assessor.*

*4. The State Board will evaluate each ratio study and statistical analysis performed pursuant to this section to determine whether the ratio study or statistical analysis reliably indicates the quality and level of assessment for the applicable class or group of properties. In making that determination, the State Board will consider:*

*(a) Whether the Department or county assessor used a sufficient number of sales or appraisals in performing the ratio study or statistical analysis;*

*(b) Whether the samples of property selected by the Department or county assessor adequately represent the total makeup of the applicable class or group of properties;*

*(c) Whether the Department or county assessor correctly adjusted the samples of property for market conditions;*

*(d) Whether any variations among sales or appraisal ratios affect the reliability of the ratio study or statistical analysis; and*

*(e) Any other matters the State Board deems relevant.*

**Sec. 15.** *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, the State Board will require the Department to:*

*1. Conduct a systematic investigation and evaluation of the procedures and operations of the county assessor; and*

*2. Report to the State Board its findings concerning whether the county assessor has appraised the property in the county in accordance with the methods of valuation prescribed by statute and the regulations of the Commission.*

**Sec. 16.** *1. If the State Board, after considering the information described in section 12 of this regulation, makes a preliminary finding that any class or group of properties in this State was not assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law, the State Board will:*

*(a) Schedule a hearing concerning that preliminary finding on a date which is not less than 10 business days after the notice of the hearing is mailed pursuant to paragraph (b).*

*(b) Require the Department to send by registered or certified mail a notice of the hearing to the county clerk, county assessor, district attorney and chair of the county board of each county in which any of the property is located. A legal representative of the county may waive the receipt of such notice.*

*(c) Require the Secretary to provide a copy of the notice of the hearing to the Commission and to the board of county commissioners of each county in which any of the property is located.*

*2. The notice of the hearing must state:*

*(a) The date, time and location of the hearing;*

*(b) The information on which the State Board relied to make its preliminary finding that the class or group of properties was not assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law; and*

*(c) The proposed order of the State Board.*

*3. The Department shall include with each notice provided pursuant to paragraph (b) of subsection 1, and upon the request of any interested person, provide to that person, a copy of any analysis or other information considered by the State Board in making its preliminary finding that the class or group of properties was not assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law.*

*Sec. 17. 1. Upon the completion of a hearing scheduled pursuant to section 16 of this regulation, the State Board will issue:*

*(a) An order stating that the State Board will take no action on the matter and specifying the reasons that no action will be taken;*

*(b) An order referring the matter to the Commission for the Commission to take such action within its jurisdiction as the Commission deems to be appropriate;*

*(c) An order requiring the reappraisal by the county assessor of a class or group of properties in a county; or*

*(d) Except as otherwise provided in this paragraph, if a ratio study or other statistical analysis performed pursuant to NRS 361.333 or section 14 of this regulation indicates with a confidence level of at least 95 percent that the median assessment ratio for any class or group of properties is less than 32 percent or more than 36 percent, an order increasing or decreasing the assessed valuation of that class or group of properties by such a factor as the State Board deems to be appropriate to cause the median assessment ratio to be not less than 32 percent and not more than 36 percent. The State Board will not issue such an order if the application of the factor would cause the coefficient of dispersion calculated for the class or group of properties to fail to meet the recommendations set forth in the Standard on Ratio Studies adopted by reference in section 10 of this regulation.*

*2. If the State Board orders the reappraisal of a class or group of properties pursuant to this section, the State Board will:*

*(a) Schedule an additional hearing to determine whether to issue an order:*

*(1) Stating that the State Board will take no further action on the matter and specifying the reasons that no further action will be taken;*

*(2) Referring the matter to the Commission for the Commission to take such action within its jurisdiction as the Commission deems to be appropriate; or*

*(3) Increasing or decreasing the taxable valuation of the class or group of properties in accordance with the reappraisal or in such other manner as the State Board deems appropriate to equalize property valuations.*

*(b) Require the Department to send by registered or certified mail, not less than 10 business days before the date of the additional hearing, notice of the date, time and location of the hearing to the county clerk, county assessor, district attorney and chair of the county*

*board of the county in which the property is located. A legal representative of the county may waive the receipt of such notice.*

*(c) Require the Secretary to notify the Commission and the board of county commissioners of the county in which the property is located, of the date, time and location of the hearing.*

*3. Each order issued pursuant to this section must include a statement of any pertinent findings of fact made by the State Board. If the State Board issues an order pursuant to this section:*

*(a) Requiring the reappraisal of a class or group of properties, the order must specify:*

*(1) The class or group of properties affected;*

*(2) The purpose and objectives of the reappraisal; and*

*(3) The procedures required for the reappraisal, including the particular methods of appraisal prescribed by the regulations of the Commission.*

*(b) Increasing or decreasing the valuation of any class or group of properties, the order must specify:*

*(1) The class or group of properties affected; and*

*(2) The amount of or the formula to be used to calculate the amount of that increase or decrease.*

*4. Upon the issuance of any order pursuant to this section:*

*(a) The Department shall send a copy of the order:*

*(1) By certified mail to the county assessor of each affected county; and*

*(2) By regular mail to the county clerk and chair of the county board of each affected county; and*

*(b) The Secretary shall provide:*

*(1) A copy of the order to the Commission; and*

*(2) Any certification and notice required to carry out the provisions of NRS 361.405.*

*5. As used in this section, "assessment ratio" means the ratio of assessed value to taxable value.*

*Sec. 18. 1. The State Board will require the Department to place on the Internet website maintained by the Department, not less than 10 business days before the date of each hearing scheduled pursuant to section 16 or 17 of this regulation, a copy of the notice of the hearing and of the agenda for the meeting at which the State Board will conduct the hearing.*

*2. If the State Board proposes to issue an order increasing the valuation of any class or group of properties at any hearing scheduled pursuant to section 16 or 17 of this regulation, the State Board will require the Department to provide to each interested person the notice of the hearing required by subsection 2 of NRS 361.395. If the notice is not provided to an interested person by personal service and the mailing address of that person is not available, the Department must send the notice of the hearing by registered or certified mail to the address of the relevant property or, if the interested person has designated a resident agent pursuant to chapter 77 of NRS, the address of that resident agent as it appears in the records of the Secretary of State. For the purposes of subsection 2 of NRS 361.395, the State Board construes the term "interested person" to have the meaning ascribed to it in section 5 of this regulation.*

*Sec. 19. 1. The following persons shall appear at each hearing scheduled pursuant to section 16 or 17 of this regulation:*

*(a) The county assessor of each county in which any of the property that is the subject of the hearing is located or a representative of the county assessor.*

*(b) A representative of the county board of each county in which any of the property that is the subject of the hearing is located.*

*2. At each hearing scheduled pursuant to section 16 or 17 of this regulation:*

*(a) The State Board will receive testimony under oath from interested persons.*

*(b) The county assessor or his or her representative, the representative of the county board and a representative of the board of county commissioners of each county in which any of the property that is the subject of the hearing is located may:*

*(1) Provide additional information and analysis in support of or in opposition to any proposed order of the State Board; and*

*(2) Show cause why the State Board should not increase or decrease the valuation, or require a reappraisal, of the pertinent class or group of properties in the county.*

*3. A hearing scheduled pursuant to section 16 or 17 of this regulation may be held by means of a video teleconference between two or more locations if the video technology used at the hearing provides the persons present at each location with the ability to hear and communicate with the persons present at each other location.*

*4. The presiding member of the State Board may exclude any disruptive person from the hearing room.*

**Sec. 20.** *If the State Board orders any increase or decrease in the valuation of any property in a county pursuant to section 17 of this regulation:*

*1. The county assessor of the county shall, on or before June 30 immediately following the issuance of the order or such a later date as the State Board may require, file with the Department the assessment roll for the county, as adjusted to carry out that order; and*

*2. The Department shall, on or before August 1 immediately following the issuance of the order or such a later date as the State Board may require:*

*(a) Audit the records of the county assessor of the county to the extent necessary to determine whether that order has been carried out; and*

*(b) Report to the State Board its findings concerning whether the county assessor has carried out that order.*

*Sec. 21. The State Board may reconsider any order issued pursuant to section 17 of this regulation in the manner provided in NAC 361.7475, except that:*

*1. A petition for reconsideration must be filed with the Secretary within 5 business days after the date on which the order was mailed to the petitioner; and*

*2. If the State Board takes no action on the petition within 10 business days after the date the petition was filed with the Secretary, the petition shall be deemed to be denied.*

*Sec. 22. NAC 361.682 is hereby amended to read as follows:*

*361.682 1. The provisions of NAC 361.682 to 361.753, inclusive:*

*(a) Govern the practice and procedure in contested cases before the State Board.*

*(b) Except where inconsistent with the provisions of sections 2 to 21, inclusive, of this regulation, apply to proceedings before the State Board to carry out the provisions of NRS 361.395.*

*(c) Will be liberally construed to secure the just, speedy and economical determination of all issues presented to the State Board.*

*2. In special cases, where good cause appears, not contrary to statute, deviation from these rules, if stipulated to by all parties of record, will be permitted.*



**Sec. 23.** 1. This section and sections 2, 8 and 10 of this regulation become effective on April 20, 2010.

2. Sections 1, 3 to 7, inclusive, 9 and 11 to 22, inclusive, of this regulation become effective on October 1, 2010.

# EXHIBIT 4

**FILED**

Electronically

04-23-2013:09:31:58 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3678951

# EXHIBIT 4

Nevada State Board of Equalization

*Certification*

**VILLAGE LEAGUE TO SAVE INCLINE ASSETS vs STATE OF NEVADA et al.**

**Second Judicial District Court**

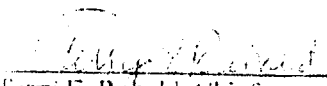
**Case No: CV 13-00522**

I, Terry Rubald, Chief, Division of Local Government Services, Nevada Department of Taxation, do hereby certify that all documents included on the attached disks submitted herewith are the record for the Writ of Mandamus.

1. Equalization Record Certification
2. Notices
3. Agendas
4. Transcripts
5. Assessor Responses
6. County Responses
7. Washoe County Brief to SBE Regarding Statewide Equalization
8. Writ of Mandamus - Order and Judgment
9. Regulations - Statutes
10. NRS & NAC - SBE Hearing Guidelines
11. Washoe Co list of IV-CB Land 03-04, 04-05, 05-06
12. Taxpayer Petitions and Evidence - Fulstone Correspondence 2012
13. Master Files Incline Village - Crystal Bay
14. Ratio Studies Adopted by NTC
15. Lake Tahoe Study
16. Performance Audits
17. Ag Land, Open Space and Historic Site Study March 2004
18. Ag Manual 2013-14 - Final Adopted 03-09-12
19. Files Received from AG 09-28 - Harris 1st JD 08-0C-00032 1B
20. Case 05-01451A Village League to Save Incline Assets
21. Case 06-00813A Barta, Ingemanson
22. Case Ingemanson Dean vs SBE 1st JDC 09-0C-00332 1B April 27-29 2009 Hearing Info
23. Case Record of Field, Anders O. Jr. & Henderson, Tom SBE 08-472 & 08-1162b
24. Case SBE vs Bakst SC Case 46752 Appellants' Appendix 10 Volumes
25. Case SBE vs Bakst SC Case 46752 Respondents' Appendix 11 Volumes
26. Case Village League 2nd JD CV03-06922 Jt App I II III IV / 2nd JD Case
27. Case Village League Assets Inc. vs SBE 1st JD Case 07-02-01720 1B
28. Case WC vs SBE 1st JD 09-0C-00494 1B
29. Case SBE vs Barta Joint Appendix Volumes I-38
30. Court Orders-Cases-Summaries

The undersigned further certifies that a copy of this Certification was hand delivered on the 10th day of April 2013 to:

Dawn (Kemp) Buoneristiani  
Deputy Attorney General  
Office of Nevada Attorney General  
100 N. Carson Street  
Carson City, NV 89701

  
Terry E. Rubald, Chief  
Division of Local Government Services  
State Board of Equalization

# EXHIBIT 5

**FILED**

Electronically

04-23-2013:09:31:58 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3678951

# EXHIBIT 5

SUBMISSION  
OF INCLINE VILLAGE/CRYSTAL BAY  
RESIDENTIAL PROPERTY OWNER/TAXPAYERS

EQUALIZATION HEARING

SEPTEMBER 18, 2012

SUELLEN FULSTONE  
SNELL & WILMER  
6100 NEIL ROAD, SUITE 555  
RENO, NEVADA 89511  
ATTORNEYS FOR VILLAGE LEAGUE TO SAVE INCLINE ASSETS  
AND INCLINE VILLAGE/CRYSTAL BAY  
RESIDENTIAL PROPERTY OWNER TAXPAYERS

## 1. INTRODUCTION

Incline Village/Crystal Bay taxpayer equalization grievances arise out of the Washoe County Assessor's 2002 mass reappraisal of Incline Village/Crystal Bay residential properties. The 2002 mass reappraisal provided the base valuation for all Incline Village/Crystal Bay residential properties for the 2003/2004 tax year and for the subsequent four tax years: 2004/2005, 2005/2006, 2006/2007 and 2007/2008. No actual physical reappraisal was done for the 2004/2005, 2005/2006, 2006/2007 and 2007/2008 tax years.

The property valuations established by the 2002 mass reappraisal of Incline Village/Crystal Bay residential properties were null, void, unjust, inequitable and unconstitutional. The Nevada Supreme Court made that determination in *State Board of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006), after determining that those valuations had been made using methodologies which were not approved by the Nevada Tax Commission, were not used elsewhere in Washoe County, and were not used elsewhere in the State of Nevada. The use of such unauthorized and non-uniform methodologies violated the constitutional requirement of equal and uniform taxation.

In *Bakst*, the Supreme Court held that the valuations established by the 2002 reappraisal were null and void. For the taxpayer parties in that case, the Supreme Court itself set the valuations of Incline Village and Crystal Bay residential property for the 2003/2004 tax year at their 2002/2003 (pre-2002 appraisal) constitutional levels. In *State Board of Equalization v. Barta*, 124 Nev. 58, 188 P.3d 1092 (2008), the Supreme Court looked at those same 2002 reappraisal valuations, this time as reflected in the 2004/2005 tax year valuations of Incline Village/Crystal Bay residential properties. In *Barta* as in *Bakst*, the Court held those valuations null and void. Again, for the taxpayer parties in the *Barta* case, the Court set their 2004/2005 valuations at 2002/2003 constitutional levels.

Following the *Bakst* and *Barta* decisions, the Carson City District Court set aside the 2005/2006 valuations of Incline Village/Crystal Bay residential property because they likewise were based on the unconstitutional 2002 reappraisal. Consistent with the Supreme Court decisions, the Carson Court set valuation levels to their 2002/2003 constitutional levels and then applied the "factor" developed by Washoe County for the 2005/2006 tax year. In the following two years, this State Board of Equalization itself set aside the Washoe County Assessor's 2006-2007 and 2007-2008 valuations of Incline Village/Crystal Bay residential property because those valuations were still based on the unconstitutional 2002 reappraisal.<sup>1</sup> The Board set the values at their 2002/2003 constitutional levels and again applied the Assessor's "factors" to reach the Board's final valuation.

Those 2003/2004, 2004/2005, 2005/2006, 2006-2007, and 2007-2008 decisions affected individual taxpayer property owners who brought constitutional challenges to their property valuations. The unconstitutional 2002 reappraisal, however, included all residential properties at Incline Village/Crystal Bay, rendering all such base valuations unconstitutional.<sup>2</sup> Addressing equalization claims for all residential property owners in Incline Village/Crystal Bay for the 2006/2007 tax year, this Board vacated the Assessor's valuations (which were based on the 2002 unconstitutional reappraisal) and established the 2006/2007 values for all residential properties at Incline Village/Crystal Bay to their 2002/2003 levels. Incline Village/Crystal Bay taxpayers ask for similar equalization of all residential properties at Incline Village/Crystal Bay for the 2003/2004, 2004/2005, 2005/2006 and 2007-2008 tax years.

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<sup>1</sup> See, e.g., *Village League v. State Bd. of Equalization* ("Village League"), 194 P.3d 1254, 124 Nev. 1079 (Nev., 2008); *Berrum v. Otto* ("Otto I"), 255 P.3d 1269, 127 Nev. Adv. Op. 30 (Nev., 2011); *Washoe County v. Otto* ("Otto II"), 128 Nev. Adv. Op. No. 40 (Nev., 2012).

<sup>2</sup> There are approximately 9000 residential properties in the Incline Village/Crystal Bay area. That number will be used as a benchmark in this submission.

The Constitutional requirement of uniformity as well as this Board's equalization obligation and its equalization precedent requires that the unconstitutional base valuations of all Incline Village/Crystal Bay residential properties for the tax years 2003/2004, 2004/2005, 2005/2006 and 2007/2008 be set aside and those base valuations reset to 2002-2003 constitutional levels. All Incline Village/Crystal Bay residential property owners are justly entitled to the same valuations as the constitutionally mandated individual valuations set by the courts for those tax years. Completion of the equalization process pursuant to the Writ of Mandamus issued on August 21, 2012, will provide justice to Incline Village/Crystal Bay residential property owner-taxpayers and will finally put a close to this long pending dispute.

## II. STATEMENT OF FACTS

### A. The 2003/2004 tax year

These equalization grievances begin with the 2003/2004 tax year. The salient facts have been determined by the Nevada Supreme Court. In *Bakst*, the Court wrote as follows:

In 2002, . . . [the] Washoe County Assessor . . . performed a mass reappraisal of the properties in [the Incline Village-Crystal Bay] area to determine their taxable values for the 2003-2004 tax year. \* \* \* In completing appraisals, county assessors must use the 'sales comparison approach,' which is a standard method to determine the full cash value of land on which its taxable value is based; under this approach, comparable sales of land in the same area are examined. \*\*\* Concerned that it would be difficult to determine comparable sales for land in the Incline Village/Crystal Bay area for the 2003-2004 tax year, the Assessor decided to use four methodologies to adjust comparable sales for the reappraisal period.

The Court

conclude[d] that the methodologies used are invalid. Specifically, their inconsistent application violated the uniform and equal rate of assessment required by Article 10 of the Nevada Constitution. **The 2003-2004 valuations, which were based on those methodologies, are therefore unjust and inequitable. Any taxes collected that can be attributed to those invalid methodologies**



(6) The findings and rulings of the Supreme Court in *Bakst*, *Barta*, *Village League*, *Otto I* and *Otto II*.

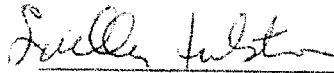
Since this massive record evidence is either a matter of public record or already in the Board's possession, taxpayers have not provided unnecessary duplicated materials. Taxpayers request that the Board make the evidence in its record available at the time of the hearing in this matter.

#### IV. ARGUMENT

Every taxpayer has the right to a uniform and equal rate of assessment and taxation guaranteed by Article 10, Section 1 of the Nevada Constitution. As set forth by the Supreme Court in *Bakst* and *Barta*, a property value determined using unauthorized, unconstitutional, non-uniform methods is necessarily unjust and inequitable. This Board's equalization function serves to effectuate the Constitutional mandate of equal and uniform taxation. In this instance, the Supreme Court has determined more than once that the 2002 mass reappraisal of Incline Village/Crystal Bay residential properties was based on unauthorized methodologies and resulted in inequitable, unjust and unconstitutional valuations. Under the 5-year reappraisal cycle, that unconstitutional mass reappraisal contaminated residential property valuations at Incline Village/Crystal Bay for each of the 2003/2004, 2004/2005, 2005/2006, 2006/2007 and 2007/2008 tax years. The law anticipates that not every taxpayer will seek individual relief from unconstitutional taxation. In such circumstances, the State Board of Equalization is assigned both the power and the ultimate responsibility for equal, uniform and constitutional valuation. This Board met that responsibility for the 2006/2007 tax year. Under the decisions of the Supreme Court, the Writ of Mandamus underlying this proceeding, the statutes, and this Board's own precedent, this Board must complete the equalization process for the 2003/2004, 2004/2005, 2005/2006 and 2006/2007 tax years, set aside the indisputably unconstitutional property valuations for those years for Incline Village/Crystal Bay residential properties and the taxpayer

owners of those properties, establish valuations at constitutional levels and put an end to this long-standing dispute.

Respectfully submitted this 13th day of September, 2012.



Suellen Fulstone  
Snell & Wilmer  
6100 Neil Road, Suite 555  
Reno, Nevada 89511

Attorneys for Village League to Save Incline Assets  
and Incline Village/Crystal Bay Residential  
Property Owner/Taxpayers

**FILED**

Electronically

07-01-2013:10:45:25 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3825250

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., a Nevada  
non-profit corporation, on behalf of  
their members and other similarly  
situated; MARYANNE  
INGEMANSON, Trustee of the Larry  
D. and Maryanne B. Ingemanson  
Trust, DEAN R. INGEMANSON,  
individually and as Trustee of the  
Dear R. Ingemanson; J. ROBERT  
ANDERSON; and LES BARTA; on  
behalf of themselves and others  
similarly situated,

Case No.: CV03-06922 (and  
consolidated case  
CV13-00522)

Dept. No.: 7

Petitioners,

vs.

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

Respondents.

**ORDER**

Petitioner Village League to Save Incline Assets, Inc. (hereinafter "Village  
League"), a group of residents from Incline Village and Crystal Bay, Nevada, seeks  
to set aside a recent determination by the State Board of Equalization ("the Board")  
ordering certain properties in the Incline Village and Crystal Bay communities to be  
appraised to determine their taxable value.

1           This *Petition for Judicial Review and Objections to State Board of*  
2 *Equalization Report and Order* stem from lengthy litigation in which the members  
3 of Village League believed their residential properties were improperly assessed by  
4 Washoe County resulting in an increased tax burden. Specifically, Village League  
5 contended the county used impermissible factors, such as views of and proximity to  
6 Lake Tahoe, in determining the taxable value of its members' property. That issue  
7 went to the Nevada Supreme Court, which ultimately decided the County's use of  
8 such factors was unconstitutional. *See State Board of Equalization v. Bakst*, 122  
9 Nev. 1403, 148 P.3d 717 (2006). In light of that decision, this court entered a Writ of  
10 Mandamus ordering the Board to hold public hearings to determine the grievances  
11 of Village League and its members. The Writ also envisioned the possibility that  
12 new valuations of the property would be made and that the County may have to  
13 "issue such additional tax statement(s) or tax refund(s) as the changed valuation  
14 may require."

15           In response to the Writ, the Board held several meetings in 2012 addressing  
16 Village League, and other taxpayers', grievances. After the public hearings, the  
17 Board issued Equalization Order 12-001. In that Order, the Board found many  
18 parcels of residential property in the Incline Village and Crystal Bay communities  
19 had been assessed based upon unconstitutional factors. The Board therefore ordered  
20 the Washoe County Assessor to "reappraise all residential properties located in  
21 Incline Village and Crystal Bay to which an unconstitutional methodology was  
22 applied to derive taxable value" using constitutional methodologies. In response to  
23 the Board' Equalization Order, Village league filed *Objections to State Board of*  
24 *Equalization Report and Order* in the original case (CV03-06922) and a *Petition for*  
25 *Judicial Review* (CV13-00522). Those cases have now been consolidated by order of  
26 this court. In both documents Village League argues, *inter alia*, that the Board is  
27 not properly constituted and that it lacks the authority to order reappraisals. The  
28 Board and the County have moved to dismiss the petition.

1           Among the arguments in support of the motions to dismiss is that the Board's  
2 Equalization order is not final and, therefore, not reviewable. All parties agree that  
3 the Board's order is not a final determination of Village League's grievances, though  
4 Petitioner invokes the provisions of NRS 233B.130(1)(b) in support of its petition.  
5 That section provides that "[a]ny preliminary, procedural or intermediate act or  
6 ruling by an agency in a contested case is reviewable if review of the final decision  
7 of the agency would not provide an adequate remedy." Petitioner asserts that  
8 permitting the Board to go forward, allegedly in excess of its jurisdiction and  
9 without authority, would cause irreparable harm and leave the members of Village  
10 League without an adequate remedy. The court disagrees.

11           Pursuant to the Board's order, the Washoe County Assessor will appraise the  
12 residential properties in Incline Village and Crystal Bay that were previously  
13 assessed in an unconstitutional manner. While the Board and the parties classify  
14 this as a "reassessment," the use of that term is not necessarily clear. Yes, an  
15 assessment has previously been done on these properties. However, those  
16 assessments were based upon constitutionally infirm factors and are thus null and  
17 void. There is no current valid assessment of any of the properties in question. Once  
18 the assessments are completed, the Board may then seek additional taxes or refund  
19 taxes to the homeowners based upon the new valuation of their property for the  
20 years in question. At that point, any homeowners who disagree with the valuations  
21 of their property have an adequate remedy at law by challenging those valuations  
22 through the normal and standard process for challenging tax assessments.  
23 Declining to rule on the petition at this time does not preclude the members of  
24 Village League from obtaining necessary relief, if any is required, in the future.  
25 Accordingly, Defendants' *Motions to Dismiss Petitioner's Petition for Judicial*  
26 *Review* are **GRANTED**.

27 ///

28 ///

1 For the same reasons, Petitioner's *Objections to State Board of Equalization*  
2 *Report and Order* are **DENIED** for lack of ripeness. The court also notes that the  
3 method of filing objections to the Board's order as opposed to seeking a second writ  
4 of mandamus appear to be procedurally dubious. Finally, it is **HEREBY**  
5 **ORDERED** that the stay issued by this court on April 1, 2013 prohibiting the  
6 Board from implementing the Equalization Order is **LIFTED**.

7 **IT IS SO ORDERED.**

8 DATED this 16<sup>th</sup> day of July ~~June~~ 2013.

9  
10 Patrick Flanagan  
11 PATRICK FLANAGAN  
12 District Judge  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 1st day of ~~June~~ <sup>July</sup>, 2013, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

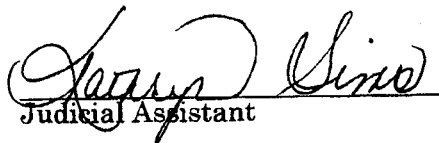
David Creekman, Esq. for Washoe County et al.

Dawn Buoncristiani, Esq. for State Board of Equalization

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

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

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

  
Judicial Assistant

1 3795  
Norman J. Azevedo, Esq. #3204  
2 405 N. Nevada Street  
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3 775.883.7000  
775.883.70001 fax  
4 [norm@nevadatatlawyers.com](mailto:norm@nevadatatlawyers.com)  
Attorney for Intervenor

5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9 VILLAGE LEAGUE TO SAVE INCLINE )  
ASSETS, INC., a Nevada non-profit )  
10 corporation, on behalf of their members and )  
others similarly situated; MARYANNE )  
11 INGEMANSON, Trustee of the Larry D. and )  
Maryanne B. Ingemanson Trust; DEAN R. )  
12 INGEMANSON, individually and as Trustee )  
of the Dean R. Ingemanson Trust; J. ROBERT )  
13 ANDERSON; and LES BARTA; on behalf of )  
themselves and others similarly situated; )

14 Plaintiffs, )  
15 )

16 vs. )

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

19 Defendants. )  
20 )

Case No.: CV03-06922

Dept. No.: 7

21 **REPLY TO THE STATE BOARD OF EQUALIZATION'S OPPOSITION TO THE**  
22 **BAKST INTERVENORS' MOTION TO INTERVENE**

23 COME NOW Intervenor, Ellen Bakst, Jane Barnhart, Carol Buck, Daniel Schwartz,  
24 Larry Watkins, Don & Patricia Wilson and Agnieszka Winkler, hereinafter referred to as the  
25 BAKST INTERVENORS, by and through its counsel of record, Norman J. Azevedo, Esq., and  
26 hereby submits its REPLY TO THE STATE BOARD OF EQUALIZATION'S OPPOSITION  
27 TO THE BAKST INTERVENORS' MOTION TO INTERVENE, and Washoe County's Joinder  
28 in the State Board of Equalization ("SBOE") Opposition.



1 **I. INTRODUCTION**

2 The SBOE filed an Opposition to the BAKST INTERVENORS' Motion to Intervene in  
3 the case before the Court. Washoe County filed a Joinder in the SBOE's Opposition to the  
4 BAKST INTERVENORS' Motion to Intervene. The SBOE offers two (2) grounds why the  
5 BAKST INTERVENORS' Motion to Intervene should be denied by the Court. First, the SBOE  
6 argues that the BAKST INTERVENORS' interest are adequately represented by the existing  
7 Plaintiffs in the case and second, that the BAKST INTERVENORS did not timely file its request  
8 for intervention in the case pending before the Court. The BAKST INTERVENORS will address  
9 each point raised by the SBOE and show that both points are as a matter of fact and law  
10 erroneous and that the BAKST INTERVENORS are entitled to intervention in the case before  
11 the Court.

12 **II. POINTS AND AUTHORITIES**

13 (a) **The BAKST INTERVENORS are entitled to intervention pursuant to NRS 12.130**  
14 **and NRCP 24**

15 In the Motion for Intervention, the BAKST INTERVENORS sought intervention  
16 pursuant to NRS 12.130 and NRCP 24. The SBOE did not address why the BAKST  
17 INTERVENORS are not entitled to intervention pursuant to NRS 12.130. The SBOE only  
18 addressed why the BAKST INTERVENORS are not entitled to intervention as a matter of right  
19 pursuant to NRCP 24(b).

20 NRS 12.130(1)(a) provides as follows:

21 **NRS 12.130 Intervention: Right to intervention;**  
22 **procedure, determination and costs; exception.**

23 (a) Before the trial, any person may intervene in an  
24 action or proceeding, who has an interest in the  
25 matter in litigation, in the success of either of the  
26 parties, or an interest against both.

25 The statutory language of NRS 12.130(1)(a) is clear in that a person may seek  
26 intervention in an action or proceeding if that person "has an interest in the matter in litigation, in  
27 the success of either of the parties or an interest against both." In the matter before the Court, the  
28 BAKST INTERVENORS clearly have an interest in the matter in litigation. The SBOE, on

1 February 8, 2013, ordered a reappraisal of the BAKST INTERVENORS' residential properties  
2 for the 2003/2004, 2004/2005 and 2005/2006 tax years. Each of the BAKST INTERVENORS  
3 have received one or more judgments from the Nevada Supreme Court determining their taxable  
4 value for their homes for the 2003/2004, 2004/2005 and 2005/2006 tax years. After receiving  
5 favorable judgments from the Nevada Supreme Court, the SBOE, on February 8, 2013, ordered  
6 the County Assessor ("Assessor") to start the entire appraisal process for 2003/2004, 2004/2005  
7 and 2005/2006, all over again for the 8,700 residential properties in Incline Village and Crystal  
8 Bay. In the event the Assessor determines a different taxable value (higher or lower) for the  
9 BAKST INTERVENORS' residences, the entire ad valorem property tax dispute process again  
10 will commence.

11 The judicial doctrines of res judicata and collateral estoppel preclude the State and  
12 County from reappraising or otherwise re-litigating the taxable values for the 2003/2004,  
13 2004/2005 and 2005/2006 tax years, and as a result, the BAKST INTERVENORS have a direct  
14 and substantial interest in the matter before the Court as required by NRS 12.130. Based on the  
15 express language of NRS 12.130(1)(a), the BAKST INTERVENORS are entitled to intervention  
16 in the matter before the Court, and the BAKST INTERVENORS are entitled to party status in the  
17 case.

18 **(b) The BAKST INTERVENORS are entitled to intervene in the case before the Court**  
19 **as a matter of right pursuant to NRCP 24(a)**

20 **1. The BAKST INTERVENORS made timely application with this Court**  
21 **seeking intervention in the case**

22 **(i) The BAKST INTERVENORS' parcels were not considered for**  
23 **equalization prior to the SBOE issuing its February 8, 2013 Order**

24 The SBOE offers for the Court's consideration a three (3) prong test to determine whether  
25 the BAKST INTERVENORS' motion to intervene is timely pursuant to NRCP 24. Specifically,  
26 the SBOE offers the following:  
27  
28

1 "In determining whether a motion for intervention is  
2 timely, we consider three factors: "(1) the stage of  
3 the proceeding at which an applicant seeks to  
4 intervene; (2) the prejudice to other parties; and (3)  
5 the reason for any length of the delay." *League*, 131  
6 F.3d at 1302 citing *County of Orange v. Air*  
7 *California*, 799 F.2d 535, 537 (9<sup>th</sup> Cir.1986).  
8 "Delay is measured from the date the proposed  
9 intervenor should have been aware that its interests  
10 would not longer be protected adequately by the  
11 parties, not the date it learned of the litigation."  
12 *U.S. v. State of Washington*, 86 F.3d 1499, 1503 (9<sup>th</sup>  
13 Cir. 1996) (citation omitted). "In considering these  
14 factors, however, we must bear in mind that 'any  
15 substantial lapse of time weighs heavily against  
16 intervention.'" *League*, 131 F.3d at 1303 quoting  
17 *U.S. v. Washington*, 86 F.3d 1499 (1996).

18 See SBOE's Opposition @ p.20:5-15.

19 In furtherance of these legal authorities, the SBOE then proceeds to argue that because the  
20 case before the Court began in 2003, over ten (10) years ago, the BAKST INTERVENORS'  
21 Motion for Intervention is untimely because both the District Court and the Nevada Supreme  
22 Court have already made numerous rulings in this matter, and also because the SBOE has had  
23 several equalization hearings, all of which the BAKST INTERVENORS neither sought  
24 intervention in nor participated in the matter See SBOE's Opposition @ p.21:2-5.

25 It is true, this case was filed in 2003 and has been litigated for the last ten (10) years by  
26 the parties. It is also true that the BAKST INTERVENORS did not participate in the  
27 administrative proceedings before the SBOE, nor seek intervention in the District Court or the  
28 Nevada Supreme Court matters. What is missing from the SBOE's analysis in this regard is that  
all of the proceedings before the SBOE, prior to the issuance of its February 8, 2013 Order,  
specifically excluded the BAKST INTERVENORS' taxable values for their homes for possible  
equalization action by the SBOE.

Prior to the February 8, 2013 Order of the SBOE, the BAKST INTERVENORS'  
residential properties were not being considered for potential equalization action presumably  
because they had received a favorable decision from the Nevada Supreme Court for the  
2003/2004, 2004/2005 and 2005/2006 tax years. It was not until the SBOE rendered its written

1 decision on February 8, 2013, did the BAKST INTERVENORS know that the Equalization  
2 Order of the SBOE was now applicable to their homes.

3 A review of the administrative proceedings before the SBOE provide that the BAKST  
4 INTERVENORS' residential properties were not being considered for potential equalization  
5 action. During the equalization hearings, the Assessor was required to prepare schedules for each  
6 respective tax year showing what parcels had been subjected to one of the four (4)  
7 unconstitutional methods of valuation as determined by *Bakst I* and *Bakst II*. The schedules  
8 further illustrated the difference between the taxable value originally determined by the Assessor  
9 as compared to the 2002/2003 taxable value ordered by the Nevada Supreme Court in *Bakst I* and  
10 *Bakst II*. Attached as Exhibit 1 to this brief are the Assessor's schedules submitted to the SBOE  
11 in December 2012. Given the length of the Assessor's schedules in Exhibit 1, 560 pages, the  
12 BAKST INTERVENORS have attached a disk including the same as opposed to a paper copy.

13 The Assessor's schedules were intended to define the potential scope of the SBOE's  
14 equalization action with regard to Incline Village and Crystal Bay. A review of the Assessor's  
15 schedules to the SBOE provide the following with regard to the BAKST INTERVENORS'  
16 residential properties:

17 1. The following residential parcel owned by a BAKST INTERVENOR was not  
18 included in the Assessor's schedules.

19	NAME	PARCEL NUMBER
20	Dan Schwartz	122-530-32

21 2. The following residential parcels owned by the BAKST INTERVENORS were  
22 included in the Assessor's schedules, but the impact of the proposed equalization action of the  
23 SBOE was shown as "zero".

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The BAKST INTERVENORS did not pursue litigation with regard to the 2005/2006 tax year. The property tax abatement provisions made the economic impact for the 2005/2006 tax year not material. Accordingly, the Assessor's schedules show a reduction in taxable value for the 2005/2006 tax year but the economic impact in tax dollars was not material.

	NAME	PARCEL NUMBER
1		
2	Ellen Bakst	122-181-51
3	Jane Barnhart	128-071-04
4	Carol Buck	123-021-02
5	Larry Watkins	126-262-09
6	Don & Patricia Wilson	125-413-04
7	Agnieszka Winkler	123-260-07

8       Based on the Assessor's schedules which were submitted into "evidence" before the  
9 SBOE, it is clear that prior to the February 8, 2013 Order of the SBOE, the BAKST  
10 INTERVENORS' residential parcels were not being considered by the SBOE as subject to  
11 potential equalization action. First, as to homeowner Schwartz, his name and parcel was not  
12 even included on any list submitted by the Assessor to the SBOE. The only reasonable  
13 conclusion that could be drawn from such an omission by the Assessor is that the potential  
14 equalization action of the SBOE would not apply to Schwartz.

15       As to the remaining BAKST INTERVENORS, as calculated by the Assessor, the impact  
16 of a potential equalization action by the SBOE was projected to be "zero." Why would a  
17 homeowner intervene in an action when either their name and parcel number was excluded from  
18 the list of parcels that were being considered by the SBOE as part of its equalization action, or  
19 alternatively, the potential economic impact that the SBOE's equalization action would have was  
20 projected by the local Assessor to be "zero"? No homeowner would intervene in an action that  
21 either excluded their parcel or indicated that the equalization action would have zero impact on  
22 their particular parcel. To suggest otherwise defies common sense, especially when the  
23 homeowner had previously received a favorable decision from the Nevada Supreme Court  
24 determining their taxable value. It was not until February 8, 2013, did the BAKST  
25 INTERVENORS definitively know that the SBOE had chosen to disregard the *Bakst I* and *Bakst*  
26 *II* Nevada Supreme Court decision and ordered a reappraisal of their residential parcels.

27       Therefore, as provided by the SBOE in its Opposition, the timeliness of an intervenors'  
28 motion is calculated from the date the intervenor became aware that their interests were no longer

1 protected by the parties and not from the date it learned of the litigation. Specifically, the SBOE  
2 offered the following:

3 "Delay is measured from the date the proposed  
4 intervenor should have been aware that its interests  
5 would not longer be protected adequately by the  
6 parties, not the date it learned of the litigation."  
7 *U.S. v. State of Washington*, 86 F.3d 1499, 1503 (9<sup>th</sup>  
8 Cir. 1996) (citation omitted).

9 Applying that legal standard provided by the SBOE to the case before the Court, the  
10 BAKST INTERVENORS were aware that their parcels had been excluded from proposed  
11 equalization action by the Assessor, and only upon receipt of the February 8, 2013 Order of the  
12 SBOE did the BAKST INTERVENORS become aware that the SBOE had altered the original  
13 nature of the SBOE's proposed equalization action to also include residential parcels that had  
14 their taxable value determined by Nevada Supreme Court decisions. After the BAKST  
15 INTERVENORS became aware that the SBOE altered the original equalization action, the  
16 BAKST INTERVENORS filed their Motion to Intervene 46-days later, which is clearly timely.  
17 The fact that the underlying litigation had been proceeding for over ten (10) years is of no  
18 moment because the entire nature of the proposed SBOE's equalization action was radically  
19 changed on February 8, 2013.

20 (ii) **The BAKST INTERVENORS could not have reasonably anticipated**  
21 **that the SBOE would impose NAC 361.665 retroactively to order a**  
22 **reappraisal of their properties**

23 For tax years 2003/2004, 2004/2005 and 2005/2006, NRS 361.395 was the only legal  
24 authority "statute or regulation" that addressed the constitutionally mandated obligation of the  
25 SBOE to equalize values statewide. Prior to 2010, there was no authority that provided the  
26 SBOE with the ability to order a local Assessor to reappraise any parcel of land let alone an  
27 entire community. The BAKST INTERVENORS relying upon the only statute that addressed  
28 equalization during the 2003/2004, 2004/2005 and 2005/2006 tax years, never envisioned the  
possibility of a SBOE ordered reappraisal by the local Assessor because NRS 361.395 did not  
bestow such authority upon the SBOE.

1 In 2010, the SBOE adopted a regulation, namely NAC 361.665, that provided the SBOE  
2 with the authority to order a local Assessor to reappraise an area within the Assessor's county.  
3 Since NAC 361.665 was adopted pursuant to Chapter 233B of the Nevada Revised Statutes,  
4 NAC 361.665 only had prospective application. See NRS 233B.070. NAC 361.665 became  
5 effective in calendar year 2010, when that regulation was filed with the Nevada Secretary of  
6 State. Since the SBOE lacked any legal authority to order a local Assessor to engage in  
7 reappraisal prior to 2010, the BAKST INTERVENORS never envisioned that the SBOE would  
8 retroactively apply a regulation to a period of time seven (7) years prior to its effective date in  
9 violation of NRS 233B.070. Again, only upon receipt of the February 8, 2013 Order of the  
10 SBOE, did the BAKST INTERVENORS know that the SBOE was applying its regulation  
11 retroactively to order the Assessor to reappraise their residential properties.

12 Based on the foregoing factual points, it is evident that the nature of the proposed  
13 equalization action of the SBOE changed significantly on February 8, 2013, and it was the  
14 rendering of that Order that lead the BAKST INTERVENORS to the conclusion that their  
15 interest in their two (2) Supreme Court decisions, *Bakst I* and *Bakst II*, had now been called into  
16 question by the SBOE's Order and intervention in the case before the Court was necessary to  
17 protect their prior Nevada Supreme Court's decisions.

18 **(c) The existing plaintiffs in the case cannot adequately represent the interest of the**  
19 **BAKST INTERVENORS**

20 The SBOE in its Opposition provides as authority the following:

21 The burden ... is on the applicant for intervention to  
22 show that this interests are not adequately  
23 represented by the existing parties. This burden  
24 may be discharged in two ways. The applicant may  
25 demonstrate that its interests, though similar to  
26 those of an existing party, are nevertheless  
27 sufficiently different that the representative cannot  
28 give the applicant's interests proper attention.  
Alternatively, the applicant may establish collusion  
between the representative and an opposing party,  
or an indication that the representative has not been  
diligent in prosecuting the litigation. *Hoots v. Com.*  
*of Pa.*, 682 F.2d 1133, 1135 (3<sup>rd</sup> Cir. 1982).

See SBOE's Opposition @ p.17:17-21.

1 The SBOE offers that because three (3) of the Plaintiffs (Ingemanson, Barta and  
2 Anderson) in the underlying action were also parties to *Bakst I* and *Bakst II*, that those Plaintiffs  
3 can adequately represent the interest of the BAKST INTERVENORS. It is true that three (3) of  
4 the Plaintiffs in the action before the Court were also Respondents in *Bakst I* and *Bakst II*. This  
5 factual similarity, while true, only establishes that those Plaintiffs cannot adequately address the  
6 BAKST INTERVENORS interests and did not address the concerns of the BAKST  
7 INTERVENORS in the matter before the Court. A review of the objection filed February 20,  
8 2013, by the Plaintiffs, in response to the February 8, 2013 Order by the SBOE, illustrates that  
9 the interest of the Plaintiffs in this case are sufficiently different than the interest of the BAKST  
10 INTERVENORS. The objection filed by the Plaintiffs does not even mention that the SBOE's  
11 Order was precluded by the application of the judicial doctrines of res judicata, collateral  
12 estoppel or the other arguments raised by the BAKST INTERVENORS. The Plaintiffs' concerns  
13 rests with the approximate 8,700 parcels that may be subject to the SBOE's Order. The ability of  
14 one Plaintiff or even a handful of Plaintiffs to represent 8,700 separate parcels, while possible,  
15 does deprive those Plaintiffs of the ability to address specific issues applicable to specific parcels,  
16 especially when those parcels are themselves physically unique, as well as having been the  
17 recipient of a Nevada Supreme Court decisions, as is the case for the BAKST INTERVENORS.  
18 The BAKST INTERVENORS interests are specific to their residential parcels and those  
19 homeowners are entitled to bring those issues to the attention of the Court.

20 **(d) The BAKST INTERVENORS are entitled to permissive intervention pursuant to**  
21 **NRCP 24(b) in the proceeding pending before the Court**

22 Even if the Court does conclude that the existing Plaintiffs can adequately represent the  
23 interests of the BAKST INTERVENORS, and that intervention as a matter of right is not  
24 appropriate, intervention by the BAKST INTERVENORS is still permissible pursuant to NRCP  
25 24(b).



1 NRCP 24(b) provides as follows:

2 **RULE 24. INTERVENTION**

3 (b) Permissive Intervention. Upon timely  
4 application anyone may be permitted to intervene in  
5 an action: (1) when a statute confers a conditional  
6 right to intervene; or (2) when an applicant's claim  
7 or defense and the main action have a question of  
8 law or fact in common. In exercising its discretion  
9 the court shall consider whether the intervention  
10 will unduly delay or prejudice the adjudication of  
11 the rights of the original parties.

12 Intervention is permitted pursuant to NRCP 24(b) when a party makes timely application  
13 to intervene in an action, and the applicant's claim or defenses and the main action have a  
14 common questions of law or fact. First, the BAKST INTERVENORS did make a timely  
15 application to the Court as explained above. Second, the BAKST INTERVENORS defense that  
16 the SBOE's Order directing the Assessor to engage in a reappraisal of the 2003/2004, 2004/2005  
17 and 2005/2006 tax years is prohibited pursuant to the judicial doctrines of res judicata and  
18 collateral estoppel is in common with any property owner from Incline Village and Crystal Bay  
19 who previously have received a refund as ordered by a decision, judicial or administrative in  
20 nature. Therefore, even if intervention by right is not available to the BAKST INTERVENORS,  
21 permissible intervention is available to the BAKST INTERVENORS.

22 (e) **The application of the common law doctrines of res judicata and collateral estoppel  
23 preclude the SBOE from ordering a reappraisal of the BAKST INTERVENORS' property**

24 The SBOE in Footnote 13 on page 26 of its Opposition, offers that the judicial doctrines  
25 of res judicata and collateral estoppel are inapplicable because equalization is different than  
26 assessment and that there is no final decision on equalization. Specifically, the SBOE provides  
27 as follows:

28 Equalization is different than assessment.  
"Assessment is the act of placing a value of tax  
purposes upon the property of a particular taxpayer.  
Equalization, on the other hand, is the act of raising  
or lowering the total valuation placed upon a class,  
or subclass, of property in the aggregate.  
Equalization deals with all the property of a class or  
subclass within a designated territorial limit, such as  
a county, without regard to who owns the individual  
parcels making up the class of subclass.

1 Assessment relates to individual properties;  
2 equalization relates to classes of property  
3 collectively." *Board of Sup'rs of Linn County v.*  
4 *Department of Revenue*, 263 N.W. 2d 227, 236  
(Iowa 1978).

5 See SBOE's Opposition @ p.26:21-24.

6 Based on these authorities, the SBOE draws this conclusion:

7 There is no basis upon which to bring an estoppel  
8 issue and no final order regarding any equalization  
9 issue and Intervenor provide none.

10 See SBOE's Opposition @ p.26:28.

11 A brief review of the authorities set forth in the Intervenor's Brief submitted with its  
12 Motion to Intervene, refutes the SBOE's statements in that regard. The SBOE's February 8,  
13 2013 Order applies to three (3) tax years, namely 2003/2004, 2004/2005 and 2005/2006. A  
14 review of *CIR Sunnen*, 331 U.S. 591, 68 S.Ct. 715, 92 L.Ed. 898 (1948), refutes the conclusion  
15 and analysis as offered by the SBOE that because equalization is different than assessment, that  
16 the SBOE is free to reappraise the BAKST INTERVENORS' parcels for the same tax years  
17 which the Nevada Supreme Court determined the BAKST INTERVENORS' residential  
18 properties taxable values and ordered a refund.

19 The U.S. Supreme Court in *Sunnen* made it clear that when taxes are levied on an annual  
20 basis, that a judgment on the merits for one tax year is res judicata as to any subsequent  
21 proceeding involving the same claim and the same tax year. As explained in the BAKST  
22 INTERVENORS' Brief in Intervention, all of the issues pending before this Court regarding the  
23 duties of the SBOE to equalize pursuant to NRS 361.395, and the appropriateness of a  
24 reappraisal, were fully litigated in *Bakst I* and *Bakst II*. After hearing all of the arguments, both  
25 factual and legal, the Nevada Supreme Court determined the BAKST INTERVENORS' taxable  
26 values for each respective tax year and rolled their taxable values back to the 2002/2003 taxable  
27 value and ordered a refund accordingly. As provided for in *Sunnen*,

28 "when a Court of competent jurisdiction has  
entered a final judgment on the merits of a **cause of**  
**action** parties to the suit and their privies are  
thereafter bound "not only as to every matter that  
was offered and received to sustain or defeat the

1 claim or demand but as to any other admissible  
2 matter which may have been offered for that  
3 purpose.”

4 [Emphasis Added]

5 See *Sunnen* 596 & 597.

6 The U.S. Supreme Court in *Sunnen*, explained quite clearly that taxes levied on an annual  
7 basis each tax year constitutes its own separate cause of action for that particular year. See  
8 *Sunnen* 598. Therefore, once a Taxpayer receives a final judgment for a specific tax year, that  
9 judgment is final and no further actions or claims may be maintained irrespective of whether  
10 those claims were raised or not with regard to that particular tax year. Accordingly, as to the  
11 BAKST INTERVENORS tax years 2003/2004, 2004/2005 and 2005/2006 are closed because the  
12 Nevada Supreme Court rendered a judgment in their favor in those tax years. The SBOE cannot  
13 renew the duel that the SBOE previously fought and lost by simply attempting to re-characterize  
14 its current action as “equalization” as opposed to assessment. Even if equalization is different  
15 than assessment, that is of no moment because the Nevada Supreme Court decisions in *Bakst I*  
16 and *Bakst II* constitutes a final resolution of tax years 2003/2004, 2004/2005, and 2005/2006.

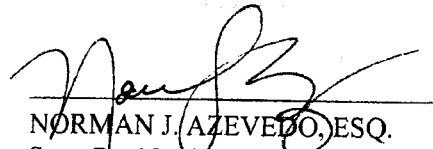
17 Finally, the SBOE claims there is no final decision on equalization to the contrary as  
18 pointed out in the BAKST INTERVENORS’ Brief in Intervention, all of the issues pertinent to  
19 NRS 361.395 and a reappraisal of the properties were raised during the *Bakst I* and *Bakst II*  
20 litigations and dispensed with by the Nevada Supreme Court. The *Bakst I* and *Bakst II* decisions  
21 are the final decisions that prohibit the SBOE from taking action with regard to the BAKST  
22 INTERVENORS.

### 23 III. CONCLUSION

24 As set forth above, the BAKST INTERVENORS timely petitioned the Court seeking  
25 intervention after the SBOE decided to extend its equalization action to all properties located in  
26 Incline Village and Crystal Bay, irrespective of whether those parcels had received a final  
27 decision from the Nevada Supreme Court. The Plaintiffs in the instant action cannot adequately  
28 represent the specific interests of the BAKST INTERVENORS while addressing the interests of  
the remaining 8,700 parcels in Incline Village and Crystal Bay. The BAKST INTERVENORS

1 are entitled to intervention pursuant to NRS 12.130, as well as NRCP 24, and respectfully  
2 requests the Court to enter an Order regarding the same.

3 Dated this 21<sup>st</sup> day of April, 2013.

4  
5   
6 NORMAN J. AZEVEDO, ESQ.  
7 State Bar No. 9204  
8 405 North Nevada Street  
9 Carson City, Nevada 89703  
10 (775) 883-7000  
11 Attorney for Intervenors  
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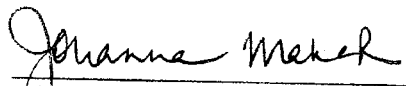
**CERTIFICATE OF MAILING**

I hereby certify that on the <sup>14<sup>th</sup></sup>~~17<sup>th</sup>~~ day of April, 2013, I placed a copy of the **REPLY TO**  
**THE STATE BOARD OF EQUALIZATION'S OPPOSITION TO THE BAKST**  
**INTERVENORS' MOTION TO INTERVENE** in the U.S. Mail, postage pre-paid, addressed  
as follows:

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

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

Suellen Fulstone, Esq.  
SNELL & WILMER, LLP  
50 West Liberty Street, Suite 510  
Reno, NV 89501

  
Johanna Maher


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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, REPLY TO THE  
STATE BOARD OF EQUALIZATION'S OPPOSITION TO THE BAKST INTERVENORS'  
MOTION TO INTERVENE, in Case No. CV03-06922, DOES NOT CONTAIN THE SOCIAL  
SECURITY NUMBER OF ANY PERSON.

DATED this 28<sup>th</sup> day of April, 2013

  
NORMAN J. AZEVEDO, ESQ.  
Nevada Bar No. 3204  
405 North Nevada Street  
Carson City, NV 89703  
775.883.7000  
Attorney for Intervenor

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INDEX TO EXHIBITS

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IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE )  
ASSETS, INC.; MARYANNE )  
INGEMANSON, TRUSTEE OF THE )  
LARRY D. & MARYANNE B. )  
INGEMANSON TRUST; ET AL., )  
Appellants, )  
vs. )  
THE STATE OF NEVADA, BOARD )  
OF EQUALIZATION; ET AL., )  
Respondents. )

---

Electronically Filed  
Nov 27, 2013 03:47 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
Case No. 2013-06922

**JOINT APPENDIX – VOLUME 6**

Suellen Fulstone, No. 1615  
SNELL & WILMER L.L.P.  
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Attorneys for Village League to Save Incline  
Assets, Inc.; Maryanne Ingemanson, Dean Ingemanson,  
J. Robert Anderson, Les Barta,  
Kathy Nelson and Andrew Whyman



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Joey Orduna Hastings

Clerk of the Court

Transaction # 3639595

1 2300  
2 DAVID C. CREEKMAN  
3 Chief Deputy District Attorney  
4 Nevada State Bar Number 4580  
5 P. O. Box 30083  
6 Reno, NV 89520-3083  
7 (775) 337-5700  
8 ATTORNEYS FOR WASHOE COUNTY,  
9 WASHOE COUNTY TREASURER AND  
10 WASHOE COUNTY ASSESSOR

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

12 IN AND FOR THE COUNTY OF WASHOE

13 \* \* \*

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

Case No. CV13-00522

Dept. No. 3

26 Petitioners,

vs.

27 STATE OF NEVADA on relation of the  
28 STATE BOARD OF EQUALIZATION; WASHOE  
29 COUNTY; TAMMI DAVIS, Washoe County  
30 Treasurer; JOSH WILSON, Washoe  
31 County Assessor; LOUISE H.  
32 MODARELLLI; WILLIAM BROOKS; CITY  
33 HALL, LLC; PAUL RUPP; DAVE DAWLEY,  
34 Carson City Assessor; Et. Al,

Respondents.

MOTION TO DISMISS NRCP 12(b)(5) AND NRCP 12(b)(6)

Respondent Washoe County, along with the Washoe County

1 Assessor and Treasurer, by and through their counsel of record,  
2 Richard A. Gammick, District Attorney of Washoe County, Nevada,  
3 and David Creekman, Chief Deputy District Attorney, herein  
4 provide this Court with this "Motion to Dismiss (NRCP 12(b)(5)  
5 and NRCP 12(b)(6))" This document is supported by the following  
6 "Statement of Points and Authorities," along with all the  
7 papers, pleadings and documents on file with the Court in this  
8 matter.

9 STATEMENT OF POINTS AND AUTHORITIES

10 I. Introduction

11 This case originated nearly ten (10) years ago, when some  
12 of the Petitioners in this particular case (alternatively  
13 referred to throughout this "Motion to Dismiss" as "taxpayers"  
14 and as the "Village League") filed a Complaint in the Second  
15 Judicial District Court on November 12, 2003. Then-Washoe  
16 County Assessor Robert McGowan, and Treasurer Bill Berrum,  
17 moved to dismiss on November 19, 2003. These responding  
18 parties asserted the grounds of failure to exhaust  
19 administrative remedies and Village League's lack of standing  
20 to bring the lawsuit in the District Court. The State Board of  
21 Equalization and Nevada Department of Taxation also filed  
22 "Motions to Dismiss." Following the completion of briefing and  
23 oral argument, Department 7 of the Second Judicial District  
24 Court, through that department's predecessor judge, the  
25 Honorable Peter Breen, on June 2, 2004, granted all motions to  
26 dismiss, based upon the Court's perception that the Petitioners

1 had failed to exhaust their administrative  
2 remedies. The Washoe County parties filed a "Notice of Entry  
3 of Order" on June 4, 2004. The Village League filed its  
4 "Notice of Appeal" to the Nevada Supreme Court on June 10,  
5 2004. The appeal was from Department 7's Order granting all  
6 the defending parties', from both the State of Nevada and  
7 Washoe County, "Motions to Dismiss."

8 On March 19, 2009, the Nevada Supreme Court issued its  
9 "Order Affirming in Part, Reversing in Part and Remanding" in  
10 the case. The Supreme Court's Order concluded that Department  
11 7 properly dismissed the action below, except for the valuation  
12 equalization claim as between Douglas and Washoe Counties,  
13 because the Village League failed to exhaust its administrative  
14 remedies before seeking judicial review. Following this  
15 conclusion, the Supreme Court directed that Department 7 should  
16 have proceeded to determine if the Village League's valuation  
17 equalization claim for injunctive relief was viable and  
18 remanded this one issue back to Department 7 for further  
19 proceedings. It did so in likely recognition of its prior  
20 holding in State Board of Equalization v. Barta, 124 Nev. 612,  
21 188 P.3d 1092 (2008), that "[u]nder NRS 361.395(1), the State  
22 Board clearly has a duty to equalize property valuations  
23 throughout the state: 'the [State Board] shall ... [e]qualize  
24 property valuations in the State'" Barta, 124 Nev. at 627,  
25 188 P.3d at 1102, coupled with its holding, also in Barta,  
26 that:

1 NRS 361 establishes a duty, separate from the equalization  
2 duty, that the State Board hear appeals from decisions made by  
3 the county boards of equalization. The two statutes create  
4 separate functions: equalizing property valuations throughout  
5 the state and hearing appeals from the county boards. Id.

6 Following the Supreme Court's remand to Department 7 of  
7 the above-described one remaining cause of action, Department 7  
8 conducted a status conference in April of 2009. At that status  
9 conference, Department 7 ordered that the parties file briefs  
10 concerning their perceptions of the issues then before  
11 Department 7, and state their positions with respect to those  
12 issues. The parties did so, as ordered by Department 7, with  
13 such briefs fully completed, and filed, with Department 7 by  
14 mid-June 2009. At the April status conference, Department 7  
15 also granted Village League the opportunity to file an amended  
16 complaint, which the Village League did on June 19, 2009, after  
17 the above-described briefs were fully completed, and filed,  
18 with Department 7. Another round of briefing ensued, at the  
19 direction and order of Department 7. Once again, these Washoe  
20 County parties argued that the case should be dismissed, in a  
21 document filed with Department 7 on October 15, 2009 and, once  
22 again Department 7 dismissed the amended complaint.

23 The Village League and certain taxpayers appealed the  
24 second dismissal to the Nevada Supreme Court. The matter was  
25 fully briefed, oral arguments were conducted before the full,  
26 en banc, Nevada Supreme Court on November 2, 2011 and, on

1 February 24, 2012, the Supreme Court issued an order affirming  
2 Department 7's dismissal in part, and reversing part of that  
3 dismissal. The part of the dismissal which was reversed  
4 involved the State Board of Equalization's failure to conduct  
5 "a public hearing during which taxpayers could air their  
6 grievances with the equalization process," with regard to  
7 statewide property tax equalization. As such, the matter was  
8 remanded to Department 7 for proceedings consistent with the  
9 Supreme Court's Order.

10 Next, on August 21, 2012, Department 7 issued a Writ of  
11 Mandamus to compel the State Board of Equalization to take such  
12 actions as are required to notice and hold a public hearing or  
13 hearings, to hear and determine the grievances of property  
14 owner taxpayers regarding the failure, or lack, of equalization  
15 of real property valuations throughout the State of Nevada for  
16 the 2003 - 2004 tax year and each subsequent tax year to, and  
17 including, the 2010 - 2011 tax year; and to raise, lower or  
18 leave unchanged the taxable value of any property for the  
19 purpose of equalization.

20 In strict compliance with Department 7's Writ of Mandamus,  
21 the State Board of Equalization acted as it was ordered to act,  
22 by conducting equalization hearings in late-2013. As a result  
23 of the State Board of Equalization's final equalization  
24 hearing, conducted on December 3, 2013, the State Board of  
25 Equalization issued "Equalization Order 12-001" on February 8,  
26 2013, in which it ordered the re-evaluation of property values

1 in the Incline Village and Crystal Bay areas of Nevada by the  
2 Washoe County Assessor and in which it indicated that it may  
3 take further action as a result of the eventual re-evaluation  
4 of those property values.

5 Equalization Order 12-001 resulted in the Village League  
6 and certain taxpayers filing objections to the State Board of  
7 Equalization's Order in Department 7 and, by agreement of the  
8 parties, Department 7's Order stayed implementation of portions  
9 of the State Board of Equalization's February 8, 2013  
10 Equalization Order. The Village League's Petition for Judicial  
11 Review to which this Motion to Dismiss responds was filed in  
12 this Court, Department 3 of the Second Judicial District Court,  
13 on March 8, 2013.

14 II. NRCP 12(b)(5) provides authority for this "Motion to  
15 Dismiss"

16 NRCP 12(b)(5) establishes, in relevant part, that the  
17 defense of a "failure to state a claim upon which relief can be  
18 granted" may be made by motion. Gull v. Hoalst, 77 Nev. 54,  
19 359 P.2d 383 (1961). A motion under NRCP 12(b)(5) should not  
20 be granted unless it appears beyond a doubt that the party  
21 bringing the action is entitled to no relief under any set of  
22 facts which could be proved in support of the claim. Blackjack  
23 Bonding v. Las Vegas Mun. Ct., 116 Nev. 1213, 1217, 14 P.3d  
24 1275, 1278 (2000), citing to Simpson v. Mars Inc., 113 Nev.  
25 188, 190, 929 P.2d 966, 967 (1997).

26 For the purposes of a motion brought under NRCP 12(b)(5),

1 this Court must accept the allegations as true, and draw all  
2 inferences in favor of the non-moving party. Brent G. Theobald  
3 Constr., Inc. v. Richardson Constr., Inc., 122 Nev. 1163, 147  
4 P.3d 238, 241 (2006). However, a motion to dismiss for failure  
5 to state a claim upon which relief can be granted may be  
6 granted irrespective of the type of action involved or its  
7 complexity because "[d]ismissal is proper where the allegations  
8 are insufficient to establish the elements of a claim for  
9 relief." Id.

10 The standard to be applied to motion for failure to state  
11 a claim contains two components: (1) fair notice of the nature  
12 and basis of a claim and (2) sufficiency of the claim. "The  
13 formal sufficiency of a claim is governed by NRCP 8(a), which  
14 requires that the claim, 'shall contain (1) a short and plain  
15 statement of the claim showing that the pleader is entitled to  
16 relief, and (2) a demand for judgment for the relief to which  
17 he deems himself entitled.'" Breliant v. Preferred Equities  
18 Corp., 109 Nev. 842, 846, 858 P.2d 1258, 1261 (1993), citing to  
19 NRCP 8(a).

20 "The test for determining whether the allegations of a  
21 complaint are sufficient to assert a claim for relief is  
22 whether the allegations give fair notice of the nature and  
23 basis of a legally sufficient claim ..." Id., 109 Nev. At 846,  
24 858 P.2d at 1260 (Internal citations omitted). A complaint  
25 must set forth sufficient facts to demonstrate the necessary  
26 elements of a claim for relief so that the adverse party has



1 adequate notice of the claim. Hay v. Hay, 100 Nev. 196, 198,  
2 678 P.2d 672, 674, citing Johnson v. Travelers Ins. Co., 89  
3 Nev. 467, 472, 515 P.2d 68, 71, (1973) (a complaint must allege  
4 facts sufficient to establish all necessary elements of the  
5 claims for relief.)

6 **III. THE ISSUES RAISED BY PETITIONERS ARE NOT RIPE FOR JUDICIAL**  
7 **DETERMINATION**

8 The State Board of Equalization has not acted with  
9 finality. And the Petitioners admit as much in their Petition  
10 for Judicial Review<sup>1</sup>. As such, the issues raised by the  
11 Petitioners are not ripe for judicial determination. A case is  
12 ripe for review when "the degree to which the harm alleged by  
13 the party seeking review is sufficiently concrete, rather than  
14 remote or hypothetical, [and] yield[s] a justiciable  
15 controversy." Herbst Gaming, Inc. v. Sec'y of State, 122 Nev.  
16 877, 887-88, 141 P.3d 1224, 1230-31 (2006). Here, the State  
17 Board of Equalization has issued the equivalent of a collateral  
18 order. It has not yet completed its work. It may ultimately  
19 decide in favor of the taxpayers, or it may not. Until such  
20 time as the State Board of Equalization has issued a final  
21 decision, in accord with its mandate, this matter of ripeness  
22 should be of concern to this Court, and to Department 7, if  
23 either this Court or Department 7 substantively respond to the  
24 Village League's and taxpayers' positions, all of which are

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25  
26 <sup>1</sup> See Petition for Judicial Review, page 5, line 6 ("The  
February 8, 2013 SBOE decision is not a final decision.").

1 premature at this time.

2       Because the State Board of Equalization has not yet acted  
3 with finality, there is no concrete application of state law.  
4 The issues raised by the Village League and the taxpayers are  
5 not yet ripe for review. The reluctance of courts to entertain  
6 cases not yet ripe is especially prevalent in the context of  
7 federal court jurisdiction, but that caselaw is illustrative of  
8 the importance of ripeness in furtherance of the  
9 separation-of-powers relationship between different branches of  
10 government. For instance, after a state commission had  
11 determined that a local union should be subject to the sanction  
12 that it could not collect dues from its casino employee  
13 members, but that it should not invoke the further statutory  
14 sanction of prohibiting the union from administering any  
15 pension or welfare funds, there was no ripe challenge to the  
16 pension fund provision of the statute. "Because the Commission  
17 never imposed this sanction ..., we are presented with no  
18 concrete application of state law. The issue is hence not ripe  
19 for review ...." Brown v. Hotel and Restaurant Employees and  
20 Bartenders Intern. Union Local 54, 468 U.S. 491, 511-513  
21 (1984). In other cases, a state should be given the  
22 opportunity to develop programs providing for educationally  
23 deprived children in private schools before a decision is  
24 issued on compliance with federal statutory and constitutional  
25 requirements. Wheeler v. Barrera, 417 U.S. 402 (1974), federal  
26 courts should not determine the interstate commerce character

1 of a declaratory judgment plaintiff's business before  
2 determining what, if anything, the state intends to do to  
3 regulate the business, Public Service Commission of Utah v.  
4 Wycoff Co., Inc., 344 U.S. 237 (1952) and the "assistant zoning  
5 technician" on duty in the zoning office advised the plaintiff  
6 to speak with the city director of zoning because her job did  
7 not include accepting building plans over the counter. Rather  
8 than consult the director, the plaintiff left and brought suit  
9 to challenge the constitutionality of a zoning ordinance the  
10 plaintiff interpreted to prohibit an adult book and video  
11 business anywhere in the city. The action was not ripe. "A  
12 challenge to the application of a city ordinance does not  
13 automatically mature at the zoning counter. ... [A] city official  
14 with sufficient authority must have rendered a decision ...."  
15 Ripeness doctrine protects administrative agencies from  
16 judicial interference until an administrative decision has been  
17 formalized and its effects felt. A mere anticipated belief that  
18 city officials would interpret an uncertain ordinance in a way  
19 that would violate the plaintiff's First Amendment rights  
20 establishes only a potential dispute, not a ripe case or  
21 controversy. Digital Properties, Inc. v. City of Plantation,  
22 121 F.3d 586 (11th Cir. 1997).

23 However, at least in the federal court context, sometimes  
24 under the "collateral order doctrine," federal courts allow for  
25 interlocutory review of certain non-final orders remanding a  
26 matter to an administrative agency. See, e.g., Occidental

1 Petroleum Corp. v. SEC, 873 F.2d 325, 329 (D.C.Cir.1989);  
2 Charles A. Wright et al., Federal Practice and Procedure:  
3 Jurisdiction § 3911 (1992). The Village League and the  
4 taxpayers in this case essentially urge this court to adopt the  
5 collateral order doctrine, as a way around the ripeness  
6 doctrine, and to apply it to this case. This Court should  
7 decline this invitation because interlocutory appeals cause  
8 delay, expense and disruption. Stringfellow v. Concerned  
9 Neighbors in Action, 480 U.S. 370, 380 (1987). Consideration of  
10 interlocutory appeals often results in piecemeal litigation.  
11 Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).  
12 Nevada's Supreme Court has stated that "adopting the collateral  
13 order doctrine would require this court to extensively screen  
14 appeals from interlocutory orders to determine whether this  
15 court has jurisdiction. Jurisdiction lines would become  
16 unfocused and uncertain. This in turn could result in a  
17 proliferation of premature appeals. These burdens would  
18 outweigh any possible benefits that could result from adoption  
19 of the collateral order doctrine." Nevada Taxicab Authority v.  
20 Greenspun, 109 Nev. 1022, 862 P.2d 423 (1993). Nevada has  
21 rejected the collateral order doctrine.

22 IV. Nevada's Administrative Procedure Act does not render all  
23 administrative decisions subject to judicial review

24 A. This is not a "contested case"

25 The Village League and taxpayers state, in their Petition  
26 for Judicial Review, that the jurisdictional basis for invoking

1 this Court's jurisdiction is found at NRS chapter 233B,  
2 Nevada's Administrative Procedure Act. Yet a close review of  
3 that statute establishes that it applies only to "contested  
4 cases," defined at NRS 233B.032 as "a proceeding, including but  
5 not restricted to rate making and licensing, in which the legal  
6 rights, duties or privileges of a party are required by law to  
7 be determined by an agency after an opportunity for hearing, or  
8 in which an administrative penalty may be imposed." NRS  
9 233B.032. This case was not a "contested case" before the  
10 State Board of Equalization.

11 In the context of administrative law, Nevada's  
12 Administrative Procedure Act does not render all administrative  
13 decisions subject to judicial review. Private Inv. Licensing  
14 Bd. v. Atherley, 98 Nev. 514, 515, 654 P.2d 1019 (1982). The  
15 key to the classification of a case as contested or  
16 non-contested is the requirement of a hearing. Greenwood Manor  
17 v. Iowa Dept. Of Public Health, State Health Facilities  
18 Council, 641 N.W.2d 823 (Iowa 2002). If a trial-like hearing  
19 is required by law, the proceeding is a contested case. In re  
20 Board of County Som'rs, Sublette County, 2001 WY 92, 33 P.3d  
21 107 (2001). If, on the other hand, a decision can be made  
22 without resort to an adversarial hearing at which a measure of  
23 procedure formality is followed, it is not a contested case.  
24 THE Chesterfield North Development, LLC v. City of  
25 Chesterfield, 106 S.W.3d 13 (Mo.Ct.App. E.D. 2003).

26 Nevada's Supreme Court has also elaborated on the

1 characteristics of a contested case. In State, Nevada State  
2 Purchasing Division v. George's Equipment, 105 Nev. 798, 783  
3 P.2d 949 (1989), that Court stated that "[i]n a contested case,  
4 each party is given a chance to prepare evidence and subpoena  
5 witnesses, if necessary." No such opportunity was available  
6 before the State Board of Equalization. Further, even when a  
7 hearing is conducted, the simple fact that a hearing occurred  
8 before an administrative agency does not convert the proceeding  
9 into a "contested case." Id.; Wen Quin Ma v. State of Nevada,  
10 2009 WL 3711938, 281 P.3d 1199 (2009).

11 B. Nevada tax law contains no obligation for the State  
12 Board of Equalization to hold a hearing to equalize  
13 property values in the State of Nevada

14 Equalization is obligated by NRS 361.395. That statute,  
15 in relevant part, establishes that:

16 During the annual session of the State Board of  
17 Equalization beginning on the fourth Monday in March of  
18 each year, the State Board of Equalization shall:  
19 (a) Equalize property valuations in the State.  
20 (b) Review the tax rolls of the various counties as  
21 corrected by the county boards of equalization thereof and  
22 raise or lower, equalizing and establishing the taxable  
23 value of the property, for the purpose of the valuations  
24 therein established by all the county assessors and county  
25 boards of equalization and the Nevada Tax Commission, of  
26 any class or piece of property in whole or in part in any  
county, including those classes of property enumerated in  
NRS 361.320. NRS 361.395.

27 It was the Nevada Supreme Court, in its Order Affirming in  
28 Part, Reversing in Part and Remanding this matter back to  
29 Department 7, which imposed the requirement of a hearing  
30 allowing the property owner taxpayers to air their grievances  
31 regarding the failure, or lack, of equalization. The Supreme

1 Court's Order references the need for the SBOE to "hold a  
2 public hearing" during which taxpayers may so grieve. These  
3 Washoe County parties respectfully submit the plain language of  
4 NRS chapter 361 does not obligate a hearing or hearings  
5 regarding equalization and that nothing within NRS chapter 361  
6 obligates the State Board of Equalization to provide an  
7 opportunity to hear taxpayer grievances. Instead, the  
8 obligation to act in such a public manner and to hear public  
9 comments arises pursuant to NRS chapter 241, Nevada's Open  
10 Meeting Law, which requires that meetings of the SBOE be open,  
11 and that they include opportunities for public comment.

12 The point here is that nothing in NRS chapter 361  
13 obligates the SBOE to act so publicly, nor to take grievances  
14 from taxpayers, yet they are now doing so, for other reasons.  
15 Additionally, the proceeding before the SBOE provided no  
16 opportunity for witness testimony and cross-examination, no  
17 subpoena powers and no other indicia of an adversarial  
18 proceeding. It was simply held for the purpose of hearing  
19 taxpayer grievances. It did not rise to the level of a  
20 contested case to which NRS chapter 233B applies.

21 C. Even if this is considered a "contested case," the  
22 Petition for Judicial Review fails to name all the  
23 parties to the State Board of Equalization's action

24 The absurdity of construing a statewide equalization  
25 action as a contested case subject to the Administrative  
26 Procedure Act is perhaps best seen when an analysis of who the  
parties to such an action might be. When so analyzed, it

1 becomes clear that every taxpayer in the State of Nevada, in a  
2 statewide equalization action, is a party to that action. In  
3 the case of Washoe County v. Otto, 128 Nev. Adv. Op. 40, 282  
4 P.3d 719 (2012), the Supreme Court stated that it is mandatory,  
5 under the Administrative Procedure Act, to name all parties of  
6 record in a petition for judicial review of an administrative  
7 decision. A District Court lacks jurisdiction to consider a  
8 petition when it fails to comply with this requirement.

9 The Washoe County v. Otto Supreme Court then went further.  
10 It stated that "in the context of an equalization decision, one  
11 need not actually appear or participate to be a party." To the  
12 extent, a point not conceded by these Washoe parties, that an  
13 equalization proceeding constitutes a "contested case," the  
14 "provisions that govern contested cases before the State Board  
15 of Equalization define a party, in relevant part, as 'a person  
16 ... entitled to appear in a proceeding of the State Board.'"  
17 Washoe County v. Otto, 128 Nev. Adv. Op. 40, f. 10, 282 P.3d  
18 719, 726, f. 10 (2012).

19 Without question, every Nevada taxpayer has an entitlement  
20 to appear before the State Board of Equalization. Thus, if a  
21 statewide equalization proceeding of the State Board of  
22 Equalizations is construed as a contested case to which the  
23 Administrative Procedure Act applies, every Nevada taxpayer is  
24 a proper and necessary party to any petition for judicial  
25 review resulting from that proceeding. Until every Nevada  
26 taxpayer is named, and served, this Court has no jurisdiction



1 over the Petition for Judicial Review.

2 V. Washoe County's response to Village League's request for  
3 class action relief contained within the Petition for  
Judicial Review

4 A. The law of class action relief

5 Class actions are governed by NRCP 23. The rule permits  
6 one or more persons to sue as representative parties on behalf  
7 of a class only if the four prerequisites set forth in NRCP  
8 23(a) are satisfied and, in addition, if at least one of the  
9 prerequisites of NRCP 23(b) can be satisfied. Johnson v.  
10 Travelers Ins. Co., 89 Nev. 467, 471, 515 P.2d 68, 71 (1973).  
11 The determination to use the class action vehicle is a  
12 discretionary function wherein the district court must  
13 determine pragmatically whether it is better to proceed as a  
14 single action or in many individual actions in order to redress  
15 a single fundamental wrong. Meyer v. Eighth Jud. Dist. Ct.,  
16 110 Nev. 1357, 1365, 885 P.2d 622, 627 (1994); Deal v. 999  
17 Lakeshore Ass'n, 94 Nev. 301, 306, 579 P.2d 775, 779 (1978).

18 The first of the four prerequisites in NRCP 23(a) is that  
19 the class be so numerous that joinder of all members is  
20 impracticable. See Cummings v. Charter Hospital of Las Vegas,  
21 Inc., 111 Nev. 639, 643, 896 P.2d 1137, 1139 (1995). The  
22 second of the four prerequisites in NRCP 23(a) is that there be  
23 questions of law or fact common to the class. A question of  
24 law or fact will be common to the class when the answer to the  
25 question holds true for all class members. See Jane Roe Dancer  
26 I-VII v. Golden Coin, Ltd., 124 Nev. 28, 176 P.3d 271, 276

1 (2008); Shuette v. Beazer Homes Holdings Corp., 121 Nev 837,  
2 847, 124 P.3d 530, 537 (2005). The third of the four  
3 prerequisites contained in NRCP 23(a) is that the claims or  
4 defenses of the representative parties be typical of the claims  
5 or defenses of the class. "[T]he class representative must  
6 have the same interest in the outcome of the litigation and  
7 have the same injury as the other class members." Jane Roe  
8 Dancer I-VII v. Golden Coin, Ltd., 124 Nev. 28, 176 P.3d 271,  
9 276 (2008). The fourth, and final, prerequisite of NRCP 23(a)  
10 is that the representative parties adequately protect the  
11 interests of the class. This prerequisite is meant to uncover  
12 conflicts of interest between the named parties and the  
13 putative class they represent. Shuette v. Beazer Homes  
14 Holdings Corp., 121 Nev. 837, 849, 124 P.3d 530, 539 (2005).

15 B. Neither the Village League, nor the named parties to  
16 this action, can meet, at a minimum, the second and  
17 third prerequisites for class action relief

18 First, the Petition for Judicial Review only mentions the  
19 petitioners' desire that the Court certify that this action may  
20 be maintained as a class. The amended complaint does not  
21 mention NRCP 23, nor does it really attempt to establish the  
22 elements needing to be met under NRCP 23 for such class action  
23 certification. Second, even if the Petition for Judicial  
24 Review did so, Village League and the named taxpayers cannot  
25 establish that they meet the second and third prerequisites for  
26 class relief: common issues of fact do not exist in this case  
and Village League, as a non-profit corporation which owns no

1 property and pays no property taxes, cannot claim to have an  
2 interest in the outcome of the litigation and to have suffered  
3 the same injury as the other class member taxpayers.

4 1. Common questions of fact do not exist here,  
5 thus defeating the requirement of NRCP 23(a)(2)

6 In general, a suit cannot be maintained by one taxpayer on  
7 behalf of himself and others similarly situated to recover  
8 taxes alleged to have been illegally assessed. Sampson v.  
9 Kenny, 185 Neb. 230, 175 N.W.2d 5 (1970). Instead, the Sampson  
10 court said, each taxpayer must bring an action on his own  
11 behalf. A class refund action, the court explained, would run  
12 counter to the principle that a suit cannot be maintained as a  
13 class action unless the named plaintiff has the power as a  
14 member of the class to satisfy a judgment on behalf of all  
15 class members. Accord, Hansen v. County of Lincoln, 188 Neb.  
16 461, 197 N.W.2d 651 (1972). Relying upon the rationale of the  
17 decision in Trustees of Jackson Township v. Thoman, 51 Ohio St.  
18 285, 37 N.E. 523 (1894), the court held in Monteith v. Alpha  
19 High School Dist., 125 Neb. 665, 251 N.W. 661 (1933), that a  
20 taxpayer cannot maintain a representative suit to recover taxes  
21 alleged to have been illegally assessed. Where recovery of  
22 taxes is sought, each taxpayer must bring an action on his own  
23 behalf. In tax refund suits, the courts reasoned, the rights  
24 of each taxpayer are purely legal and perfectly distinct, so  
25 that the outcome of each taxpayer's case depends upon its own  
26 particular circumstances. Thus, there was no merit to the

1 contention that representative refund actions should be  
2 permitted in order to avoid a multiplicity of suits. Upon  
3 determining that representative tax actions are improper, the  
4 court held that the trial court was correct in concluding that  
5 a complaint which sought the recovery of allegedly illegal  
6 property taxes did not state facts that were sufficient to  
7 justify recovery on behalf of all the persons from whom the tax  
8 was collected. Id.

9 In Trustees of Jackson Township v. Thoman, 51 Ohio St.  
10 285, 37 N.E. 523 (1894), a suit to enjoin the collection of  
11 township property tax, the court said that a suit cannot be  
12 maintained by one taxpayer on behalf of himself and other  
13 taxpayers to recover taxes alleged to have been illegally  
14 assessed. Each taxpayer, the court said, must bring a suit on  
15 his own behalf. The court explained that a tax refund suit is  
16 substantially different from a suit to enjoin the collection of  
17 a tax, because in a tax suit invoking principles of equity  
18 jurisdiction for injunctive relief, not only is each taxpayer  
19 interested in the question involved, but a judgment may be  
20 rendered in favor of all taxpayers as a class. In contrast, it  
21 said, the outcome of a refund suit depends on whether  
22 individual taxpayers made a voluntary or involuntary payment of  
23 taxes due and, when a refund is due, the amount depends upon  
24 the payments made by each taxpayer. Accord, Pennsylvania R.  
25 Co. v. Scioto-Sandusky Conservancy Dist., 101 Ohio App. 61, 137  
26 N.E.2d 891, app dismissed, 165 Ohio St. 466, 135 N.E.2d 765

1 (1956).

2 Class action status in tax litigation was also determined  
3 inappropriate where condominium owners sought to recover a  
4 refund of property taxes they paid, but the trial court was  
5 advised it erred in permitting the taxpayers to bring a class  
6 action where most of the plaintiffs failed to pursue the  
7 statutory remedy provided for protesting their property  
8 valuation. Hoffman v. Colorado State Bd. of Assessment  
9 Appeals, 683 P.2d 783 (Colo. 1984). Likewise, in actions by  
10 taxpayers who sought tax refunds alleging that reassessment of  
11 their properties was discriminatory, unconstitutional and  
12 illegal, the trial court properly denied a motion for class  
13 certification. The trial court did so where governmental  
14 actions were involved and subsequent plaintiffs would be  
15 adequately protected under the doctrine of stare decisis, and  
16 where commencement of the action purportedly on behalf of all  
17 similarly situated taxpayers did not constitute an appropriate  
18 indicia of protest by each proposed member of the class such  
19 that a determination of whether individual taxpayers would be  
20 entitled to a refund could be made. Conklin v. Southampton,  
21 141 App.Div.2d 596, 529 N.Y.S.2d 517 (1988). Similarly, in an  
22 action by taxpayers seeking a declaratory judgment that a  
23 school district illegally collected statutory penalties  
24 attached to ad valorem taxes which were delinquent prior to the  
25 effective date of a penalty statute, the trial court did not  
26 abuse its discretion in denying class certification to the

1 class of taxpayers against whom the statutory penalties had  
2 been assessed and by whom they were subsequently paid, where  
3 claims of each individual class member would require individual  
4 fact findings. Salvaggio v. Houston Independent School Dist.,  
5 709 S.W.2d 306 (Tex. App. Houston, 14th Dist. 1986).

6 2. Because Village League lacks the required  
7 standing to bring this case, it cannot claim to  
8 have an interest in the outcome of this  
9 litigation and to have suffered the same injury  
as the other would-be class members, thus  
defeating its ability to meet NRCP 23(a)(3)'s  
requirement of typicality for a class action.

10 "Standing is the legal right to set judicial machinery in  
11 motion." Heller v. Legislature of Nev., 120 Nev. 456, 460, 93  
12 P.3d 746, 749 (2004) (quoting Smith v. Snyder, 267 Conn.456, 839  
13 A.2d 589, 594 (2004)). Because standing affects the court's  
14 original jurisdiction, courts must address standing even if the  
15 parties fail to do so. See Heller, 120 Nev. at 461, 93 P.3d at  
16 749. The question of standing is similar to the issue of real  
17 party in interest because it also focuses on the party seeking  
18 adjudication rather than on the issues sought to be  
19 adjudicated. Szilagyi v. Testa, 99 Nev. 834, 673 P.2d 495  
20 (1983).

21 The traditional two-prong test for standing is that the  
22 claimant must allege that the complained of action caused the  
23 claimant's injury-in-fact, and the claimant's interest must  
24 arguably be within the zone of interest protected or regulated  
25 by the statute or constitutional guarantee in question. Ass'n  
26 of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S.

1 150(1970); see also Heller v. Legislature of Nev., 120 Nev.  
2 456, 460, 93 P.3d 746, 749 (2004). The inquiry of standing is  
3 separate from and preliminary to a decision on the merits.  
4 Ass'n of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S.  
5 150 (1970); S.F. County Democratic Cent. Comm. v. Eu, 826 F.2d  
6 814 (9th Cir. 1987).

7 As stated, standing represents a jurisdictional  
8 requirement, Pedro/Aspen, Ltd. v. Board of County Com'rs for  
9 Natrona County, 94 P.3d 412 (Wyo. 2004), which remains open to  
10 review at all stages of the litigation. Alabama Alcoholic  
11 Beverage Control Bd. v. Henri-Duval Winery, LLC, 890 So.2d 70  
12 (Ala. 2003). Such jurisdiction may not be waived and Nevada's  
13 Supreme Court has recognized this rule, along with the same  
14 fundamental rule in other states. Swan v. Swan, 106 Nev. 464,  
15 469, 796 P.2d 211, 224 (1990).

16 The standing rule is well established and is to be  
17 extended to the class action context. One cannot rightfully  
18 invoke the jurisdiction of the court to enforce private rights  
19 unless the person seeking relief can show that he has sustained  
20 or is in immediate danger of sustaining some injury to his  
21 personal or property rights as a result of the matter  
22 complained of, and can show that he will be benefitted by the  
23 relief granted. Boeing Airplane Co. v. Perry, 322 F.2d 589  
24 (10th Cir. 1963) (when a statute or rule creates a cause of  
25 action and designates the persons who may sue, none but the  
26 persons so designated has the right to bring such action). The

1 specific designation of a person or class of persons as the  
2 beneficiaries of certain statutory provisions respecting the  
3 performance of certain duties by others has the effect of  
4 limiting the right of action to the person or class of persons  
5 so described. Hunt v. State, 201 N.C. 37, 158 S.E. 703 (1931).

6 In this regard, the real party in interest to a challenge  
7 of an assessor's valuation is clearly identified in NRS chapter  
8 361 as the real property owner who alleges improper assessment  
9 or valuation. NRS 361.356(1) establishes that "[a]n owner of  
10 property who believes that his property was assessed at a  
11 higher value than another property whose use is identical and  
12 whose location is comparable may appeal the assessment...." NRS  
13 361.356(1). No different standard should apply to an  
14 equalization action. In fact, it was the Nevada Supreme Court  
15 which recognized it is taxpayers who have the right to grieve  
16 about equalization in its Order sending this case back to  
17 Department 7 and to the State Board of Equalization. Plaintiff  
18 does not allege that it owns any affected property within  
19 Washoe County. Rather, the Complaint is drafted to indicate  
20 that members of the association, rather than the association  
21 itself, are the property owners. The plain language of the  
22 amended complaint itself establishes the Petitioners' status  
23 here:

24 Petitioner Village League to Save Incline Assets, Inc.  
25 ('Village League'), is a nonprofit membership corporation  
26 organized and existing under the laws of the State of  
Nevada, whose members own real property at Crystal Bay  
and/or Incline Village, in Washoe County, Nevada, and pay



1 taxes on that property as assessed....<sup>2</sup>

2 Village League is not a real party in interest in this  
3 lawsuit. It owns no property and it pays no taxes. It has  
4 suffered no injury nor is it subject to any irreparable injury.  
5 It, thus, lacks standing to bring, and maintain, this action.  
6 With respect to the issue of standing, as related to  
7 construction defect litigation, in Deal v. 999 Lakeshore  
8 Ass'n., 94 Nev. 301, 304, 579 P.2d 775, 777 (1978), the Supreme  
9 Court stated:

10 NRCP 17(a) provides:  
11 'Every action shall be prosecuted in the name of the real  
12 party in interest.' In the absence of any express  
13 statutory grant to bring suit on behalf of the owners, or  
14 a direct ownership interest by the association in a  
condominium within the development, a condominium  
management association does not have standing to sue as a  
real party in interest.... Only the owners of  
condominiums have standing to sue.... Id.

15 Similarly, in this case, it is the property owners themselves,  
16 not the Petitioner association, who have standing to sue since  
17 they must eventually bear the costs of the tax assessments.

18 Neither is associational standing available to this  
19 Village League Petitioner. The United States Supreme Court, in  
20 Hunt v. Washington State Apple Advertising Commission, 432 U.S.  
21 333 (1977), set forth the requirements for associational  
22 standing. Those requirements include that an association's  
23 members would otherwise have standing to sue in their own  
24 right, that the interests the association seeks to protect are  
25 germane to the organization's purpose and that neither the  
26

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<sup>2</sup> See Petition for Judicial Review, page 2, lines 4 - 14.

1 claims nor the requested relief require the participation of  
2 individual members in the lawsuit. Hunt, 432 U.S. at 343. At  
3 a minimum, the Village League fails to satisfy the last element  
4 of the Hunt requirements for associational standing because the  
5 claims and the relief being sought in this case require, under  
6 Nevada law, the participation of the individual members of the  
7 association. Simply stated, the individual participation of  
8 each property owner is necessary for the resolution of this  
9 case. Because all those individual property owners are not  
10 before this Court, in their capacities as individual taxpayers,  
11 the Village League not only lacks standing but that lack of  
12 standing establishes that Village League cannot meet NRCP  
13 23(a)(3)'s requirement that it establish an interest in the  
14 relief sought, along with the same injury having been suffered  
15 by the other taxpayers that the Village League purports to  
16 represent in this case.

17 C. Nevada Supreme Court precedent in the class action  
18 context also obligates rejection of this attempt to  
certify this as a class action

19 On September 3, 2009, a Nevada Supreme Court decision was  
20 rendered in D.R. Horton, Inc. v. Eighth Judicial Dist.  
21 Court, 125 Nev. 449, 215 P.3d 697 (2009). The D.R. Horton case  
22 involved a petition for extraordinary writ relief in which, in  
23 the underlying case, the question arose as to whether a  
24 homeowners' association had standing to pursue constructional  
25 defect claims on behalf of its members with respect to alleged  
26 defects in individual units in a common-interest community.

1 Under a statutory provision relative to common interest  
2 communities, the equivalent of which does not exist in the  
3 property tax context, the Supreme Court concluded that the  
4 homeowner's association enjoyed a right to bring a class-action  
5 to redress the individual homeowners' grievances, if the suit  
6 fulfills the requirements of NRCP 23 and the principles and  
7 concerns of Shuette v. Beazer Homes Holdings Corp., 121 Nev.  
8 837, 124 P.3d 530 (2005). Of particular relevance to this case  
9 is the Supreme Court's recognition, in both Shuette and D.R.  
10 Horton that because a fundamental tenet of property law is  
11 that land is unique, "as a practical matter ... [these disputes  
12 involving land-related issues] will rarely be appropriate for  
13 class action treatment." Shuette, 121 Nev at 854, 124 P.3d at  
14 542. In other words, because tax disputes, such as this,  
15 relate to multiple properties and will typically involve  
16 different types of damages, issues concerning causation,  
17 defenses and compensation are widely disparate and cannot be  
18 determined through the use of generalized proof. Rather,  
19 individual parties need to substantiate their own claims and  
20 class action certification is not appropriate.

21 VI. NRCP 12(b)(6)'s failure to join an indispensable party  
22 provision provides additional authority for this "Motion  
to Dismiss"

23 A. NRCP 12(b)(6) and its relationship to NRCP 19

24 NRCP 12(b)(6) establishes that "[e]very defense, in law or  
25 fact, to a claim for relief in any pleading ... shall be asserted  
26 in the responsive pleading thereto ..., except that the following

1 defenses may at the option of the pleader be made by motion:  
2 --- (6) failure to join a party under Rule 19" NRCP 12(b)(6).  
3 NRCP 12 goes on to state, in subsection (h) of the Rule, that a  
4 "defense of failure to join a party indispensable under Rule 19  
5 ... may be made in any pleading permitted or ordered ..., or by  
6 motion for judgment on the pleadings, or at the trial on the  
7 merits." NRCP 12(h)(2). Additionally, "[w]henever it appears  
8 by suggestion of the parties or otherwise that the court lacks  
9 jurisdiction of the subject matter, the court shall dismiss the  
10 action." NRCP 12(h)(3).

11 Meanwhile, NRCP 19 provides, in relevant part, that "[a]  
12 person who is subject to service of process and whose joinder  
13 will not deprive the court of jurisdiction over the subject  
14 matter of the action shall be joined as a party in the action  
15 if (1) in the person's absence complete relief cannot be  
16 accorded among those already parties ...." NRCP 19 goes on to  
17 establish that if a person described in subsection (a) of the  
18 Rule cannot be made a party, "the court shall determine whether  
19 in equity and good conscience the action should proceed among  
20 the parties before it, or should be dismissed, the absent  
21 person being thus regarded as indispensable." NRCP 19(b).

22 In dealing with the issue of necessary and indispensable  
23 parties under the analogous Federal Rule of Civil Procedure,  
24 the Seventh Circuit Court of Appeals stated that "Rule 19 is  
25 designed to protect the interests of absent persons, as well as  
26 those already before the court, from duplicative litigation,

1 inconsistent judicial determinations, or other practical  
2 impairment of their legal interests." Hammond v. Clayton, 83  
3 F.3d 191, 195 (7th Cir. 1996). The Ninth Circuit Court of  
4 Appeals has held similarly in CP National Corporation v.  
5 Bonneville Power Administration, 928 F.2d 905 (1991). The  
6 Ninth Circuit has also recognized that the absence of  
7 "necessary" parties may be raised by reviewing courts sua  
8 sponte. McCowen v. Jamieson, 724 F.2d 1421, 1424 (9th Cir.  
9 1984); McShan v. Sheriff, 283 F.2d 462, 464 (9th Cir. 1960).  
10 Furthermore, the issue can be properly raised at any stage in  
11 the proceeding, Provident Tradesmen Bank and Trust v.  
12 Patterson, 390 U.S. 102, 126 (1968), according to United States  
13 Supreme Court precedent.

14       Meanwhile, Nebraska's state courts have declared that the  
15 presence of necessary parties is jurisdictional and cannot be  
16 waived, and if such persons are not made parties, then a court  
17 has no jurisdiction to determine the controversy. Langemeier  
18 v. Urwiler Oil & Fertilizer, Inc., 259 Neb. 876, 613 N.W.2d 435  
19 (2000). The Langemeier court's holding was similar to the  
20 Virginia Supreme Court's holding that necessary parties'  
21 interest in the subject matter of the suit, and in the relief  
22 sought, are so bound up with that of the other parties, that  
23 their legal presence as parties to the proceeding is an  
24 absolute necessity, without which the court cannot proceed, and  
25 in such cases the court refuses to entertain the suit, when  
26 those parties cannot be subjected to jurisdiction. Jett v.

1 DeGaetani, 259 Va. 616, 528 S.E.2d 116 (2000). In accord with  
2 these holdings is the Nevada Supreme Court case of Potts v.  
3 Vokits, 101 Nev. 90, 692 P.2d 1304 (1985), in which the Supreme  
4 Court explained law of necessary and indispensable parties in  
5 the context of the Court's jurisdiction.

6 The core concept of NRCp 12(b)(6) is that a case will be  
7 dismissed if there is an absent party under NRCp 19, without  
8 whom complete relief cannot be granted or whose interest in the  
9 dispute is of such a nature that to proceed without that party  
10 could prejudice either that party or others. Here, it is  
11 Washoe County whose interests are prejudiced by the maintenance  
12 of this litigation, without the full party participation of  
13 each of Nevada's other counties.

14 B. Each of Nevada's other counties is a necessary party  
15 to this action

16 Each of Nevada's County Assessors was named as a party to  
17 the Petition for Judicial Review by the Village League and the  
18 taxpayers. But Washoe County was the only county named as a  
19 party. Given that this case involves a statewide equalization  
20 action, Washoe County contends that each of Nevada's counties,  
21 along with each of Nevada's County Assessors, should be named  
22 as parties to this proceeding.

23 C. Equity and good conscience, along with absolute legal  
24 barriers, do not now permit the joinder of all of  
25 Nevada's counties as necessary parties to this action  
26 and, as such, all of Nevada's counties become  
indispensable parties obligating the dismissal of  
this case

1       Considerations of equity and good conscience guide this  
2 Court's discretion in deciding upon a NRCP 12(b)(6) "Motion to  
3 Dismiss" such as this. Regarding these considerations, it is  
4 not only the case that without the party participation of each  
5 of Nevada's counties, any decision favorable to the taxpayers  
6 will automatically, and unfairly, fall entirely, and only, to  
7 Washoe County.

8       This consideration can result in but one conclusion: the  
9 continued maintenance of this lawsuit without the involvement  
10 of each of Nevada's counties is inappropriate, inequitable and  
11 prejudicial to Washoe County. As such, this Petition for  
12 Judicial Review should be dismissed against all parties.

13 Adding additional difficulty, if not impossibility, to the  
14 joinder of all of Nevada's counties in this proceeding is  
15 Nevada's venue rule, at NRS 13.030, which, in relevant part,  
16 establishes that "[a]ctions against a county may be commenced  
17 in the district court of the judicial district embracing the  
18 county...." NRS 13.030. Under that venue rule, it is simply  
19 impossible to bring each of Nevada's counties before this  
20 Court, sitting in Washoe County.

#### 21 VII. Conclusion

22       This Petition for Judicial Review did not arise from a  
23 "contested case" before the State Board of Equalization. The  
24 issues raised by the Petitioners are not final, nor are they  
25 ripe for judicial resolution. If, however, this Petition for  
26 Judicial Review is properly before this Court as arising from a

1 "contested case" before the State Board of Equalization, then  
2 the Petition for Judicial Review is deficient because it fails  
3 to name all taxpayer parties to the proceeding before the State  
4 Board of Equalization, as required by Nevada's Supreme Court.  
5 The Petition is also deficient because it fails to name all the  
6 Nevada county participants (beyond the various county  
7 assessors) involved in a statewide equalization matter. Next,  
8 due to Nevada's venue rules, it is impossible to join all of  
9 Nevada's counties as necessary parties in one proceeding in  
10 Washoe County - thus rendering these counties "indispensable"  
11 to this proceeding, and obligating the dismissal of the  
12 proceeding in its entirety. Finally, the Village Leagues'  
13 attempt to establish itself as a class representative in this  
14 matter is completely inappropriate, as NRCP 23's class action  
15 requirement cannot be met.

16 AFFIRMATION PURSUANT TO NRS 239B.030

17 The undersigned does hereby affirm that the preceding  
18 document does not contain the social security number of any  
19 person.

20 Dated this 4th day of April, 2013.

21 RICHARD A. GAMMICK  
22 District Attorney

23 By /s/ DAVID C. CREEKMAN  
24 DAVID C. CREEKMAN  
25 Chief Deputy District Attorney  
26 P. O. Box 30083  
Reno, NV 89520-3083  
(775) 337-5700

ATTORNEYS FOR WASHOE COUNTY,  
WASHOE COUNTY TREASURER AND  
WASHOE COUNTY ASSESSOR



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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I hereby certify that on 04-04-2013, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

SUELLEN FULSTONE, ESQ. for KATHY NELSON TRUST et al  
DAWN BUONCRISTIANI, ESQ. for STATE OF NEVADA STATE BOARD OF  
EQUALIZATION

Dated this 4th day of April, 2013.

/s/ MICHELLE FOSTER  
MICHELLE FOSTER

FILED

Electronically

04-05-2013:02:02:01 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3641674

1 CODE 4085

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

6

7

VILLAGE LEAGUE TO SAVE INCLINE

ASSETS, INC., et al.,

Petitioner(s)/Plaintiff(s),

8

vs.

Case No. CV13-00522

9

STATE OF NEVADA, et al.,

Dept. No. 3

10

Respondent(s)/Defendant(s).

11

12

**SUMMONS**

13

**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS.  
READ THE INFORMATION BELOW VERY CAREFULLY.**

14

15

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

16

The object of this action is:

17

18

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons, exclusive of the day of service:

19

- a. File with the Clerk of the Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;

20

- b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.

21

22

2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

23

Dated this 12 day of March, 20 13

24

Issued on behalf of Plaintiff(s):

25

Name: Suellen Fulstone

26

Address: 50 W. Liberty St., Ste. 510  
Reno, NV 89501

27

Phone Number: (775) 785-5440

28

JOEY ORDUNA-HASTINGS  
CLERK OF THE COURT

By: [Signature]  
Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

**DECLARATION OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF NEVADA )

COUNTY OF DELRARE )

I, NATHAN CARMICHAEL, declare:  
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the Summons and the following documents:

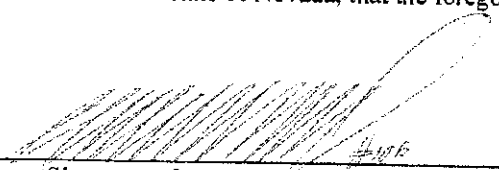
upon CELESTE HAMILTON, at the following  
(Name of Respondent/Defendant who was served)

address: 398 MAIN STREET

on the 3 day of APRIL, 20 13.  
(Month) (Year)

This document does not contain the Social Security Number of any Person.

I declare, under penalty of perjury under the law of then State of Nevada, that the foregoing is true and correct.

  
(Signature of person who completed service)

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Summons

(Title of Document)

filed in case number: CV13-00522



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 5, 2013

/s/ Suellen Fulstone

(Signature)

Suellen Fulstone

(Print Name)

Petitioners

(Attorney for)

FILED

Electronically  
04-09-2013:11:25:04 AM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 3647191

1 CODE 4085

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

7 VILLAGE LEAGUE TO SAVE INCLINE  
8 ASSETS, INC., et al.,  
9 Petitioner(s)/Plaintiff(s),

10 vs.

Case No. CV13-00522

11 STATE OF NEVADA, et al.,  
12 Respondent(s)/Defendant(s).

Dept. No. 3

13 **SUMMONS**

14 **TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**  
15 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS.**  
16 **READ THE INFORMATION BELOW VERY CAREFULLY.**

17 A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that  
18 document (see complaint or petition). When service is by publication, add a brief statement of the object of the  
19 action. See Nevada Rules of Civil Procedure, Rule 4(b).

20 The object of this action is:

- 21 1. If you intend to defend this lawsuit, you must do the following within 20 days after service of  
22 this summons, exclusive of the day of service:
- 23 a. File with the Clerk of the Court, whose address is shown below, a **formal written**  
24 **answer** to the complaint or petition, along with the appropriate filing fees, in  
25 accordance with the rules of the Court, and;
  - 26 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address  
27 is shown below.
- 28 2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may  
enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 12 day of March, 20 13

Issued on behalf of Plaintiff(s):

Name: Suellen Fulstone  
Address: 50 W. Liberty St., Ste. 510  
Reno, NV 89501  
Phone Number: (775) 785-5440

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By: [Signature]  
Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

## AFFIDAVIT OF SERVICE

State of Nevada

County of Washoe

Washoe County District Court

Case Number: CV13-00522

Petitioner:

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

vs.

Respondent:

STATE OF NEVADA, et al.,

For:

Snell & Wilmer L.L.P.  
50 West Liberty Street  
Suite 510  
Reno, NV 89501

Received by Legal Express on the 3rd day of April, 2013 at 10:55 am to be served on Storey County Assessor, 26 South B Street, Virginia City, NV 89440.

I, Nicholas DiFraia, being duly sworn, depose and say that on the 3rd day of April, 2013 at 1:50 pm, I:

SERVED an authorized entity by delivering a true copy of the Summons, Motion to Consolidate Cases, Petition for Judicial Review to Jana Sneddon as Storey County Assessor.

Said service was made at the address of: 26 South B Street, Virginia City, NV 89440.

Affiant is, and was, a citizen of the United States, over 18 years of age, and not a party to, nor interested in, the proceeding in which this affidavit is made.

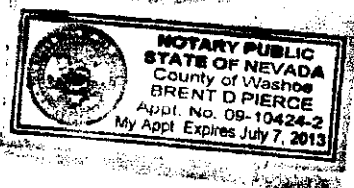
SIGNED and SWORN TO before me on the 5th  
day of April 2013 by the affiant who  
is personally known to me.

  
NOTARY PUBLIC

  
Nicholas DiFraia  
Process Server

Legal Express  
Nevada License 999/999a  
911 South 1st Street  
Las Vegas, NV 89101  
(702) 877-0200  
Our Job Serial Number: 2013000602

Service Fee: \$88.50



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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Summons

(Title of Document)

filed in case number: CV13-00522



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 9, 2013

/s/ Suellen Fulstone  
(Signature)

Suellen Fulstone  
(Print Name)

Petitioners  
(Attorney for)

FILED

Electronically

04-11-2013:10:46:45 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3653614

1 CODE 4085

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

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

Petitioner(s)/Plaintiff(s),

9 vs.

Case No. CV13-00522

10 STATE OF NEVADA, et al.,

Dept. No. 3

Respondent(s)/Defendant(s).

11  
12 **SUMMONS**

13 **TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**  
14 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS.**  
15 **READ THE INFORMATION BELOW VERY CAREFULLY.**

16 A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that  
17 document (see complaint or petition). When service is by publication, add a brief statement of the object of the  
18 action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is:

- 19 1. If you intend to defend this lawsuit, you must do the following within 20 days after service of  
20 this summons, exclusive of the day of service:  
21 a. File with the Clerk of the Court, whose address is shown below, a formal written  
22 answer to the complaint or petition, along with the appropriate filing fees, in  
23 accordance with the rules of the Court, and;  
24 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address  
25 is shown below.  
26 2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may  
27 enter a judgment against you for the relief demanded in the complaint or petition.

28 Dated this 12 day of March, 2013

Issued on behalf of Plaintiff(s):

Name: Suellen Fulstone

Address: 50 W. Liberty St., Ste. 510  
Reno, NV 89501

Phone Number: (775) 785-5440

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By: *[Signature]*  
Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501



## AFFIDAVIT OF SERVICE

State of Nevada

County of Washoe

Washoe County District Court

Case Number: CV13-00522

Petitioner:

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

vs.

Respondent:

STATE OF NEVADA, et al.,

For:

Snell & Wilmer L.L.P.

50 West Liberty Street

Suite 510

Reno, NV 89501

Received by Legal Express on the 22nd day of March, 2013 at 9:55 am to be served on Louise H. Modarelli, 4746 East Montara Circle, Las Vegas, NV 89121.

I, John Nicholson, being duly sworn, depose and say that on the 30th day of March, 2013 at 4:09 pm, I:

**SERVED** by personally delivering a true copy of the Summons, Petition for Judicial Review, Motion to Consolidate Cases to Louise H. Modarelli at 4746 East Montara Circle, Las Vegas, NV 89121.

Affiant is, and was, a citizen of the United States, over 18 years of age, and not a party to, nor interested in, the proceeding in which this affidavit is made.

SIGNED and SWORN TO before me on the 3  
day of April, 2013 by the affiant who  
is personally known to me.

NOTARY PUBLIC



  
John Nicholson  
Process Server

Legal Express  
Nevada License 999/999a  
911 South 1st Street  
Las Vegas, NV 89101  
(702) 877-0200  
Our Job Serial Number: 2013000569

Service Fee: \$42.50

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Summons

(Title of Document)

filed in case number: CV13-00522



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 11, 2013

/s/ Suellen Fulstone

(Signature)

Suellen Fulstone

(Print Name)

Petitioners

(Attorney for)

FILED  
Clerk of the Court  
04-12-2013:02:32:27 PM  
Joey Orduna Hastings  
Transaction # 3657899

FELKO COUNTY SHERIFF'S DEPT.  
CIVIL #

CODE 4085

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.,

Petitioner(s)/Plaintiff(s),

vs.

Case No. CV13-00522

STATE OF NEVADA, et al.,

Dept. No. 3

Respondent(s)/Defendant(s).

**SUMMONS**

**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.**

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is:

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.

2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 12 day of March, 20 13

Issued on behalf of Plaintiff(s):

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

Name: Suellen Fulstone

By: [Signature]

Address: 50 W. Liberty St., Ste. 510  
Reno, NV 89501

Phone Number: (775) 785-5440

Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

**DECLARATION OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF Nevada

COUNTY OF Elko

I, Doreen Kostelack DeHeeler declare:  
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the Summons and the following documents:

upon Katrinka Russell, at the following  
(Name of Respondent/Defendant who was served)

address: 571 Court St (Assessor's  
Elko NV 89801 Office)

on the 5 day of April, 20 13.  
(Month) (Year)

This document does not contain the Social Security Number of any Person.

I declare, under penalty of perjury under the law of then State of Nevada, that the foregoing is true and correct.

D. Kostelack DeHeeler  
(Signature of person who completed service)

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Summons

(Title of Document)

filed in case number: CV13-00522



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 12, 2013

/s/ Suellen Fulstone

(Signature)

Suellen Fulstone

(Print Name)

Petitioners

(Attorney for)

ORIGINAL

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04-12-2013:02:32:27 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3657899

CODE 4085

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.,

Petitioner(s)/Plaintiff(s),

vs.

Case No. CV13-00522

STATE OF NEVADA, et al.

Dept. No. 3

Respondent(s)/Defendant(s).

**SUMMONS**

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU **RESPOND IN WRITING** WITHIN 20 DAYS.  
READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is:

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 26 day of MAR 2013.

Issued on behalf of Plaintiff(s):

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

Name: Suellen Fulstone

By: [Signature]

Address: 50 W. Liberty St., Ste. 510

Reno, NV 89501

Phone Number: (775) 7855440

Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

**DECLARATION OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF NEVADA )  
COUNTY OF ESMERALDA )

I, Matthew Kirkland, declare:  
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the Summons and the following documents:

Petition for Judicial Review

Motion to Consolidate Case.

upon Paul Rupp, at the following  
(Name of Respondent/Defendant who was served)

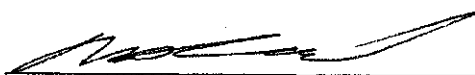
address: 1155 Cinnabar

Silver-park NV 89047.

on the 4<sup>th</sup> day of APRIL, 20 13.  
(Month) (Year)

This document does not contain the Social Security Number of any Person.

I declare, under penalty of perjury under the law of then State of Nevada, that the foregoing is true and correct.

  
(Signature of person who completed service)

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Summons

\_\_\_\_\_  
(Title of Document)

filed in case number: CV13-00522



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 12, 2013

/s/ Suellen Fulstone  
(Signature)

Suellen Fulstone  
(Print Name)

Petitioners  
(Attorney for)



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Clerk of the Court  
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE

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

Petitioner(s)/Plaintiff(s),

9 vs.

Case No. CV13-00522

10 STATE OF NEVADA, et al.,

Dept. No. 3

Respondent(s)/Defendant(s).

11  
12 **SUMMONS**

13 **TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**  
14 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS.**  
15 **READ THE INFORMATION BELOW VERY CAREFULLY.**

16 A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that  
17 document (see complaint or petition). When service is by publication, add a brief statement of the object of the  
18 action. See Nevada Rules of Civil Procedure, Rule 4(b).  
19 The object of this action is:

20 1. If you intend to defend this lawsuit, you must do the following within 20 days after service of  
21 this summons, exclusive of the day of service:

- 22 a. File with the Clerk of the Court, whose address is shown below, a formal written  
23 answer to the complaint or petition, along with the appropriate filing fees, in  
24 accordance with the rules of the Court, and;  
25 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address  
26 is shown below.

27 2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may  
28 enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 12 day of March, 2013

Issued on behalf of Plaintiff(s):

Name: Suellen Fulstone

Address: 50 W. Liberty St., Ste. 510  
Reno, NV 89501

Phone Number: (775) 785-5440

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By: [Signature]

Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

**DECLARATION OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF Nevada )  
COUNTY OF Lyon )

I, Josh Barnes, declare:  
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the Summons and the following documents:

upon Concha Whalin, at the following  
(Name of Respondent/Defendant who was served)

address: 27 S. Main Street  
Yerington, NV 89447

on the 3 day of April, 20 13.  
(Month) (Year)

This document does not contain the Social Security Number of any Person.

I declare, under penalty of perjury under the law of then State of Nevada, that the foregoing is true and correct.

J. Barnes  
(Signature of person who completed service)

LYON COUNTY SHERIFFS  
Civil Division  
911 Harvey Way #1  
Yerington, NV 89447

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Summons

\_\_\_\_\_  
(Title of Document)

filed in case number: CV13-00522

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 12, 2013

/s/ Suellen Fulstone  
(Signature)

Suellen Fulstone  
(Print Name)

Petitioners  
(Attorney for)

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3657899

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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.,

Petitioner(s)/Plaintiff(s),

vs.

Case No. CV13-00522

STATE OF NEVADA, et al.,

Dept. No. 3

Respondent(s)/Defendant(s).

**SUMMONS**

**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS.  
READ THE INFORMATION BELOW VERY CAREFULLY.**

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is:

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons, exclusive of the day of service:

- File with the Clerk of the Court, whose address is shown below, a formal written answer to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
- Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.

2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 26 day of MAR 2013.

Issued on behalf of Plaintiff(s):

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

Name: Suellen Fulstone

By: [Signature]

Address: 50 W. Liberty St., Ste. 510

Reno, NV 89501

Phone Number: (775) 785-5440

Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

**DECLARATION OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF NEVADA )

COUNTY OF ESMERALDA )

I, Matthew Kirkland, declare:  
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the Summons and the following documents:

Petition for Judicial Review

Motion to Consolidate Case.

upon Paul Rupp, at the following  
(Name of Respondent/Defendant who was served)

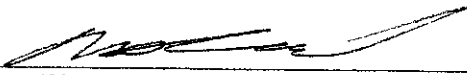
address: 115 S. Cinnabar

Silver-park NV 89047.

on the 4<sup>th</sup> day of APRIL, 20 13.  
(Month) (Year)

This document does not contain the Social Security Number of any Person.

I declare, under penalty of perjury under the law of then State of Nevada, that the foregoing is true and correct.

  
(Signature of person who completed service)

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_  
Summons

(Title of Document)

filed in case number: CV13-00522

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 12, 2013

/s/ Suellen Fulstone  
(Signature)

Suellen Fulstone  
(Print Name)

Petitioners  
(Attorney for)

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3661684

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

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

Petitioner(s)/Plaintiff(s),

9 vs.

Case No. CV13-00522

10 STATE OF NEVADA, et al.,

Dept. No. 3

Respondent(s)/Defendant(s).

11  
12 **SUMMONS**

13 TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
14 WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS.  
15 READ THE INFORMATION BELOW VERY CAREFULLY.

16 A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that  
17 document (see complaint or petition). When service is by publication, add a brief statement of the object of the  
18 action. See Nevada Rules of Civil Procedure, Rule 4(b).  
19 The object of this action is:

20 1. If you intend to defend this lawsuit, you must do the following within 20 days after service of  
21 this summons, exclusive of the day of service:

- 22 a. File with the Clerk of the Court, whose address is shown below, a **formal written**  
23 **answer** to the complaint or petition, along with the appropriate filing fees, in  
24 accordance with the rules of the Court, and;  
25 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address  
26 is shown below.

27 2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may  
28 enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 17 day of March, 20 13

Issued on behalf of Plaintiff(s):

Name: Suellen Fulstone

Address: 50 W. Liberty St., Ste. 510  
Reno, NV 89501

Phone Number: (775) 785-5440

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By: [Signature]  
Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

**DECLARATION OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF Nevada

COUNTY OF White Pine

I, Sgt Todd Fincher, declare:  
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the Summons and the following documents:

upon Robert Bishop, at the following  
(Name of Respondent/Defendant who was served)

address: White Pine County Assessor's Office

on the 9<sup>th</sup> day of April, 20 13.  
(Month) (Year)

This document does not contain the Social Security Number of any Person.

I declare, under penalty of perjury under the law of then State of Nevada, that the foregoing is true and correct.

[Signature]  
(Signature of person who completed service)



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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Summons

\_\_\_\_\_  
(Title of Document)

filed in case number: CV13-00522



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-OR-



For the administration of a public program

-OR-



For an application for a federal or state grant

-OR-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 15, 2013

/s/ Suellen Fulstone

(Signature)

Suellen Fulstone

(Print Name)

Petitioners

(Attorney for)

1 **2645**  
2 CATHERINE CORTEZ MASTO  
3 Attorney General  
4 DAWN BUONCRISTIANI  
5 Deputy Attorney General  
6 Nevada Bar No. 7771  
7 100 North Carson Street  
8 Carson City, Nevada 89701-4717  
9 Telephone: (775) 684-1129  
10 Facsimile: (775) 684-1156  
11 Email: [dbuoncrystiani@ag.nv.gov](mailto:dbuoncrystiani@ag.nv.gov)  
12 *Attorneys for the State Board of Equalization*

8 **IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA**  
9 **IN AND FOR THE COUNTY OF WASHOE**

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

16 Plaintiffs,

17 vs.

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

20 Defendants.

**Case No. CV03-06922**

**Dept. No. 7**

22 **STATE BOARD'S OPPOSITION TO MOTION FOR**  
23 **LEAVE OF COURT TO FILE MOTION TO INTERVENE**

24 Respondent State of Nevada *ex rel.*, State Board of Equalization (State Board), by  
25 and through its attorneys, Catherine Cortez Masto, Attorney General, by Dawn  
26 Buoncrystiani, Deputy Attorney General, submits its Opposition to Motion for Leave of Court  
27 to File Motion to Intervene (Opposition). The Opposition is based upon WDCR 12(2), the  
28 pleadings and papers on file herein, and the following Points and Authorities.

**AFFIRMATION PURSUANT TO NRS 239B.030**

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

DATED this 15th day of April, 2013.

CATHERINE CORTEZ MASTO  
Attorney General

By: /s/ Dawn Buoncristiani  
DAWN BUONCRISTIANI  
Deputy Attorney General  
Nevada State Bar No. 7771  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1219  
Attorneys for the State of Nevada,  
State Board of Equalization

**POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Intervenors Ellen Bakst, Jane Barnhart, Carol Buck, Daniel Schwartz, Lillian Watkins, Don Wilson, Patricia Wilson and Agnieszka Winkler (Intervenors) seek leave of this Court to file a motion to intervene. Intervenors' Motion for Leave of Court to File Motion to Intervene (Motion) must be denied because Intervenors' interests are adequately represented by Appellants in this matter and Intervenors did not timely make their Motion. The following facts, that only relate to action in this matter during the past year, support the State Board's position that Intervenors' interests are adequately represented by the Plaintiffs in this matter and Intervenors' Motion is untimely under NRCP 24(a).

**II. FACTS**

This case has a long history dating back to 2003. See Complaint for Declaratory and Related Relief filed November 13, 2003. The State Board will only provide the facts leading up to the State Board's Equalization Order which Intervenors have prayed that this Court dismiss. See Brief in Intervention (Brief), p. 21. The Nevada Supreme Court (Supreme Court) in Case No. 56030 issued an Order Affirming in Part, Reversing in Part and Remanding (Order) on February 24, 2012. In such Order, the Supreme Court held "[t]he State Board's failure to conduct public hearings with regard to statewide equalization has denied Village League an adequate remedy at law."<sup>1</sup> A Writ of Mandamus (Writ) was issued by this Court on August 21, 2012. The Writ directed the State Board to hold public hearings to "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, . . ." See Exhibit 1 hereto - Petition for Judicial Review, Exhibit 2, p. 1. The State Board held public hearings on September 18, 2012, November 5, 2012, and December 3, 2012. See Exhibit

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<sup>1</sup> The Plaintiffs are Village League to Save Incline Assets, Inc., on behalf of their members and others similarly situated; Maryanne Ingemanson, Trustee of the Larry D. and Maryanne B. Ingemanson Trust (Ingemanson); Dean R. Ingemanson, individually and as Trustee of the Dean R. Ingemanson Trust; J. Robert Anderson (Anderson); and Les Barta (Barta) on behalf of themselves and others similarly situated.

1 1 hereto, Exhibit 1, pp. 4-5.

2 In response to the Writ directing the State Board to hold its first public hearing "not  
3 more than 60 days after the date of the writ's issuance. . . ." the State Board met on  
4 September 18, 2012, to hear taxpayer grievances. See Exhibit 1 hereto, Exhibit 1, p. 2, and  
5 Exhibit 2 pp. 1-2. The State Board elected to "cause published notices" of the equalization  
6 hearing "to be made in the press". NRS 361.380. The notice was placed in 21 newspapers  
7 across the State. See Exhibit 1 hereto, Exhibit 1, p. 2. The State noticed Intervenor along  
8 with the rest of the State through this method of notice. Published notices were made  
9 through the Nevada Press Association. See Exhibit 1 hereto, Exhibit 1, p. 2. More  
10 specifically, for the September 18, 2012 State Board hearing, notice was published in the  
11 North Lake Tahoe Bonanza newspaper, the Tahoe Daily Tribune as well as the Reno  
12 Gazette Journal. See Exhibit 1 hereto, Exhibit 1, pp. 2-3. See the Record for Writ of  
13 Mandamus Hearing in Imaged Format (3CDs) and Agency Certification (ROA), Notices,  
14 Nevada Press Association Ad Placement. More specifically, for the December 3, 2012  
15 State Board hearing, notice was published in the North Lake Tahoe Bonanza and Reno  
16 Gazette Journal. See Exhibit 1 hereto, Exhibit 1, p. 3. Notice of Hearing was sent to  
17 Plaintiffs in this matter through attorney, Suellen Fulstone. See Exhibit 1 hereto, Exhibit 1,  
18 p. 2. Plaintiffs were part of a group of Washoe County property owners submitting an  
19 equalization grievance. Such property owners from Incline Village and Crystal Bay (Incline)  
20 were represented by Suellen Fulstone at the equalization hearings. Incline stated there  
21 were some 1300 property owners whose interests were represented at the hearing;  
22 however, the claim was for equalization of all residential property in Incline. See Exhibit 1  
23 hereto; Exhibit 2 hereto— Transcript of November 5, 2012 Public Hearing of the State Board  
24 of Equalization. Hence, Intervenor received notice and representation at the three State  
25 Board hearings.<sup>2 3</sup>

26 <sup>2</sup> Incline received notice of the November 5, 2012 State Board hearing through attorney Sue Ellen  
27 Fulstone. See ROA, Notices, November 5, 2012, Fulstone NOEH.

28 <sup>3</sup> The State Board agendas for its hearings were posted in public places: **"Notice agendas were posted at the following locations:** DEPARTMENT OF TAXATION LOCATIONS: 1550 E. College Parkway, Carson City; 4600 Kietzke Lane, Bldg L, Ste235, Reno; 555 E. Washington Ave, #1300, Las Vegas; 2550

1 On September 18, 2012, the State Board hearing in response to the Writ was video-  
2 conferenced between the Carson City Legislative Building and the Las Vegas Legislative  
3 Building as well as eight other locations including Battle Mountain, Caliente, Elko, Ely,  
4 Eureka, Pahrump, and Winnemucca. See Exhibit 1 hereto, Exhibit 1, p. 2. The hearing was  
5 available for live viewing via the internet at the Legislative website: <http://leg.state.nv.us>.  
6 The hearing was also available by teleconferencing through a call-in number. See Exhibit 1  
7 hereto, Exhibit 1, p. 2.

8 At the State Board hearing on September 18, 2012, property owners from four  
9 Nevada counties submitted grievances. Three property owners appeared in person and  
10 through teleconferencing. See Exhibit 1 hereto, Exhibit 1, pp. 3-6. Two property owners  
11 from Clark County submitted grievances. The first Clark County property owner was Louise  
12 H. Modarelli (Mordarelli). In this matter, the State Board dismissed Mordarelli's claim  
13 because her claim was for her individual property valuation and there was no equalization  
14 component to such claim. See Exhibit 2 hereto, pp. 6-11.

15 The second Clark County property owner was City Hall, LLC (City). City made a  
16 claim regarding the taxable value of its property after an exemption from taxation was  
17 removed when the property was purchased by City. City wanted the State Board to make  
18 sure the assessor: (1) correctly assessed a property pursuant to the applicable statutes and  
19 regulations; and, (2) then exempted such value if an exemption was appropriate. City also  
20 wanted to be able to appeal the taxable value of the property in January of 2013, so that it  
21 could appeal that current tax year valuation in the upcoming appeal cycle. See Exhibit 1  
22 hereto, Exhibit 1, p. 3.

23 The State Board dismissed City's individual grievance because the State Board does  
24 not have the authority to grant a property owner the right to appeal a property tax in a year  
25 other than the year established pursuant to NRS Chapter 361. No timely appeal was filed

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Paseo Verde Parkway, Suite 180, Henderson; Also: CLARK COUNTY GOVERNMENT CENTER, 500 S.  
28 Grand Central Parkway, Las Vegas; LAS VEGAS LIBRARY, 833 Las Vegas Blvd, Las Vegas; STATE  
LIBRARY & ARCHIVES, 100 Stewart St, Carson City. See ROA, Agendas.

1 for the subject property by the appeal deadline of January 17, 2012. According to public  
2 records, City did not own the property until April 4, 2012. The State Board directed the  
3 Department of Taxation (Department) to investigate the issue regarding the proper valuation  
4 of a property the year after such property is no longer tax exempt. NAC 361.663. The issue  
5 is to be "part of a broader performance appraisal question to be applied across all counties."  
6 See Exhibit 1 hereto, Exhibit 1, pp. 3-4; Exhibit 2 hereto, pp. 12-15.

7 One property owner submitted a grievance from Douglas County. H. William Brooks  
8 (Brooks) complained that he was paying a higher tax on his property than the tax paid on  
9 other properties in Genoa. Brooks disputed the classification of agricultural property and  
10 how agricultural property is valued. See Exhibit 2 hereto, p. 27. The Douglas County  
11 assessor responded with a review of four parcels explaining why the differences in valuation  
12 were a result of various statutory valuation requirements. See Exhibit 1 hereto, Exhibit 1, p.  
13 5. The State Board directed the Department to make the disputed agricultural issues the  
14 subject of a future performance audit: the Department "would look at how assessors are  
15 qualifying properties for the agricultural" designation for property valuation. See Exhibit 2  
16 hereto, p. 28.

17 One property owner from Esmeralda County submitted a grievance. Paul Rupp, a  
18 property owner, and Michael Queen explained how they would like to see property tax laws  
19 changed. The State Board took no action on this matter finding it had no authority to  
20 change property tax laws. The Department offered to provide training to the Esmeralda  
21 County Board of Equalization on general procedures for its hearings. See Exhibit 2 hereto,  
22 p. 38.

23 Incline's position was [t]he [Nevada] Supreme Court (Supreme Court) has  
24 determined that the 2002 appraisal was unlawful and that the valuations reached in that  
25 appraisal were null, void, and unconstitutional. Equalization under the constitution requires  
26 uniform and equal taxation, and requires that all of the valuations of residential property at  
27 Incline Village and Crystal Bay be set for those years at the 2002-2003 constitutional levels.  
28 See Exhibit 1 hereto, Exhibit 1, p. 6. Pursuant to *State Board of Equalization, et al. v.*

1 *Bakst, et al.*, 122 Nev. 1403, 1408, 148 P.3d 717 (2006) four methods were determined to  
2 be invalid and unconstitutional: adjustments for view, adjustments for time, adjustments for  
3 teardowns, and adjustments for beach type. See Exhibit 1 hereto, Exhibit 1, p. 6. This is  
4 the same claim for relief that Intervenor makes for themselves: the assessed taxable values  
5 resulting from the *Bakst* and *Barta* cases be left intact at the 2002-2003 taxable values.  
6 See generally Brief. See *State ex rel. State Bd. of Equalization v. Bakst*, 122 Nev. 1403,  
7 1417, 148 P.3d 717, 726 (2006) ("district court properly ordered that their 2003-2004  
8 valuations be set to the 2002-2003 level."). *State ex rel. State Bd. of Equalization v. Barta*,  
9 124 Nev. 612, 628, 188 P.3d 1092, 1103 (2008) ("we therefore affirm the district court's  
10 orders granting judicial review, declaring the Taxpayers' 2004-2005 assessments void, and  
11 setting their assessed values for 2004-2005 to the 2002-2003 levels.").

12 For relief, Incline requested that after setting residential property land values at the  
13 2002-2003 level, a factor, as approved by the Nevada Tax Commission, be applied which  
14 would result in a total taxable value for each property.<sup>4</sup> See Exhibit 2 hereto, p. 56. At the  
15 November 5, 2012 hearing, Incline testified that the tax years under dispute are 2003- 2004,  
16 2004-05, and 2005-06 and that tax year 2007-2008 was "not at issue here." See Exhibit 2  
17 hereto, pp. 49, 67-68, 90.

18 On November 5, 2012, the State Board held a hearing at which four county  
19 assessors individually responded to the grievances of taxpayers residing within the county  
20 in which each assessor appraises property.<sup>5</sup> See Exhibit 1 hereto, Exhibit 1, pp. 3-7. The  
21 Washoe County Assessor (Assessor) responded to Incline's grievances. The Assessor  
22 testified that not all of the Incline residential properties had one of the invalid methodologies  
23

24 <sup>4</sup> If this process resulted in an increase in value, the Writ requires such property owners/taxpayers be  
25 noticed pursuant to NRS 361.395(2). See Writ, p. 2. NRS 361.395(2) provides: "If the State Board of  
26 Equalization proposes to increase the valuation of any property on the assessment roll, it shall give 10 days'  
27 notice to interested persons by registered or certified mail or by personal service. The notice must state the  
28 time when and place where the person may appear and submit proof concerning the valuation of the property.  
A person waives the notice requirement if he or she personally appears before the Board and is notified of the  
proposed increase in valuation."

<sup>5</sup> However, all 17 assessors received a notice for the hearing. See Exhibit 1 hereto, and Exhibit 1, p.  
1 to Petition for Judicial Review (exhibit 1 hereto).



1 applied to arrive at taxable value. See Exhibit 2 hereto, pp. 39, 43. Incline disagreed  
2 testifying that one of the invalid methods was used on all residential properties in Incline.  
3 See Exhibit 2 hereto, p. 46. When the Chairman asked for the specific information or  
4 evidence that the methods were used on all Incline properties, Incline responded "[Y]ou  
5 have all of that information in the records of this Board for those years." See Exhibit 2  
6 hereto, p. 49. Later, Incline pointed to the record again to indicate support for a general  
7 equalization down for all properties in Incline. See Exhibit 2 hereto, p. 68.

8 The Department, the state agency that maintains State Board records, testified that  
9 the records Incline requested to be placed in front of the State Board included only  
10 information relating to taxable values for properties which were appealed to the State Board  
11 in past years. The records did not contain information about other properties under  
12 consideration for equalization at Incline. NRS 361.375(11). Incline stated that the record  
13 would provide "more information, in terms of what was done at Incline for those years."  
14 See Exhibit 2 hereto, pp. 68-69. State Board members indicated an interest in information  
15 relating to those properties that were not previously appealed because the Writ addresses  
16 general equalization, not individual appeals. See Exhibit 2 hereto, pp. 68-69.

17 Responding to an inquiry from the Chairman, the Department referred the State  
18 Board to NAC 361.652 which defines equalized property. "'Equalized property valuations'  
19 means to ensure that the property in this State is assessed uniformly in accordance with the  
20 methods of appraisal and at the level of assessment required by law." NAC 361.652;  
21 NRS 361.333. The Department testified that the State Board may need to "explore what  
22 happens when you remove those [invalid] methodologies." After the value was removed,  
23 would the properties be valued at the level of assessment required by law? NAC 361.652;  
24 NRS 361.333. See Exhibit 2 hereto, pp. 55-56.

25 The State Board expressed concern that it did not have enough information on  
26 exactly which properties the invalid appraisal methods were applied. See Exhibit 2 hereto,  
27 pp. 58-59, 61-62. The Incline properties which had the invalid methodologies applied to  
28 arrive at a taxable value should be identified. See Exhibit 2 hereto, pp. 75-76. The State

1 Board considered Incline's request for relief: set the base value at the 2002-2003 taxable  
2 value and apply Nevada Tax Commission factors each year forward to develop a final  
3 taxable value for each Incline property. See Exhibit 2 hereto, pp. 88-90. When asked by  
4 the State Board, the Assessor responded that he could identify residential parcels which  
5 had had one of the invalid methodologies applied to arrive at taxable value. See Exhibit 2  
6 hereto, p. 93.

7 The State Board passed a motion directing the Assessor to identify the Incline  
8 properties which had one of the invalid methodologies applied to it in order to arrive at the  
9 taxable value for the land. See Exhibit 2 hereto, pp. 100-101. The Assessor was to then  
10 reduce taxable value to the 2002-2003 level and apply the Nevada Tax Commission factor  
11 to each year forward from 2003-2004, 2004-2005 and 2005-2006 to result in a taxable value  
12 for such property. See Exhibit 2 hereto, pp. 100-101. The Assessor was to report back to  
13 the State Board to review the Assessor's work at another hearing to determine if the State  
14 Board agreed with the taxable values or if the State Board needed to continue to deliberate  
15 regarding its final action on this matter. See Exhibit 2 hereto, p. 113. The Department  
16 suggested that a sales ratio study be performed on the final taxable values to determine if  
17 the level of assessment was consistent with NRS 361.333. NAC 361.652. See Exhibit 2  
18 hereto, pp. 98-100.

19 On December 3, 2012, the State Board held a hearing by video conference to  
20 receive information from the Assessor as requested at the hearing on November 5, 2012.  
21 See Exhibit 1 hereto, Exhibit 1, p. 3. The information included revised valuations of  
22 properties located in Incline Village and Crystal Bay for the 2003-2004, 2004-2005, and  
23 2005-2006 tax years pursuant to the direction of the State Board at a hearing held on  
24 November 5, 2012. See Exhibit 3 hereto - State Board of Equalization Transcript of  
25 Proceedings Public Meeting, Monday, December 3, 2012, p. 5.

26 The Assessor reported that applying the State Board's directions to value property in  
27 Incline/Crystal Bay as directed at the November meeting would result in reduction in value  
28 to most parcels (land) and an increase in value to some parcels. See Exhibit 3 hereto, p. 6.

1 The decrease in value was \$698,000,000 for tax year 2003-2004; \$657,000,000 for tax year  
2 2004-2005; and \$564,000,000 for tax year 2005-2006. See Exhibit 3 hereto, p. 6.

3 The State Board Chairman inquired about "the percentage increase . . . during that  
4 period and/or if you had utilized other adjusting techniques in your reappraisal would your  
5 value still have been similar to what you actually had on them in 2003-2004?" The  
6 Assessor responded "yes." See Exhibit 3 hereto, pp. 8, 59.

7 Another State Board member inquired if the Assessor was using the same methods  
8 that assessors in other counties were using. See Exhibit 3 hereto, p. 13. The Assessor  
9 deferred to the Department. See Exhibit 3 hereto, p. 13. The Department replied that "all of  
10 the assessors make adjustments to value to reflect the effect of a property characteristic  
11 that has significance in the local market. They might not make view [sic] adjustments or  
12 beach adjustments or time adjustments. But they do make adjustments that are relevant to  
13 their market." See Exhibit 3 hereto, pp. 16, 24; Exhibit 2 hereto, p. 57.

14 The Department responded that the results of a performance audit indicated no  
15 exceptions for Washoe County appraisals which meant there were no problems found in  
16 Washoe County's procedures for performing appraisals.<sup>6</sup> See Exhibit 3 hereto, p. 14.  
17 Although the Performance Audit was approved by the Nevada Tax Commission on March 9,  
18 2012, it is relevant to prior assessment years because the methodologies discussed in the  
19 Performance Audit "are the same types of methodologies that had been used in the prior  
20 years." See Exhibit 3 hereto, p. 14.

21 The Department recommended that if any taxable values that were developed using  
22 the unconstitutional methodologies are revised that a ratio study be performed to ensure the  
23 level of assessment is at the same level as the rest of Washoe County. In other words,  
24 Incline properties will "have the same relationship to taxable value as all other properties in  
25 the county." See Exhibit 3 hereto, p. 24. The Department quoted NAC 361.652: "equalized  
26 property valuation means to ensure that the property in this state is assessed uniformly in  
27 accordance with the methods of appraisal and at the level of assessment required by law."

28 <sup>6</sup> The Department indicated it reviewed sales in Washoe County as far back as 2006.

1 See Exhibit 3 hereto, pp. 24-25. Even if a method is struck down by the Supreme Court,"  
2 those properties still have to reach the parameters that are outlined in NRS 361.333, which  
3 is for land, . . . The level of assessment has to be between 32 and 36 percent of the taxable  
4 value. And taxable value for land is defined as market value." See Exhibit 3 hereto, p. 25.  
5 NRS 361.025. For purposes of equalization "similarly-situated properties are treated  
6 similarly and they should all arrive at the statistical level of assessment and an equal  
7 amount." See Exhibit 3 hereto, p. 26. For that reason, the Department suggested a sales  
8 ratio study to assure the Incline properties are equalized. See Exhibit 3 hereto, p. 27.

9 Incline responded to the Assessor's testimony. See Exhibit 3 hereto, p. 27. Although  
10 Incline pointed out that the taxable value of land "is based on comparable sales of vacant  
11 land. . . ." Incline maintained in a taxable value system like Nevada's, not based on market  
12 value, "the uniformity of regulations and uniformity of assessors in following those  
13 regulations is the only basis for assuring constitutional valuation." See Exhibit 3 hereto, p.  
14 27. Incline acknowledged the regulations to value land have been extensively developed  
15 since the earlier set of regulations became effective in 2004 and then in 2009.<sup>7</sup> See Exhibit  
16 3 hereto, p. 30.

17 It was Incline's position that looking at the Department's procedural audit that goes  
18 back as far as 2006, does not "advance the issue" before the State Board. See Exhibit 3  
19 hereto, p. 30. Incline argued that "for purposes of the board's decision here those values  
20 [tax year 2002] have been deemed to be constitutional by the Supreme Court and as the  
21 basis --- because they weren't unchallenged and become the basis for resetting the  
22 unconstitutional valuations of 2000 -- as determined by the courts of 2003-2004." See  
23 Exhibit 3 hereto, p. 32. Incline stated and the Department agreed there were no  
24 equalization regulations until 2010. See Exhibit 3 hereto, pp. 34-35.

25 However, the Department indicated there was a regulation "in place for what  
26 methodologies that the assessors could use." See LCB File No. RO31-03. See Exhibit 3  
27 hereto, p. 34. Incline argued "you can't fix unconstitutional valuation by ratio studies. You  
28

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<sup>7</sup> The additional land regulations became effective June, 17, 2008. See LCB File R166-07.

1 can't fix unconstitutional valuation by factoring. You can't fix valuation done pursuant to  
2 unconstitutional methodologies." See Exhibit 3 hereto, pp. 36-37, 55. It is the duty and  
3 obligation of the State Board to fix the valuations created pursuant to unconstitutional  
4 methodologies by resetting the values at 2002-2003 valuations. See Exhibit 3 hereto, pp.  
5 36-37, 55. The Supreme Court does not "allow a do-over" and has held that equalization  
6 should be the State Board's predominant concern. Exhibit 3 hereto, pp. 39, 43. The remedy  
7 is the valuations must go back to 2002. See Exhibit 3 hereto, pp. 39, 55.

8 In response to Incline's comments, the State Board Chairman was concerned about  
9 equalization because looking at the actual valuation numbers returned by the Assessor, "it  
10 throws it out of equalization and it's not fair and equitable values for 03-04, . . ." See Exhibit  
11 3 hereto, pp. 40, 58.

12 David Creekman responded on behalf of the Washoe County parties, the Washoe  
13 County Board of County Commissioners and the Washoe County Treasurer (County). See  
14 Exhibit 3 hereto, p. 50. County was concerned that there has "been no analysis of valuation  
15 methods used elsewhere within the State of Nevada. See Exhibit 3 hereto, pp. 50-51.  
16 County agreed with the Department's definition of equalizing properties. In response to a  
17 State Board member's question, County responded that NAC 361.652 defines "equalized  
18 property values" and that is why the term "value" does not appear within the definition itself.  
19 See Exhibit 3 hereto, p. 51. County argued the statutory duty of the State Board had not  
20 been modified in decades and it provides the meaning to a constitutional guarantee of a  
21 uniform and equal rate of assessment and taxation. See Exhibit 3 hereto, p. 52. County,  
22 therefore, concurred with the Department that the State Board should perform a ratio study  
23 to assure the valuations comply within the range provided by statute. See Exhibit 3 hereto, ,  
24 p. 52. County went on that since the State Board had noticed the hearing pursuant to NAC  
25 361.650 through NAC 361.667 the State Board must apply the 2010 regulations. Applying  
26 such regulations, the State Board has four alternative options. The State Board may: (1) do  
27 nothing; (2) refer this matter to the Nevada Tax Commission; (3) order a reappraisal; or (4)  
28 adjust values up or down pursuant to a ratio study. See Exhibit 3 hereto, p. 53.

1 Incline opposed County's arguments arguing the "definition of equalization and how  
2 you equalize for purposes of this proceeding is in the Supreme Court decisions." The level  
3 of assessment in NAC 361.652 is thirty-five percent (35%) and the reference to level of  
4 assessment is not a reference to valuation. See Exhibit 3 hereto, p. 54. Incline stated it is  
5 not necessary to look at methods applied throughout Nevada, but to determine the  
6 grievances presented by Incline. See Exhibit 3 hereto, p. 55.

7 The Department responded that NAC 361.652 is not isolated from other definitions  
8 and regulations about equalization. Level of assessment is not just a mathematical thing  
9 but the Department looks for "the quality and uniformity of assessment through statistical  
10 analysis." See Exhibit 3 hereto, p. 56. The Department stated if removal of the  
11 unconstitutional methods results in valuations that are too low or too high, then part of the  
12 equalization process is to correct such unjust valuations. See Exhibit 3 hereto, p. 57. NAC  
13 361.652.

14 The Department pointed out that the regulations in LCB File No. RO31-03, adopted  
15 on August 4, 2004, codify each of the methods that were formerly held unconstitutional by  
16 the Supreme Court. See Exhibit 3 hereto, p. 57.

17 The Chairman closed the hearing and the State Board discussed the Incline issues  
18 and options. One member stated the right option is to reappraise the properties whose  
19 taxable value was determined by applying one of the methods held to be unconstitutional at  
20 the time. Reappraisal would be fair across the board. See Exhibit 3 hereto, pp. 60-64.  
21 However, this is in conflict with Incline's opinion that reappraisal is not an option pursuant to  
22 Supreme Court decisions and the remedy is to return valuations to the 2002 tax year level.  
23 See Exhibit 3 hereto, pp. 60-63, 65. Another member disagreed stating that the values  
24 should remain unchanged because lowering the values is in conflict with the market values  
25 of land going up at that time. See Exhibit 3 hereto, pp. 64-65. Equalization of valuation is  
26 the issue. See Exhibit 3 hereto, p. 69. Another member stated that the values should not  
27 remain the same because the values were developed applying unconstitutional methods  
28 and the Supreme Court has closed the door to other options. See Exhibit 3 hereto, pp. 67-

1 68.

2 In response, the member stated the Supreme Court may have stated that reappraisal  
3 is not an option, but we have a Writ that states "to raise, lower or leave unchanged and so  
4 it's your [State Board's] call." Just following the Supreme Court cases is not applying the  
5 State Board's discretion to raise, lower or leave unchanged taxable values. See Exhibit 3  
6 hereto, p. 70.

7 Another member asked legal counsel for the State Board "I've heard Ms. Fulstone's  
8 testimony that's [reappraise] something we can't do because the Supreme Court told us we  
9 can't. What can we or can't we do as a board?" Legal counsel agreed with the member  
10 who referenced the Writ that leaves the State Board's options open to "raise, lower or leave  
11 unchanged the taxable value of any property for the purpose of equalization." See Exhibit 1  
12 hereto, Exhibit 2, p. 1; Exhibit 2 hereto, p. 71. Such member struggled with the solution of  
13 lowering valuations 1.9 billion dollars in Washoe County creating a level of assessment that  
14 is not in conformance with the law. NRS 361.333. Reappraisal would get the values right  
15 by applying regulations that were correct at the time of the tax years at issue. See Exhibit 3  
16 hereto, p. 72. The other State Board members agreed. See Exhibit 3 hereto, pp. 73-75.

17 By motion, the State Board voted unanimously to direct the Assessor of Washoe  
18 County to "reappraise all properties for the...03-04, 04-05, and 05-06...in those three tax  
19 years that were unconstitutionally appraised or identified as unconstitutionally appraised  
20 and to determine the new taxable value. And in the event that any of those valuations  
21 increase, to assure that we comply with NRS 363.395(2) (sic)." NRS 361.395(2). See  
22 Exhibit 3 hereto, p. 76. Further, "whatever the results are from the Washoe County  
23 assessor's office that Terry [Department] prepare a sales ratio study on those to determine if  
24 they're at the level of assessment required by law." NAC 361.652; NRS 361.333. See  
25 Exhibit 3 hereto, p. 77. The State Board also unanimously passed a motion to give the  
26 Assessor twelve (12) months to complete the reappraisal. See Exhibit 3 hereto, pp. 78-79.

27 Statewide equalization was the final item the State Board considered. See Exhibit 3  
28 hereto, p. 79. State Board members took no further action based on the Taxpayers'

1 testimony and information that had come before the State Board in the three equalization  
2 hearings on September 18, 2012, November 5, 2012, and December 3, 2012. See Exhibit  
3 3 hereto, pp. 79-81.

4 Petitioners in this matter filed a Petition for Judicial Review on March 8, 2013. State  
5 Board filed a Motion to Dismiss Petition for Judicial Review on April 4, 2013.

6 These facts demonstrate that not only has this litigation been going on since 2003,  
7 but there has been extensive action on it in the last year. The Supreme Court issued its  
8 Order remanding the matter back to this Court for equalization purposes because  
9 Appellants along with those similarly situated in this matter did not have an adequate  
10 remedy at law. Hearings have been held by the State Board since this Court issued the Writ  
11 ordering the State Board to hold equalization hearings statewide. Intervenor had notice  
12 but chose not to participate in the State Board equalization hearings until the State Board  
13 issued its Equalization Order on February 8, 2013.

### 14 III. APPLICABLE LAW

#### 15 **NRS 12.130 Intervention: Right to intervention; procedure, determination 16 and costs; exception.**

17 1. Except as otherwise provided in subsection 2:

18 (a) Before the trial, any person may intervene in an action or  
19 proceeding, who has an interest in the matter in litigation, in the success of  
20 either of the parties, or an interest against both.

21 (b) An intervention takes place when a third person is permitted to  
22 become a party to an action or proceeding between other persons, either by  
23 joining the plaintiff in claiming what is sought by the complaint, or by uniting  
24 with the defendant in resisting the claims of the plaintiff, or by demanding  
25 anything adversely to both the plaintiff and the defendant.

26 (c) **Intervention is made as provided by the Nevada Rules of Civil  
27 Procedure.**

28 (d) The court shall determine upon the intervention at the same time  
that the action is decided. If the claim of the party intervening is not sustained,  
the party intervening shall pay all costs incurred by the intervention.  
(Emphasis added).

#### NRCP 24. Intervention

(a) Intervention of Right. **Upon timely application anyone shall be  
permitted to intervene in an action:** (1) when a statute confers an  
unconditional right to intervene; or (2) when the applicant claims an interest  
relating to the property or transaction which is the subject of the action and the  
applicant is so situated that the disposition of the action may as a practical  
matter impair or impede the applicant's ability to protect that interest, **unless**



1       the applicant's interest is adequately represented by existing parties.

2           (b) Permissive Intervention. Upon timely application anyone may be  
3 permitted to intervene in an action: (1) when a statute confers a conditional  
4 right to intervene; or (2) when an applicant's claim or defense and the main  
5 action have a question of law or fact in common. In exercising its discretion the  
6 court shall consider whether the intervention will unduly delay or prejudice the  
7 adjudication of the rights of the original parties.

8           (c) Procedure. A person desiring to intervene shall serve a motion to  
9 intervene upon the parties as provided in Rule 5. The motion shall state the  
10 grounds therefor and shall be accompanied by a pleading setting forth the  
11 claim or defense for which intervention is sought. The same procedure shall  
12 be followed when a statute gives a right to intervene. (Emphasis added).

#### 13       IV. LEGAL ARGUMENTS.

14       Intervention is made in this matter as provided by the Nevada Rules of Civil  
15 Procedure. NRS 12.130(1)(c). Intervenor's Motion should not be granted. Pursuant to  
16 NRCP 24(a)(2), Intervenor's Motion was untimely. Intervenor waited until after the State  
17 Board issued an equalization order before seeking to intervene. Even if this court finds the  
18 Motion is timely filed, Intervenor's interests are adequately represented by the Plaintiffs in  
19 this matter because Plaintiffs Barta, Ingemanson, and Anderson (Plaintiffs) were parties to  
20 either one or both of the *Bakst* and *Barta* cases. *State ex rel. State Bd. of Equalization v.*  
21 *Bakst*, 122 Nev. 1404; *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. at 614.  
22 Intervenor has not proven that such Plaintiffs cannot adequately represent Intervenor's  
23 interests. Additionally, the Writ requires that if the State Board increases any taxable values  
24 the State Board shall give notice to such interested persons pursuant to NRS 361.395(2).  
25 See Exhibit 1 hereto, Exhibit 2, p. 2. NRS 361.395 provides "[t]he notice must state the time  
26 when and place where the person may appear and submit proof concerning the valuation of  
27 the property." Intervenor's interests are adequately represented and protected. Intervenor's  
28 Motion should be denied.

29       **A. Intervenor's Motion Should Be Denied Because Intervenor Has**  
30       **Not Shown that Intervenor's Interests Are Not Adequately**  
31       **Represented by Existing Party Plaintiffs.**

32       Intervenor cites to NRCP 24(a)(2) as support for their Motion.<sup>8 9</sup> See Motion, p. 2.

33       <sup>8</sup> Therefore, State Board does not address NRCP 24(b).

1 "NRCP 24(a) governs intervention, providing for both intervention of right and permissive  
2 intervention. . . ." *American Home Assur. Co. v. Eighth Judicial Dist. Court ex rel. County of*  
3 *Clark*, 122 Nev. 1229, 1235, 147 P.3d 1120, 1124 - 1125 (2006). Intervenor quote the  
4 section on "Intervention of Right." See Motion, p. 2.

5 *American Home Assurance* provides four requirements that must be met "to  
6 intervene under NRCP 24(a)(2), . . ." *Id.* at 1238.

7 [A]n applicant must meet four requirements: (1) that it has a sufficient interest  
8 in the litigation's subject matter, (2) that it could suffer an impairment of its  
9 ability to protect that interest if it does not intervene, (3) that its interest is not  
10 adequately represented by existing parties, **and** (4) that its application is  
timely. Determining whether an applicant has met these four requirements is  
within the district court's discretion. (Emphasis added).

11 *Id.* See also, *League of United Latin American Citizens*, 131 F.3d 1297, 1302 (9<sup>th</sup> Cir. 1997).  
12 "A district court is entitled to the full range of reasonable discretion in determining whether  
13 these requirements are met." *Nish and Goodwill Services, Inc. v. Cohen*, 191 F.R.D. 94, 96  
14 (E.D.Va.,2000) (citation omitted). See *Lawler*, 94 Nev. 623, 626, 584 P.2d 667 (1978)  
15 (recognizing that this court may look to the federal courts' interpretations of similar federal  
16 rules for guidance).

17 The burden . . . is on the applicant for intervention to show that his interests  
18 are not adequately represented by the existing parties. This burden may be  
19 discharged in two ways. The applicant may demonstrate that its interests,  
20 though similar to those of an existing party, are nevertheless sufficiently  
21 different that the representative cannot give the applicant's interests proper  
attention. Alternatively, the applicant may establish collusion between the  
representative and an opposing party, or an indication that the representative  
has not been diligent in prosecuting the litigation.

22 *Hoots v. Com. of Pa.*, 672 F.2d 1133, 1135 (3<sup>rd</sup> Cir. 1982). "Where there is an identity of  
23 interest, . . .the movant to intervene must rebut the presumption of adequate representation  
24 by the party already in the action." *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171,  
25 179-180 (2<sup>nd</sup> Cir. 2001). Further, in *Mountain Top Condominium Ass'n v. Dave Stabbert*  
26 *Master Builder, Inc.* 72 F.3d 361, 368 -369 (3<sup>rd</sup> Cir. 1995), the court opined:

27 <sup>9</sup> Intervenor make no claim under NRCP 24(a)(1) citing no statute which provides an unconditional  
28 right to intervention. See generally, Motion.

1 The most important factor in determining adequacy of  
2 representation is how the interest of the absentee compares with  
3 the interest of the present parties. If the interest of the absentee  
4 is not represented at all, or if all existing parties are adverse to  
5 him, then he is not adequately represented. If his interest is  
6 identical to that of one of the present parties, or if there is a party  
7 charged by law with representing his interest, then a **compelling**  
8 **showing** should be required to demonstrate why this  
9 representation is not adequate. (Emphasis added).

10 In applying the facts to the requirements in *American Home Insurance* and the  
11 foregoing rules, Intervenor demonstrate a sufficient interest in the subject matter of the  
12 litigation. See generally Motion; generally Brief. Intervenor have an identity of interest  
13 because their interests are the same as Plaintiffs who were parties to the same litigation in  
14 *Bakst* and/or *Barta*. *Bakst* and *Barta* reduced the taxable values of Plaintiffs' and  
15 Intervenor's property to 2002-2003 levels. See generally, Motion; generally, Brief. See  
16 *Bakst*, 122 Nev. at 1417; *Barta*, 124 Nev. at 628. However, Intervenor will not suffer an  
17 impairment to their interest if the Motion is not granted because Intervenor's interest can be  
18 adequately represented by Plaintiffs who are subject to the same Supreme Court orders as  
19 Intervenor.<sup>10</sup> See generally, Motion; generally, Brief. Intervenor cannot meet the second,  
20 third and fourth requirements. Intervenor have not demonstrated that Plaintiffs, who will  
21 suffer the same harm alleged by Intervenor, cannot adequately represent Intervenor's  
22 interests. See *Bakst*, 122 Nev. at 1417; *Barta*, 124 Nev. at 628.

23 Intervenor's interests are adequately represented by Plaintiffs because Plaintiffs  
24 *Barta*, Ingemanson, and Anderson were parties to one or both of the *Bakst* and *Barta* cases.  
25 Therefore, Plaintiffs' (*Barta*, Ingemanson and Anderson) interests are identical to  
26 Intervenor's interests. This identity of interests is similar to the *Lundberg* case where the  
27 *Lundberg* Court upheld the denial of a motion to intervene.

28 The interests of the parties to this proceeding, [and] the  
proposed intervenors, . . . are identical insofar as the resolution of  
the legal issue is concerned. In this context the government's  
representative is adequate to represent the interests of those  
desiring to intervene. Accordingly, a right to intervene under

<sup>10</sup> By referencing the Motion, State Board does not necessarily agree with the harm identified by Intervenor but agrees whatever harm may occur is the same harm which would occur to Plaintiffs.

NRCP 24(a)(2) is not established.

*Lundberg v. Koontz*, 82 Nev. 360, 363, 418 P.2d 808, 809 - 810 (1966). Intervenor's burden in moving to intervene is more difficult due to its delay in moving to intervene. Intervenor's delay "suggest[s] that it [Intervenor] is comfortable with how Madison (Plaintiffs) has [have] proceeded with the case." *American Home Assur. Co.*, 122 Nev. at 1242. Similarly, Intervenor's delay in moving to intervene suggests that Intervenor has been comfortable with how Plaintiffs have proceeded with this ten year old case.

Further, Intervenor has not suggested, much less demonstrated, that Plaintiffs are not fully and competently prosecuting their case. Intervenor has pointed to no recently discovered information indicating that Plaintiffs' "interest is somehow adverse to its interest." *American Home Assur. Co.*, 122 Nev. at 1242 citing to *McGinnis v. United Screw & Bolt Corp.*, 637 F.Supp. 9, 11 (E.D.Pa.1985) (finding no inadequacy of representation when the insurer fails to show collusion, adverse interest, or less-than-diligent prosecution). Under *American Home Assurance* and *Lundberg* Intervenor's Motion should be denied. See also, *Hoots*, 672 F.2d at 1135 (motion to intervene denied when there was an "identity of interest" and movant did not establish that party's representation of movant's interests was ineffectual or not diligent). Accordingly, Intervenor's Motion must be denied because Intervenor has not demonstrated that Plaintiffs' representation is inadequate. Intervenor has not demonstrated collusion on behalf of Plaintiffs and Defendants, an adverse interest, or less than diligent prosecution. Intervenor merely states that they have a direct interest in the outcome of the matter. See Motion, p. 4; *generally* Brief. Intervenor's Motion should be denied.

**B. Intervenor's Motion Should be Denied Because Intervenor's Motion was Not Timely Made Pursuant to NRCP 24(a).**

"Timeliness is not a word of exactitude or of precisely measurable dimensions. The requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice." (citation omitted) (internal quotation marks omitted). *Lawler*, 94 Nev. at 626. "Timeliness is

1 a determination that lies within the sound discretion of the trial court." *Cleland v. Eighth*  
2 *Judicial Dist. Court, In and For Clark County*, Dept. No. V, 92 Nev. 454, 456, 552 P.2d 488,  
3 490 (1976). See also *Dangberg Holdings Nevada, L.L.C. v. Douglas County and its Bd. of*  
4 *County Com'rs*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999).

5 "In determining whether a motion for intervention is timely, we consider three factors:  
6 "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice  
7 to other parties; and (3) the reason for and length of the delay." *League*, 131 F.3d at 1302  
8 citing *County of Orange v. Air California*, 799 F.2d 535, 537 (9th Cir.1986). "Delay is  
9 measured from the date the proposed intervenor should have been aware that its interests  
10 would no longer be protected adequately by the parties, not the date it learned of the  
11 litigation." *U.S. v. State of Washington*, 86 F.3d 1499, 1503 (9<sup>th</sup> Cir. 1996) (citation omitted).  
12 "In considering these factors, however, we must bear in mind that 'any substantial lapse of  
13 time weighs heavily against intervention.'" *League*, 131 F.3d at 1303 quoting *U.S. v.*  
14 *Washington*, 86 F.3d 1499 (1996).

15 In applying the first factor, the stage of the proceeding at which application is made,  
16 the *League* court found intervenors' motion was not timely because "a lot of water had  
17 already passed underneath Proposition 187's bridge." *Id.* See also, *Smith v. Marsh*, 194  
18 F.3d 1045, 1051 (9<sup>th</sup> Cir. 1999) ("substantial engagement by the district court with the issues  
19 in a case weighs heavily against allowing intervention as of right, . . .") (citation omitted)  
20 (internal quotations omitted). In the *League* case, not only had complaints been filed but so  
21 had a temporary restraining order, preliminary injunction, and appeal of the preliminary  
22 injunction, as well as, intervention by other parties at an early stage of the proceeding,  
23 denial of a motion to dismiss, granting in part, denial in part of a motion for summary  
24 judgment, and discovery had been proceeding for nine months and suspended. *League*,  
25 131 F.3d at 1303.

26 Similarly, in this matter, a lot of water has gone under the bridge because various  
27 court proceedings have been held including two orders appealed to the Supreme Court and  
28 returning on remand. See Order; Order Affirming in Part, Reversing in Part and Remanding,

1 Case No. 43441. A Writ has been issued and the State Board has held three hearings and  
2 ordered a reappraisal and ratio study. See Writ; Exhibit 1 hereto, Exhibit 1, pp. 2-10. As in  
3 *League*, the Motion is not timely because the District Court and Supreme Court have  
4 already made numerous rulings in this matter along with all of the State of Nevada  
5 procedures preparing for hearings before the State Board as well as the actual hearings.

6 Filing of the Motion after the Equalization Order was issued does not indicate  
7 timeliness, "particularly where there is evidence that the intervenor should have known the  
8 suit could impact its interests for some time prior" to the issuance of the Equalization Order.  
9 *Heartwood, Inc. v. U.S. Forest Service, Inc.*, 316 F.3d 694, 701 (7<sup>th</sup> Cir. 2003). "A  
10 prospective intervenor must move promptly to intervene as soon as it knows or has reason  
11 to know that its interests **might be** adversely affected by the outcome of the litigation." *Id.*  
12 (citation omitted) (emphasis added). In considering the "length of time during which the  
13 would-be intervenor actually knew or reasonably should have known of his interest in the  
14 case before he petitioned for leave to intervene....," the court in *Lelsz v. Kavanagh*, 710 F.2d  
15 1040, 1045 (5<sup>th</sup> Cir. 1983) opined that:

16 The proposed intervenors' notion seems to be that one contemplating  
17 intervention is entitled to assume the aims of the parties with whom he  
18 disagrees will somehow be thwarted and hence he need not move to  
intervene. The Federal Rules of Civil Procedure do not countenance such an  
assumption.

19 *Id.* Similarly, here, the issue of statewide equalization in this matter has been raised since  
20 at least June 19, 2009, when Plaintiffs filed their Amended Complaint/Petition for Writ of  
21 Mandamus. See Amended Complaint/Petition for Writ of Mandamus, pp. 6-7. If Intervenor  
22 did not know about the litigation, notice statewide was made for the State Board September

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1 2012 and December 2012 hearings.<sup>11</sup> Further, Incline and Plaintiffs claim to represent the  
2 interests of others similarly situated. It is not timely to file a motion to intervene when the  
3 lawsuit has reached a stage where it constitutes "a threat." *Id.* See Motion, p. 4.<sup>12</sup> Under  
4 factor one, Intervenor's Motion is not timely and must be denied.

5 When applying the second factor, prejudice to other parties, the following may be  
6 considered. "The most important question to be resolved in the determination of the  
7 timeliness of an application for intervention is not the length of the delay by the intervenor  
8 but the extent of prejudice to the rights of existing parties resulting from the delay."  
9 *Danberg*, 115 Nev. at 141 (citation omitted) (internal quotations omitted). The *Danberg*  
10 Court affirmed the grant of a motion to intervene. The motion was timely made within four to  
11 eight weeks of when the movants learned a prior agreement was not going to be followed  
12 but other arrangements for the property were being negotiated. *Danberg*, 115 Nev. at 136-  
13 137. Although additional legal expenses would be incurred by *Danberg* when admitting  
14 intervenors, the presence of intervenors would more fully define *Danberg's* "rights and  
15 obligations with respect to all parties in one judicial proceeding" and "foster the principles of  
16 judicial economy and finality." *Id.* at 141-142.

17 Here, unlike *Danberg*, there has been no change of position in the litigation. Plaintiffs  
18 have maintained since at least June 19, 2009, that the State Board must equalize statewide.  
19

20 <sup>11</sup> The *Bi-Metallic* Court addressed notice in the context of a state agency's act of equalization. The  
21 plaintiff was the owner of real property in Denver, Colorado and complained that plaintiff "was given no  
22 opportunity to be heard, and therefore its property will be taken without due process of law, . . . *Bi-Metallic Inv.*  
23 *Co. v. State Bd. of Equalization*, 239 U.S. 441, 443 (1915). Such Court held: "[I]f certain property has been  
24 valued at a rate different from that generally prevailing in the county, . . . the owner has had his opportunity to  
25 protest and appeal as usual in our system of taxation. The question, then, is whether all individuals have a  
26 constitutional right to be heard before a matter can be decided in which all are equally concerned, . . . Where a  
27 rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice  
28 in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of  
the whole. General statutes within the state power are passed that affect the person or property of individuals,  
sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only  
way that they can be in a complex society, by their power, immediate or remote, over those who make the  
rule." *Bi-Metallic Inv. Co.*, 444-445 (citation omitted). Notice to every individual impacted by the *Bi-Metallic*  
decision was not required.

<sup>12</sup> Intervenor's state "[b]ased on the SBOE's order directing the Washoe county Assessor to  
reappraise their homes, the BAKST INTERVENORS now have a direct interest in the outcome of the matter  
being litigated in Case no. CV03-06922."

1 See Amended Complaint/Petition for Writ of Mandamus, pp. 6-7. Permitting Intervenor to  
2 intervene would not more fully define the existing parties' rights and obligations because  
3 there is an identity of interest between Plaintiffs' interests and Intervenor's interests.  
4 Judicial economy and finality would not be fostered because Plaintiffs represent the same  
5 interests the Intervenor seeks to represent. See *Bakst*, 122 Nev. at 1417; *Barta*, 124 Nev.  
6 at 628. Rather, the litigation will be increased because with additional parties there are  
7 additional questions, objections, briefs, arguments, motions, etc. *Molthan v. Temple*  
8 *University of Com. System of Higher Ed.*, 93 F.R.D. 585, 587 (D.C.Pa., 1982). Under factor  
9 2, the Motion is not timely.

10 However, "additional delay is not decisive. . ." *League*, 131 F.3d at 1304. But, the  
11 *League* court found there was prejudice to other parties where there was not only delay, but

12 "the proposed intervenor waited twenty-seven months before seeking to  
13 interject itself into the case, only to move the court for full-party participation at  
14 a time when the litigation was, by all accounts, beginning to wind itself down,  
15 we [the court] believe that the additional delay caused by the intervenor's  
presence is indeed relevant to the timeliness calculus, and counsels against  
granting ACNFARI's [intervenor's] motion."

16 *League*, 131 F.3d at 1304. See also, *Smith*, 194 F.3d at 1051 (the district court properly  
17 concluded that granting intervention would prejudice parties where there was "a lengthy  
18 delay-fifteen months-before Students [intervenor] attempted to intervene, and many  
19 substantive and procedural issues had already been settled by the time of the intervention  
20 motion."). Similarly, here, there is prejudice to the State Board because it has been nearly  
21 ten years since this litigation started, and four years since the 2009 remand on Plaintiffs'  
22 statewide equalization claim. Many substantive and procedural issues have already been  
23 resolved while the litigation is moving to achieve its ultimate goal: State Board of  
24 Equalization hearings on statewide equalization. Three of such hearings have been held  
25 resulting in an order for reappraisal and a ration study. Under factor two, Intervenor's  
26 lengthy delay in filing its motion is not timely. Intervenor's Motion must be denied.

27 Applying the third factor, reason for and length of delay, the *League* court found  
28 intervenor's motion to intervene was not timely. "[A]ny substantial lapse of time weighs



1 heavily against intervention." *League*, 131 F.3d at 1302 (citation omitted) (internal quotation  
2 marks omitted). "[U]nder Rule 24 the timeliness clock begins ticking from the time a  
3 proposed intervenor should have been aware [its] 'interest[s] would no longer be protected  
4 adequately by the parties, . . . , ACNFARI's [intervenors] motion was properly denied." *Id.* at  
5 1307 (citation omitted) (internal quotation marks omitted).

6 The *League* court did not accept intervenor's position that the representation by  
7 future defendants in future years would be inadequate or that intervenors' interest may  
8 diverge from the identity of interest with a party in the future because such positions were  
9 speculative. *Id.* at 1304 and 1307. The *League* intervenors had known about the suit since  
10 the day the suit began. *Id.* at 1304. The *League* intervenors' admitted their interest was  
11 identical to the defendants. *Id.* at 1304.

12 The rule in *League* is "[w]here an applicant for intervention and an existing party have  
13 the same *ultimate objective*, a presumption of adequacy of representation arises." *Id.* at  
14 1305 (citations omitted) (internal quotations omitted). Allegations that the intervenors'  
15 interests in *League* may not be adequately represented were not enough to explain a delay  
16 in moving to intervene when there was an identity of interest. Intervenor did not provide  
17 reasons why the party with an identity of interests could not adequately represent intervenor  
18 other than the litigation was moving slowly and there could be difference in interest in the  
19 future. *Id.* at 1306-1307.

20 Similarly, Intervenors in this matter have not provided an explanation for the reason  
21 Intervenors waited so long to intervene. This case began in 2003. See Complaint for  
22 Declaratory and Related Relief, November 13, 2003. The Amended Complaint/Petition for  
23 Writ of Mandamus was filed June 19, 2009. See Amended Complaint/Petition for Writ of  
24 Mandamus, p. 1. The State Board sent out notices statewide for three equalization  
25 hearings. See Exhibit 1 hereto, and Exhibit 1, pp. 2-3 to the Petition for Judicial Review  
26 (exhibit 1 hereto). Yet Intervenors did not file the Motion until after the State Board issued  
27 its Equalization Order on February 8, 2013, nearly 4 years after the Amended  
28 Complaint/Petition for Writ of Mandamus was filed.

1 Intervenor have not overcome the presumption that Intervenor will be adequately  
2 represented by Plaintiffs who have the same ultimate objective that Intervenor have.  
3 Intervenor merely state Intervenor have a direct interest in the case since the State Board  
4 issued its Equalization Order. See motion, p. 4.

5 "[F]ailure to realize that one's interests are in jeopardy until very late in the  
6 proceedings may make a late motion to intervene 'timely.'" *Washington*, 86 F.3d at 1506  
7 (citation omitted). But the *Washington* court found intervenors knew earlier in the litigation  
8 that its interests were threatened; therefore, its excuse for a delayed filing did not excuse a  
9 delayed filing of the motion to intervene. *Id.* Similarly, Intervenor had notice since at least  
10 September 2012, through statewide notice that the State Board would be meeting to  
11 equalize statewide. See Exhibit 1 hereto, Exhibit 1, pp. 2-3. Yet Intervenor waited until  
12 after the State Board issued its Equalization Order to file its Motion.

13 This matter before this Court is unlike the *Day* case where the intervenor sought to  
14 protect an interest determined by a judgment which neither party intended to appeal. "[A]ll  
15 the circumstances of a case must be considered in ascertaining whether or not a motion to  
16 intervene is timely under Fed. R. Civ. P. 24." *Day v. Apoliona*, 505 F.3d 963, 966 (9<sup>th</sup> Cir.  
17 2007). "[E]ven though Hawaii [intervenor] could have and should have intervened earlier,  
18 we will not foreclose further consideration of an important issue because of the positions of  
19 the original parties, despite the long term impact on the State of Hawaii." *Id.* The *Day* court  
20 granted the motion to intervene. *Id.* Here, Intervenor have an identity of interest with  
21 Plaintiffs. Intervenor present no interest which Intervenor seek to protect that is different  
22 than that which Plaintiffs pursue in this matter. Intervenor's delay in moving to intervene  
23 should weigh against Intervenor and the Motion should be denied.

24 This matter is unlike *U.S. v. State of Or.*, 745 F.2d 550, 551-552 (9<sup>th</sup> Cir. 1984) where  
25 a case began in 1968 and led to a five year plan for management of the litigated issue  
26 signed by all parties in 1977. At the end of five years, two of the parties gave notice of  
27 either withdrawing from the negotiated plan or renegotiating the plan. *Id.* The State of  
28 Idaho, intervenor, moved to intervene shortly before the court found the plan was subject to

1 revision or modification. *Id.* The Oregon court granted the motion to intervene  
2 based on intervenors' claim of:

3 changed circumstance—the possibility of new and expanded  
4 negotiations—as a major reason for its attempted intervention at  
5 this time. This change of circumstance, which suggests that the  
6 litigation is entering a new stage, indicates that the stage of the  
proceeding and reason for delay are factors which militate in  
favor of granting the application.

7 *Id.* at 552. Here, there are no changed circumstances that mitigate in favor of granting the  
8 Motion. Plaintiffs filed their Amended Complaint/Petition for Writ of Mandamus on June 19,  
9 2009, seeking statewide equalization. See Amended Complaint/Petition for Writ of  
10 Mandamus, p. 1. The State Board took action to equalize. Intervenors did not file their  
11 Motion until after State Board acted to equalize which was not a change in circumstances  
12 since Plaintiffs had been seeking such action since at least June 19, 2009. Based on all  
13 three factors to determine untimely filing of a motion to intervene, Intervenors' Motion is  
14 untimely.<sup>13</sup> The Motion should be denied.

### 15 III. CONCLUSION

16 Intervenors have not met the four requirements of *American Home Assurance*.  
17 Intervenors demonstrate they have an interest in the case. Intervenors have not  
18 demonstrated they may suffer impairment if the Motion is not granted. Intervenors' interests

19  
20 <sup>13</sup> As to Intervenors' other arguments, the action in which Intervenors seek to intervene is not a  
21 dispute over individual assessments appealed pursuant to NRS 361.360, rather this is a statewide equalization  
22 action ordered by this Court pursuant to its Writ. NRS 361.395. See Writ, pp. 1-2; Order, p. 4. Equalization is  
23 different than assessment. "Assessment is the act of placing a value for tax purposes upon the property of a  
24 particular taxpayer. Equalization, on the other hand, is the act of raising or lowering the total valuation placed  
25 upon a class, or subclass, of property in the aggregate. Equalization deals with all the property of a class or  
26 subclass within a designated territorial limit, such as a county, without regard to who owns the individual  
27 parcels making up the class or subclass. Assessment relates to individual properties; equalization relates to  
28 classes of property collectively." *Board of Sup'rs of Linn County v. Department of Revenue*, 263 N.W.2d 227,  
236 (Iowa 1978). Accordingly, the underlying legal principles are different for equalization than those for  
assessment. "[I]t is the statutory duty of the county assessor to initially set the assessment percentage on all  
property within the county, . . . it was the overriding constitutional and statutory duty of the Board to make such  
adjustments as will achieve uniformity and equality of taxation on a statewide basis, . . ." *State ex rel. Poulos*  
*v. State Bd. of Equalization for State of Okl.*, 646 P.2d 1269, 1273 (Okl., 1982). (citation omitted) (Internal  
quotations omitted.) See also, *Idaho State Tax Com'n v. Staker*, 663 P.2d 270, 274 (Idaho, 1982) (Court "  
concluded that the tax commission [state board of equalization] does have the constitutional authority to  
override the counties' valuation, . . ."). There is no basis upon which to bring an estoppel issue and no final  
order regarding any equalization issue and Intervenors provide none. See generally, Motion.

1 are adequately protected by Plaintiffs who were parties to either the *Bakst* and/or *Barta*  
2 cases, along with Intervenor. Intervenor have not demonstrated that their interest is  
3 sufficiently different than that of Plaintiffs, that Plaintiffs cannot give Intervenor's interests  
4 proper attention, that there is collusion between Plaintiffs and Defendants or that Plaintiffs  
5 have not diligently prosecuted this matter. *Hoots*, 672 F.2d at 1135.

6 Finally, Intervenor's Motion is not timely. After nearly ten years of litigation, the  
7 proceedings in this matter have finally arrived at the point where the State Board of  
8 Equalization has held hearings and issued decisions regarding equalization statewide.  
9 Intervenor received notice regarding statewide equalization along with the rest of the State  
10 in September, 2012, and December, 2012, that the State Board was holding equalization  
11 hearings. Intervenor should have known that their interests may be impacted by an  
12 equalization order. Intervenor waited to file their Motion until after the State Board made a  
13 determination to order a reappraisal and ratio study. Intervenor's interests are the same as  
14 Plaintiffs. There are no changed circumstances upon which Intervenor can claim a right to  
15 intervene.

16 Additionally, Intervenor would not be prejudiced by denial of the Motion because  
17 they have an adequate remedy to protect their interests. Each will be notified of a hearing  
18 pursuant to NRS 361.395(2) if the reappraisal and ratio study result in an increase in  
19 taxable value of their property. See Writ, p. 2. See *U.S. v. Ritchie Special Credit*  
20 *Investments, Ltd.* 620 F.3d 824, 834 (8<sup>th</sup> Cir. 2010) (no prejudice to intervenor if motion to  
21 intervene is denied because intervenor "still has a venue to contest (and protect) its  
22 claims...").

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1 Accordingly, the State Board respectfully requests this Court deny Intervenor's  
2 Motion for Leave of Court to File Motion to Intervene and grant such other and further relief  
3 that the judge deems just and proper.

4 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

7 Dated: April 15, 2013.

8 CATHERINE CORTEZ MASTO  
Attorney General

9  
10 By: /s/ Dawn Buoncristiani  
11 DAWN BUONCRISTIANI  
12 Deputy Attorney General  
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14 (775) 684-1219  
15 Attorneys for the State Board of Equalization  
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Nevada Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on April 15, 2013, I served the foregoing **STATE BOARD'S OPPOSITION TO MOTION FOR LEAVE OF COURT TO FILE MOTION TO INTERVENE** by depositing for mailing at Carson City, Nevada, a true and correct copy thereof in first class mail, postage prepaid, fully addressed as follows:

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

**David Creekman  
Chief Deputy District Attorney  
Washoe County District Attorney's Office  
Civil Division  
Post Office Box 11130  
Reno, Nevada 89520-0027**

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

Dated: April 15, 2013

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

INDEX TO EXHIBITS TO STATE BOARD'S OPPOSITION TO MOTION FOR  
LEAVE OF COURT TO FILE MOTION TO INTERVENE

Exhibit No.	Description of Exhibit
1	Petition for Judicial Review
2	Transcript of November 5, 2012 Public Hearing of the State Board of Equalization
3	State Board of Equalization Transcript of Proceedings Public Meeting, Monday, December 3, 2012

FILED

Electronically

04-16-2013:01:38:17 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3663735

CODE 4085

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.,

Petitioner(s)/Plaintiff(s),

vs.

Case No. CV13-00522

STATE OF NEVADA, et al.,

Respondent(s)/Defendant(s).

Dept. No. 3

**SUMMONS**

**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS.  
READ THE INFORMATION BELOW VERY CAREFULLY.**

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is:

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 12 day of March, 20 13

Issued on behalf of Plaintiff(s):

Name: Suellen Fulstone  
Address: 50 W. Liberty St., Ste. 510  
Reno, NV 89501  
Phone Number: (775) 785-5440

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By: [Signature]  
Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501