certain instances were eight years old. In order to "pretend" that the sale occurred closer in time to the date of reappraisal, the ASSESSOR applied the time adjustment methodology in the form of a "paired sales analysis" in effect to guess as to what the sales price would be for those previous sales had the sale of those properties occurred currently.

In the case of lakefront, there was finally a sale of a lakefront home that illustrated the flawed time adjustment methodology (paired sales analysis) being applied by the ASSESSOR. All lakefront homes had to be reduced as a result of the recent sale ("Quiet Waters"). The balance of the homeowners in Incline Village/Crystal Bay were not so fortunate. The ASSESSOR's time adjustment methodologies directly conflicts with NRS 361.227(5) which require comparable sales to be based on prices actually paid in market transactions.

D. The COMMISSION

1. Regulations

The COMMISSION is required to adopt regulations on valuation for local assessors to adhere to in furtherance of determining the taxable value of land. NRS 360.250(1). Shortly after the 1981 tax shift, the COMMISSION promulgated regulations in 1982 pursuant to the process set forth in Chapter 233B of the Nevada Revised Statutes governing the determination of the taxable value of land during reappraisal by the local assessors. The 1982 regulations of the COMMISSION were applicable during the 2003-2004 reappraisal of Incline Village/Crystal Bay. NAC 361.118 and NAC 361.122, as adopted in 1982, are the regulations that govern the determination of the TAXPAYERS' lands' taxable value for the 2003-2004 reappraisal year.

The DEPARTMENT had **not** performed its 10-year review of NAC 361.118 and NAC 361.127 as is required by NRS 233B.050(1)(e) after the conclusion of the ASSESSOR's reappraisal of Incline Village. Thus, NAC 361.118 and NAC 361.122 were 10 years past due for their statutorily-mandated review. NRS 233B.050(1)(e) should have occurred in 1992 and had this review timely occurred, possibly the problem in Incline Village/Crystal Bay currently pending before the Supreme Court could have been avoided.

"generally accepted appraisal standard."

The COMMISSION did (after receiving a request from the residents in Incline Village and Crystal Bay) hold 32 workshops and ultimately adopted a new revised regulation on August 4, 2004. The regulation represented consensus between the 17 local assessors and interested taxpayers. The purpose of the regulation as stated by the COMMISSION was "[T]he immediate and long-term effects of the regulation is to promote better understanding of the valuation process by the public and to promote the use of standardized valuation methods by county assessors for a more efficient and equitable system of appraisal for property tax purposes." AA 0980. The newly- adopted regulation addresses each of the disputed methodologies and ultimately the COMMISSION rejected every standard and methodology utilized by the ASSESSOR during the 2003-2004 reappraisal of InclineVillage and Crystal Bay. AA 0982-0998.

2. Special Study

As a result of the issues that were arising in Incline Village and Crystal Bay, the COMMISSION ordered the DEPARTMENT to perform a special study of the valuations of the residential property located in Incline Village, Crystal Bay and the residential property located in Douglas County at Lake Tahoe. AA 0969-0973. The DEPARTMENT due to time constraints only completed the special study as to Incline Village and Crystal Bay. AA 0969-0973. The finding of the DEPARTMENT's staff was that the residential property in Incline Village was poorly equalized with property values being too low, too high and some just right. AA 0969-0973. The results of the special study were so poor that the DEPARTMENT recommended that the residential property in Incline Village and Crystal Bay be reappraised by an outside appraiser. AA 0969-0973.

3. Ratio Study

The Nevada Legislature charged the COMMISSION and its staff (the DEPARTMENT) with the obligation to perform a statutory function to monitor the assessment practices in the State of Nevada. The function is referred to as the "ratio study" which is required by NRS 361.333. The Attorney General opined that due to the manner in which the DEPARTMENT had been selecting the parcels for audit of the local assessors as required by NRS 361.333, that prior to the 2003-2004 tax year, the COMMISSION had not been discharging its statutory function. RA 2290-2296. In fact, the Attorney General indicated that had the DEPARTMENT been properly selecting parcels for review

that the problems in Incline Village and Crystal Bay would have been detected at an early stage and may have been headed off. RA 2298-2296.

E. The County Board

At the beginning of the County Board session for the 2003-2004 tax year, the County Board held an orientation workshop on December 19, 2002. RA 0707-0708. During the workshop, the Chairman of the County Board indicated that he was concerned that some of the taxable values determined by the ASSESSOR in Incline Village and Crystal Bay were so high that the taxable value as determined by the ASSESSOR exceeded the property's full cash value. RA 1750-1751. As a result of the Chairman's stated concerns, the County Board ultimately reduced two entire neighborhoods because the taxable value as determined by the ASSESSOR had exceeded the parcel's respective taxable value. RA 1681-1682. Thus, even though the County Board attempted to address the results of the use of ill-advised and illegal methods of valuation, the County Board's primary concern was that the taxable value not exceed the property's full cash value. NRS 361.227(5). The County Board, while making a large valuation reduction, entirely disregarded the fact that the methodologies resulted in a violation of Nevada's uniform and equal mandate as set forth in the Nevada Constitution.

F. The STATE BOARD

The STATE BOARD heard the requests of the TAXPAYERS that the standards and methodologies utilized by the ASSESSOR were not prescribed by law and resulted in the imposition of unequal and non-uniform determinations of taxable value. RA 2195-2206. In response, the STATE BOARD stated that the ASSESSOR was unconstrained and was able to utilize any method of valuation that he deemed appropriate. RA 2616-2617. In its June 30, 2003 Decision supporting the use of the four disputed methodologies utilized by the ASSESSOR, the STATE BOARD concluded that the methodologies did not need to be included in a regulation prior to their utilization for the determination of land's respective taxable value. RA 2539-2540.

TAXPAYERS also requested the STATE BOARD to perform its statutory equalization function set forth in NRS 361.395(1)(b). Specifically, TAXPAYERS requested that the STATE BOARD review the tax rolls as adjusted by the respective County Boards of Equalization and adjust parcels to the correct taxable value. The STATE BOARD refused to discharge its express statutory

function even though the TAXPAYERS had requested them to do so. RA 2577-2609. The STATE BOARD dismissed the requests of TAXPAYERS as being not relevant, misplaced or even threatening the homeowners with a retaliatory assessment. AA 0695-0696.

IV.
STANDARD OF REVIEW

TAXPAYERS' petition is reviewed under NRS 361.420 which is specific to challenges to tax assessments and permits a property owner denied relief by the STATE BOARD to petition for judicial review.[6] The TAXPAYER bears the burden of proof "to show by clear and satisfactory evidence that any valuation ... is unjust and inequitable." *Imperial Palace v. State of Nevada,* 108 Nev. 1060, 1069 (1992). This burden is not satisfied "unless the court can find that the Board applied a fundamentally wrong principle, or refused to exercise its best judgment, or that the assessment was so excessive as to give rise to an implication of fraud or bad faith. " *Id.*

V.
ARGUMENT

A. The ASSESSOR and STATE BOARD Applied Fundamentally Wrong Principles in Determining the Taxable Value of TAXPAYERS' land for tax year 2003-2004

Judge Maddox concluded as follows:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims. Nev. Const. Art. X Sec. 1.
>
> The State Board of Equalization is permitted to value property by any method of appraisal approved by law. ***Washoe County v. Golden Road Motor Inn***, 105 Nev. 402, 406 (1989). Properly promulgated regulations have the full force of a law. NRS 233.B.040(1).
>
> AA 0755-0756.

The uniform and equal clause in Nev. Const. Art. 10, §1 has been interpreted by the Nevada

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[6] In their opening brief, the ASSESSOR alleged that four parcels have not paid their taxes under protest. Frankly, this argument of the ASSESSOR is simply outrageous because the ASSESSOR's own record on appeal reflects that the ASSESSOR voluntarily withdrew his objections in this regard. AA 0413. As to TAXPAYER MORIARTY, the TAXPAYER attempted to pay under protest and the Treasurer rejected his payment. MORIARTY, through counsel, then re-submitted his taxes under protest and the Treasurer accepted the same and granted a refund of a penalty. The documents evidencing payment regarding MORIARTY are not in the record as this issue was handled between counsel.

Supreme Court many times. Recently, the Nevada Supreme Court in *Sun City Summerlin v. State of Nevada*, 113 Nev. 835, 841 (1997) provided the following interpretation of the uniform and equal clause regarding assessment and taxation.

The Supreme Court held:

> Nev. Const. Art. 10, §1 requires the Legislature to "provide by law for a uniform and equal rate of assessment and taxation" and "prescribe such regulations as shall secure a just valuation for taxation on all property." Early in its history, this Court explained that the constitutional provision requires 'that all *ad valorem* taxes should be of a uniform rate or percentage. That one species of taxable property should not pay a higher rate of taxes than other kinds of property." *State of Nevada v. Eastabrook*, 3 Nev. 173, 177 (1867). The Court concluded that a statute providing for a different tax rate for the products of mines was unconstitutional and void: "The legislature could neither make the tax greater nor, less on the products of mines than on other property." *Id* at 179. This Court has reaffirmed its holding in *Eastabrook* many times. *See List*, 99 Nev. 138, 660 P.2d 107.
>
> *Supra* @ 841.

The Supreme Court in *Boyne v. State ex rel. Dickerson*, 80 Nev. 160, 390 P.2d 225 (1964) also addressed the "uniform and equal rate of assessment and taxation" language set forth in Nev. Const. Art. 10, §1. The Supreme Court in *Boyne* further addressed the interaction of Nev. Const. Art. 10, §1 with Nev. Const. Art. 4, §20 and Nev. Const. Art. 4, §21.

Conversely, when the STATE BOARD utilizes a method of valuation not prescribed by law it is applying a fundamentally wrong principle. *Imperial Palace* @ 1069 stated that "Specifically, these cases are based upon the proposition that the State Board is permitted to use any method to determine taxable value that is prescribed by law." *Id* @ 1069. The failure to utilize a method of valuation prescribed by law constitutes the application of a fundamentally wrong principle. The importance of utilizing only those methods of valuation as prescribed by law is that different methods of valuation derive different taxable values.

The District Court in TAXPAYER BAKST's matter provided as follows:

> Both the Nevada Revised Statutes and the Nevada Administrative Code outline several methods in which to assess property for taxation purposes. However, none of the disputed methodologies are listed in either the statutes or codes. Despite not being codified, the ASSESSOR still used them in the reappraisal of Incline Village and Crystal Bay in 2003.
>
> The State Board is allowed to assess property by any method of appraisal

> approved by law. This rule requires that the assessment methods be codified in a law and promulgated through regulations, codes, or statutes. By utilizing methods that are not part of the law, the methods are therefore not approved by law.
>
> While the county assessors must establish standards for appraising land pursuant to the Nevada Revised Statutes, it is the Nevada Tax Commission that shall adopt formulas and incorporate them in its records, providing the methods used in establishing the taxable value of all real property assessed by it. Since the Nevada Tax Commission shall adopt these formulas, in furtherance of assessing property uniformly and equally, it does not logically fit that each individual appraiser in the ASSESSOR's office is free to determine their own methodology. Furthermore, the individual adoption by the appraisers does not comply with the procedures enumerated in the Nevada Revised Statutes for making regulations.[7]
>
> AA 0744.

As concluded by the District Court, none of the four disputed methodologies are in a statute or regulation of the COMMISSION. Accordingly, based upon the holding in *Imperial Palace, supra,* no further analysis should be required as none of the disputed methodologies are prescribed by law and thus constitutes the utilization of a fundamentally wrong principle when determining a property's respective taxable value.

The STATE BOARD and ASSESSOR alternatively argue that NRS 361.260(7) bestow upon the ASSESSOR the unconstrained authority to utilize any standard or methodology that the ASSESSOR deems is appropriate irrespective as to whether the particular methodology is set forth in a statute or regulation of the Nevada Constitution. This interpretation of NRS 361.260(7) of the COMMISSION and ASSESSOR as affirmed by the STATE BOARD on June 23, 2003 is the catalyst for the DEPARTMENT's finding that the taxable values in Incline Village/Crystal Bay are out of equalization and thus as a matter of law, is a violation of the uniform and equal mandates of the Nevada Constitution.

B. The Assessor Did Not Follow NAC 361.118 During the Reappraisal of Incline Village & Crystal Bay

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[7] The Appellants suggest that because Judge Maddox's referenced NRS 361.320 in his Order, that the legal basis of his Order is fundamentally flawed. While NRS361.320 is applied to central assessment, the Court's reference in that regard appears to be erroneous as the proper statutory reference should have been NRS 360.250.

The regulation of the COMMISSION that governs the methodologies that can be used by a local assessor in determining the taxable value of land is set forth in NAC 361.118. NAC 361.118 provides as follows:

> **Land.** (NRS 360.090, 360.250) In making a physical appraisal, each county assessor shall determine the full cash value of land by using market data or a comparative approach to valuation. **If sufficient market data is not available**, the county assessor may use one of the following procedures:
>
> 1. Allocation (abstraction) procedure: An allocation of the appraised total value of the property between the land and any improvements added to the land.
> 2. Anticipated use or development procedure: An estimate of the value of undeveloped land which has the potential for development, determined by deducting from the value of the parcel as fully developed the cost of the development of the site, overhead, the expenses of sales and any profit. The remaining portion is attributable to undeveloped land.
> 3. Land residual technique: The income from a property is split between the land and any improvements so that the portion allocated to land can be capitalized into value.
>
> [Tax Comm'n, Property Tax Reg. part No. 2, eff. 1-14-82]

The 1982 version of NAC 361.118 was effective for the reappraisal of Incline Village and Crystal Bay as well as the 2004-2005 tax year. A review of NAC 361.118 provides that if there is insufficient market data, then the ASSESSOR must value land by either: (1) allocation/abstraction method; (2) anticipated use or development procedure; or (3) the land residual technique. ASSESSOR Appraiser Ron Sauer testified under oath during the County Board hearings as follows:

> As the assessor in Douglas – well, teardowns aren't the best sales. They're fine. **We wish we had vacant land sales of every other property in Incline Village. If we had that we wouldn't have to use teardowns or use listings.** We have to use the best data available. **Teardowns involve the best data.** The reason we don't believe that they're a bad transaction is because when a buyer, when he buys the property, tears the house down, he's indicating to us that there's no contributory value to the improvements that he's purchasing, he's removing them.
>
> RA 1172.

It is clear that the ASSESSOR utilized two of the disputed methodologies because of the lack of vacant land sales data. Pursuant to NAC 361.118, since as testified to by the ASSESSOR there was an absence of market data, the ASSESSOR was then required to use one of the alternate methodologies set forth in NAC 361.118. Instead, the ASSESSOR utilized the disputed

methodologies/standards. It is interesting to note that now before the Supreme Court, the STATE and ASSESSOR now suggest that all of the disputed methodologies were either authorized or implied by the 1982 version of NAC 361.118. Any arguments in this regard should be construed by the Supreme Court as a last ditch attempt to justify the actions of the STATE BOARD and ASSESSOR. The record on appeal is very clear that not only did the existing regulatory scheme provide that the disputed methodologies are not included within the existing regulations on valuation by the COMMISSION, but that the ASSESSOR refused to follow the COMMISSION's regulations on valuation. AA 0797-0799.

C. The ASSESSOR and the COMMISSION's Arguments to Substantiate that the ASSESSOR is not Subject to the Rule-Making Requirements of NRS 233B Disregards 130 Years of *Stare Decisis* as Applied to the Ad Valorem Valuation System of Taxation Within the State of Nevada

The COMMISSION and ASSESSOR argue that the District Court was legally incorrect when he stated that the ASSESSOR was not immune from Chapter 233B and that methodologies or standards of valuation prior to their use must be set forth in a statute or a duly promulgated regulation of the COMMISSION. The COMMISSION and ASSESSOR argue that because NRS 361.260(7) requires assessors to adopt standards of valuation and since NRS Chapter 233B is applicable to only State agencies, therefore the ASSESSOR is free to adopt methods and standards of valuation as he sees fit. This interpretation of the foregoing authorities directly contradicts the historical interpretation of the Nev. Const. Art. 10, §1, Nev. Const. Art. 4, §20 and Nev. Const. Art. 4, §21 as well as the duties and obligations of the STATE and ASSESSOR as set forth in Chapter 361 of the NRS.

1. The STATE and ASSESSOR's Interpretation Conflicts with the County Board's Stated Position

At the inception of this case, there were no dispute as to the applicability of Chapter 233B to the ASSESSOR or the County Board. The County Board correctly represented in its website that the County Board hearing process is subject to the Administrative Procedures Act. RA 2187-2190. Thus, the County Board represented to every taxpayer in Washoe County that the Nevada Administrative Procedures Act (Chapter 233B) was applicable to the proceedings before the Washoe County Board of Equalization.

Moreover, the District Attorney representing the County Board in a letter dated January 10,

2003 represented to the TAXPAYERS, in direct conflict with her client, that "NRS 233B would not apply to CBOE hearings." And, in the same letter, the Deputy District Attorney represented to the TAXPAYERS that the procedures for "CBOE hearings can be found in Nevada Administrative Code Sections 622-643." RA 2255. The inconsistency of the District Attorney's position in her January 10, 2003 correspondence is clear, when she stated that NRS 233B is inapplicable to County Board proceedings yet on the other hand states that the proceedings are governed by the NAC which are the regulations adopted pursuant to Chapter 233B. How can regulations adopted in compliance with Chapter 233B of the NRS govern the proceedings before the County Board while the balance of Chapter 233B be inapplicable to the same administrative proceedings? Simply put, there is no reasonable legal basis upon which the position of ASSESSOR in this regard can be reconciled.

It was only when the TAXPAYERS claimed that the STATE BOARD and the ASSESSOR rendered decisions in violation of the requirements set forth in Chapter 233B of the NRS that the ASSESSOR and the STATE BOARD began to argue that the language set forth in NRS 361.260(7) authorizes all 17 local assessors to apply any standard and rule of valuation that suits their fancy because the ASSESSOR is not subject to Chapter 233B of the NRS. AA 0792-0799. As will be addressed later in this brief, the arguments by the Appellants regarding NRS 361.260(7) is the only argument that will legally justify the actions of the STATE and ASSESSOR that were taken during the 2003-2004 reappraisal of Incline Village/Crystal Bay.

2. *The STATE and ASSESSOR'S Interpretation and Application of NRS 361.260(7) Conflicts with Previous Decisions of the Nevada Supreme Court*

The only way any Court can accept the tortured analysis regarding NRS 361.260(7) as being offered by the STATE BOARD and ASSESSOR that the ASSESSOR can utilize any standard or rule on valuation is to make the illogical leap that the ASSESSOR is somehow a legally separate and distinct entity from the STATE in the valuation process contemplated in Chapter 361 of the NRS. Both the COMMISSION and ASSESSOR argue the same. *See* COUNTY's opening brief @ p. 2 and COMMISSION's opening brief @ p. 21. The arguments of the ASSESSOR and COMMISSION in this regard contradict the current statutory scheme set forth in Chapter 360 and Chapter 361 of the NRS as well as previous decisions of the Nevada Supreme Court and the Constitution of the State of

Nevada.

First, the Nevada Supreme Court as well and the Federal District Court had clearly delineated the function and role of county government in the ad valorem valuation process set forth in Chapter 361 of the NRS. In *State of Nevada v. Reeco*, 272 F. Supp 942 (1967), the Federal District Court quoted a Nevada Supreme Court decision addressing the role of county government in the ad valorem valuation system of taxation.

Reeco, at page 945, provides:

> In 1876, in State of Nevada ex rel. Piper v. Gracey, 11 Nev 223, the Court stated, at pages 227 and 228:
> "* * * It relates to the collection of taxes imposed by the authority of public statutes enacted by the sovereign power of the state, and the money when collected, is received by the county in its public political capacity, to be applied by the officers of the county to the specific public purposes designated in the respective statutes which provide for its levy and collection. In fact, all taxes imposed for county purposes emanate from state authority, and the collection thereof can only be enforced in the name of the state. **Both the levy and collection is the action of the state, operating through the instrumentality of its county organizations. Counties are but integral parts or local subdivisions of the state, *instituted merely as means of government*, and they, and the officers thereof, are but parts of the machinery that constitute the public systems, and designed to assist in the administration of the civil government.**"
>
> [Emphasis added.]

TAXPAYERS submit that the long-established interpretation of the role of the ASSESSOR and the STATE is the correct legal and constitutionally-required analysis. Based upon the longstanding proposition that the ASSESSOR is simply performing a function required of it by the State, it defies common sense how the COMMISSION and ASSESSOR could believe that the Nevada Legislature in adopting the language in NRS 361.260(7) some how reversed 125 years of *stare decisis* permitting all local assessors the ability to create their own methodologies and standards of valuations.

D. The ASSESSOR and COMMISSION's Interpretation and Application of NRS 361.260(7) Conflicts with Statutes in NRS Chapters 360 & 361

Moreover, the interpretation by the COMMISSION and ASSESSOR of NRS 361.260(7) directly contradicts the very reason the COMMISSION was created by the Twenty-Sixth Session of the Nevada Legislature in 1915. The COMMISSION was created to supervise the local assessors because prior to the time the COMMISSION was created, the taxpayers of this State had been indulging in

what has been referred to as a carnival of "individual equalization." The phrase "individual equalization" means that each county was assessing property as it saw fit with no centralized supervision to assure the "uniform and equal" requirements of the Nevada Constitution had been satisfied. The Nevada Legislature, concerned about its constitutional obligations regarding prescribing a uniform system of regulations, intended to secure a uniform and equal valuation thereby creating the COMMISSION.

The intent behind the creation of the COMMISSION was to "centralize" the **assessment** and **equalization** functions and to eliminate or otherwise minimize the "individual equalization." Until the reappraisal of Incline Village and Crystal Bay, neither the STATE nor any of its political subdivisions had disputed the fact that the ad valorem valuation system set forth in Chapter 361 of the NRS was centralized both as to assessment valuation as well as collection of the tax. It has always been accepted that the methods of valuation and assessment would need to be general and uniform in operation throughout the State. Now, the STATE and ASSESSOR in order to justify the actions of the ASSESSOR, argue that the Nevada Legislature's promulgation of NRS 361.260(7) represents a reversal of the intent to centralize the ad valorem system set forth in Chapter 361 of the NRS. Neither the COMMISSION nor ASSESSOR offer any support for its position in this regard with the exception of their interpretation of one subsection of one statute contained in Chapter 361 of the NRS.

Contrary to the COMMISSION and ASSESSOR's interpretation of NRS 361.260(7), the exact language that was inserted in the NRS when the COMMISSION was created regarding the supervision of the local assessors is presently today found in NRS 360.215(6). Consequently, had the Nevada Legislature intended to reverse its very purpose of creating the COMMISSION, wouldn't it had been advisable to also change the very statute that was adopted to centralize the assessment and collection function of the ad valorem system of taxation? *State v. Weddell,* 117 Nev. 651 (2001) (Legislature is presumed to be aware of existing statutes when new enactments are adopted).

E. The ASSESSOR and COMMISSION's Interpretation of NRS 361.260(7) Violates Nev. Const. Art. 4, §20 and is Inconsistent with Existing Authorities

Appellants argue that since the Nevada Legislature in NRS 361.260(7) requires assessors to adopt standards/methods of valuation for land, the ASSESSOR nor any other local assessor is

constrained in any manner as to how those standards are adopted and utilized in determining taxable value of land. In addition, Appellants raise the applicability of AB 392 of the 2005 Session of the Nevada Legislature for the first time in this case before the Supreme Court and the TAXPAYERS will respond to the new arguments raised by the Appellants before the Supreme Court.

NRS 361.260(7) provided at that time as follows:

> The county assessor shall establish standards for appraising and reappraising land pursuant to this section. In establishing the standards, the county assessor shall consider comparable sales of land before July 1 of the year before the lien date.

The COMMISSION and ASSESSOR's interpretation of the language found in NRS 361.260(7) is an unconstitutional interpretation of NRS361.260(7). Since as offered by the STATE and ASSESSOR, the Legislature bestowed the statutory authority to adopt any applicable standard that the ASSESSOR deemed appropriate then each of the 17 assessors are free to practice their "ART" in the manner that each local assessor deems appropriate. This interpretation and application of NRS 361.260(7) by the COMMISSION and ASSESSOR is violative of Nev. Const. Art. 4, §20 and Nev. Const. Art. 4, §21 which provides as follows:

> The legislature shall not pass local or special laws in any of the enumerated cases - that is to say: . . .
> For the assessment and collection of taxes for state, county, and township purposes;

Based upon the express language of Nev. Const. Art. 4, §20, no law promulgated by the Nevada Legislature relating to the assessment and collection of tax will be constitutionally valued unless those laws are of a general and uniform operation throughout the State. The Nevada Supreme Court has had occasion to previously interpret Nev. Const. Art. 4, §20 and has held that the constitutional constraints set forth in Art.4, §20 to be as follows:

> The prohibition in section 20 against the passage of local or special laws "or the assessment and collection of taxes for state, county and township purposes", was only intended to apply to laws regulating the **method of Assessing** and collecting taxes for the purpose of general revenue.....
>
> *State v. Fogus,* 19 Nev. 247, 249 (1885).

> By this provision, it was evidently intended simply to inhibit local or special laws, respecting or **Regulating the manner or mode of assessing** and collecting taxes. Assessment, as used in this section, evidently has reference to the duties of the subordinate officer, known

> under our laws as an Assessor, who duty it is to ascertain the value of the taxable property, and determine the exact amount which each parcel or individual is liable for.
>
> *Gibson v. Mason,* 5 Nev. 283, 304 (1869).

It is clear based on the Supreme Court's decisions in *Fogus* and *Mason* that the methods of assessing property must constitutionally be general and uniform in operating throughout the State. The STATE and ASSESSOR's interpretation in their application of NRS 361.260(7) will, and may have, resulted in potentially 17 different systems of ad valorem valuation of land in the State of Nevada. Thus, the interpretation of the COMMISSION and ASSESSOR is in direct conflict with Nev. Const. Art. 4, §20 as interpreted by the Supreme Court. The Supreme Court should note that the term "assessing" stated in the Nevada Constitution has consistently been interpreted to mean the "method and mode of assessing property." The COMMISSION and ASSESSOR argue that the Legislature in 2001 in SB 389 when it promulgated NRS 361.260(7) intended to permit each local assessor the right to set forth his own "methods and mode of valuing and assessing property." Neither the Legislative History of SB 389 or the Nevada Constitution support or permit the COMMISSION and ASSESSOR'sinterpretation and application of NRS 361.260(7).

The Nevada Supreme Court in 1964 interpreted Nev. Const. Art. 4, §20 and Nev. Const. Art. 10, §1 within the context of the property tax system set forth in Chapter 361 of the NRS. In *Boyne v. State of Nevada*, 80 Nev. 160 (1964), the Nevada Supreme struck down a system of taxation that was provided by the Nevada Legislature to mitigate the impacts on the State's ranchers and farmers attributable to the "urban explosion that had engulfed" Nevada in the years that preceded 1964. In *Boyne*, the Supreme Court stated:

> It is self-evident under Nevada law that no special laws can be passed 'for the assessment and collection of taxes for the state, county and township purposes' (Article IV, Section 20); that all laws shall be general and of uniform operation throughout the State' (Article IV, Section 21)

Id. @ 166. In furtherance of the constitutional and legal conclusion, the Nevada Supreme Court declared a separate system of valuation and taxation afforded to farmers and ranchers by the Nevada Legislature as unconstitutional. Ultimately, the Nevada Constitution was amended which provided for a separate classification of agriculture property to be subject to a separate and distinct appraisal and

valuation of the agriculture property. *See* Nev. Const. Art. 10, §1; NRS Chapter 361A.

If as suggested by the ASSESSOR and COMMISSION that each local assessor is permitted to set his own standards of valuation for land, how can the constitutional mandate that all laws be general and operate uniformly throughout the State be satisfied when as suggested each of the 17 local assessors can adopt their own standards and methodologies? The answer to the question posed is that it cannot and the record in this case supports this point.

In Incline Village and Crystal Bay, the STATE BOARD ultimately approved and utilized a 13-step view classification system to measure the view of 3,200 parcels. The ASSESSOR's next door neighbor, Douglas County, used a 4-step view system on parcels located in Douglas County. RA 0272-0274. Currently, as a matter of fact, in Northern Nevada there are already two different view classification standards attempting to measure the same view, a view of Lake Tahoe being utilized in Nevada. Accordingly, presuming you had two identical parcels side-by-side and separated only by the invisible county line, the two identical properties would have two different taxable values simply because one is located in Washoe County subjected to a 13-step view system and the parcel is located in Douglas County and subjected to a 4-step view classification system. The reason that Douglas County and Washoe County were able to adopt different land valuation standards is because the ratio study as required by NRS 361.333 has not been performed correctly at the DEPARTMENT level denying the COMMISSION the opportunity to detect these differences in land valuation standards.

It is respectfully submitted that Nev. Const. Art. 4, §20 is complementary to the uniform and equal mandates set forth in Nev. Const. Art. 10, §1 as articulated in *Boyne*. Based upon Nev. Const. Art. 4, §20 and Nev. Const. Art. 4, §21, the Appellants' interpretation and application of NRS361.260(7) is in violation of the Nevada Constitution because it permits each assessor to adopt their own methodologies and standards regarding the determination of a land's taxable value which has resulted in a non-uniform method of assessment being implemented in Nevada. The District Court recognized this point and stated:

> Without standards regulating and maintaining the appraisers as a collective group, each is free to apply and evidence as shown, do apply, whatever method they desire. As a result, any one property has 17 potential assessed values.
>
> AA 0755-0756.

In this case, there is no dispute that the ASSESSOR interpreted and the STATE BOARD approved the four disputed methodologies for use in only Incline Village and Crystal Bay. In fact the District Attorney representing the ASSESSOR stated that "Certainly, Incline Village is a distinct area requiring its own classification system to assure equalization." RA 2237. It is ironic that the ASSESSOR represented that the reason they created these methods of valuation was to assure equalization when, as we know today, the parcels in Incline Village and Crystal Bay have been valued in violation of the uniform and equal mandate are out of equalization. AA 0973.

In *Boyne*, the Nevada Supreme Court struck down a system of taxation for agriculture property that was to be utilized statewide because it set up a different classification for agriculture property. In this case the ASSESSOR has created four disputed methodologies for only two neighborhoods in Washoe County (Incline Village and Crystal Bay) relying upon NRS 361.260(7) which the ASSESSOR states permits all 17 assessors to do exactly as he did.

As the Supreme Court did in *Boyne,* so should the Supreme Court in this case and strike down the STATE BOARD and ASSESSOR's interpretation and application of NRS 361.260(7) as being a violation of Nev. Const. Art. 4, §20 and Nev. Const. Art. 10, §1. Based upon the COMMISSION and ASSESSOR's interpretation of NRS 361.260(7) and the STATE BOARD's application of NRS 361.260(7), there will be no general and uniform set of laws for the determination of taxable value of land since every assessor is free to practice his "ART" unconstrained by anyone. Accordingly, due to the STATE BOARD's June 30, 2003 Decision, TAXPAYERS had their lands' taxable value determined in a manner violative of Nev. Const. Art. 4, §20 and Nev. Const. Art. 10, §1.

Finally, the legislative history of SB 376 (2001) also refutes the arguments of Appellants that the statutory language found at NRS 361.260(7) permits the local assessors to adopt land appraisal standards outside the NRS Chapter 233B process.

In support of SB 376 (2001), the Clark County Assessor testified to explain the statutory language now contained in NRS 361.260(7). Specifically, Clark County Assessor Mark Schofield testified as follows:

> On page 12, line 18, this language deals with the standards we use for the appraisal of land. **We use sales, however, the sales we use by Nevada Administrative Code (NAC) are cut off 18 months in arrears**

> **of the actual start of the fiscal year in which they will be billed.** What we are asking you to do is push that up an additional 6 months to give us a more accurate database with which we can value land. Section 20 deals with the letter of authorization for the appeal I spoke about earlier.
>
> RA 0712.

Thus, from reviewing the testimony of the Clark County Assessor, it is clear from the explanation the Clark County Assessor gave justifying the need for the changes proposed by SB 376 that the NAC did govern the appraisal standards for valuation of land by local assessors. In addition, Appellants have produced no authority whatsoever that would support their interpretation that the language of NRS 361.260(7) entirely removed the land valuation standards from the regulatory process of the COMMISSION. The NAC has always set the standards for the valuation of land by the ASSESSOR and no legislative acts have occurred to change the land valuation standards and methodologies. In fact, AB 392 of the 2005 Legislative Session "clarified" that land valuation standards and methodologies must be included in a duly-promulgated regulation of the COMMISSION prior to use.

In an attempt to support the actions of the ASSESSOR and STATE BOARD in their reappraisal of Incline Village and Crystal Bay, Appellants have exalted the language in NRS 361.260(7) above the constitutional mandates set forth in Nev. Const. Art. 10, §1 and Nev. Const. Art. 4, §20. In *Foley v. Kennedy*, 110 Nev. 1295 (1994), the Nevada Supreme Court rejected a similar attempt by an appellant to require the Constitution to conform to a statute as opposed to the statutes conforming to the Constitution. In *Foley*, the Supreme Court held that " The constitution may not be construed pursuant to a statute enacted pursuant thereto...rather statutes must be construed consistent with the constitution and, where necessary, in a manner supportive of their constitutionality." *Id.* @ 1300. Appellants have interpretated NRS 361.260(7) to permit all 17 local assessors the ability to create and implement their own independent set of land valuation standards while Nev. Const. Art. 4, §20 requires the laws of Nevada regarding the assessment and collection of tax to be general and uniform in operation throughout the State. An appropriate and constitutional interpretation of NRS 361.260(7) would be that NRS 361.260(7) requires local assessors to adopt standards of valuation regarding land but prior to the use of any land valuation standards, the ASSESSOR must petition the COMMISSION and include those land valuation standards in a regulation of the COMMISSION

thereby assuring that the valuation standards advocated by one assessor will be utilized throughout the entire State. The interpretation of NRS 361.260(7) by the STATE BOARD and ASSESSOR are violative of the Nev. Const. Art. 10, §1, Nev. Const. Art. 4, §20 and Nev. Const. Art. 4, §21.

F. "Ad Hoc Rule Making" by the STATE BOARD has Denied TAXPAYERS their Due Process of Law by Setting a Standard of Valuation not Prescribed by Law

On June 30, 2003, the STATE BOARD approved the four disputed methodologies for use in Incline Village and Crystal Bay even though the four disputed methodologies were not in State statute or a duly-promulgated COMMISSION regulation. The Nevada Supreme Court has stated the importance of the regulatory process as set forth in Chapter 233B of the Nevada Revised Statutes.

> If an administrative agency needs to adopt a regulation which comes within the definition of that term as found in the Administrative Procedure Act, then it is, in my opinion, essential that the agency proceed in accordance with the provisions of the Act. This is required, in my opinion, because of the great scope of authority vested in administrative agencies, the broad discretion allowed to them in the exercise of that authority, because of the impact of their actions on the vital interest of all citizens of this state, including the business entities and other persons who come before that agency, and because the deference accorded their determinations by the courts on judicial review.
> . . . .
> If the procedures of 233B are followed there will be adequate notice given to all persons who will be immediately or may be in the future affected by the proposed regulation. They will be afforded an opportunity to appear at hearings and to offer evidence and argument in support of or in opposition to the proposed regulation. **The agency and its staff will have the benefit of various opposing views on the subject, and who knows, in the process the agency might even change its position and modify or even withdraw a proposed regulation.**
>
> *Public Serv. Comm'n v. Southwest Gas,* 99 Nev. 268 @ 273 (1983) [Emphasis added.]

This case is also unique in that the Supreme Court is afforded the ability to see the results that have occurred when the regulatory process before the COMMISSION is given the opportunity to work after the TAXPAYERS have been afforded the opportunity to participate in a properly-noticed regulatory process. The COMMISSION, at the conclusion of the public regulatory process, rejected all of the methodologies and standards that were applied during the 2003-2004 tax year in Incline Village and Crystal Bay. Thus, even though the COMMISSION rejected the disputed methodologies, Appellants are now asking the Supreme Court to validate the valuation methodologies/standards that

the COMMISSION itself rejected for the 2003-2004 tax year.

In furtherance of this point, the District Court stated:

> The Court cannot emphasize the importance of public comment and awareness of generally applicable rules and regulations that affect monetary interests of the citizens as a whole. A voice that is not heard, is a voice that has not spoken. The individualistic approach of the appraisers has led to taxes that are not uniform and equal, as required by the Nevada Constitution.
>
> AA 0755-0756.

The District Court understood the importance of requiring the STATE BOARD to adhere to the rule of law that the STATE BOARD may only determine the taxable value of property by a method of valuation prescribed by law.

In spite of the foregoing the STATE BOARD, COMMISSION and ASSESSOR continue to advocate that the appraisal standards for the valuation of land do not need to be adopted in any formal process prior to utilization. Moreover, the arguments of the Appellants in this case must be reviewed in the light of the facts as they unfolded during the administration hearings for 2003-2004 tax year because the Appellants are asking the Supreme Court to support what in fact occurred during the administrative hearings before the County and STATE BOARD during the 2003-2004 tax year. For example, the STATE and ASSESSOR believe that NRS 361.260(7) permits the ASSESSOR to change his standards and methodologies during the course of an administrative hearing to justify his previous taxable value even though those same standards were not used during the reappraisal of the subject properties (e.g. ASSESSOR changed the written view standards to the view book standards during a contested case). The facts of this case illustrate the type of conduct which the framers of the Constitution intended to prohibit through the enactment special and local legislation.

G. NRS 233B.038(1)(d) and NRS 233B.038(2)(d) Required the Four Disputed Methodologies be Included in a Regulation of the COMMISSION Prior to Utilization by the STATE BOARD

AB 171 of the 1997 Session and AB 12 of the 1999 Session were ultimately codified in NRS 233B.038(1)(d) and NRS 233B.038(2)(d) which currently define what constitutes a regulation for purposes of Chapter 233B. The purpose of these two legislative changes were to provide all citizens of the State of Nevada who interact with state agencies the right to have the standards, policies and methodologies utilized against them for determining compliance to be subjected to the regulatory

process prior to those policy's utilization in a contested case against that citizen.

NRS 233B.038(1)(d) provides:

> **"Regulation" defined.** . . . .
> (d) The general application by an agency of a written policy, interpretation, process or procedure to determine whether a person is in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty or monetary interest.

NRS 233B.038(2)(d) provides:

> 2. The term does not include: . . . .
> (d) A manual of internal policies and procedures or audit procedures of an agency which is used solely to train or provide guidance to employees of the agency and which is not used as authority in a contested case to determine whether a person is in compliance with a federal or state statute or regulation;

Based on the foregoing, the operative inquiry becomes whether the four disputed methodologies/standards in question were of general applicability and whether the standards were used as authority in a contested case to determine whether a person is in compliance with State Law in order to assess a monetary fee, fine or penalty.

The STATE BOARD utilized the disputed standards/methodologies delineated in the June 30, 2003 Decision and applied that decision against 107 separate TAXPAYERS appearing before the STATE BOARD as well as applying the four disputed methodologies to the balance of the 9,000 parcels Incline Village and Crystal Bay. The proceeding/hearing before the STATE BOARD constituted a contested case as defined by NRS 233B.032.

In this case, the four disputed methodologies/standards were utilized to determine the TAXPAYERS' taxable value of their property. The determination of a TAXPAYER's property's taxable value is a process by which property owner's liability for the ad valorem tax imposed by Chapter 361 of the NRS is established. The determination of a property's taxable value clearly has a monetary impact on the owner of that property. In fact, each of the TAXPAYERS remitted the following ad valorem taxes for the 2003-2004 tax year as follows:

TAXPAYERS	Taxes Paid Under Protest
Bakst	$37,261.74
Barnhart	9,428.57
Bender	14,558.78

Leach	7,252.66	
Moriarty	15,577.94	
Myerson	3,971.81	
Nakada	8,129.23	
Rebane	17,450.08	
Schwartz	8,544.17	
Stewart	5,853.19	
Watkins	12,909.72	
Wilson	6,303.21	
Winkler	9,417.43	
Zanjani	21,643.47	
Taxes Paid Under Protest by 14 Plaintiffs for 03-04	$178,302.02	AA 0784.

The legislative history regarding AB 171 and AB 12[8] answers any remaining questions as to whether the standards/methodologies utilized by the STATE BOARD to determine the taxable value of the respective properties were required to be included in a duly- promulgated regulation before the COMMISSION prior to utilization of these standards by the ASSESSOR in determining the taxable value of the TAXPAYERS' residences.

The purpose of AB 171 and AB 12 was stated as follows:

> **Assemblyman Amodei asked whether it was the Nevada Taxpayers Association's desire that anything which might be used as a basis for an adverse administrative finding be contained in NAC. Ms. Vilardo answered affirmatively.**
>
> *See* Legislative Minutes re: AB 171 dated 2/26/97 [Emphasis added.]

The legislative history also makes it clear that AB 171 and AB 12 were intended to be applicable to taxation matters.

> Ms. Angres suggested the Department of Taxation's problems might be unique and more properly addressed by amending the chapter of NRS which pertained to that department rather than amending a chapter which applied to all state agencies.
>
> *See* Legislative Minutes re: AB 171 dated 2/26/97 [Emphasis added.]

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[8] AB 171 of the 1997 session of the Nevada Legislature was never adopted into law. The sponsor of AB171 also sponsored AB 12 of the 1999 session of the Nevada Legislature. AB 12 utilized much of the language that was the result of the deliberations that occurred during the 1997 Legislative Session on AB 171.

The disputed methodologies were utilized to substantiate the ASSESSOR's determination of taxable value in all the contested cases before the STATE BOARD. In conclusion, the four disputed methodologies of general applicability and have a direct monetary impact on the TAXPAYERS and thus were requiring them to be included in a duly-promulgated regulation of the COMMISSION prior to their utilization by the STATE BOARD. The COMMISSION and ASSESSOR argue that since the ASSESSOR contrived the four disputed methodologies that the STATE BOARD's consideration and approval of the four disputed methodologies is not a violation of NRS 233B.038. Fortunately for the TAXPAYERS, the Nevada Legislature foresaw this type of maneuvering by State agencies and both discussed and addressed the situation when State agencies utilize policies, standards and methodologies to determine compliance with a State statute that were not "State" initiated policies, standards and methodologies and whether the State agencies are required to include those non-state initiated policies in a regulation before utilizing those non-state standards, policies and methodologies.

> Chairman O'Connell asserted she would like to add "of state policy" after "interpretation" in section 1, subsection 1, paragraph c), of A.B. 171. Mr. Wasserman said this would clarify the general application of a state policy. **He suggested language stating "or other interpretation" would cover any interpretation a state agency may be attempting to use in order to apply a rule of general applicability. Ms. Vilardo commented the Nevada Taxpayers Association would not oppose the language referred to by Mr. Wasserman as, she indicated, there are other interpretations besides those of state.** She remarked agencies having the authority to make interpretations are covered in section 1, subsection 2, paragraph (g) of A.B. 171 to avoid impacting an agency with this ability. She reiterated previous amendments attempt to address all concerns brought forth by state agencies as A.B. 171 is intended to allow a user-friendly regulatory environment in which businesses are made aware of regulations to be followed.
>
> *See* Legislative Minutes re: AB 171 dated 5/23/97 [Emphasis added.]

Thus, based upon the express language of NRS 233B.038(1)(d) and the removal of the word "state," it is clear that the fact that the disputed methodologies/standards were initially offered by the ASSESSOR as opposed to STATE is of no moment in the consideration as to whether the four disputed methodologies were required to be included in a regulation prior to use.

H. The STATE BOARD Did Adopt and Utilize the Disputed Methodologies/Standards

The STATE BOARD has suggested to the Supreme Court that the STATE BOARD only "reviewed the standards and methodologies" utilized by the ASSESSOR and in fact, never adopted the disputed methodologies and standards. *See* STATE BOARD's opening brief @ p. 22. **This statement is false.** The June 30, 2003 Decision of the STATE BOARD provides as follows:

> 5. In making the finding that adjustments to the value of land for time and view are standard accepted valuation methodologies, the State Board referenced The Appraisal of Real Estate (12th Edition) and the Dictionary of Real Estate Appraisal. The State Board determined the use of "tear-downs" as comparable sales to vacant land is very common and typically used by brokers, owners, buyer, sellers, and real estate appraisers in the Lake Tahoe real estate market as well as other areas in the nation. The State Board further determined the Assessor is correctly using these valuation methodologies pursuant to NRS 361.260(7). . . .
>
> **DECISION**
>
> Upon hearing the arguments on methodology made by the parties, the State Board determined time adjustment is a standard principle for adjusting sales in a sales comparison approach; view is a physical characteristic of land which is considered in valuing land; and the use of "tear-downs" as comparable sales is an accepted valuation methodology, all of which may be used by the Assessor in the appraisal of land.

RA 2616-2617. Thus, the express terms of the Decision of the STATE BOARD not only directly contradicts the STATE BOARD's position but also the testimony of the STATE BOARD Members themselves. In response to an inquiry by a homeowner, STATE BOARD Member Lowe boasted how the STATE OF NEVADA had in fact adopted the disputed methodology/standards:

> MR. FISCHER: I'll try and keep it very short. I'm Wayne Fischer. I spent 24 years of my professional career writing computer standards. That computer over there probably has 20 to 40 standards on the hardware, software interfaces and so on, and I'm somewhat appalled by the use of the word standards on appraisal methods.
>
> **We have no standard. It's whatever they want it to be.** If we're going to write a standard it should [be] called methods and procedures of appraisal. If I'm anal retentive enough to go through and read through a 500,000-page document, at least I should have the right to verify that my property is appraised properly, whether it's land values are *Marshall-Swift* factor. That should be well documented whether I get it over the Internet or call the appraiser's office.
>
> We should have it fully documented. **What Norm and Elaine have done is reverse engineered the whole process and we still are up in the air on how it's really done. We really don't know.**
>
> MEMBER LOWE: The State of Nevada has **adopted** the uniform standards of professional appraisal practice and it is a requirement of every appraiser to fulfill those standards.
>
> MR. FISCHER: Is that available to the public?
>
> MEMBER LOW: Sure. **It's a state law.**

MR. FISCHER: It's a law, but it is all time valuations, is the *Marshall-Swift* factor, everything in there?

MEMBER LOWE: No, because there's different entities that have different opinions and a value here can be the same as a value in New York or Las Vegas or Los Angeles, **but the methodologies and techniques are the same throughout.**

MR. FISCHER: How can I get a copy of that?

MEMBER LOWE: Write to the Appraisal Foundation or the Appraisal Institute.

MR. FISCHER: Here in Nevada? If I ask my attorney, can he get a copy of it?

MEMBER LOWE: Anyone can get a copy of it.

RA 2523. [Emphasis added.]

Thus, contrary to the assertions of the STATE BOARD that it only reviewed the ASSESSOR's disputed methodologies/standards, the record and the June 30, 2003 Decision provide otherwise. As stated by STATE BOARD Member Lowe, the STATE OF NEVADA has adopted the *Uniform Standards of Appraisal (USPAP)* which at that time was, as Member Lowe stated was "state law." Neither NRS Chapters 360 or 361 or NAC Chapters 360 or 361 contain any reference to the supposed "adoption" of the *USPAP* as was stated by STATE BOARD Member Lowe as support for the STATE BOARD's decision to determine that the ASSESSOR could utilize the disputed methodologies and standards for property tax purposes. As such, the TAXPAYERS can only conclude that the STATE BOARD adopted the *USPAP* without observing the process required by Chapter 233B of the Nevada Revised Statutes. Again, another example of ad hoc rule making.[9]

I. The State Board is an Agency as Defined in NRS 233B.031 and the Administrative Proceeding Before the State Board Is a Contested Case as Defined in NRS 233B.032

First, the ASSESSOR has previously argued that the STATE BOARD is not an agency as that term is contemplated within NRS 233B.031. NRS 233B.031 provides as follows:

> **"Agency" defined.** "Agency" means an agency, bureau, board, commission, department, division, officer or employee of the Executive Department of the State Government authorized by law to make regulations or to determine contested cases.

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[9] The STATE and ASSESSOR argue that NRS 233B.038(2)(h) enables the STATE BOARD the ability to adopt the four disputed methodologies without assessing the formal regulation process in Chapter 233B. This argument, for the grounds set forth in this brief, represent a violation of Nev. Const. Art. 4, §20 and no further discussion will address this point.

The STATE BOARD is a duly comprised board of the Executive Branch of State Government with its members being appointed by the Governor. *See* NRS 361.375. Moreover, the STATE BOARD has the authority to issue regulations. *See* NRS 361.375(9). Finally, the STATE BOARD has the statutory duty to determine contested cases. Based on the foregoing, the STATE BOARD is an agency as that term is defined by NRS 233B.031

Second, NRS 233B.032 defines contested case and provides as follows:

> **"Contested case" defined.** "Contested case" means a proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party 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 defines a contested case as a proceeding in which the legal rights, duties or privileges of a party are required to be determined by an agency after the opportunity for a hearing. In the case of the STATE BOARD, NRS 361.400 sets forth the general hearing obligations of the STATE BOARD where the rights and duties of TAXPAYERS are determined every time the STATE BOARD convenes. In a STATE BOARD hearing, the STATE BOARD first determines whether the taxable value as calculated by the local ASSESSOR was correctly determined and second, whether the taxable value as determined by the local ASSESSOR exceeds the subject property's full cash value. *See* NRS 361.227(1)&(5). Thus, the STATE BOARD determines the duties and rights of all TAXPAYERS appearing before the STATE BOARD as to the amount of ad valorem tax that each taxpayer will owe pursuant to Chapter 361 of the Nevada Revised Statutes.

Based on the foregoing, the STATE BOARD is an agency as defined by NRS 233B.031 and the cases of the TAXPAYERS before the STATE BOARD were contested cases as defined by NRS 233B.032. As further support, it is important to note that NRS 233B.039 contains a long list of state agencies which are exempt from Chapter 233B of the NRS and the STATE BOARD is not one of the listed exempt entities. Clearly, had the Nevada Legislature intended to exempt the STATE BOARD, it would have done so.

J. The Disputed Standards/Methodologies are not Generally-Accepted Appraisal Standards

In Nevada, the ASSESSOR is required by law to determine a property's "taxable value." *See*

NRS 361.227(1). Once the ASSESSOR has determined the taxable value of the subject property, he is required to determine that the taxable value as calculated by the ASSESSOR does not exceed the property's full cash value. *See* NRS 361.227(5). Taxable value of property is not the property's market value or full cash value. *Id.* Both the STATE BOARD and the ASSESSOR argue that the appraisers in the ASSESSOR's office are permitted to utilize generally-accepted appraisal standards or generally-recognized standards of appraisal in determining a property's taxable value. AA 0794; AA 0797-0799. Neither Appellant point to one book, treatise or other authority that contain the alleged generally-accepted appraisal practices. **The reason the Appellants fail to provide such book for the Court's consideration is because it does not exist.** In an attempt to justify their appraisal standards and methodologies the ASSESSOR and STATE BOARD referenced seven treatises that the STATE BOARD and ASSESSOR relied upon. The list of authorities relied upon to date are as follows:

1) *USPAP (Uniform Standard Appraisal Practices).* AA 0579G-0579H.

2) *Frequently Asked Questions About USPAP.* AA 0579G-0579H.

3) *The Appraisal of Real Estate 12th Edition.* AA 0579G-0579H.

4) *The Appraisal of Real Estate 10th Edition.* AA 0579G-0579H.

5) *The Appraisal of Real Estate 9th Edition.* AA 0579G-0579H.

6) *The Dictionary of Real Estate Appraisal.* AA 0579G-0579H.

7) *Property Assessment Valuation.*[10] AA 0579G-0579H.

None of the foregoing textbooks contain references to generally-accepted appraisal practices. Again, no such authority has been brought forward to substantiate that the ASSESSOR in fact did apply generally-accepted appraisal practices as appropriate in the taxable value system of valuation and taxation. **The STATE BOARD and the ASSESSOR never will be able to produce such authority as the only entity that can make the determination as to what are acceptable appraisal practices for the determination of taxable value is the COMMISSION.** Moreover, after 32 workshops the COMMISSION has rejected the disputed methodologies and standards.

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[10] The *Property Assessment Manual* was recently referenced in the ASSESSOR's responsive brief. During the previous 18 months, neither the STATE BOARD nor the ASSESSOR had relied upon this particular treatise.

The ASSESSOR in his opening brief states that the IAAO and the Appraisal Institute are the certifying organization for "the profession." AA 0550. The Court needs to be aware that neither the IAAO nor the Appraisal Institute certify anything in the STATE OF NEVADA with respect to the determination of ad valorem valuation tax imposed pursuant to Chapter 361 of the Nevada Revised Statutes. In fact, it is the COMMISSION who certifies the appraisers in the local assessor's office to perform property tax appraisals. *See* NRS 361.221, et seq. The State Board of Real Estate Appraisers is the public body who regulates fee appraisers and is specifically prohibited from regulating tax appraisers. *See* NRS 645C.150. *See* also SB 358 of the 1989 Session of the Nevada Legislature. The STATE BOARD argues to the Court that it would be "highly impractical" to codify all standards by which county assessors typically rely. This statement is erroneous. As an example, the State Board of Real Estate Appraisers correctly adopted the *USPAP* as being applicable to fee appraisers in NAC 645C.400. NAC 645C.400 provides as follows:

> **Adoption of professional standards by reference; review of revisions.** (NRS 645C.210)
>
> 1. The Commission hereby adopts by reference the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation, 2004 edition. The *Uniform Standards of Professional Appraisal Practice* may be obtained from the Appraisal Foundation Distribution Center, P.O. Box 381, Annapolis Junction, Maryland 20701-0381, for the price of $40.
> 2. If the publication adopted by reference pursuant to subsection 1 is revised, the Commission will review the revision to determine its suitability for this State. If the Commission determines that the revision is not suitable for this State, the Commission 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 Commission does not revise its determination, the Commission will give notice that the revision is not suitable for this State within 30 days after the hearing. If the Commission does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.
> (Added to NAC by Comm'n of Appraisers of Real Estate, eff. 1-26-90; A 11-19-91; R017-98, 10-23-98; R100-03, 1-30-2004)

Thus, it is not impractical nor difficult as it only requires the ASSESSOR to obtain the consent of the COMMISSION and for the COMMISSION to comply with NRS 233B in adopting a regulation in this regard. The COMMISSION has never agreed to provide local assessors with that level of unsupervised discretion.

K. The Recently-Adopted Commission's Permanent Regulations Reject All of the Disputed Methodologies/Standards

The STATE BOARD argues that the COMMISSION's August 2, 2004 regulations should not be read to mean that appraisal methodologies need to included in a regulation prior to their use by a local assessor. If the STATE BOARD is correct, it begs the question as to why the COMMISSION held 32 workshops to reach consensus amongst the TAXPAYERS and the 17 assessors prior to the promulgation of the August 4, 2004 regulation by the COMMISSION. The STATE BOARD's statement in this regard is wrong.

The COMMISSION regulations effective August 4, 2004 reject each of the disputed standards/methodologies. Regulations which have yet to implemented by the ASSESSOR even though they became effective for the 2005-2006 tax year. AA 0789-0800.

1. Teardowns

As stated above, the ASSESSOR determined improved land sales to be a vacant comparable land sale when the ASSESSOR deemed the sale to be a teardown. The recently-adopted regulation of the COMMISSION on August 4, 2004 specifically prohibits the use of teardowns because of the inclusion of the language of "vacant at the time of sale" in section 13 of LCB File R031-03. AA 522. *See* also Section 13(2)(b)(2).

All of the teardowns utilized for the recent reappraisal of Incline Village were not vacant at the time of sale. As such, the methodology approved by the STATE BOARD was rejected by the COMMISSION.

2. Time Adjustments

The ASSESSOR in determining the taxable value of the TAXPAYERS' land adjusted the actual sales price of the comparable sales to pretend that the actual sale occurred on July 2, 2002. Section 18(1)(f)(2) of the August 4, 2004 COMMISSION regulations prohibit the utilization of a time adjustment to the actual sales price of a comparable sale. The time adjustment methodology as was utilized during the reappraisal of Incline Village and Crystal Bay for the 2003-2004 tax year has been rejected by the COMMISSION.

3. View Classifications

During the reappraisal of Incline Village, the ASSESSOR required access to the main living area of the home to determine the appropriate view classification. Section 18(1)(f)(1) specifically mandates that the view influence be determined from the land. Thus, this section of the August 4, 2004 regulation rejects both the ability to determine the view from within the home and the ability to classify views.[11]

4. Rock Classifications

The August 4, 2004 regulation requires the ASSESSOR to have market data for each adjustment for physical attribute (rock/sand) and to provide a comprehensive analysis sufficient to enable the owner to determine that the value of his parcel was properly adjusted. *See* Section 18(1)(f)(2) &(3). As represented in the statement of facts, the STATE BOARD approved the rock classification system of the ASSESSOR even though there were no standards to differentiate between any one of the five classifications.

Based upon the foregoing, all of the disputed standards/methodologies have been rejected or modified by the COMMISSION. **Since the COMMISSION rejected the disputed standards and methodologies as not being appropriate for determining taxable value so should the Supreme Court.**

L. The State Board has Never Performed its Equalization Function as Mandated by NRS 361.395 and all other Statutory Protections Afforded by the Nevada Legislature Have Failed or Have Been Discharged in an Ill-Advised Manner

The Nevada Legislature has set forth three separate statutory functions to be performed by different State Agencies or their staffs to assure that the levy and collection of the tax imposed by Chapter 361 of the NRS is done in uniform and equal manner. All three statutory protections have failed for one reason or another. The three statutory protections are as follows:

- The STATE BOARD is required to equalize taxable values annually. NRS

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[11] The ASSESSOR attempt to characterize the TAXPAYERS' arguments regarding the view classification system as being in conflict with NRS 361.228(3). This attempt to construe the TAXPAYERS' arguments in this regard is disingenuous. The TAXPAYERS have disputed the manner in which the ASSESSOR chose to measure the view attribute of their property both as to the absence of a legally-adopted regulation as well as the inconsistent and unconstitutional application of the ASSESSOR's various vew classification standards.

361.395(1)(b)

- The COMMISSION is to perform a ratio study designed to assure that assessments are properly performed. NRS 361.333
- The DEPARTMENT is to carry on a continuing study regarding equalization. NRS 360.215(4)

*1. **The STATE BOARD has never equalized pursuant to NRS 361.395(1)(b)***

NRS 361.395(1)(b) requires the STATE BOARD to review the tax rolls as adjusted by the respective county board of equalization and to equalize and establish the taxable value of all property subject to the uniform and equal clause of the Nevada Constitution. The STATE BOARD has never discharged this function for the 2003-2004 tax year or for any other year that the TAXPAYERS are aware of. RA 2580-2581; RA 2606-2609.

The consequence of the STATE BOARDS's decision affording the ASSESSOR to value property with the four disputed methodologies and the failure of the STATE BOARD to equalize values pursuant to NRS 361.395(1)(b) was formally enunciated by the DEPARTMENT in its results of its special study. The DEPARTMENT concluded that the residential properties in Incline Village/Crystal Bay are poorly equalized and the DEPARTMENT recommended a reappraisal of the entire area. This conclusion came as no surprise to the TAXPAYERS since they knew that when 30 out 50 view classifications were wrong as proven through the STATE BOARD process which resulted in an error rate of 60%. Moreover, the STATE BOARD should not be surprised by this conclusion since the STATE BOARD was aware that the ASSESSOR did not adhere to his own view classification standard by failing to gain access to the residence to properly measure the view attribute.[12] RA 0494-0495.

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12 In addition, the record on appeal before the STATE BOARD illustrates that the STATE BOARD was well aware that properties were not in equalization and the STATE BOARD failed to address the disparity. AA 0696. The appraiser of the STATE BOARD made a specific point of bringing to the attention of the TAXPAYERS the percentage difference between a property's respective taxable value as compared to its full cash value. Even *though it* was apparent to the STATE BOARD that the taxable value of the residences in Incline Village/Crystal Bay were significantly disparate as compared to the respective market value, the STATE BOARD simply refused to address discriminatory and disparate determination of taxable value by the ASSESSOR.

Specifically, the DEPARTMENT concluded:

> "we need to make it clear that the allocation study and the abstraction study using vacant land sale comparison, that we believe that **there is a need to correct a unsatisfactory equalization that is evidenced,** by the high dispersion and as Doug said, the bimodal dispersion and high vertical inequality, **the only way to cure it is to do a reappraisal and that is our recommendation to this body...**"
>
> AA 0973. [Emphasis added.]

> **"...improved land looks poorly equalized, shows high dispersion, bimodal distribution with most properties either too low or too high, very few in the statutory range and we find what we call vertical inequality where we see the highest ratios on the lowest value properties and the lowest ratios on the highest value properties."**
>
> AA 609. [Emphasis added.]

It is ironic that the appraiser for the STATE BOARD professed as follows:

> MEMBER JOHNSON: I **think it is (the) responsibility of the State Board of Equalization to equalize values of all properties in the State of Nevada.** In fairness to other taxpayers throughout the State of Nevada who did not file a timely appeal and were not heard by this Board, in all those cases historically we have denied their request for appearance...
>
> AA 1718. [Emphasis added.]

Yet the STATE BOARD appraiser qualified the STATE BOARD's equalization duties to only those taxpayers who timely appealed which is in direct conflict to the STATE BOARD's express statutory duties and constitutional obligations. Clearly NRS 361.395(1)(b) requires the STATE BOARD to equalize without the need for an appellant to file a petition in order to evoke the equalization duties of the STATE BOARD. The STATE BOARD was created in its current format in 1975 as a result of the Assessment and Tax Equity Committee's final report submitted to the Honorable Mike O'Callaghan in October, 1974. AA 0606. The role of the STATE BOARD is defined in that report on page 7, as follows (emphasis added):

> . . . That the State Board of Tax Appeals and Equalization be established:
>
> (a) To perform the tax equalization function.
>
> (b) **And** hear appeals from decisions of the Department of Taxation and county boards. . . .
>
> AA 0606.

This also explains why when TAXPAYER STEWART appeared before the STATE BOARD for the 2003-2004 tax year, he was denied relief even though he and the ASSESSOR were in agreement that his view classification was too high. AA 2544. The STATE BOARD disregarded their statutory duties under NRS 361.395(1)(b) and simply acknowledged that TAXPAYER STEWART was over-valued and to appeal the succeeding tax year. AA 2504-2526; AA 2544.

This same member of the STATE BOARD in response to TAXPAYER BAKST's request for equalization pursuant to NRS 361.395(1)(b) threatened him with a retaliatory assessment. Specifically, STATE BOARD Member Johnson stated:

> What Shelli is saying too is if you're going to have - we want all citizens of the state of Nevada treated equally and if Clark County is on the tax roll at 100 percent of their full cash value, Incline is on at 70 and Douglas is on at 60, we should find some way where they're all treated the same and **maybe we should bring them all up to 100 percent of market value and maybe that would be the most equitable thing.**
>
> AA 0696. [Emphasis added.]

Accordingly, even though the STATE BOARD professes to adhere to the constitutional mandates of valuing property in a uniform and equal manner when requested by TAXPAYERS to equalize their property, the TAXPAYERS' requests have been either summarily dismissed as not relevant or threatened with a retaliatory assessment. AA 0696. STATE BOARD Member Johnson's statements to TAXPAYER BAKST cannot be reconciled with the statute since NRS 361.395(1)(b) requires property to be equalized to its taxable value which is always less than market value. NRS 361.227(5).

2. The COMMISSION has Never Properly Discharged its Statutory Obligation in Performing the Ratio Study

NRS 361.333 requires the DEPARTMENT and COMMISSION to perform a study to assure that property is assessed in a correct and timely manner as well as to assure that there is an equality of assessment. NRS 361.333(1)(b) & (3). On October 6, 2003 the Attorney General opined to his client that " The ratio study, as currently conducted, does not permit the Commission to fulfill its statutory duty to insure that "all property" is being taxed appropriately." **"...A sample of Incline Village properties was not included in the most recent ratio study for Washoe County, primarily because Incline Village was not within the reappraisal area at the time the DEPARTMENT**

conducted the ratio study. Had the ratio study included a sample of properties from Incline Village, it may have alerted the DEPARTMENT and/or the COMMISSION to a potential problem, thus affording an opportunity to facilitate an early resolution of the problem." RA 2290-2296. Once again, had the ratio study been performed correctly, the statutory study may have headed off the problem currently pending before the Supreme Court. Moreover, even though the Attorney General representing the COMMISSION acknowledged the problem in Incline Village/Crystal Bay, the Appellants consistently dispute any decision of a Court which agrees with the Attorney General's advice to its own client. Thus, there is a problem in Incline Village and Crystal Bay and a problem which the District Court addressed in his January 13, 2006 Order.

3. The DEPARTMENT Has Never Performed its Continuing Study on Equalization

NRS 360.215(4) provides that the Department "[S]hall carry on a continuing study, the object of which is the equalization of property values between counties." The DEPARTMENT has not performed this function. It is most telling of the DEPARTMENT's failure to perform this function when the Attorney General representing the STATE BOARD indicated that the reason the STATE BOARD never discharged its statutory function was because it was a part time board and did not have the time to equalize the property values in this STATE. RA 2607. Specifically, the Attorney General stated that the STATE BOARD simply did not have time as a part-time body to perform the equalization function and that the DEPARTMENT was performing that function on behalf of the STATE BOARD. RA 2607.

Accordingly, every protection provided to TAXPAYERS failed for one reason or another. Yet in light of the foregoing, the Appellants are requesting the Supreme Court to uphold the taxable values as determined by the STATE BOARD on their behalf. Finally, it is incomprehensible to the TAXPAYERS that the STATE BOARD could represent that it did not have sufficient time to equalize when that is the precise function that the STATE BOARD was created to perform.

M. The *Sierra Pacific* Case Requires the Assessment Formula to Be Codified in a Regulation Irrespective of Whether the Property Tax Is Centrally Assessed or Locally Assessed

Appellants argue that *State Board of Equalization v. Sierra Pacific Power* Co., 97 Nev. 261, 634 P.2d 461 (1981) is inapplicable in this case because there are differences between local assessment

and central assessment. The primary point of the *Sierra Pacific,* case is that assessment formula constitutes a standard that needs to be included in a regulation promulgated pursuant to Chapter 233B of the Nevada Revised Statutes. The STATE BOARD attempts to characterize the actions of the ASSESSOR as interpreting market data. If that was in fact the case, the TAXPAYERS would not be involved in this action. The ASSESSOR created assessment formulas and applied them to the determination of the TAXPAYERS' taxable value. The Deputy District Attorney stated it best as what occurred during the administrative hearings as follows:

> MS. ADMIRAND: It's not so much of an equalization issue when you're looking at how the formula was applied to each of the properties as it is maybe a land valuation.
>
> RA 1248.

There is no dispute that the disputed methodologies/standards were in fact formulas and not interpretations of comparable sales data. As our Nevada Supreme Court held in *Sierra Pacific, supra,* the determination of assessment formula are subject to the regulatory process. Morever, the assessor attempts to argue that all the ASSESSOR was doing was interpreting market data when they created the four disputed methodologies. This statement is a matter of fact, false. For example, as to the rock classification standard, three of the respective classifications (rocky-cobble, cobble, or cobble sandy) have no comparable sales. According to the ASSESSOR, there has never been a comparable sale of any property in Incline Village/Crystal Bay that possessed those types of beach fronts. The ASSESSOR simply made them up, he was not interpreting market data since it did not exist.

N. The Nevada Legislature Clarified its Intent with Respect to NRS 361.260(7)

Finally, as a result of the actions of the ASSESSOR and the STATE, the Nevada Legislature was compelled to "clarify" what the legal rolls of the various political bodies are in the ad valorem valuation system of taxation. During the 2005 Session of the Nevada Legislature, AB 392 was passed as clarifying changes to Chapters 360 and 361 of the Nevada Revised Statutes. In that clarifying act, the Nevada Legislature made it sledge-hammer clear that all local assessors must follow the COMMISSION's rules on valuation. The Legislature further clarified that the respective boards of equalization must also follow the COMMISSION's rules on valuation.

Specifically, on April 7, 2005, Assemblyman Lynn Hettrick, the sponsor of AB 392, introduced

AB 392 as follows. "Assembly Bill 392, **is proposing to *clarify* where the regulations will come from and that must be used by the folks doing assessed evaluation.**" "....the Nevada Tax Commission shall adopt general and uniform regulations governing the assessment of property. This is to be used by the various counties, county boards, State Boards and Equalization, and the Department of Taxation."

On May 10, 2005, Assemblyman Hettrick, stated the following after the 1st Reprint of the AB 392: **"What the bill does is simple. Section 1 says the Tax Commission shall adopt general and uniform regulations governing the assessment of property. In addition, it shows who would be regulated by that assessment, state boards, county boards and the Department of Taxation."** *See* attached Addendum 2: Correspondence to Steven Sparks, Chair, Washoe County Board of Equalization, dated March 7, 2006.

Again, on May 10, 2005, Senator Coffin addresses the following concerning views: **"Will the first five floors be worth less than the next five, et cetera? If one side of the building is facing The Strip and another is facing my district, one side might be worth more than the other. What arguments would those people have?" Later in the meeting Senator Coffin remarks, "There could be 10 or 15 views variations, based upon that kind of calculation. Maybe this bill is the vehicle to start addressing this." Assemblyman Hettrick responds, "We have to take the subjectivity" out of this and give some kind of rule."**

The clarifying language of Assembly Bill 392 is simple and unambiguous.

- Section 1 - mandates that the COMMISSION **shall** adopt regulations governing the assessment of property by county assessors, county boards of equalization, the STATE BOARD and the DEPARTMENT of Taxation.
- Section 3 (7) - mandates that the county assessor **shall** use the standards adopted by the COMMISSION.
- Section 5 (10) - mandates the STATE BOARD **shall** comply with regulations adopted by the COMMISSION.

Based upon the foregoing, this Court should not accept the arguments of the ASSESSOR and STATE that the ASSESSOR can utilize any method or standard of valuation as such an argument is against the all known authorities in the State of Nevada. Moreover, the Legislature felt compelled to

clarify the existing language set forth in NRS 361.260(7) and the Legislative clarification rejected the ASSESSOR and COMMISSION's interpretation of NRS 361.260(7). Even though the Legislature clarified this position, the ASSESSOR and his staff refuses to follow the COMMISSION's regulations as promulgated by the COMMISSION on August 4, 2004.

O. The Roll Back of Taxable Values to 2002-2003 was the Correct Remedy Given the Finding of the Court that the TAXPAYERS Were Valued in Violation of the Uniform and Equality Mandates of the Nevada Constitution and thus Were Subject to a Discriminatory Tax

In *World Corp. v. State of Nevada*, 113 Nev. 1032 (1997), the Nevada Supreme Court held that "When a tax is determined to be unconstitutional, the taxpayer is entitled to a refund." *Iowa Des Moines Nat'l Bank v. Bennett*, 284 U.S. 239.247 (1931); *World Corp* @1040.

In this case the valuation of the TAXPAYERS' residences were done in violation of Nev. Const. Art. 4, §20 and Nev. Const. Art. 10, §1 and thus, unconstitutional. Morever, since the COMMISSION and ASSESSOR properly determined the TAXPAYERS' taxable values for the 2002-2003 tax year, any difference in taxable valuation between the 2002-2003 tax year and 2003-2004 tax year, is directly attributable to the use of the four disputed methodologies which are illegal and unconstitutionally applied. Accordingly, a refund is due based upon the difference between the 2002-2003 taxable value and the 2003-2004 taxable value.

P. Response to Amicus Curie Briefs

The local governments who filed Amicus Curie Briefs focus primarily on the financial impact a refund will cause to their respective political subdivision. The case before the Supreme Court is not about how to address the fiscal impact of the consequence of the granting of a refund. The case before the Supreme Court is addressing whether the valuations were done lawfully or constitutionally. If the District Court is upheld, the fiscal consequences of the STATE BOARD's decision permitting the use of unlawful methodologies is of no moment.

Really what is at issue is whether the ASSESSOR and STATE BOARD are required to adhere to the regulations of the COMMISSION. In 2005, the Nevada Legislature passed AB 392 which made it very clear that both the ASSESSOR and STATE BOARD are required to follow the COMMISSION's regulations. AB 392 became effective on October 1, 2005. Even though AB 392

was effective in October 2005, the ASSESSOR refused to follow the COMMISSION regulations adopted on August 4, 2004 for the 2006-2007 tax year. An Appraiser for the ASSESSOR testified before the County Board that Gary Warren stated:

> Now, I would like to - - during the lunch hour I went through all the statutes, both Chapters 360 and 361. I could not find a statue that specifically states that the Nevada Tax Commission will set forth how the assessors are to value land as far as standards. However, I can direct you attention to statute 361.260, subsection 7. That's contained in Exhibit 3. It's found on page 2 and I can quote from it. This is about midway through the page on page 2. **The County assessor shall establish standards for appraising and reappraising land pursuant to this section.**

See Addendum 2 attached hereto.

In addition, the Attorney General representing the STATE BOARD made it clear that the STATE BOARD has never equalized pursuant to NRS 361.395(1)(b). *See* Addendum 3: Correspondence from Attorney General dated March 7, 2006.

Finally, in a workshop held by the STATE BOARD intended to solicit comments on how it should discharge its equalization function it became clear to the TAXPAYERS that absent clear guidance from the Supreme Court, that equalization would never occur. A STATE BOARD member in this workshop equated NRS 361.195(1)(b) (the statute requiring the equalization function) to a statute prohibiting sodomy. This STATE BOARD member went as far as to suggest that all the participants in the audience would be guilty of sodomy if the sodomy laws were applied and enforced. *See* Addendum 4: Transcript of March 27, 2006 State Board Meeting.

Based upon the foregoing, the COUNTY BOARD due to the ASSESSOR's failure to follow the COMMISSION's regulations for the fourth year in a row, rolled back all taxable values for all 9,000 parcels in Incline Village and Crystal Bay for 2006-2007 tax year to the 2002-2003 taxable values. In the 2006-2007cases, the ASSESSOR simply fails to follow the COMMISSION's regulations even when the Nevada Legislature clarifies that the ASSESSOR must do so in AB 392.

VI.
CONCLUSION

To the TAXPAYERS in this case, this case represents the most important issue that the Supreme Court may address with respect to their constitutional rights as property owners in Nevada.

While all the TAXPAYERS acknowledge that it is their civic duty to remit a fair and uniform tax to fund their government, that is not the issue before the Supreme Court. The STATE and ASSESSOR believe that NRS 361.260(7) has permitted the ASSESSOR the right to value TAXPAYERS' properties differently simply because the properties were located in Incline Village or Crystal Bay. The TAXPAYERS respectively submit that even though Lake Tahoe is the jewel of the Sierras and its beauty, in their opinion is unsurpassed, the same could be said of Lake Mead. Lake Mead, even though different, is the jewel of Clark County. Why does the Clark County Assessor not utilize a view classification system and beach front classification system when determining the taxable value of the residences surrounding Lake Mead? Simply put, the Clark County Assessor has adhered to the COMMISSION mandates set forth in Nev. Const. Art. 4, §20 and Nev. Const. Art. 10, §1 and is prohibited from doing so until the either the Nevada Legislature passes a statute in this regard or the COMMISSION adopts a duly-promulgated regulation.

Dated this 10th day of May, 2006.

NORMAN J. AZEVEDO, ESQ.
State Bar No. 3204
712 E. Musser Street
Carson City, NV 89701
(775) 883.7000
Attorney for Respondents Bakst, Barnhart, Bender, Leach, Moriarty, Myerson, Nakada, Rebane, Schwartz, Stewart, Watkins, Wilson, Winkler & Zanjani

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Respondents' 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 15th day of May, 2006.

NORMAN J. AZEVEDO, ESQ.
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Attorney for Respondents Bakst, Barnhart, Bender, Leach, Moriarty, Myerson, Nakada, Rebane, Schwartz, Stewart, Watkins, Wilson, Winkler & Zanjani

CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of May, 2006, I *faxed* the foregoing document as well as placed a copy of the foregoing in the United States Mail, postage pre-paid, addressed to:

Karen Dickerson, Esq.
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Rhonda Azevedo

ADDENDUM 1

	VIEW	ROCK	TIME	TEARDOWN
BAKST		X	X	X
BARNHART	X		X	X
BENDER	X		X	X
LEACH	X		X	X
MORIARTY	X		X	X
MYERSON	X		X	X
NAKADA			X	X
REBANE	X		X	X
SCHWARTZ	X		X	X
STEWART	X		X	X
WATKINS	X		X	X
WILSON	X		X	X
WINKLER	X		X	X
ZANJANI	X		X	X

ADDENDUM 2

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712 E. Musser Street
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March 7, 2006

HAND DELIVERED

Steven Sparks, Chairman
Washoe County Board of Equalization
Washoe County Clerk's Office
75 Court Street Room #131
Reno, NV 89520

Re: March 8, 2006 Equalization Meeting

Dear Mr. Sparks:

Attached as Exhibit A is a copy of the letter and exhibits delivered to the Nevada Tax Commission (NTC) and Department of Taxation today. It summarizes our twenty-eight (28) clients concerns that property has not been equalized in Washoe County because the Assessor does not follow NTC regulations or Nevada Law, specifically Assembly Bill 392 that passed during the 2005 Legislative Session. As you will note on page 3 of the letter to the NTC dated March 7, 2006, Gary Warren of the Assessor's Office referenced a statute (NRS 361.260(7))that has been changed through ***"clarification"*** delineated in the AB 392 of the 2005 Legislative Session. As stated in our letter, "Not only does the Washoe County Assessor not use the NTC regulations on valuation, his office staff does not recognize the Legislative "clarification" of AB 392."

In addition to the information provided to the NTC concerning the Lake Tahoe Special Study, we would also like to provide to you and the Board another example of the Washoe County Assessor ignoring Nevada Law. I bring this information forward as I believe it is directly relevant to your discussion in your public meeting of the March 8, 2006.

As you may recall, on February 10, 2005, Mr. William Brooks appealed the value of four parcels to the Washoe County Board of Equalization (*See* Exhibit B: WCBE Decision Letter dated February 22, 2005). The Findings by the WCBE were that the subject parcels were out of equalization with surrounding properties. The decision was to reduce the values of the four parcels owned by Mr. William Brooks.

The Washoe County Assessor disagreed with the WCBE decision in this regard and petitioned the decision to the State Board of Equalization (SBE). He asserted that the WCBE was **required to equalize property to its full cash value** pursuant to NRS 361.345 as opposed to its taxable value pursuant to NRS 361.345. His assertion was supported by using AGO 80-34 that opines on the practice of backdating new construction. AGO 80-34 is an opinion that pre-dates the shift from market value in 1981 to taxable value. The SBE concluded that the

properties as adjusted (reduced) by the WCBE were in equalization with adjacent property and denied the Assessor's appeal (*See* Exhibit C: SBE Decision - dated January 5, 2006). The SBE rejected the Assessor's misplaced reliance upon AGO 80-34.

Included for your information is a copy of the parcel map used during the SBE hearing by the Petitioner William Brooks. You will note four parcels are colored pink and four parcels are colored green. Mr. Brooks' parcels are the green-colored parcels on the map (*See* Exhibit D). As you may recall, Mr. Brooks' parcels had a taxable value twice of the adjoining parcels noted in pink. All of the parcels, both Brooks and his neighbors, had a taxable value below the property's respective full cash value.

The next exhibit is troubling for all of our clients. Mr. Shane of the Assessor's Office states during the hearing that, "The reason that this was brought before the State Board of Equalization is an issue of the application of what we feel is appropriate law and was not a real disagreement - well, it becomes a disagreement on value, but it's the position of the Washoe County Assessor that **the County Board of Equalization made the wrong application of law in equalizing the subject properties' taxable values with those of similar neighborhood parcels** whose taxable values had been established in a prior year's appraisal (*See* Exhibit E: SBE Transcript December 5, 2005 @ page 12). In other words, the Assessor has no problem increasing taxable values for **some taxpayers** to their property's full cash value in the same fiscal tax year while the balance of the respective reappraisal district remain at their properly determined taxable values. This is not equalization as required by NRS 361.345. In fact, this administration of Chapter 361 of the NRS by the Assessor results in a direct lack of equalization as mandated by NRS 361.345. Mr. Shane also testifies that, "**We apply the same standard if we're doing developments where we have hundreds of lots coming on the tax roll that are new**, and so the principle here is a very broad principle and that has been applied in a way that really is within the law and if we look at the values, the values are substantiated by the comps." (*See* Exhibit E: SBE Transcript December 5, 2005 @ page 16). Again, the Washoe County Assessor has determined that similar parcels can have two different values in the same tax year. In this example, ***the parcels are side by side and are identical in all practicable respects!***

In conclusion, the principle offered by Mr. Shane has not been accepted. It is in direct contradiction of the meaning of equalization. It also points out, based on his testimony, that hundreds of parcels in Washoe County are out of equalization and you may wish to pursue this point during your March 8, 2006 hearing. Unfortunately for the WCBE, the SBE failed to pursue the other parcels not related to William Brooks by simply ignoring the testimony of the Assessor.

Sincerely,

NORMAN J. AZEVEDO, ESQ.

NJA/ra
Enclosures as stated
cc: Amy Harvey, Washoe County Clerk
Thomas Sheets, Chairman, Nevada Tax Commission

EXHIBIT A

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712 E. Musser Street
Carson City, Nevada 89701

March 7, 2006

Tom Sheets, Chairman
State of Nevada Department of Taxation
1550 E. College Parkway, Suite 115
Carson City, NV 89706-7937

Charles Chinnock, Executive Director
State of Nevada Department of Taxation
1550 E. College Parkway, Suite 115
Carson City, NV 89706-7937

Re: Lake Tahoe Special Study

Dear Chairman Sheets and Director Chinnock:

On behalf of my twenty-eight (28) property tax clients, I would like to offer the following for the Nevada Tax Commission's (NTC) consideration on March 13, 2006. Assembly Bill 392 of the 2005 Legislative Session was approved by the Governor with an effective date of October 1, 2005 (Exhibit 1- bill history). The bill passed unanimously with 63 Yea votes.

On April 7, 2005, Assemblyman Lynn Hettrick, the sponsor of the bill, offered the following introduction of the bill. " **Assembly Bill 392 is proposing to "*clarify*" where the regulations will come from and that must be used by the folks doing assessed evaluation."** "... the Nevada Tax Commission shall adopt general and uniform regulations governing the assessment of property. That is to be used by the various counties, county boards, State Board of Equalization, and the Department of Taxation" (Exhibit 2 - Minutes of April 7, 2005 pages 2 and 3).

On May 10, 2005, Assemblyman Hettrick, stated the following after the 1st Reprint of the bill. **"What the bill does is simple. Section 1 says the Tax Commission shall adopt general and uniform regulations governing the assessment of property. In addition, it shows who would be regulated by that assessment, state boards, county boards and the Department of Taxation."** (Exhibit 3 - Minutes of May 10, 2005 page 9)

You have heard various individuals state that appraisal is an ***"art"*** and ***subjective.*** The Washoe County Assessor went as far to say that he implements appraisal methods first before NTC regulations because of this subjectivity. Again, on May 10, 2005, Senator Coffin asks the

following concerning views; **"Will the first five floors be worth less than the next five, et cetera? If one side of the building is facing The Strip and another is facing my district, one side might be worth more than the other. What arguments would those people have?"** Later in the meeting Senator Coffin remarks, **"There could be 10 or 15 view variations, based upon that kind of calculation. Maybe this bill is the vehicle to start addressing this."** Assemblyman Hettrick responds, **"We have to take the *"subjectivity"* out of this and give some kind of rule."** (Exhibit 3 - Minutes of May 10, 2005 page 14).

The clarifying language of Assembly Bill 392 is simple and unambiguous (Exhibit 4 - copy attached).

Section 1 - mandates that the NTC **shall** adopt regulations governing the assessment of property by county assessors, county boards of equalization the SBE and the Department of Taxation.

Section 3 (7) - mandates that the county assessor **shall** use the standards adopted by the NTC.

Section 5 (10) - mandates the SBE **shall** comply with regulations adopted by the NTC.

The NTC has followed the mandate of the 2005 Legislature as delineated in AB 392 (Effective October 1, 2005). On August 4, 2004 Regulation R031-03 was adopted. Judge Maddox has ordered that "Standards for determining the taxable value of land by local assessors do not apply until adopted by the Commission." (January 13, 2006) . The Supreme Court has ordered that "The Washoe County Board of Equalization should, however, proceed with its determination, based on the reasoning of the district court's order, of any additional petitions that seek a roll back of petitioners' properties to the 2002/03 tax year values."

The Washoe County Assessor does not follow the NTC's regulations or AB 392. In an affidavit dated January 20, 2006 attached to the County's Motion to Stay Judge Maddox's order he states,**"It has always been the practice of the assessors in this State that county assessors do not observe the regulation-making provisions of the APA, before using generally-accepted appraisal practices to value real and personal property for tax purposes."** This practice of the Washoe County Assessor has not changed.

Mr. Warren of the Washoe County Assessor's Office stated on February 7, 2006, " Now, in Mr. Azevedo's presentation, he stated that the State has the full rule-making and regulatory authority to make standards for the assessors to use, and he basically said that we weren't following that and that the net impact of that was that Judge Maddox's decision wiped the slate

clean, so to speak, in that those adjustments that we made during the reappraisal don't apply. I would respectfully disagree."(Exhibit 5 - Transcript February 7, 2006 page86)

In addition Mr. Warren added "Now, I would like to - - during the lunch hour I went through all the statutes, both Chapters 360 and 361. I could not find a statue that specifically states that the Nevada Tax Commission will set forth how the assessors are to value land as far as standards. However, I can direct you attention to statute 361.260, subsection 7. That's contained in Exhibit 3. It's found on page 2 and I can quote from it. This is about midway through the page on page 2. **The County assessor shall establish standards for appraising and reappraising land pursuant to this section."** (Exhibit 5 - Transcript February 7, 2006 page 88)

Not only does the Washoe County Assessor not use the NTC regulations **his office staff does not recognize the Legislative "clarification" of AB 392.** Stated again, Section 3 (7) of AB 392, NRS 361.260 is amended, **The county assessor shall use the standards for appraising and reappraising land adopted by the Nevada Tax Commission pursuant to NRS 360.250.** In using the standards, the county assessor shall consider comparable sales of land before July 1 of the year before the lien date. (Exhibit 4 - AB 392 page 5)

The State Board of Equalization and the Executive Director of the Department of Taxation as Secretary to the SBE do not follow the NTC's regulations or AB 392. In the Notice of Decision in the matter of Leonard and Roberta Gang dated January 5, 2006 in Findings of Fact (7) - The State Board found the evidence supports the Assessor's testimony that the subject property **view classification is superior** to the neighboring parcel and justifies a difference in valuation between the two parcels. (Exhibit 6 - SBE Decision)

This is the same view classification standard developed by the Washoe County Assessor in 2003 that was not adopted by regulation through the NTC.

Finally, the Department's website includes a menu describing Administrative Roles of various entities (copy attached was printed from the site on March 3, 2006). Under the County Assessors role it is stated that, **"The Assessor establishes standards for appraising and reappraising land. (NRS 361.260)."** As stated above Section 3 (7) of AB 392- mandates that the county assessor **shall** use the standards adopted by the NTC. As such the Department website is in direct contradiction to the law. (Exhibit 7 - Website Administrative Roles)

The Department is responsible for implementing tax policy as established by the NTC. Six months after the effective date of AB 392 the Department has not accepted the mandate of the 2005 Legislature and this statement on the website supports the Work Session document dated April 14, 2005 that carries the statement, **"Testimony in opposition to the bill came from Washoe County, the County Assessors Association, and Chuck Chinnock, Department of Taxation."**(Exhibit 8 - Assembly Work Session)

In conclusion, we appreciate the effort of the Department in conducting the Special Study. However, we respectfully request the NTC either affirm or deny that local assessors must utilize the NTC regulations to develop taxable values.

Sincerely,

NORMAN J. AZEVEDO, ESQ.

NJA/ra

Enclosures

ADDENDUM 3

ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE
100 North Carson Street
Carson City, Nevada 89701-4717

GEORGE J. CHANOS
Attorney General

RANDAL R. MUNN
Assistant Attorney General

March 7, 2006

VIA FACSIMILE (775) 883-7001
AND U.S. MAIL

Norman J. Azevedo, Esq.
712 E. Musser Street
Carson City, NV 89701

Re: Request for Public Records

Dear Norm:

Thank you for your response dated March 6, 2006. I am somewhat confused by your second to the last paragraph. What would persuade you to believe that the State Board of Equalization (hereinafter "State Board") made any "secret" decisions? Since you were Senior DAG from at least March of 1999 over Tax, and then Chief of Civil until December of 2002, I am sure you made certain that no "secret" decisions were made by the State Board during your tenure. Since that time, I have been assured that no "secret" meetings and/or decisions have been held or made.

When speaking in Court February 1, 2006 I stated that:

> On behalf of the State Board of Equalization, they feel like they have equalized every year... the Department serves as their staff, and they've already begun preparing all the documentation and backup necessary for the Board to put that on the record.

Nothing was said or inferred that any component of the State Board's duty to equalize was performed in "secret." They have not prior to this year stated in an open meeting how their duty under 361.395 of the NRS has been met. However, that is not to say that it was secret and in any other way in violation of the open meeting law. For example, an element of the State Board's responsibility to equalize relates to reviewing the tax rolls of the various counties as corrected by the county boards of equalization. The Department, in large part, acting as staff to the SBE, performs that function. Those tax rolls would be public record both with the counties and the Department. Additionally, every appeal the SBE hears from the county boards is part of the State Board's function of equalizing.

Again, I must ask that you narrow your request. Every single document produced by and/or for the State Board, including the thousands of records on appeal from the county boards, would fill a small room if produced for just one year. Without clear delineation of what exact documents you want, it is impossible to comply with your request.

Additionally, as stated in my correspondence of February 28, 2006, "[t]he vast majority of public records requests are surely handled in under 30 minutes and requests of over 30 minutes are more likely to be of a nuisance type or to hinder governmental operations." AGO No. 2002-32. After I receive a more meaningful request, I will determine if the request is "extraordinary" and advise you accordingly.

Since the records retention schedule differs as to types of documents, I refer you to the Nevada State website. You will find all state agencies and their record retention schedules under the Department of Cultural Affairs.

Thank you.

Sincere regards,

GEORGE J. CHANOS
Attorney General

By: _____
KAREN R. DICKERSON
Senior Deputy Attorney General
Tax Section
(775) 684-1100

KRD/cb

ADDENDUM 4

CERTIFIED COPY

STATE OF NEVADA

DEPARTMENT OF TAXATION

STATE BOARD OF EQUALIZATION

TRANSCRIPT OF PROCEEDINGS

PUBLIC MEETING

MONDAY, MARCH 27, 2006

CARSON CITY, NEVADA

THE BOARD:	CLAY FITCH, Chairman STEPHEN R. JOHNSON, Member MICHAEL CHESHIRE, Member WES SMITH, Member RICHARD M. MASON, Member
FOR THE BOARD:	DAWN KEMP Deputy Attorney General
FOR THE DEPARTMENT:	CHUCK CHINNOCK Executive Director TOM SUMMERS Deputy Executive Director TERRY RUBALD, Chief, Division of Assessment Standards SARA MARTEL Coordinator NAN PAULSON Coordinator
REPORTED BY:	CAPITOL REPORTERS Certified Court Reporters BY: MARY E. CAMERON, RPR, CP Nevada CCR #98 410 East John Street, Ste. A Carson City, Nevada 89706 (775) 882-5322

I think all we've done so far is listen to a lot of parties trying to provide us with information so that at the end we will affirm, whether you like it or not or anyone else likes it or not, we will affirm what we feel we've done or should do.

MEMBER MASON: May I?

CHAIRMAN FITCH: Go ahead.

MS. FULSTONE: If you don't mind, I wasn't suggesting that the Board say anything like that.

CHAIRMAN FITCH: What did you mean by shine on a Judge? What's that mean?

MS. FULSTONE: I said specifically at the outset of my remarks that I was responding to Mr. Chinnock. That's what I understood the gist of his remarks to be.

CHAIRMAN FITCH: Are you saying that his remarks were that he was suggesting to the Board that we should shine on the Judge?

MS. FULSTONE: He was suggesting to the Board that you need not be concerned about the order of remand. That's what I understood him to say.

CHAIRMAN FITCH: I don't believe that's even close to what he said. Go ahead, you have a question?

MEMBER MASON: I have a couple of questions. First, when I asked Mr. Chinnock whether or not he viewed it as a vestigial statute, that's for me to know. There are

we're taking it from adverse parties to the Department and we are indeed looking at it. That is what this order says.

MS. FULSTONE: That's I believe what I was suggesting that the order says, that you have a duty, an affirmative duty to equalize. I don't believe any of my remarks suggested that you were reviewing the actions of the Tax Commission. You have an affirmative duty to equalize under 361.395. That's the point of my remarks.

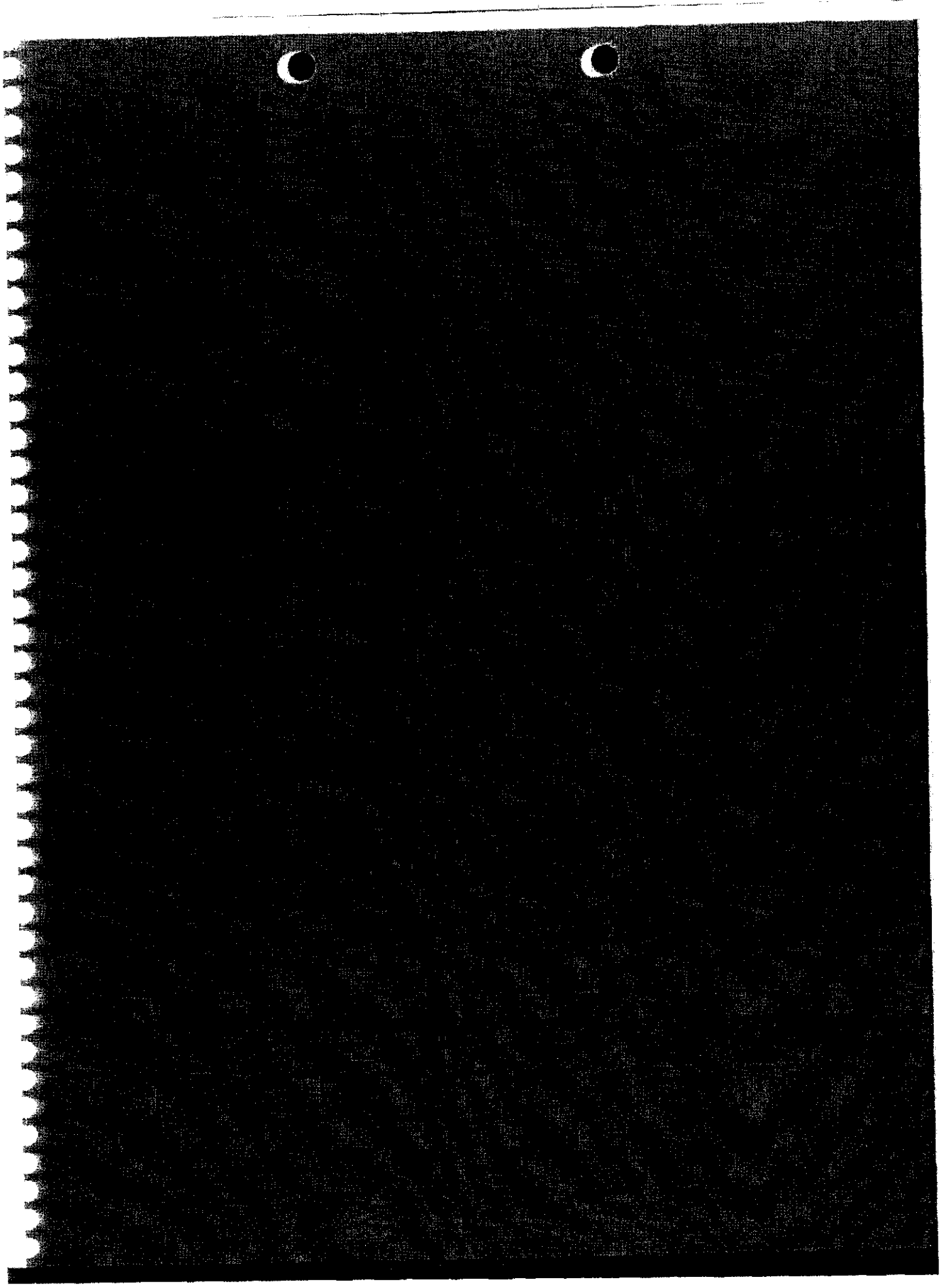
MEMBER MASON: Mary, could we read back from the record the part about that we could not in essence pass the buck to the Tax Commission that she testified to?

(The record was read.)

CHAIRMAN FITCH: Why don't we continue forward. Any other questions? Thank you, sir.

MR. SCHMIDT: For the record, Gary Schmidt. I can't help but respond and make some comments to Dr. Mason in regards to laws on the books not enforced. I'm a firm believer that laws on the books not enforced create the opportunity for government bureaucrats to discriminate and harass citizens, and I'm a firm believer that laws on the books not enforced must be, in order to have due process and any level of fair application of the laws, must be immediately repealed or revisited. And I cite as an example, I'm a little bit off the subject matter, but I'm responding to something.

EXHIBIT 2



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RESPONDENTS' ANSWERING BRIEF

I. INTRODUCTION

This Answering Brief is being filed only on behalf of the clients represented by Norman J. Azevedo, Esq. pursuant to the Court's Order of May 21, 2007. Specific clients' names are: Bakst, Buck, Erdman, Glen, Thomas, FFO, Vento, VIFX & Winkler in Case No. 47400; and Austin, Barnhart, Bender, Cumming, D'Andre, Frei, Gastanaga, Leach, Edwards, Moriarty, Nakada, Pendergraft, Peno Bottom, Taylor, Watkins, Wilson and Zanjani in Case No. 47401 (hereinafter referred to as "Respondents").

II. ISSUES PRESENTED

Appellants' Opening Brief raises both factual and legal issues which will be set forth hereinbelow.

1. Whether the District Court's reliance on the Maddox Decision was appropriate for the 2004/2005 tax year, given the representations of the State and County that the cases were factually identical, as well as the Record on Appeal.
2. Whether the temporary regulation adopted by the Commission on December 12, 2002 supports the utilization by the Assessor and State Board of the four unconstitutional methodologies in only Incline Village and Crystal Bay.
3. Whether the Assessor and State Board utilized the four unconstitutional methodologies to determine the Respondents' taxable value for 2004/2005 tax year.
4. Whether the State Board and Commission ever equalized taxable values pursuant to NRS 361.395 or NRS 361.333.
5. Whether the refund remedy imposed in *Bakst* is the appropriate remedy to address taxes collected in contravention to Nev. Const. Art. 10, §1 and are illegal and void because of the failure of the State Board and Commission to equalize taxable values pursuant to NRS 361.395 and NRS 361.333.

III. STATEMENT OF THE CASE

On December 28, 2006, this Honorable Court addressed in a reported opinion, the legality

of the four different valuation methodologies utilized by Appellant Washoe County Assessor ("Assessor")[1] during the reappraisal of Incline Village and Crystal Bay for the 2003/2004 tax year. The Nevada Supreme Court ultimately concluded that the adoption and utilization of the four disputed valuation methodologies by the Assessor were in violation of Nev. Const. Art. 10, §1 and ordered a refund of tax plus interest be paid to the Taxpayers. See *State of Nevada v. Bakst,* 122 Nev.___, 148 P.3d 717 (2006) @ p. 22. The methodologies utilized by the Assessor for the 2003/2004 tax year were part of the reappraisal process mandated by NRS 361.260(1) & (6).

The case currently before the Supreme Court is addressing the reversal by the District Court of the Assessor's determination of taxable value of the Respondents' land value for the 2004/2005 tax year was affirmed by Appellant State Board of Equalization ("State Board"). Appellant Nevada Tax Commission ("Commission") determined the Respondents' taxable value of their land by utilization of the "factor" process set forth in NRS 361.260(5) when the Commission adopted a factor of 1.0 due to inconclusive sales dates. *See* Respondents' Countermotion to Take Judicial Notice @ Exhibit 1.

The State Board affirmed the County Board and permitted the Assessor to utilize the four unconstitutional methodologies to determine the Respondents' taxable value for the 2004/2005 tax year. Respondents will show that even though the process utilized to determine the taxable value for 2004/2005 was the "factor process" and not the "reappraisal process," the Assessor and the Commission utilized and relied upon the exact same four disputed appraisal methodologies determined to be unconstitutional in *Bakst.* Moreover, contrary to the affidavit of the current Assessor Josh Wilson, the previous Assessor and State Board utilized for the 2004/2005 tax year the exact same view classification system, the exact same rock classification system, the exact same "tear down" methodology and the exact same time adjustment methodology determined to be unconstitutional in *Bakst* for the 2004/2005 tax year.

---

[1] References to Assessor in this Brief means the previous Assessor Robert McGowan, except for the affidavit cited in the Opening Brief filed by the State and County which is an affidavit of the current Assessor Josh Wilson.

Respondents will also show that every statutory protection put in place by the Nevada Legislature to assure that property is both valued and taxed in a uniform and equal manner, as required by Nev. Const. Art. 10, §1 has not only failed but have been disregarded by both the State Board and the Commission. Specifically, Respondents will show the following:

1. As a result of the failure to regulate the factor methodology, the Commission has inconsistently calculated the land factors required by NRS 361.260(5) for tax years before 2005/2006.
2. The State Board, subsequent to its separation from the Commission in 1975, never equalized the taxable values in the State of Nevada as required by NRS 361.395.
3. Once again, as in *Bakst*, the four unconstitutional methodologies were utilized to determine the land "factor" only in Incline Village and Crystal Bay.
4. The ratio study required by NRS 361.333 had not been properly administered to discharge the Commission's duties regarding equalization for tax years 2004/2005.
5. Due to the failure to equalize taxable values by the State Board and the Commission, and as a result of the application of the four unconstitutional methodologies in only Incline Village and Crystal Bay, the taxes imposed for the 2004/2005 tax year are both illegal and void.
6. The appropriate remedy, given the facts of this case, is not a remand to the State Board but a refund of the taxes that were unconstitutionally and illegally imposed and collected.
7. The State and County have not disputed the fundamental finding of the District Court in this case when he concluded that "The evidence establishes that the taxes assessed in the Incline Village area are not uniform or equal to other areas in the county." *See* May 1, 2006 Decision, @ p. 2:7-9.

In their Opening Brief, Appellants argue that the District Court's May 6, 2006 Order is flawed for two basis reasons:

1. Neither the Assessor nor the State Board utilized any of the four unconstitutional

methodologies in determining Respondents' taxable value for their land for the 2004/2005 tax year; and

2. Even if the Supreme Court believes that the taxable value of the Respondents' land is attributable to the four unconstitutional methodologies, refund is not the appropriate remedy, but a remand is the appropriate remedy.

IV. FACTS

A. General Facts

This case before the Court is addressing the Assessor's determination of the Respondents' taxable value for land for the tax year 2004/2005. RA 1449. The Court in *Bakst* was addressing the Assessor's determination of the Respondents' taxable value for land for the tax year 2003/2004. *Bakst* @ p. 3. Respondents' taxable value of land for the 2004/2005 tax year was calculated by applying a factor to the previous 2003/2004 tax year's assessed value for land. AA 4697.[2] The land factor "approved" by the Commission was 1.0 for Incline Village and Crystal Bay. AA 4398-4404. The Commission determined a factor of 1.0 because there were insufficient or inconclusive sales data to calculate an alternate taxable value. *See* Respondents' Countermotion to Take Judicial Notice @ Exhibit 1. The Assessor calculated the factor of 1.0 which was ultimately approved by the Commission by utilizing the exact same four unconstitutional appraisal methodologies that were used for the 2003/2004 tax year. AA 622, 822, 946, 1027, 1090, 1289, 5104, 6203, 6359, 6480, 6526, 6646, 6722, 6760, 6842, 7173, 7234 & 7406.

.../

.../

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[2] Appellants confuse the terms "appraisal" and "reappraisal." In their Opening Brief, Appellants represent that "Consequently, no appraisals by the Washoe County Assessor were performed at Incline Village/Crystal Bay." *See* Opening Brief @ p. 1:13-14. NRS 361.260 provides as follows in its title: "**NRS 361.260 Method of assessing property for taxation; appraisals and reappraisals.**" The reappraisal referenced in the title of the statute is the reappraisal contemplated in NRS 361.260(6). The appraisal referenced in the title is addressing the valuation methodology referred to as factoring as set forth in NRS 361.260.

An example of the application of the 1.0 factor approved by the Commission for the 2004/2005 tax year to Respondent Bakst's assessed value is as follows:

Tax Year	Assessor's Value Land
2002/2003	850,500
2003/2004	940,450
***	1.0
2004/2005	940,450

B. Procedural Facts

All of Respondents represented by the undersigned counsel followed and adhered to the required procedural steps necessary to dispute the Assessor's determination of their land's taxable value. Specifically, Respondents followed the following administrative and judicial process:

1. Filed a timely petition for review for assessed valuation to the Washoe County Board of Equalization ("County Board"). AA 540.[3]
2. Participated in a hearing before the County Board. AA 640.
3. Received an adverse decision from the County Board. AA 647-648.
4. Filed a timely petition with the State Board for appeal from the decision of the County Board. AA 536.
5. Participated in a hearing before the State Board. AA 226.
6. Received an adverse decision from the State Board. AA 216-222.
7. Filed a timely petition/complaint pursuant to NRS 233B.130 and NRS 361.420 with the First Judicial Court in Carson City, Department I. AA 2-12.
8. Received a favorable decision from the District Court in Carson City, Department I. AA 3271-3275, 3294.

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[3] References only to the Record on Appeal for Dr. Alvin Bakst will be made even though all Respondents pursued the identical process. The 2003/2004 assessed value shown for Respondent Bakst's land is shown unadjusted as required by *Bakst*.

C. **Land Factor Methodology Utilized by the Assessor and Approved by the State Board for the 2004/2005 Tax Year**

The Assessor represented in its Opening Brief that in lieu of utilizing the four unconstitutional appraisal methodologies, he in fact determined the taxable value of the Respondents' land by calculating a "factor" based upon a different methodology, which is supported by statute contained in NRS Chapter 361, namely NRS 361.260(5). *See* Opening Brief @ pp. 23-24. In order to make this factual assertion, the Assessor was required to go outside the Record on Appeal because neither the State nor the County ever offered such an argument to the County Board, State Board or the District Court. The failure to previously raise the argument that the Assessor utilized the factor methodology described by the current Assessor before the County Board and State Board is easy to reconcile as the use of such a methodology is completely belied by the Record on Appeal.

One example of how the Record on Appeal contradicts the affidavit submitted by the current Assessor is the record on the case of the property owned by Esmail & Sally Zanjani. Specifically, the minutes from the County Board hearing on February 17, 2004 in the Zanjani matter reflect the following testimony, under oath, by Appraiser Gary Warren:

> Gary Warren, Appraiser, duly sworn, submitted Assessor's fact Sheet(s) and Maps, Exhibit III, pages 1 through 6, and oriented the Board as to the location of subject property....
> He said the subject is a unique parcel, and it **was valued** using the nearest sales on Gonowabie Road.
>
> AA 7487. [Emphasis added.]

A review of Exhibit III referenced by Appraiser Warren illustrates that the Zanjani's residence was valued using "time adjustments" and a view classification. AA 7480 & 7483.

The State, to support their argument that the four unconstitutional methodologies were not used for the 2004/2005 tax year, even attempts to re-characterize Respondents' argument to the District Court to support their argument that the four unconstitutional methodologies were not utilized by the Assessor for the 2004/2005 tax year as follows:

> Taxpayers primary basis for judicial review was the Assessor's property appraisal methodologies used for the prior years assessment 2003-2004, not whether the State Board should have determined that assessment was out of proportion to and above the

taxable full cash value of the properties assessed or the assessment was not in accordance with a uniform and equal rate of assessment.

See Opening Brief @ p. 2.

The State's characterization of Respondents' argument for the 2004/2005 tax year to the District Court is at best, misleading. A review of the State Board's "complete" decision for the 2004/2005 tax year makes it clear that the State Board concluded that the Assessor in fact, utilized the four unconstitutional methodologies for tax year 2004/2005 to calculate Respondents' taxable land values. AA 219 & 7625. Respondents agree with this conclusion by the State Board.

The Record on Appeal provides the following with respect to the Assessor's use of the four unconstitutional methodologies as follows:

1. The Unconstitutional View Classification Methodology

The Assessor applied the identical view classification methodology during the 2004/2005 tax year as he did for the 2003/2004 tax year. AA 756, 1644-1649, 6461, 6348 & 7326. This unconstitutional methodology primarily constituted a methodology where the Assessor "drove by" and "guessed" (estimated) as to what view a particular residence may have from the main living area. AA 4138. The Assessor created a 12-step view classification standard. Due to the "drive-by" technique for the 2003/2004 tax year, 30 out of 50 views were incorrectly classified, with 29 being too high and 1 too low. AA 2690 & 4142. In order to correct this problem, the Assessor would perform an interior inspection of the home to "properly" determine his unconstitutional view classification. AA 4138-4140.

Not only did the Assessor utilize the "identical" view classification methodology to determine the Respondents' taxable value for the 2004/2005 tax year, but the Assessor also recommended changes to Respondents' land value by changing the view classification based upon interior examination of the respective residences. AA 6225-6227.

2. The Unconstitutional Rock Classification Methodology

The Assessor utilized the identical rock classification methodology for the lakefront properties in Incline Village for the 2004/2005 tax year as he did for the 2003/2004 tax year. AA

622. The County Board even made changes to the respective rock classification to properties during the 2004/2005 tax year. AA 6172-6173

3. The Unconstitutional Tear Down Methodology

The Assessor utilized the identical tear down methodology for all of Incline Village and Crystal Bay for the 2004/2005 tax year as he did for the 2003/2004 tax year. AA 1644-1649. A review of the evidence submitted by the Assessor to the County Board shows his designation of tear downs to certain sales which were used during reappraisal, as well as "new" sales as they became available subsequent to the reappraisal year of 2003/2004.

4. The Unconstitutional Time Adjustments Methodology

The Assessor utilized the identical time adjustment methodology for all of Incline Village and Crystal Bay for the 2004/2005 tax year as he did for the 2003/2004 tax year. AA 622.

D. State Board of Equalization Decisions

Appellants provided for the Court a part of the State Board's decisions for some Respondents for the 2004/2005 tax year. *See* Opening Brief @ pp. 2-6. Appellants omitted the most relevant conclusion of law by the State Board which addressed the Assessor's use of the four unconstitutional methodologies during the 2004/2005 tax year.

Because the Assessor represented he utilized the four unconstitutional methodologies for the 2004/2005 tax year, Respondents continued to dispute the utilization of the four unconstitutional methodologies and brought their concerns to the attention of the State Board for the 2004/2005 tax year. AA 216-221. In response to the concerns of Respondents, the State Board made the following conclusion of law in its decisions for Respondents represented by the undersigned counsel:

> The comparable sales for land only used by the Assessor include "teardown" parcels, the application of time-adjustments, and classification of beachfronts. The State Board previously found the use of "teardowns", time-adjustment, and view classifications were appropriate appraisal tools and standard accepted valuation methodologies (See, Notice of Decision of Leonardini et al, Case No. 143, dated May 30, 2003, Findings of Fact Subsection 4). The State Board also previously concluded the use of "teardowns" as comparable sales of vacant land is very common and typically used by practitioners in the Lake Tahoe real estate market, and that the Assessor is correctly using teardowns, time adjustments, and view

classifications pursuant to NRS 361.260(7). (See, Notice of Decision of Leonardini, et al. Case No. 143, dated May 30, 2003, Conclusions of Law Subsection 5).

AA 6158.

As stated above, the State Board correctly concluded that the Assessor, for the 2004/2005 tax year, did in fact utilize the tear down methodology, the time adjustment methodology, the rock "beach front" classification methodology, as well as the view classification methodology. The State Board, in approving the use of the four unconstitutional methodologies, relied upon its May 30, 2003 Decision as support for upholding the Assessor's use of the four unconstitutional methodologies for the 2004/2005. The May 30, 2003 Decision of the State Board was the Decision of the State Board reversed in *Bakst* @ pp. 5-6.

The State Board for the 2004/2005 tax year also correctly concluded that the view classification system that was first used in the 2003/2004 tax year was also used as an appraisal method during the 2004/2005 tax year by the Assessor. Specifically, the State Board concluded as follows:

> The comparable sales for land only used by the Assessor include "teardowns" parcels and the application of time-adjustments. View premiums are added to value based on a view rating system. The State Board previously found the use of "teardowns," time-adjustments, and a view rating system were appropriate apprisal tools and standard accepted valuation methodologies (See, Notice of Decision dated May 30, 2003, Finding of Fact Subsection 4). The State Board also previously concluded the use of "teardowns" as comparable sales of vacant land is very common and typically used by practitioners in the Lake Tahoe real estate market, and that the Assessor is correctly using teardowns, time adjustments, and view rating system pursuant to NRS 361.260(7) (See, Notice of Decision dated May 30, 2003, Conclusions of Law Subsection 5).

AA 217.

Once again, for support of the proposition that the view classification methodology was an appropriate methodology, the State Board relied upon its May 30, 2003 Decision. The May 30, 2003 Decision of the State Board was invalidated by the Nevada Supreme Court in *Bakst*.

The State Board went further in its 2004/2005 decisions and offered as support of the Assessor's use of the four unconstitutional methodologies that the Respondents' land's taxable value can be appraised as provided for in NRS 361.227 and as provided for in NRS 361.260(7).

AA 5730. The same State's interpretation of NRS 361.260(7) was rejected by the Nevada Supreme Court in *Bakst* and resulted in the Supreme Court concluding that the State's interpretation of NRS 361.260(7) undermined the ad valorem property tax system. *Bakst* @ p. 18.

What is most significant in reviewing the decisions of the State Board is that the State Board correctly concluded that Respondent Bakst's land was valued utilizing the four unconstitutional methodologies for tax year 2004/2005. AA 216-220. In fact, in order to substantiate their "rock" classification of Respondent Bakst's land, the Assessor submitted photos of Respondent Bakst's "rocks"as evidence to support their rock classification. AA 304 & 310. In addition, Appraiser Warren represented to the State Board as follows: "...[t]he land sales that are used to establish the land value for Dr. Bakst's property... Contained in the analysis is an adjustment process based upon sales analysis to come up with a derivative using these sales to come up with a value for Dr. Bakst." AA 312. The sales that Appraiser Warren references are located at AA 622 which clearly illustrates that the Assessor utilized the four unconstitutional methodologies in determining Respondent Bakst's values. The sales data at AA 622 relied upon by the Assessor to value Respondent Bakst's land illustrates the use of the rock classification method, the time adjustment method and the tear down method. The Assessor utilized his four unconstitutional methodologies for 2004/2005.

E. The District Court's Decision

The District Court ultimately rendered its decision adopting the decision rendered by the Honorable William Maddox because all the parties before the Court correctly, and in a manner consistent with the Record on Appeal, represented to the District Court **that the two cases** (Maddox and Griffin) **were factually identical**. AA 3310, 3581, 4696. After receiving affirmation from all parties' counsel that the cases were "identical," the District Court ordered briefing and rendered a decision based on the parties' representations and brief. AA 3271-3275, 3294.

Both the State Appellants and the County Appellants represent that the District Court erred by adopting the reasoning of Maddox because the Appellants now suggest that the facts

between the two cases are different and not identical. Based upon this allegation by the Appellants, a comparison of the representations to the Supreme Court and the previous representations by Appellants to the District Court is necessary.

First, the County represented the following in its Opening Brief to the Supreme Court: "In other words, Judge Griffin decided that these consolidated cases were based upon facts that were identical to the facts in *Bakst*. This is not accurate." *See* Opening Brief @ p. 21:17-21.

Second, the County, represented to Judge Griffin in its Opposing Brief, just the opposite:

> The arguments of the plaintiffs are foreclosed under the doctrine of administrative res judicata
>
> The plaintiff has made or has had the opportunity to make all of the same arguments in front of the CBOE and the SBOE in the 2003/2004-tax year. There the parties were identical, the issues were identical and they were adjudicated to a final determination.

AA 4696.

Thus, the County, in order to support its claim that the doctrine of *res judicata* barred Respondent Lowe from seeking relief for 2004/2005, represented to the District Court that the parties and the issues were identical...not similar, but identical. Now, before the Supreme Court, the County argues that the facts and issues are different.

Second, the State Appellants in their Opening Brief indicate that the District Court failed to take into consideration "different circumstances" that were present in *Bakst*. Specifically, State Appellants represent, in their Opening Brief, the following:

> In doing so, the District Court erred by failing to consider the different circumstances existing for the 2004/2005 tax year.

See Opening Brief @ p. 9:13-14.

Conversely, the State represented to the District Court, in its Motion Requesting a Stay, as follows:

> Rather than rehash the arguments that led to the Nevada Supreme Court granting a Stay, in part, of the Maddox decision, the State respectively requests this Court to follow the Supreme Court's lead by granting the State's Motion to Stay in this case because this Honorable Court correctly noticed the two cases are factually identical.

AA 3310.

In furtherance of the representation by the State Board and County that the Maddox Decision and Griffin Decision were factually identical, the District Court made the following conclusion in its decision dated May 1, 2006:

> The decision issued by the Honorable William Maddox in cases with identical facts competently and thoroughly decides these issues. This Court therefore concurs with the Findings of Fact, Conclusions of Law, and Judgment as wet forth in Case No. 03-01501A, adopts and incorporates the decision of the Honorable William Maddox as though fully set forth herein.
>
> AA 3273.

The District Court in its May 1, 2006 Decision made additional conclusions that provide insight into the second District Court Judge to reverse the decisions of the State Board regarding the ability of the Assessor to utilize valuation methodologies that are not properly included in a duly-promulgated regulation of the Commission. The Honorable Michael Griffin concluded as follows:

> (a) The appraisal of real property for purposes of assessment of taxation is an art, and not a science. But there are rules for the practice of the art.
>
> *See* May 1, 2006 Decision @ p. 2:2-3.

> (b) Taxes in Nevada must be uniform and equal. Nevada Constitution, Article 10, Section 1. Assuring that real property taxes are "uniform and equal" within a County is the County assessor's obligation. The County Board of Equalization is then charge with assuring that taxes within the County are, indeed, "uniform and equal." **The evidence establishes that the taxes assessed in the Incline Village area are not uniform or equal to other areas in the County.** The Assessor and County Board have adopted policies which assess the property in Incline Village on a different basis from other Washoe properties.
>
> *See* May 1, 2006 Decision @ p. 2:4-10.

> (c) As a result of the varying, subjective assessment of Incline Village property utilizing factors that have not been promulgated as regulations, or applied uniformly in the County, a taxpayer cannot determine on what basis his property is assessed.
>
> *See* May 1, 2006 Decision @ p. 2:16-17.

> (d) There is no consistent regulation or procedure established by the county to ensure that the assessment of real property is not solely subjective "guess work." No two assessors could agree upon the methodology used, let along the value resulting from the

> methodology, because the assignment of view components and the resulting valuation are arbitrary standards with no limitations on them by regulation or procedure.

See May 1, 2006 Decision @ p. 2:21-25.

In its Opening Brief, the State suggests that the District Court did not base its decision on substantial evidence in the Record on Appeal. *See* Opening Brief @ p. 8. As noted above, the District Court did review the evidence in the Record on Appeal and concluded that based on the evidence in the record, the evidence established that the valuations performed by the Assessor for 2004/2005 and affirmed by the State Board **were neither equal nor uniform.** Thus, contrary to the assertions of the State, the District Court did review the evidence in the record and concluded that the State Board and Assessor violated Nev. Const. Art. 10, §1 by valuing property in a non-uniform and non-equal manner. This conclusion by the Court that the valuations in Incline Village and Crystal Bay are not uniform or equal is not disputed by Appellants.

V. STANDARD OF REVIEW

The Supreme Court in *Bakst* @ pp. 8-9 stated the standard of review applicable to Petitions for Judicial Review challenging determinations by the State Board. Specifically, the Supreme Court articulated the applicable standard of review as follows:

> In reviewing orders resolving petitions for judicial review that challenge State Board decisions, the State Board's determinations are presumed valid. The burden of proof is on the taxpayer "to show by clear and satisfactory evidence that any valuation established by the Nevada Tax Commission or the county assessor or equalized by the county board of equalization or the State Board of Equalization is unjust and inequitable." The taxpayer "does not satisfy this burden 'unless the court finds that the [S]tate [B]oard applied a fundamentally wrong principle, or refused to exercise its best judgment, or that the assessment was to excessive as to create an implication of fraud and bad faith. Additionally, the district court may not foreclose the State Board's exercise of independent judgment on matters within its expertise, particularly since the State Board is composed of members with particular knowledge about property valuation. Agency decisions that are based on statutory construction, however, are questions of law, which this court reviews de novo. And, we will declare a government action invalid if it violates the Constitution.
>
> *See Bakst* @ pp. 8-9 (footnotes omitted).

.../

.../

As in *Bakst*, Respondents represented by the undersigned counsel have carried their burden of proof and established their entitlement to a refund of taxes paid attributable to value determined by use of unconstitutional methodologies, plus interest at 6%.[5]

VI. ARGUMENT

A. The State and County Do Not Dispute the Two District Court Conclusions that the Evidence in Both Cases Establish that the Assessor's Determination of Taxable Value Has Resulted in Non-Uniform and Non-Equal Valuations, Assessments and Taxes

Initially, for the 2003/2004 tax year, the Honorable William Maddox concluded as follows:

> The individual implementation of these four disputed methodologies by individual appraisers that are not promulgated through the formal process of NRS 233B do not provide for a uniform and equal rate of assessment.
>
> AA 8823.

> Without standards regulating and maintaining the appraisers as a collective group, each is free to apply, and evidence has shown do apply, whatever method whenever they desire. As a result, any one property has seventeen potential assessed values. Furthermore, the lake-front rock and view classifications have no standards defined, or if the standards are defined, the application of these standards has been inconsistent. This again by definition does not provide for equal and uniform assessments.
>
> *See* Order, May 2, 2006 @ p. 14:27-28 & 15:1-5.

> Due to the lack of equal and uniform application of these disputed methodologies, the reappraisal of Incline Village and Crystal Bay are not enforceable as to the excess in valuation.
>
> *See* Order, May 2, 2006 @ p. 15:24-26.

.../

.../

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[5] The State argues that 5 Respondents failed to present sufficient evidence to support the relief provided by the Court. *See* Opening Brief @ p. 7:2-4. The evidence excluded were photos of the results of a physical inspection of the subject properties. The District Court did not invalidate the Assessor's application of the disputed methodologies but invalidated the disputed methodologies themselves. Thus, the exclusion of the evidence is of no moment.

Addressing the next tax year 2004/2005, the Honorable Michael Griffin concluded as follows:

> The evidence establishes that the taxes assessed in the Incline Village area are not uniform or equal to other areas in this county. The Assessor and the County Board have adopted policies and procedures which assess the property in Incline Village on a different basis from other Washoe properties.
>
> *See* Order, May 2, 2006 @ p. 2:7-10.

The Nevada Supreme Court in *Bakst*, stated as follows:

> Article 10, Section 1 of the Nevada Constitution declares that "[t]he Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory." The Legislature has created the Department of Taxation, headed by the Nevada Tax Commission, to administer the state taxation system. The Tax Commission has the duty to administer Nevada's revenue and taxation laws.
>
> ...Those methodologies are unconstitutional, however, because they are inconsistent with the methodologies used in other parts of Washoe County and the entire state.
>
> *See Bakst* @ p. 9.

Thus, two District Courts concluded that the valuation of Incline Village and Crystal Bay violated Nev. Const. Art. 10, §1 because the methodologies utilized resulted in values and assessments that were neither uniform nor equal. None of the Appellants dispute these conclusions by the District Courts.

In this case, Appellants only dispute the fact that the Assessor utilized four unconstitutional methodologies to determine the taxable value of land for the 2004/2005 tax year and the Appellants do not dispute that valuations performed by the Assessor and Commission resulted in non-uniform and non-equal taxable valuations. Since Appellants have never disputed the District Courts' conclusions that the valuations in Incline Village and Crystal Bay are non-uniform and non-equal, and as such, will not be considered. *See, e.g. Holland Livestock v. B&C Enterprises*, 92 Nev. 473, 474, 553 P.2d 950, (1976) & *Weaver v. State, Dep't of Motor Vehicles*, 121 Nev. 494, 502, 117 P.2d 193, 198-99 (2005). In addition, the State Appellants attempt to craft an argument that the Supreme Court cannot provide relief to the 38 Respondents because to

do so would cause an equalization problem. *See* Opening Brief @ p. 14:15-18.

The argument will be addressed in detail in Section H of this brief, but what the State Appellants fail to represent to the Court is that all of Washoe County is out of equalization because of the Assessor's use of the four unconstitutional methodologies. Thus, by reducing the 38 Respondents to the 2002/2003 tax year will only refund tax dollars attributable to use of the four unconstitutional methodologies. In addition, by refusing to lower Respondents' taxable values, the Supreme Court would be further compounding the equalization problem created by the State Board and the Assessor.

B. The Assessor has Failed to Adhere to the Directive in *Bakst* and Reset Respondents' Taxable Values to the 2002/2003 Level

In *Bakst*, the Supreme Court stated as follows:

> Accordingly, the district court properly ordered that their 2003-2004 valuations be set to the 2002-2003 level.
>
> *See Bakst* @ p. 21.

In the case of Respondent Bakst, his assessed value for land was $940,450 for the 2003/2004 tax year as a result of the Assessor's determination of his taxable land value utilizing three of the four unconstitutional methodologies. Specifically, Dr. Bakst's assessed value history is as follows:

INCORRECT APPLICATION OF *BAKST*

Tax Year	Dr. Bakst Assessed Land Value
2002/2003	$850,500
2003/2004	940,450
***	1.0
2004/2005	940,450

Accepting the Supreme Court's directive to "reset" the taxable value for land to the 2002/2003 level for the 2003/2004 tax year should have resulted in a reduction of Dr. Bakst's assessed value for land from $940,450 to $850,500. Thus, based on the ruling in *Bakst*, Respondent Bakst's taxable value for land for 2003/2004 should be $850,500; however, the

Assessor has not reset the value as ordered in *Bakst*. Since 2004/2005 was a factor year, then the application of the factor derived by the Assessor should have been applied by simply multiplying the assessed value for 2003/2004 times the factor of 1.0, resulting in a carry-forward of the 2003/2004 assessed taxable value. The second chart below illustrates the correct application in *Bakst*, by resetting the 2003/2004 assessed value to the 2002/2003 assessed value, as follows:

CORRECT APPLICATION OF *BAKST*

Tax Year	Assessor's Value	Comments
2002/2003	$850,500	
2003/2004	940,450	*Unconstitutional Value
	850,500	*Bakst* Ordered Reset Value
	1.0	NTC Factor for 2004/2005
2004/2005	850,500	*Constitutionally Assessed Value

Thus, had the Assessor properly reset Respondent Bakst's 2003/2004 taxable value as provided for in *Bakst*, then his land value would simply carry forward from tax years 2003/2004 to 2004/2005. However, in lieu of actually resetting the assessed value for the 2003/2004 tax year, the Assessor maintains this appeal.

C. The Commission and the Assessor Utilized the Four Unconstitutional Methodologies in Calculating the Factor for Tax Year 2004/2005

It is important to note that the Assessor represented to the District Court what valuation methodologies were utilized by the Assessor and the State Board in this case for the 2004/2005 tax year, as follows:

> Not one of the four appraisal practices at issue can be said to suffer any greater defect or success in the imprecise art of mass appraisal land valuation work than any other professional land appraisal practice.
>
> AA 2987-2988.

> County submits that the Assessor's year 2002 land valuation practices, now being challenged for tax year 2004/2005, were not required to be codified in order to be lawful.
>
> AA 2899.

It is also important to know what the State Board represented to the District Court with respect to the use of the four unconstitutional methodologies for the 2004/2005 tax year. Specifically, the State Board represented to the District Court as follows:

> The State Board found that that (sic) the Assessor correctly used certain appraisal methodologies:
>
> The comparable sales for land only used by the Assessor include the application of time-adjustments. The State Board previously found the use of time-adjustments was an appropriate appraisal tool and standard accepted valuation methodology (See, Notice of Decision of Leonardini et. al, Case No. 143, dated May 30, 2003, Finding of Fact Subsection 4). The State Board also previously concluded the Assessor is correctly using time adjustments pursuant to NRS 361.260(7) *See, Notice of Decision of Leonardini et al, Case No. 143, dated May 30, 2003, Conclusions of Law Subsection 5.*
>
> See Administrative Record on Appeal ("RA"), p. 4 (emphasis original); *see also, e.g.* RA at 445, 757. The May 30, 2003, decision, which involved a taxpayer apparently unrelated to this litigation, states as follows:
>
> In making the finding that adjustments to the value of land for time and view are standard accepted valuation methodologies, the State Board reference The Apprisal of Real Estate (12th Edition) and Diction of Real Estate Appraisal. The State Board determined the use of "tear-downs" as comparable sales to vacant land is very common and typically used by brokers, owners, buyer[s], sellers, and real estate appraisers in the lake Tahoe real estate market as well as other areas in the nation. The State Board further determined the Assessor is correctly using these valuation methodologies pursuant to NRS 361.260(7).
>
> RA at 1359. In its May 30, 2003, decision, the State Board then concluded:
>
> Upon hearing the arguments on methodology made by the parties, the State Board determined time adjustment is a standard principle for adjusting sales in a sales comparison approach' view is a physical characteristic of land which is considered in valuing land; and the use of "tear-downs" as comparable sales is an accepted valuation methodology, all of which may be used by the Assessor in the appraisal of land.
>
> AA 2869.

In addition to the representations by the District Attorney's Office and the Attorney General's Office, the actions of the appraisers in the Assessor's Office and the statements also support the fact that the appraisers in the Assessor's Office utilized the four unconstitutional methodologies for the 2004/2005 tax year. The appraisers of the Assessor's Office determined the taxable value of Respondents represented by the undersigned counsel as follows:

.../

1. View Classification

As previously addressed before the Supreme Court in *Bakst,* the Assessor created a view classification system that required an appraiser from the Assessor's Office to perform an interior inspection of the homes which they had not done. Instead, the appraisers did a drive-by appraisal attempting to classify the respective view.

For example, for the 2003/2004 tax year, the Assessor performed an interior inspection of the residence owned by Dr. & Mrs. Bender, located at 733 Champagne Road, Incline Village. As noted in the Record on Appeal, the Assessor performed his interior examination on July 30, 2003 which resulted in a view classification reduction from a View-6 to a View-5. AA 6348. Thus, the appraisal practice utilized by the Assessor for the 2003/2004 tax year to properly determine what has now been deemed to be an unconstitutional view classification methodology, was to perform an interior inspection to be assured that the view was properly classified either by utilization of the written standard or the view book standard.

For the 2004/2005 tax year, the Assessor implemented the exact same view classification methodology. In the case of the property owned by the D'Andre Trust, on August 13, 2004, the Assessor performed a physical examination of the parcel's respective view classification. The result of the physical examination that took place on August 13, 2004 resulted, yet once again, in a view reduction from a View-6 to a View-4.5, with a corresponding reduction of the land value being reduced from $800,000 to $650,000. AA 6459-6461. Thus, the appraisers in the Assessor's Office utilized the exact same view classification method for 2004/2005 as they did in 2003/2004, even though it was a factor year. During the course of the administrative hearing before the State Board, Appraiser Lopez boasted that the Assessor's Office stands behind the view classification system. AA 4400. Consequently, the Assessor utilized the same unconstitutional appraisal methodologies for both the reappraisal year 2003/2004 as well as the factor year 2004/2005.

2. Time Adjustment Methodology

A review of the appraisal data submitted by the Assessor for the 2004/2005 factor year illustrates very clearly that the same unconstitutional methodologies were utilized for the

2004/2005 tax year. A review of the valuation evidence submitted by the Assessor to the County Board and the State Board clearly illustrates that the time adjustment methodology had been used for the 2004/2005 factor. In the case of the D'Andre Trust (AA 6480), the Assessor submitted his substantiation for Respondent D'Andre's taxable value. Each Respondent has a similar submission by the Assessor illustrating the use of time adjustments and tear downs. A review of the data (AA 6480) shows the Assessor's time-adjusted sales prices and classifies the view of the D'Andre property. The time adjustment methodology (AA 6480) was applied to new sales data as it became available. Contrary to the assertions of the Assessor and the State, the time adjustment methodology was utilized for the 2004/2005 factor year.

3. Rock Classification Methodology

The Assessor clarified his utilization of the rock classification methodology during the 2004/2005 factoring of Incline Village. Specifically, it was learned that the Assessor classified the property owners' rocks by reviewing GIS photos from inside the Assessor's Office that had been taken years earlier. AA 7149. The GIS Map review only permitted an approximate 100' downward panoramic viewing. In fact, the State Board approved the rock classification methodology within the context of the Respondent Pendergraft's property. AA 7144. The Assessor did not suggest to the State Board within the context of any case that he had applied a different valuation methodology from the four unconstitutional methodologies. If fact, just the opposite is true.

D. Appellants' Arguments that the Temporary Regulation Adopted by the Commission on December 12, 2002 Supports their Determination of Taxable Value is Belied by the Record and the Express Language of the Temporary Regulation

The Appellants attempt to suggest that the fact that the Commission adopted the temporary regulation on December 12, 2002, namely LCB File number T032-02, somehow mitigates the concerns raised by the Supreme Court in the *Baksi* decision. *See* Opening Brief @ p. 10:10-22. While it is a fact that a temporary regulation was adopted on December 12, 2002 by the Commission, that is the only point that can be recognized by Respondents. In reviewing the Opening Brief of Appellants, neither the State Appellant nor the County Appellant suggests that

the temporary regulation adopted by the Commission on December 12, 2002, in fact, supports what the Assessor and State Board did for the 2004/2005 tax year. It is only the affidavit submitted by the currently-seated Assessor who suggests that the December 6, (sic) 2002 regulation authorized his factor methodologies for the 2004/2005 tax year which conflicts to what actually occurred before the County Board and State Board.

The affidavit submitted by Assessor Wilson is **inaccurate** and contradicts the previous representations of his counsel to the District Court, the representations by State Appellants to the District Court and the statements of the appraisers in his office. A detailed review of the previous representations of all of the foregoing parties in the record is warranted to establish the false nature of the Assessor's representations in his affidavit. Assessor Wilson submitted the following portion of his affidavit for the Supreme Court's consideration:

> 8. The following valuation techniques were specifically adopted in regulation by the Nevada Tax Commission on December 6, (sic) 2002: (AA 76-78)
>
> 1. Abstraction (the so-called "tear down" method)
> 2. Allocation method
> 3. Capitalization of ground rent
> 4. Cost of development method
> 5. Extraction method.
>
> *See* Opening Brief, p. 24:14-18.

Thus, even though the Assessor suggests that the 2002 regulation supports his "factor" methodology in his affidavit, he does not assert that the 2002 temporary regulation supports the use of the four unconstitutional valuation methodologies <u>because it does not</u>. Alternatively, the District Attorney previously represented to the Supreme Court as follows:

> Because of this court's order **nullifying the assessment standards developed by the Assessor relative to view classifications and beachfront classification**, the reappraisal of a large percentage of the parcels will violate the Nevada constitutional mandate that the property in this state be assessed for tax purposes at a "uniform and equal rate of assessment and taxation." Art. 10, sec 1 Constitution of the State of Nevada. **This is because there are no assessment standards dealing with these attributes of real property that have been adopted pursuant to the regulation making provisions of NRS Chapter 233B.**
>
> AA 2782 [Emphasis added].

The above quote by the District Attorney is from his January 2006 Emergency Motion for Stay filed with the Nevada Supreme Court. Consequently, as of January 2006, which is after the adoption of the 2002 temporary regulations as well as the approval by the Commission of the August 4, 2004 regulations, the District Attorney correctly represented that neither set of regulations (2002 temporary regulation or 2004 permanent regulation) support the Assessor's determination of taxable value in Incline Village and Crystal Bay because he used the disputed view classification and beachfront classification systems.

The previous Assessor, Robert McGowan, submitted an affidavit in support of the Emergency Motion to Stay, wherein he testified as follows:

> If a county assessor may only use assessment standards that have been codified in accordance with NRS Chapter 233B, then this court's order effectively nullifies the procedures used in the Washoe County Assessor's Office and in all of the assessors' offices of the other counties that deal with land attributes such as **view** and/or **beachfront classifications**. Without being able to use the assessment standards adopted by your affiant's office to appraise and reappraise real property, it will be impossible to equally and uniformly reappraise the Incline Village/Crystal Bay Area **this year** in accordance with the reappraisal schedule Washoe County has adopted.
>
> AA 2786. [Emphasis added.]

The affidavit of Robert McGowan makes it clear that he would be unable to prepare a land factor for submission to the Commission without the use of his view and beachfront (rock) classification methodologies. In his affidavit when Assessor McGowan referred to "this year," he was referring to the 2006/2007 tax year which the Assessor determined the taxable value of the property owners' land through the factor process contemplated in NRS 361.260(5). The affidavit of Robert McGowan is factually accurate because the appraisers in the Assessor's Office utilized the four unconstitutional methodologies for the 2004/2005 tax year.

During the proceedings before the County Board, 22 cases were consolidated in an agreement between Respondent and the Assessor based on the recommendation of the Assessor to inspect the subject properties for proper view classifications and rock classifications which were to be resolved at the State Board level. AA 7185. It begs the question: Why would the Assessor go out and perform physical examinations of the subject properties for the 2004/2005

tax year to verify his view and rock classifications when, as alleged by the current Assessor in his affidavit, the Assessor and Commission utilized a different methodology by calculating the factor which does not apply to any of the four disputed unconstitutional methodologies? The record is clear: The Assessor did utilize the four disputed unconstitutional methodologies and those four disputed unconstitutional methodologies have **never** been included in a duly-promulgated regulation of the Commission.

E. The State Board of Equalization is Requesting the Supreme Court to Retroactively Apply the August 4, 2004 Regulation of the Commission

State Appellants seem to suggest that even if the temporary regulations are found to be inadequate, which they were, that somehow the State Board would be able to rely on the regulations adopted by the Commission on August 4, 2004 for the 2004/2005 tax year. Specifically, the State Board in its Opening Brief, stated as follows:

> Therefore, even if the temporary regulations in effect when the various county assessors formulated the factors for the 2004-2005 tax year are found wanting in determining initial values, these values were subject to correction on equalization, using the new regulations.
>
> *See* Opening Brief @ pp. 11-12.

The "new regulations" referred to by State Appellants in their Opening Brief is a reference to the current regulations adopted by the Commission on August 4, 2004. The suggestion by the State Appellants that the August 4, 2004 regulations could be applied to the 2004/2005 tax year is in direct conflict with the decision of the State Board, the directives of the Commission and the express language of NRS 233B.040 for the 2004/2005 tax year. The State Board in its decisions, made the following finding:

> 5) Taxpayers offered a second exhibit consisting of documentation with regard to regulations adopted by the Commission and effective August 4, 2004. The Taxpayers admitted the new regulations do not have retroactive application to the 2004-2005 tax year. *See Tr., p. 57, ll. 15-18.* The State Board determined the documentation had no relevance to the specific valuations for 2004-2005 tax year. *See Tr., p. 62, ll. 22-25; p. 63, ll. -6.*
>
> AA 6969.

The Commission similarly addressed the applicability of the regulations adopted on August 4, 2004. Specifically, at a sub-committee meeting of the Commission on September 27, 2004, the following dialogue occurred:

> MS.RUBALD: If I may, I even have it in writing here. On the time line, it talks about land values are established based on sales occurring before 7/1/04, and then it refers to the new regulations that say, "cannot use sales earlier than 7/1/04", and that's I guess my demonstrated proof that we expect to apply the new regulations.
> MR. OTTO: To When?
> MS. RUBALD: To the '05-06 year.
> MR. OTTO: Terrific.

AA 116.

Both the State Board and Commission represented to all Respondents and local governments alike that the regulations adopted on August 4, 2004 would only apply to tax years 2005/2006 and later. The Attorney General, on behalf of these State agencies, is now suggesting a different effective date for the August 4, 2004 regulation...to the 2004/2005 tax year. The suggestion by the Attorney General is also violative of NRS 233B.040. Specifically, NRS 233B.040(1) provides as follows:

> **Regulations: Adoption; enforcement; contents; adoption of material by reference.**
> 1. To the extent authorized by the statutes applicable to it, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions. If adopted and filed in accordance with the provisions of this chapter, the following regulations have the force of law and must be enforced by all peace officers:
> (a) The Nevada Administrative Code; and
> (b) Temporary and emergency regulations.
> In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned.

Thus, NRS 233B.040 provides that a regulation promulgated by a State agency does not have the force of law until such time as it is approved by the respective State agency and "filed" as provided for in Chapter 233B of the NRS. In this case, the August 4, 2004 regulation did not become effective until August 4, 2004. The appraisers for the 2004/2005 tax year were required to use sales that occurred no later than July 1, 2004. *See* NRS 361.260(7). As such, it was

impossible to apply the newly-promulgated regulations to the 2004/2005 tax year, either by the Assessor in the determination of taxable value or by the State Board, had it, in fact, performed the requisite equalization function pursuant to NRS 361.395.

F. The Factor Methodology Described in Assessor Wilson's Affidavit is Unconstitutional

NRS 361.260(5) provides as follows:

> **NRS 361.260 Method of assessing property for taxation; appraisals and reappraisals.**
> 5. In addition to the inquiry and examination required in subsection 1, for any property not reappraised in the current assessment year, the county assessor shall determine its assessed value for that year by:
> (a) Determining the replacement cost, subtracting all applicable depreciation and obsolescence, applying the assessment ratio for improvements, if any, and applying a factor for land to the assessed value for the preceding year; or
> (b) Applying to the assessed value for the preceding year a factor for improvements, if any, as adopted by the Nevada Tax Commission in the manner required by NRS 361.261, and a factor for land developed by the county assessor and approved by the Commission. The factor for land must be so chosen that the median ratio of the assessed value of the land to the taxable value of the land in each area subject to the factor is not less than 30 percent nor more than 35 percent.

Before the Supreme Court, the current sitting Assessor, for the first time, articulated the process he either intends to follow or believed the previous Assessor followed to calculate the factor utilized for the 2004/2005 tax year.[6] Specifically, the Assessor stated that he calculates the land factor as follows:

> 2. The assessor then compares the assessed values of these parcels to their sale prices to develop a factor ratio. This analysis creates a ratio of the assessed value of this parcel from the previous year (as the numerator) over the sales price that represents "full cash value" of the land (as the denominator). NRS 361.227(1)(a) requires the taxable value of vacant land to be assessed at its full cash value.
> 3. NRS 361.260(5) then directs the assessors to choose the median ratio of these sales. NRS 361.260(5)(b) states that "The factor for land must be so chosen that the median ratio of the

.../

[6] As shown in Section C of this brief, the Assessor utilized the four unconstitutional methodologies to determine the Respondents' taxable land values for tax year 2004/2005.

> assessed value of the land to the taxable value of the land in each area subject to the factor is not less than 30 percent nor more than 35 percent."

See Opening Brief @ p. 23:6-23.

The Assessor has described his methodology to determine the land factor pursuant to NRS 361.260(5). The factor method described and utilized by the Assessor is not contained within a duly-promulgated regulation of the Commission nor is it contained in a statute promulgated by the Nevada Legislature. The Assessor, as will be discussed below, has yet once again created an unconstitutional method of valuation to implement the statutorily-prescribed factor method of valuation prescribed by NRS 361.260(5).

In paragraph 2 of his affidavit, the Assessor describes his own unique unconstitutionally determined methodology to prepare the land factor. The Assessor describes a process where sales are analyzed by him to calculate the factor ratio prescribed in NRS 361.260(5). He describes a process where he develops his ratio by comparing the previous assessed value for a particular sale to the subject property's sales price. In short, the Assessor describes a fraction where the numerator consists of the property's previously determined assessed value and the denominator is the property's sales price. In short, the Assessor is determining the ratio between the properties' assessed values for the previous year and the properties' sales price, which is commonly referred to as a "sales ratio." The Assessor testified through his affidavit that this is the manner in which he calculates the factor for all properties, both improved and vacant. A detailed review of NRS 361.260(5) is warranted because it does not support the Assessor's factor methodologies.

NRS 361.260(5) in pertinent provides as follows:

> The factor for land must be so chosen that the median ratio of the **assessed value of the land to the taxable value of the land** in each area subject to the factor is not less than 30 percent nor more than 35 percent.

The statute requires that the Assessor and the Commission adopt a land factor that provides a ratio of not less than 30% and not more than 35% of the land's previously assessed value to its "taxable value," not sales price.

In fact, in the taxable value system, taxable value for improved property is **not** equivalent to the sales price of the subject property. The Assessor on his own has interpreted "taxable value" within the context of NRS 361.260(5) to mean sales price. There is no authority to support his determination in this regard. In fact, because of the lack of regulation guidance, the manner in which the factor had been calculated for tax years prior to 2005/2006 were done inconsistently from Assessor to Assessor. Specifically, the Executive Director of the Department represented to the State Board on March 27, 2006 as follows:

> Then in May 2004 there was a realization that land factoring studies that were being accomplished by the county assessors were only developing factors in areas where there was a plethora of vacant land sales but not in such areas as built-up areas even when there were substantial sales of improved parcels and that also is documented in various reports.
>
> Recalling the statutory concept that was envisioned under NRS 361.260 wherein if property is not physically reappraised then it needs to be factored, the Department recommended and the Commission approved that in developing a land factor for all areas, not just for those areas where vacant land sales were abundant. In other words, the assessor needed to keep in mind that statutory scheme of keeping all properties maintained at a reasonable taxable value or level.
>
> AA 2981.

Thus, as noted by the then Executive Director, the Assessors were inconsistently calculating and applying land factors. The former Executive Director represented to the State Board that the Commission directed factors be approved for all areas. This direction is not set forth in a regulation of the Commission. In *Bakst*, the Supreme Court concluded:

> The Nevada Tax Commission failed to fulfill its statutory duty to update general and uniform regulations governing the assessment of property. Without uniform regulations from the Tax Commission, the Assessor, understandably, created the methodologies he deemed necessary to assess the properties in the Incline Village and Crystal Bay areas. Those methodologies are unconstitutional, however, because they are inconsistent with the methodologies used in other parts of Washoe County and the entire state.
>
> *See Bakst* @ p. 22.

In the case of the factor methodology submitted by the current Assessor, the current Assessor indicates that he looks to the sales price of property and compares it to the previous

year's assessed value since, yet once again, the Commission has failed to give regulation guidance to local assessors to assist them in properly calculating land factors. Neither the 2002 temporary regulation nor the August 4, 2004 regulation provides any guidance on the uniform means to calculate the ratio prescribed in NRS 361.260(5).

As authority for his conclusion in this regard, the Assessor references NRS 361.227(1)(a). The Assessor's reference to (1)(a) while accurate, is incomplete. NRS 361.227(1) in total provides as follows:

> **NRS 361.227 Determination of taxable value.**
> 1. Any person determining the taxable value of real property shall appraise:
> (a) The full cash value of:
> (1) Vacant land by considering the uses to which it may lawfully be put, any legal or physical restrictions upon those uses, the character of the terrain, and the uses of other land in the vicinity.
> (2) Improved land consistently with the use to which the improvements are being put.

In 1981, the Nevada Legislature set up different valuation standards for improved land and vacant land. Improved land being valued in a manner consistent with the use to which the improvements are being put and vacant land being valued at its full cash value taking into consideration the applicable deed restrictions associated with that land. The Assessor's methodology articulated in his affidavit disregards the mandate to value improved land differently than vacant land. The comments of the former Executive Director established that Assessors only factored property in areas where they were in abundance of vacant land sales. In this case, Incline Village was factored by the Washoe County Assessor even though there was little or no vacant land sales. It was this fact, lack of vacant land sales, that resulted in the Assessor creating the four unconstitutional methodologies. Applying the conclusion in *Bakst* to the factor methodology offered by the current Assessor leads to the same conclusion as what was reached in *Bakst*. The conclusion being that due to lack of regulatory guidance, the Assessor created his own factor methodology and applied that factor methodology to the taxable values of Respondents' properties. It is important to note that in the entire transcript where the Executive Director was briefing the State Board on March 27, 2006, he never indicated that the

Commission had regulated the factor methodology prescribed in the Assessor's affidavit. AA 2961-3000.

Further, in addressing the Assessor's methodology described in his affidavit, he indicates that the assessed value for the sales that he obtains from the title companies, is the numerator in his ratio calculation. The numerator in the case of property located at Incline Village and Crystal Bay for the 2004/2005 tax year would be the assessed value calculated for the 2003/2004 tax year, which was unconstitutionally derived. How could the Assessor's sales ratio be valid if the numerator contains an unconstitutionally-determined assessed value?

G. Respondents Have Never Alleged that their Properties' Taxable Value Exceeds its Full Cash Value

On pages 2-6 of the Opening Brief, Appellants argue that "portions of the State Board's decision that indicate that the respective subject property's taxable value did not exceed its respective full cash value. While in many instances this was a correct conclusion by the State Board, the Respondents did not express a concern in this regard.

Given the nature of the taxable value system imposed by virtue of NRS 361.227, it is almost without exception that residential property's taxable value will not exceed its full cash value. NRS 361.227(5) prohibits a property's taxable value from exceeding its market value. Taxable value of residential property is, if properly calculated, done by valuing the land and improvements separately. The improvements receive a 1.5% annual depreciation. *See* NRS 361.227(1)(b). The 1.5% mandatory depreciation historically has exceeded the amount of economic obsolescence actually occurring on the marketplace. Consequently, the fact that the taxable value of a residential property is less than that property's full cash value is nothing more than a simple recognition that the Assessor is applying the statutorily-mandated depreciation. None of Respondents have ever disputed otherwise.

H. A Remand is Not an Appropriate Remedy Given the Fact that the Commission and State Board have Failed to Timely and Properly Regulate and Equalize Values Pursuant to NRS 361.395

Both the State Appellant and the County Appellant in essence, argue that the relief they are seeking from the Supreme Court is to "remand to the State Board for it to make findings as to

the correct valuations under what this Court determines to be the regulations' validity in effect with respect to those valuations." *See* Opening Brief @ p. 17:22-24. Appellants' request for remand is both factually and legally inappropriate primarily attributable to the actions and inactions of the Commission, State Board and Assessor. Appellants suggest that by reducing the value of the 38 parcels, a roll back to 2002/2003 would create an inequality amongst taxpayers. Specifically, Appellants provide as follows:

> Additionally, the remedy given to the taxpayer should not create inequality among other taxpayers. *Imperial Palace*, 108 Nev. @ 1068, 843 P.2d at 818.
>
> *See* Opening Brief @ pp. 15:1, 16:1-2

The Maddox Court and the Griffin Court both have concluded that the valuations performed by the Assessor for tax year 2003/2004 and tax year 2005/2005 have resulted in non-uniform and non-equal assessments of taxation. Thus, the purported inequality that Appellants suggest would occur as a result of the roll back to 2002/2003 is already present. It is the outright refusal of the Commission and State Board to apply the reasoning of *Bakst* to all similarly-situated parcels that continues to maintain the inequality. Many State courts have had the opportunity to interpret the constitutional requirement of equality and uniformity. In *Village of Ridgefield Park, et al. v. Bergen County Board of Taxation,* 160 A2d 316 (1960), the Superior Court provided as follows:

> "Generally equality and uniformity of taxation are necessary under the provisions of the constitutions of many of the states * * *. Such requirements lie at the foundation of the taxing power of the state. * * *. A constitutional requirement of equal and uniform taxation substantially covers the ground of the due process and equal protection clauses of the federal Constitution and state constitution, that is, the requirements of these provisions in tax matters are substantially similar, and what violates one of these provisions will contravene the other."
>
> *See Ridgefield* @ p. 337.

The Court in *Ridgefield* went on to state as follows:

> "Taxing is required to be by a "uniform rule" - that is, by one and the same unvarying standard. Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and

this equality of burden cannot exist without uniformity in the mode of assessment, as well as the rate of taxation. But this is not all. The uniformity must be coextensive with the territory to which it applies. If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution does not stop here. It must extend to all property subject to taxation, so that all property may be taxed alike - equally - which is taxing by a uniform rule."

See Ridgefield @ pp. 333-334.

The Superior Court in *Ridgefield* further stated the function of equalization:

"The function of equalization is the adjustment of aggregate valuations of property, * * * between the different taxing districts of the same county, so that the share of the whole tax imposed on each * * * district shall be justly proportioned to the value of taxable property within its limits, in order that one * * * district shall not pay a higher tax, in proportion to the value of its taxable property, than another. * * *. The object to be accomplished by equalization is to produce relative equality among the several taxing districts."

See Ridgefield @ p. 334.

In Nevada, two State agencies are responsible for equalizing values statewide. NRS 361.395 bestows this equalization function upon the State Board. NRS 361.395 provides:

NRS 361.395 Equalization of property values and review of tax rolls by State Board of Equalization; notice of proposed increase in valuation.

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

(a) Equalize property valuations in the State.

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

2. If the State Board of Equalization proposes to increase the valuation of any property on the assessment roll, it shall give 10 days' notice to interested persons by registered or certified mail or by personal service. The notice must state the 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 personally appears before the Board and is notified of the proposed increase in valuation.

.../

Even though NRS 361.395 on its face is very clear that the State Board is required to equalize values statewide by reviewing the tax rolls of the various counties as adjusted by the County Board, the Executive Director of Taxation advised the State Board that the duty to equalize between counties is the obligation of the Commission. Specifically, former Director Chinnock provided as follows:

> The Nevada Tax Commission in adopting the study makes their decision on the record I a public process and in accordance with the Opening Meeting Law. Now, the point I'm trying to make is twofold. From a general standpoint and with respect to one county versus another and with respect to the various classes of property listed in NRS 361.333 and through the adoption of factors in accordance with NRS 361.320, the Nevada Tax Commission ensures equalization among the various counties, not the State Board of Equalization. * * *.
>
> Therefore, with respect to making general valuation adjustments there is no need and no authority for the State Board of Equalization, just as there is little specific authority provided to the Boards of Equalization to involve itself in general equalization studies and efforts.

AA @ 2976-2977.

The Attorney General similarly advised that the provisions of NRS 361.395 regarding reviewing the tax rolls did not require the State Board to be proactive in its approach to equalization. Specifically, the Attorney General writes:

> By your interpretation, NRS 361.395 requires the SBE to be highly proactive in its approach to equalization. By our interpretation, NRS 361.395 requires the SBE to equalize valuations in the context of administrative appeals.

AA 8418.

The Department and the Attorney General simply refuse to acknowledge the affirmative duty to equalize property values statewide as provided for in NRS 361.395. For the first time, the Attorney General now suggests that in order to equalize Area 1, which is the area where Incline Village and Crystal Bay are located, that it is necessary to remand the 38 parcels that are the subject of this appeal purportedly to the State Board so that their values can be properly determined through the application of uniform rules and standards. As such, it is appropriate to

.../

.../

determine what the requisite remedy is when the equalization function has not been performed statewide. In *Ridgefield*, the Superior Court of New Jersey, addressed this point as well:

> All acts relating to taxation and the enforcement thereof are subject to the constitutional requirement of equality and uniformity. The constitutional mandate that property shall be assessed for taxes by uniform rules is self-executing. No legislation is needed to give it effect; and anything done in violation thereof is absolutely void and of no effect. Consequently, no tax can be lawfully laid on property which is not determined by a valuation of the property by a uniform rule.
>
> *See Ridgefield* @ p. 336.

Much like this Honorable Court in *Bakst* which concluded that when a tax statute is determined to be unconstitutional, the Taxpayer is entitled to a refund, the Superior Court in New Jersey similarly held that acts related to taxation that are done in violation of uniformity and equality, are illegal and void. The unconstitutional imposition of a tax which occurs in violation of Nev. Const. Art. 10, §1, warrants a refund and the measure of the refund is to be calculated in the identical manner as *Bakst*. As was shown above, Respondents' properties were valued utilizing the same four unconstitutional methodologies. The use of those same unconstitutional methodologies results in a violation of Nev. Const. Art. 10, §1 which warrants a refund.

To accept the State's suggestion that the remand remedy is appropriate would place these 38 homeowners in peril. It is clear that neither the State nor the Assessor determined the taxable value of land in Incline Village and Crystal Bay by utilizing regulations promulgated by the Commission. The Record on Appeal makes this point abundantly clear. Consequently, the suggestion by the State to remand the 38 parcels and single those parcels out for the application of the methodologies prescribed in either the 2002 temporary regulation or the August 4, 2004 regulation, would again violate the uniform rule of valuation, assessment and taxation. Is the State suggesting that the entire State of Nevada's property be remanded and revalued by the State Board for tax year 2004/2005? If so, what uniform appraisal standard will be used? The 2002 temporary regulation does not provide for a uniform system of valuation. In fact, to the contrary, it provides the Assessor the ability to select any method of valuation and once again, resulting in non-uniform and non-equal valuations, assessments and taxation.

Moreover, the Commission and State Board have either permitted or refused to take action to require the Assessor to follow duly-promulgated regulations of the Commission. As noted in *Ridgefield*, if valuations are performed pursuant to a uniform standard, then equalization is self executing.

The Supreme Court in *Bakst* addressed the requirement of the Assessor to apply regulated appraisal methodologies. In addition, the Nevada Legislature clarified in 2005, within the context of AB392, the same issue that the Supreme Court addressed in *Bakst* which is that the Assessor is required to value property for ad valorem purposes pursuant to valuation methodologies and standards that are set forth in a regulation of the Commission and uniformly applied statewide.

On March 27, 2006, the undersigned counsel transmitted a letter to the Commission to apply the August 4, 2004 regulation of the Commission, requesting assistance with regard to the conduct of the Assessor. Specifically, the Assessor for the 2006/2007 tax year still refused to value property applying the regulations of the Commission promulgated on August 4, 2004. Thus, even though the Legislature clarified the issue on the proper methodology to be applied and utilized by the Assessor for tax years 2005/2006 forward, both the Assessor and State Board refused to comply. In fact, the State Board on January 5, 2006 utilized the Assessor's view classification for the 2005/2006 tax year, even though that view classification system has **never** been authorized by a properly-promulgated regulation of the Commission. In response to the March 7, 2006 correspondence, **the Commission took no action**, even though the statutes not only permit, but require, the Department to consult and assist Assessors to maintain standard assessment procedures in all of the counties of this State. *See* NRS 360.215.

Moreover, the State Board, when faced with a request to equalize, pursuant to NRS 361.395, told the Respondents that their request was irrelevant. AA 316. In addition, members of the State Board have equated their duties pertinent to equalization as set forth in NRS 361.395 to be the equivalent of the act of sodomy. AA 3018. It has been established through the statements of the Chairman of the State Board that the express statutory obligation to review the tax rolls of each county as adjusted by the County Board, had never been performed by him. *See*

Respondents' Countermotion to Take Judicial Notice @ Exhibit 3. In addition, the State Board has indicated that if forced to equalize values, they would in fact, engage in retaliatory assessment by raising values to their full cash values or market values, as opposed to equalizing at its properly determined taxable value. AA 2993.

Accordingly, even though two District Court Judges concluded that the valuations performed in Incline Village and Crystal Bay were neither uniform nor equal, none of the Appellants have disputed these findings and have argued to the Court that the valuations performed were in fact, uniform and equal. The Commission and State Board have simply refused to assist the parties in equalizing taxable values either in Incline Village, Crystal Bay, Washoe County or for that matter, the State of Nevada. A remand to either the Commission or State Board would most likely be met with the retaliatory assessment as was suggested by State Board Member Johnson on August 24, 2004, when he stated as follows:

> What Shelli is saying too is if you're going to have - we want all citizens of the state of Nevada treated equally and if Clark County is on the tax roll at 100 percent of their full cash value, Incline is on at 70 and Douglas is on at 60, we should find some way where they're all treated the same and maybe **we should bring them all up to 100 percent of market value and maybe that would be the most equitable thing.**
>
> AA 4243.

Thus, even though the State Board acknowledged the disparate values between Clark, Washoe and Douglas, instead of taking some corrective equalization action, the State Board suggested to Respondent Bakst that it would consider equalizing at market value which is in direct conflict to NRS 361.395 requiring properties be equalized to their respective taxable value.

VII. CONCLUSION

The Record on Appeal makes it abundantly clear that the Assessor utilized the four disputed unconstitutional methodologies in determining the taxable value of Respondents' land for 2004/2005 tax year. As mandated in *Bakst*, the use of those methodologies warrant a refund of the monies paid on the valuation increase between 2002/2003 and 2004/2005.

Moreover, a remand is appropriate for prospective equalization by the Commission for the 2008/2009 tax year since the Assessor is currently reappraising Incline Village and Crystal

Bay based on his five-year cycle. A statewide reappraisal is the only manner to remedy the non-uniform, non-equal values, assessments and taxes imposed thereby due to the failure of the State Board to discharge its equalization function statewide. The Department performed a special study of the taxable values in Incline Village and Crystal Bay and concluded they were "poorly equalized" and that the only remedy for poor equalization is a reappraisal. AA 8446.

Dated this 24 day of July, 2007.

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Respondents' 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 2nd day of July, 2007.

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CERTIFICATE OF MAILING

I hereby certify that on the 2ND day of July, 2007, I placed a copy of the foregoing in the United States Mail, postage pre-paid, addressed to:

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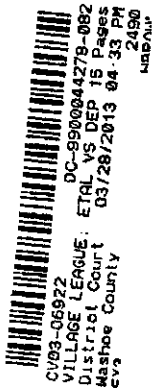
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EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, ex rel. STATE BOARD OF EQUALIZATION, an agency of the State of Nevada; WASHOE COUNTY, a subdivision of the State of Nevada; WASHOE COUNTY ASSESSOR; NEVADA TAX COMMISSION; and NEVADA DEPARTMENT OF TAXATION, Appellants, vs. LESLIE P. BARTA, et. al., Respondents.	**No. 47397** **No. 47398** **No. 47399** **No. 47400** **No. 47401**

REPLY BRIEF OF STATE BOARD OF EQUALIZATION, NEVADA TAX COMMISSION, AND DEPARTMENT OF TAXATION TO BRIEFS ON BEHALF OF RESPONDENTS

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I. ISSUES PRESENTED

A. Has the Nevada Tax Commission discharged its responsibility to engage in rulemaking?

B. Have the Respondents established that the Assessor's Land Factor Development for Tax Year 2004-05 produced a just or equitable valuation?

C. Have the Respondents shown that the valuations established by the State Board were not just and equitable?

D. Have the Respondents justified another rollback to 2002-2003 values in light of the probable unjust and inequitable results such would produce?

II. SUPPLEMENTAL STATEMENT OF THE CASE

On July 17, 2007, after Appellants filed their opening brief, this Court granted, in part and denied in part, Appellants' motion for judicial notice and denied the countermotion of Respondents represented by Attorney Azevedo (Bakst, Buck, Erdman, Glen, Thomas, FFO, Vento, VIFX, Winkler, Austin, Barnhardt, Bender, Cumming, D'Andre, Frei Gastanaga, Leach, Edward, Moriarty, Nakada, Pendergraft, Peno Bottom, Taylor, Watkins, Wilson and Zanjani)(hereinafter "Bakst Respondents")[1]. The motions were granted insofar as they requested judicial notice of certain temporary regulations put in place by the Nevada Tax Commission, and denied the request for judicial notice concerning a district court order and an excerpt of the Department of Taxation's "Assessor's Recommended Land Factors."

III. ARGUMENT

State ex rel. State Board of Equalization v. Bakst, 122 Nev. ___, 148 P.3d 717 (2006) this Court upheld a decision of the Honorable Judge Maddox ordering "Washoe County to roll back the tax valuations" on certain properties for assessment year 2003-2004 "to their 2002-2003 amounts. The district court also ordered refunds to any Taxpayers who had paid more

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[1] This brief will refer to respondents generally as "Respondents" and respondents represented by Ms. Fulstone as "Anderson Respondents."

than the 2002-2003 amounts, with interest." *Id.* at ___, 148 P.3d at 721. As noted in this Court's order herein dated March 16, 2007, this appeal addresses the applicability of *Bakst* to the factor year 2004-2005.

A. The Nevada Tax Commission Discharged its Responsibility to Engage in Rulemaking.

In *Bakst*, this Court affirmed the District Court's decision based on the Nevada Tax Commission's failure "to fulfill its statutory duty to update general and uniform regulations governing the assessment of property." *Id.* at ___, 148 P.3d at 726. Starting July 30, 2002, the Department of Taxation commenced workshops as part of its ten-year review pursuant to NRS 233B.050(1)(e) of substantive regulations within its authority. As a result of the workshops that ensued, the Nevada Tax Commission adopted temporary[2] regulations discussed in Appellants' Opening Brief. Again, as part of its ten-year review of regulations under NAC chapter 361, on August 6, 2003, while the foregoing temporary regulations were still in effect, the Department of Taxation published notice for the first in a series of regulation workshops for the adoption of permanent regulations. As discussed in Appellants' Opening Briefs, the regulations that resulted were adopted by the Nevada Tax Commission at a hearing on June 25, 2004 and were filed with the Secretary of State on August 4, 2004. *See* Notice of Adoption of Proposed Regulation, LCB File No. R031-003.[3]

The December 2002 regulations did not refer specifically to the view, beach quality, tear-down, or time-adjustment methodologies. However, in requiring the assessor to determine full cash value of vacant and improved land by making appropriate adjustments "for differences in physical attributes," (*see* NAC 361.118, as amended by the December 2002 regulations), the Nevada Tax Commission directed that all the assessors address all value influences when appropriate—that would include view and beach. In requiring the assessors

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[2] During the period July 1 of even years to July 1 of odd years, the Legislative Counsel is not given a deadline in its review of permanent regulations. NRS 233B.063(2). The practical result is that agencies proceed by temporary regulations during this period pursuant to NRS 233B.063(3).

[3] http://www.leg.state.nv.us/register/2003Register/R031-03A.pdf.

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to consider adjustments for time of sale, the December 2002 regulations required that assessors use time adjustments. "Tear-downs" are a creature of market conditions in which, because of a shortage of vacant, developable land, buyers will purchase improved land for the purpose of removing existing structures. Thus, the assessor would be required to consider tear-downs as "similarly situated or comparable properties," under the December 2002 regulations, to properties without such improvements.

The foregoing regulations gave guidance to the assessors. The August 2004 regulations, excerpted in the *Bakst* decision at 122 Nev. ___, 148 P.3d at 722, n.19, gave further guidance, specifying, for example, how view is to be considered. NAC 361.118 (2004). The appropriate evaluation should be whether the assessors followed that guidance.

Respondent Les Barta ("Respondent Barta") argues that the December 2002 regulations do not authorize the four methodologies, and therefore, under *Bakst*, they are invalid. *Bakst* described the methodologies as follows:

> These disputed methodologies adjusted the comparable sales for (1) a parcel's view of Lake Tahoe, using a point system to classify each parcel and increasing the values accordingly; (2) a five-step "rock" classification, which raised the value of the land based on its relationship to the lakefront; (3) a "paired sales analysis" which estimated the value of a subject property based on previous sales of comparable properties adjusted, however, as though those properties had sold currently; and (4) for properties with residences slated to be demolished for rebuilding, the Assessor adopted a "tear-down" method to determine comparable sales in which the entire value of an improved property was assigned to the land.

122 Nev. ___, 148 P.3d at 719.

The Nevada Tax Commission does not, itself, value locally assessed property or sit in on appeals of such valuations. While indeed regulations governing land values have been a work in progress, given the millions of properties that are subject to assessment, the fact is that the Nevada Tax Commission is not necessarily able to identify specific issues relating to methodologies until they are brought to its attention. Respondents themselves claim not to have been aware of taxpayers' concerns about methodologies until 2003. Appellants' Appendix ("AA") 00007.

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If further clarification is in order from this Court, it would be to guide all concerned as to what level of specificity would be needed from regulations of the Nevada Tax Commission, or conversely, to what degree may the assessors be allowed to exercise judgment in identifying factors that influence value and in putting into place formulae for ascertaining the probable relative contribution the multiple predictors of value may make to the full cash value of land. Further, assessors' workloads and the computing and other tools they have available may factor into the methods (e.g., computerized mass appraisal) through which they can perform their work. This would, in turn, raise the issue whether under this Court's analysis in *Bakst*, it would suffice for regulations to permit different mathematical models for valuation as long as regulations require that the mathematical models meet statistical tests imposed by the Department of Taxation pursuant to regulation.

B. Respondents Have Not Established That the Assessor's Land Factor[4] Development for Tax Year 2004-05 Produced Unjust or Inequitable Valuations.

Under NRS 361.260(5), county assessors are required to develop and apply factors for land values to raise or lower those values in non-reappraisal areas so that the median ratio of assessed values to taxable values in those areas are between 30 and 35 percent. The assessors conduct sales-ratio studies comparing sales of property to the previous-year's recorded assessed values for the sold properties. If these sales show a median ratio of less than 30 percent or greater than 35 percent, then a factor (i.e., a multiplier) that would place the median ratio in between 30 and 35 must be used.

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[4] The Bakst Respondents contend "factoring" is reappraisal under NRS 361.260. On the contrary, factoring was created to be used as an alternative means for adjusting value when there is no reappraisal. Unlike reappraisals (which are simply new appraisals of properties previously appraised), factors are across-the-board adjustments of value. The purpose of factoring is to minimize the abruptness of the valuation changes that can otherwise be created by the five-year reappraisal cycle. *See Minutes of the Assembly Committee on Taxation*, February 25, 1983, p. 9. Factoring was first instituted in 1981. As a result, it is not clear how *Recanzone v. Nevada Tax Commission*, 92 Nev. 302, 550 P 2d 401 (1976), cited by Barta, sheds light on factoring, other than to give background to the problem that factoring was intended to address—the disparate effects of the five-year cycle.

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For 2004-2005, the Washoe County Assessor was required to compare sales that occurred between July 1, 2002 and June 30, 2003 with the assessed values set for 2003-2004 for the sold property, which values had been derived from reappraisals. The Washoe County Assessor, assuming the validity of the assessed values set for 2003-2004, determined that the median ratio was between 30 and 35 percent, and thus arrived at a 1.0 factor.[5] Of course, the Washoe County Assessor did so without foreknowledge of this Court's decision in the *Bakst* matter. In that decision, this Court, in affirmance of the District Court's decision, held invalid the reappraisals used in the 2003-2004 land valuations and required refunds of the tax amounts paid by the taxpayers in excess of "what taxes should have been paid." This Court deemed, based on taxpayers' concessions, that the amount that should have been paid was the amount based on valuations for 2002-2003. *Bakst*, *supra*, 122 Nev. ___, 148 P.3d at 727 (2006).

Had the Washoe County Assessor had the benefit of the *Bakst* decision when formulating the 2004-2005 land factor for Incline Village and Crystal Bay, his mathematical calculation would most likely have been very different, but the values produced by that calculation would most likely have been the same. He would have formulated the land factor for 2004-2005 by determining the number that needed to be multiplied by the 2002-2003 assessed values, the values this Court found valid, to achieve a median ratio within the statutory range based on the factor data. Logically, the number would have been very different than the 1.0 found by the Assessor working off of the 2003-2004 values. The outcome, the values produced by use of that number to achieve a ratio within the statutory range, would have been the same.

Respondents attempt to cast doubt on the factor data by references to the record herein that they suggest prove that the factor data were based on the methodologies rejected

[5] This Court's July 17, 2007 order appears to foreclose reference to materials concerning the 2004-05 factors. Were that not the case, Appellants would draw this Court's attention to the erroneous interpretation of the Department's "I" rating for the Washoe County Assessor's factor. On the contrary, "I" does not reflect insufficiency of the data, but rather that it was inconclusive as to whether the median ratio of all properties within the area was over or under 30 percent. In other words, the median ratio was not conclusively within the statutory range.

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by this Court in *Bakst*. Even assuming for argument that intervening regulations did not cure any defect in the methodologies, the proof from the record to which the Bakst Respondents cite consists entirely of information submitted in the equalization process[6]—i.e., before the Boards of Equalization—in support of Washoe County's position that taxable value of the properties undergoing that process did not exceed full cash value. *See, e.g.*, NRS 361.360. Reference to the methodologies in the record do not discredit the factor data.

Rather, presentation at the equalization stage of data derived from methodologies not approved by statute or regulation would be significant only if that data was relied upon in the equalization process to the detriment of the Bakst Respondents' substantial rights. NRS 233B.135. Absent an indication of such on the record, the State Board's decision should stand. In the event that the record indicates such reliance to the detriment of a given taxpayer on unapproved methodologies, then the reliance could constitute "application of a fundamentally wrong principle" or be otherwise in violation of the review standards set forth in *Imperial Palace v. State, Department of Taxation*, 108 Nev. 1060, 1066, 843 P.2d 813, 817 (1992). For reasons discussed below, in the event of the latter instance, the appropriate remedy would be to remand the individual taxpayer matter for application of a correct principle and a determination whether the taxpayer's substantial rights were adversely affected thereby.[7]

Respondents argue that the land factors themselves were invalid because they were not adopted according to statute or regulation. This Court in *Bakst* referred to factors as "a statutorily approved method of adjusting the value of land." *Bakst, supra*, 122 Nev. ___, 148 P.3d at 719. That is the Washoe County Assessor and the Nevada Tax Commission were

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[6] Their references are to comp sheets. As an example, *see* AA 000622. *See* Bakst Respondents' Answering Brief, p. 4.

[7] Insofar as the State Board tested the factor-based values using data that passed muster under either the December 2002 temporary regulations or the August 2004 permanent regulations, then that testing did not constitute application of a fundamentally wrong principle. This is not a retroactive application of a regulation, contrary to the Bakst Respondents' assertions.

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implementing a statutorily approved method. *Cf., State of Nevada, Department of Insurance v. Humana Health Insurance of Nevada*, 112 Nev. 356, 362, 914 P.2d 627, 631 (1996) (implementation of meaning of "home office" for tax credit not required to be in regulation). Therefore, no additional regulations were required.[8]

C. Respondents Failed To Show That The Valuations Established by the State Board Were Not Just and Equitable.

On page 29 of their brief, the Bakst Respondents concede that their taxable values do not exceed full cash (i.e., fair market) value. They attempt to diminish the significance of this fact by asserting the unsupported assumption that the statutory 1.5 percent per year depreciation of improvements will exceed obsolescence (i.e., market depreciation).

The effect of this concession is that the only basis for relief concerning the State Board's decision is a failure to equalize land values under NRS 361.356. Respondents have not demonstrated that they are paying more than their fair share of taxes as a result of the alleged inequity. The fact that their valuations are less than fair market value, should give rise to a strong presumption that their valuations are just and equitable. *See Imperial Palace, supra*, 108 Nev. at 1065, n.10, 1066, 843 P.2d at 817 (1992) (where taxable value does not exceed full cash value, relief is limited to errors of high inequitability). Absent a showing that specifically complies with NRS 361.356 (*see, e.g.*, NRS 361.356(4)), the Bakst Respondents must be denied relief on claims of inequity.[9]

Respondent Barta cites to a spreadsheet that he apparently produced that he claims show the ratios of sales prices to taxable values in Incline Village, Crystal Bay and Douglas County. AA 000740-744. That spreadsheet was not authoritatively validated in proceedings

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[8] Respondents incorrectly regard factoring as a form of appraisal akin to physical appraisal. Factoring Does Not involve a comparison between a subject property and sales of other property, but rather calls for the assessor to make adjustments that "reflect any general increase or decrease in value during the preceding year but, in any case, must result in a median land assessment ratio in the factoring district of not less than .30 or greater than .35." *Minutes of the Assembly Committee on Taxation*, Exhibit G, May 11, 1983, at page 3 (emphasis in original).

[9] It should be noted that Respondents' quotations from Department personnel as to a lack of equalization in Incline Village is given without sufficient context. None of said quotations actually say that land values in Incline Village and Crystal Bay are higher than, or even equal to, full cash value.

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below and omits critical information, such as the age of the improvements in Douglas County, which can be a critical factor in taxable value (because of the statutory straight-line depreciation).

Most importantly, aggregate analyses offered by Respondents do not show the actual effect of the four methodologies on the Incline Village and Crystal Bay properties. Probably the most significant of the four methodologies is the view classification system. *See, e.g.*, AA00484. Even if the view classification system were eliminated, there is no indication why view could not be valued using the sales comparison approach in the existing regulations.

D. The Bakst Respondents Fail to Justify Another Rollback to 2002-2003 Values In Light of the Probable Unjust and Inequitable Results Such Would Produce, In Violation of the Nevada and U.S. Constitutions.

In *Bakst*, Judge Maddox rolled back the 2003-2004 values for at least the seventeen taxpayers involved in that proceeding, which this Court affirmed based on the Nevada Tax Commission's failure "to fulfill its statutory duty to update general and uniform regulations governing the assessment of property." *Bakst, supra*, 122 Nev. ___, 148 P.3d at 726. As noted above, the Nevada Tax Commission has fulfilled that duty. Even had the Nevada Tax Commission not discharged that duty, there are compelling reasons not to freeze land values for Incline Village and Crystal Bay at the 2002-2003 levels for another year. Two authorities cited by Bakst Respondents in their brief and errata thereto are very helpful. They are *Village of Ridgefield Park v. Bergen County Board of Taxation*, 160 A.2d 316 (N.J. Super. Ct. 1960)("Ridgefield Park A"), and the decision that reversed it, *Village of Ridgefield Park v. Bergen County Board of Taxation*, 163 A.2d 144 (N.J. 1960)("*Ridgefield Park B*").

In *Ridgefield Park A*, the lower court looked at the valuation process for the 70 municipalities within Bergen County, New Jersey, one of which is Ridgefield Park. The lower court noted that the New Jersey Constitution required that county taxes be imposed simply by a uniform rule, and that uniform rule was simply the "judgment of the County Board of Taxation." The court found that the Bergen County Board of Taxation had merely accepted without scrutiny the valuations of the 70 essentially lay municipal assessors with respect to personal property subject to the ad valorem tax, but had scrutinized values of real property.

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Personal property values had been undervalued by most of the assessors, and the real property bore a disproportionate burden. Certain municipalities, such as Ridgefield Park, bore a significantly greater tax burden than others. The lower court set aside the tax as follows:

> Whatever the situation may be, the Bergen County tax apportioned to the Village of Ridgefield Park is unconstitutional and void for the reasons heretofore given. Therefore, the Bergen County equalization table for the year 1959, insofar as it affects the Village of Ridgefield Park will be set aside as unconstitutional and void; the Bergen County table of aggregates for the year 1959, insofar as it affects the Village of Ridgefield, will also be set aside as unconstitutional and void; and the Bergen County taxes apportioned to the Village of Ridgefield Park for the year 1959, together with all things touching and concerning the same insofar as they affect the Village of Ridgefield Park will be set aside as unconstitutional and void.

Ridgefield Park A, 160 A.2d at 215.

The New Jersey Supreme Court, in reversing the remedy awarded in *Ridgefield Park A*, noted that "(a)bsolute equality in taxation is a practical impossibility." The court rejected the wholesale refund ordered by the lower court:

> To recapitulate, the equalization table for 1959 and the apportionment of the county tax for that year could be reviewed as such only in the administrative process; and with respect to a claimed inequity for the year 1959 which was beyond relief by way of administrative review, *Ridgefield Park can at most seek a credit against a future apportionment in such amount as it shows to be in excess of the share it would have owed if the statutory provisions had been honored by the local assessors* within the county.
>
> *We cannot agree that the Constitution requires the claimed inequity to be rectified only by nullification of the apportioned tax with the governmental chaos which would ensue. The appropriate course, as held upon the first appeal, is to seek a credit in another year for the overcharge.* We are not unmindful of the problems of proof in demonstrating the amount of the claimed excess, but the answer lies in a common sense approach to the sufficiency of the required showing, and not in a destruction of tax revenues.

Ridgefield Park B, 163 A.2d at 146 (emphasis added).

Ridgefield Park B thus directed implementation of a remedy that more closely met the harm to be addressed.

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Assuming for argument that the assessments for Bakst Respondents' land were based on methodologies that are invalid, the relief requested by Bakst Respondents is excessive to the point of being unconstitutional. Land values at Lake Tahoe did not stand still from July 31, 2001 to June 30, 2003, but rather have substantially increased. *See* AA 5127. To again order a rollback to 2002-2003 valuations would be to put the taxpayers receiving the rebate completely out of equalization, in violation of the Nevada and U.S. Constitutions, with those other taxpayers, inside and outside of Incline Village and Crystal Bay, who do not receive the rollback, because those taxpayers experienced valuation increases attributable to the prevailing market tendencies, while the rolled-back taxpayers would not.

The proper approach, in accordance with Nevada law, is to correct the error in assessment. *Nellis Housing Corporation v. State,* 75 Nev. 267, 277, 339 P.2d 758, 763-4 (1959), (citing NRS 361.420(5) (currently NRS 361.420(6), which calls for a discriminatory assessment to be void only to the extent of the excess of valuation). It should not be assumed that "discriminatory" procedures produced discriminatory values. *See, e.g., Kindsfater v. Butte County*, 458 N.W.2d 347, 349 (S.D. 1990). The amount of any discriminatory assessments to be set aside should be limited to the amount, if any, that the assessments exceed the values that would be arrived at using methodologies that are duly authorized. Further, there is always the possibility that some of the Respondents received lower values as a direct result of the methodologies. (AA 622, 5014)(respondents with rocky beach classifications).

The Bakst Respondents' rationale for not using a remedy in accord with the foregoing is illogical. On one hand, the Bakst Respondents posit that the only alternative to another rollback would be to reappraise the whole State of Nevada. Statewide reappraisal offers a hypothetically best case, one that the Bakst Respondents must realize will be rejected because it is prohibitively expensive[10] and, even assuming statewide lack of equalization,

[10] *Cf. Noah's Ark Family Park v. Board of Review of the Village*, 210 Wis.2d 301, 322, 565 N.W.2d 230, 239 (1997)(court declined to order costly and burdensome reappraisal when limited, less burdensome reappraisal available, even though latter remedy called for non-statutory basis for reappraisal).

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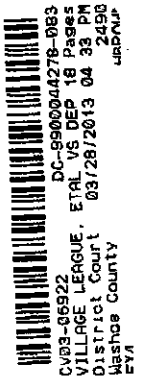
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EXHIBIT 4

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

TARGET INVESTMENTS, LLC., Petitioner, vs. STATE OF NEVADA ex rel. NEVADA TAX COMMISSION; NEVADA STATE BOARD OF EQUALIZATION; WASHOE COUNTY ASSESSOR and WASHOE COUNTY, political subdivisions of the State of Nevada, Respondents.	CASE NO. 12-OC-00429 1B DEPT. NO. I **STATE RESPONDENTS' REPLY TO OPPOSITION TO RESPONDENTS' MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**

Respondents, State of Nevada ex rel. the State Board of Equalization (State Board), and Nevada Tax Commission (NTC), through their counsel Catherine Cortez Masto, Attorney General, by Dawn Buoncristiani, Deputy Attorney General, pursuant to FJDCR 15(4) hereby submit their Reply to Target Investments, LLC.'s (Petitioner) Opposition to State Respondents' Motion to Dismiss (Reply).

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The State Board and NTC submit this Reply in Support of Their Motion to Dismiss Petitioner's Petition for Judicial Review (Petition). This Reply is based upon the pleadings and papers on file herein, and the following Points and Authorities.

Dated this 22nd day of March, 2013.

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POINTS AND AUTHORITIES

A. Introduction

On December 26, 2012, Petitioner filed a Petition for Judicial Review pursuant to NRS 361.410 (Petition). On February 28, 2013, Respondents State Board and NTC filed a Motion to Dismiss Petition for Judicial Review (Motion). The State Board and NTC filed the Motion to dismiss the State Board and NTC from Petition. In its Petition, Petitioner asked this court to set aside the Washoe County Treasurer's bill in the total amount of $106,031.86 for tax years 2007-2008, 2008-2009, 2009-2010, and 2010-2011. *See* Petition, pp. 2-3. Petitioner's dispute is with the Washoe County Treasurer (Treasurer) regarding the retroactive calculation of property tax abatement. *See* Petition, pp. 1-4. Petitioner corrected the facts as stated in State Board's Motion to the following: "there is no refund as the taxes have not been paid." *See* Opposition, p. 3.

Petitioner also clarified that the "action before the Court is a Petition for Judicial Review addressing the refusal of the Board to take jurisdiction over Petitioner's claim which ratified the Treasurer's position that the Treasurer can issue multiple tax bills for the same tax year."[1] State Board agrees the issue is the State Board's decision not to take jurisdiction. Therefore, the arguments should be about the State Board's jurisdiction, not about the details relating to Petitioner's dealing with various agencies about the retroactive billing. *See* generally, Opposition, Exhibits 1-4, 6-12.

Petitioner appealed to the State Board based on the reason that it was on the "advice of the District Attorney." *See* Opposition, p. 4, Exhibit 13. At the State Board hearing on September 17, 2012, the issues heard by the State Board were: (1) whether the State Board had jurisdiction to hear the appeal since the tax years appealed were not the current tax year; and (2) whether the subject matter was beyond the authority of the State Board to act. *See* Petition, Attachment (Att.) pp. 2-3. The State Board did not accept jurisdiction to hear

[1] State Board and NTC moved to dismiss the Petition because the State Board and NTC had no jurisdiction to hear the appeal, Petitioner provided none at the hearing and Petitioner agreed the State Board did not have jurisdiction. Now in its Opposition, Petitioner takes an opposing position. *See* Motion, pp. 8-9; Petition, Att., p. 2. Petitioner is judicially estopped from taking this position. *See* Motion, pp. 14-16. Petitioner provides not direct opposition to State Board's and NTC's judicial estoppel argument. *See* Opposition, p. 18.

Petitioner's case because Petitioner was appealing prior tax years and Petitioner's request for relief was outside the authority of the State Board to act. *See* Petition, p. 2; Att. p. 2. Petitioner agreed that the State Board had no jurisdiction to hear the case. *See* Petition, Att. p. 2. In its Opposition, Petitioner states at length facts which do not relate to the issue of the State Board not taking jurisdiction. *See* generally, Opposition. In the end without explaining why, Petitioner took the District Attorney's advice to appeal to the County Board of Equalization and the State Board. *See* Opposition, pp. 6, 8; Exhibit 12. Petitioner does not explain how taking the District Attorney's advice is supported by relevant authority that the State Board has jurisdiction to hear such appeal. *See* Opposition, pp. 6, 8; Exhibit 12. The State Board was not a participant in the facts discussed prior to the State Board hearing. *See* generally Opposition. The State Board had no jurisdiction to hear the appeal. *See* Petition, Att. pp. 1-4.

The State Board is a state executive branch agency with special and limited jurisdiction. *See State v. Central Pac. R.R. Co.*, 21 Nev. 172, 26 P. 225, 226 (1891) ("A board of equalization is of special and limited jurisdiction, and, like all inferior tribunals, has only such powers as are specially conferred upon it.") The State Board has the jurisdiction to equalize property valuations. NRS 361.395. The State Board has the jurisdiction to hear appeals and decide contested cases. NRS 361.360; NRS 361.400; NRS 361.403. The State Board has jurisdiction to review the county assessor's valuation methods. *State ex rel. State Bd. of Equalization, et al. v. Barta*, et al., 124 Nev. 612, 188 P.3d 1092, 1102 (2008). The State Board has the authority to determine whether it has jurisdiction to hear a matter. *Checker, Inc. v. Pub. Serv. Comm'n*, et al., 84 Nev. 623, 629-630, 446 P.2d 981 (1968) ("It is the universal rule of statutory construction that whenever a power is conferred by statute, everything necessary to carry out the power and make it effectual and complete will be implied." (citation omitted)). Without proper legal authority, the State Board cannot hear cases appealing past tax years. At the State Board hearing, Petitioner maintained agreement with the following statement regarding the State Board's authority to act and/or take jurisdiction on Petitioner's issues. The State Board has no authority to set aside a retroactive tax bill by the

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Treasurer for past tax years. *See* Petition, Att. p. 2.

Petitioner was not appealing the Assessor's valuation of the Subject Property. *See* Petition, Att. pp. 1-4. Petitioner was not appealing an equalization issue. *See* Petition, Att. pp. 1-4. Petitioner was not complaining about a method of valuation. *See* Petition, Att. pp. 1-4. Petitioner's issue related to retroactive tax bills sent to Petitioner by the Treasurer for prior tax years. *See* Petition, p. 2; Att. p. 2. Petitioner did not think "an appeal to the State Board was an appropriate place for Taxpayer's dispute with the Washoe County Treasurer." *See* Petition, Att. p. 2. Petitioner provided no legal authority under which the State Board could hear its case. *See* Petition, Att. p. 2.

Nevada Rule of Civil Procedure 12(b)(5) authorizes a Court to dismiss an action for failure to state a claim upon which relief can be granted. A Court may dismiss a complaint "only if it appears beyond a doubt that it [Target] could prove no set of facts, which, if true, would entitle it [Target] to relief." *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 181 P.3d 670, 672 (2008). A court will recognize all factual allegations in Petitioner's Petition as true and draw all inferences in Petitioner's favor. Id.

Here, Petitioner asserts many allegations and arguments about events that occurred prior to the State Board hearing. *See* generally Opposition. Petitioner does not explain how such allegations and arguments provide the State Board with jurisdiction to hear the matter or how such allegations and arguments make the NTC a party to the appeal.

None of these allegations and arguments are persuasive. Some provide no authority for the arguments, and others run contrary to the limited authority provided to the State Board by the Legislature or to the position of the NTC as a non-party in a petition for judicial review. There is no support to make the NTC a respondent when the NTC was not a party at the State Board hearing or the agency that made the final decision.

B. LEGAL ARGUMENTS

Contrary to Petitioner's argument, Petitioner is barred from seeking relief through a collateral court action when appealing a State Board decision and Petitioner's sole remedy is to seek judicial review from the district court. NRS 361.420; NRS 233B.130(6). *See*

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Opposition, pp. 12-15. Petitioner claims an action for the set aside of retroactive taxes billed by the Treasurer as an independent basis provided for in NRS 361.410. *See* Petition, pp. 1, 6; Opposition, pp. 12-15. Petitioner argues that *State Board of Equalization, et al. v. Bakst, et al.*, 122 Nev. 1403, 148 P.3d 717 (2006) stands for the proposition that a petition and complaint may both be filed. *See* Opposition, pp. 12, 20. Such was not the holding in *Bakst*. Pursuant to *Bakst*, four methods were determined to be invalid and unconstitutional: adjustments for view, adjustments for time, adjustments for teardowns, and adjustments for beach type. *Bakst, et al.*, 122 Nev. at 1408. The NRS 361.410 issue was not present in *Bakst*. Id. The *Bakst* case is distinguishable from the facts of this case. The *Bakst* Court reviewed a petition for judicial review requesting a refund of taxes and found that the assessment methods used were unconstitutional. *Bakst*, 122 Nev. 1408. The *Bakst* Court addressed issues relating to assessment and valuation, not a retroactive tax billing by a county assessor. The issues related to matters over which the State Board has jurisdiction.

NRS 361.410 does not provide for a separate cause of action and does not provide a review different from NRS Chapter 233B. *See* Opposition, p 14. Petitioner filed the Petition seeking judicial review of a decision of the State Board. *See* generally, Petition, Att. pp. 1-4; Opposition, pp. 12-14. Petitioner is barred from seeking relief from a collateral court action and its sole remedy in appealing a State Board decision is to seek judicial review by the district court. "When a judgment is attacked in a way other than by proceeding in the original action to have it vacated, reversed, or modified, or by a proceeding in equity to prevent its enforcement, the attack is a 'collateral attack.'" *County of Adams v. Nebraska State Bd. of Equalization and Assessment*, 566 N.W.2d 392, 397 (1997).

Petitioner's sole remedy is limited to judicial review by the district court. NRS 361.410 and NRS 361.420 provide the proper procedure to appeal a State Board decision and such sections are to be harmonized with NRS 233B.130. In *Mineral County v. State Bd. of Equalization*, 121 Nev. 533, 119 P.3d 706 (2005), the Nevada Supreme Court harmonized the provisions of NRS Chapter 361 and NRS Chapter 233B. *See* Mineral County, 121 Nev. at 536 (in judicial review of a State Board decision "the provisions of NRS Chapter 361

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supplement . . . the provisions of NRS Chapter 233B . . . . This interpretation is optimal because it permits harmonious construction of NRS Chapter 233B and NRS Chapter 361").[2] Certain provisions of NRS Chapter 361 appear to give a taxpayer a separate right of action or collateral action in a dispute on the amount of taxes owed.

NRS 361.410; NRS 361.420; NRS 361.710. *See* Opposition, pp. 12-14. However, NRS Chapter 233B, the Administrative Procedure Act, provides that if the parties have submitted an issue to a state agency, the aggrieved party may only seek redress by a petition for judicial review. NRS 233B.130(6) provides: "The provisions of this Chapter are the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which this Chapter applies."[3] The Legislature's clear intent was that state agency decisions be reviewed exclusively by a petition for judicial review. *See Mineral County*, 121 Nev. at 536. NRS 233B.130 (6). Accordingly, any collateral action contemplated by Petitioner is barred and the only relief available is through NRS Chapter 233B and NRS Chapter 361.

Contrary to Petitioner's claims, there is no separate cause of action under NRS 361.410. NRS 361.410 is a condition precedent to filing an appeal pursuant to NRS 361.420. *First Am. Title Co. of Nevada v. State*, 91 Nev. 804, 805-806, 543 P.2d 1344, 1345 (1975).[4]

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

NRS 361.410. This section represents the exhaustion of administrative remedies doctrine.

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[2] The issue in the *Mineral County* case was whether an assessor could appeal a State Board decision. *Mineral County*, 121 Nev. at 534.

[3] However, Petitioner must comply with other rules to seek review of the State Board decision by this Court. Petitioner's failure to comply with such rules has been discussed in the State Board Motion to Dismiss. For example, NTC was not a party to the appeal to the State Board. *See* Petition, Att. pp. 1-4; State Board's Motion to Dismiss, pp. 9-10.

[4] Contrary to Petitioner's allegation, State Board did not advise Petitioner to file a Writ. *See* Opposition, pp. 15-16. *See* Petition, p. 16; att. pp. 1-4. In the hearing before the State Board NTC did not tell Petitioner to file a Writ. *See* Petition, p. 16; att. pp.1-4.

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First Am. Title Co. of Nevada, 91 Nev. at 805-806. This condition must be met before a taxpayer may appeal under NRS 361.420. Id. Petitioner, without authority, argues that because the *First American Title* case does not state it is not a separate remedy, such section; therefore, does provide a separate remedy. *See* Opposition, p. 13. Without citations to legal authority, Petitioner's contention need not be considered. *See Humane Soc. of Carson City and Ormsby County v. First Nat. Bank of Nevada*, 92 Nev. 474, 478, 553 P.2d 963, 965 (1976) ("Appellant cites no authority to support its contention, and we need not consider it.") (citations omitted).

Under NRS 233B.135(2) and (3), taxpayers' remedy in a petition for judicial review is limited to: the court may reverse the State Board's decision and "[t]he court may remand or affirm the final decision or set it aside in whole or in part. . . ." *Washoe County v. Dermody*, 99 Nev. 608, 612, 668 P.2d 280, 282 (1983). NRS 361.420(6) and (7) provide for interest on the amount of the judgment, which is the excess in valuation, "not to exceed 6 percent per annum from and after the date of payment of the tax Petitioned of." The relief Petitioner seeks is setting aside the Treasurer's retroactive billing for $106,031.86. See Petition, p. 3. Petitioner does not seek relief from the State Board's decision not to take jurisdiction to hear the matter. *See* Petition, p. 3. The State Board and NTC cannot provide the relief requested. The State Board's decision has nothing to do with the setting aside of the Treasurer's retroactive tax bill. *See* Petition, Att. pp. 1-4.

Petitioner may have exhausted its administrative remedies pursuant to NRS 361.410, but such hearings before the Washoe County Board of Equalization and State Board were not timely because Petitioner was appealing prior tax years: 2007-2008, 2008-2009, 2009-2010, and 2010-2011. NRS 361.360.[5] *See* Opposition, pp. 8, 14-15, 17; Petition, Att. pp. 1-4. "An examination of the relevant statutes indicates that the legislature did not intend that the State Board of Equalization (Board) concern itself with property assessments other than for the

[5] "Any taxpayer aggrieved at the action of the county board of equalization in equalizing, or failing to equalize, the value of his or her property, or property of others, or a county assessor, may file an appeal with the State Board of Equalization on or before March 10 and present to the State Board of Equalization the matters complained of at one of its sessions. If March 10 falls on a Saturday, Sunday or legal holiday, the appeal may be filed on the next business day." NRS 361.360.

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particular revenue year in which it is convened. *Metropolitan Water Dist. of Southern California v. State*, 99 Nev. 506, 508, 665 P.2d 262, 263 – 264 (1983) citing NRS 361.380(1).

> NRS 361.380(1) requires that the Board shall act on all cases by October 1 [November 1], and on those cases which may have "a substantial effect on tax revenues," equalization must be concluded by April 10. Clearly, these rules requiring that the Board meet certain deadlines, designed to allow the state to achieve some degree of certainty regarding the amount of its tax revenue, would serve no purpose if the actions of the Board of Equalization could apply to previous years. See also NRS 361.320, 361.380, and 361.395, which contain annual deadlines.[6] (Emphasis added.)

Metropolitan Water Dist. of Southern California, 99 Nev. at 508. In light of *Metropolitan Water*, even if the State Board had authority to hear the subject matter of setting aside the Treasurer's retroactive tax billings, the State Board does not have authority to hear appeals from previous tax years. Petitioner admits it did not timely appeal for the tax years in question. Hence, the State Board did not have jurisdiction to hear the prior tax years' appeals.[7] *See* Opposition, p. 4.

Contrary to Petitioner's claim, NRS 361.410 and *McKernan* do not provide for a separate cause of action to review a State Board decision. *See* Opposition, p. 14. In *McKernan*, the taxpayer had exhausted its administrative remedies in an appeal of a valuation issue. *See State v. McKernan*, 275 P. 369, 369 -370 (1929) ("We are of opinion that the report of the land committee, approved by the state board of equalization, which report states, 'We make no recommendation,' was tantamount to the refusal of that board to grant the petitioner the relief demanded in its application, and by virtue of the provisions contained in section 6 it had the right to complain to the Nevada tax commission to remedy any inequality in the assessed valuation of its land"). The *McKernan* case does support Petitioner's argument that this "District Court action in no way is limited to the topic of jurisdiction before the State Board. The nature of review pursuant to NRS 361.410 is different from NRS

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[6] NRS 361.380 has been amended to now provide: "Cases may be heard at additional meetings which may be held at any time and place in the state before November 1."

[7] Petitioner asserts that although, the State Board may not be able to hear such tax years, Petitioner can still appeal them. See Opposition, p. 17. Petitioner goes on to discuss *Metropolitan Water*'s application, but the State Board and NTC have already countered this argument in the following pages.

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233B.135." *See* Opposition, p. 14. The state board in *McKernan* took jurisdiction to hear the appeal on valuation but made no decision on the valuation issue. The *McKernan* Court made a finding on the state board's action which was a non-action. Petitioner cites no legal authority to support such claim and this Court need not consider it. *See Humane Soc. of Carson City and Ormsby*, 92 Nev. at 478.

The *Mineral County* court found "NRS 361.410(1) and NRS 361.420(2) provide a specific mechanism for taxpayers to protest State Board valuations." *Mineral County*, 121 Nev. at 536. The *Mineral County* court did not find that each provided a different mechanism, but "a" [one] mechanism. Therefore, the nature of NRS 361.410 is not different from NRS 233B.130 because the court found harmonious construction of NRS Chapter 361 and NRS Chapter 233B to be optimal. Id. at 708.[8]

Petitioner alleges it has faced discrimination like the taxpayer in *Metropolitan Water* but does not provide evidence that other taxpayers have not been treated (retroactively billed) the same way Petitioner has been retroactively billed. *See* Opposition, p. 18. *Metropolitan Water* is distinguishable from this case because the subject matter of the case addressed a discriminatory assessment. *See Metropolitan Water Dist. of Southern California*, 99 Nev. at 507 ("In August, 1979 the Water District learned for the first time that while the assessment of the Water District's transmission lines was based on historical cost without deduction for depreciation, other similar entities owning electric transmission lines in Nevada had their property assessed on an historical cost less depreciation basis."). Here, Petitioner disputes a retroactively abatement tax billing made by the Treasurer. *See* Petition, p. 2. There is no discriminatory assessment involved in this matter. *Metropolitan Water* does not provide authority for a separate action pursuant to NRS 361.410 or jurisdiction for the State Board to hear the matter of the retroactive tax billing.

Petitioner does not directly oppose State Board's argument that Petitioner is judicially estopped from appealing jurisdiction after Petitioner stated the State Board did not have jurisdiction to hear the appeal. *See* Opposition, p. 18. Rather, Petitioner argues the State

[8] The State Board did not direct Petitioner to file a Writ in District Court. *See* Opposition, p. 16. *See* Petition, Att., pp. 1-4.

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Board should be judicially estopped because Petitioner has followed the process presumably outlined in its Opposition. *See* Opposition, pp. 3-12. The State Board did not advise Petitioner to follow any administrative process for two years, nor did any such act occur within the State Board hearing by the NTC. *See* Opposition, p. 18. *See* Petition, Att. pp. 1-4. Petitioner admits Washoe County directed it to follow the administrative process. *See* Opposition, p. 18. There is no switching of horses. *See* Opposition, p. 18.

Accordingly, this case is distinguishable from *Southern California Edison* where the Department of Taxation adopted a new policy for refund cases. *See Southern California Edison v. First Judicial Dist. Court of State of Nevada*, 255 P.3d 231, 234 (2011) ("It appears that the Department has adopted a new policy for refund cases."). Petitioner does not apply the elements for judicial estoppel to indicate that judicial estoppel applies to the facts of this matter. *See* Opposition, p. 18. *Southern California Edison*, 255 P.3d at 237. Petitioner merely asserts that judicial estoppel applies. *See Colwell v. State*, 118 Nev. 807, 814, 59 P.3d 463, 468 (2002) (conclusory claims that fail to provide specific allegations and argument do not warrant relief) (declined to follow *Colwell* based on other grounds by *Danforth v. State*, 718 N.W.2d 451, 457 (Minn. 2006)). This Court need not provide Petitioner relief based on this argument.

Petitioner argues that NTC is properly named as a party respondent because the NTC was named as a respondent in *Bakst*. *See* Opposition, p. 19. However, whether the NTC was a proper respondent was not the issue before the *Bakst* Court. *See Bakst*, et al., 122 Nev. at 1417 (without uniform regulations adopted by the Tax Commission methods of valuation were unconstitutional). Petitioner argues that the same arguments were made in *Bakst* and rejected by the district court and Supreme Court. However, Petitioner points to no specific authority in *Bakst* to support such an argument. *See Humane Soc. of Carson City and Ormsby County*, 92 Nev. at 478. ("Appellant cites no authority to support its contention, and we need not consider it.") (citations omitted). Such was not the holding in *Bakst*. *See Bakst*, et al., 122 Nev. at 1417. Hence, the NTC is not a proper party in this matter.

Petitioner states that "there is no statutory provision in State law permitting the

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Treasurer or any other party to issue multiple bills for the same tax year." *See* Opposition, p. 20. This appears to be the substantive issue underlying Petitioner's appeal to the State Board, but the State Board never heard this issue because it did not take jurisdiction to hear the case. *See* Petition, p. 2; Att. pp. 1-4. Petitioner was required to exhaust its administrative remedies regarding areas in which the State Board has jurisdiction to hear the matter. The State Board is a state executive branch agency with special and limited jurisdiction. *See State v. Central Pac. R.R. Co.*, 21 Nev. 172, 26 P. 225, 226 (1891) ("A board of equalization is of special and limited jurisdiction, and, like all inferior tribunals, has only such powers as are specially conferred upon it.") The State Board has the jurisdiction to equalize property valuations. NRS 361.395. The State Board has the jurisdiction to hear appeals and decide contested cases. NRS 361.360; NRS 361.400; NRS 361.403. The State Board has jurisdiction to review the county assessor's valuation methods. *Barta*, et al., 124 Nev. 612, 188 P.3d at 1102. The State Board has the authority to determine whether it has jurisdiction to hear a matter. *Checker, Inc.*, 84 Nev. at 629-630. Without proper legal authority, the State Board cannot hear cases appealing prior tax years or issues over which it has no jurisdiction. The State Board had no jurisdiction to hear Petitioner's appeal and correctly declined to take jurisdiction.

At the State Board hearing, Petitioner maintained agreement with the following statement regarding the State Board's authority to act and/or take jurisdiction on Petitioner's issues. The State Board has no authority to set aside a retroactive tax bill by the Treasurer for past tax years. *See* Petition, Att. p. 2. Petitioner followed the correct procedures to appeal in the current tax year, a valuation issue, certain equalization issues and the use of a questionable method. However, Petitioner did not provide legal authority for the State Board to set aside a retroactive abatement tax billing pursuant to the statutes and case law granting the State Board authority to act.[9] *See* Opposition, p. 20. Petitioner is mixing apples and

[9] Petitioner cites to *Bakst* to state NTC oversees Nevada's revenue system in various ways, but this has nothing to do with the State Board's authority to act. *See* Opposition, p. 20. In *Bakst* the State Board and county assessor had no codified regulations to assess certain types of properties. The subject matter of Bakst related to the State Board's authority to review property assessments. *Bakst*, 122 Nev. 1417. Such is not the case here regarding a retroactive abatement tax billing. *See* Petition, p. 2.

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oranges when it discusses the actions of other government entities because this is an appeal of a decision of the State Board not to take jurisdiction. Accordingly, the State Board and NTC should be dismissed from this action.

Contrary to Petitioner's argument, Petitioner is required to serve the Office of the Attorney General with its Petition. *See* Opposition, pp. 21-22. Motion, pp.12-14. In NRS 41.031(2), the State of Nevada waives its sovereign immunity. Such section does not provide any substantive right to sue the State of Nevada. *See* Opposition, p. 21. Rather, such section requires service on the Office of the Attorney General and State entity for notice that an action has been filed.[10] NRS 41.031(2) provides: "In any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis for the suit. . . ." Petitioner did bring this action against the State of Nevada ex rel. NTC and State Board; however, Petitioner did not follow the requirement that the summons and complaint must be served upon the Attorney General and State agency. *See* Petition, p. 1. NRS 41.031(2). Petitioner goes on at length with Petitioner's own legal analysis about why no summons was required, but does not distinguish the legal arguments supported by case law in State Board's Motion.[11] *See* Opposition, pp. 21-22; Motion, pp. 12-14. *See Humane Soc. of Carson City and Ormsby County*, 92 Nev. at 478.

Contrary to Petitioner's argument that no summons was required by NAC 361.748, Petitioner provides this response while citing to authority: "The rules governing service of a summons and a complaint are intended to provide a defendant with notice of an action against it and to require its presence in Court to defend the action." *See* Opposition, p. 24. This is exactly the reason the State Board, NTC and Attorney General should have been served with a summons. Petitioner states "the parties to a Petition for Judicial Review are already aware

[10] By giving up its sovereign immunity the State of Nevada has by statute required that the State's attorney is notified of any actions against a state entity. This seems reasonable since non-lawyer employees are not generally aware that specific time deadlines are triggered with the service of a summons.

[11] Petitioner also alleges this Court did not order Petitioner to serve the Office of the Attorney General, but does not provide authority to support such argument that this Court can relieve Petitioner from the requirements of law.

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of the matter, and NRCP 4's service of process requirements do not apply." The State Board and NTC were not parties to the underlying action before the State Board. *See* Opposition, p. 25. The State Board was the agency that made the final decision. The NTC was not present at the hearing before the State Board. Petition, Att. pp. 1-4. Consistent with NRS 361.710, NRCP 4 service of process requirements do apply. *See* NRS 361.710 ("NRS 361.710 Applicability of NRS, N.R.C.P. and NRAP to proceedings. The provisions of title 2 of NRS and the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure, so far as the same are not inconsistent with the provisions of this chapter, are hereby made applicable to the proceedings under this chapter [NRS Chapter 361].") As argued in State Board's and NTC's Motion, service of the Petition with a summons on the State Board, NTC and Attorney General is consistent with an appeal of a State Board decision and with NRS 361.710. *See* Motion, pp. 12-14.

Contrary to Petitioner's argument, NAC 361.748 does not provide authority for two separate rights to appeal. *See* Opposition, p. 13. Such regulations merely provide for service of an appeal. The State Board has not been granted the right to provide for appeal. NRS 361.375(9). The right to appeal is provided by statute. In *Kokkos v. Tsalikis*, 91 Nev. 24, 25, 530 P.2d 756, 757 (1975) this court held that "[W]here no statutory authority to appeal is granted, no right exists." Citing *State v. Langan*, 29 Nev. 459, 91 P. 737 (1907); *Davis v. Davis*, 66 Nev. 164, 207 P.2d 240 (1949). *See State Taxicab Authority v. Greenspun*, 109 Nev. 1022, 1024, 1025, 862 P.2d 423, 424 (1993) (The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists citing *Taylor Constr. Co. v. Hilton Hotels*, 100 Nev. 207, 678 P.2d 1152 (1984) and *Kokkos v. Tsalikis*, 91 Nev. 24, 530 P.2d 756 (1975)). Therefore, NAC 361.748 does not provide for or support the argument that there are two separate rights to appeal a State Board decision. The regulation mentions petitions and complaints because NRS 361.420(6) provides for a complaint but NRS 233B.130 provides for a petition for judicial review. But both chapters apply to appeals of a State Board decision.

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CONCLUSION

Petitioner argues that NRS 361.410 provides a separate cause of action with no support by case law. Petitioner ignores the *Mineral County* and *First American Title* cases which interpret the relationship of NRS 361.410, NRS 361.420, and NRS Chapter 361 in an appeal of State Board decision. NRS 361.410 is a condition precedent to NRS 361.420 which provides for an appeal of a State Board decision. *First Am. Title Co. of Nevada*, 91 Nev. at 805-806. NRS 361.410 and NRS 361.420 The *Mineral County* court did not find that each provided a different mechanism, but together they provided "a" [one] mechanism. *Mineral County*, 121 Nev. at 536. The *Mineral County* court "concluded the provisions of NRS Chapter 361 supplement, rather than preempt, the provisions of NRS Chapter 233B. . ." Id. Accordingly, NRS 361.410 should not be read to stand alone.

The issue in this appeal is that the State Board did not take jurisdiction to hear Petitioner's appeal because the State Board did not have authority over the subject matter, the retroactive tax abatement billing. The State Board did not have authority to hear appeals for prior tax years. Even if NRS 361.410 provided a separate cause of action, the State Board would not have jurisdiction of the subject matter or jurisdiction to hear matters regarding prior tax years. Nor would the NTC be a proper party because the NTC was not a party in the hearing before the State Board or the agency that made the final decision. Accordingly, all of the issues raised in Petitioner's Opposition other than those regarding the State Board's decision arise outside of the issues determined by the State Board. *See* generally, Opposition; Petition, Att. pp. 1-4. NRS 233B.135(1)(a). State Board and NTC cannot provide the relief requested.

Petitioner's Petition must be dismissed as to the State Board and NTC. Petitioner fails to state a claim upon which relief may be granted as to the State Board because the State Board cannot grant the relief requested; the State Board cannot hear appeals from prior tax years without legal authority to do so; and the State Board has no jurisdiction of the subject matter. Petitioner fails to state a claim upon which relief may be granted because the NTC was not a party to the State Board proceeding; the NTC did not make the final decision

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appealed from; nor is the NTC a proper party to this appeal. The matter should be dismissed because the State Board did not hear the issue of the retroactive billing by the Treasurer; therefore, such subject is not reviewable through the Petition because it is a new issue on appeal. Petitioner's Petition should be dismissed as to the State Board and NTC because Petitioner did not properly serve the State Board and NTC; and, did not serve the Office of the Attorney General at all. Finally, Petitioner should be judicially estopped from making conflicting claims regarding the State Board's power to hear a matter regarding a retroactive tax billing of the Treasurer.

Based on the foregoing points and authorities, the State Board and NTC respectfully request this Court dismiss the State Board and NTC as respondents from Petitioner's Petition.

Dated this 22nd day of March, 2013.

CATHERINE CORTEZ MASTO
Attorney General

By: _____

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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 that on March 22, 2013, I served a true and correct copy of the foregoing **STATE RESPONDENTS' REPLY TO OPPOSITION TO RESPONDENTS' MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** by *mailing* a copy thereof in the United States Mail, postage prepaid, fully addressed as follows:

Norman J. Azevedo, Esq.
405 North Carson Street
Carson City, NV 89703
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Target Investments, LLC.

Terry Shea, Esq
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Josh Wilson
Washoe County Assessor
P.O. Box 11130
Reno, NV 89520
(courtesy copy)

Dated: March 22, 2013

Mary C. Wilson
An employee of the State of Nevada,
Office of the Attorney General

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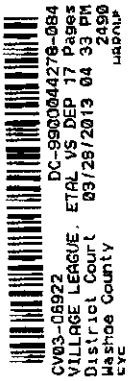
CV03-06922 DC-9900044278-084
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District Court 03/28/2013 04 33 PM
Washoe County 2490
EYE

EXHIBIT 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

IMPERIAL PALACE, INC., A NEVADA CORPORATION, D/B/A IMPERIAL PALACE CASINO,

Appellant,

vs.

THE STATE OF NEVADA, DEPARTMENT OF TAXATION AND NEVADA TAX DIVISION,

Respondents.

No. 25948

FILED

OCT 04 1995

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying a petition for judicial review of an agency decision. Having reviewed the record and briefs, and having heard the parties' oral arguments, we conclude that the district court was correct in dismissing appellant's petition. The doctrine of collateral estoppel prevents appellant from relitigating the issue which was previously raised, litigated and decided on the merits. See NRS 372.775; NRS 374.780; Sunnen v. Comm'r, 333 U.S. 591 (1948).

Accordingly, we hereby

ORDER this appeal dismissed.

_____, C.J.
Steffen

_____, J.
Young

_____, J.
Springer

_____, J.
Shearing

_____, J.
Rose

litigated in Imperial I. Accordingly, the application of the rule of res judicata is not legally sound. See NRS 372.775.

However, the application of the doctrine of collateral estoppel is not only appropriate but is imperative in order to respect the finality of the decision in Imperial I. This is consistent with the decision in Sunnen which provided that "But if the later proceeding is concerned with a similar or unlike claim relating to a different tax year, the prior judgment acts as a collateral estoppel only as to the matters in the second proceeding which were actually presented and determined in the first suit." Sunnen v. Comm'r., 333 U.S. 591 at 594 (1948).

Collateral estoppel has been defined by the Nevada Supreme Court as a doctrine which "operates to preclude the parties or their privies from re-litigating issues previously litigated and actually determined in the prior proceeding. State v. Kallio, 92 Nev. 665, 557 P.2d 705 (1976); Clark v. Clark, 80 Nev. 52, 389 P.2d 330 (1976)." Landex, Inc. v. State, ex rel., List, 94 Nev. 469, 582 P.2d 786 (1978).

The Nevada Supreme Court in The City of Reno v. Nevada First Thrift, 100 Nev. 483, 686 P.2d 231 (1984) clearly delineated three questions which must be answered affirmatively in order for collateral estoppel to be properly applied in a case. The three questions delineated therein are as follows:

1) Was the issue decided in the prior adjudication?

2) Was there a final judgment on the merits?

3) Was the party against whom the plea is asserted a party or in privity with a party to a prior adjudication?

/ / /

/ / /

Imperial I. These issues are set forth on p. 1 of this responding brief. Thus, the identity of issues requirement espoused by the Supreme Court has also been satisfied.

The Supreme Court of Nevada has not previously addressed the application of collateral estoppel to a tax dispute involving different tax periods. However, in Pacific Power & Light v. Montana Department of Revenue, 246 Mont. 398, 804 P.2d 397 (1992) the

Montana Supreme Court addressed this exact issue as applied to the imposition of a use tax, and concluded that where the substance of the challenge to a tax is identical to the challenge made in a prior proceeding then collateral estoppel should apply:

> [R]es judicata bars the same parties from re-litigating the same cause of action, collateral estoppel bars the parties from re-litigating the identical issues that have already been decided in a different cause of action. There are three elements that must be satisfied in order for collateral estoppel to apply. First, the issue must be identical to an issue that has been decided in a prior adjudication. Second, a final judgment on the merits must have been made in the prior adjudication. Third, the party against whom the plea is made must have been a party, or have privity to the party, in the prior adjudication. . . . **In applying each element in turn to the facts of this case it becomes clear that collateral estoppel should be applied. . . . The fact that different tax years are being challenged makes no difference. The constitutional challenge remains the same, and it is the substance of these challenges that have failed. The year in which they were brought have no bearing upon lack of success. Allowing the Colstrip Owners to raise the same challenges to the same tax each subsequent tax year serves no purpose. If such were the case, each new year would provide a clean slate for any and all previous claims to be readjudicated. The challenges raised in the previous case before this Court and thus satisfy the first element."** [Emphasis added.]

Pacific Power, 804 P.2d at 404.

EXHIBIT 2

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

BRIAN SANDOVAL
Governor

CHRISTOPHER G. NIELSEN
Secretary

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

EQUALIZATION ORDER

Appearances

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

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

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

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

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

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

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

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

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

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

Summary

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

Notice, Agendas, and Attendance

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

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

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

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

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

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

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

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

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

Clark County Grievances and Responses

City Hall, LLC Grievance

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

Response to City Hall, LLC grievance

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

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

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

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

Louise Modarelli Grievance

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

Response to Modarelli grievance

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

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

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

Douglas County Grievances and Responses

William Brooks Grievance

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

Response to Brooks Grievance

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

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

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

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

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

Esmeralda County Grievances and Responses

Queen/Rupp Grievance

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

Response to Queen/Rupp Grievance

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

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

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

Washoe County Grievances and Responses

Village League Grievance

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

Response to Village League Grievance

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

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

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

The Department commented that NAC 361.662 defines "equalized property," which means to "ensure that the property in this state is assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law." The Department further commented that there is insufficient information in the record to determine whether the methods of appraisal used on all the properties at Incline Village were or were not uniform. In addition, the Department recommended the State Board examine the effects of removing the unconstitutional methodologies to determine the resulting value and whether the resulting value complies with the level of assessment required by law. *See Tr, 11-5-12, p 55, l. 10 through p 56 l 3.*

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

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

4) Except for NRS 361 333 which is equalization by the Nevada Tax Commission, there were no statutes or regulations defining equalization by the State Board prior to 2010. As a result, the State Board for the current matter relied on the definition of equalization provided in NAC 361 652 and current equalization regulations for guidance in how to equalize the property values in Incline Village and Crystal Bay, Washoe County, Nevada. The State Board found the Incline Village and Crystal Bay properties to which unconstitutional methodologies were applied to establish taxable value in 2003-2004, 2004-2005, and 2005-2006 should be reappraised using the constitutional methodologies available in those years; and further, that the taxable values resulting from said reappraisal should be tested to ensure the level of assessment required by law has been attained, by using a sales ratio study conducted by the Department. *See Tr., 12-3-12, p. 76, l. 2 through p. 79, l. 21.*

5) The standard for the conduct of a sales ratio study is the IAAO *Standard on Ratio Studies (2007).* *See NAC 361.658 and NAC 361 662.*

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

7) NAC 361 663 provides that the State Board require the Department to conduct a systematic investigation and evaluation of the procedures and operations of the county assessor before making any determination concerning whether the property in a county has been assessed uniformly in accordance with the methods of appraisal required by law.

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

ORDER

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

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

2) The Washoe County Assessor must complete the reappraisal and report the results to the State Board no later than one year from the date of this Notice of Decision. The report shall include a list for each year, of each property by APN, the name of the taxpayer owning the property during the relevant years, the original taxable value and assessed value and the reappraised taxable value and assessed value. The report shall also include a narrative and discussion of the

processes and methodologies used to reappraise the affected properties. The Washoe County Assessor may request an extension if necessary. *See Tr., p. 78, l. 14 through p. 79, l. 1.* The Washoe County Assessor may not change any tax roll based on the results of the reappraisal until directed to do so by the State Board after additional hearing(s) to consider the results of the reappraisal and the sales ratio study conducted by the Department.

3) The Department is directed to conduct a sales ratio study consistent with NAC 361.658 and NAC 361.662 to determine whether the reappraised taxable values of each affected residential property in Incline Village and Crystal Bay meets the level of assessment required by law; and to report the results of the study to the State Board prior to any change being applied to the 2003-2004, 2004-2005, or 2005-2006 tax rolls. The Washoe County Assessor is directed to cooperate with the Department in providing all sales from the Incline Village and Crystal Bay area occurring between July 1, 1999 to June 30, 2004, along with such information necessary and in a format to be identified by the Department, for the Department to perform the ratio study.

4) The Washoe County Assessor shall separately identify any parcel for which the reappraised taxable value is greater than the original taxable value, along with the names and addresses of the taxpayer owning such parcels to enable the State Board to notify said taxpayers of any proposed increase in value.

5) The Washoe County Assessor shall send a progress report to the State Board on the status of the reappraisal activities six months from the date of this Equalization Order including the estimated date of completion, unless the reappraisal is already completed.

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

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

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

Christopher G. Nielsen, Secretary

CGF/ter

CERTIFICATE OF SERVICE
Equalization Order 12-001

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

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IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Petitioners,

vs.

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

Respondents.

Case No. CV13-00522

Dept. No. 3

MOTION TO TAKE JUDICIAL NOTICE

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

MOTION TO TAKE JUDICIAL NOTICE

Respondent, State of Nevada, ex rel. State Board of Equalization, by and through its counsel Catherine Cortez Masto, Attorney General, by Dawn Buoncristiani, Deputy Attorney General, submits its Motion to Take Judicial Notice (Motion) of Nevada Supreme Court Order Affirming in Part and Reversing in Part and Remanding entered in the Docket for Nevada Supreme Court Case No. 56030 on February 24, 2012. A true and correct copy of the Order Affirming in Part and Reversing in Part and Remanding is attached hereto as Exhibit 1.

This Motion is made pursuant to WDCR 12, NRS 47.130, NRS 47.140, NRS 47.150, and based upon the 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 3rd day of May, 2013.

CATHERINE CORTEZ MASTO
Attorney General

By: Dawn Buoncristiani
DAWN BUONCRISTIANI
Deputy Attorney General
Nevada Bar No. 7771
100 N. Carson Street
Carson City, Nevada 89701-4717
(775) 684-1219
Attorneys for Respondent State Board of Equalization

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

POINTS AND AUTHORITIES

The State Board moves this Court to take judicial notice of Nevada Supreme Court Order Affirming in Part and Reversing in Part and Remanding, Case No. 56030 dated February 24, 2012. *See* Exhibit 1 - Nevada Supreme Court Order Affirming in Part and Reversing in Part and Remanding, Case No. 56030 dated February 24, 2012 (Order). Pursuant to NRS 47.130(2), a court may appropriately take judicial notice of facts generally known within the jurisdiction or readily verifiable from sources of indisputable accuracy. The Order is readily verifiable from sources of indisputable accuracy, the Nevada Supreme Court. *See* Exhibit 1.

As a result of the Order, a Writ of Mandamus was issued ordering the State Board to hold statewide equalization hearings from which Petitioners filed their Petition for Judicial Review (Petition). See Petition, Exhibit 1 – State Board's Equalization Order; Exhibit 2- Writ of Mandamus.

NRS 361.140 provides for a Court to take judicial notice of matters of law. Usually, judicial notice would be taken of a published opinion. *Andolino v. State*, 99 Nev. 346, 351, 662 P.2d 631, 633 (1983). However, "the law of Nevada as found in reported court opinions is similarly subject to judicial notice. The law of the case is necessarily included within the ambit of this law." *Id.* The Order provides the law of the case in this matter.

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

CONCLUSION

In conclusion, the State Board respectfully requests this Court take judicial notice of Nevada Supreme Court Order Affirming in Part and Reversing in Part and Remanding, Case No. 56030 dated February 24, 2012.

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 3rd day of May, 2013.

CATHERINE CORTEZ MASTO
Attorney General

By: Dawn Buoncristiani
DAWN BUONCRISTIANI, Deputy Attorney General
Nevada Bar No. 7771
Attorneys for Respondent State Board of Equalization

Nevada Office of the Attorney General
100 North Carson Street
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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 that on May 3, 2013, I electronically filed the foregoing **MOTION TO TAKE JUDICIAL NOTICE** with the Clerk of the Court using the electronic filing system (CM/ECF), which served the following parties electronically:

SUELLEN FULSTONE for Petitioners

DAVID CREEKMAN for Washoe County

The parties below will be served by depositing a true and correct copy of the **MOTION TO TAKE JUDICIAL NOTICE** in a sealed, postage prepaid envelope for delivery by the United States Post Office fully addressed as follows:

Attorney/Address	Phone/Fax/E-Mail	Party Represented
Norman J. Azevedo 405 North Nevada Street Carson City, NV 89703	Phone: 775-883-7000 Fax: 775-883-7001	Petitioners
Dave Dawley, Assessor City Hall 201 N. Carson Street, Suite 6 Carson City, NV 89701	Phone: 775-887-2130 Fax: 775-887-2139	Dave Dawley, Carson City Assessor
Michele Shafe, Assessor Clark County - Main Office 500 South Grand Central Parkway, Second Floor Las Vegas, Nevada 89155	Phone: 702-455-3882 Fax: E-Mail:	Michele Shafe, Clark County Assessor
Douglas Sonnemann, Assess Douglas County 1616 8th St. Minden, NV 89423	Phone: 775-782-9830 Fax: 775-782-9884	Douglas Sonnemann, Douglas County Assessor
Mike Mears, Assessor Eureka County Michael A. Me P.O. Box 88 20 S Main St Eureka, NV 89316	Phone: 775-237-5270 Fax: 775-237-6124 E-Mail: ecmears@eurekanv.org	Mike Mears, Eureka County Assessor
Jeff Johnson, Assessor Humboldt County 50 West Fifth Street Winnemucca, NV 89445	Phone: 775-623-6310 Fax: E-Mail: assessor@hcnv.us	Jeff Johnson, Humboldt County Assessor
Lura Duvall, Assessor Lander County 315 S. Humboldt Street Battle Mountain, NV 89820	Phone 775-635-2610 Fax 775-635-5520 E-Mail: assessor@landercountynv.org	Lura Duvall, Lander County Assessor

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

Attorney/Address	Phone/Fax/E-Mail	Party Represented
Melanie McBride, Assessor Lincoln County 181 North Main Street Suite 203 P.O. Box 420 Pioche, NV 89043	Phone: 775-962-5890 Fax: 775-962-5892 E-Mail:	Melanie McBride, Lincoln County Assessor
Linda Whalin, Assessor Lyon County 27 S. Main Street Yerington, NV 89447	Phone: 775-463-6520 Fax: 775-463-6599	Linda Whalin, Lyon County Assessor
Dorothy Fowler, Assessor Mineral County 105 South "A" Street, Suite 3 PO Box 400 Hawthorne, NV 89415-0400	Phone: 775-945-3684 Fax: 775-945-0717 E-Mail: djfassessor@mineralcountynv.org	Dorothy Fowler, Mineral County Assessor
Shirley Matson, Assessor Nye County 101 Radar Rd. P.O. Box 271 Tonopah, NV 89049	Phone: 775-482-8174 Fax: 775-482-8178 E-Mail:	Shirley Matson, Nye County Assessor
Jana Sneddon, Assessor Storey County Courthouse 26 S. B Street Post Office Box 494 Virginia City, NV 89440	Phone: 775-847-0961 Fax: 775-847-0904	Jana Sneddon, Storey County Assessor

Dated: May 3, 2013.

Mary A. Wilson

An Employee of the State of Nevada
Office of the Attorney General

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

INDEX OF EXHIBIT TO MOTION TO TAKE JUDICIAL NOTICE

Exhibit No.	Description of Exhibit	Pages
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Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., A NEVADA NON-PROFIT CORPORATION, ON BEHALF OF THEIR MEMBERS AND OTHERS SIMILARLY SITUATED; MARYANNE INGEMANSON, TRUSTEE OF THE LARRY D. AND MARYANNE B. INGEMANSON TRUST; DEAN R. INGEMANSON, INDIVIDUALLY AND AS TRUSTEE OF THE DEAN R. INGEMANSON TRUST; J. ROBERT ANDERSON; AND LES BARTA, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED,
Appellants,
vs.
THE STATE OF NEVADA ON RELATION OF THE STATE BOARD OF EQUALIZATION; WASHOE COUNTY; AND BILL BERRUM, WASHOE COUNTY TREASURER,
Respondents.

No. 56030

FILED

FEB 24 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY D. Malone
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order dismissing a petition for a writ of mandamus in a property tax action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

In 2003, appellant Village League to Save Incline Assets, Inc. filed a complaint in district court concerning property tax assessments against the Nevada Department of Taxation, the Nevada Tax Commission, the State Board of Equalization, the Washoe County Assessor, and the Washoe County Treasurer. Village League alleged, in relevant part, that the Washoe County Assessor used unconstitutional methodologies to

assess property values in Incline Village and Crystal Bay for the 2003-2004 tax year, and that the State Board of Equalization had failed to carry out its constitutional obligation to equalize property valuations statewide. Because Village League failed to exhaust its administrative remedies before bringing suit, the district court dismissed the complaint and Village League appealed the dismissal.

In 2009, this court affirmed in part and reversed in part the district court's order. See Village League v. State, Dep't of Taxation, Docket No. 43441 (Order Affirming in Part, Reversing in Part and Remanding, March 19, 2009). While agreeing that Village League failed to exhaust available administrative remedies on the majority of its claims, this court concluded that "[i]t is not clear, however, that Village League had available any means to administratively challenge the State Board of Equalization's alleged failures to carry out its equalization duties." Id. Consequently, the case was remanded to the district court for the limited purpose of determining the viability of Village League's equalization claim. Id.

On remand, Village League amended its complaint to seek a writ of mandamus, alleging that the State Board of Equalization (the State Board) failed to equalize valuations throughout the state, as well as between Washoe and Douglas counties, for the 2003-2004 tax year, and that writ relief was warranted to compel it to do so. Respondents the State Board, Washoe County, and the Washoe County Treasurer filed a motion to dismiss, arguing, in relevant part, that a writ of mandamus was unavailable to control the State Board's discretion in effecting equalization for that tax year and that Village League had an adequate remedy at law. The district court agreed and denied the petition for a writ of mandamus. Village League appealed the dismissal of its petition.

We affirm in part, reverse in part, and remand this case to the district court. As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

The State Board has an obligation to act and the proper forum for a taxpayer to request statewide equalization is before the State Board

Generally, the district court's denial of a writ petition is reviewed for an abuse of discretion; however, when the petition contains questions of law, we review the district court's decision de novo. Reno Newspapers v. Gibbons, 127 Nev. ___, ___, ___ P.3d. ___, ___ (Adv. Op. No. 79, December 15, 2011).

The Nevada Constitution guarantees "a uniform and equal rate of assessment and taxation" with respect to real property. Nev. Const. art. 10, § 1; see State, Bd. of Equalization v. Bakst, 122 Nev. 1403, 1413, 148 P.3d 717, 724 (2006). Also, it is well settled that the State Board had a duty in 2003-2004, as it does now, to equalize property valuations in the state. NRS 361.395(1) ("[T]he State Board of Equalization shall . . . [e]qualize property valuations in the State."); see Marvin v. Fitch, 126 Nev. ___, ___, 232 P.3d 425, 430 (2010) ("NRS Chapter 361 . . . obligates the State Board to equalize property valuations throughout the state . . . . The State Board's predominant concern . . . should be the guarantee of a uniform and equal rate of taxation."); State, Bd. of Equalization v. Barta, 124 Nev. 612, 627-28, 188 P.3d 1092, 1102 (2008) (recognizing that the State Board has a duty to equalize property valuations statewide).

In this case, the district court correctly stated that the State Board has an obligation to determine the proper equalization of property valuations throughout the state of Nevada, as well as between Washoe County and Douglas County. The district court, further, correctly

concluded that the proper forum for a taxpayer to request or discuss the need for the adjustment of property valuations is before the State Board.

The district court erred in concluding that Village League had an adequate remedy at law

Village League argues that the district court erred in determining that it had an adequate remedy at law, and in dismissing its petition for a writ of mandamus. We agree.

A writ of mandamus will not issue if the petitioner has "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. The petitioner bears "the burden of demonstrating that extraordinary [writ] relief is warranted." Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). A petition for a writ of mandamus "should be dismissed only if it appears beyond a doubt that [petitioners] could prove no set of facts, which, if true, would entitle [them] to relief." Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008); see also NRS 34.300 (the "Nevada Rules of Civil Procedure relative to civil actions in the district court are applicable to and constitute the rules of practice in [mandamus] proceedings").

Here, Village League petitioned for a writ of mandamus to direct the State Board to equalize property valuations throughout the state. As noted above, the district court properly determined that the only available forum for taxpayers to be heard regarding the statewide adjustment of taxable property valuation is in front of the State Board. The State Board has repeatedly stated in its motions and briefs that no hearings have been held to equalize all property values in the state. The State Board has previously met to discuss how to implement the requirements of NRS 361.395, but has not held a public hearing during which taxpayers could air their grievances with the equalization process, nor has it affirmatively acted to equalize property values. The State

Board's failure to conduct public hearings with regard to statewide equalization has denied Village League an adequate remedy at law. See Pan, 120 Nev. at 224, 88 P.3d at 841 (concluding that a writ of mandamus is appropriate if the petitioner does not have an adequate remedy at law); see also NRS 34.170. The district court erred in determining that Village League had an adequate remedy at law. The State Board is required to hold a public hearing, and its failure to do so has precluded Village League from availing itself of available administrative remedies.[1] For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[2]

_____, C.J.
Saitta

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Gibbons

_____, J.
Hardesty

_____, J.
Parraguirre

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[1]Because we have determined that Village League did not have an adequate remedy at law, and are remanding this case to the district court, we do not reach the substantive merits of Village League's arguments.

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

cc: Hon. Patrick Flanagan, District Judge
Morris Peterson/Reno
Washoe County District Attorney/Civil Division
Attorney General/Carson City
Washoe District Court Clerk

EXHIBIT 2

EXHIBIT 2

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

WRIT OF MANDAMUS

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

AND TO WASHOE COUNTY AND THE WASHOE COUNTY TREASURER:

YOU ARE COMMANDED BY THIS COURT AS FOLLOWS:

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

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

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

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

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

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

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

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

By Patrick Flanagan
District Judge

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.	Supreme Court Case No. 63581 District Court Case No. CV07-01932

JOINT APPENDIX – VOLUME 7

Suellen Fulstone, No. 1615
SNELL & WILMER L.L.P.
50 West Liberty Street, Suite 510
Reno, Nevada 89501
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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3795
CATHERINE CORTEZ MASTO
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Attorneys for the State Board of Equalization

IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Petitioners,

vs.

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

Respondents.

Case No. CV13-00522

Dept. No. 3

REPLY TO PLAINTIFFS'/PETITIONERS' OPPOSITION TO STATE'S MOTION TO DISMISS

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

REPLY TO PLAINTIFFS'/PETITIONERS' OPPOSITION TO STATE'S MOTION TO DISMISS

Respondent, State of Nevada, ex rel. State Board of Equalization (State Board), by and through its counsel Catherine Cortez Masto, Attorney General, by Dawn Buoncristiani, Deputy Attorney General submits its Reply to Petitioners' Points and Authorities in Opposition to State Board of Equalization Motion To Dismiss (Reply). This Reply is based upon the pleadings and papers on file herein, and the following points and authorities.

I. POINTS AND AUTHORITIES

A. Introduction

Petitioners seek to have this Court review the State Board's Equalization Order pursuant to a petition for judicial review. *See* Petition for Judicial Review (Petition), Exhibit 1. The Petition must be dismissed because the State Board's action was a legislative action not an adjudicatory action. There was no contested case pursuant to NRS 233B.130. Further, the right to appeal must be provided by statute and NRS 361.395, the statute governing State Board equalization decisions, does not provide a right to appeal an equalization action by the State Board. NRS 361.395. The statute does not provide a remedy for a person to dispute a general equalization decision of the State Board. The Nevada Legislature could easily have provided such a right to a "person" if it had intended to do so. NRS 361.395. However, as the Legislature did not so provide, Petitioners' Petition should be dismissed.

The issue of whether the State Board's equalization decision pursuant to NRS 361.395 is appealable through a petition for judicial review pursuant to NRS Chapter 233B is a matter of first impression. The State Board had not previously heard statewide equalization issues. *See* Petition, Exhibit 2, pp. 1-2; *See*, Exhibit 1 - Nevada Supreme Court Case No. 56030, Order Affirming in Part, Reversing in Part and Remanding dated February 24, 2012 (Order), p. 4 ("The State Board has repeatedly stated in its motions and briefs that no hearings have been held to equalize all property values in the state."). Petitioners rely heavily on the *Marvin v. Fitch*, 232 P.3d 425, 430-431 (2010) case to

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oppose State Board's Motion to Dismiss Petition for Judicial Review (Motion). The *Marvin* case is distinguishable from this matter as will be explained in the following Reply. The procedural posture of such case was based on a hearing before the State Board when the State Board was sitting to hear contested cases pursuant to NRS 361.360 and NRS 361.400. *Marvin*, 232 P.3d at 427. Otherwise, Petitioners do not directly oppose or distinguish much of the law and cases upon which State Board based its Motion.

Contrary to Petitioners' argument, the State Board's equalization decision was not the result of a contested case. *See* Points and Authorities in Opposition to State Board of Equalization Motion to Dismiss (Opposition), pp. 5-7. The State Board's equalization action pursuant to 361.395(1) is a legislative action. *May Dept. Stores Co. v. State Tax Commission*, 308 S.W.2d 748, 756 (Mo.1958). After the State Board completes its legislative action, it may consider raising the valuation on individual properties. *See* Petition, Exhibit 1, p. 10.[1] At this point, if the State Board "proposes to increase the valuation of any property on the assessment roll," the State Board shall give notice and an opportunity to be heard to "interested persons." NRS 361.395(2). Such interested persons "may appear and submit proof concerning the valuation of the property." NRS 361.395.

Pursuant to *Marvin*, the matter may become a contested case.

> NRS 361.395(2) and 361.405(1) require notice be given to property owners when equalization results in a proposed or actual increase to a property's valuation. . . In the event that the State Board proposes to increase the valuation of any property, the State Board is required to give specific notice to the interested property owner detailing when and where the property owner may appear and submit evidence of the property's value. NRS 361.395(2). If the State Board does increase the property's valuation, the property owner is entitled to another notice of the increased value. NRS 361.405(1).

Marvin, 232 P.3d at 430-431.

Hence, prior to proposing an increase in value, the State Board's actions are legislative in nature. Otherwise, it would be impossible for the State Board to equalize pursuant to NRS 361.395, because it would be impracticable for the State Board to provide

[1] "The Washoe county Assessor shall separately identify any parcel for which the reappraised taxable value is greater than the original taxable value, along with the names and addresses of the taxpayer owning such parcels to enable the State Board to notify said taxpayers of any proposed increase in value." NRS 361.395(2).

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individual notice and a hearing to the entire State. "It will not be assumed that one part of a legislative act will make inoperative or nullify another part of the same act, if a different and more reasonable construction can be applied." *Board of Com'rs of Nye County v. Schmidt, 157 P. 1073, 1075 (1916).* "Where possible, a statute should be construed so as to give meaning to all of its parts." *Nevada State Personnel Division v. Haskins*, 90 Nev. 425, 427, 529 P.2d 795, 796 (1974) (citation omitted). With the foregoing interpretation of NRS 361.395, each part of NRS 361.395 is given meaning, no part is nullified, and the interpretation is consistent with *Marvin* as well. *Marvin*, 232 P.3d at 431. *See American Federation of State, County and Mun. Employees, Council 31, AFL-CIO v. Department of Cent. Management Services*, 681 N.E.2d 998, 1005, (Ill.App. 1 Dist.,1997) ("Although the Commission has quasi-judicial powers, the Commission's required approval of the reclassification plan was a quasi-legislative function.") Similar to requirements of NRS 361.395, in *American Federation* the legislature allowed the "Commission to hear appeals of employees" who did not accept the decision of the Commission after such individuals had the opportunity to present their views at the legislative hearing by providing "information to the Commission."[2] *Id.*

B. **APPLICABLE LAW**

NRS 361.360 Appeals to State Board of Equalization.

1. Any taxpayer aggrieved at the action of the county board of equalization in equalizing, or failing to equalize, the value of his or her property, or property of others, or a county assessor, may file an appeal with the State Board of Equalization on or before March 10 and present to the State Board of Equalization the matters complained of at one of its sessions. If March 10 falls on a Saturday, Sunday or legal holiday, the appeal may be filed on the next business day.

2. All such appeals must be presented upon the same facts and evidence as were

[2] As in the *American Federation* case, Petitioners had the opportunity to present their views in a legislative type hearing. *See* Opposition, p. 7. The State Board also took testimony and evidence as well as briefs from Washoe County. *See* Record on Appeal, CD 1, 4. Transcripts, November 5, 2012 and December 3, 2012; 7. Washoe County Responses. Similar to the hearing in *American Federation*, legislative actions do not take place without input from a variety of sources. *Id.* NAC 361.660-NAC 361.663, NAC 361.667.

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submitted to the county board of equalization in the first instance, unless there is discovered new evidence pertaining to the matter which could not, by due diligence, have been discovered before the final adjournment of the county board of equalization. The new evidence must be submitted in writing to the State Board of Equalization and served upon the county assessor not less than 7 days before the hearing.

NRS 361.395 Equalization of property values and review of tax rolls by State Board of Equalization; notice of proposed increase in valuation.

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

(a) Equalize property valuations in the State.

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

2. If the State Board of Equalization proposes to increase the valuation of any property on the assessment roll, it shall give 10 days' notice to interested persons by registered or certified mail or by personal service. The notice must state the 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.

[Part 4:177:1917; A 1929, 341; 1939, 279; 1953, 576] + [Part 6:177:1917; A 1929, 341; 1933, 248; 1939, 279; 1943, 81; 1953, 576]—(NRS A 1977, 605; 1981, 799; 1983, 1196; 1987, 294; 1993, 96).

NRS 361.400 Appeals from action of county boards of equalization.

1. The State Board of Equalization shall hear and determine all appeals from the action of each county board of equalization, as provided in NRS 361.360.

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2. No such appeals shall be heard and determined by the State Board of Equalization where overvaluation or excessive valuation of the claimant's property, or the undervaluation of other property, or nonassessment of other property, was the ground of complaint before the county board of equalization, save upon the terms and conditions provided in NRS 361.350 and **361.355.** (Emphasis added.)

3. No appeal shall be heard and determined save upon the evidence and data submitted to the county board of equalization, unless it is proven to the satisfaction of the State Board of Equalization that it was impossible in the exercise of due diligence to have discovered or secured such evidence and data in time to have submitted the same to the county board of equalization prior to its final adjournment.

NRS 361.355 Complaints of overvaluation or excessive valuation by reason of undervaluation or nonassessment of other property.

1. Any person, firm, company, association or corporation, **claiming overvaluation or excessive valuation of its real or secured personal property in the State**, whether assessed by the Nevada Tax Commission or by the county assessor or assessors, **by reason of undervaluation for taxation purposes of the property of any other person, firm, company, association or corporation within any county of the State** or by reason of any such property not being so assessed, shall appear before the county board of equalization of the county or counties where the undervalued or nonassessed property is located and make complaint concerning it and submit proof thereon. The complaint and proof must show the name of the owner or owners, the location, the description, and the taxable value of the property claimed to be undervalued or nonassessed. (Emphasis added.)

2. Any person, firm, company, association or corporation wishing to protest the valuation of real or personal property placed on the unsecured tax roll which is assessed between May 1 and December 15 may appeal the assessment on or before the following January 15, or the first business day following January 15 if it falls on a Saturday, Sunday or holiday, to the county board of equalization.

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3. The county board of equalization forthwith shall examine the proof and all data and evidence submitted by the complainant, together with any evidence submitted thereon by the county assessor or any other person. If the county board of equalization determines that the complainant has just cause for making the complaint it shall immediately make such increase in valuation of the property complained of as conforms to its taxable value, or cause the property to be placed on the assessment roll at its taxable value, as the case may be, and make proper equalization thereof.

4. Except as provided in subsection 5 and NRS 361.403, any such person, firm, company, association or corporation who fails to make a complaint and submit proof to the county board of equalization of each county wherein it is claimed property is undervalued or nonassessed as provided in this section, is not entitled to file a complaint with, or offer proof concerning that undervalued or nonassessed property to, the State Board of Equalization.

5. If the fact that there is such undervalued or nonassessed property in any county has become known to the complainant after the final adjournment of the county board of equalization of that county for that year, the complainant may file the complaint on or before March 10 with the State Board of Equalization and submit his or her proof as provided in this section at a session of the State Board of Equalization, upon complainant proving to the satisfaction of the State Board of Equalization he or she had no knowledge of the undervalued or nonassessed property before the final adjournment of the county board of equalization. If March 10 falls on a Saturday, Sunday or legal holiday, the complaint may be filed on the next business day. The State Board of Equalization shall proceed in the matter in the same manner as provided in this section for a county board of equalization in such a case, and cause its order thereon to be certified to the county auditor with direction therein to change the assessment roll accordingly.

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C. LEGAL ARGUMENTS

1. VALUATIONS DEVELOPED BY ASSESSMENT ARE APPEALABLE PURSUANT TO NRS 361.420 AND NRS CHAPTER 233B; HOWEVER, A STATE BOARD EQUALIZATION ACTION IS NOT APPEALABLE PURSUANT TO NRS 361.420 AND NRS CHAPTER 233B BECAUSE IT WOULD BE IMPRACTICABLE.[3]

Contrary to Petitioners' allegations, *Marvin*, is not binding precedent in this matter.[4] *See* Opposition, pp. 5-7. The *Marvin* Court was discussing equalization within the context of NRS 361.355 for disputing an unequal assessment which an individual property owner could appeal to the county board of equalization or State Board.[5] The valuation would not be developed by a State Board act of equalization pursuant to NRS 361.395.[6] The following quotation from *Marvin* provides support that the the valuation was developed through assessment by the county assessor.

> At the meetings, an individual may challenge a property's valuation recorded on the county tax rolls and submit evidence for the State Board's consideration 'with respect to the valuation of his or her property or the property of others.' *Id.; see* NRS 361.355. We conclude that the ability to contest the **assessed value of one's own property or present evidence questioning the value of the property of others** is a quintessential indication of the adversarial nature of the equalization process. Thus, we deem the State Board's equalization process to be adversarial in nature and "functionally comparable" to an adjudicatory proceeding. (emphasis added) (citation omitted).

Marvin, 232 P.3d at 431. Hence, equalization pursuant to NRS 361.355 is in the form of a contested case.

Procedures for developing valuations by assessment and equalization are distinctly different: Valuations developed by assessment and equalization are developed by different procedures.

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[3] *See* Section A for discussion of an appeal of a valuation developed pursuant to NRS 361.395.

[4] Petitioners mention judicial estoppel but do not provide the analysis or citation to authority for such an argument, consequently, the State Board does not respond to such allegation and this Court need not consider it. *See* Opposition, p. 5. *See Humane Soc. of Carson City and Ormsby County v. First Nat. Bank of Nevada*, 92 Nev. 474, 478, 553 P.2d 963, 965 (1976) ("Appellant cites no authority to support its contention, and we need not consider it.") (citations omitted). Should the Court determine such is an issue, the State Board reserves the opportunity to respond at such time.

[5] To the extent the Marvin Court addressed NRS 361.395, *See* Section A of this Reply.

[6] Until the 2012 hearings the State Board had never addressed statewide equalization, hence this case was remanded back to the State Board to address statewide equalization. *See* Order, pp. 4-5.

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> Assessment is the act of placing a value for 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 or subclass. Assessment relates to individual properties; equalization relates to classes of property collectively.

Board of Sup'rs of Linn County v. Department of Revenue, 263 N.W.2d 227, 236 (Iowa 1978) (citation omitted). Accordingly, the underlying legal principles and procedures 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, . . .").

Like the *Staker* case, the procedures to appeal an individual assessment do not apply to a State Board equalization action. Id.

> [T]he legislature has made no provision for an appeal to be taken from the decision of the tax commission in equalizing assessments made pursuant to I.C. § 63-605, et seq. Therefore, it is apparent that the legislature did not contemplate that the action of the State Tax Commission in equalizing assessments would be subject to review by either the district courts or by the Board of Tax Appeals. . . There is no method of appeal pointed out by statute to secure review of the action of said board. The writ of *certiorari* is the proper and only means of bringing such action before this court for review.

Staker, 663 P.2d at 273-274 (citation omitted) (internal quotation marks omitted).

The procedures to appeal valuation in a contested case before State Board are different than those for an equalization action and necessarily so. To appeal to the State Board, a property owner must first appeal to a county board of equalization. Property owners must strictly follow the appeal procedures. Property owners must appeal to the county boards of equalization. NRS 361.360. "Taxpayers must exhaust their administrative remedies before seeking judicial relief." *County of Washoe v. Golden Road Motor Inn, Inc.*,

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105 Nev. 402, 403, 777 P.2d 358, 360 (1989). *See also, First Am. Title Co. of Nevada v. State*, 91 Nev. 804, 806, 543 P.2d 1344, 1345 (1975). The property owner, only after having protested the payment of taxes pursuant to NRS 361.420(1), and after having been denied relief by the State Board, may seek judicial review. NRS 361.410(1). These requirements are jurisdictional; failure to exhaust administrative remedies deprives the district court of subject matter jurisdiction. *Golden Road Motor Inn*, 105 Nev. at 403.

The State Board did not hear the property owner appeals in *Marvin* because they did not first go to the county board of equalization. *Marvin*, 232 P.3d at 427 ("The State Board conducted a hearing on the matter and determined that it lacked jurisdiction because the Taxpayers had failed to first petition the County Board, as required by NRS 361.360."). The *Marvin* Court did not accept appellants' Motion to Take Judicial Notice that "the matter of statewide equalization did not appear on any State Board agenda for the relevant term." *Id.* Hence, the State Board hearing under consideration by the *Marvin* Court was a contested case pursuant to NRS 361.360, appeal of a county board decision. Id. The *Marvin* Court did not address the procedures of a State Board hearing regarding state wide equalization except to the extent of notice pursuant to NRS 361.395(2). Id. at 431. The *Marvin* case is not binding authority that the State Board's statewide equalization hearings were contested cases.

Even if the State Board's equalization action was based on some characteristics of a quasi-judicial nature, the review need not be subject to NRS Chapter 233B. The *Staker* Court opined that the equalization board was "clothed by statutory authority with quasi-judicial powers in regard to the assessment of certain classes and kinds of property." *Staker*, 663 P.2d at 273. Still the action of the equalization board was reviewable by writ of certiorari because "no method of appeal was pointed out by statute. . ." Id. Similarly, in this matter NRS 361.395 does not provide for appeal of a State Board decision like NRS 361.420 provides for appeals by property owners whose cases were heard in individual appeals. NRS 361.360; NRS 361.355; NRS 361.400.[7] Therefore, judicial review pursuant

[7] NRS 361.400(2) provides for individual appeal of a county board decision based on claims made pursuant to NRS 361.355. The *Marvin* case identifies equalization in a disputed State Board action as one

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to NRS Chapter 233B is not appropriate. There was no contested case with notice and hearing pursuant to the statutes and regulations applicable when an individual appeals pursuant to NRS 361.420 There was no requirement the individuals exhaust administrative remedies before the county board of equalization and appeal to the State Board.

The *Bakst* and *Barta* Courts also distinguished between the State Board's duty to hear individual appeals pursuant to NRS 361.360 and NRS 361.400, and the State Board's duty to equalize statewide. The *Bakst* Court opined:

> The State Board, which is responsible for equalizing all property valuations in this state, also considers taxpayer appeals from the actions of the County Boards of Equalization. NRS 361.360; NRS 361.400.[8] If the State Board does not provide a taxpayer with relief, a taxpayer may, after protesting the payment of taxes in excess of what the owner believes is justly due, "commence a suit in [district court] against the State and county in which the taxes were paid, . . NRS 361.420(1).

State ex rel. State Bd. of Equalization v. Bakst, 122 Nev. 1403, 1412, 148 P.3d 717, 723 - 724 (2006). The *Barta* Court specifically opined in response to Taxpayers' request to:

> address the State Board's duty to equalize taxes statewide. Under NRS 361.395(1), the State Board clearly has a duty to equalize property valuations throughout the state: "the [State Board] shall ... [e]qualize property valuations in the State." [NRS 361.395(1)(a)]. Furthermore, **NRS 361.400 establishes a requirement, separate from the equalization duty,** that the State Board hear appeals from decisions made by the county boards of equalization. The two statutes create separate functions: equalizing property valuations throughout the state and hearing appeals from the county boards. (Emphasis added).

State ex rel. State Bd. of Equalization v. Barta, 124 Nev. 612, 628, 188 P.3d 1092, 1102 - 1103 (2008).

Accordingly, the *Marvin* Court's analysis was about the State Board's equalization actions pursuant to NRS 361.355 which was an appeal pursuant to NRS 361.400(2) from a county board of equalization action. Such appeals provide for individual notice and hearing for a contested case as previously discussed. The *Marvin* case is distinguishable from the

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pursuant to NRS 361.355 where an individual presents an issue of over or under valuation in a hearing. *Marvin*, 232 P.3d at, 431 (citation omitted).

[8] NRS 361.400, titled "Appeals from action of county boards of equalization" references NRS 361.355, the equalization section addressed by the *Marvin* Court. *Marvin*, 232 P.3d at 431.

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present action. The present action before this Court is based on the State Board's separate duty to equalize statewide pursuant to NRS 361.395. *See* Petition, Exhibit 2. Accordingly, review pursuant to NRS Chapter 233B is not an appropriate means to review the State Board's Equalization action. But the State Board did not state the Equalization Order was not reviewable at all.

> Even though an agency is performing a legislative function, the Legislature may confer upon it judicial power to determine facts and equities under which legislation authorizes some changes to be made. . .One cannot be denied his right of review in the appellate courts, and proceedings in error are always resorted to where no other method is pointed out or provided for.

Richardson v. Board of Ed. of School Dist. No. 100, 290 N.W.2d 803, 808 (Neb., 1980) (citations omitted) (internal quotations omitted).

2. The State Board Did Not Argue that the State Board's Equalization Decision was not Reviewable; the State Board argued the State Board's Decision was not Reviewable Pursuant to NRS Chapter 233B, Nevada Administrative Procedure Act, Because the Hearings Before the State Board were not Contested Cases.

Contrary to Petitioners' allegation, the State Board did not argue that the State Board's Equalization Decision was not reviewable. *See* Opposition, pp. 1-2, 7, 8. The State Board argued with supporting case law that the State Board's decision was not reviewable pursuant to the Nevada Administrative Procedure Act because the hearings before the State Board were not contested cases, the State Board's equalization action was a legislative action, and NRS 361.395 does not provide a right to appeal a State Board equalization decision. *See generally*, Motion. Various states hold differing views on the means to review state board of equalization decisions. The following are just a few of such positions.

The *Staker* court opined that the legislature provided for appeals of an individual property dispute but "[t]here is no method of appeal pointed out by statute to secure review of the action [equalization of assessments] of said board. The writ of *certiorari* is the proper and only means of bringing such action before this court for review." *Staker,* 663 P.2d at 273 (citation omitted). Similarly, there is no means of review provided by NRS 361.395.

Other courts reviewing legislative actions by administrative agencies generally have

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held various positions on the means by which a legislative action may be reviewed. *See East St. Louis School Dist. No. 189 Bd. of Educ. v. East St. Louis School Dist. No. 189 Financial Oversight Panel*, 811 N.E.2d 692, 698 (Ill.App. 5 Dist.,2004) ("Quasi-legislative actions of an administrative agency can be reviewed in a declaratory judgment action if it is alleged that the action is unlawful.") (citing *Woolfolk v. Board of Fire & Police Commissioners of Village of Robbins*, 79 Ill.App.3d 27, 29, 34 Ill.Dec. 551, 398 N.E.2d 226 (1979); *860 Executive Towers v. Board of Assessors of Nassau County*, 377 N.Y.S.2d 863, 868 (N.Y.Sup. 1975) ("The state rate once determined is the result of an administrative decision (RPTL s 202(1)(b)) not reviewable by the taxpayer but by the taxing district under the limitation of an Article 78 proceeding. . .") (citation omitted); *Town of Riverhead v. New York State Office of Real Property Services*, 802 N.Y.S.2d 698, 700 (N.Y.A.D. 2 Dept.,2005) (pursuant to § 1218, review of final determinations of state board of real property tax services relating to state equalization rates, "individual taxpayer such as Densieski lacks standing to challenge the methodology employed by the Board to calculate equalization rates, even when those rates are calculated for the municipality in which the taxpayer owns property." (citations omitted); *Pierce v. Green*, 294 N.W. 237, 254 (Iowa 1940) (property owner could bring suit to review equalization action in mandamus proceeding). *See also, American Federation*, 681 N.E.2d at 1005.

Finally, the *Linn* court, in spite of the fact that an equalization action was a legislative action, found review was available through the administrative procedure act. *Board of Sup'rs of Linn County v. Department of Revenue*, 263 N.W.2d 227, 239-240 (Iowa 1978). This ruling was made in a single statement without explanation or analysis. In contrast, the *May* Court held the administrative procedure act did not apply to an equalization, legislative action. It explained its rationale.

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> The first question which confronts us is whether the validity of the order of the Commission increasing valuations in St. Louis County, on July 6, 1955, may properly be considered in this action. We have determined that it may not. Equalization between counties was a duty expressly imposed upon the Commission by the mandate of § 138.390 [to classify and equalize property]. That order of the Commission did not constitute a 'contested case' within the meaning of § 536.100 [Administrative Procedure and Review] providing for judicial review of administrative decisions in such matters; § 536.010 defines a 'contested case' as a 'proceeding * * * in which legal rights, duties or privileges of specific parties are required by statute to be determined after hearing.' In matters thus reviewable under Chapter 536, notice to the parties affected is expressly provided for (§ 536.090), and the petition for review must be filed within 30 days after the mailing or delivery of notice. It **would be wholly impracticable for the Commission to give notice of a blanket increase to all owners of real estate in 26 counties, or even in St. Louis County.** The order here affected counties and classes of taxpayers, and not 'specific parties'; and it was not a subject of contest, within the usual understanding of that term. We hold that the equalization order of July 6, 1955, was not a decision of which a review is contemplated under § 536.100 [Administrative Procedure and Review]. (Emphasis added).

May Dept. Stores Co., 308 S.W.2d at 756. The *May* Court's rationale provides a sound basis for not providing appeal of a State Board of Equalization decision pursuant to NRS Chapter 233B.

3. THE STATE BOARD DID NOT HEAR CONTESTED CASES AT THE GENERAL EQUALIZATION HEARINGS PURSUANT TO NRS 361.395: IT WOULD HAVE BEEN WHOLLY IMPRACTICABLE FOR THE STATE BOARD TO PROVIDE INDIVIDUAL NOTICE TO ALL PROPERTY OWNERS IN INCLINE VILLAGE, CRYSTAL BAY AND THE REST OF THE STATE WHEN THE STATE BOARD NOTICED ITS STATEWIDE EQUALIZATION HEARINGS OR TO FOLLOW THE PROCEDURES FOR HEARING CONTESTED CASES PURSUANT TO NAC CHAPTER 361.

Contrary to Petitioners' allegations, the equalization hearings were not contested cases within the meaning of NRS Chapter 233B.[9] *See* Opposition, pp. 5-7. First, the State Board did not hear contested cases at the equalization hearings. *See* Motion, pp. 14-17. If the equalization hearings had been accorded contested case status, the notice and hearing requirements would have been much different pursuant to the applicable statutes and regulations for a contested case. NAC 361.702; NRS 233B.121. Although the State Board

[9] Petitioners go on at length with Petitioners' own legal analysis about why the equalization hearing was a contested case, but does not distinguish the legal arguments supported by case law in State Board's Motion. *See* Opposition, pp. 5-7; Motion, pp. 17-19. *See Humane Soc. of Carson City and Ormsby County, 92 Nev. at 478* ("Appellant cites no authority to support its contention, and we need not consider it.") (citations omitted).

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is required to provide notice of an increase in value pursuant to NRS 361.395 in a general equalization action, it would be wholly impracticable for the State Board to provide individual notice to all of Incline Village and Crystal Bay or the entire state pursuant to NAC 361.702 and NRS 233B.121 when considering a general equalization action. *May Dept. Stores Co.*, 308 S.W.2d at 756. *See* NAC 361.702; NRS 233B.121.[10]

In a general equalization hearing it would be wholly impracticable for the State Board to hear individual contested cases with each party receiving 15 minutes of oral argument and a rebuttal of 5 minutes. NAC 361.741. *May Dept. Stores Co.*, 308 S.W.2d at 756. "A common rule of statutory construction requires the court to avoid interpretation that will result in absurd consequences." *Schmidt*, 157 P. at 1075 (1916). It would lead to absurd consequences to determine that the State Board general equalization action is an action like

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[10] NAC 361.702 provides:

1. The State Board will give reasonable notice of any hearing held before it to each party or the authorized agent of a party at the address of each of those persons as those addresses appear in the records of the Department.

2. The State Board will notify the appropriate county assessor of a hearing relating to any property in his or her county or which may have a direct effect upon his or her county. . .

NRS 233B.121 further requires:

1. In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice.

2. The notice must include:

(a) A statement of the time, place and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and regulations involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

3. Any party is entitled to be represented by counsel.

4. Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved. An agency may by regulation authorize the payment of fees and reimbursement for mileage to witnesses in the same amounts and under the same conditions as for witnesses in the courts of this state.

5. Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. If an informal disposition is made, the parties may waive the requirement for findings of fact and conclusions of law.

6. The record in a contested case must include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) A statement of matters officially noticed.

(d) Questions and offers of proof and objections, and rulings thereon.

(e) Proposed findings and exceptions.

(f) Any decision, opinion or report by the hearing officer presiding at the hearing.

7. Oral proceedings, or any part thereof, must be transcribed on request of any party.

8. Findings of fact must be based exclusively on substantial evidence and on matters officially noticed.

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the *Marvin* Court reviewed where taxpayer/property owners would each have individual notice and an opportunity to be heard. NRS 361.360; NRS 361.400; NRS 361.355. The equalization action was a legislative action affecting classes of taxpayers not specific parties. *See* Motion, pp. 14-17. Therefore, NRS Chapter 233B does not apply to this matter. The Petition should be dismissed.

Accordingly, if the State Board hearings had been adjudicative in nature with contested hearings providing notice and opportunity to be heard pursuant to the applicable statutes and regulations, the State Board would not have been able to even consider statewide equalization. It would have been impracticable for the State Board to provide individual notices to all property owners prior to the hearings and provide each property owner with at least a thirty-five minute hearing.[11]

4. Reponses to Petitioners' Other Arguments.

Contrary to Petitioners' allegations, the State Board correctly followed its own Equalization Regulations. *See* Opposition, p. 7. The equalization regulations were lawfully, uniformly, and equally applied retroactively to the equalization cases before the State Board because such regulations provide procedures and remedies and do not cut off any of Petitioners' substantive rights as alleged. The general rule is that a newly enacted statute will not apply to ongoing proceedings. *See Valdez v. Employers Ins. Co. of Nevada*, 123 Nev. 170, 179-180, 162 P.3d 148, 154 (2007) (Newly enacted statutes "apply prospectively unless the Legislature clearly indicates that they should apply retroactively or the Legislature's intent cannot otherwise be met.") (citation omitted).

But,"[t]his general rule does not apply to statutes that do not change substantive rights and instead relate solely to remedies and procedure, however; in these instances, a statute will be applied to any cases pending when it is enacted." *Valdez*, 123 Nev. at 179-180 (citation omitted). *See* also, *Madera v. State Indus. Ins. System*, 114 Nev. 253, 258, 956 P.2d 117, 120 (1998) ("the general rule against retrospective construction of a statute

[11] In this case perhaps the hearing requirements could have been met since not many individual property owners appeared and roughly 1300 of the 8700 Incline Village and Crystal Bay property owners were represented by one attorney. However, in the future the possibility exists that it would be impracticable to hear the number of property owners who may appear for their individual equalization hearing.

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does not apply to statutes relating merely to remedies and modes of procedure").

These rules of statutory construction apply to regulations as well as statutes. *See Meridian Gold Co. v. State ex rel. Department of Taxation,* 119 Nev. 630, 633, 81 P.3d 516, 518 (2003) ("Rules of statutory construction apply to administrative regulations."). Hence, the equalization regulations have the force of law and must be followed. *See State Bd. of Equalization v. Sierra Pac. Power Co.,* 97 Nev. 461, 464, 634 P.2d 461, 463 (1981) ("'A properly adopted substantive rule establishes a standard of conduct which has the force of law.'").[12]

The equalization regulations lawfully and correctly applied to this case which was pending when the equalization regulations were enacted, codified. *See Friel v. Cessna Aircraft Co,* 751 F.2d 1037, 1039 (9th Cir. 1985) (no danger in applying statute [regulation] retroactively where statutes [regulations] merely affect remedies or procedures."). The equalization regulations merely provided the State Board with procedures and remedies to address general equalization issues. The equalization regulations provide the modes of procedure to hear equalization issues and the remedies to follow when the State Board determines action is necessary. Applying its discretion and following the equalization regulations with the procedures and remedies available, the State Board voted to direct the Washoe County Assessor (Assessor) to reappraise residential land in Incline Village and Crystal Bay. *See* Petition, Exhibit 1, p. 9. NAC 361.665. The Assessor was directed to reappraise those parcels where one of the methods was applied which had been declared unconstitutional by *Bakst. See* Petition, Exhibit 1, p. 9. The State Board's actions were lawful because the foregoing rules of statutory construction apply to the equalization regulations as well as statutes. *See Hallowell v. Commons,* 239 U.S. 506, 508-509, (1916) (the change in the statute took "away no substantive right" but simply changed the procedure of who would hear appeals which procedure "applies with the same force to all

[12] The equalization regulations were properly adopted as R153-09 and became effective on October 1, 2010. The State Board properly adopted the equalization regulations by the Legislative authority given to it pursuant to NRS 361.375(9). Hence, when the State Board followed the equalization procedures it acted legally and its actions are not void. *See* Objection, pp. 13-14.

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cases. . .in a statute that. . .was intended to apply to all,. . .").[13]

Similarly in this case, retroactive application of the equalization regulations is, not only legally correct, but it provides uniformity and equality because the State Board, for reasons explained above, previously had no standard by which it could equalize large areas of the state. If the State Board acted with no equalization regulations, a property owner could easily reference the *Bakst* and *Barta* cases claiming an unconstitutional lack of uniformity and equality because the State Board action could lead to a change of property assessments without the guidance of regulations to provide uniformity and equality. *Bakst,* 122 Nev. at 1413, 1417; *Barta*, 124 Nev. at 626. At the December 3, 2012, equalization hearing, Petitioners' attorney made a similar statement regarding the purpose of regulations, stating "the uniformity of regulations and uniformity of assessors in following those regulations is the only basis for assuring constitutional valuation." *See* Record on Appeal, CD 1, Transcripts, December 3, 2012, p. 29. This same concept of uniformity applies to the equalization process: the equalization regulations provided uniformity of equalization.

Even if the equalization regulations do not apply retroactively. The State Board should also be accorded latitude in its discretion executing equalization pursuant to NRS 361.395. *See* Opposition, p. 6. *See Grant County v. State Bd. of Equalization and Assessment*, 63 N.W.2d 459, 467 (Neb.1954) (When "statute does not require any particular method of procedure to be followed by the State Board in equalizing the assessment of range and grazing lands between the various counties. It [state board] may adopt any reasonable method for that purpose."). *See also*, *Boyd County v. State Bd. of Equalization and Assessment*, 296 N.W. 152, 156 (Neb. 1941) ("The statute . . . does not require any particular kind nor standard of evidence. The method to be used is left to the discretion of the state board. No formal hearing is required. In addition to the evidence mentioned in the record, the State Board may take into consideration matters within the general knowledge of its members." (citation omitted)). NRS 361.395 does not require any particular method for

[13] NRS 361.395 provides broad authority for the State Board to equalize and the equalization regulations did not exceed such broad authority. NRS 361.375.

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statewide equalization purposes. The State Board followed its own regulations.

Petitioners provide no authority for their allegation that the Writ of Mandamus itself which directed the State Board to hold equalization hearings, "does not direct the SBOE to equalize for the tax years 2003-2004 to 2010-2011 using the equalization regulations. . ." *See* Opposition, p. 6. Without citations to legal authority, Petitioners' contention need not be considered. *See Humane Soc. of Carson City*, 92 Nev. at 478 ("Appellant cites no authority to support its contention, and we need not consider it." (citations omitted)). The Court need not consider this argument or Petitioners' allegation that "[t]he contested case is created here by the writ of mandate." *See* Opposition, p. 6. Neither statement is supported by citation to authority to support such contentions.

Contrary to Petitioners' argument, the right to appeal is granted by statute or rule. See Opposition, pp. 7-8. "The right to appeal is not a vested right; rather it is an inchoate right which is wholly derived from statute and the right no longer exists after the repeal of the statute granting the right." *Chapman Industries v. United Ins. Co. of America*, 110 Nev. 454, 457, 874 P.2d 739, 741 (1994) (citation omitted) also citing *Gary v.* Sheriff, 96 Nev. 78, 605 P.2d 212 (1980); *Neilson v. Perkins,* 86 Conn. 425, 85 A. 686 (1913); *Lake Erie & W.R. Co. v. Watkins,* 157 Ind. 600, 62 N.E. 443 (1902). In the *Chapman* case the party was appealing a matter pursuant to a statute that had been repealed. The *Chapman* court held such party had no right to appeal since the statute had been repealed.

The Legislature did not provide for an appeal of an equalization decision; therefore, no appeal should be granted to Petitioners. See *Clark County Sports Enterprises, Inc. v. City of Las Vegas*, 96 Nev. 167, 174, 606 P.2d 171, 176 (1980) ("It is clear from the language of NRS 361.157 that it was the intent of the legislature to limit the facilities described to those operated by a public entity. Had the legislature intended inclusion, it would have specifically so provided by language to that effect."). The Legislature expressly provided for judicial review of an individual contested case. NRS 361.420. The Legislature did not provide such review for a State Board general equalization decision applying to classes of property. "The maxim of statutory construction, 'expressio unius est exclusio

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alterius,' applies to the judicial review provision of the Gaming Control Act. By expressly designating the areas to which NRS 463.315 shall apply, the legislature, by implication, excluded other areas therefrom." *O'Callaghan v. Eighth Judicial Dist. Court In and For Clark County*, 89 Nev. 33, 35, 505 P.2d 1215, 1216 (1973) (citations omitted). In the *O'Callaghan* case judicial review was not available pursuant to the applicable act; however, the court did not deny appellant equitable relief. *Id.* at 36. Accordingly, the Legislature has not provided for judicial review of a State Board equalization decision.

D. Conclusion

The issue before this Court is one of first impression: whether a State Board equalization action is appealable pursuant to NRS Chapter 233B as a petition for judicial review. The decision on this matter will determine if property owners from possibly large portions of the state each have an individual right to appeal an equalization order and be accorded the rights provided by a notice and a hearing through a contested case pursuant to NRS Chapter 233B and NAC Chapter 361. If this is correct, then it would seem that those same individuals would have to comply with the other statutory requirements in NRS Chapter 361 such as NRS 361.420 which requires payment of the disputed taxes under protest before appealing to a district court for judicial review of a State Board decision.

The Legislature has provided the exclusive remedy for taxpayers dissatisfied with their property assessments in NRS 361.420. "All [taxpayer] actions must be for redress from the findings of the State Board of Equalization." NRS 361.410(1). Property owners must "pay **each** installment of taxes as it becomes due under protest in writing." NRS 361.420(1). [Emphasis Added]. Only then may the property owner seek a recovery in court "of the difference between the amount of taxes paid and the amount which the owner claims justly to be due." NRS 361.420(2). This specific procedure for obtaining judicial review of property tax determinations precludes all other avenues for relief. *Labruce v. City of North Charleston*, 234 S.E.2d 866, 877 (S.C. 1977) (statutory tax refund action is exclusive remedy). NRS 361.420 **exclusively** governs all actions for disputes over assessments of property taxes. "[I]f a statutory procedure exists either for recovery of taxes collected

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erroneously or for disputing an excessive assessment, **that procedure must be followed.** *Golden Road Motor Inn*, 105 Nev. at 404 (citing *Lovelace Center for Health Sciences v. Beach*, 93 N. M. 793 (Ct. App. 1980) (Emphasis in original)).

Taxpayers would have to first appeal to the county board of equalization. Complaints based on the valuation of property are confined to review of "the record before the State Board of Equalization." NRS 361.420(5). NRS 233B.135(1). The burden of proof is on the taxpayers to show that the valuation is unjust and inequitable. NRS 361.430. "To prevail on a **petition for judicial review**, the taxpayer . . . must show that the tax valuation established by the state board is unjust and inequitable." *Golden Road Motor Inn, Inc.*, 105 Nev. at 405 (emphasis added).

However, the foregoing procedure is unnecessary because the appeal process is for appeal of a valuation developed through an assessment by a county assessor or county board of equalization, or the State Board, not for an act of equalization by the State Board. The matter before this Court is not a dispute over individual assessments appealed pursuant to NRS 361.360 and NRS 361.400. Rather, this is a statewide equalization action ordered pursuant to a writ of mandamus. NRS 361.395. *See* Petition, Exhibit 2, pp. 1-2; Order, p. 4.[14] *See Bakst*, 122 Nev. at 1412; *Barta*, 124 Nev. at 628, (Duty to equalize pursuant to NRS 361.395 is separate and apart from from duty to hear individual contested case appeals pursuant to NRS 361.400). To this point in time, the State Board has not heard individual contested case appeals pursuant to NRS 361.395(2). Should the State Board determine that the taxable value of some properties must be adjusted up, then such property owners will be entitled to notice and a hearing pursuant to NRS 361.395(2).

[14] In its February 24, 2012 Order in this matter, the Supreme Court stated, "The State Board has repeatedly stated in its motions and briefs that no hearings have been held to equalize all property values in the state. The State Board has previously met to discuss how to implement the requirements of NRS 361.395, but has not held a public hearing during which taxpayers could air their grievances with the equalization process, nor has it affirmatively acted to equalize property values." The *Marvin* Court addressed taxpayers petition to the State Board made in March, 2007. *Marvin*, 232 P.3d at 427 (taxpayers appealed to State Board in March, 2007). Since the State Board had not held statewide equalization hearings prior to and up to March, 2007, it would be impossible for the *Marvin* opinion to address a statewide equalization action of the State Board pursuant to NRS 361.395. Nevada Administrative Code Chapter 361 equalization regulations were effective April 20, 2010, pursuant to LCB File No. R153-09.

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The State Board respectfully requests this Court dismiss Petitioners' Petition for Judicial Review and requests such other and further relief this Court deems just and equitable.

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated: May 3, 2013.

CATHERINE CORTEZ MASTO
Attorney General

By: Dawn Buoncristiani

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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 that on May 3, 2013, I electronically filed the foregoing **REPLY TO PLAINTIFFS'/PETITIONERS' OPPOSITION TO STATE'S MOTION TO DISMISS,** with the Clerk of the Court using the electronic filing system (CM/ECF), which served the following parties electronically:

SUELLEN FULSTONE for Petitioners

DAVID CREEKMAN for Washoe County

The following parties will be served by depositing a true and correct copy of the **REPLY TO PLAINTIFFS'/PETITIONERS' OPPOSITION TO STATE'S MOTION TO DISMISS,** in a sealed, postage prepaid envelope for delivery by the United States Post Office fully addressed as follows:

Attorney/Address	Phone/Fax/E-Mail	Party Represented
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Shirley Matson, Assessor Nye County 101 Radar Rd. P.O. Box 271 Tonopah, NV 89049	Phone: 775-482-8174 Fax: 775-482-8178 E-Mail:	Shirley Matson, Nye County Assessor
Jana Sneddon, Assessor Storey County Courthouse 26 S. B Street Post Office Box 494 Virginia City, NV 89440	Phone: 775-847-0961 Fax: 775-847-0904	Jana Sneddon, Storey County Assessor

Dated: May 3, 2013.

An Employee of the State of Nevada
Office of the Attorney General

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INDEX OF EXHIBIT TO REPLY TO PLAINTIFFS'/PETITIONERS' OPPOSITION TO STATE'S MOTION TO DISMISS

Exhibit No.	Description of Exhibit	Pages
1	Nevada Supreme Court Case No. 56030, Order Affirming in Part, Reversing in Part and Remanding dated February 24, 2012	6

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EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., A NEVADA NON-PROFIT CORPORATION, ON BEHALF OF THEIR MEMBERS AND OTHERS SIMILARLY SITUATED; MARYANNE INGEMANSON, TRUSTEE OF THE LARRY D. AND MARYANNE B. INGEMANSON TRUST; DEAN R. INGEMANSON, INDIVIDUALLY AND AS TRUSTEE OF THE DEAN R. INGEMANSON TRUST; J. ROBERT ANDERSON; AND LES BARTA, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED,
Appellants,
vs.
THE STATE OF NEVADA ON RELATION OF THE STATE BOARD OF EQUALIZATION; WASHOE COUNTY; AND BILL BERRUM, WASHOE COUNTY TREASURER,
Respondents.

No. 56030

FILED

FEB 24 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order dismissing a petition for a writ of mandamus in a property tax action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

In 2003, appellant Village League to Save Incline Assets, Inc. filed a complaint in district court concerning property tax assessments against the Nevada Department of Taxation, the Nevada Tax Commission, the State Board of Equalization, the Washoe County Assessor, and the Washoe County Treasurer. Village League alleged, in relevant part, that the Washoe County Assessor used unconstitutional methodologies to

assess property values in Incline Village and Crystal Bay for the 2003-2004 tax year, and that the State Board of Equalization had failed to carry out its constitutional obligation to equalize property valuations statewide. Because Village League failed to exhaust its administrative remedies before bringing suit, the district court dismissed the complaint and Village League appealed the dismissal.

In 2009, this court affirmed in part and reversed in part the district court's order. See Village League v. State, Dep't of Taxation, Docket No. 43441 (Order Affirming in Part, Reversing in Part and Remanding, March 19, 2009). While agreeing that Village League failed to exhaust available administrative remedies on the majority of its claims, this court concluded that "[i]t is not clear, however, that Village League had available any means to administratively challenge the State Board of Equalization's alleged failures to carry out its equalization duties." Id. Consequently, the case was remanded to the district court for the limited purpose of determining the viability of Village League's equalization claim. Id.

On remand, Village League amended its complaint to seek a writ of mandamus, alleging that the State Board of Equalization (the State Board) failed to equalize valuations throughout the state, as well as between Washoe and Douglas counties, for the 2003-2004 tax year, and that writ relief was warranted to compel it to do so. Respondents the State Board, Washoe County, and the Washoe County Treasurer filed a motion to dismiss, arguing, in relevant part, that a writ of mandamus was unavailable to control the State Board's discretion in effecting equalization for that tax year and that Village League had an adequate remedy at law. The district court agreed and denied the petition for a writ of mandamus. Village League appealed the dismissal of its petition.

We affirm in part, reverse in part, and remand this case to the district court. As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

The State Board has an obligation to act and the proper forum for a taxpayer to request statewide equalization is before the State Board

Generally, the district court's denial of a writ petition is reviewed for an abuse of discretion; however, when the petition contains questions of law, we review the district court's decision de novo. Reno Newspapers v. Gibbons, 127 Nev. ___, ___, ___ P.3d. ___, ___ (Adv. Op. No. 79, December 15, 2011).

The Nevada Constitution guarantees "a uniform and equal rate of assessment and taxation" with respect to real property. Nev. Const. art. 10, § 1; see State, Bd. of Equalization v. Bakst, 122 Nev. 1403, 1413, 148 P.3d 717, 724 (2006). Also, it is well settled that the State Board had a duty in 2003-2004, as it does now, to equalize property valuations in the state. NRS 361.395(1) ("[T]he State Board of Equalization shall . . . [e]qualize property valuations in the State."); see Marvin v. Fitch, 126 Nev. ___, ___, 232 P.3d 425, 430 (2010) ("NRS Chapter 361 . . . obligates the State Board to equalize property valuations throughout the state . . . . The State Board's predominant concern . . . should be the guarantee of a uniform and equal rate of taxation."); State, Bd. of Equalization v. Barta, 124 Nev. 612, 627-28, 188 P.3d 1092, 1102 (2008) (recognizing that the State Board has a duty to equalize property valuations statewide).

In this case, the district court correctly stated that the State Board has an obligation to determine the proper equalization of property valuations throughout the state of Nevada, as well as between Washoe County and Douglas County. The district court, further, correctly

concluded that the proper forum for a taxpayer to request or discuss the need for the adjustment of property valuations is before the State Board.

The district court erred in concluding that Village League had an adequate remedy at law

Village League argues that the district court erred in determining that it had an adequate remedy at law, and in dismissing its petition for a writ of mandamus. We agree.

A writ of mandamus will not issue if the petitioner has "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. The petitioner bears "the burden of demonstrating that extraordinary [writ] relief is warranted." Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). A petition for a writ of mandamus "should be dismissed only if it appears beyond a doubt that [petitioners] could prove no set of facts, which, if true, would entitle [them] to relief." Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008); see also NRS 34.300 (the "Nevada Rules of Civil Procedure relative to civil actions in the district court are applicable to and constitute the rules of practice in [mandamus] proceedings").

Here, Village League petitioned for a writ of mandamus to direct the State Board to equalize property valuations throughout the state. As noted above, the district court properly determined that the only available forum for taxpayers to be heard regarding the statewide adjustment of taxable property valuation is in front of the State Board. The State Board has repeatedly stated in its motions and briefs that no hearings have been held to equalize all property values in the state. The State Board has previously met to discuss how to implement the requirements of NRS 361.395, but has not held a public hearing during which taxpayers could air their grievances with the equalization process, nor has it affirmatively acted to equalize property values. The State

Board's failure to conduct public hearings with regard to statewide equalization has denied Village League an adequate remedy at law. See Pan, 120 Nev. at 224, 88 P.3d at 841 (concluding that a writ of mandamus is appropriate if the petitioner does not have an adequate remedy at law); see also NRS 34.170. The district court erred in determining that Village League had an adequate remedy at law. The State Board is required to hold a public hearing, and its failure to do so has precluded Village League from availing itself of available administrative remedies.[1] For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[2]

_____, C.J.
Saitta

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Gibbons

_____, J.
Hardesty

_____, J.
Parraguirre

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[1]Because we have determined that Village League did not have an adequate remedy at law, and are remanding this case to the district court, we do not reach the substantive merits of Village League's arguments.

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

cc: Hon. Patrick Flanagan, District Judge
Morris Peterson/Reno
Washoe County District Attorney/Civil Division
Attorney General/Carson City
Washoe District Court Clerk

ORIGINAL

FILED

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JOEY ORDUNA HASTINGS
CLERK OF THE COURT
BY _____
DEPUTY

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Attorney for Intervenors

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 others similarly situated; MARYANNE INGEMANSON, Trustee of the Larry D. and Maryanne B. Ingemanson Trust; DEAN R. INGEMANSON, individually and as Trustee of the Dean R. Ingemanson Trust; J. ROBERT ANDERSON; and LES BARTA; on behalf of themselves and others similarly situated; Petitioners, vs. STATE OF NEVADA on relation of the State Board of Equalization; WASHOE COUNTY; and BILL BERRUM, Washoe County Treasurer, Respondents.	Case No.: CV03-06922 Dept. No.: 7 **MOTION FOR LEAVE OF COURT TO FILE MOTION TO INTERVENE**

COME NOW Intervenors, Ellen Bakst, Jane Barnhart, Carol Buck, Daniel Schwartz, Lillian Watkins, Don & Patricia Wilson and Agnieszka Winkler, hereinafter referred to as BAKST INTERVENORS, by and through their counsel of record, Norman J. Azevedo, Esq., and hereby files their Motion for Leave of Court to File Motion to Intervene pursuant to NRCP 24 and NRS 12.130.

.../

I. INTRODUCTION

The BAKST INTERVENORS are seeking intervention in Case No. CV03-06922 because the February 8, 2013 Order of the State Board of Equalization ("SBOE") is in direct conflict with their judgments received in *State of Nevada v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006) and *State of Nevada v. Barta*, 124 Nev. 612, 188 P.3d 1092 (2008).

Attached as Exhibit 1is the BAKST INTERVERNORS' Brief in Intervention.

II. POINTS & AUTHORITIES

BAKST INTERVENORS' ability to intervene in the above-captioned matter is governed by NRCP 24 and NRS 12.130. NRCP 24 provides as follows:

> **RULE 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 the applicant's interest is adequately represented by existing parties.
> **(b) Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
> **(c) Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

As set forth in NRCP 24(a), "Upon timely application anyone shall be permitted to intervene in an action... 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 the applicant's interest is adequately represented by existing parties." See *Bartlett v. Bishop*, 59 Nev. 283 (1939).

.../

The BAKST INTERVENORS are individual taxpayers who own residential real estate in either Incline Village or Crystal Bay, Nevada and have a judgement in their favor which was affirmed by the Nevada Supreme Court .

By way of background, the BAKST INTERVENORS contested their taxable values determined by the then Washoe County Assessor all the way to the Nevada Supreme Court for the tax years 2003/2004 and 2004/2005. The BAKST INTERVENORS were awarded two judgments pursuant to NRS 361.420 indicating their respective taxable values of their residences had been determined in violation of Art. 10, Sec. 1 of the Nevada Constitution. The BAKST INTERVENORS had finally resolved all of their outstanding matters with the Washoe County Assessor during calendar year 2008 for all tax years through 2012/2013.

The SBOE recently rendered an Order on February 8, 2013 directing the Washoe County Assessor to "reappraise all residential property in Incline Village and Crystal Bay." *See* Exhibit 2: SBOE Order @ p. 9, paragraphs 1-2. The SBOE order dated February 8, 2013 directed the Washoe County Assessor to reappraise "all residential properties" which would include the residential properties owned by the BAKST INTERVENORS.

Thus, even though the BAKST INTERVENORS have a final judgment affirmed by the Nevada Supreme Court determining their respective taxable values for the 2003/2004 and 2004/2005 tax years, the SBOE has ordered the Washoe County Assessor to disregard the BAKST INTERVENORS' final judgments and to "reappraise" their residences. Currently, in Case No. CV03-06922, the existing parties to that case cannot protect or adequately represent the interests of the BAKST INTERVENORS because no parties in Case No. CV03-06922 were parties in *Bakst*, save and except Barta. Even though Barta was a party in *Bakst*, his interests were different than the balance of the parties in that case as he is a party in Case No. CV03-06922.

It is a fundamental tenant of tax law that "where a claim relating to a particular tax year is litigated to a judgment on the merits, that judgment is *res judicata* as to any subsequent proceedings involving the same claim and the same tax year." See *CIR Sunnen*, 331 U.S. 591, 68 S.Ct. 715, 92 L.Ed. 898 (1948). Moreover, a judgment on the merits between the same party

operates as an estoppel not only as to every matter which was offered and received, but as to every other matter which might with propriety have been litigated and determined. *International Curtis Machine Turbine v. U.S.*, S.Ct. 56 F.2d 708 (1932). The BAKST INTERVENORS are protected by these principles with regard to this matter before the court.

Further, NRS 12.130 provides any person with the right to participate in an action or proceeding if that person has an interest in the matter being litigated. Specifically, NRS 12.130 provides as follows:

> **Intervention: Right to intervention; procedure, determination and costs; exception.**
> 1. Except as otherwise provided in subsection 2:
> (a) Before the trial, any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both.
> (b) An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant.
> (c) Intervention is made as provided by the Nevada Rules of Civil Procedure.
> (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.
> 2. The provisions of this section do not apply to intervention in an action or proceeding by the Legislature pursuant to NRS 218F.720.

Case No. CV03-06922 clearly is either an action or a proceeding as defined by NRS 12.130(1)(a). The SBOE in its decision has ordered the Washoe County Assessor to reappraise all the residential properties in Incline Village and Crystal Bay which would include the residences owned by the BAKST INTERVENORS. Based 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. *State v. Wright*, 10 Nev. 167 (1875).

.../

.../

.../

III. CONCLUSION

Based on the foregoing points, it is clear that the BAKST INTERVENORS have a direct interest in the matter being litigated before the Court and should be granted intervener status as provided in NRCP 24 and NRS 12.130.

DATED this 28th day of March, 2013.

NORMAN J. AZEVEDO, ESQ.
State Bar No. 3204
405 North Nevada Street
Carson City, NV 89703
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2013, I placed a copy of the **MOTION TO INTERVENE**, in the U.S. Mail, postage pre-paid, addressed as follows:

Suellen Fulstone, Esq.
Snell & Wilmer LLP
50 West Liberty Street, Suite 510
Reno, NV 89501
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Civil Division
P.O. Box 30083
Reno, NV 89520

Johanna Maher

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, MOTION FOR LEAVE OF COURT TO FILE MOTION TO INTERVENE in Case No. CV03-06922, DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.

DATED this 28th day of March, 2013

NORMAN J. AZEVEDO, ESQ.
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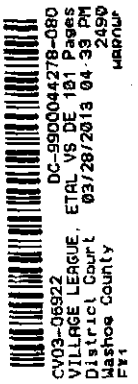
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EXHIBIT 1

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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., a Nevada non-profit corporation, on behalf of their members and others similarly situated; MARYANNE INGEMANSON, Trustee of the Larry D. and Maryanne B. Ingemanson Trust; DEAN R. INGEMANSON, individually and as Trustee of the Dean R. Ingemanson Trust; J. ROBERT ANDERSON; and LES BARTA; on behalf of themselves and others similarly situated; Petitioners, vs. STATE OF NEVADA on relation of the State Board of Equalization; WASHOE COUNTY; and BILL BERRUM, Washoe County Treasurer, Respondents.	Case No.: CV03-06922 Dept. No.: 7 **BRIEF IN INTERVENTION**

COME NOW Intervenors, Ellen Bakst, Jane Barnhart, Carol Buck, Daniel Schwartz, Larry Watkins, Don & Patricia Wilson and Agnieszka Winkler, hereinafter referred to as the BAKST INTERVENORS,[1] by and through its counsel of record, Norman J. Azevedo, Esq., and hereby submits its Brief in Intervention pursuant to NRCP 24.

---

[1] None of the BAKST INTERVENORS were or are a party to Case No. CV03-06922, yet somehow the State Board of Equalization has decided to extend its Equalization Order beyond the actual Petitioners to all of Incline Village and Crystal Bay. This extension by the State Board of Equalization includes the BAKST INTERVENORS.

POINTS & AUTHORITIES

A. BACKGROUND

Over ten (10) years ago, the BAKST INTERVENORS received notices of value from the Washoe County Assessor ("Assessor") that in many instances increased their taxable value of their homes as much as 300% from the previous tax year. In order to increase the taxable value of the residences in Incline Village and Crystal Bay, the Assessor changed his appraisal methodologies from the previous tax year. The lead Plaintiff in *State ex rel. State Bd. Of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717, 719-720 (2006) "*Bakst I*" was Dr. Alvin Bakst. Dr. Bakst and the other property owners were resolute in their conviction that the Assessor's appraisal methodologies (view classifications, rock classifications, time adjustments and tear downs), were discriminatory and resulted in a violation of their constitutional right to a uniform and equal assessment pursuant to Article X, Section 1 of the Nevada Constitution. In furtherance of these convictions, the BASKT INTERVENORS proceeded through four (4) years of very contentious administrative and judicial litigation.

B. *BAKST I*

The Nevada Supreme Court, on December 28, 2006, rendered *State ex rel. State Bd. Of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717, 719-720 (2006), agreed with the BAKST INTERVENORS finding that the **Assessor had violated the Constitution** and the **Nevada Tax Commission** ("Commission") had been **derelict** in their **duties** for failing to properly adopt regulations that allowed the Assessor to perform his statutory and constitutional function. *See Bakst I* @ p.1416-1417. The BAKST INTERVENORS having prevailed on a four (4) year highly contested tax case, rightfully assumed the case was concluded because they had received a "**Final Decision**" in their favor from the Nevada Supreme Court adverse to the State Board of Equalization "SBOE," the Commission and Washoe County.

Six (6) years after the Nevada Supreme Court rendered its final decision in *Bakst I*, the SBOE, as if the *Bakst I* decision had never been rendered, ordered the Assessor to go out and reappraise the BAKST INTERVENORS' homes in Incline Village and Crystal Bay, for tax years 2003/2004, 2004/2005 and 2005/2006. *See* SBOE Equalization Order dated February 8, 2013.

The *Bakst I* case finally adjudicated all claims for the 2003/2004 tax year. Even though *Bakst I* had finally adjudicated on the merits, all claims for the 2003/2004tax year, the SBOE Equalization Order did not direct the Assessor to exclude the BAKST INTERVENORS from the recently ordered reappraisal.

Since the BAKST INTERVENORS have a final decision from the Nevada Supreme Court addressing their taxable values for 2003/2004 and 2004/2005, a review of the arguments before the Nevada Supreme Court in *Bakst I* and *Bakst II* will provide the Court with the understanding that the recent SBOE Equalization Order directing a reappraisal of Incline Village and Crystal Bay is nothing more than a rehash of the same arguments made to the Nevada Supreme Court by the SBOE and County in *Bakst I* and *Bakst II*, all of which were rejected by the Nevada Supreme Court.

While the Nevada Supreme Court focused primarily on the constitutional requirements attributable to the determination of taxable value by the Assessor in *Bakst I*, that was only one of many issues litigated in that case by the BAKST INTERVENORS, the State and County.

The BAKST INTERVENORS will illustrate for the Court that all of the issues pertinent to the SBOE Equalization Order have been previously raised in the proceedings both administratively and judicially, and ultimately decided by the Nevada Supreme Court. Specifically, the following points were litigated by the parties during the administrative and judicial action in *Bakst I*:

1. The failure of the SBOE to equalize taxable values pursuant to NRS 361.395.

2. The threat of a retaliatory valuation (100% of F.M.V.) by the SBOE to TAXPAYER BAKST if the SBOE would be required to perform its equalization function as provided for in NRS 361.395.

3. That the refund remedy being sought by the BAKST INTERVENORS was an incorrect remedy and that it was necessary to remand the case to the SBOE to reappraise not only the BAKST INTERVENORS, but all residential properties in Incline Village and Crystal Bay.

.../

.../

C. *BAKST II*

After the Nevada Supreme Court rendered its decision in *Bakst I*, the State and County refused to correct the taxable values for the next succeeding tax year 2004/2005, claiming that because the 2004/2005 taxable values of the residential properties in Incline Village and Crystal Bay had been determined utilizing a statutorily prescribed method of valuation, namely "factoring," that the BAKST INTERVENORS were required to once again receive a decision from the Nevada Supreme Court addressing the taxable value of their residences for the 2004/2005 tax year. In *State ex rel. State Board of Equalization v. Barta*, 124 Nev. 58, 188 P.3d 1092 (2008) "*Bakst II*," the Supreme Court again rejected all of the arguments of the County and State and ordered a refund for the 2004/2005 tax year. The recent SBOE Equalization Order again directed the Assessor to reappraise the BAKST INTERVENORS' properties for the 2004/2005 tax year even though the BAKST INTERVENORS have a final decision from the Nevada Supreme Court addressing the 2004/2005 tax year.

D. THE SBOE EQUALIZATION ORDER DATED FEBRUARY 8, 2013

Recently, the SBOE held a series of hearings and published notifications in a variety of newspapers, but never specifically noticed any of the BAKST INTERVENORS regarding the equalization hearings, even though the BAKST INTERVENORS had received final judgments for all of the years that were before the SBOE on its equalization matters. In the SBOE Equalization Order, pertinent to the BAKST INTERVENORS, the following portions are relevant for the Court's consideration:

> The Department comments that NAC 361.652 defines "equalized property," which means to "ensure that the property in this state is assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law." The Department further commented that there is insufficient information in the record to determine whether the methods of appraisal used on all the properties at Incline Village were not uniform. In addition, the Department recommended that the State Board examine the effects of removing the unconstitutional methodologies to determine the resulting value and whether the resulting value complies with the level of assessment required by law.

As stated above, in the SBOE Equalization Order the findings indicate the only "party" that suggested that Incline Village and Crystal Bay were out of equalization was the Department and not Washoe County. Based on this finding, the SBOE rendered the following Order:

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

E. LEGAL ARGUMENTS

1. Generally

The primary substantive issue before the Court in Case No. CV03-06922 is equalization pursuant to NRS 361.395, and the ability or the proper remedy of the State and County within the context of a finding that certain parcels may be out of equalization. Specifically, as noted above, the SBOE ordered a reappraisal of Incline Village and Crystal Bay's residential properties for the 2003/2004, 2004/2005 and 2005/2006 tax years. This Order by the SBOE did not exclude any of the residential properties in Incline Village or Crystal Bay. As such, all of the residential properties of the BAKST INTERVENORS are going to be reappraised as provided for in the SBOE Equalization Order.

Even though the BAKST INTERVENORS have final decisions for the three (3) tax years that are the subject of the SBOE Equalization Order, the SBOE did not exclude those properties from its Order. This failure on the SBOE to exclude the BAKST INTERVENORS' residences from the SBOE Equalization Order can be explained by reviewing the advice provided to the SBOE during the deliberative phase of the SBOE hearing, prior to rendering its Equalization Order. Specifically, the Deputy Attorney General advising the SBOE provided as follows:

> MEMBER JOHNSON: .... What can we or can't we do as a board?
> MS. BUONCRISTIANI: I think if you look at your writ of mandate, I **agree with what Dennis was**

> **saying in that it leaves it pretty open as to what you can do. I'm not sure, and I couldn't tell you that I agree with Ms. Fulstone in terms of you are limited to what the Supreme Court has said in Bakst or Barta.** Because you have the opportunity.
> This is very similar properties, but these, this is a hearing where you're taking information. And for you to ignore information that you take or that you could take there wouldn't be a purpose to the hearing. Does that answer your question?
>
> [Emphasis Added]
>
> *See* Transcript of Department of Taxation State Board of Equalization, December 3, 2012 @ p.71 & p.72.

Given that legal advice, the SBOE rendered the Equalization Order. The SBOE ordered a reappraisal of the residences in Incline Village and Crystal Bay based on the advice of the Deputy Attorney General that the SBOE was not constrained by two (2) Nevada Supreme Court decisions, namely *Bakst I* and *Bakst II*. The Deputy Attorney General advised the SBOE that it was not constrained by *Bakst I* and *Bakst II*, even though Bakst I and *Bakst II* specifically litigated the identical facts present before the SBOE, and addressed legal arguments pertinent to both the unconstitutional valuations and assessments of ad valorem property tax that occurred in Incline Village and Crystal Bay for the 2003/2004 and 2004/2005 tax years, and also legal arguments regarding the failure of the SBOE to equalize pursuant to NRS 361.395.

2. The SBOE Equalization Order violates the BAKST INTERVENORS' Taxpayers' rights as no further action is permissible as the Assessor and SBOE are collaterally estopped for taking any action as to the 2003/2004, 2004/2005 and 2005/2006 tax years and the *Bakst I* and *Bakst II* are *res judicata* to the current action

In tax cases, the legal principals of collateral estoppel and *res judicata* are applicable to prohibit vexatious litigation by the Government adverse to Taxpayers, as well as prohibiting Taxpayers from re-litigating the same issue over and over again . *See* e.g. NRS 372.775 [*res judicata* and collateral estoppel applicable to sales tax]. Previously, the Nevada Supreme Court on two (2) occasions has specifically addressed the application of the doctrine of *res judicata* in

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the ad valorem property tax context. *See Kroeger Properties & Development, Inc. v. Douglas County Commissioners*, 101 Nev. 583, 707 P.2d 544 (1985). *Bissell v. College Development Co.*, 89 Nev. 558, 517 P.2d 185 (1974).

Based on the above stated Supreme Court decisions, the *stare decisis* in the State of Nevada has long observed that *res judicata* (claim preclusion) and collateral estoppel (issue preclusion), are related but distinct preclusion doctrines and are applicable to tax matters. The judicial doctrine of *Res judicata* prevents re-litigation of claims, i.e. it "puts an end to the cause of action, which cannot be brought into litigation between the parties upon any ground whatever," regardless of whether that ground or issue was actually litigated when the claim was first adjudicated. *See Nevada v. United States*, 463, U.S. 110, 129-30 (1983). By contrast, collateral estoppel precludes re-litigation of particular issues. Collateral estoppel operates to preclude litigation of a particular issue in a second suit even if the claim for a cause of action involved in the second suit is different from a previous adjudicated claim involving the same issue, but only if the issue was actually litigated in connection with the prior claim. *See Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326 (1979). *See International Curtis Machine Turbine v. U.S.*, S.Ct. 56 F.2d 708 (1932).

The definitive case addressing the application of *res judicata* and collateral estoppel in a tax matter is *CIR Sunnen*, 331 U.S. 591, 68 S.Ct. 715, 92 L.Ed. 898 (1948). While the tax in issue before the United States Supreme Court in *Sunnen* was an income tax, the conclusions of the U.S. Supreme Court in *Sunnen* have been adopted by the Nevada Supreme Court in applying the judicial doctrine of *res judicata* and collateral estoppel in tax cases. *See* Case No. 25948 *Imperial Palace v. Nevada Department of Taxation*.[2] *See* Exhibit 5. Accordingly, a detailed review of the U.S. Supreme Court's reasoning and holding in *Sunnen* is warranted in this case. Specifically, the Supreme Court in *Sunnen* concluded as follows:

.../

.../

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[2] Reference to unpublished decision No. 25948 is done pursuant to Supreme Court Rule 123, and is being offered as an example of a rule of the case.

a. The U.S. Supreme Court in *Sunnen* explains the doctrine of *res judicata* as follows:

> The general rule of res judicata applies to repetitious suits involving the same cause of action. It rests upon considerations of economy of judicial time and public policy favoring the establishment of certainty in legal relations. The rule provides that 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 claim or demand but as to any other admissible matter which might have been offered for that purpose." Cromwell v. Sac County, 94 US 351, 352, 24 L ed 195, 197. The judgment puts an end to the cause of action which cannot again be brought between the parties upon any ground whatever absent fraud or some other factor invalidating the judgment.
>
> *See Sunnen* @ p.596, 597.

b. The U.S. Supreme Court explains the difference between *res judicata* as compared to collateral estoppel as follows:

> But where the second action between the same party is upon a different cause or demand the principal of res judicata is applied much more narrowly. In this situation, the judgment in the prior action operates as an estoppel, not as to matters which might have been litigated and determined, but "only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. See Cromwell v. Sac County, 94 US 351, 352, 24 L ed 195, 197. ...
>
> Since the cause of action involved the second proceeding is not swallowed in the prior suit, the parties are free to litigate points that were not issue in the first proceeding, even though such points might have been tendered and decided at that time. But matters which were actually litigated and determined in the first proceeding cannot be relitigated. Once a party has fought out a matter in litigation with the other party, he cannot later renew that duel. In this sense, res judicata is usually and more accurately referred to as estoppel by judgment or collateral estoppel. ...
>
> *See Sunnen* @ 598.

.../

c. The U.S. Supreme Court explains the application of *res judicata* in a tax case as follows:

> ... Taxes are levied on an annual basis. Each year is the origin of a new liability and of a separate cause of action thus if a claim of liability or non liability relating to a particular tax year is litigation a judgment on the merits is res judicata as to any subsequent proceeding involving the same claim and the same tax year. ..
>
> *See Sunnen* @ 598.

d. The U.S. Supreme Court explained when a claim constitutes a separate claim in a tax case.

> ... If the later proceeding is concerned with a similar or unlike claim **relating to a different tax year,** the prior judgment acts as a collateral estoppel only as to those matters in the second proceeding which were actually presented and determined in the first suit.
>
> [Emphasis Added]
>
> *See Sunnen* @ 598, 599.

Applying the legal principals set forth in *Sunnen* to the facts of this case result in the inevitable conclusion that the SBOE is estopped from reappraising the BAKST INTERVENORS' residences for the 2003/2004, 2004/2005 and 2005/2006 tax years. The SBOE has ordered the Assessor to reappraise the residences of the BAKST INTERVENORS, and if such reappraisal indicates that a higher value is warranted, then a second hearing will occur wherein the BAKST INTERVENORS will be required to re-litigate their taxable value for their homes for the same tax years upon which they have already received a final judgment on the merits. As provided for in *Sunnen*, because the SBOE is attempting to reappraise the **same tax years** that the BAKST INTERVENORS have final judgments on the merits, the SBOE and County are bound "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *See Cromwell v. Sac County*, 94 US 351, 352, 24 L ed 195, 197. The SBOE must accept once and for all, as very aptly articulated in *Sunnen*, " Once a party has fought out a

matter in litigation with the other party, he cannot later renew that duel." The duels engaged during the pendency of *Bakst I* and *Bakst II* were contentious, exhaustively litigated between the parties on all factual and legal points and there was nothing left on the table at that time by either party. The SBOE Equalization Order is a direct attempt to start the valuation process all over for the three (3) tax years previously resolved by the Nevada Supreme Court. The case is over and has been for five (5) years to six (6) years.

Even if the Court cannot conclude somehow that the judgments in *Bakst I, Bakst II* and the administrative decision from the SBOE for tax year 2005/2006 constitutes estoppel by judgment or *res judicata* , the SBOE and Assessor are collaterally estopped from proceeding forward, as all of the issues present in the case before the Court have previously been litigated by the parties. Specifically, the parties argued the failure of the SBOE to equalize pursuant to NRS 361.395, as well as whether the correct remedy in the case should have been a reappraisal of the residential properties in Incline Village and Crystal Bay, as opposed to a refund.

During *Bakst I, Bakst II*, and the proceedings before the SBOE for 2005/2006, the following points were exhaustively litigated by the parties.

(i) The failure of the SBOE to equalization pursuant to NRS 361.395 was raised in *Bakst I* and *Bakst II*

The issue regarding the failure of the SBOE to equalize pursuant to NRS 361.395 was raised both in *Bakst I* and *Bakst II* cases. Specifically, the lead Plaintiff in *Bakst I*, namely Dr. Alvin Bakst, raised the failure of the SBOE to equalize pursuant to NRS 361.395. In the responding brief filed by the BAKST INTERVENORS in *Bakst I* before the Nevada Supreme Court, the following was offered:

> ***The STATE BOARD has never equalized pursuant to NRS 361.395(1)(b)***
> NRS 361.395(1)(b) requires the STATE BOARD to review the tax rolls as adjusted by the respective county board of equalization and to equalize and establish the taxable value of all property subject to the uniform and equal clause of the Nevada Constitution. The STATE BOARD has never discharged this function for the 2003-2004 tax year or for any other year that the TAXPAYERS are aware of. RA 2580-2581; RA 2606-2609.

> ..... The STATE BOARD in response to TAXPAYER BAKST's request for equalization pursuant to NRS 361.395(1)(b) threatened him with a retaliatory assessment. Specifically, STATE BOARD Member Johnson[3] stated:
>
> What Shelli is saying too is if you're going to have - we want all citizens of the state of Nevada treated equally and if Clark County is on the tax roll at 100 percent of their full cash value, Incline is on at 70 and Douglas is on at 60, we should find some way where they're all treated the same and **maybe we should bring them all up to 100 percent of market value and maybe that would be the most equitable thing.**
>
> AA 0696.
> [Emphasis added.]
>
> Accordingly, even though the STATE BOARD professes to adhere to the constitutional mandates of valuing property in a uniform and equal manner when requested by TAXPAYERS to equalize their property, the TAXPAYERS' requests have been either summarily dismissed as not relevant or threatened with a retaliatory assessment. AA 0696. STATE BOARD Member Johnson's statements to TAXPAYER BAKST cannot be reconciled with the statute since NRS 361.395(1)(b) requires property to be equalized to its taxable value which is always less than market value. NRS 361.227(5).
>
> *See* BAKST INTERVENORS' *Bakst I* Answering Brief @ p. 42:6:11 & p. 44:6-19. *See* Exhibit 1.

In *Bakst II*, once again the topic of NRS 361.395 on the equalization functions was raised during the administrative and judicial litigation. Specifically, in BAKST INTERVENORS' Answering Brief in *Bakst II* the following is provided.

H. A Remand is Not an Appropriate Remedy Given the Fact that the Commission and State Board have Failed to Timely and Properly Regulate and Equalize Values Pursuant to NRS 361.395

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[3] The Member Johnson referenced in this quote is not the same Member Johnson currently seated on the SBOE. The current Member Johnson on the SBOE is the son of the Board Member quoted above, which indirectly reflects how long this matter has been maintained by the State and County.

> Both the State Appellant and the County Appellant in essence, argue that the relief they are seeking from the Supreme Court is to "remand to the State Board for it to make findings as to the correct valuations under what this Court determines to be the regulations' validity in effect with respect to those valuations." *See* Opening Brief @ p. 17:22-24. Appellants' request for remand is both factually and legally inappropriate primarily attributable to the actions and inactions of the Commission, State Board and Assessor. Appellants suggest that by reducing the value of the 38 parcels, a roll back to 2002/2003 would create an inequality amongst taxpayers. Specifically, Appellants provide as follows:
> Additionally, the remedy given to the taxpayer should not create inequality among other taxpayers. *Imperial Palace*, 108 Nev. @ 1068, 843 P.2d at 818.
>
> *See* Opening Brief @ pp. 15:1, 16:1-2
>
> The Maddox Court and the Griffin Court both have concluded that the valuations performed by the Assessor for tax year 2003/2004 and tax year 2005/2005 have resulted in non-uniform and non-equal assessments of taxation. Thus, the purported inequality that Appellants suggest would occur as a result of the roll back to 2002/2003 is already present. It is the outright refusal of the Commission and State Board to apply the reasoning of *Bakst* to all similarly- situated parcels that continues to maintain the inequality.
>
> *See* Exhibit 2 @ p.29:25-28, p.30:1-18.

As shown by the excerpt from the BAKST INTERVENORS' Responsive Brief in Exhibit 2, the SBOE long ago began its crusade to persuade the Nevada Supreme Court to reappraise Incline Village and Crystal Bay as opposed to paying a refund within the context of *Bakst II*. In furtherance of its desire to revalue the residential properties in Incline Village and Crystal Bay at 100% of their full cash value, as stated by Member Johnson, the SBOE argued to the Nevada Supreme Court in *Bakst II* as follows:

> The Bakst Respondents' rationale for not using a remedy in accord with the foregoing is illogical. On one hand, the Bakst Respondents posit that they only alternative to another rollback would be to reappraise the whole State of Nevada. Statewide reappraisal offers a hypothetically best case, one

> that the Bakst Respondents must realize will be reject because it is prohibitively expensive and, even assuming statewide lack of equalization, could only minimally affect statewide tax burdens. In the present case, it would be more appropriate to follow NRS 361.420(6) by reappraising and valuing the properties without using the point systems and view classifications.
>
> *See* Reply Brief of State Board of Equalization, Nevada Tax Commission, and Department of Taxation to Briefs on behalf of Respondents @ p.10-21-25, p. 11 @ 1-3. *See* Exhibit 3.

Accordingly, it is clear that the topic of equalization pursuant to NRS 361.395 was argued extensively in both *Bakst I* and *Bakst II*. Furthermore, the SBOE argued against a refund to the BAKST INTERVENORS and wanted the opportunity to do a reappraisal of Incline Village and Crystal Bay instead of giving a refund. The Nevada Supreme Court previously rejected all of these arguments and awarded the BAKST INTERVENORS a refund for both the 2003/2004, and 2004/2005 tax years. The SBOE similarly issued an administrative decision for 2005/2006, once again awarding a refund to the BAKST INTERVENORS.

While the BAKST INTERVENORS do believe that the SBOE should discharge its equalization function as required by NRS 361.395, it cannot do so retroactively. The BAKST INTERVENORS were never a party to Case No. CV03-06922, as such that case cannot extend to them retroactively as contemplated by the SBOE Equalization Order. This is true whether the results of a reappraisal would generate a further refund or indicate a different value is required. The tax years which are the subject of the SBOE Equalization Order are closed as to the BAKST INTERVENORS. Furthermore, as discussed below, those tax years are closed for all property owners because the SBOE has no authority to issue deficiencies for previous tax years.

(ii) *The SBOE does not have jurisdiction to order the Assessor to reappraise the residential properties in Incline Village and Crystal Bay*

The SBOE, without exception, argues to all Courts in the State that "The State Board is a state executive branch agency with special and limited jurisdiction. See *State v. Central Pac.*

.../

.../

R.R. Co., 21 Nev. 172, 26 P. 22, 226 (1891) ("A Board of equalization is of special and limited jurisdiction, and, like all inferior tribunals, has only such powers as are specially conferred upon it.") *See* Exhibit 4 @ p.4:13-16.

NRS 361.395 provides as follows:

> **NRS 361.395 Equalization of property values and review of tax rolls by State Board of Equalization; notice of proposed increase in valuation.**
>
> 1. During the annual session of the State Board of Equalization beginning on the fourth Monday in March of each year, the State Board of Equalization shall:
>
> (a) Equalize property valuations in the State.
>
> (b) Review the tax rolls of the various counties as corrected by the county boards of equalization thereof and raise or lower, equalizing and establishing the taxable value of the property, for the purpose of the valuations therein established by all the county assessors and county boards of equalization and the Nevada Tax Commission, of any class or piece of property in whole or in part in any county, including those classes of property enumerated in NRS 361.320.
>
> 2. If the State Board of Equalization proposes to increase the valuation of any property on the assessment roll, it shall give 10 days' notice to interested persons by registered or certified mail or by personal service. The notice must state the 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.

NRS 361.395 does not authorize SBOE to direct any Assessor to take any action. NRS 361.395 only permits the SBOE to review tax rolls except reviewing tax rolls as part of its equalization. Clearly, if as represented by the SBOE, it is a Board of limited and special jurisdiction, there would need to be some statute or regulation that bestowed that power upon the SBOE. NAC 361.665 provides in pertinent part as follows:

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> **NAC 361.665 Hearing on preliminary finding: Order of State Board; additional hearing following order for reappraisal.** (NRS 361.375, 361.395)
>
> 1. Upon the completion of a hearing scheduled pursuant to NAC 361.664, the State Board will issue: ...
>
> **(c) An order requiring the reappraisal by the county assessor of a class or group of properties in a county; or**
>
> 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 ...
>
> [Emphasis Added]

Therefore, the SBOE does have the authority from 2010 forward to order the Assessor to reappraise a class or group of property within the County. What the SBOE does **not** have is the authority to require an Assessor to reappraise property ten (10) years in arrears or reappraise retroactively.

Chapter 233B of the NRS provides that regulations adopted by an agency of the State of Nevada are not effective until after the agency has complied with all of the administrative requirements of Chapter 233B of the NRS applicable to the adoption regulations by State agency (see NRS 233B.0395 et seq.) and the Legislative Counsel Bureau files the regulation with the Secretary of State. *See* NRS 233B.040. Specifically, NRS 233B.070(1) provides as follows:

> **NRS 233B.070 Effective date of permanent, temporary and emergency regulations; dissemination of regulations; duties of Secretary of State.**
>
> 1. A permanent regulation becomes effective when the Legislative Counsel files with the secretary of State the original of the final draft or revision of a regulation, except as otherwise provided in NRS 293.247 or where a later date is specified in the regulation.

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.../

NAC 361.665 did not become effective until 2010, long after the BAKST INTERVENORS cases were final and the tax years which are the subject of the SBOE's Order has long since closed. Since none of the BAKST INTERVENORS were a party to Case No.. CV03-06922, there is no lawful manner upon which unrelated parties to the BAKST INTERVENORS could initiate and maintain an action that could somehow disturb their final decisions in *Bakst I* and *Bakst II*. The Supreme Court in *Sunnen* did discuss the proper application of the doctrine of *res judicata* when there is a change in legal principals subsequent to the rendering of the first judgment. Specifically, *Sunnen* provides as follows:

> A taxpayer may secure a judicial determination of a particular tax matter, a matter which may reoccur without substantial variation for some years thereafter. But a subsequent modification of the significant facts or a change or development in the controlling legal principals may make that determination obsolete or erroneous for **future purposes**.
>
> [Emphasis Added]
>
> *See Sunnen* @ 599.

What appears to the BAKST INTERVENORS may have happened in that case is the Department and the SBOE after the conclusion of *Bakst I* and *Bakst II*, hatched an ill advised plan to collaterally attack the prevailing parties, namely the BAKST INTERVENORS, and other similarly situated Taxpayers who prevailed in *Bakst I* and *Bakst II*, when the Nevada Supreme Court issued its order on February 24, 2012. *See* Order Affirming in Part, Reversing in Part and Remanding. The question before tbe Court is whether a party to a litigation who was found by the Supreme Court to have been derelict in its duties, can adopt retroactive regulations to "claw back" what has already been lost. There is no legal authority that can be found by the BAKST INTERVENORS that would permit such unprecedented and unlawful activity.

Equalization today in Nevada does not exist. The Court should challenge the SBOE to substantiate its findings in its Equalization Order. Any Taxpayer who is vigilant in verifying his taxable value can check from County Assessor to County Assessor in the State of Nevada and quickly verify that taxable values and methodologies for valuation vary from County to County. The SBOE should endeavor to discharge its constitutional function on a prospective basis with

the hope that one day equalization will occur in the State of Nevada, given the fact that prior to 2006/2007, it appears the SBOE never discharged is constitutional function as set forth in NRS 361.395.

The application of *res judicata* and collateral estoppel in tax cases is of vital importance because without exception one of the parties to the litigations is a Government agency. Since one party to a tax case is the Government, the application and enforcement against the Government of this judicial doctrine is strictly adhered to. Otherwise, the Government, or in this case the SBOE, could lose a case and after such a loss, promulgate new regulations or statutes, then retry the case utilizing the new retroactive regulations or statutes, thereby effectively re-stacking the deck so that the re-litigation of the issue would place the Taxpayer in an un-winnable scenario. This is exactly what is occurring in this case. The SBOE in its Response to Plaintiff's Objection provides as follows:

> Similarly in this case, retroactive application of the equalization regulations is, not only legally correct, but it provides uniformity and equality because the State Board, for reasons explained above, previously had no standard by which it could equalize large areas of the state.
>
> *See* State's Response to Plaintiff's Objection to SBOE Report and Order @ p.11:22-24, p.12:1.

The SBOE adopted new regulations in 2010 regarding equalization which are being implemented against the BAKST INTERVENORS as set forth in the Equalization Order. The SBOE does not hide the fact that it promulgated new law to utilize not only against the Petitioners in this case, but against the BAKST INTERVENORS, all of whom have a final judgment. As stated in *Sunnen*, when the Government, in this case the SBOE, changes the controlling legal principals after the issuance of the first judgment, the change in the controlling legal principals may make the judgment or erroneous but only for **"future purposes."** *See Sunnen* @ 599.

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(iii) Contrary to the assertions of the SBOE, the equalization process embodied in NRS 361.395 is not intended to balance the State Budget

The SBOE describes the purpose of the equalization process as follows:

> "The State Board was to assure there would be enough assessed value to support the expenses in the State budget."

See State's Response to Plaintiff's Objection to SBOE Report and Order @ p.4:14-15

The single statement by the SBOE in its response explains the reasoning and rationale of the SBOE in issuing its Equalization Order. The Equalization Order is nothing more than an attempt and hope to raise additional tax revenue. As stated above, the State, after having been found to violate the Nevada Constitution, is implementing a process with the hope of "clawing" back the tax dollars it lost. In order to revive a new tax process, the SBOE must justify to the Court the following of its actions:

1. Disregarding two (2) Supreme Court decisions that have already rejected the request of the SBOE to do a reappraisal of the residents of Incline Village and Crystal Bay.

2. Disregarding the well established judicial doctrines of collateral estoppel and *res judicata.*

3. Extending CV03-06922 to the BASKT INTERVENORS, and other similarly situated Taxpayers who previously have never been a party to the case.

4. Disregarding the fact that there is no provision in Chapter 361 of the NRS that would permit either a reappraisal of the BAKST INTERVENORS' homes, or a statutory provision that would permit a retroactive billing to the BAKST INTERVENORS, or any other party.

The only reasonable explanation why Nevada SBOE would attempt to initiate a tax process ten (10) years in arrears with absolutely no legal support for the same is to collaterally attack its losses in *Bakst I* and *Bakst II.*

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.../

(iv) The SBOE cannot equalize retroactively residential property in Incline Village and Crystal Bay

Chapter 361 of the Nevada Revised Statutes govern the imposition of the ad valorem property tax which is the subject of the case before the Court. The SBOE Equalization Order requires the Assessor to revalue all residential property in Incline Village and Crystal Bay and it seems that to the extent the reappraisal indicates the taxable value is too low, then a second hearing will occur.

Chapter 361 of the NRS does not contain a provision that allows retroactive billings or deficiency determinations to be issued by the SBOE, Commission, or the County. In Nevada, for other taxes, there are statutory provisions that permit retroactive billings, namely NRS 360.300 et seq., but those statutory provisions are inapplicable to the taxes levied pursuant to Chapter 361 of the NRS. Therefore, irrespective of the outcome from the reappraisal, there is no provision in law that allows a retroactive billing adverse to a property owner, let alone ten (10) years in arrears.

A review of the statutory provisions in Chapter 361 further support that a retroactive billing by the SBOE or Assessor, would constitute a due process violation because all statutory time lines have expired. Specifically, the following deadlines are applicable in Chapter 361 of the NRS.

The notice of the Assessor's determination of taxable value is transmitted in the latter part of November or early December of the calendar year preceding the tax year in question. *See* NRS 361.260. For example, for tax year 2003/2004, the notice of taxable value was required to be transmitted by the Assessor in the latter part of November 2002, or early December 2002. If an Incline Village resident wanted to appeal the taxable value determination for a particular tax year, that resident was required to file an appeal by January 15 of 2003. *See* NRS 361.356. Accordingly, the time frame for all tax years which are the subject of the Equalization Order have lapsed.

The County Treasurer, based on the Assessor's determination of taxable value, calculates the ad valorem tax due and bills the same on the secured tax roll pursuant to NRS 361.300.

Once the ad valorem tax bill is calculated, then the abatement provisions set forth in NRS 361.471 to NRS 4735, are applied to the ad valorem tax bill to provide that such bill can only increase from the previous tax year by 3% for primary residences and 8% for all other property. If a Taxpayer believes there is an error in the abatement calculation for a particular tax year, there is a statutory process that allows the Taxpayer to dispute the same. The Assessor explains very well the process and the time lines a Taxpayer must follow in order to avail oneself of the contested case process. A Taxpayer must file a written Petition with either the Assessor or the Treasurer by a specific time. For all tax years prior to 2009/2010, the Petition deadline was January 15. For example, appeals of abatement calculation for 2008/2009 were due on January 15, 2009. For all tax years after 2009/2010, the appeal must be filed with the Assessor by June 30 of the current fiscal year. For example, appeal of abatement calculations for 2011/2012 must be filed not later than June 30, 2012. On the Assessor's Website these requirements and time lines are fully explained.

The abatement provisions were not added to Chapter 361 until the 2005 Legislative Session. The abatement provisions are cumulative from year to year. Consequently, a retroactive change to a property owner's taxable value will have a ripple effect from the date of the change through the current tax year. The Incline Village and Crystal Bay homeowners will have no process to contest this change because all of the deadlines will have lapsed from 2005/2006 through tax year 2011/2012. If the Court supports the SBOE Equalization Order, the Taxpayers will have no process to dispute the abatement calculation.

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CONCLUSION

The Nevada Supreme Court in *Bakst I* made a very important finding for this Court's consideration in Case No. CV03-06922. Specifically, the Nevada Supreme Court in *Bakst I* found as follows:

> Neither of those regulations gave the County Assessors the guidance they needed to perform their responsibilities or uniformly apply the statutes, ...
> The Assessor violated the Constitution
> In the absence of guidance from the Tax Commission, the County Assessors in 2002 had to find their own methodologies for assessing property values. ...
>
> *See Bakst* I @ p. 1417.

It begs the question, if the Assessors did not have the sufficient regulations in 2002 to calculate the 2003/2004 taxable value, how did the passage of ten (10) years change this fact? The SBOE has directed the Assessor to do what he could not do in the first instance. The Equalization Order as to the BAKST INTERVENORS must be dismissed as the BAKST INTERVENORS have final decisions for each of the three (3) tax years referenced in the Equalization Order.

Dated this 28 day of March, 2013.

NORMAN J. AZEVEDO, ESQ.
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Attorney for Petitioners

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of March, 2013, I placed a copy of the **BRIEF IN INTERVENTION**, in the U.S. Mail, postage pre-paid, addressed as follows:

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Johanna Maher

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, BRIEF IN INTERVENTION in Case No. CV03-06922, DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.

DATED this 28th day of March, 2013

NORMAN J. AZEVEDO, ESQ.
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EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, ex rel. STATE BOARD OF EQUALIZATION, an agency of the State of Nevada; WASHOE COUNTY, a subdivision of the State of Nevada; WASHOE COUNTY ASSESSOR; NEVADA TAX COMMISSION; and NEVADA DEPARTMENT OF TAXATION,

Appellants,

vs.

ALVIN BAKST, JANE BARNHART, LESLIE BARTA, ROBERT BENDER, ROGER LEACH, PAUL LEVY, BYE BYE BENTON, LLC., MAUREEN MORIARTY, ZOE MYERSON, JAMES NAKADA, TOOMAS REBANE, DANIEL SCHWARTZ, JERRY STEWART, LARRY WATKINS, DONALD WILSON, AGNIESZKA WINKLER, and ESMAIL ZANJANI,

Respondents.

Supreme Court Case No. 46752

District Court Case No. 03-01501A

RESPONDENTS' ANSWERING BRIEF

COME NOW Respondents represented by NORMAN J. AZEVEDO, ESQ., and pursuant to the Court's May 3, 2006 Order, respectfully submit their Answering Brief. The undersigned counsel only represents Respondents Bakst, Barnhart, Bender, Leach, Moriarty, Myerson, Nakada, Rebane, Schwartz, Stewart, Watkins, Wilson, Winkler & Zanjani (hereinafter referred to as "TAXPAYERS").

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I. STATEMENT OF THE CASE

The framers of the Nevada Constitution promised the citizens of the State of Nevada through Nev. Const. Art. 10, §1 that the legislature would provide a system of assessment and taxation that would secure a **just valuation** of all property, whether real, personal and/or possessory, which results in a **uniform and equal rate of assessment and taxation.** The Nevada Legislature has honored this promise to the citizens of the State of Nevada through the promulgation of the statutes set forth in Chapter 361 of the NRS. The State Board of Equalization ("STATE BOARD") and the Washoe County Assessor ("ASSESSOR") however, broke this promise to the TAXPAYERS listed above through their administration of the ad valorem valuation system of taxation set forth by the Nevada Legislature in Chapter 361 of the NRS.

Judge Maddox in his January 13, 2006 Order concluded as follows:

> The individualistic approach of the appraisers have led to taxes that are not uniform and equal as required by the Nevada Constitution. Without standards regulating and maintaining the appraisers as a collective group, each is free to apply, and evidence has shown do apply, whatever method whenever they desire. As a result, any one property has seventeen (17) different values.
>
> AA 0755-0756.

The Department of Taxation ("DEPARTMENT") has independently confirmed this conclusion of the District Court through its special study of Incline Village and Crystal Bay. The fact that the residential properties in Incline Village and Crystal Bay are out of equalization is not in dispute by any of the Appellants with the exception of the ASSESSOR.

In this brief, TAXPAYERS will show without factual dispute that every statutory protection provided by the Nevada Legislature to assure that the ad valorem valuation system adhered to the uniform and equal mandates set forth in Nev. Const. Art. 10, §1 has failed. These statutory protections failed because the agencies charged with those statutory obligations either willfully failed to discharge their obligation or alternatively, discharged their statutory obligation in such a ill-chosen manner that in fact that statutory obligation was not discharged. TAXPAYERS will further show that when the property owners inquired about equalization, the STATE BOARD (the agency charged with this obligation) told them that their inquiry was either irrelevant or misplaced. In one instance, the

appraiser on the STATE BOARD even threatened a TAXPAYER with a retaliatory valuation raising his total taxable value to fair market value. All of this occurred because the STATE BOARD has never discharged its statutory mandate to equalize property value pursuant to NRS 361.395(6)(g).

The STATE BOARD and ASSESSOR alternatively have stated and will state to the Court that their administration of the ad valorem valuation laws of this State is an "art" not subject to codification in a regulation or otherwise. RA 1314. They will further state that each local assessor and every appraiser within their respective offices are free to adopt, without any public process, their own independent system of valuation and taxation for "land." It was the affirmation of the ASSESSOR's position in this regard by the STATE BOARD in its June, 2003 Decision that has resulted in the lack of equalization currently present in Incline Village and Crystal Bay. The Court should note that not one of the Appellants addressed the District Court's finding that the consequence of the June, 2003 Decision of the STATE BOARD has resulted in a violation of the uniform and equal mandates set forth in the Nevada Constitution. In the text of this brief, TAXPAYERS respectfully submit that no interpretation of any statute or statutes should be upheld when that interpretation results in a violation of Nevada Constitution's mandate that the ad valorem taxes be uniform and equal.

II. ISSUE

Whether the ASSESSOR has the authority pursuant to NRS 361.260(7) to adopt any standard or method of valuation he deems appropriate for ad valorem valuation purposes.

III. FACTS

A. The Taxable Value System

In Nevada, the ASSESSOR is required every year to determine the taxable value of all property located in their respective county. NRS 361.045. In the determination of taxable value, all assessors are required to comply with the statutes promulgated by the Nevada Legislature and the regulations prescribed by the Nevada Tax Commission ("COMMISSION"). NRS 360.250(2). The regulations on valuation prescribed by the COMMISSION are intended to insure uniformity and equality. NRS 360.215(2).

NRS 361.260(6) requires that an assessor reappraise property at least once every five years. In tax years in which the ASSESSOR did not reappraise as required by NRS 361.260(6), the taxable

value of property is determined through factoring which is another statutorily-prescribed manner of valuation. NRS 361.260(5). The factoring method of valuation requires the COMMISSION approve the taxable value of land for that section of the county subject to factoring. *Id.* As required by law, all property has its taxable value determined annually by one of two prescribed methods of valuation. The law permits the respective local assessor to select whether it will appraise all of its property annually or utilize the factoring methodology. *Id.* In Nevada, all local assessors utilize the factoring method in conjunction with a five-year reappraisal cycle with the exception of Clark County who reappraises annually and does not factor. RA 0726-0727. The factor method valuations are performed utilizing the same regulations on valuation of the COMMISSION as utilized for the valuations done during reappraisal. NAC 361.118, et seq.

B. The 2003-2004 Reappraisal of Incline Village and Crystal Bay

The ASSESSOR reappraised the Incline Village/Crystal Bay area for the 2003-2004 tax year. RA 0248. The ASSESSOR in conjunction with the COMMISSION determined the taxable value of land by utilizing the statutorily-prescribed factor method for the previous tax year 2002-2003. NRS 361.260(5)(b); RA 0661-0685. The ASSESSOR in many instances utilized the same comparable sales data for the 2002-2003 tax year to determine the taxable value of the TAXPAYERS' homes as was used for the 2003-2004 tax year. Even though the ASSESSOR used the same comparable sales data, the ASSESSOR significantly increased the taxable values of all TAXPAYERS' property for the 2003-2004 tax year. RA 0748. The ASSESSOR increased the taxable value of all of TAXPAYERS' property simply by changing the methodologies utilized to determine a property's respective taxable value. RA 0748.

After utilizing the disputed methodologies, the ASSESSOR acknowledged that the disputed methodologies resulted in many residences' total taxable value in Incline Village/Crystal Bay exceeding the parcels' respective fair market value. RA 0249. NRS 361.227(5) prohibits the taxable value of any parcel exceeding its market value. After acknowledging this fact, the ASSESSOR arbitrarily lowered the parcels' taxable value in order to adhere to the statutory mandate that a parcels' taxable value is not to exceed its full cash value. NRS 361.227(5); RA 0249. The ASSESSOR however, never addressed the equalization of the parcels in Incline Village and Crystal Bay when he

decided to arbitrarily lower the values determined by the four disputed methodologies. Moreover, the ASSESSOR failed to address the fact that the four disputed methodologies resulted in a factual violation of NRS 361.227(5).

C. The Disputed Methodologies

The ASSESSOR used the following standards/methodologies during their reappraisal of Incline Village/Crystal Bay for the 2003-2004 tax year.[1] The ASSESSOR created each of the disputed methodologies for the 2003-2004 tax year. RA 1754-1755; RA 2539-2540.

1. View Classification Standards

The ASSESSOR created a methodology/formula to determine the value of a residential parcel based on that parcel's respective view. The effect of the ASSESSOR's various view classification systems was that it singled out one attribute of real property and exalted the view attribute above all others and attempted to measure the view attribute as the primary indicator of value for the land. None of the view classification systems created by the ASSESSOR for the 2003-2004 tax year is in any statute or COMMISSION regulation. RA 2410. None of the view classification systems at issue in this case were utilized anywhere else in Washoe County or the State of Nevada. RA 0714-0715.

Depending upon the view classification attributed to a parcel of land, the respective taxable value of the land could increase as much as 368% **solely** attributable to the view classification given by the respective ASSESSOR appraiser. RA 0251-0255.

Prior to the County Board proceeding for the 2003-2004 tax year, TAXPAYERS' counsel requested from the ASSESSOR a copy of the applicable standards regarding the view classification system. RA 2232. In response to counsel's inquiry, a written document was produced setting forth six different view classifications. RA 0365. The view classification standard document produced set

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[1] Appellants argue to the Supreme Court that because the TAXPAYERS set forth the factual circumstances surrounding the four disputed methodologies, the TAXPAYERS were more concerned about the application of the standards and methodologies and not whether the standards and methodologies are required to be included in a properly-promulgated regulation. Appellants misconstrued the reason that the TAXPAYERS set forth all the facts associated with the disputed methodologies. It is necessary to factually address each of the four disputed methodologies because there is no written standard to rely upon, except the view book. Attached as Addendum 1 to this brief is a matrix showing which disputed methodologies were utilized against each TAXPAYER.

forth written standards to differentiate between each of the respective six view classification steps. It was represented by the ASSESSOR that in order to properly apply the written view classification standard, the view was to be measured from the main living area of the residence. RA 1361. During the reappraisal of Incline Village/Crystal Bay, the ASSESSOR did not request or demand access into any of the parcels that were subject to the view classification methodology. RA 1065.

Upon receipt of the written standards from the ASSESSOR, counsel for the TAXPAYERS took photos from within the TAXPAYERS' homes and attempted to reconcile the photos with the written standards previously provided by the ASSESSOR. RA 2138-2186. Comparing the views of the respective homes to the written standards, it became readily apparent that the ASSESSOR had grossly over-classified (valued) TAXPAYERS' view classification when compared to the written standards. RA 2138-2186.

The photos taken of the views from the respective homes were produced during the County Board proceeding and the respective views were compared to the written standards previously provided. RA 0764-0797. Once the appraisers for the ASSESSOR during the County Board hearing saw the pictures taken from the homes of the respective TAXPAYERS' residences and the attempts of the TAXPAYERS to correlate the actual view from the residence to the written standards, the ASSESSOR took action. Specifically, observing the TAXPAYERS' comparison of the photos to the written standard previously provided prompted Ernie McNeill, a Senior appraiser of the ASSESSOR, to announce during the course of the County Board proceedings that **"the written standards would no longer be used."** RA 1312. Until this point in time, the ASSESSOR had represented to the TAXPAYERS that the written standard was the applicable standard.

The reason the ASSESSOR denounced any reliance on the written standard was because the views from the respective TAXPAYERS' residences were significantly inferior than what the ASSESSOR had placed on the subject parcel during reappraisal which, if the written standards were in fact the applicable standard, then reliance on the written standards would result in a reduction in the land value of anywhere from $100,000 to several hundred thousand dollars. RA 0253-0256.

After the ASSESSOR abandoned the previously submitted written standards as the applicable

standard, the ASSESSOR stated that the new standards would be a picture book that had been recently compiled from the "inside views" of specific homes. RA 1322. The view book was yet a new standard that had not been applied during the ASSESSOR's reappraisal of Incline Village/Crystal Bay. RA 1160-1162. The view book contained 12 different view classifications while the written standards only contained six different view classifications.[2] Moreover, the view book represented photos taken of a lakeview from **inside a residence.** RA 1321-1322.

The ASSESSOR testified under oath that the view classifications for the 3,200 view parcels within the East Slope and West Slope during reappraisal was done by doing a "drive-by" or "windshield" appraisal.[3] RA 1065. Accordingly, based on the ASSESSOR's own testimony, they did not apply the view book standard because they did not **request** nor gain access to the 3,200 view parcels. The most troubling aspect of the view book standard was that the Chief Appraiser for the ASSESSOR testified under oath that in order to do the view book standard classification correctly, it must be done from within the home. RA 1360-1361. The ASSESSOR did not gain access to the TAXPAYERS' residences to apply the view book standards during his reappraisal of Incline Village/Crystal Bay. RA 1063-1070.

The County Board and STATE BOARD knew that the ASSESSOR did not gain access to the 3,200 homes and thus, the view book standard, as enunciated by the ASSESSOR, was not followed. RA 1160. Nonetheless, both the County Board and STATE BOARD supported the ASSESSOR's utilization of the view book standard. STATE BOARD Member Steve Johnson told the TAXPAYERS that, "Appraising is an art, it's not a science." AA 0482.

STATE BOARD Member Johnson also stated the following:

> "I have to say that this photo book that the Washoe County Assessor's

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[2] The ASSESSOR stated that they created one-half (½) classes for the purpose of providing a mechanism to give TAXPAYERS a reduction in value if they complained. RA 1547-1548.

[3] The term drive-by and windshield appraisal simply means in the context of the view classification standard, that the ASSESSOR drove by and guessed at what he believed the view to be from within inside the home. The drive-by appraisals were necessary because the ASSESSOR neither requested nor accessed all 3,200 parcels that he classified based upon its respective view.

> Office has put together is probably one of the best efforts, it is the best effort I've ever seen to stratify the views and assist somebody in interpreting the various view levels or view classifications in the basin. So I compliment the Washoe County Assessor's Office in that. It's very helpful. I will probably even use it with my staff."
>
> AA 0482.

It is unconscionable how the appraiser for the STATE BOARD could compliment the ASSESSOR for the use of the view book standard when the STATE BOARD knew that of the 3,200 view parcels, only a handful had an interior examination which, as stated by Steve Churchfield (Chief Appraiser for the ASSESSOR), is necessary to properly implement the alleged view book/ classification standard of the ASSESSOR. Moreover, the STATE BOARD knew that of the 50 clients having gone forward during the 2003-2004 tax year, 30 out of 50 were wrong with 29 being classified too high thus resulting in a significant over valuation and an error rate of 60%. RA 2186.

It even becomes more troubling when the statements of the other appraiser on the STATE BOARD directly contradict the statements of STATE BOARD Member Johnson. Specifically, STATE BOARD Member LOWE stated as follows:

> MEMBER LOWE: I have a question. I want to make sure that when you look at a view you're looking at it, it doesn't matter what room you're looking at it from because the view is a value to the lot. So whether the house is there or not, I mean, what if I had the best view in the world and I decided to build a house with no windows? Wouldn't I still have a view lot?
> MR. SAUER: No, probably not.
> MEMBER LOWE: That's the wrong answer.
> MR.SAUER: That's one opinion. For us to be consistent –
> MEMBER LOWE: No, it's not an opinion, it's a fact. If a view is an amenity of the lot and that's what you're adding it to, the lot is always valued as vacant and unimproved.
>
> AA 483.

Thus, based upon the comments of Board Member Lowe, the ASSESSOR's methodology requiring access to the main living area was in fact misplaced.

Prior to the County Board and STATE BOARD hearing, TAXPAYERS had no way of knowing that access to the residence was necessary or that there was a written view classification or a view book classification standard. There were other aspects of the view classification system that made it impossible for the TAXPAYERS to adequately address the ASSESSOR's determination of

their lands' respective taxable value. A list of the unresolved view classification issues that were never resolved with the ASSESSOR's View Classification Systems are as follows:

A) From what location within the home is the view classification to be determined?

1) Where a person is most likely to drink a glass of wine? RA 1530.

2) Leaning over an outside deck? RA 1125.

3) Peeking around the fireplace? RA 1530.

4) Peeking between homes? RA 1501.

5) From the land? RA 2483.

B) Is the view classification the same for a home who has a V-6 (panoramic view) out of one window and for a home who has a V-6 out of 20 windows? RA 0456-0457.

C) Why was the 12-step view classification only applicable to lake views?

D) Does the view from the parcel change when a home is torn down and a new home erected? RA 2058.

After hearing four days of testimony addressing the ASSESSOR's view classification systems, the County Board Members made the following comments regarding the ASSESSOR's view classification standard within the picture books:

> O'BRIEN: "I think there's probably a lot of lots in Incline that don't have the proper view classification..."
>
> RA 1287.
>
> OBESTER: "I think Mr. Azevedo has shown that the view classification cannot be relied upon..."
>
> RA 1295.
>
> ALLISON: "And I'm very troubled and I'm sure that the assessor's office is troubled. They just need to go and figure this out, to make a process that is absolutely more fair and more accurate on establishing values that are based on view, and I'm sure when they see these pictures that they know that they took a picture from the road because they didn't get in the house and what have you. There's just going to have to be an effort made to rectify this..."
>
> RA 1676.
>
> O'BRIEN: "I don't like half classes of views either. I think it's starting to get into the ridiculous."

RA 1561.

> O'BRIEN: "I think since it is such a big valuation, since it does affect the value so much up there, a lot of time does need to be given to these views, and my opinion is on reappraisal, they really ought to try to make an effort to get into every house to look at the view."

RA 1573.

Even though the County Board Members made the foregoing comments, the County Board applied the view classification standards as suggested by the ASSESSOR. The County Board upheld the ASSESSOR's view classification picture book standard even though the view book was not used by the ASSESSOR in performing his reappraisal of Incline Village/Crystal Bay. The decision to uphold was based on the following statement of the Chair of the County Board:

> O'BRIEN: "I would just say again I think we have to rely on the assessor to make these decisions. It is subjective, but hopefully, they're consistent, consistently right or wrong, but anyway, they've been in the field, they've looked at it, that's their opinion, so I would be inclined to uphold the assessor's valuation."

RA 1523.

The County Board Chair's hopes were misplaced as 30 out of 50 of the view classifications were wrong. RA 2186. The Chair of the County Board never knew this outcome as the results never occurred until the matters were before the STATE BOARD. RA 2144-2186. Even though the STATE BOARD was aware that the ASSESSOR did not follow its own illegal written standards, neither the County Board or STATE BOARD took any action to equalize the balance of the parcels that the ASSESSOR subjected to a view classification (3,200 parcels in all). The STATE BOARD and County Board never required the ASSESSOR to adhere to its written standard of view classification, which was purportedly the basis upon which the ASSESSOR determined the homes with a view classification land's taxable value. The ASSESSOR's view classification system was created in violation of Nev. Const. Art. 4, §20 and Nev. Const. Art. 4, §21.

*2. **Lakefront Rock Classification***

Similar to the view classification standard, the ASSESSOR created a five-step rock classification for residential properties located in Incline Village on the lakefront. RA 1754-1755.

The ASSESSOR created the following five-rock classifications:[4]

1) Sandy;

2) Sandy-Cobble;

3) Cobble;

4) Cobble-Rocky; and

5) Rocky.

There are no written or photographic standards being offered by the ASSESSOR to differentiate the type of rocks or the amount of rocks on a lakefront residential property that would enable a homeowner to be able to make a determination as to whether their parcel is a rocky, cobble or cobble-rocky. Yet such a determination can affect the taxable value of the land as much as 23%. RA 1754-1755. Again, depending upon the classification given to a particular residential parcel, the value of the parcel could range from $4,500,000 (rocky) to $5,500,000 (sandy) for the typical 100-wide lakefront lot located in Incline Village, constituting a difference in taxable value of $1,000,000.00. Moreover, the ASSESSOR created three new beach front classifications of rocky-cobble, cobble and cobble rocky even though there was no market data ever produced or reviewed by the ASSESSOR that would justify the creation of such a methodology.

Neither the applicable statutes and/or regulations contain any reference to rock classifications. Again, due to the absence of written regulations, may questions remain, namely:

1) Does the volume of rocks on the beach matter or just the size of the rocks?

2) Is the rock determination to be made at high or low lake level?

3) Does the shape of the rocks differentiate the respective classification?

4) What happens if a parcel has boulders? Is that considered rocky?

5) What happens when you have large rocks with a secluded sandy beach between the rocks?

6) Does the taxable value of a home vary in high water year versus a low water year?

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[4] The ASSESSOR alleged in his opening brief that the rock classification system was not raised during the County Board and STATE BOARD hearings. This statement is incorrect. RA 1754-1755.

7) Does the taxable value of a parcel change when a storm redistributes the rocks along the lake front?

The rock classification standard was used as a methodology to determine the taxable value of the land of every lakefront property owner in Incline Village and was used in the contested cases to defend the ASSESSOR's determination of taxable value. The ASSESSOR did not utilize the same rock classification in Crystal Bay even though in Crystal Bay there is the same lake, same water, same rocks and same sand as is Incline Village. RA 0277.

Prior to the 2003-2004 reappraisal, there never existed a five-step rock classification system anywhere in the State of Nevada. The ASSESSOR's rock classification system was created and applied in violation of Nev. Const. Art. 4, §20 and Nev. Const. Art. 4, §21.

*3. **Teardown Methodology***

The ASSESSOR created a rule that in essence provided that if a parcel was sold with an entire home (improved property)and either the residence was at a later date demolished or the buyer expressed the intent to demolish the home or some portion of the home, then that sale of an improved property was deemed to be a vacant land sale for property tax purposes. RA 1210. The practical effect of the ASSESSOR deeming the "teardown" sale to a vacant land sale is that he was then able to treat the entire purchase price as only a land purchase price and then increase all of the neighboring parcels land values based upon the sales price of this new "teardown" sale. The impact of the ASSESSOR's new rule is that he has determined that all residential land in Incline Village and Crystal Bay to be a "teardown" even if the current owner has no desire to demolish the residence. Never before had the concept of a "teardown" been addressed by either the Nevada Legislature, Nevada Supreme Court, STATE BOARD, COMMISSION or the DEPARTMENT (all collectively referred to as "STATE"). In fact, the ASSESSOR could not even locate any appraisal treatise that either supported or addressed the topic of "teardowns."

At the time the reappraisal was occurring there existed no statute or regulation as to how such a determination was being made. In fact, many of the alleged teardowns utilized by the ASSESSOR to determine the taxable value of the parcels at Incline Village and Crystal still had their homes on the parcel through the administrative proceedings before the respective Boards of Equalization. RA 1219-

1220.

Moreover, the ASSESSOR did not consistently apply this unwritten "teardown" standard from appraiser-to-appraiser within the ASSESSOR's own office. The inconsistency of the teardown concept can be best addressed by looking to the discussions that occurred before the respective Boards of Equalization. First, an appraiser from the ASSESSOR's Office responded to a question from the County Board that an improved land sale becomes a teardown when the house is "actually" torn down. RA 1210. Conversely, the appraiser who did the reappraisal of the golf course areas in Incline Village actually determined sales of improved properties to be a "teardown" even though the residence was still being occupied on the parcel at the time the ASSESSOR designated the sale as a "teardown." RA 1210. The ASSESSOR testified under oath that the only reason they created this teardown methodology and utilized the same was because there were insufficient vacant land sales. RA 1171-1173.

The standard for determining what constituted teardown became so confusing that County Board Member Fox stated that "...I think it was when Gary Warren was testifying the question was asked when is a house a teardown, and... his reply was we know a house is a teardown when they tear it down. So that was the answer then. I don't know if that's still the answer today." RA 1242. The teardown methodology was used in the County Board and STATE BOARD hearings for the TAXPAYERS to defend the ASSESSOR's determination of taxable value of all of their respective properties. The ASSESSOR's teardown methodology is in direct conflict with NAC 361.113.

4. Time Adjustment Methodology

Ron Sauer, Senior Appraiser for the ASSESSOR, stated that the reason they used time adjustments is that "...appraisal practice dictates that we used time adjustments..." RA 1158. This statement is consistent with the ASSESSOR in the ASSESSOR's Office believes that adhering to generally-accepted appraisal practice is what guides the ASSESSOR's determination of taxable value and not the statutes and regulations.[5] The ASSESSOR utilized comparable sales of property that in

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[5] The ASSESSORs often refer to their ad hoc standards as "generally accepted appraisal standards" yet the ASSESSOR is unable to cite to authority to support the ASSESSOR's reference to his standards constituting a