

1 that they're required to treat taxpayers uniformly and
2 consistently under the taxpayer bill of rights for any taxes
3 administered by the State. And while the State is afforded
4 the option, prospectively to change as to the Sunnen
5 decision, what I would submit to the Court is that uniform
6 and consistent treatment set forth in the taxpayer bill of
7 rights -- taxpayers bill of rights, excuse me, is applicable
8 in this instance.

9 These taxpayers, whether they're not in my case,
10 Dr. Alvin Bakst or otherwise, are entitled to the same
11 consistent treatment from the State and the County under that
12 particular charge.

13 It, candidly, surprises me that you go from year to
14 year and potentially have the template in this case entirely
15 rewritten based on the concept of stare decisis not being
16 applicable.

17 The Nevada Legislature is very clear; the taxpayers
18 are entitled to uniform and equal treatment under their
19 rights.

20 With that, Your Honor, I think I'll rest.

21 THE COURT: Thank you. Ms. Fulstone.

22 MS. FULSTONE: Thank you, Your Honor. I will not
23 promise to be brief, but I will promise that I will try to
24 address the issues as best I made my notes raised by the

1 statements of the County and State Board representatives.

2 I loved hearing the part from the County Assistant
3 District Attorney that the Supreme Court did, in fact,
4 invalidate the 2003-4 appraisal. I'm looking forward to how
5 I might implement that for all taxpayers at Incline Village.

6 I don't think he meant to say that, and certainly
7 the County Assessor has not operated as though the 2002
8 appraisal is void as to Incline Village-Crystal Bay in all
9 aspects. It would not have been able to assess or appraise
10 or collect taxes for any of the following five years.

11 Addressing the separation of powers argument, I'm
12 not familiar with the case. I saw it, I didn't read it. And
13 it wasn't, obviously, cited as supplemental authority here.
14 But in terms of the discussion from counsel, what he talked
15 about was some determination that separate bodies of
16 government have inherent authority and, you know, and we
17 would be overstepping the inherent authority here of the
18 State Board of Equalization to challenge its jurisdiction to
19 order reappraisals.

20 But one, the State Board of Equalization is not a
21 separate agency, separate government. It is an agency
22 created by the legislature. As such, you know, if you go
23 back and read the cases that are cited in the brief about the
24 agencies that are creations of the legislatures, created by

1 statute, they specifically do not have any inherent power.
2 They do not have any common law power.

3 They have under the case law exactly the powers
4 given to them by the legislature that created them. They
5 have the expressed powers stated in the statute, and they
6 have the implied powers that are necessary based on the
7 expressed powers. They have no inherent powers. You know,
8 there is no separation of powers issue here. And there isn't
9 any inherent power to reappraise. It would be in the
10 legislature.

11 If the legislature wanted to create the option for
12 the State Board, or the tax commission for that matter, for
13 reappraisal, it certainly has the power to do so. It's never
14 done so. Even in NRS 361.333, the ratio study statute where
15 there is a specific provision for what happens if the ratio
16 study shows that the assessor hasn't done his job correctly,
17 there's no reappraisal. There's no provision for
18 reappraisal.

19 What happens is that there is the appointment of a
20 third person to examine the appraisals done by the assessor.
21 Nobody reappraises. The County has to spend the money to
22 hire someone to examine and tell the assessor, you know,
23 where he was wrong, and -- but there's no reappraisal. You
24 can study that statute beginning to end, there is no

1 reappraisal order.

2 And that would be the logical place if the
3 legislature thought reappraisal ought to be an option.
4 There's certainly nothing under the State Board of
5 Equalization enabling statutes.

6 Another place where reappraisal might have been --
7 the authority to reappraise might have been engendered, and
8 that would be in the tax commission when it provided the
9 regulations under 361.250 for assessment for the County
10 Board, for the State Board, all the, you know, the
11 regulations that by statute the State Board must comply with,
12 the County Board must comply with, what the assessor must
13 comply with, and so on, which are specifically the
14 regulations governing appraisal.

15 No provision in the regulations adopted by the tax
16 commission for reappraisals ordered by the tax commission,
17 ordered by the State Board of Equalization, ordered by the
18 Governor for that matter.

19 So which brings us, I think, to this notion that
20 Mr. Creekman proposed that well, you know, if the assessor is
21 the problem, let's hire a third party at taxpayer expense.
22 He doesn't say taxpayer expense, but it doesn't make any
23 difference who pays for it, whether the State pays for it,
24 the County pays for it or the State and the County together

1 pay for it. Ultimately it's the taxpayer who pays for it.
2 There is no money that isn't taxpayer money in this process.

3 The issue, though, is not, you know, who does a
4 reappraisal. The issue is, there is no authority for a
5 reappraisal and there should not be a reappraisal.

6 When the assessor makes an unconstitutional
7 appraisal, all the public policy in the world would say, you
8 know, you go back to the most recent constitutional
9 appraisal, and that's the basis for taxation. You know, if
10 the assessor gets a free do-over whenever he does something
11 wrong, what would be the point of challenging what the
12 assessor does?

13 You know, you're simply making more work for the
14 assessor, not getting any kind -- the only thing that will --
15 the only disincentive to the assessor is not the opportunity
16 to do a new appraisal, it's the fact that he needs to live
17 with the appraisal that was done before.

18 Let me look at my --

19 THE COURT: Take your time, please.

20 MS. FULSTONE: -- notes briefly. I may kind of
21 jump around in these arguments. But one of the things I did
22 want to touch briefly on, at least, is the representations
23 made by the attorney general, the deputy attorney general,
24 about what I said at the time of the State hearing and how

1 those hearings progressed.

2 First of all, what I said was, and what I repeated,
3 and I repeated it here today, all the properties at Incline
4 Village-Crystal Bay were appraised in that 2002 appraisal for
5 the following five tax years unconstitutionally. Every
6 residential property, single-family residence or condominium,
7 in my opinion, was appraised unconstitutionally.

8 And if you look at the methods that were used, the
9 Court, the State Board, anyone looking at that under the
10 standard established in Bakst would agree with me. I did not
11 say the methods were used in all of the appraisals, the four
12 methods identified in Bakst, I said -- but I said all the
13 appraisals were unconstitutional. The Deputy Attorney
14 General goes back to the four methods, but I go back to the
15 four methods are not exclusive. You know, there is a
16 standard for unconstitutional valuation. It isn't limited to
17 four methods.

18 But I want to talk -- what happened is, you know,
19 counsel for the taxpayers didn't point out in the record
20 where these unconstitutional methods were.

21 THE COURT: I read the transcript. I saw the 24
22 file banker boxes comments.

23 MS. FULSTONE: Well, what I want to make sure that
24 the Court understands is that at the time they asked me the

1 question, there were no 24 banker boxes. I mean, this is the
2 most schizophrenic hearing process I've ever encountered.
3 You know, we file a writ. We get a notice for the first
4 hearing --

5 THE COURT: Ms. Fulstone, slow down.

6 MS. FULSTONE: Well, you're having fun, Your Honor.
7 Aren't you keeping up with me?

8 The first hearing noticed to hear taxpayer
9 grievances, we don't have four taxpayer grievances, we have
10 1400 properties, which is usually twice that many taxpayers
11 or more, because there are a lot of multiple ownerships in
12 Incline Village.

13 You know, I file a brief, I say this is the record.
14 The record that's in the possession of the department, which
15 is the staff of the State Board of Equalization. I want the
16 2003-4 cases, because that will show you the unconstitutional
17 methods.

18 There was a special hearing at the beginning of the
19 2003-4 session of the State Board which specifically
20 addressed the methods. I wasn't there, because I wasn't
21 involved at that time, but Mr. Azevedo can address it. It
22 was specifically devoted to the methods.

23 There were not -- there were 17 plaintiffs in
24 Bakst, and I think 33, 34, 35 in the second case, the Barta

1 case. There were 100 cases from -- there were at least 100,
2 more than 100, appealed from the County Board to the State
3 Board, you know, where Mr. Azevedo represented the Incline
4 Village or Crystal Bay taxpayer for that '03-'04 year. They
5 had a special hearing devoted to methods, but, you know, when
6 the chairman of the Board said "where is that," there weren't
7 any banker boxes. They didn't provide them for the first
8 hearing.

9 At the first hearing, you know, the first thing
10 from the chairman's mouth was "five minutes to a taxpayer."
11 And there's questions and so on. They went longer. They
12 took counties alphabetically. Washoe County went last. I
13 said, you know, "I've got at least 1400 properties here. Can
14 I have somewhat more than five minutes, not necessarily 5
15 times 1400, but more than five minutes?" Chairman said,
16 "Nope. Five minutes."

17 So obviously, I mean, five minutes wasn't in the
18 notice. It wasn't in the preparation. I couldn't make my
19 presentation. I did what I could, and they asked me
20 questions. But there was no record.

21 The next hearing in November, still no record.
22 That was, the assessor came in, again, the taxpayers'
23 representative was allowed to participate some in that
24 hearing. That's where I said again, I believe, that all

1 those properties at Incline Village-Crystal Bay were valued
2 unconstitutionally. And the chairman said to me, "Well, how
3 do you know this?" And when I tried to explain -- for all
4 those five years, what I tried to explain to him was we only
5 have one assessment here, one evaluation, one appraisal.
6 It's used for five years. It doesn't get any better. It
7 doesn't change. That's what the Supreme Court recognized in
8 Barta. If it's unconstitutional in 2003, it's just as
9 unconstitutional in 2007.

10 And once the Bakst case came down, the County Board
11 and the State Board started making reductions based on Bakst
12 and subsequently Barta. But, you know, it's simply a matter
13 of I don't have to go through every single property at
14 Incline Village-Crystal Bay and point out to the State Board
15 of Equalization how they were valued. The valuation methods
16 were in the record. The record was not provided to the
17 Board.

18 And again at this November hearing, the second
19 hearing, the assessor said, well, you know, he was
20 specifically asked about the four methods. He said every
21 single-family residence was valued using the four methods or
22 one or more of the four methods. And, you know, a thousand
23 maybe at the condominiums valued using one of those methods,
24 either the condo had a view or the condo was a timeshare --

1 time valued or whatever. And the Board said, okay, those are
2 the ones we're going to pick, notwithstanding argument that
3 all, all of the properties were unconstitutionally valued.

4 They made a final decision at that November
5 hearing. It was described in the record as a final decision.
6 The assessor, Washoe County Assessor, wanted to come back
7 with this adjusted value based on their final decision for
8 confirmation. And they agreed with that, that they would
9 have another hearing when the assessor had put those values
10 together, and they would put that perhaps on the consent
11 calendar.

12 In December, when we come to a hearing, all of a
13 sudden we have, notwithstanding the fact that the case is
14 over, we have 20 some bankers boxes. Now we have the record.
15 As demonstrated later, it still didn't have, and doesn't have
16 in it the record filed with the State before the Court today,
17 those '03-'04 cases. It still doesn't have those in the
18 records, which is where the original evidence on methodology
19 was provided. But, you know, there they are.

20 The Board members joke about who wants to review
21 the records. Nobody reviews the record. No opportunity is
22 given to counsel for taxpayers. You know, the Board Member
23 Marnell who had made the decision, made the motion that was
24 approved unanimously in the prior hearing, and said I'm

1 making this, I want this to be a final determination. He
2 said, "I thought we made a final decision last time." And
3 the chairman of the State Board says, well, we did, but we're
4 undoing it. I mean, I'm not quoting him, but that's
5 essentially the practical effect of what he said.

6 Then no notice, no opportunity to prepare, but this
7 time we can take, you know, the taxpayers' representative can
8 have as much time as available, just no access to the record,
9 no notice as to what's been held. That's why, you know, this
10 is a very haphazard procedure to follow. Then over our
11 objections that they don't have the authority to reappraise,
12 they make the motion to reappraise and to do a ratio study.

13 The deputy attorney general also argues that the
14 ratio study is going to confirm that these new values
15 established by the reappraisal are good. The ratio study
16 they ordered is only for Incline Village and Crystal Bay.
17 They're going to compare the appraisals they've done with the
18 appraisals they've done -- you know, not the old original
19 appraisals, those are, you know, but with the -- the new
20 appraisal. All they're going to do is compare one
21 reappraisal with another reappraisal.

22 Then, you know, under the ratio study ordered by
23 the Board, and there's no authority for them to order a ratio
24 study either, but we'll -- but, you know, in that ratio study

1 they're not saying, you know, let's look at the State of
2 Nevada for '03-'04. They're not even saying, let's look at
3 Incline Village-Crystal Bay and the properties in Douglas
4 County at the Lake for '03-'04, because they know what they'd
5 find. They're not even saying let's look at the reappraised
6 values for Incline Village-Crystal Bay in the context of the
7 entirety of Washoe County for that year, because they know
8 what they'd find.

9 So what they're doing is a completely meaningless
10 ratio study, or what they're ordering is a completely
11 meaningless ratio study.

12 I should probably address the Chevron thing and the
13 City of Arlington. I have addressed that within my
14 supplemental response, some of the points I tried to make
15 there.

16 Really, Chevron doctrine of deference is a federal
17 doctrine applicable to federal agencies. The Arlington case
18 involved the Federal Communications Commission. The other
19 cases involved the Environmental Protection Department, the
20 SEC and so on, you know, established federal agencies.

21 One of the bases for the application of the Chevron
22 doctrine, even in the federal courts, is the general
23 authority to regulate. The State Board has no general
24 authority to regulate, it only has specific authority to

1 adopt regulations. The general authority to regulate is with
2 the tax commission.

3 But, you know, more importantly, even if you look
4 at Chevron and say okay we're going to apply Chevron
5 deference. And again, as I put in my brief, you can't really
6 compare what is a citizen board that meets three a times a
7 year, you know, a few times a year, more than three times
8 usually, but a few times a year with a federal agency like
9 the Federal Communications Commission and its established
10 history of regulating and interpreting federal statutes
11 governing communications.

12 But if you get right down to what Chevron says, it
13 says if the statute is silent, or ambiguous -- the statute
14 isn't silent -- the statute says the State Board of
15 Equalization can increase, decrease or leave the same. The
16 statute is also not ambiguous. There isn't a single
17 ambiguity; raise, lower, leave alone. You can't make an
18 ambiguity out of the statutory provision.

19 The deputy attorney general also said the job of
20 the Board is equalizing to create constitutional values. And
21 the Bakst and Barta decision weigh in directly on that. The
22 issue is uniform treatment of the uniformly situated
23 taxpayers. Stare decisis aside, what the County board did
24 and the State Board affirmed for the 2006 year is an

1 appropriate exercise of equalization, because in returning
2 everybody at Incline Village-Crystal Bay to '02-'03 because
3 of the, you know, determined unconstitutional evaluations,
4 admittedly now unconstitutional evaluations of a substantial
5 part, I think it's all -- but the assessor certainly has
6 admitted to more than, I don't know, 50, 60 percent.

7 To return them all to '02-'03 value is a way of
8 creating constitutional values, just as the Supreme Court
9 said. We're going to go back to the last constitutional
10 value. If they want to create constitutional values, that's
11 what they would do. And that's what they decided to do here
12 in November, at least as to the portions the assessor
13 admitted were unconstitutional.

14 I'm going to talk briefly about the makeup of the
15 Board. When a statute says the Board shall be constituted of
16 one appraiser, one person versed in the evaluation of
17 centrally-assessed properties, one CPA and two business
18 people, it doesn't mean that you can appoint an appraiser in
19 addition to the appraiser who fills the appraiser job, but
20 you can appoint an appraiser in one of the business people
21 positions. It doesn't mean -- I know appraisers in business.
22 Most of them are, anyway. I've never met one that wasn't,
23 but that doesn't mean, you know, I mean the -- all of the
24 rules of statutory construction would say that when the

1 legislature specifies what it wants, that's what it means.
2 It doesn't mean that you can sneak appraisers in in these
3 other slots, you know.

4 And she argues, well, you know, the other cases
5 that I cited where an unlawfully constituted board couldn't
6 make -- was determined -- and the decisions of that board
7 were determined to be invalid. The focus is on the
8 unlawfully constituted board. She wants to distinguish those
9 cases by saying well, that board was unlawfully constituted
10 because there was a conflict of interest or that board was
11 unlawfully constituted because they appointed the members
12 themselves, you know.

13 How the Board got unlawfully constituted is not the
14 issue. The fact that the Board is unlawfully constituted
15 invalidates any decision made by that Board.

16 She said, well, they did all the paperwork, you
17 know, they did all the paperwork. I don't think we refuted
18 that they did all the paperwork. The point is, they didn't
19 stay within the provisions of the statute.

20 She also said if this gets to the point where
21 there's equalization every year -- which is a very strange
22 way to put it, since the Supreme Court has told them there's
23 a statute, and the legislature has, too. What NRS 361.395
24 means is that there is a duty of equalization by the State

1 Board every year. It isn't like, if it happens. It's going
2 to happen.

3 Now, if they mean are there going to be
4 equalization grievances, there's no -- as I said, there's no
5 provision in that regulation for equalization grievances.
6 She says well, maybe we should be doing this by writ of
7 certiori. And this is, of course, why I did what I did here
8 on behalf of the taxpayers. The provisions of the writ
9 require a report of compliance.

10 I filed objections to protect my clients' interest
11 in objecting to the decision of the Board. I filed the
12 Petition for Judicial Review so that nobody could come in and
13 say, oh well, objections was the wrong way to go, you should
14 have filed a Petition for Judicial Review.

15 And if I'm -- you know, if we're told now that
16 well, you can't adjudicate this through objections, and you
17 can't adjudicate this with a Petition for Judicial Review,
18 you know, I'll file my extraordinary writ petition in
19 prohibition or certiori or whatever is available.

20 When government acts inappropriately -- I mean, its
21 always been my firm conviction that there has to be a way to
22 get review of that determination in the courts. Now, I don't
23 think we should play musical chairs here about how to get it
24 reviewed. The point is to get it reviewed to establish

1 whether at least in the Court's view there has been error and
2 move on from there, whether it's to a Supreme Court decision,
3 to a remand, to whatever it is. This is the decision that
4 has to be reviewable, and is reviewable, and whatever the --
5 whatever the guise that review takes. I just don't like
6 being flipped, you know, from one to another.

7 The deputy attorney general also says well,
8 assessment and equalization are different functions. And she
9 had raised this with regard to the condo argument. And she
10 said well, the State Board of Equalization is not looking at
11 specific cases, but I mean that's exactly what they did. Now
12 we didn't argue for that, but that's exactly what they did.
13 They said assessor, you tell us what specific cases you used
14 one of these four methods in, and those we'll fix.

15 If they're going to look at specific cases, they
16 should have looked at specific condo cases. They should have
17 looked at all of the methods used, not just the four methods
18 that were identified in Bakst.

19 You know, you can't -- what the State seems to want
20 is, you know, we want these grievances that we're hearing,
21 but at the same time we want our equalization regulation over
22 here, which has nothing to do with grievances. We want to be
23 able to say well, order reappraisals and ratio studies, and
24 whatnot, based on the regulations adopted in 2010, even

1 though that's not what the writ requires. The writ requires
2 a hearing or as many hearings as necessary on specific
3 taxpayer equalization grievances.

4 She said they addressed the specific grievances.
5 They certainly didn't address the topic grievances. They
6 didn't look at the record. They joked about the record,
7 about looking at the record.

8 She also says that again -- now we're talking about
9 constitutionality -- and I really won't be much longer --
10 that the order does not require -- again, the order requires
11 the regulation, the methodology regulations to be used by the
12 assessor in these reappraisals that are used in the rest of
13 the state. And that is deliberately, I think, misleading.

14 What the -- what the order specifically requires,
15 and this part of the order is written by the department. You
16 know, you said at your outset that this order was issued by
17 the Board. This order actually isn't issued by the Board.
18 This order is issued by the Department. It's another funky
19 part of the procedure down there, is that the actual written
20 decision never even gets looked at by the Board, doesn't get
21 signed by the Board, doesn't get approved by the Board, you
22 know, gets issued by the secretary, the executive director of
23 the firm.

24 Okay. With that little aside, what the order

1 specifically says is that the assessor will use the regs in
2 the tax year being valued. And I may have slightly misquoted
3 it, but that's what it says, "The regs in the tax year being
4 appraised." Okay. And that is not what the assessor or any
5 assessor throughout Nevada used for that year.

6 You know, this is a trailing system. This
7 appraisal for '03-'04 to '07-'08, some in 2002 with the regs
8 in 2002. If you're going to redo '03-'04, '04-'05, '05-'06
9 using the regs that were in place in those years, you're
10 going to do '03-'04 with the 2002 temporary regs, not the
11 regs that were actually in place when the first appraisal was
12 done, not the regs that were used for all the rest of the
13 appraisals for '03-'04 throughout the State. That's the
14 conflict.

15 I mean, maybe they don't understand that, but what
16 their order says is you're going to use these later
17 regulations, so that every single appraisal done under this
18 order, assuming they get done, is done under the wrong year's
19 regulations essentially, because it's the later years,
20 they're not done in the year they would have been -- using
21 the regulations for the year that they would have been done,
22 because they're not applying this trailing system.

23 So there are no '03-'04 valuations on which taxes
24 were based, property taxes were based throughout the rest of

1 the state that were done based on the regulations in place in
2 '03-'04. Not a single one, because all of those were done in
3 2002. The same thing for the subsequent years.

4 She also said that if the Court were to say that
5 the Board cannot order reappraisal, it would be, as I
6 understood her, interfering with the discretion of the Board.

7 The Board does not have discretion to exceed its
8 statutory jurisdiction. It does not have discretion to adopt
9 regulations that are substantive. It doesn't have discretion
10 to violate the constitution. It has discretion within its
11 authority, its statutory authority; not beyond it.

12 And do you have any questions?

13 THE COURT: No. Thank you, Counsel.

14 All right. I want to supplement the record and
15 make sure that the motion to intervene that this Court
16 granted is granted pursuant to NRCP 24(b)(2). That's clear.

17 Take the other motions, I said the Motion to
18 Dismiss, that were more brief, we will take those under
19 submission. I agree with counsel. I don't think it's
20 necessary to hear argument on those as well as this.

21 I want to -- before we recess, I want to end where
22 I started. I want to compliment the attorneys on all sides.
23 Its always good to have good lawyers in front of you. It
24 doesn't make a judge's job any easier. These are difficult

1 issues. And I also want to address the citizens here.

2 I meant no disrespect when I asked that the Court
3 come to order during Mr. Creekman's presentation. It is
4 important that everybody be heard. We are a court of general
5 jurisdiction. That means I handle civil cases,
6 administrative law cases as well as criminal cases every
7 week. And it's my oath of office that requires me to hear
8 these difficult matters and make a decision. And even in
9 criminal cases the law requires that everybody be heard. And
10 before I impose sentence in a criminal case, I turn to the
11 defendant, and I say that the law affords them an opportunity
12 to be heard in terms of mitigation, punishment, or any matter
13 they wish to say before judgment is passed and sentence is
14 imposed.

15 It's no different here. Everybody is entitled to
16 be heard. And I know all of you respect that as well.

17 It is the purpose of this hearing to hear from both
18 sides. Also I want to compliment the attorneys who represent
19 the public agencies, these are not faceless bureaucrats,
20 these are citizens as well.

21 The citation to the Sparks Municipal Court case
22 dealing with separation of powers highlights how unique
23 America is. The concept of separation of powers was a French
24 political concept written about by Baron de Montesquieu. He

1 had proposed a free party, three branches of government; an
2 executive branch, a legislative branch and a judicial branch
3 to keep the power balanced, each of them to operate as a
4 check on the power of each other to prevent a monarchy from
5 arising, to keep a check on the people, and to keep a check
6 on who passes the laws.

7 You'll notice that these are open courtrooms, and
8 citizens are free to come here and sit and listen, watch
9 their government at work. This is probably the only country
10 in the world in which an ordinary citizen can haul their
11 government into court and have them explain their decisions,
12 have them deal with their property, their life, their
13 happiness. No other country in the world can do that.

14 Some time ago I was presiding over a jury trial,
15 and Juror Number 1 seated up there in the top left-hand
16 corner started to cry. Obviously I was very concerned about
17 that. I had my bailiff go over to check on the juror, and
18 she said she was fine. And the trial concluded, and I have
19 the distinct honor and privilege to meet with these citizens
20 who serve as jurors back in my chambers. And I asked her if
21 she was all right, and what was it that prompted that
22 emotional response.

23 And she said she was born in Iran, and her father
24 was a university professor under the Shah of Iran, and at

1 that time he was a political science teacher teaching
2 democracy. And he was arrested by the Shaw's secret police
3 and taken to prison and sentenced to death. Didn't have a
4 trial, wasn't able to have an attorney represent him or
5 defend him, sentence was passed by somebody he never saw.

6 His life was spared about a week before he was to
7 be executed, and shortly thereafter they immigrated to the
8 United States. She is a very successful businesswoman in her
9 own right. She said to me as I sat there and I saw that
10 there were no bars in the windows, the doors were open, that
11 the parties were represented by counsel. And she says, "This
12 never would have happened in Iran." She said, "America is
13 the best country in the world."

14 Today we celebrate Flag Day. I encourage each and
15 every one of you when you drive home today, look around, look
16 at the public buildings, the courthouses where people come,
17 have their grievances heard and see their flag, and think
18 about that. America is the greatest country in the world.

19 Well, as I said, I'll take these cases under
20 submission. I thank the attorneys for the good work they've
21 done in this case. I appreciate the briefs that they
22 submitted, and I certainly appreciate spending the time with
23 you.

24 All right. Anything further, Ms. Fulstone?

1 Mr. Creekside?

2 MS. FULSTONE: No. I think you're going to make me
3 cry here in a minute.

4 THE COURT: No.

5 MR. CREEKSID: No. Thank you.

6 THE COURT: Ms. Buoncristiani, anything further?

7 MS. BUONCRISTIANI: No, Your Honor.

8 THE COURT: All right. This court is in recess.

9 (Proceedings Concluded)

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1 STATE OF NEVADA)
) ss.
2 COUNTY OF WASHOE)

3

4 I, EVELYN STUBBS, certified court reporter of
5 the Second Judicial District Court of the State of Nevada, in
6 and for the County of Washoe, do hereby certify:

7 That as such reporter I was present in
8 Department No. 6 of the above court on FRIDAY, JUNE 14, 2013,
9 at the hour of 9:00 a.m. of said day, and I then and there
10 took stenotype notes of the proceedings had and testimony
11 given therein upon the case of VILLAGE LEAGUE, ET AL,
12 Plaintiff, vs. DEPARTMENT OF TAXATION, ET AL, Defendant, Case
13 No. CV03-06922.

14 That the foregoing transcript, consisting of
15 pages numbered 1 to 94, inclusive, is a full, true and
16 correct transcript of my said stenotype notes, so taken as
17 aforesaid, and is a full, true and correct statement of the
18 proceedings had and testimony given therein upon the
19 above-entitled action to the best of my knowledge, skill and
20 ability.

21 DATED: At Reno, Nevada, this 28th day of
22 June, 2013.

23 /s/ Evelyn Stubbs

24 _____
EVELYN J. STUBBS, CCR #356

FILED

Electronically

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

Joey Orduna Hastings

Clerk of the Court

Transaction # 3825250

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

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

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

Dept. No.: 7

Petitioners,

vs.

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

Respondents.

ORDER

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

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

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

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

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

27 ///

28 ///

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

7 **IT IS SO ORDERED.**

8 DATED this 16th day of ~~June~~^{July} 2013.

9
10 
11 **PATRICK FLANAGAN**
12 District Judge
13
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 18th day of ~~June~~ ^{JULY}, 2013, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:

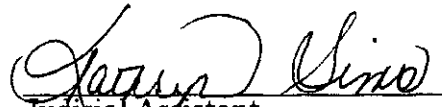
7 David Creekman, Esq. for Washoe County et al.

8 Dawn Buoncristiani, Esq. for State Board of Equalization

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

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

13 Norman J. Azevedo
14 405 N. Nevada Street
15 Carson City, NV 89703

16 
17 Judicial Assistant
18
19
20
21
22
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25
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28

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

FILED
Electronically
07-01-2013:02:00:45 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3826620

1 2540
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAWN M. BUONCRISTIANI
5 Deputy Attorney General
6 Nevada Bar No. 7771
7 100 N. Carson Street
8 Carson City, Nevada 89701-4717
9 Phone: (775) 684-1129
10 Fax: (775) 684-1156
11 Attorneys for the State Board of Equalization

12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

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

Case No. CV03-06922

16 Petitioners,

Dept. No. 7

17 vs.

18 THE STATE OF NEVADA, on relation of the
19 STATE BOARD OF EQUALIZATION, et al.

20 Respondents.

Consolidated with:

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

Case No. CV13-00522

23 Petitioners,

formerly assigned to Dept. No. 3

24 vs.

25 STATE OF NEVADA, on relation of the STATE
26 BOARD OF EQUALIATION, et al.,

27 Respondents.

28 **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that this Court entered its Order in the above-entitled action on July 1, 2013, granting Respondents' Motions to Dismiss, Denying Petitioner's Objections to State Board of Equalization's Report and Order, and lifting the stay issued by this Court on April 1, 2013. A copy of said Order is attached hereto as Exhibit 1 and incorporated herein by reference.

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

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned hereby affirms this Notice of Entry of Order does not contain the social security number of any person.

DATED: July 1, 2013.

CATHERINE CORTEZ MASTO
Attorney General

By: *Dawn Buoncrisiani*
DAWN BUONCRISTIANI
Deputy Attorney General
Nevada Bar No. 7771
Attorneys for the State Board of Equalization

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on July 1, 2013, I electronically filed the foregoing **NOTICE OF ENTRY OF ORDER** 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 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
Arthur E. Mallory, District Attorney Churchill County 165 North Ada Street Fallon, NV 89406	Phone: 775-423-6561 Fax: 775-423-6528	Norma Green, Churchill County 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, Assessor 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 20 S Main St P.O. Box 88 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

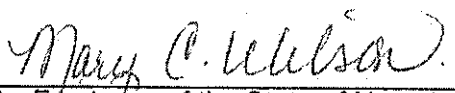
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Attorney/Address	Phone/Fax/E-Mail	Party Represented
Lura Duvall, Assessor Lander County 315 S. Humboldt Street Battle Mountain, NV 89820	Phone 775-635-2610 Fax 775-635-5520 E-Mail: assessor@landercountynv.org	Lura Duvall, Lander County Assessor
Melanie 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: djassessor@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: July 1, 2013.


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

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INDEX OF EXHIBIT TO NOTICE OF ENTRY OF ORDER

Exhibit No.	Description of Exhibit	Pages
1	Order	5

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07-01-2013:02:00:45 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3826620

EXHIBIT 1

EXHIBIT 1

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

9 VILLAGE LEAGUE TO SAVE
10 INCLINE ASSETS, INC., a Nevada
11 non-profit corporation, on behalf of
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13 situated; MARYANNE
14 INGEMANSON, Trustee of the Larry
15 D. and Maryanne B. Ingemanson
Trust, DEAN R. INGEMANSON,
individually and as Trustee of the
Dear R. Ingemanson; J. ROBERT
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Case No.: CV03-06922 (and
consolidated case
CV13-00522)

Dept. No.: 7

16 Petitioners,

17 vs.

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

21 Respondents.
22 _____/

23 **ORDER**

24 Petitioner Village League to Save Incline Assets, Inc. (hereinafter "Village
25 League"), a group of residents from Incline Village and Crystal Bay, Nevada, seeks
26 to set aside a recent determination by the State Board of Equalization ("the Board")
27 ordering certain properties in the Incline Village and Crystal Bay communities to be
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1 This *Petition for Judicial Review* and *Objections to State Board of*
2 *Equalization Report and Order* stem from lengthy litigation in which the members
3 of Village League believed their residential properties were improperly assessed by
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15 In response to the Writ, the Board held several meetings in 2012 addressing
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1 Among the arguments in support of the motions to dismiss is that the Board's
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22 through the normal and standard process for challenging tax assessments.
23 Declining to rule on the petition at this time does not preclude the members of
24 Village League from obtaining necessary relief, if any is required, in the future.
25 Accordingly, Defendants' *Motions to Dismiss Petitioner's Petition for Judicial*
26 *Review* are GRANTED.

27 ///

28 ///

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

7 **IT IS SO ORDERED.**

8 DATED this 16th day of July ~~June~~ 2013.

10 *Patrick Flanagan*
11 PATRICK FLANAGAN
District Judge

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 1st day of ~~June~~ ^{July}, 2013, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:

7 David Creekman, Esq. for Washoe County et al.

8 Dawn Buoncristiani, Esq. for State Board of Equalization

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

10 I deposited in the Washoe County mailing system for postage and mailing
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13 Norman J. Azevedo
14 405 N. Nevada Street
15 Carson City, NV 89703

16 
17 Judicial Assistant

CV03-06922
CONSOLIDATED
District Court
Washoe County
DC
DC-9900047228-001
VILLAGE LEAGUE 3 Pages
07/03/2013 03:02 PM
\$2515
PSN(U)

Snell & Wilmer
LLP

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

\$2515
SNELL & WILMER L.L.P.
Suellen Fulstone, No. 1615
50 West Liberty Street, Suite 510
Reno, Nevada 89501
Telephone: (775) 785-5440

Attorneys for Petitioners

FILED

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JURY
CLEAN COURT

BY Alone

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

VILLAGE LEAGUE TO SAVE INCLINE
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vs.

STATE OF NEVADA on relation of the STATE
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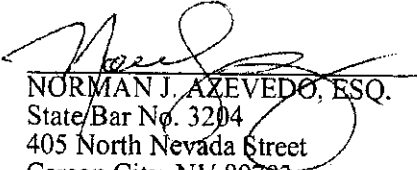
Respondents.

NOTICE OF APPEAL

Petitioners, Village League to Save Incline Assets, Inc., et al., appeal to the Supreme Court of Nevada from the decision and Order of this Court entered on July 1, 2013, dismissing the petition for judicial review (Case No. CV13-00522) and denying petitioners' Objections to the Report of the State Board of Equalization pursuant to the Writ of Mandamus issued on August 21,

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

3 Dated this 19th day of July, 2013.
4

5 
6 NORMAN J. AZEVEDO, ESQ.
7 State Bar No. 3204
8 405 North Nevada Street
9 Carson City, NV 89703
10 (775) 883.7000

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on the 19th day of July, 2013, I placed a copy of the **NOTICE OF**
13 **APPEAL** in the U.S. Mail, postage pre-paid, addressed as follows:

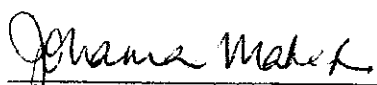
14 Dawn Buoncristiani
15 Office of the Attorney General
16 100 North Carson St.
17 Carson City, NV 89701

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

23 Suellen Fulstone, Esq.
24 SNELL & WILMER, LLP
25 50 West Liberty Street, Suite 510
26 Reno, NV 89501

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

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


Johanna Maher

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LIST OF EXHIBITS

No. of Pages

Exhibit 1 - Order

5

EXHIBIT 1

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3825250

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

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

27 ///

28 ///

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

7 **IT IS SO ORDERED.**

8 DATED this 18th day of ~~June~~ ^{July} 2013.

9
10 
11 PATRICK FLANAGAN
12 District Judge
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 18th day of July, 2013, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:

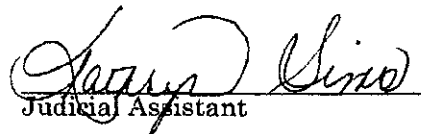
7 David Creekman, Esq. for Washoe County et al.

8 Dawn Buoncristiani, Esq. for State Board of Equalization

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

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

13 Norman J. Azevedo
14 405 N. Nevada Street
15 Carson City, NV 89703

16 
17 Judicial Assistant
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FILED

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07-05-2013:02:05:51 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3835846

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

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

Case No.: CV03-06922

Petitioners,

Dept. No.: 7

vs.

STATE OF NEVADA on relation of
the STATE BOARD OF
EQUALIZATION, et al.,

Respondents.

ORDER

On May 23, 2013, Respondent, Norma Green, Churchill County Assessor (hereinafter "Churchill County"), filed its *Notice of Non-Participation and Motion to Dismiss*. On June 7, 2013, Petitioner, VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC. (hereinafter "Village League"), filed its *Response to Churchill County Assessor Motion to Dismiss*. On July 3, 2013, the matter was submitted for decision. However, on July 1, 2013, this Court entered its *Order* granting Defendants' Motion to Dismiss Petitioner's Petition for Judicial Review. Therefore, Churchill County's *Motion to Dismiss* is **DENIED AS MOOT**.

DATED this 5 day of July, 2013.


PATRICK FLANAGAN
District Judge

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 5 day of July, 2013, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:

7 David Creekman, Esq. for Washoe County et al.

8 Dawn Buoncristiani, Esq. for State Board of Equalization

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

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

13 Norman J. Azevedo
14 405 N. Nevada Street
15 Carson City, NV 89703

16 Arthur E. Mallory
17 Churchill County District Attorney
18 165 N. Ada St.
19 Fallon, NV 89406

20 
21 Judicial Assistant

CV03-06922
CONSOLIDATED
District Court
Washoe County
NVR
DC-990047637-089
VILLAGE LEAGUE 3 Pages
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\$2515

ORIGINAL

FILED

2013 JUL 19 PM 2:46

JOEY ORGONIA HASTINGS
CLERK OF THE COURT

BY  DEPUTY

1 \$2515
2 Norman J. Azevedo, Esq. #3204
3 405 N. Nevada Street
4 Carson City, NV 89703
5 775.883.7000
6 775.883.70001 fax
7 norm@nevadataxlawyers.com

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE

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

22 Petitioners,

23 vs.

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

27 Respondents.
28

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

Dept. No.: 7

NOTICE OF APPEAL

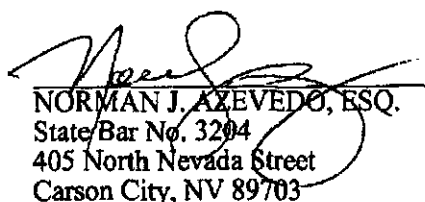
22 Notice is hereby given that Ellen Bakst, Jane Barnhart, Carol Buck, Daniel Schwartz,
23 Larry Watkins, Don & Patricia Wilson and Agnieszka Winkler, who were granted intervenor
24 status by the Court on July 1, 2013, hereinafter referred to as the BAKST INTERVENORS,
25 hereby appeals to the Supreme Court of Nevada from the decision and Order from this Court
26 entered on July 1, 2013, attached as Exhibit 1.

27 .../

28 .../

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

3 Dated this 19th day of July, 2013.
4

5 
6 NORMAN J. AZEVEDO, ESQ.
7 State Bar No. 3204
8 405 North Nevada Street
9 Carson City, NV 89703
10 (775) 883.7000

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on the 19th day of July, 2013, I placed a copy of the **NOTICE OF**
13 **APPEAL** in the U.S. Mail, postage pre-paid, addressed as follows:

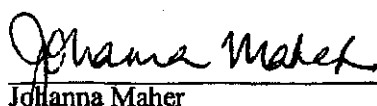
14 Dawn Buoncristiani
15 Office of the Attorney General
16 100 North Carson St.
17 Carson City, NV 89701

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

23 Suellen Fulstone, Esq.
24 SNELL & WILMER, LLP
25 50 West Liberty Street, Suite 510
26 Reno, NV 89501

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

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


Johanna Maher

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LIST OF EXHIBITS

No. of Pages

Exhibit 1 - Order

5

CV03-08922 DC-9900047637-090
CONSOLIDATED VILLAGE LEAGUE 6 Pages
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EXHIBIT 1

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3825250

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

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

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

Dept. No.: 7

Petitioners,

vs.

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

Respondents.

ORDER

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

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

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

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

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

27 ///

28 ///

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

7 **IT IS SO ORDERED.**

8 DATED this 16th day of July ~~June~~ 2013.

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

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 18th day of July, 2013, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:


7 David Creekman, Esq. for Washoe County et al.

8 Dawn Buoneristiani, Esq. for State Board of Equalization

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

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

13 Norman J. Azevedo
14 405 N. Nevada Street
15 Carson City, NV 89708

16 
17 Judicial Assistant
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Joey Orduna Hastings

Clerk of the Court

Transaction # 3867097

1 2175
2 SNELL & WILMER L.L.P.
3 Suellen Fulstone, No. 1615
4 50 West Liberty Street, Suite 510
5 Reno, Nevada 89501
6 Telephone: (775) 785-5440

7 Attorneys for Petitioners

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

10
11 IN AND FOR THE COUNTY OF WASHOE

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

14 Petitioners,)

Case No. CV03-06922

Dept. No. 7

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

20 Petitioners-in-Intervention)

21 vs.)

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

24 Respondents.)

Consolidated with

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

Case No. CV13-00522

27 Petitioners,)

formerly assigned to Dept. No. 3

28 vs.)

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

31 Respondents.)

Snell & Wilmer

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

APX01516

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

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

Respectfully submitted this 11th day of July, 2013.

SNELL & WILMER L.L.P.

By: 

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

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

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

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

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

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

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

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

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

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

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

1 years, whether or not those new valuations are characterized as "reappraisals."

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

12 Under the February 2013 SBOE "equalization" order, taxpayers whose new valuations are
13 lower than the prior, unconstitutional valuations get no hearing at all. Taxpayers whose new
14 valuations are higher than the prior, unconstitutional valuations get, at best, an inadequate
15 hearing. There is nothing "unripe" or "less than final" about the provisions of the SBOE order
16 that deny taxpayers their constitutional, due process rights to challenge the valuation of their
17 properties for property tax purposes. The "adequate remedy" described by the Court in its July 1,
18 2013 Order as the basis for denying taxpayers an immediate judicial review of the SBOE decision
19 simply does not exist.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **III. Conclusion.**

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

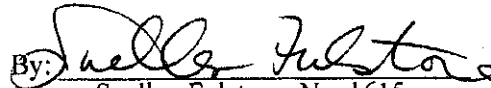
1 July 1, 2013 Order and certify that intention to the Supreme Court. In the alternative, this Court
2 should stay the July 1, 2013 Order and reinstate the stay of the February 2013 SBOE Equalization
3 Order pending the resolution of the appeal of the July 1, 2013 Order.

4 **AFFIRMATION**

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

7 Dated this 19th day of July, 2013.

8 SNELL & WILMER L.L.P.

9
10 By: 

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

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

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

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

And mailed a copy to the following:

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

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

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

DATED this 19th day of July, 2013.


Employee of Snell & Wilmer L.L.P.

ORIGINAL

FILED

2013 JUL 19 PM 2:48

JOEY INGRAM HASTINGS
CLERK OF THE COURT

BY  DEPUTY

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8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE

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

22 Petitioners,

23 vs.

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

27 Respondents.
28

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

Dept. No.: 7

JOINDER

22 COME NOW Intervenor, Ellen Bakst, Jane Barnhart, Carol Buck, Daniel Schwartz,
23 Larry Watkins, Don & Patricia Wilson and Agnieszka Winkler, hereinafter referred to as the
24 BAKST INTERVENORS, by and through its counsel of record, Norman J. Azevedo, Esq., and
25 hereby submits its Joinder in the appeal filed by the Petitioners on July 3, 2013.

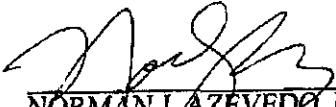
26 .../

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

3 Dated this 1st day of July, 2013.
4

5 
6 NORMAN J. AZEVEDO, ESQ.
7 State Bar No. 3204
8 405 North Nevada Street
9 Carson City, NV 89703
10 (775) 883.7000

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on the 19th day of July, 2013, I placed a copy of the JOINDER in the
13 U.S. Mail, postage pre-paid, addressed as follows:


14 Dawn Buoncristiani
15 Office of the Attorney General
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Johanna Maher

FILED

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8 ATTORNEYS FOR WASHOE COUNTY
9 AND WASHOE COUNTY TREASURER

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

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

12 * * *

13 VILLAGE LEAGUE TO SAVE INCLINE
14 ASSETS, INC. ET AL,

15 Petitioners,

Case No. CV03-06922

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

Dept. No. 7

20 Petitioners in intervention

21 vs.

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

24 Respondents.

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

Consolidated with

Case No. CV13-00522

Petitioners,

formerly assigned to Dept

vs.

No. 3

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

Respondents.

1 **RESPONSE AND OPPOSITION TO MOTION FOR LEAVE TO SEEK**
2 **RECONSIDERATION OF JULY 1, 2013 ORDER**

3 Washoe County (hereinafter "Washoe") Defendants and
4 Respondents, by and through their counsel of record, Richard A.
5 Gammick, District Attorney of Washoe County, Nevada and David
6 Creekman, Chief Deputy District Attorney, herein file this
7 Response and Opposition to Motion for Leave to Seek
8 Reconsideration of July 1, 2013 Order.

9 **INTRODUCTION**

10 Without repeating (once again) the extensive decade-long
11 history of this case, the development in this case which
12 prompted Plaintiffs/Petitioners Village League's (hereinafter
13 "Village League") recent Motion for Leave to Seek
14 Reconsideration of July 1, 2013 Order was, in fact, this Court's
15 July 1, 2013 Order, an Order which the Village League has
16 already appealed to the Nevada Supreme Court and for which a
17 briefing schedule has already been set and imposed upon the
18 parties.

19 The July 1, 2013 Order of this Court dismissed the Village
20 League's arguments that the State Board of Equalization
21 (hereinafter "SBOE") is improperly constituted and lacks
22 authority to act as it has chosen to act in performing its
23 statewide equalization function under Nevada law. The July 1,
24 2013 Order also dismissed a separate petition for judicial
25 review of the SBOE's earlier actions which was consolidated into
26 this case. The July 1, 2013 Order then lifted a stay of the

1 SBOE's earlier actions, such stay imposed by this court pending
2 resolution of the Village League's arguments.

3 Because of the pendency of the Village League's appeal of
4 the July 1, 2013 Order to the Supreme Court, this Court
5 reimposed the stay of the SBOE's earlier actions and did so in
6 an Order dated July 31, 2013. The Washoe parties are in accord
7 with the reimposition of the stay of the SBOE's earlier actions,
8 pending full and final resolution of the Village League's appeal
9 by the Supreme Court. The Washoe parties oppose the Village
10 League's attempt to have this Court reconsider its July 1, 2013
11 Order, and do so for the reasons set forth below.

12 **THE VILLAGE LEAGUE'S REQUEST FOR RECONSIDERATION**
13 **OF THE JULY 1, 2013 ORDER OF THIS COURT**

14 The Village League cites to no authority for this Court to
15 reconsider its July 1, 2013 Order. A review of the Nevada Rules
16 of Civil Procedure, however, establishes that authority for such
17 a request may be derived from one of two sources --- either NRCP
18 59 or 60, neither of which lend support to reconsideration of
19 the July 1, 2013 Order of this Court.

20 I. NRCP 59

21 NRCP 59 provides a procedure for altering or amending a
22 judgment. The three essentials of a motion to alter or amend a
23 judgment are a motion, notice of such motion, and the
24 requirement that it be served not later than 10 days after

25 ///

26 ///

1 written service of notice of entry of the judgment. United Pac.
2 Ins. Co. v. St. Denis, 81 Nev. 103, 399 P.2d 135 (1965). NRCP
3 59 is, by its terms, unavailable to the Village League in this
4 case. This is so because a Motion to Alter or Amend a Judgment
5 must be filed "no later than 10 days after service of written
6 notice of entry of the judgment." NRCP 59(e). In this case,
7 Notice of Entry of the July 1, 2013 Order was electronically
8 served on the Village League on July 1, 2013. Even assuming an
9 additional three days is provided when a document is
10 electronically filed, the latest date by which NRCP 59's
11 authority for alter or amending a judgment could have been
12 invoked by the Village League was 13 days later on July 14,
13 2013. Yet a review of the Village League's Motion for Leave to
14 Seek Reconsideration of July 1, 2013 Order establishes that it
15 was filed on July 19, 2013, nearly a week later than the
16 deadline established by NRCP 59. Thus, reconsideration pursuant
17 to NRCP 59 is not available to the Village League.

18 II. NRCP 60

19 NRCP 60 provides a procedure for relief from a judgment or
20 order. The district court has wide discretion in deciding
21 whether to grant or deny a motion to set aside a judgment under
22 NRCP 60(b). Its determination will not be disturbed on appeal
23 absent an abuse of discretion. Union Petrochemical Corp. v.
24 Scott, 96 Nev. 337, 338, 609 P.2d 323 (1980).

25 Under NRCP 60(b)(1), the district court may relieve a party
26 from a final judgment on grounds of mistake, inadvertence,

1 surprise, or excusable neglect. NRCF 60(b)(1). Although it is
2 somewhat difficult to tell with absolute certainty, the Village
3 League's Motion for Leave to Seek Reconsideration of July 1,
4 2013 Order appears to seek relief from the July 1, 2013 Order
5 based upon its belief that the Court made a mistake of law with
6 respect to its statement that:

7 ... any homeowners who disagree with the valuations of their
8 property have an adequate remedy at law by challenging
9 those valuations through the normal and standard process
 for challenging tax assessments. July 1, 2013 Order, p.
 3., lines 20 - 22.

10 The July 1, 2013 Order does not state what the "normal and
11 standard process for challenging tax assessments" is in the case
12 of an equalization action. But the Village League certainly
13 does so state, and does so within its Motion itself. In this
14 regard, the Court's attention is directed to that portion of the
15 Village League's Motion in which the Village League clearly
16 states that "[t]axpayers whose proposed new property valuations
17 are higher get a hearing before the State Board of Equalization
18 on a 10-day notice (pursuant to the Writ of Mandate and NRS
19 361.395(2))." It is this notice, and opportunity for a hearing,
20 which these Washoe parties believe the Court was referencing, in
21 its Order, as "the normal and standard process for challenging
22 tax assessments" in the context of a SBOE equalization
23 proceeding. While the Village League might not like this
24 process, it does exist in Nevada law, it does provide the
25 taxpayer with appropriate due process, and it is an adequate
26 remedy available to dissatisfied Village Leaguers who may

1 ultimately disagree with increased valuations placed upon their
2 property by virtue of the SBOE's efforts to equalize those
3 property values.

4 It is true, however, that property owners whose values (and
5 tax liability) remain either static or are reduced are without a
6 remedy. But this is the case because when property values (and
7 tax liability) remain static or are reduced, there is no
8 potential or actual deprivation of property to elicit due
9 process protections such as exist when values (and tax
10 liability) are increased. No normal and standard process for
11 challenging tax assessments exists in this case for the simple
12 reason that none is necessary because no property right
13 deprivation occurs.

14 CONCLUSION

15 The Court got it right in its July 1, 2013 Order. The
16 Court made no mistake in stating that there exists an adequate
17 remedy at law for taxpayers to challenge valuations through
18 normal and standard processes. The Court recognizes that
19 equalization by the SBOE is a function separate and distinct
20 from an initial valuation, such initial valuation ultimately
21 invoking the appellate function of the SBOE. The Court should
22 reject the Village League's Motion for Leave to Seek
23 Reconsideration of July 1, 2013 Order and permit this case to
24 proceed through the resolution of the Village League's appeal to
25 the Nevada Supreme Court.

26 ///

1 AFFIRMATION PURSUANT TO NRS 239B.030

2 The undersigned does hereby affirm that the preceding
3 document does not contain the social security number of any
4 person.

5 Respectfully submitted this 1st day of August, 2013.

6 RICHARD A. GAMMICK
7 District Attorney

8 By /s/ DAVID C. CREEKMAN
9 DAVID C. CREEKMAN
10 Chief Deputy District Attorney
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15 AND WASHOE COUNTY TREASURER
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DAWN BUONCRISTIANI, ESQ. for STATE BOARD OF EQUALIZATION

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

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., et al., Case No. CV03-06922

Petitioners,

Dept. No. 7

vs.

THE STATE OF NEVADA, on relation of the
STATE BOARD OF EQUALIZATION, et al.

Respondents.

Consolidated with:

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

Case No. CV13-00522

Petitioners,

formerly assigned to Dept. No. 3

vs.

STATE OF NEVADA, on relation of the STATE
BOARD OF EQUALIATION, et al.,

Respondents.

**STATE BOARD'S OPPOSITION TO MOTION FOR LEAVE TO SEEK RECONSIDERATION
AND OPPOSITION IN PART TO REINSTATEMENT OF STAY OF FEBRUARY 8, 2013
STATE BOARD OF EQUALIZATION DECISION**

The State of Nevada, Nevada State Board of Equalization (State Board) by and through its
counsel, Catherine Cortez Masto, Attorney General, by Dawn Buoncristiani, Deputy Attorney
General, pursuant to WDCR 12(2) submits its Opposition to Motion for Leave to Seek

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

1 Reconsideration and Opposition in Part to Reinstatement of Stay of February 8, 2013 State
2 Board of Equalization Decision.

3 DATED: August 5, 2013.

4 CATHERINE CORTEZ MASTO
Attorney General

5
6 By: *Dawn Buoncrisiani*
7 DAWN BUONCRISTIANI
8 Deputy Attorney General
9 Nevada Bar No. 7771
10 100 North Carson Street
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12 Attorneys for the State Board of Equalization
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POINTS AND AUTHORITIES

I. Introduction

Petitioners seek to have this Court reconsider the basis for its Order Dismissing Petitioners' Petition for Judicial Review and denial of Petitioners' Objections to State Board of Equalization Report and Order. Petitioners' Motion for Leave to Seek Reconsideration or, in the Alternative, for Stay of July 1, 2013 Order and Reinstatement of Stay of February 8, 2013 State Board of Equalization Decision Pending Appeal (Motion) should be denied in part based on the following reasons.^{1 2} First, Petitioners' Motion should not be reconsidered because it was not timely filed pursuant to WDCR 12 (8).

Second, most of the issues raised by Petitioners' Motion, although reworded, have been fully briefed by the parties and warrant no reconsideration: inadequate notice pursuant to NRS 361.395 and Petitioners' ability to challenge the State Board's final decision in this matter.³ The notice requirement in NRS 361.395 was addressed by the State Board. See State Board's Reply to Plaintiffs'/Petitioners' Opposition to State's Motion to Dismiss (Reply), p. 21; State Board's Response to Objection (Response), pp. 16-17; State's Surreply to Petitioners' Reply to State Board of Equalization Response to Objection to February 2013 Decision on Equalization, p. 7. The issue of the procedure to review State Board decisions was fully briefed by the State Board in its Motion to Dismiss Petition for Judicial Review (Motion to Dismiss PJR) and Reply. See Motion to Dismiss PJR, pp. 3-4; State Board's Reply, pp. 8-16. On June 14, 2013, this Court heard oral argument for nearly three hours on

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¹ State Board does not oppose staying the portion of the State Board's Equalization Order (Equalization Order) addressing appraisal of Petitioners' property by the Washoe County Assessor as delineated in the Equalization Order. See Exhibit 1 - State Board of Equalization's Notice of Equalization Order.

² State Board does not oppose staying this Court's Order dated July 1, 2013.

³ State Board provides some of the pages from briefs where the issues were argued.

1 these subjects as well as others.⁴

2 The Nevada Legislature in NRS 361.395 has provided the notice requirement for
3 equalization hearings and no right to appeal a State Board equalization decision. Courts
4 should not fill in for what may appear to be an improvident means to notice equalization
5 hearings or review or lack thereof of an equalization decision, but let the democratic process
6 address such issues. *Vance v. Bradley*, 440 U.S. 93, 97 (1979). See also, *Nordlinger v.*
7 *Hahn*, 505 U.S. 1, 17-18 (1992).

8 Third, Petitioners are not the real parties in interest and do not have standing to seek a
9 stay of the State Board decisions regarding agricultural and exemption grievances brought by
10 other property owners. Fourth, the stay should not be granted as to the agricultural and
11 exemption grievances because the third element of the requirements for a stay, whether the
12 State may suffer serious injury, cannot be met.⁵

13 II. APPLICABLE LAW

14 D.C.R. (7) provides:

15 No motion once heard and disposed of shall be renewed in the same cause, nor shall
16 the same matters therein embraced be reheard, unless by leave of the court granted upon
17 motion therefor, after notice of such motion to the adverse parties.

18 WDCR 12(8) provides:

19 The rehearing of motions must be done in conformity with D.C.R.13,
20 Section 7. **A party seeking reconsideration of a ruling of the court**, other
21 than an order which may be addressed by motion pursuant to N.R.C.P. 50(b),
22 52(b), 59 or 60, **must file a motion for such relief within 10 days after**
23 **service of written notice of entry of the order** or judgment, unless the time is
shortened or enlarged by order. A motion for rehearing or reconsideration must
be served, noticed, filed, and heard as is any other motion. A motion for
rehearing does not toll the 30-day period for filing a notice of appeal from a final
order or judgment. (*Emphasis added*).

24 ⁴ Contrary to Petitioners' allegation, the State Board does not have authority to provide how its decisions
25 will be reviewed/challenged. See Motion, pp. 3-4. Petitioners provide no authority to support such an allegation.
26 See *Humane Soc. of Carson City and Ormsby County v. First Nat. Bank of Nevada*, 92 Nev. 474, 478, 553 P.2d
27 963, 965 (1976) (When party cites no authority to support its contention, Court need not consider it). The
Legislature provides the means to review or appeal agency decisions and the State Board's decisions in
particular. See Motion to Dismiss PJR, pp. 19-22; Reply, pp. 19-20.

28 ⁵ By identifying this third element of the requirements for a stay, the State Board is not thereby agreeing
with Petitioners' analysis and application of the other three elements.

1 **III. RELEVANT PROCEDURAL FACTS**

2 On July 1, 2013, this Court entered its Order denying Petitioners' Objections to State
3 Board of Equalization Report and Order, and granting Defendants' Motions to Dismiss
4 Petitioners' Petition for Judicial Review. On July 1, 2013, written Notice of Entry of the Order
5 was filed. On July 3, 2013, Petitioners filed a Notice of Appeal with this Court. On July 15,
6 2013, Petitioners filed a Notice of Appeal with the Nevada Supreme Court. On July 19, 2013,
7 Petitioners filed the Motion.

8 **IV. LEGAL ARGUMENTS**

9 **A. Petitioners' Motion Should Not Be Reconsidered Because It Was Not**
10 **Timely Filed Pursuant to WDCR 12(8) Which Requires Filing of a**
11 **Motion for Such Relief Within 10 Days After Service of Written**
12 **Notice of Entry of the Order.**

13 Petitioners' Motion should not be reconsidered because it was not timely filed pursuant
14 to WDCR 12(8). WDCR 12(8) requires that Petitioners' Motion should have been filed by July
15 11, 2013, ten days after service of the written Notice of Entry of Order. *See Arnold v. Kip*,
16 123 Nev. 410, 416, 168 P.3d 1050, 1054 (2007) ("Washoe District Court Rule 12(8) . . . sets
17 forth deadlines for seeking reconsideration."). Petitioners' Motion was untimely filed on July
18 19, 2013. The date of filing of the Motion was not compliant with the 10-day requirement in
19 WDCR 12(8).⁶ Petitioners' Motion should not be reconsidered.⁷

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27 ⁶ Even adding three days for service, July 14, 2013, the July 19, 2013 filing of the Motion was not timely
28 pursuant to WDCR 12(8)

⁷ State Board is unaware of any enlargement of time granted by the Court for filing the motion.

1 **B. The Nevada Legislature Provided the Means to Notice and Appeal a**
2 **State Board Decision in a Contested Case; It is Logical that the**
3 **Legislature Could Have Provided the Same Notice and Appeal**
 Process For a State Board Equalization Decision, If the Legislature
 Had so Intended, But the Legislature Did Not So Provide.

4 Petitioners raise the issue of inadequate notice and inadequate means to challenge
5 State Board equalization decisions unless such decisions result in an increase in value.^{8 9}

6 See Motion, pp. 3, 5. NRS 361.395(2) provides the individual notice requirement for a State
7 Board equalization decision. If the State Board proposes to increase the value of a property
8 then "it [State Board] shall give 10-days' notice to interested persons. . ." NRS 361.395(2).

9 NRS 361.395(2) was recently amended. Such amendment provides notice of 30 days
10 instead of 10 days, if the State Board proposes to increase taxable value of the property
11 pursuant to an equalization action. See Act of July 1, 2013, Ch. 481, §1, 2013 Nev. Stat. ____.

12 See a/so, Exhibit 2- Assembly Bill No. 66. Such notice is limited to a "fiscal year that begins
13 on or after July 1, 2013" and for "notices of proposed increases in the valuation of property..."

14 *Id.* at §2.¹⁰

15
16 ⁸ Contrary to Petitioners' allegation, the State Board does not have authority to provide the means for
17 Petitioners to "challenge" valuations that are not increased. See Motion, pp. 3-4. The State Board is an executive
18 branch agency with special and limited jurisdiction and it cannot provide such relief. See *State v. Central Pac.*
19 *R.R. Co.*, 21 Nev. 172, 26 P. 225, 226 (1891) ("A board of equalization is of special and limited jurisdiction, and,
20 like all inferior tribunals, has only such powers as are specially conferred upon it. It is essential to the validity of
21 its actions that they should be authorized by some provision of the statute, otherwise they are null and void.").
22 Petitioners provide no authority to indicate that the State Board is authorized by any legal authority to provide the
23 means for Petitioners to challenge the State Board's equalization decisions. See *Humane Soc. of Carson City*
24 *and Ormsby County v. First Nat. Bank of Nevada*, 92 Nev. 474, 478, 553 P.2d 963, 965 (1976) (When party cites
25 no authority to support its contention, court need not consider it.). However, to the extent the State Board may
26 reconsider an equalization order pursuant to NAC 361.669, Petitioners have an option for the State Board to
27 reconsider its own decision.

28 ⁹ It is unclear to the State Board how property rights issues as alleged by Petitioners in this matter may be
addressed by the State Board. See Motion, p. 5. The State Board cannot provide relief for this alleged issue.
The State Board has been ordered to equalize which it has the authority to do and which the State Board is
attempting to do; however, the State Board has no authority to settle any property rights disputes as alleged by
Petitioner. NRS 361.395. See Motion, p. 5. (Petitioners provide no authority to support Petitioners' property
rights allegations regarding the State Board's authority to address their property rights issues. Accordingly, such
property rights issues should not be considered by this court. See *Humane Soc. of Carson City and Ormsby*
County, 92 Nev. at 478 (When party cites no authority to support its contention, Court need not consider it.)).
Appraisals by the Washoe County Assessor establish property assessments for property tax purposes not for
purposes of other property rights transactions. NRS 361.221; NRS 361.227.

¹⁰ NRS 361.405 was, also amended by AB 66 to provide notice to property owners after the State Board
has raised the valuation of any property pursuant to NRS 361.395(1) by an act of equalization. In other words,
those affected by an increase in property value shall receive notice. See Exhibit 2.

1 Accordingly, in the legislative session of 2013, the Legislature addressed the issue of
2 notice of a State Board equalization action: when an interested person should be noticed.
3 This Court should not read into the statute another means of notice as argued by Petitioners.
4 "The mention of one thing or person is in law an exclusion of all other things or persons."
5 *Virginia & T.R. Co. v. Elliott*, 1870 WL 2464, 3 (Nev.) (1870). "The court should read each
6 sentence, phrase, and word to render it meaningful within the context of the purpose of the
7 legislation." *Board of County Com'rs of Clark County v. CMC of Nevada, Inc.*, 99 Nev. 739,
8 744, 670 P.2d 102, 105 (1983) citing *State Gen. Obligation Bond v. Koontz*, 84 Nev. 130, 437
9 P.2d 72 (1968). "[I]t is a common rule of construction that, when not in conflict with the
10 Constitution, the intention of the Legislature is to govern in the construction of statutes." *State*
11 *v. Boerlin*, 38 Nev. 39, 144 P. 738, 740 (1914).

12 Here, the Legislature has affirmed its intention that notice of a proposed equalization
13 decision will go to interested persons when the State Board proposes to raise the valuation of
14 their property by an equalization action. There is no room for interpretation because the
15 language is not ambiguous. "It is well settled in Nevada that when statutory language is clear
16 on its face, its [legislative] intention must be deduced from such language." *Worldcorp v.*
17 *State, Dept. of Taxation*, 113 Nev. 1032, 1035-1036, 944 P.2d 824, 826 (1997) (citation
18 omitted). The legislative intent is clear from the plain language of NRS 361.395(2) and
19 affirmed by the recent amendment to such subsection that notice of a proposed equalization
20 decision is required only when the valuation of the property is increased. Notice to those
21 affected by an equalization order is sent only when the valuation of the property is
22 increased.¹¹

23 NRS 361.405. See Exhibit 2.

24
25 ¹¹ "The Secretary of the State Board of Equalization forthwith shall certify **any** change made by the Board
26 in the assessed valuation of **any** property in whole or in part to the **county auditor** of the county where the
27 property is assessed, . . ." NRS 361.405. (Emphasis added). The Legislature has chosen to require the
28 Secretary to the State Board to notify only the county auditor of any changes in value and not the property
owners. *Virginia & T.R. Co. v. Elliott*, 1870 WL 2464, 3 (Nev.) (1870) (the mention of one thing excludes all
others). Here, the Legislature has excluded notice to property owners whose property valuations are lowered.
See Motion, p. 4.

1 Petitioners allege many wrongs pursuant to the notice requirements and lack of review
2 of a State Board of equalization decision pursuant to NRS 361.395.¹² Motion, pp. 3-5. Such
3 allegations of different treatment in an equalization hearing as compared to notice and review
4 for contested cases are related to legitimate state purposes and not irrational such that this
5 Court misunderstood and should vacate its Order.

6 The Constitution presumes that, absent some reason to infer antipathy, even
7 improvident decisions will eventually be rectified by the democratic process and
8 that judicial intervention is generally unwarranted no matter how unwisely we
9 may think a political branch has acted. Thus, we will not overturn such a statute
unless the varying treatment of different groups or persons is so unrelated to the
achievement of any combination of legitimate purposes that we can only
conclude that the legislature's actions were irrational.

10 Vance, 440 U.S. at 97. See also, *Nordlinger*, 505 U.S. at 18. The State has a legitimate
11 purpose for notice to only those whose values may be increased. Such legitimate purpose is
12 that even just noticing those whose value may go up could be quite costly and could have a
13 chilling effect on issuing equalization orders affecting large portions of the State. NRS
14 361.395 in its current form may have this chilling effect. See Exhibit 3 - Hearing A.B. 66
15 before the Assembly Committee on Taxation, 2013 Leg., 77th Session 17-18 (February 21,
16 2013).

17 Petitioners were represented in the political process during the recent Legislative
18 session which amended NRS 361.395. Assemblyman Randy Kirner represented Petitioners
19 at the February 21, 2013 hearing on A.B. 66 as well as at the March 14, 2013 hearing on
20 such assembly bill. See Exhibit 3, p. 1; Exhibit 4 - Hearing A.B. 66 before the Assembly
21 Committee on Taxation, 2013 Leg., 77th Session 3 (March 14, 2013). Hence, the democratic
22 process did not see its way to make such changes as Petitioners allege in the Motion. The
23 Legislature increased notice to 30 days on a proposed equalization order increasing value.
24 See Exhibit 2. The Legislature clarified that notice of an equalization order increasing value
25 must be made by first-class mail, but added no means to appeal such an equalization
26

27 ¹² Contrary to Petitioners' allegation regarding a violation of due process, Petitioners have appeared
28 and spoken at three State Board hearings on equalization so far. See Exhibit 1. See Motion, pp. 4-6. After the
Assessor appraises the identified parcels, at least one additional hearing will be held at which Petitioners may be
heard. NAC 361.653; NAC 361.665; NAC 361.667.

1 decision. See Exhibit 2. Therefore, the State has a legitimate purpose for only noticing
2 proposed increases and actual increases in value pursuant to an equalization order.¹³

3 Additionally, "[if] the legislature had the foresight to provide" for appeal of a State Board
4 decision in a contested case pursuant to NRS 361.420, "then it is only logical that the same
5 would be provided" in NRS 361.395 "if the legislature so intended." *Estate of Delmue v.*
6 *Allstate Ins. Co.*, 113 Nev. 414, 418, 936 P.2d 326, 329 (1997). The Legislature did not
7 provide for an appeal of a State Board equalization decision pursuant to a petition for judicial
8 review. The Court did not fail to consider any material facts or law and did not misapprehend
9 applicable law. The Court should not reconsider and/or vacate its Order.

10 **C. State Board Opposes in Part Petitioners' Motion to Stay the State**
11 **Board's Equalization Order: Petitioners Are Not the Real Parties in**
12 **Interest and Have no Standing to Seek a Stay of the State Board**
13 **Orders Regarding the Agricultural and Exemption Grievances;**
14 **Petitioners Have Not Met the Third Element Required for a Stay of**
15 **the Equalization Order Addressing the Agricultural and Exemption**
16 **Grievances.**

17 Petitioners' Motion requesting a reinstatement of the stay of the February 8, 2013 State
18 Board of Equalization Order should be denied in part because Petitioners are not the real
19 parties in interest, nor do Petitioners have standing to challenge the agricultural and
20 exemption grievances argued by other taxpayers. See Exhibit 1.¹⁴

21 NRCP 17(a) provides: "Real Party in Interest. Every action shall be prosecuted in the
22 name of the real party in interest."

23 ¹³ NRS 361.395 applies equally to all property owners in the State. Pursuant to NRS 361.395 no group or
24 persons are subject to varying treatment which is so unrelated to the achievement of a legitimate purpose that the
25 Legislature's actions are irrational. As a matter of fact such statute is consistent with *Bi-metallic Inv. Co. v. State*
26 *Bd. of Equalization*, 239 U.S. 441, 445-446 (1915). In an equalization action without opportunity for property
27 owners to be heard before property values were equalized up, the Bi-metallic Court held there was no due
28 process violation. The following was the Bi-metallic court's rationale. "Where a rule of conduct applies to more
than a few people, it is impracticable that everyone should have a direct voice in its adoption. The Constitution
does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within
the state power are passed that affect the person or property of individuals, sometimes to the point of ruin,
without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex
society, by their power, immediate or remote, over those who make the rule. . . There must be a limit to individual
argument in such matters if government is to go on." *Id.*

¹⁴ See specifically, pp. 3-5 of [Exhibit 1] to State Board of Equalization's Notice of Equalization Order.

1 This [real party in interest] has been defined as the person who 'by the
2 substantive law has the right to be enforced.' 3 Moore's Federal Practice, par.
3 17.02 at page 1305 (2nd ed. 1964). The purpose behind this requirement is to
4 protect individuals from the harassment of suits by persons who do not have the
power to make final and binding decisions concerning prosecution, compromise
and settlement.

5 *Lum v. Stinnett*, 87 Nev. 402, 408, 488 P.2d 347, 351 (1971). Another purpose of NRS 17(a)
6 is to assure the State Board of the "finality of the judgment," and that State Board "will be
7 protected against another suit brought by the real party at interest on the same matter."
8 *Painter v. Anderson*, 96 Nev. 941, 943, 620 P.2d 1254, 1256 (1980) (citation omitted).

9 Petitioners are not real parties in interest to the agricultural and exemption grievances
10 because Petitioners did not bring the grievances; therefore, Petitioners do not have any rights
11 under substantive law to be enforced. City Hall, LLC brought the exemption grievance and
12 William Brooks brought the agricultural grievance. See Exhibit 1.¹⁵ On April 8, 2013, City
13 Hall, LLC filed a Notice of Intent Not to Participate in the current matter. On April 6, 2013,
14 William Brooks was served with a summons but no response was filed. Hence, neither real
15 party in interest is participating in this matter.

16 If the stay is placed against the entire Equalization Order, the State Board will not be
17 protected from the harassment of this suit by Petitioners who do not have the power to make
18 final and binding decisions concerning prosecution, compromise and settlement of the
19 agricultural and exemption grievances. There would be an issue of the finality of any
20 judgment in each instance. See Exhibit 1.¹⁶ If the stay is applied to the State Board
21 equalization orders regarding the agricultural and exemption grievance, the Department of
22 Taxation will not be able to investigate the issues raised by the grievances of these two
23 taxpayers. Since this case originated in 2003, it could possibly be 10 or more years before
24 the Department of Taxation could investigate the agricultural and exemption grievances.

25
26
27 ¹⁵ See specifically, pp. 3-5 of [Exhibit 1] to State Board of Equalization's Notice of Equalization Order.

28 ¹⁶ See specifically, pp. 4-5, 10 of [Exhibit 1] to State Board of Equalization's Notice of Equalization Order.

1 Additionally, if the State Board determined that agricultural and/or exemptions issues existed,
2 no action could be taken to correct any problems without violating the stay.

3 Here, the State may suffer serious injury if the stay is granted and the State Board is
4 not permitted to perform its equalization duties regarding the agricultural and exemption
5 grievances. One of the required elements to grant a stay is "whether respondent will suffer
6 irreparable or serious injury if the stay is granted, . . ." *Mikohn Gaming Corp. v. McCrea*, 120
7 Nev. 248, 251, 89 P.3d 36, 38 (2004). Therefore, Petitioners do not meet all of the elements
8 for a stay as to the State Board's Equalization Order addressing the agricultural and
9 exemption grievances.

10 Accordingly, not only do Petitioners fail to meet the requirements for a stay, but
11 Petitioners lack standing to bring a request for stay of State Board equalization orders
12 regarding the agricultural and exemption grievances because Petitioners were not the real
13 party in interest to such grievances. *Deal v. 999 Lakeshore Ass'n*, 94 Nev. 301, 305, 579
14 P.2d 775, 778 (1978). Petitioners have no standing to seek the stay because Petitioners will
15 suffer no loss or injury from the State Board's orders regarding the agricultural and exemption
16 grievances. *State, Dept. of Taxation v. Chrysler Group LLC*, 29 Nev. ___, 300 P.3d 713,
17 715 (2013). Petitioners Motion for stay should not be granted for any equalization order
18 except the one affecting Petitioners: the appraisal of property by the Washoe County
19 Assessor. See Exhibit 1.¹⁷

20 **V. CONCLUSION**

21 Based on the foregoing reasoning and authority, the State Board respectfully requests
22 the Court deny Petitioners' Motion seeking reconsideration of the matter before the Court and
23 Motion to vacate the Court's Order. Further, State Board, respectfully requests the Court
24 deny Petitioners' Motion for Stay relating to State Board's equalization orders about the
25 agricultural and exemption grievances and for such other and further relief the Court deems

26 ///

27
28 ¹⁷ See specifically, pp. 9-10 of [Exhibit 1] to State Board of Equalization's Notice of Equalization Order.

1 just and proper.¹⁸ See Exhibit 1.

2 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

5 DATED: August 5, 2013.

6 CATHERINE CORTEZ MASTO
7 Attorney General

8 By: *Dawn Buoncristiani*
9 DAWN BUONCRISTIANI
10 Deputy Attorney General
11 Nevada Bar No. 7771
12 100 North Carson Street
13 Carson City, NV 89701-4717
14 Attorneys for the Nevada State Board of
15 Equalization
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26 ¹⁸ The State Board dismissal of the Louise Mordarelli grievance should not be stayed on the same basis
27 as argued under Section IV. The State Board action relates only to dismissal of her case and there was no
28 equalization component to the matter. There is nothing to be gained by not dismissing this matter until resolution
of the Village League issues. However, there will be no injury to the State if this State Board Order is not stayed.
See specifically, p. 4 of [Exhibit 1] to State Board of Equalization's Notice of Equalization Order.

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

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on August 5, 2013, I served the foregoing **STATE BOARD'S OPPOSITION TO MOTION FOR LEAVE TO SEEK RECONSIDERATION AND OPPOSITION IN PART TO REINSTATEMENT OF STAY OF FEBRUARY 8, 2013 STATE BOARD OF EQUALIZATION DECISION**, by depositing a true and correct copy in a sealed, postage prepaid envelope for delivery by the United States Post Office fully addressed as follows:

**Suellen Fulstone, Esq.
Snell & Wilmer, LLP.
50 West Liberty Street, Suite 510
Reno, NV 89501
Attorneys for Intervenors**


**Norman J. Azevedo
405 North Nevada Street
Carson City, NV 89703
Attorneys for Intervenors and Petitioners Village League to Save Incline Assets, Inc., et al.**

**David Creekman, Chief Deputy District Attorney
Washoe County District Attorney's Office
Civil Division
Post Office Box 30083
Reno, NV 89520
Attorneys for Washoe County Respondents**

**Arthur E. Mallory, District Attorney
Churchill County
165 North Ada Street
Fallon, NV 89406
Attorneys for Churchill County Assessor**

**Jim C. Shirley, District Attorney
Pershing County
400 Main Street
Post Office Box 934
Lovelock, NV 89419
Attorneys for Pershing County Assessor**

Dated: August 5, 2013.


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

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INDEX OF EXHIBITS

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EXHIBIT 1

EXHIBIT 1

FILED

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02-08-2013:02:01:23 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3520875

1 **2610**

2 CATHERINE CORTEZ MASTO

3 Attorney General

4 DAWN BUONCRISTIANI

5 Deputy Attorney General

6 Nevada Bar No. 7771

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9 (775) 684-1219

10 (775) 684-1156 (f)

11 dbuoncristiani@ag.nv.gov

12 Attorneys for State Board of Equalization

13 **IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA**

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

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

25 Plaintiffs,

26 vs.

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

Defendants.

Case No. CV03-06922

Department No. 7

STATE BOARD OF EQUALIZATION'S NOTICE OF EQUALIZATION ORDER

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

1 is timely made.

2 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

5 Respectfully submitted this 8th day of February, 2013.

6 CATHERINE CORTEZ MASTO
7 Attorney General

8 By: *Dawn Buoncrisiani*
9 DAWN BUONCRISTIANI
10 Deputy Attorney General
11 Nevada State Bar No. 7771
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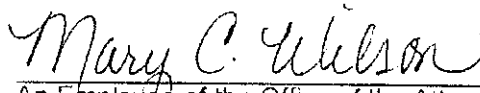
Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

CERTIFICATE OF SERVICE

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

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

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


An Employee of the Office of the Attorney General

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

Exhibit No. Description of Exhibit

1 State Board of Equalization's Order

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3520875

EXHIBIT 1

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

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EXHIBIT 1

APX01554



BRIAN SANDOVAL
Governor

**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

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

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

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

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

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

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

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

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

FINDINGS OF FACT

- 1) The State Board is an administrative body created pursuant to NRS 361.375.
- 2) The State Board is mandated to equalize property valuations in the state pursuant to NRS 361.395.
- 3) The State Board found there was insufficient evidence to show a broad-based equalization action was necessary to equalize the taxable value of residential property in Clark County that was the subject of a grievance brought forward by Louise Modarelli. The State Board dismissed

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

- 4) The State Board found there was insufficient evidence to show a broad-based equalization action was necessary to equalize the valuation of exempt property in Clark County that was the subject of a grievance brought forward by City Hall, LLC. The State Board dismissed the grievance from further action. The State Board, however, directed the Department to conduct a performance audit of the work practices of county assessors with regard to how value is established for exempt properties. *See Tr., 11-5-12, p. 12, l. 21 through p. 13, l. 4; p. 14, l. 9 through p. 15, l. 10.*
- 5) The State Board did not make a finding with regard to a broad-based equalization action on agricultural property in Douglas County, however, the State Board directed the Department to conduct a performance audit of the work practices of county assessors in the proper classification of agricultural lands. *See Tr., 11-5-12, p. 27, l. 16 through p. 29, l. 3.*
- 6) The State Board found the grievance brought forward by Dehnert Queen and Paul Rupp, Esmeralda County, with regard to the property tax system required statutory changes. The State Board dismissed the grievance from further action. *See Tr., 11-5-12, p. 34, l. 25 through p. 35, l. 4.*
- 7) The State Board found there was sufficient evidence to support a finding that some properties located in Incline Village and Crystal Bay, Washoe County, were valued in 2003-2004, 2004-2005, and 2005-2006 using methodologies that were subsequently found to be unconstitutional by the Nevada Supreme Court. *See Tr., 11-5-12, p. 92, l. 19 through p. 94, l. 24; p. 98, l. 1-9; p. 100, ll. 3-23; State Board of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006).*
- 8) The State Board found there was no evidence to show methods found to be unconstitutional by the Nevada Supreme Court in the *Bakst* decision were used outside of the Incline Village and Crystal Bay area. *See Tr., 11-5-12, p. 94, l. 15 through p. 95, l. 7; p. 106, l. 7 through p. 108, l. 2; Tr., 12-3-12, p. 61, ll. 3-21.*
- 9) The State Board found that equalization of the Incline Village and Crystal Bay area which might result in an increase in value to individual properties requires separate notification by the State Board of Equalization pursuant to NRS 361.395(2). *See Tr., 11-5-12, p. 103, ll. 12-21; Tr., 12-3-12, p. 74, l. 12 through p. 75, l. 9.*
- 10) Any finding of fact above construed to constitute a conclusion of law is adopted as such to the same extent as if originally so denominated.

CONCLUSIONS OF LAW

- 1) The State Board has the authority to determine the taxable values in the State and to equalize property pursuant to the requirements of NRS 361.395.
- 2) County assessors are subject to the jurisdiction of the State Board.
- 3) The Writ of Mandamus issued in Case No. CV-03-06922 requires the State Board to take such actions as are required to notice and hold public hearings, determine the grievances of property owner taxpayers regarding the failure or lack of equalization for 2003-2004 and subsequent years to and including the 2010-2011 tax year, and to raise, lower, or leave unchanged the taxable value of any property for the purpose of equalization. *See Writ of Mandamus issued August 21, 2012.* The State Board found the Writ did not limit the type of equalization action to

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

- 4) Except for NRS 361.333 which is equalization by the Nevada Tax Commission, there were no statutes or regulations defining equalization by the State Board prior to 2010. As a result, the State Board for the current matter relied on the definition of equalization provided in NAC 361.652 and current equalization regulations for guidance in how to equalize the property values in Incline Village and Crystal Bay, Washoe County, Nevada. The State Board found the Incline Village and Crystal Bay properties to which unconstitutional methodologies were applied to establish taxable value in 2003-2004, 2004-2005, and 2005-2006 should be reappraised using the constitutional methodologies available in those years; and further, that the taxable values resulting from said reappraisal should be tested to ensure the level of assessment required by law has been attained, by using a sales ratio study conducted by the Department. See Tr., 12-3-12, p. 76, l. 2 through p. 79, l. 21.
- 5) The standard for the conduct of a sales ratio study is the IAAO *Standard on Ratio Studies* (2007). See NAC 361.658 and NAC 361.662.
- 6) The Nevada Supreme Court defined unconstitutional methodologies used on properties located at Incline Village and Crystal Bay as: classification of properties based on a rating system of view; classification of properties based on a rating system of quality of beachfront; time adjustments and use of teardown sales as comparable sales. See *State Board of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006).
- 7) NAC 361.663 provides that the State Board require the Department to conduct a systematic investigation and evaluation of the procedures and operations of the county assessor before making any determination concerning whether the property in a county has been assessed uniformly in accordance with the methods of appraisal required by law.
- 8) Any conclusion of law above construed to constitute a finding of fact is adopted as such to the same extent as if originally so denominated.

ORDER

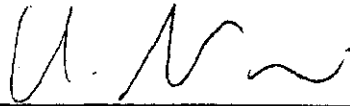
Based on the Findings of Fact and Conclusions of Law above, the State Board determined that no statewide equalization was required. See Tr., 12-3-12, p. 80, l. 1 through p. 81, l. 10. However, based on the Findings of Fact and Conclusions of Law above, the State Board determined certain regional or property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

- 1) The Washoe County Assessor is directed to reappraise all residential properties located in Incline Village and Crystal Bay to which an unconstitutional methodology was applied to derive taxable value during the tax years 2003-2004, 2004-2005, and 2005-2006. The reappraisal must be conducted using methodologies consistent with Nevada Revised Statutes and regulations approved by the Nevada Tax Commission in existence during each of the fiscal years being reappraised. The reappraisal must result in a taxable value for land for each affected property for the tax years 2003-2004; 2004-2005; and 2005-2006.
- 2) The Washoe County Assessor must complete the reappraisal and report the results to the State Board no later than one year from the date of this Notice of Decision. The report shall include a list for each year, of each property by APN, the name of the taxpayer owning the property during the relevant years, the original taxable value and assessed value and the reappraised taxable value and assessed value. The report shall also include a narrative and discussion of the

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

- 3) The Department is directed to conduct a sales ratio study consistent with NAC 361.658 and NAC 361.662 to determine whether the reappraised taxable values of each affected residential property in Incline Village and Crystal Bay meets the level of assessment required by law; and to report the results of the study to the State Board prior to any change being applied to the 2003-2004, 2004-2005, or 2005-2006 tax rolls. The Washoe County Assessor is directed to cooperate with the Department in providing all sales from the Incline Village and Crystal Bay area occurring between July 1, 1999 to June 30, 2004, along with such information necessary and in a format to be identified by the Department, for the Department to perform the ratio study.
- 4) The Washoe County Assessor shall separately identify any parcel for which the reappraised taxable value is greater than the original taxable value, along with the names and addresses of the taxpayer owning such parcels to enable the State Board to notify said taxpayers of any proposed increase in value.
- 5) The Washoe County Assessor shall send a progress report to the State Board on the status of the reappraisal activities six months from the date of this Equalization Order including the estimated date of completion, unless the reappraisal is already completed.
- 6) The Department is directed to conduct a performance audit of the work practices of all county assessors with regard to the valuation of exempt properties, and to report the results of the audit to the State Board no later than the 2014-15 session of the State Board. All county assessors are directed to cooperate with the Department in supplying such information the Department finds necessary to review in order to conduct the audit; and to supply the information in the format required by the Department. See *Finding of Fact #5*.
- 7) The Department is directed to conduct a performance audit of the work practices of all county assessors with regard to the proper qualification and classification of lands having an agricultural use, and to include in the audit the specific properties brought forward in the Brooks grievance. The Department is directed to report the results of the audit to the State Board no later than the 2014-15 session of the State Board. All county assessors are directed to cooperate with the Department in supplying such information the Department finds necessary to review in order to conduct the audit; and to supply the information in the format required by the Department. See *Finding of Fact #6*.

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



Christopher G. Nielsen, Secretary

CGF/ter

**CERTIFICATE OF SERVICE
Equalization Order 12-001**

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

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Anita L. Moore, Program Officer I
State Board of Equalization

EXHIBIT 2

EXHIBIT 2

Assembly Bill No. 66--Committee on Taxation

CHAPTER.....

AN ACT relating to property tax; revising the manner in which the State Board of Equalization must provide certain notices concerning increases in the valuation of property; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the State Board of Equalization is required to give 10 days' notice by registered or certified mail or by personal service to interested persons if the Board proposes to increase the valuation of any property on the assessment roll. (NRS 361.395) **Section 1** of this bill maintains this requirement if the Board proposes to increase the valuation of any property on the assessment roll in a proceeding to resolve an appeal or other complaint before the Board pursuant to NRS 361.360, 361.400 or 361.403. However, for notices of proposed increases in the valuation of a class or group of property that relate to a fiscal year that begins on or after July 1, 2013, **section 1** requires the Board to give 30 days' notice by first-class mail to interested persons.

Under existing law, whenever the valuation of any property is raised by the Board, the Secretary of the Board is required to forward notice of the increased valuation by certified mail to the property owner or owners affected. (NRS 361.405) **Section 1.5** of this bill: (1) maintains the requirement that this notice be provided by certified mail if the Board increases the valuation in a proceeding to resolve an appeal or other complaint before the Board pursuant to NRS 361.360, 361.400 or 361.403; and (2) requires this notice to be provided by first-class mail to the property owner or owners affected if the Board increases the valuation of a class or group of properties.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~to be omitted~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 361.395 is hereby amended to read as follows:

361.395 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~~:

(a) Pursuant to paragraph (b) of subsection 1, it shall give 30 days' notice to interested persons by first-class mail.

(b) In a proceeding to resolve an appeal or other complaint before the Board pursuant to NRS 361.360, 361.400 or 361.403, it shall give 10 days' notice to interested persons by registered or certified mail or by personal service. ~~The~~

→ A notice provided pursuant to this subsection 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.

Sec. 1.5. NRS 361.405 is hereby amended to read as follows:

361.405 1. The Secretary of the State Board of Equalization forthwith shall certify any change made by the Board in the assessed valuation of any property in whole or in part to the county auditor of the county where the property is assessed, and whenever the valuation of any property is raised ~~it~~:

(a) In a proceeding to resolve an appeal or other complaint before the Board pursuant to NRS 361.360, 361.400 or 361.403, the Secretary of the ~~State~~ Board ~~of Equalization~~ shall forward by certified mail to the property owner or owners affected, notice of the increased valuation.

(b) Pursuant to paragraph (b) of subsection 1 of NRS 361.395, the Secretary of the Board shall forward by first-class mail to the property owner or owners affected, notice of the increased valuation.

2. As soon as changes resulting from cases having a substantial effect on tax revenues have been certified to the county auditor by the Secretary of the State Board of Equalization, the county auditor shall:

(a) Enter all such changes and the value of any construction work in progress and net proceeds of minerals which were certified to him or her by the Department, on the assessment roll before the delivery thereof to the tax receiver.

(b) Add up the valuations and enter the total valuation of each kind of property and the total valuation of all property on the assessment roll.

(c) Certify the results to the board of county commissioners and the Department.

3. The board of county commissioners shall not levy a tax on the net proceeds of minerals added to the assessed valuation



pursuant to paragraph (a) of subsection 2, but, except as otherwise provided by specific statute, the net proceeds of minerals must be included in the assessed valuation of the taxable property of the county and all local governments in the county for the determination of the rate of tax and all other purposes for which assessed valuation is used.

4. As soon as changes resulting from cases having less than a substantial effect on tax revenue have been certified to the county tax receiver by the Secretary of the State Board of Equalization, the county tax receiver shall adjust the assessment roll or the tax statement or make a tax refund, as directed by the State Board of Equalization.

Sec. 2. The amendatory provisions of section 1 of this act apply only to notices of proposed increases in the valuation of property that relate to a fiscal year that begins on or after July 1, 2013.

Sec. 3. This act becomes effective on July 1, 2013.



EXHIBIT 3

EXHIBIT 3

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION**

**Seventy-Seventh Session
February 21, 2013**

The Committee on Taxation was called to order by Chairwoman Irene Bustamante Adams at 1:29 p.m. on Thursday, February 21, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Irene Bustamante Adams, Chairwoman
Assemblywoman Peggy Pierce, Vice Chairwoman
Assemblywoman Teresa Benitez-Thompson
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Randy Kirner
Assemblywoman Dina Neal
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Aizley, Clark County Assembly District No. 41
Assemblyman Michael Sprinkle, Washoe County Assembly District No. 30



STAFF MEMBERS PRESENT:

Michael Nakamoto, Deputy Fiscal Analyst
Gina Hall, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

Dave Dawley, Assessor's Office, Carson City
Daphne DeLeon, Administrator, Division of State Library and Archives
Carole Vilardo, President, Nevada Taxpayers Association
Joshua Wilson, Assessor, Washoe County
Kyle Davis, representing the Nevada Conservation League and Education Fund
Barry Smith, representing the Nevada Press Association
Jennifer J. DiMarzio, representing the Nevada Press Association
Andrea Engleman, Private Citizen, Carson City, Nevada
Chris Nielsen, Executive Director, Department of Taxation
Terry Rubald, Chief, Local Government Services, Department of Taxation
Dan Gouker, Executive Director, Division of Apprenticeship Studies, College of Southern Nevada
Constance J. Brooks, Ph.D., Director, Government Relations, Nevada System of Higher Education
Stephen G. Wells, Ph.D., President, Desert Research Institute, Nevada System of Higher Education
Dennis Perea, Deputy Director, Department of Employment, Training, and Rehabilitation
Maria C. Sheehan, Ed.D., President, Truckee Meadows Community College
Thomas C. Piechota, Ph.D., P.E., Vice President for Research and Dean of the Graduate College, Division of Research and Graduate Studies, University of Nevada, Las Vegas
Tray Abney, representing the Chamber of Commerce of Reno, Sparks, and Northern Nevada
Carol A. Lucey, Ph.D., President, Western Nevada College
Collie L. Hutter, President, Click Bond, Inc., Carson City
Jeffrey S. Thompson, Dean, Professor of Physics, College of Science, University of Nevada, Reno
Tyson K. Falk, representing the Nevada Institute for Renewable Energy Commercialization
Douglas W. Sonnemann, Assessor, Douglas County
Yolanda T. King, Director, Budget and Financial Planning, Department of Finance, Clark County

Joyce Haldeman, Associate Superintendent, Community and Government
Relations, Clark County School District
Ray Bacon, representing the Nevada Manufacturers Association

Chairwoman Bustamante Adams:

Good afternoon everyone. I will call to order the meeting of the Assembly Committee on Taxation. [Roll was taken.] I would like to open the hearing on Assembly Bill 75. Assemblyman Aizley, please proceed.

Assembly Bill 75: Revises provisions governing the publication of property tax rolls. (BDR 32-486)

Assemblyman Paul Aizley, Clark County Assembly District No. 41:

I am here today to introduce Assembly Bill 75, which proposes to provide certain county assessors an alternative method for publishing the property assessment tax rolls each year. County assessors are required to prepare a list of all the taxpayers on the secured roll with the total valuation of their property. The list must be published in the newspaper in the county on or before January 1 of each year. County assessors are required to provide this list to each taxpayer in the county by one of three methods: deliver the list, mail the list, or publish the list in the newspaper of general circulation. In addition county assessors are required to post the list in a public area: public branch libraries, the county assessor's office, on an Internet website maintained by the county assessor, or on a website maintained by the county if one is not maintained by the county assessor. The assessors' offices in Nevada counties with populations of 100,000 or more, and of course those are Clark and Washoe, currently maintain an Internet website to which the list can be published. In the current economic climate this is a cost-effective measure, as publishing the list on an Internet website reduces the cost of physically publishing the list and distributing it to each taxpayer in the county.

Assembly Bill 75 would provide an alternative method for counties with a population of 100,000 or more to publish the property tax rolls. Section 1 allows the county assessors of counties with a population of 100,000 or more to publish the list on a website maintained by the county assessor. Section 2 states the effective date of the measure is July 1, 2013.

Providing the local governments a way to reduce expenditures is a prudent economic decision. Saving the counties the money that they are spending on publishing this in the newspaper is my main motivation.

I brought with me the full publication from Clark County for one biennium of two Decembers, 2012 and 2011. The total cost was \$580,000 each time, for

merit increases to the city employees. Now we want to save \$8,000 by denying something to the public that they are used to receiving.

Chairwoman Bustamante Adams:

Are there any questions from the members of the Committee? [There were none.] Are there any others in opposition? [There were none.] Is there anyone in neutral? [There was no one.] Assemblyman Aizley, could you please come back up and give any closing remarks?

Assemblyman Aizley:

I do not have any closing remarks that are really necessary at this time.

Chairwoman Bustamante Adams:

I heard a good middle ground. I really hope you all can get there. I think it would be a great transition point for us.

I would like to close the hearing on Assembly Bill 75 and open the hearing on Assembly Bill 66. Could the presenters please come to the table?

Assembly Bill 66: Revises the circumstances under which the State Board of Equalization must provide notice of a proposed increase in the valuation of property. (BDR 32-301)

Chris Nielsen, Executive Director, Department of Taxation:

Terry Rubald is here with me today. She is the chief of the Local Government Services Division at the Department of Taxation. We are here today to present Assembly Bill 66, which revises circumstances under which the State Board of Equalization must notify taxpayers by certified mail. Again the intent of this bill is to address costs, similar in a certain respect to the previous bill. I am going to turn it over to Ms. Rubald to go over the proposal.

Terry Rubald, Chief, Local Government Services, Department of Taxation

The purpose of A.B. 66 is to clarify State Board noticing requirements in *Nevada Revised Statutes* (NRS) 361.395. Currently, any action by the State Board which results in an increased assessed value requires a notice to the taxpayer by certified or registered mail. [Continued to read from written testimony (Exhibit G).]

There is a chart (Exhibit H) if you want to see the breakdown by county.

The basic point is that it becomes very costly to order broad equalization. The language in this bill is designed to continue individual notice by certified

mail to resolve appeals and complaints, but to remove the certified mail requirement for broad equalization actions.

Chairwoman Bustamante Adams:

Are there any questions from the Committee members?

Assemblyman Frierson:

My question involves kind of the grey area. You gave the example of countywide versus individual. I am just wondering if those are the only alternatives. If there is a change in valuation for someone for a reason other than an appeal or a complaint, even though it was an individual, it does not seem to me that they would be notified under this bill as it is written now. Is there ever a situation where there is just a neighborhood or a smaller number, smaller than a county, where there would still seem to be a need for notice?

Terry Rubald:

Yes. Sometimes equalization actions come as a result of an appeal by an individual. I can recall several instances through the years where an individual would come forward and most of the time those resulted in lowering of value so notice was not an issue. It is possible that an increase in value would occur and in that case everyone who was affected by that decision, as a result of the individual case, would have to be notified. As the bill states, if it is to resolve an appeal or other complaint everyone affected would have to be notified by certified mail. The issue that we are trying to bring forward is in the broad equalization action, which might affect one or more counties, where we are trying to equalize whole areas, and in that case certified mail would make it make it very costly to produce, each letter plus the mailing costs. These folks could still be notified by regular mail or advertisement, just not certified mail.

Assemblyman Frierson:

I am not entirely clear as to whether or not there are ever any circumstances where there would be a change in valuation due to a reason other than an appeal or a complaint.

Terry Rubald:

The equalization actions sometimes occur under the earlier part of NRS 361.395. The State Board is required to equalize property valuations. They can do that by examining a body of evidence, things we call ratio studies or performance audits, those types of things, so the information can come forward to the State Board outside of an appeal. If they were ever to decide that an equalization action affected more than just a neighborhood they might have to issue an equalization order. In that case all those affected should be

notified. What we are trying to say is not by certified mail because it would have a chilling effect because of the cost.

Assemblyman Frierson:

I think that I am following you, but is there a place that requires notice, short of certified notice, where we would be certain that those folks would be noticed?

Terry Rubald:

Perhaps we need to clarify that in this bill, to make sure that that is understood. What we were trying to get to was the cost of certified mail. Perhaps we need to expand this to make sure that notice is still there.

Chairwoman Bustamante Adams:

Are there any questions from the members of the Committee? [There were none.] I would like to move to the support position. Could those in favor of A.B. 66 please come to the table? [There were none.] Could those in neutral to A.B. 66 please come to the table?

Joshua Wilson, Assessor, Washoe County:

It is not often that I am at odds with the Department of Taxation. I believe Assemblyman Frierson hit it on the head here. If the State Board is going to propose any increase on any taxpayer in the state, they need to be made aware that they potentially may be liable for this increased tax that may result from the State Board increasing the value.

I stand here today not necessarily on behalf of the Nevada Assessor's Association but more as the Washoe County Assessor who has recently received an order for equalization of an entire region of my county for the 2003 year, 2004 year, and 2005 year. If the reappraisal that was so ordered by the State Board of Equalization in December should result in any increase in any of those assessments those folks need to be made aware of that.

Chairwoman Bustamante Adams:

Are there any questions from the members of the Committee? [There were none.] I will close the hearing on A.B. 66. [(Exhibit I)] was presented but not discussed and is included as an exhibit for the meeting.]

I will now open the hearing on Assembly Bill 138. Assemblyman Sprinkle, please come to the table.

EXHIBIT 4

EXHIBIT 4

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION**

**Seventy-Seventh Session
March 14, 2013**

The Committee on Taxation was called to order by Chairwoman Irene Bustamante Adams at 1:42 p.m. on Thursday, March 14, 2013, in Room 4100 of the Legislative Building, 401 S. Carson St., Carson City, NV. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Irene Bustamante Adams, Chairwoman
Assemblywoman Peggy Pierce, Vice Chairwoman
Assemblywoman Teresa Benitez-Thompson
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Randy Kirner
Assemblywoman Dina Neal
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Aizley, Clark County Assembly District No. 41

Minutes ID: 521



STAFF MEMBERS PRESENT:

Russell J. Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Gina Hall, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

None

Chairwoman Bustamante Adams:

Good afternoon everyone. Let the record show all members are present and we have a quorum. Today we have two work sessions.

I will open the hearing on Assembly Bill 66.

Assembly Bill 66: Revises the circumstances under which the State Board of Equalization must provide notice of a proposed increase in the valuation of property. (BDR 32-301)

Chairwoman Bustamante Adams:

At this time I will ask Mr. Nakamoto to go through the work session document, which the Committee members have in their binders.

Michael Nakamoto, Deputy Fiscal Analyst:

The work session document (Exhibit C) for Assembly Bill 66 is located in Nevada Electronic Legislative Information System (NELIS). It is also in your binders, located behind the tab for A.B. 66.

This bill revises the circumstances under which the State Board of Equalization must provide notice of a proposed increase in the valuation of property. It was sponsored by this Committee, on behalf of the Department of Taxation, and was heard on February 21.

The bill clarifies that the State Board of Equalization is only required to give notice by Registered Mail or Certified Mail, or by personal service, if it proposes to increase the valuation of any property on the assessment roll in a proceeding to resolve an appeal or other complaint before the board.

The testimony in support of the bill was given by Mr. Nielsen and Ms. Rubald from the Department of Taxation. There was no testimony in opposition.

Assembly Committee on Taxation
March 14, 2013
Page 3

The only testimony otherwise was from Mr. Wilson, the Washoe County Assessor, testifying as neutral with respect to the bill.

There is an amendment attached to this. It is the second page of the work session document. It was based on concerns raised by Assemblyman Frierson and Mr. Wilson, with respect to notification of those people that otherwise were not affected by the broad equalization actions, or that were affected by the broad equalization actions, whether they would receive notice. The language that was proposed by the Department of Taxation would provide notice by United States mail for all of those people who would not be given notice by Registered Mail or Certified Mail.

That is all I have on this particular work session. If anybody has any questions, I will be glad to answer them.

Assemblyman Kirner:

Obviously for me this is a concern because I represent the folks at Incline Village and they went through a major reassessment. If I understand the amendment correctly, they still would have an obligation to be notified by mail, just not Certified Mail?

Michael Nakamoto:

That is correct. They would still receive a notice through the mail. It would just not be through the registered or certified process.

Chairwoman Bustamante Adams:

Are there any other questions from the members of the Committee on the bill? Seeing none I will entertain a motion to amend and do pass A.B. 66.

ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 66.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will close the hearing on A.B. 66 and open the hearing on Assembly Bill 75.

Assembly Bill 75: Revises provisions governing the publication of property tax rolls. (BDR 32-486)

Michael Nakamoto:

Under current law the list is already required to be published and made available in the libraries and at the office of the county assessor, so that is already part of current law. Current law already requires the county assessors to put that information on the assessment card when it is mailed out in December.

Chairwoman Bustamante Adams:

Are there any questions from the members of the Committee? [There were none.] I will entertain a motion to amend. What is the pleasure of the Committee?

ASSEMBLYMAN KIRNER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 75.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Bustamante Adams:

I will close the hearing on A.B. 75. I will assign the floor statement to Assemblyman Aizley on A.B. 75. I will assign the floor statement of Assembly Bill 66 to Assemblyman Hickey.

Is there any public comment at this time? [There was none.] The meeting is adjourned [at 1:56 p.m.].

RESPECTFULLY SUBMITTED:

Gina Hall
Committee Secretary

APPROVED BY:

Assemblywoman Irene Bustamante Adams
Chairwoman

DATE: _____

3795
SNELL & WILMER L.L.P.
Suellen Fulstone, No. 1615
50 West Liberty Street, Suite 510
Reno, Nevada 89501
Telephone: (775) 785-5440

Attorneys for Petitioners

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

VILLAGE LEAGUE TO SAVE INCLINE
ASSETS, INC., ET AL,

Petitioners,

ELLEN BAKST, JANE BARNHART,
CAROL BUCK, DANIEL SCHWARTZ,
LILLIAN WATKINS, DON AND
PATRICIA WILSON, AND AGNIESZKA
WINKLER,

Petitioners-in-Intervention

vs.

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

Respondents.

VILLAGE LEAGUE TO SAVE INCLINE
ASSETS, INC. ET AL,

Petitioners,

vs.

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

Respondents.

Case No. CV03-06922

Dept. No. 7

Consolidated with

Case No. CV13-00522

formerly assigned to Dept. No. 3

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

Respondents make two arguments against reconsideration.¹ First, they argue that the taxpayers' motion cannot be considered by the Court because it is untimely. Their second argument admits that taxpayers with lower reappraised values will have no opportunity to challenge those values but claims no resulting denial of due process. Both arguments are mistaken. The timing of the motion is merely a matter of counting the days under the Rules as prescribed by the Supreme Court. The second argument reflects a misunderstanding that demonstrates exactly why the Court should reconsider its July 1, 2013 order and certify to the Supreme Court its intention to vacate that order.

**I. THE MOTION FOR LEAVE TO SEEK RECONSIDERATION
WAS FILED AND SERVED WITHIN THE TIME PRESCRIBED.**

The Court entered its order on July 1, 2013. The State Board of Equalization (SBOE) filed and served notice of entry of the order on the same day, July 1, 2013. Under Rule 12(8) of the Rules of Practice of the Second Judicial District Court and Rule 13 of the District Court Rules, a motion for reconsideration must be made with ten days of service of the notice of entry.

The calculation of that ten-day period is governed by Rule 6 of the Nevada Rules of Civil Procedure. Under Rule 6, the time period begins to run the day after the notice is given. In this case, that would be July 2. Under Rule 6, when the time period is less than 11 days, Saturdays, Sundays and non-judicial days are not included. The "ten" days in this case were July 2, 3, 5, 8, 9, 10, 11, 12, 15, and 16. July 4 was a holiday; July 6, 7, 13, and 14 were weekend days. Under Rule 6, none of those days could properly be included in the calculation of the "ten" day period.

As calculated under Rule 6, the "ten" days expired on July 16, 2013. The notice of

¹ Neither the County nor the State respondents oppose the stay of the District Court's July 1, 2013 order or the reinstatement of the previously entered stay of those provisions of the State Board of Equalization (SBOE) February 8, 2013 decision requiring the Washoe County Assessor to perform reappraisals of residential properties at Incline Village/Crystal Bay.

entry of the July 1, 2013 order, however, was served by electronic means. Under Rule 6(e), when a paper is served by electronic means, an additional three days is added to the end of the period. In this case, that extended the period for filing a motion for reconsideration from July 16 to July 19, 2013. *Winston Products Co. v. Deboer*, 122 Nev. 517, ___, 134 P.3d 726, 731 (2006). The motion for leave to seek reconsideration was filed and served on July 19, 2013, within the time prescribed by the rules.

II. BOTH THE SBOE AND THE COUNTY REPENDENTS ADMIT THAT THE COURT'S JULY 1, 2013 DECISION WAS INCORRECT IN STATING THAT ANY TAXPAYER WHO DISAGREED WITH THE REAPPRAISED VALUE OF HIS OR HER PROPERTY COULD CHALLENGE THAT VALUE THROUGH THE "NORMAL AND STANDARD PROCESS."

The February 8, 2013 "Equalization" Decision of the SBOE directed the Washoe County Assessor to reappraise residential properties at Incline Village/Crystal Bay for the three tax years 2003-2004, 2004-2005, and 2005-2006 and then report those reappraised values to the SBOE. Taxpayers sought judicial review of the SBOE's interlocutory decision on the grounds under NRS 233B.130(1)(b) that "review of the final decision of the agency would not provide an adequate remedy." Taxpayers argued that review of the final decision would be inadequate because there were threshold issues of jurisdiction to be resolved before the expenditure of limited public resources on reappraisals, because taxpayers were denied their due process rights to challenge the "reappraised" valuations, and because delaying review of the jurisdictional issues until after "reappraised" values were determined negatively impacted the marketability of their properties and their ability to obtain title insurance for which taxpayers had no remedy whatsoever.

This Court focused on the due process issue and concluded that interlocutory review was unavailable because taxpayers could challenge the reappraised valuations "through the normal and standard process for challenging tax assessments." July 1, 2013 Order, p. 3, Ins.20-22. This Court explained its conclusion as follows:

There is no current valid assessment of any of the properties in question. Once the assessments are completed, the Board may then seek additional taxes or refund taxes to the homeowners based upon the new valuation of their property for the years in question. **At that point, any homeowners who disagree with the valuations of**

1 **their property have an adequate remedy at law by challenging**
2 **those valuations through the normal and standard process for**
3 **challenging tax assessments.** Declining to rule on the petition at
4 this time does not preclude the members of Village League from
5 obtaining necessary relief, if any is required, in the future. *Id.*, lns.
6 17-22.

7 Taxpayers brought this motion for leave to seek reconsideration on the grounds that the Court had
8 misapprehended the substance of the SBOE decision and the applicable statutes. Taxpayers
9 argued that, in fact, the "normal and standard process of challenging tax assessments" would not
10 be available to challenge the new valuations of their properties. The County respondents admit
11 that any "challenge" to the new valuations is limited to those valuations that are greater than the
12 previously void and unconstitutional valuations.² According to the County respondents,

13 It is true, however, that property owners whose values (and tax
14 liability) remain either static or are reduced are without a remedy.
15 *County Response and Opposition*, p. 6, lns.4-6.

16 The SBOE similarly acknowledges that "notice of a proposed equalization decision is required
17 only when the valuation of the property is increased." *SBOE Opposition to Motion for*
18 *Reconsideration*, p. 7, lns. 19-20.³ The County respondents and the SBOE claim that there is no
19 resulting failure of due process because property values are not increased from the previous
20 valuations. However, using the previous valuations to distinguish between taxpayers who can
21 and taxpayers who cannot challenge their new valuations is giving the previous valuations a role
22 and a significance that is inconsistent with the Court's determination that those previous
23 valuations are void and of no effect whatsoever.

24 As framed by this Court, whether taxpayers have an adequate remedy at law
25 precluding interlocutory review of the SBOE decision depends on the right and the ability of **any**

26 ² Even for taxpayers whose property values are increased, the "remedy" is the opportunity
27 for a hearing on 10 days' notice before the SBOE – a far cry from the remedy available to
28 taxpayers on the initial valuation of their properties. See NRS 361.300; 361.345.

³ The SBOE spends most of its argument on amendments to NRS 361.395 that were
 adopted in the 2013 Legislature. Those amendments have nothing to do with the constitutional
 issues raised in the present case. The Legislature does not determine constitutional issues.
 Furthermore, those amendments were expressly adopted as applying to tax years **after** 2013-
 2014.

1 and all Incline Village/Crystal Bay homeowner taxpayers to challenge the "reappraised"
2 valuations of their properties using the "normal and standard process for challenging tax
3 assessments." The fact that respondents themselves deny that taxpayers have any such right or
4 any such ability requires the Court to reconsider its decision.

5 **III. NEITHER THE COUNTY NOR THE STATE RESPONDENTS**
6 **OPPOSE THE STAY OF THE COURT'S JULY 1, 2013 ORDER**
7 **OR THE REINSTATEMENT OF THE STAY OF PARAGRAPHS**
8 **1-5 OF THE SBOE FEBRUARY 8, 2013 DECISION.**

9 The County respondents are "in accord" with the stay of the July 1, 2013 decision
10 of this Court and the "reimposition of the stay of the SBOE's earlier actions, pending full and
11 final resolution of the Village League's appeal by the Supreme Court." *County Opposition to*
12 *Motion for Reconsideration*, p. 3, lns. 6-9. The SBOE, as well, "does not oppose staying the
13 Court's Order dated July 1, 2013" or "the portion of the State Board's Equalization Order
14 addressing appraisal of Petitioners' property by the Washoe County Assessor as delineated in the
15 Equalization Order." *SBOE Opposition to Motion for Reconsideration*, p. 1, lns. 1, 2. The SBOE
16 does argue at some length that the Court should not stay the portions of the SBOE order
17 addressing the "agricultural and exemption grievances." *Id.*, p. 9, lns. 10- p. 11, ln. 19. That
18 portion of the SBOE argument is extraneous. Taxpayer petitioners have never sought to stay any
19 portions of the SBOE decision other than those dealing with the reappraisals of Incline
20 Village/Crystal Bay properties by the Washoe County Assessor. Taxpayer petitioners have
21 moved the Court only for the "reinstatement" of the stay of the SBOE decision that was
22 previously entered. That stay was expressly limited to paragraphs 1 through 5, inclusive, of the
23 SBOE decision, the paragraphs which address only the order for reappraisals by the Washoe
24 County Assessors and directly related issues.

25 **IV. CONCLUSION**

26 The Court has correctly described the prior appraised values for Incline Village/
27 Crystal Bay properties as void and of no effect. The Court has also correctly described the
28 "reappraisals" ordered by the SBOE as, for all practical purposes, initial appraisals. The Court,
however, has incorrectly assumed that, with their properties subject to new "initial" appraisals,

1 taxpayers would have the due process rights ordinarily available to taxpayers in challenging
2 valuations on initial appraisals. The facts are not disputed. Both the County respondents and the
3 SBOE agree with taxpayers that those due process rights are not available to taxpayers in these
4 circumstances. Without those due process rights, taxpayers have no adequate remedy at law and
5 they are entitled to an interlocutory review of the SBOE decision. Taxpayers respectfully submit
6 that the Court should grant the motion for leave to seek reconsideration and that, upon
7 reconsideration of the matter, should certify to the Supreme Court its intent to vacate its July 1,
8 2013 Order so that the Supreme Court may remand for that purpose. Alternatively, taxpayers
9 respectfully request that the Court enter the unopposed stay of its July 1, 2013 Order and reinstate
10 the previously entered partial stay of the SBOE's February 2013 decision.

11 DATED this 13th day of August, 2013.

12 SNELL & WILMER L.L.P.

13 /s/ Suellen Fulstone

14 By:

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

16 Attorneys for Petitioners

17 **AFFIRMATION**

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

20 DATED this 13th day of August, 2013.

21 SNELL & WILMER L.L.P.

22 /s/ Suellen Fulstone

23 By:

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

25 Attorneys for Petitioners

CERTIFICATE OF SERVICE

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

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

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

And mailed a copy to the following:

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

Arthur E. Mallory
Churchill County District Attorney
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DATED this 13th day of August, 2013.

/s/ Holly W. Longe

Employee of Snell & Wilmer L.L.P.

FILED

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3971472

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;

Case No.: CV03-06922

Dept. No.: 7

Petitioners,

ELLEN BAKST, et al.

Petitioners-in-Intervention

vs.

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

Respondents.

ORDER

On July 19, 2013, Petitioners, Village League to Save Incline Assets, Inc., et
al. [hereafter referred to as Village League] filed their *Motion for Leave to Seek
Reconsideration or, in the Alternative, for Stay of July 1, 2013 Order and
Reinstatement of Stay of February 8, 2013 State Board of Equalization Decision*

1 *Pending Appeal.* On July 31, 2013, this Court entered its *Order for Temporary Stay*
2 *of July 1, 2013 Order Pending Determination of Motion for Leave to Seek*
3 *Reconsideration.* On August 1, 2013, Respondents, Washoe County and Washoe
4 County Treasurer, filed its *Response and Opposition to Motion for Leave to Seek*
5 *Reconsideration of July 1, 2013 Order.* On August 5, 2013, Respondents, the State
6 of Nevada, filed its *Opposition to Motion for Leave to Seek Reconsideration and*
7 *Opposition in Part to Reinstatement of Stay of February 8, 2013 State Board of*
8 *Equalization Order.* On August 13, 2013, Village League filed its *Reply* and
9 submitted the matter for decision.

10 **Legal Standards**

11 Motions for reconsideration are to be denied with the exception of “very rare instances in
12 which new issues of fact or law are raised supporting a ruling contrary to the ruling already
13 reached” by the court. Moore v. City of Las Vegas, 92 Nev. 402, 405 (1976). A decision may
14 be reconsidered “if substantially different evidence is subsequently introduced or the decision is
15 clearly erroneous.” Masonry and Title Contractors Association of Southern Nevada v. Jolley,
16 Urga & Wirth, 113 Nev. 737, 741 (1997).

17 Motions for reconsideration are to be denied with the exception of “very rare instances in
18 which new issues of fact or law are raised supporting a ruling contrary to the ruling already
19 reached” by the court. Moore v. City of Las Vegas, 92 Nev. 402, 405 (1976). A decision may
20 be reconsidered “if substantially different evidence is subsequently introduced or the decision is
21 clearly erroneous.” Masonry and Title Contractors Association of Southern Nevada v. Jolley,
22 Urga & Wirth, 113 Nev. 737, 741 (1997). The law is clear: motions for reconsideration should
23 not be granted absent highly unusual circumstances. See S.E.C. v. Platform Wireless Inter'l
24 Corp., 617 F.3d 1072, 1100 (9th Cir. 2010).

25 This court has carefully reviewed Plaintiffs’ arguments and considered the arguments of
26 Defendants Washoe County and the State Board of Equalization in opposition. While Plaintiffs

27 ///

28 ///

1 take issue with certain portions of this Court's *Order*, those arguments do not rise to the
2 demanding standard required to compel reconsideration.

3 **THEREFORE**, Plaintiffs' *Motion for Reconsideration* is **DENIED**.


4 **DATED** this 4 day of September, 2013.

5
6 
7 **PATRICK FLANAGAN**
8 District Judge
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Dawn Buoncristiani, Esq. for State Board of Equalization;
Suellen Fulstone, Esq. for Village League to Save Incline Assets, Inc.; and
David Creekman, Esq. for Washoe County

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


Judicial Assistant

CERTIFICATE OF SERVICE

This document was filed electronically with the Nevada Supreme Court on November 27, 2013. Electronic service of this document shall be made in accordance with the Service List as follows:

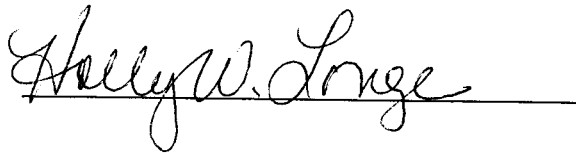
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A handwritten signature in cursive script, reading "Kelly W. Longe", is written over a horizontal line.

IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE)	Supreme Court Case No. 27-2013-00348	Electronically Filed Nov 27, 2013 3:48 p.m.
ASSETS, INC.; MARYANNE)		Tracie K. Lindeman
INGEMANSON, TRUSTEE OF THE)	District Court No. CV03-00922	Clerk of Supreme Court
LARRY D. & MARYANNE B.)		
INGEMANSON TRUST; ET AL.,)		
)		
Appellants,)		
)		
vs.)		
)		
THE STATE OF NEVADA, BOARD)		
OF EQUALIZATION; ET AL.,)		
)		
Respondents.)		
_____)		

JOINT APPENDIX – VOLUME 8

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

ALPHABETICAL INDEX

Document	Date	Vol.	Pages
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2004/2005 Incline Village/Crystal Bay list to the State Board of Equalization per request on November 5, 2012 (first and last page)		1	APX00231- APX00232
2005/2006 Incline Village/Crystal Bay list to the State Board of Equalization per request on November 5, 2012 (first and last page)		1	APX00233- APX00234
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Baskt Intervenor's Joinder in Notice of Appeal	7/19/13	8	APX01525- APX01526
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Clerk of the Court

Transaction # 3712899

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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,

Case No. CV03-06922

Dept. No. 7

Petitioners,
vs.

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

Respondents.

**STATE'S SURREPLY TO PETITIONERS' REPLY TO STATE BOARD OF EQUALIZATION
RESPONSE TO OBJECTIONS TO FEBRUARY 2013 DECISION ON EQUALIZATION**

The State of Nevada, Nevada Department of Taxation ("Department"), by and through
its counsel, Catherine Cortez Masto, Attorney General, by Dawn Buoncristiani, Deputy
Attorney General, Respondent, submits this Surreply to Petitioners' Reply To State Board of
Equalization Response to Objections to February 2013 Decision on Equalization (Surreply).¹

¹ The State Board of Equalization (State Board) responds that Petitioners' Reply to State Board of
Equalization's Response to Objections to February 2013 Decision on Equalization (Reply) was filed nearly two
months after the State Board filed its Response to Petitioners' Objection to State Board of Equalization Report
and Order. If the Objection was made pursuant to WDCR 12, then the Reply was due "within 5 days after service

1 Contrary to Petitioners' argument, *Marvin v. Fitch*, 232 P.3d 425, 430-431 (2010) does
2 not provide binding authority for State Board statewide equalization actions. See Reply, pp.
3 3-8. The Marvin case is distinguishable from this matter. The taxpayers in Marvin were
4 appealing assessments made by the county assessor to the State Board. The procedural
5 posture of the *Marvin* case was based on a hearing before the State Board when the State
6 Board was sitting to hear contested cases pursuant to NRS 361.360 and NRS 361.400.
7 *Marvin*, 232 P.3d at 427. Here the State Board is equalizing assessments made by the
8 county assessor pursuant to NRS 361.395. Prior to the Writ of Mandate (Writ) issued by this
9 Court on August 21, 2012, the State Board had heard statewide equalization issues only a
10 couple of times. The State Board had not heard statewide equalization issues in tax years
11 subject to the Writ. See Nevada Supreme Court Case No. 56030, Order Affirming in Part,
12 Reversing in Part and Remanding dated February 24, 2012 (Order), p. 4 ("The State Board
13 has repeatedly stated in its motions and briefs that no hearings have been held to equalize all
14 property values in the state.").²

15 The State Board's equalization decision in this matter was not the result of a contested
16 case or cases. The State Board's equalization action pursuant to 361.395(1) is a legislative
17 action. *May Dept. Stores Co. v. State Tax Commission*, 308 S.W.2d 748, 756 (Mo.1958).
18 After the State Board completes its legislative action, it may consider raising the valuation on
19 individual properties. See State Board of Equalization's Notice of Equalization Order filed

20 ///

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22
23 of the answering points and authorities." Pursuant to the WDCR 12, even adding time for service, the Reply is
untimely.

24 ² In its February 24, 2012 Order in this matter, the Supreme Court stated, "The State Board has
25 previously met to discuss how to implement the requirements of NRS 361.395, but has not held a public hearing
26 during which taxpayers could air their grievances with the equalization process, nor has it affirmatively acted to
27 equalize property values." The *Marvin* Court addressed taxpayers petition to the State Board made in March,
28 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 through 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.

1 February 8, 2013 (Equalization Order), p. 10.³ At this point, if the State Board "proposes to
2 increase the valuation of any property on the assessment roll," the State Board shall give
3 notice and an opportunity to be heard to "interested persons." NRS 361.395(2). Such
4 interested persons "may appear and submit proof concerning the valuation of the property."
5 NRS 361.395.

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

7 NRS 361.395(2) and 361.405(1) require notice be given to property owners
8 when equalization results in a proposed or actual increase to a property's
9 valuation. . . In the event that the State Board proposes to increase the
10 valuation of any property, the State Board is required to give specific notice to
11 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).

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

13 Hence, prior to increasing valuation, the State Board's actions are legislative in nature.
14 Otherwise, it would be impossible for the State Board to equalize pursuant to NRS 361.395,
15 because it would be impracticable for the State Board to provide individual notice and a
16 hearing to the entire State. "It will not be assumed that one part of a legislative act will make
17 inoperative or nullify another part of the same act, if a different and more reasonable
18 construction can be applied." *Board of Com'rs of Nye County v. Schmidt*, 157 P. 1073, 1075
19 (1916). "Where possible, a statute should be construed so as to give meaning to all of its
20 parts." *Nevada State Personnel Division v. Haskins*, 90 Nev. 425, 427, 529 P.2d 795, 796
21 (1974) (citation omitted). "[W]here a particular construction of a statute will occasion great
22 inconvenience or produce inequality and injustice, that view is to be avoided if another and
23 more reasonable interpretation is present in the statute." *Knowlton v. Moore*, 178 U.S. 41,
24 (1900).

25 ///

26
27 ³ "The Washoe County Assessor shall separately identify any parcel for which the reappraised taxable
28 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).

1 With the foregoing interpretation of NRS 361.395, each part of NRS 361.395 is given
2 meaning, no part is nullified, great inconvenience is avoided, equity and justice area are met,
3 and the interpretation is consistent with *Marvin* as well. *Marvin*, 232 P.3d at 431. See
4 *American Federation of State, County and Mun. Employees, Council 31, AFL-CIO v.*
5 *Department of Cent. Management Services*, 681 N.E.2d 998, 1005, (Ill.App. 1 Dist., 1997)
6 ("Although the Commission has quasi-judicial powers, the Commission's required approval of
7 the reclassification plan was a quasi-legislative function.") Similar to the requirements of
8 NRS 361.395, in *American Federation*, the legislature allowed the "Commission to hear
9 appeals of dissatisfied employees" after such individuals had the opportunity to present their
10 views at the legislative hearing by providing "information to the Commission." *Id.*

11 Unlike the matter before this Court, the *Marvin* court was discussing equalization within
12 the context of NRS 361.355 for disputing an unequal assessment which an individual property
13 owner could appeal to the county board of equalization or State Board. The valuation would
14 not be developed by a State Board act of equalization pursuant to NRS 361.395. The
15 following quotation from *Marvin* provides support that the valuation was developed through
16 assessment by the county assessor.

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

22 *Marvin*, 232 P.3d at 431. Hence, pursuant to NRS 361.355 through a contested case appeal,
23 the State Board may equalize the assessment of one property with the assessment of
24 another property based on evidence provided by a property owner. *Id.*

25 Procedures for developing valuations by assessment and equalization are distinctly
26 different.

27 Assessment is the act of placing a value for tax purposes upon the property of a
28 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

1 aggregate. Equalization deals with all the property of a class or subclass within a
2 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.

3 *Board of Sup'rs of Linn County v. Department of Revenue*, 263 N.W.2d 227, 236 (Iowa 1978)
4 (citation omitted). Accordingly, the underlying legal principles and procedures are different for
5 assessment than those for equalization. "[I]t is the statutory duty of the county assessor to
6 initially set the assessment percentage on all property within the county, . . . it was the
7 overriding constitutional and statutory duty of the Board to make such adjustments as will
8 achieve uniformity and equality of taxation on a statewide basis, . . ." *State ex rel. Poulos v.*
9 *State Bd. of Equalization for State of Okl.*, 646 P.2d 1269, 1273 (Okl., 1982) (citation omitted)
10 (Internal quotations omitted). See also, *Idaho State Tax Com'n v. Staker*, 663 P.2d 270, 274
11 (Idaho, 1982) (court "concluded that the tax commission [state board of equalization] does
12 have the constitutional authority to override the counties' valuation. . .").

13 The procedures to appeal valuation in a contested case before the State Board are
14 different than those for an equalization action and necessarily so. To appeal an assessment
15 to the State Board, a property owner must usually first appeal to a county board of
16 equalization. NRS 361.360. Property owners must strictly follow the appeal procedures.
17 "Taxpayers must exhaust their administrative remedies before seeking judicial relief." *County*
18 *of Washoe v. Golden Road Motor Inn, Inc.*, 105 Nev. 402, 403, 777 P.2d 358, 360 (1989).
19 See also, *First Am. Title Co. of Nevada v. State*, 91 Nev. 804, 806, 543 P.2d 1344, 1345
20 (1975). The property owner, only after having protested the payment of taxes pursuant to
21 NRS 361.420(1), and after having been denied relief by the State Board, may seek judicial
22 review. NRS 361.410(1). These requirements are jurisdictional; failure to exhaust
23 administrative remedies deprives the district court of subject matter jurisdiction. *Golden Road*
24 *Motor Inn*, 105 Nev. at 403. When the State Board equalizes pursuant to NRS 361.395, there
25 is no contested case with notice and hearing pursuant to the statutes and regulations
26 applicable when an individual appeals pursuant to NRS 361.420. NRS 361.395 has no
27
28

1 requirement that individuals exhaust administrative remedies before the county board of
2 equalization and appeal to the State Board.

3 In the Marvin case, the State Board did not hear the property owner appeals because
4 they did not first appeal to the county board of equalization. *Marvin*, 232 P.3d at 427 ("The
5 State Board conducted a hearing on the matter and determined that it lacked jurisdiction
6 because the Taxpayers had failed to first petition the County Board, as required by NRS
7 361.360.").⁴ Hence, the State Board hearing under consideration by the *Marvin* Court was a
8 contested case pursuant to NRS 361.360, appeal of a county board decision. *Id.* The *Marvin*
9 Court did not address the procedures of a State Board hearing regarding statewide
10 equalization except to the extent of notice pursuant to NRS 361.395(2). *Id.* at 431. The
11 *Marvin* case is not binding authority that the State Board's statewide equalization hearings
12 were contested cases.

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

16 The State Board, which is responsible for equalizing all property valuations in
17 this state, also considers taxpayer appeals from the actions of the County
18 Boards of Equalization. NRS 361.360; NRS 361.400.⁵ If the State Board does
19 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).

20 *State ex rel. State Bd. of Equalization v. Bakst*, 122 Nev. 1403, 1412, 148 P.3d 717,
21 723-724 (2006). The *Barta* Court specifically opined in response to Taxpayers' request
22 to:

23 address the State Board's duty to equalize taxes statewide. Under NRS
24 361.395(1), the State Board clearly has a duty to equalize property valuations
25 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**

26 ⁴ The *Marvin* Court did not accept appellants' Motion to Take Judicial Notice that "the matter of
27 statewide equalization did not appear on any State Board agenda for the relevant term." *Id.*

28 ⁵ 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.

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

5 *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 628, 188 P.3d 1092, 1102-1103
6 (2008) (emphasis added).

7 Accordingly, the *Marvin* Court's analysis was about the State Board's equalization
8 actions pursuant to NRS 361.355 which was an appeal pursuant to NRS 361.400(2) from a
9 county board of equalization action. Such appeals provide for individual notice and hearing
10 for a contested case as previously discussed. The *Marvin* case is distinguishable from the
11 present action. The present action before this Court is based on the State Board's separate
12 duty to equalize statewide pursuant to NRS 361.395.

13 If the equalization hearings had been accorded contested case status, the notice and
14 hearing requirements would have been much different pursuant to the applicable statutes and
15 regulations for a contested case. NAC 361.702; NRS 233B.121. Although the State Board is
16 required to provide notice of an increase in value pursuant to NRS 361.395 in a general
17 equalization action, it would be wholly impracticable for the State Board, when considering
18 statewide equalization, to provide individual notice to all of Incline Village, Crystal Bay and
19 the entire state pursuant to NAC 361.702 and NRS 233B.121. *May Dept. Stores Co.*, 308
20 S.W.2d at 756. See NAC 361.702; NRS 233B.121.⁶

21 ⁶ NAC 361.702 provides:

22 1. The State Board will give reasonable notice of any hearing held before it to each party or the
23 authorized agent of a party at the address of each of those persons as those addresses appear in the records of
24 the Department.

25 2. The State Board will notify the appropriate county assessor of a hearing relating to any property in his
26 or her county or which may have a direct effect upon his or her county. . .

27 NRS 233B.121 further requires:

- 28 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.

1 The facts of this matter are similar to those in *May County Department Stores*.

2 Equalization between counties was a duty expressly imposed upon the
3 Commission by the mandate of § 138.390 [to classify and equalize property].
4 That order of the Commission did not constitute a 'contested case' within the
5 meaning of § 536.100 [Administrative Procedure and Review] . . . § 536.010
6 defines a 'contested case' as a 'proceeding * * * in which legal rights, duties or
7 privileges of specific parties are required by statute to be determined after
8 hearing.' In matters thus reviewable under Chapter 536, notice to the parties
9 affected is expressly provided for (§ 536.090), . . . **It would be wholly
10 impracticable for the Commission to give notice of a blanket increase to all
11 owners of real estate in 26 counties, or even in St. Louis County.** The order
12 here affected counties and classes of taxpayers, and not 'specific parties'; and it
13 was not a subject of contest, within the usual understanding of that term.
14 (Emphasis added).

15 *May Dept. Stores Co. v. State Tax Commission*, 308 S.W.2d 748, 756 (Mo.1958).⁷

16 In a general equalization hearing it would be wholly impracticable for the State Board to
17 hear individual contested cases with each party receiving 15 minutes of oral argument and a
18 rebuttal of 5 minutes. NAC 361.741. *May Dept. Stores Co.*, 308 S.W.2d at 756. "A common
19 rule of statutory construction requires the court to avoid interpretation that will result in absurd
20 consequences." *Schmidt*, 157 P. at 1075 (1916). It would lead to absurd consequences to
21 determine that a State Board general equalization action is an action like the *Marvin* Court
22 reviewed where taxpayer/property owners would each have individual notice and an

23 3. Any party is entitled to be represented by counsel.

24 4. Opportunity must be afforded all parties to respond and present evidence and argument on all issues
25 involved. An agency may by regulation authorize the payment of fees and reimbursement for mileage to
26 witnesses in the same amounts and under the same conditions as for witnesses in the courts of this state.

27 5. Unless precluded by law, informal disposition may be made of any contested case by stipulation,
28 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.

⁷ Here the State Board would provide notice of an increase to interested parties, but no notice for the
initial equalization hearings such is now before this Court pursuant to Petitioners objection to the State Board's
Equalization Order.

1 opportunity to be heard. NRS 361.360; NRS 361.400; NRS 361.355. The equalization action
2 was a legislative action affecting classes of taxpayers, not specific parties.

3 The State Board's equalization decision was a legislative action of general applicability,
4 not an adjudicatory action based on evidentiary input of particular individuals describing
5 specific situations or instances. There is a "recognized distinction in administrative law
6 between proceedings for the purpose of promulgating policy-type rules or standards, on the
7 one hand, and proceedings designed to adjudicate disputed facts in particular cases on the
8 other." *U.S. v. Florida East Coast Ry. Co.*, 410 U.S. 224, 245-246 (1973).

9 The following explains the difference between an adjudicatory function and a legislative
10 function. A "governmental agency serves in an adjudicatory capacity when it determines the
11 rights, duties and obligations of specific individuals as created by past transactions or
12 occurrences." *Linn County*, 263 N.W.2d at 239 (citations omitted). "Quasi-judicial
13 proceedings are designed to adjudicate disputed facts in a particular case. Quasi-judicial
14 hearings concern agency decisions that affect a small number of persons on individual
15 grounds based on a particular set of disputed facts that have been adjudicated." *East St.*
16 *Louis School Dist. No. 189 Bd. of Educ. v. East St. Louis School Dist. No. 189 Financial*
17 *Oversight Panel*, 811 N.E.2d 692, 697-698 (Ill. App. 5 Dist. ,2004) (citation omitted).
18 Adjudicatory functions are those in which 'the government's action affecting an individual (is)
19 determined by facts peculiar to the individual case. . ." *Horn v. County of Ventura*, 156
20 Cal.Rptr. 718, 722 (Cal., 1979) (citations omitted). Adjudicatory decisions differ from
21 "legislative" decisions which involve the adoption of a "broad, generally applicable rule of
22 conduct on the basis of general public policy." *Id.* (internal quotations omitted).

23 Quasi-legislative proceedings are designed to promulgate policy-type rules or
24 standards and involve general facts affecting everyone. *American Federation of State*, 681
25 N.E.2d at 1005-1006 (citation omitted). "No individual rights are at stake in a quasi-legislative
26 proceeding." *Id.* at 1006 (citation omitted). "A hearing conducted in a quasi-legislative
27 proceeding is intended to be an information-gathering forum in pursuit of legislative facts,
28

1 rather than an adversarial adjudication of the rights of the individual." *East St. Louis School*
2 *Dist. No. 189 Bd. of Educ.*, 811 N.E.2d at 698 (citation omitted).

3 In *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441 (1915), the Court
4 opined that an equalization action was a legislative action in that it was "a general
5 determination dealing only with the principle upon which all the assessments in a county had
6 been laid."⁸ The *Bi-Metallic* case has "assumed major importance in administrative law as
7 foundation for the differing treatment given legislative functions as opposed to adjudicative or
8 quasi-judicial responsibilities." *Linn County*, 263 N.W.2d at 239. The *Linn* court found that
9 the state agency functioned legislatively when it equalized "property values on a statewide
10 basis." *Id.* at 239. Pursuant to the *Bi-Metallic* and *Linn* courts, the State Board's equalization
11 action was a legislative action, not an adjudicatory action making the reasoning under *Marvin*
12 inapplicable to this matter.

13 Here, the State Board did not adjudicate specific facts. See Equalization Order, pp. 1-
14 10. The State Board made a decision of general applicability directing the Washoe County
15 Assessor "to reappraise all residential properties located in Incline Village and Crystal Bay to
16 which an unconstitutional methodology was applied to derive taxable value during the tax
17 years 2003-2004, 2004-2005, and 2005-2006." See Equalization Order, p. 9. NAC 361.665.
18 The State Board also directed the Department of Taxation to conduct a ratio study to
19 determine if the reappraised taxable values "meet the level of assessment required by law;..."
20 See Equalization Order, p. 9. NAC 361.658; NAC 361.662. The matter before this Court is
21 similar to the *Bi-Metallic*, *Linn*, and *May* cases because the Equalization Order affected
22 classes of property. See Equalization Order, p. 9. The equalization hearings before the State
23 Board were not contested cases as in the *Marvin* case.

24 In conclusion, if the State Board equalization hearings had been adjudicative in nature
25 with contested hearings providing notice and opportunity to be heard pursuant to the
26 applicable statutes and regulations, the State Board would not have been able to even
27

28 ⁸ Appellants appealed an equalization order that increased "the valuation of all taxable property in Denver
by 40 percent."

1 consider statewide equalization. It would have been impracticable for the State Board to
2 provide individual notices to all property owners prior to the hearings and provide each
3 property owner with at least a thirty-five minute hearing.⁹ Unlike the *Marvin* case, the matter
4 before this Court is not a dispute over individual assessments appealed pursuant to NRS
5 361.360, NRS 361.400, and NRS 361.355. Rather, this is a statewide equalization action
6 ordered pursuant to the Writ. NRS 361.395. See *Bakst*, 122 Nev. at 1412; *Barta*, 124 Nev.
7 at 628, (Duty to equalize pursuant to NRS 361.395 is separate and apart from duty to hear
8 individual contested case appeals pursuant to NRS 361.400). To this point in time, the State
9 Board has not heard individual contested case appeals pursuant to NRS 361.395(2). Should
10 the State Board determine that the taxable value of some properties must be adjusted up,
11 then such property owners will be entitled to notice and a hearing pursuant to NRS
12 361.395(2).

13 ///

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27 ⁹ In this case perhaps the hearing requirements could have been met since not many individual property
28 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 an individual equalization hearing.


1 The State Board respectfully requests this Court deny Petitioners' requests in their
2 objection, lift the Stay on the State Board's Equalization Order permitting this matter to go
3 forward and such other and further relief as this Court deems just and equitable.

4 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

7 DATED: May 8, 2013.

CATHERINE CORTEZ MASTO
Attorney General

9
10 By: 
11 DAWN BUONCRISTIANI
12 Deputy Attorney General
13 Nevada Bar No. 7771
14 Attorneys for the State Board of Equalization
15
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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 8, 2013, I electronically filed the foregoing **STATE'S SURREPLY TO PETITIONERS' REPLY TO STATE BOARD OF EQUALIZATION RESPONSE TO OBJECTIONS TO FEBRUARY 2013 DECISION ON EQUALIZATION**, with the Clerk of the Court using the electronic filing system (CM/ECF), which served the following parties electronically:

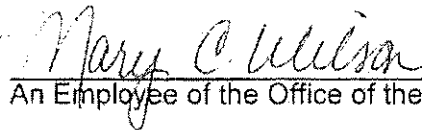
SUELLEN FULSTONE for Petitioners

DAVID CREEKMAN for Washoe County Respondents

The parties below will be served with a true and correct copy deposited in a sealed envelope, postage prepaid, for delivery by the United States Post Office addressed as follows:

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

Dated: May 8, 2013


An Employee of the Office of the Attorney General

FILED

Electronically

05-10-2013:03:27:34 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3718964

1 **3880**
2 SNELL & WILMER L.L.P.
3 Suellen Fulstone, No. 1615
4 50 West Liberty Street, Suite 510
5 Reno, Nevada 89501
6 Telephone: (775) 785-5440
7 Facsimile: (775) 785-5441

8 Attorneys for Petitioners

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

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

12 VILLAGE LEAGUE TO SAVE INCLINE ASSETS,
13 INC., a Nevada non-profit corporation, as authorized
14 representative of the owners of more than 1300 residential
15 properties at Incline Village/Crystal Bay; et al.,

16 Petitioners,

17 vs.

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

22 Respondents.

Case No.: CV13-00522

Dept. No. 3

Snell & Wilmer

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

23 **PETITIONERS' RESPONSE TO**
24 **PERSHING COUNTY ASSESSOR MOTION TO DISMISS**

25 The Pershing County Assessor, Celeste Hamilton, seeks an order dismissing her from this
26 judicial review proceeding on the grounds that she did not appear or participate in the
27 administrative proceeding and thus was not a party of record required to be named and served
28 under NRS 233B.130(2)(a). Although the Pershing County Assessor is correct with respect to
how a person or entity **ordinarily** becomes a party to a proceeding, she is mistaken with regard to
equalization proceedings before the State Board of Equalization ("SBOE"). The Nevada Supreme
Court has directly addressed the issue of who is a "party of record" to SBOE equalization
proceedings, writing as follows in *Washoe County v. Otto*, 128 Nev. Adv. Opn. 40, 282 P.3d 719

1 (2012):

2 We recognize that generally, to be a party of record, one must enter
3 an appearance or participate in some manner in the proceedings.
4 [Citations omitted.] **However, in the context of an equalization**
5 **decision, one need not actually appear or participate to be a**
6 **party. Rather, the provisions that govern contested cases before**
7 **the State Board of Equalization define a party, in relevant part,**
8 **as "a person ... entitled to appear in a proceeding of the State**
9 **Board." NAC 361.684(11) (emphasis added). 282 P.3d at 727,**
10 **fn.10 (Emphasis added.)**

11 The issue before the Court in *Washoe County v. Otto*, was compliance with the requirement of
12 NRS 233B.130(2)(a) that the petitioner name all "parties of record." The petitioner, Washoe
13 County, had failed to name as respondents in its petition for judicial review some 8700 taxpayers
14 that the SBOE had identified as parties of record to the proceeding. The Court wrote that the
15 "taxpayers were both admitted and named as parties to the administrative proceedings before the
16 State Board, making them 'parties of record.'" 282 P.3d at 726. In footnote 10 to that statement,
17 the Court explained that although not all of the approximately 9000 taxpayers identified as
18 "parties of record" on the SBOE Exhibit A either appeared or participated in the proceeding, they
19 were still parties of record because they satisfied the definition of "party" in the SBOE regulations
20 governing contested cases before the Board.

21 In this proceeding, the SBOE identified all of the County Assessors throughout Nevada as
22 parties of record and served the decision by certified mail on all of the County Assessors,
23 including the Pershing County Assessor, as parties of record as required by SBOE regulation.
24 NAC 361.747(5). The Pershing County Assessor is not entitled to dismissal from this matter on
25 the grounds that she was not a party of record to the administrative proceeding.

26 Because the Pershing County Assessor was a party to the SBOE proceeding below, the
27 law may not permit her dismissal from this action. NRS 233B.130(5) expressly authorizes the
28 dismissal of parties of record from a judicial review action only in matters originating from the
State Contractor's Board. However, although the law requires that Pershing County Assessor be
made a party to this judicial review action, petitioners have no claim against the Pershing County
Assessor and have alleged the absence of any such claim in their petition. No relief is sought or
will be awarded against the Pershing County Assessor.

1 In any event, under the statutes, the Pershing County Assessor controls her own
2 participation in this judicial review action:

3 [A] ny party desiring to participate in the judicial review must file a
4 statement of intent to participate in the petition for judicial review
5 and serve the statement upon the agency and every party within 20
6 days after service of the petition. NRS233B.130(3).

7 By not filing a notice of intent to participate, the Pershing County Assessor has already for all
8 practical purposes removed herself from this case. Petitioners respectfully submit that the motion
9 of the Pershing County Assessor must be denied.

10 DATED this 10th day of May, 2013.

11 SUELLEN FULSTONE
12 SNELL & WILMER L.L.P.
13 50 West Liberty Street, Suite 510
14 Reno, Nevada 89501

15 /s/ Suellen Fulstone
16 by _____
17 Attorneys for petitioners

18 AFFIRMATION

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

21 Dated this 10th day of May, 2013.

22 /s/ Suellen Fulstone
23 By: _____
24 Suellen Fulstone, No. 1615
25 Attorneys for Petitioners
26
27
28

CERTIFICATE OF SERVICE

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

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

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

And mailed a copy of the following to:

Jim C. Shirley
Pershing County District Attorney
Pershing County Courthouse
P.O. Box 934
Lovelock, Nevada 89419

DATED this 10th day of May, 2013.

/s/ Holly W. Longe

Employee of Snell & Wilmer L.L.P.

RECEIVED

MAY 22 2013

1 2315

2 Arthur E. Mallory
3 Churchill County District Attorney
4 165 N. Ada St.
5 Fallon, NV 89406
6 T: (775) 423-6561
7 F: (775) 423-6528
8 Attorneys for Respondent
9 NORMA GREEN

10
11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN**
12 **AND FOR THE COUNTY OF WASHOE**
13

14 VILLAGE LEAGUE TO SAVE INCLINE
15 ASSETS, INC., *et. al.*,
16 Petitioners,

Case No.: CV13-00522

Dept. No.: III

17 v.
18 STATE OF NEVADA, on relation of the State
19 Board of Equalization; NORMA GREEN,
20 Churchill County Assessor, *et. al.*
21 Respondents.

NOTICE OF NON-PARTICIPATION AND
MOTION TO DISMISS

22 COMES NOW, Respondent NORMA GREEN, Churchill County Assessor, by and
23 through its attorney, DISTRICT ATTORNEY ARTHUR E. MALLORY, and moves this Court
24 for an order dismissing the Petition herein as is relates to Respondent NORMA GREEN pursuant
25 to N.R.C.P. 12(b)(5) for failure to state a claim upon which relief can be granted. This Motion is
26 based upon the memorandum of points and authorities herein, the pleadings and papers in file
27 with the Court herein.
28

Dated, this 20 day of May, 2013.

ARTHUR E. MALLORY,
DISTRICT ATTORNEY

By: 

Wade Carner
Deputy District Attorney
165 N. Ada St.
Fallon, NV 89406

Churchill County District Attorney
165 N. Ada St.
Fallon, Nevada 89406
(775) 423-6561 Fax (775) 423-6528

NOTICE OF NON-PARTICIPATION

Respondent NORMA GREEN, Churchill County Assessor, by and through her Attorney of Record, Arthur E. Mallory, Churchill County District Attorney, and Wade Carner, Civil Deputy District Attorney, hereby gives this Court Notice that Churchill County and the Churchill County Assessor NORMA GREEN will not participate in this action.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

I. FACTS

The above-entitled action came before this court upon the Petition of the Petitioners for judicial relief from an Order by the Nevada State Board of Equalization on February 8, 2013. See Petition for Judicial Relief Page 2, Lines 1-3. The Petition herein names NORMA GREEN as a Respondent because she is "required to be named" pursuant to NRS 233B.130(2)(a).¹ Nothing in the underlying February 8, 2013 decision indicates that Ms. Green was named a party of record to the Board of Equalization proceeding. See Petition, Exhibit 1 attached hereto.

II. ARGUMENT

Nev. Rule of Civ. Pro. 12(B)(5) specifically provides that the defense of the "failure to state a claim upon which relief can be granted" may be made by motion. *Gull v. Hoalst*, 77 Nev. 54, (1961). Such a Motion tests the legal sufficiency of a claim against the moving party. In considering a Motion under NRCP 12(b)(5) the Court must accept the facts contained in the Complaint as true and construed in the light most favorable to the non-moving party and apply the relevant substantive law. *Hansen-Niederhauser v. Nevada Tax Commission*, 81 Nev. 307 (1965). If it then appears that under the facts presented and applicable substantive law that the Plaintiff is entitled to no relief, then the Motion should be granted. See *Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163 (1965); *Edgar v. Wagner*, 101 Nev. 226 (1985). As discussed *infra*, that is precisely the situation in this case.

¹ NRS 233B.130(2)(a) states:

2. Petitions for judicial review must:

(a) Name as respondents the agency and all parties of record to the administrative proceeding;

1 Petitioners in this case have not even alleged that they are seeking any type of relief from
2 Respondent NORMA GREEN. In fact, Petitioners go so far as to admit that they are not seeking
3 any relief from Respondent NORMA GREEN at Page 3, Lines 18-20 of the Petition herein:
4 "Petitioners seek no relief on behalf of or against respondent county assessors other than the
5 Washoe County Assessor." Taking this statement as true for purposes of this Motion, Petitioners
6 have not stated a claim upon which relief may be granted, but have expressly denied even
7 seeking such relief. Petitioners claim to have named Respondent NORMA GREEN as a
8 requirement under NRS 233B.130(2)(a)². However, Respondent NORMA GREEN was not,
9 under the definition of the Nevada Administrative Code or the definition of the Nevada Supreme
10 Court, a "Party" to the underlying Administrative Proceeding.

11 The Nevada Administrative Code Defines three distinct classifications of "Parties to
12 Proceedings:"

13 **NAC 361.690 Classification of parties.**

- 14 1. "Intervener" means a person, government, governmental agency or political
15 subdivision of a government, other than an original party to a proceeding, who
16 has been granted leave to intervene in a proceeding pursuant to NAC 361.692.
17 2. "Petitioner" means a party who initiates or commences an administrative
18 proceeding before the State Board pursuant to the provisions of chapter 361 of
19 NRS.
20 3. "Respondent" means a party who responds to an administrative proceeding
21 initiated or commenced by a petitioner.

22 Respondent NORMA GREEN falls into none of these categories. A review of "Exhibit 1"
23 attached to the Petition herein shows that Ms. Green is not referenced anywhere in that
24 document. The transcripts from the underlying Administrative Proceeding do not list her as
25 being present, nor a participant in any way to those proceedings. Under the definition of the
26 Nevada Administrative Code, Ms. Green was not a "Party" to the underlying proceeding in this
27 case.

28 ² NRS 233B.130 Judicial review; requirements for petition; statement of intent to participate; petition for rehearing.

2. Petitions for judicial review must:

(a) Name as respondents the agency and all parties of record to the administrative proceeding;

Churchill County District Attorney
165 N. Ada St.
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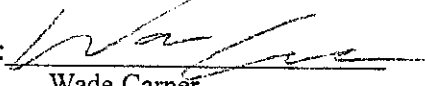
1 Similarly, Ms. Green does not meet the definition of a "Party of Record" as defined by the
2 Nevada Supreme Court. A Party of Record is one who is "served with process or enters an
3 appearance." *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 447-448 (1994). Petitioners
4 here have not alleged that Ms. Green was served with process or entered an appearance in the
5 underlying administrative proceeding. Again, as discussed *supra*, a review of the record of the
6 Administrative Proceeding provides no reference whatsoever to Ms. Green or the office of
7 Churchill County Assessor. Accordingly, as a matter of law, Ms. Green should be dismissed
8 from this action with prejudice, and this action should not be binding upon her or her duties as
9 Churchill County Assessor.

10 **AFFIRMATION**

11 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the foregoing MOTION
12 TO DISMISS does not contain the Social Security Number of any person.

13 Dated, this, the 20 day of May, 2013.

14 ARTHUR E. MALLORY,
15 DISTRICT ATTORNEY

16 By: 
17 Wade Carner
18 Deputy District Attorney
19 165 N. Ada St.
20 Fallon, NV 89406
21
22
23
24
25
26
27
28

Churchill County District Attorney
165 North Ada Street
Fallon, Nevada 89406
(775) 423-6561 Fax (775) 423-6528

CERTIFICATE OF SERVICE

On the 21st day of May, 2013, I was an employee of the Churchill County District Attorney's Office and that the foregoing **Notice Of Non-participation And Motion To Dismiss**, was served to the following address(s):

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

Louise H. Modarelli
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Petitioner

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

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

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

Village League to Save Incline
Assets, Inc., ET AL
Suellen Fulston
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6100 Neil Road, #555
Reno, NV 89511
Petitioner

Dave Dawley
Carson City Assessor
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Carson City, NV 89701
Respondent

Ms. Michelle Shafe
Clark County Assessor
500 South Grand Central Pkwy., 2nd Floor
Las Vegas, NV 89106
Respondent

Katrinka Russell
Elko County Assessor
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Elko, NV 89801
Respondent

Douglas Sonnermann
Douglas County Assessor
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Minden, NV 89423
Respondent

Mike Mears
Eureka County Assessor
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Respondent

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

DA#13-497/CBM/MLB

Churchill County District Attorney
165 North Ada Street
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- 1 Lura Duvall
2 Lander County Assessor
3 315 South Humboldt Street
4 Battle Mountain, NV 89820
Respondent
- 5 Linda Whalin
6 Lyon County Assessor
7 27 South Main Street
8 Yerington, NV 89447
Respondent
- 9 Shirley Matson
10 Nye County Assessor
11 160 North Floyd Drive
12 Pahump, NV 89060
Respondent
- 13 Jana Seddon
14 Storey County Assessor
15 P.O. Box 494
16 Virginia City, NV 89440
Respondent
- 17 Joshua G. Wilson
18 Washoe County Assessor
19 P.O. Box 11130
20 Reno, NV 89520-0027
Respondent
- 21 Richard Gammick
22 Washoe County District Attorney
23 P.O. Box 30083
24 Reno, NV 89520-3083
- 25 By:
26 ☒ U.S. Mail
27 ☐ Certified Mail
28 ☐ Return Receipt Requested
☐ Hand Delivered

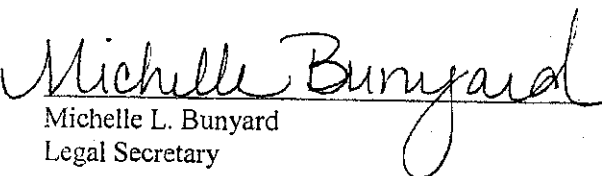
Jeff Johnson
Humboldt County Assessor
50 West Fifth Street
Winnemucca, NV 89445
Respondent

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

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

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

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


Michelle L. Bunyard
Legal Secretary

DA#13-497/CBM/MLB

FILED

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3774541

1 **2645**

2 **SNELL & WILMER L.L.P.**

3 Suellen Fulstone, No. 1615

4 50 West Liberty Street, Suite 510

5 Reno, Nevada 89501

6 Telephone: (775) 785-5440

7 Attorneys for Petitioners

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

9 IN AND FOR THE COUNTY OF WASHOE

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

12 Petitioners,)

Case No. CV03-06922

13 vs.)

Dept. No. 7

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

16 Respondents.)

Consolidated with

17 VILLAGE LEAGUE TO SAVE INCLINE)
18 ASSETS, INC. ET AL,)

Case No. CV13-00522

19 Petitioners,)

formerly assigned to Dept. No. 3

20 vs.)

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

23 Respondents.)

24 **PETITIONERS' RESPONSE TO**
25 **CHURCHILL COUNTY ASSESSOR MOTION TO DISMISS**

26 The Churchill County Assessor, Norma Green, seeks an order dismissing her from this
27 judicial review proceeding on the grounds that the complaint fails to state a claim against her and
28 that, having neither appeared nor participated in the administrative proceeding, she was not a
party of record required to be named and served under NRS 233B.130(2)(a). The Assessor,

Snell & Wilmer

LLP
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1 however, fails to acknowledge the special nature of a statutory judicial review proceeding. The
2 Nevada Supreme Court has directly addressed the issue of who is a "party of record" to SBOE
3 equalization proceedings and who must be named and served in order to establish jurisdiction,
4 writing as follows in *Washoe County v. Otto*, 128 Nev. Adv. Opn. 40, 282 P.3d 719 (2012):

5 We recognize that generally, to be a party of record, one must enter
6 an appearance or participate in some manner in the proceedings.
7 [Citations omitted.] **However, in the context of an equalization**
8 **decision, one need not actually appear or participate to be a**
9 **party. Rather, the provisions that govern contested cases before**
10 **the State Board of Equalization define a party, in relevant part,**
11 **as "a person ... entitled to appear in a proceeding of the State**
12 **Board." NAC 361.684(11) (emphasis added). 282 P.3d at 727,**
13 **fn.10 (Emphasis added).**

14 The issue before the Court in *Washoe County v. Otto*, was compliance with the requirement of
15 NRS 233B.130(2)(a) that the petitioner name all "parties of record." The petitioner, Washoe
16 County, had failed to name as respondents in its petition for judicial review some 8700 taxpayers
17 that the SBOE had identified as parties of record to the proceeding. On that ground, the County's
18 petition for judicial review was dismissed for lack of jurisdiction.

19 The Supreme Court wrote that the "taxpayers were both admitted and named as parties to
20 the administrative proceedings before the State Board, making them 'parties of record.'" *Washoe*
21 *County v. Otto, supra*, 282 P.3d at 726. In footnote 10 to that statement, the Court explained that,
22 although not all of the approximately 9000 taxpayers identified as "parties of record" on the
23 SBOE Exhibit A either appeared or participated in the proceeding, they were still parties of
24 record because they satisfied the definition of "party" in the SBOE regulations governing
25 contested cases before the Board.

26 In this proceeding, the SBOE identified all of the County Assessors throughout Nevada as
27 parties of record and served the decision by certified mail on all of the County Assessors,
28 including the Churchill County Assessor, as parties of record as required by SBOE regulation.
NAC 361.747(5). Under *Washoe County v. Otto*, the Churchill County Assessor had to be
named and served in this proceeding to establish jurisdiction. Under *Washoe County v. Otto*, the
Churchill County Assessor is not entitled to dismissal from this matter on the grounds that she
was not a party of record to the administrative proceeding.

Whether or not the Incline Village/Crystal Bay taxpayer petitioners have a claim against the Churchill County Assessor, they were required to name her as a party because she was identified as a party of record by the SBOE itself. *Washoe County v. Otto, supra*. A motion to dismiss for failure to state a claim, however, is and was unnecessary. Just as the judicial review statutes specifically require that all parties of record be named and served, they provide for each party to make its own determination as to whether to participate in the judicial review proceeding. For party respondents such as the Churchill County Assessor against whom no claim is stated, they may simply opt out of the proceeding by **not** filing a "statement of intent to participate." NRS 233B.130(3). No party respondent is "defaulted" for a failure to appear.

Rather than simply **not** filing a statement of intent to participate, the Churchill County Assessor has filed a notice of **NO** intent to participate. The affirmative notice that she does not intend to participate is unnecessary but the result is necessarily the same. The Churchill County Assessor has removed herself as a party to this proceeding. The motion to dismiss was unnecessary and, under the statutes which govern this judicial review proceeding, should be denied as moot.

DATED this 7th day of June, 2013.

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

/s/ Suellen Fulstone
by _____
Attorneys for petitioners

AFFIRMATION

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

Dated this 7th day of June, 2013.

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

CERTIFICATE OF SERVICE

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

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

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

And mailed a copy to the following:

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

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

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

DATED this 7th day of June, 2013.

/s/ Holly W. Longe

Employee of Snell & Wilmer L.L.P.

1 3880
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAWN M. BUONCRISTIANI
5 Deputy Attorney General
6 Nevada Bar No. 7771
7 100 N. Carson Street
8 Carson City, Nevada 89701-4717
9 Phone: (775) 684-1129
10 Fax: (775) 684-1156
11 Attorneys for the State Board of Equalization

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

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

Case No. CV03-06922

Dept. No. 7

Petitioners,

vs.

16 THE STATE OF NEVADA, on relation of the
17 STATE BOARD OF EQUALIZATION, et al.

Respondents.

Consolidated with:

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

Case No. CV13-00522

formerly assigned to Dept. No. 3

Petitioners,

vs.

20 STATE OF NEVADA, on relation of the STATE
21 BOARD OF EQUALIATION, et al.,

Respondents.

22 **STATE BOARD'S SUPPLEMENT TO AUTHORITIES IN**
23 **RESPONSE TO PETITIONERS' OBJECTION**

24 Respondent, State of Nevada, ex rel. State Board of Equalization, by and through its
25 counsel Catherine Cortez Masto, Attorney General, by Dawn Buoncristiani, Deputy Attorney
26 General, hereby submits its Supplement to State Board's Authorities in Response to
27 Petitioners' Objection. These citations to legal authority supplement the State Board's
28 Response to Plaintiffs' Objection to State Board of Equalization Report and Order. See
Response, pp. 17-20.

///

1 The United States Supreme Court recently issued on May 20, 2013, an opinion
2 expanding on the *Chevron* standard of deference to give an executive branch agency's
3 determinations including issues of jurisdiction.¹

4 [T]he question—whether framed as an incorrect application of agency authority
5 or an assertion of authority not conferred—is always whether the agency has
6 gone beyond what Congress has permitted it to do, there is no principled basis
7 for carving out some arbitrary subset of such claims as 'jurisdictional.'

8 *City of Arlington, Tex. v. F.C.C.*, 2013 WL 2149789, 6 (U.S.) (U.S., 2013). There are no
9 "separate 'jurisdictional' questions on which no deference is due. . ." *Id.* The Nevada
10 Supreme Court has cited to *Chevron* in support for its opinion giving deference to a state
11 executive branch agency's determination. *Thomas v. City of North Las Vegas*, 122 Nev. 82,
12 102, 127 P.3d 1057, 1070 (2006) ("We give deference to administrative interpretations.")

13 Accordingly, the State Board's interpretation of NRS 361.395 is entitled to deference
14 under *Chevron* and *Thomas* even though Petitioners identify such
15 interpretations/determinations as outside the State Board's jurisdiction. See Objection, pp. 7-
16 17.

17 This Court need not puzzle over whether the State Board acted beyond its jurisdiction.
18 The question for this Court is whether the State Board's interpretation of NRS 361.395 is
19 based on a permissible construction of the statute.

20 ///

21 ///

22 ¹ "[T]he scope of the doctrine enshrined in *Chevron*. . . [is] that case's now-canonical formulation. When a court
23 reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, applying the
24 ordinary tools of statutory construction, the court must determine whether Congress has directly spoken to the precise
25 question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give
26 effect to the unambiguously expressed intent of Congress. But if the statute is silent or ambiguous with respect to the
27 specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the
28 statute. *City of Arlington, Tex. v. F.C.C.*, L 2149789, 4 -5 (U.S., 2013) (citations omitted) (internal quotation marks
omitted) (emphasis added).

"*Chevron* is rooted in a background presumption of congressional intent: namely, that Congress, when it left
ambiguity in a statute administered by an agency, understood that the ambiguity would be resolved, first and foremost, by the
agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows.
Chevron thus provides a stable background rule against which Congress can legislate: Statutory ambiguities will be resolved,
within the bounds of reasonable interpretation, not by the courts but by the administering agency. Congress knows to speak
in plain terms when it wishes to circumscribe, and in capacious terms when it wishes to enlarge, agency discretion." *City of
Arlington, Tex. v. F.C.C.*, L 2149789, 4 -5 (U.S., 2013) (citations omitted) (internal quotation marks omitted).

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

1 Where Congress has established a clear line, the agency cannot go beyond it;
2 and where Congress has established an ambiguous line, the agency can go no
3 further than the ambiguity will fairly allow. But in rigorously applying the latter
4 rule, a court need not pause to puzzle over whether the interpretive question
5 presented is "jurisdictional. If "the agency's answer is based on a permissible
6 construction of the statute," that is the end of the matter.

7 *City of Arlington*, 2013 WL 2149789 at 1, quoting *Chevron*, 467 U.S., at 842. Here, NRS
8 361.395 is silent and ambiguous and this Court should give deference to the State Board's
9 permissible construction of such section. See Response, pp. 17-19.

10 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

13 DATED: June 10, 2013.

14 CATHERINE CORTEZ MASTO
15 Attorney General

16 By: *Dawn Buoncrisiani*
17 DAWN BUONCRISTIANI
18 Deputy Attorney General
19 Nevada Bar No. 7771
20 Attorneys for the State Board of Equalization
21
22
23
24
25
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27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on June 10, 2013, I electronically filed the foregoing **STATE BOARD'S SUPPLEMENT TO AUTHORITIES IN RESPONSE TO PETITIONERS' OBJECTION** 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 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
Arthur E. Mallory, District Attorney Churchill County 165 North Ada Street Fallon, NV 89406	Phone: 775-423-6561 Fax: 775-423-6528	Norma Green, Churchill County 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, Assessor 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 20 S Main St P.O. Box 88 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

///

///

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Attorney/Address	Phone/Fax/E-Mail	Party Represented
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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
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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: June 10, 2013.



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

1 4185

2

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4

5 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6

IN AND FOR THE COUNTY OF WASHOE

7

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

8

--oOo--

9

VILLAGE LEAGUE, et al.,

Case No. CV03-06922

10

Petitioners,

Dept. No. 7

11

vs.

12

DEPARTMENT OF TAXATION, et al.,

13

Respondents.

14

15

TRANSCRIPT OF PROCEEDINGS

16

ORAL ARGUMENTS

17

Friday, June 14, 2013

18

19

20

21

22

23

Reported by:

24

EVELYN J. STUBBS, CCR #356

1 APPEARANCES:

2
3 For the Petitioners:

SNELL & WILMER
Attorneys at Law
By: Suellen Fulstone, Esq.
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8 For the Respondents:

DAVID CREEKMAN, ESQ.
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12 DAWN BUONCRISTIANI, ESQ.
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100 North Carson Street
13 Carson City, Nevada 89701

14
15 For the Intervenors:

NORMAN J. AZEVEDO, ESQ.
Attorney at Law
405 North Nevada Street
16 Carson City, Nevada 89703

17
18 Also Present:

Maryanne Ingemanson,
President, Village League

1 RENO, NEVADA; FRIDAY, JUNE 14, 2013; 9:00 A.M.

2 --o0o--

3
4 THE COURT: All right. Ms. Clerk, let's call this
5 matter.

6 THE CLERK: Case No. CV03-06922, Village League
7 versus Department of Taxation. This matter is set for oral
8 arguments. Counsel, please state your appearance.

9 MS. FULSTONE: Suellen Fulstone of Snell and Wilmer
10 on behalf of the taxpayer Petitioners.

11 THE COURT: Good morning.

12 MR. AZEVEDO: Norm Azevedo on behalf of the
13 proposed intervenors.

14 THE COURT: Good morning.

15 MR. CREEKMAN: David Creekman on behalf of the
16 Washoe County respondents.

17 MS. BUONCRISTIANI: And Dawn Buoncristiani for the
18 State Board of Equalization.

19 THE COURT: Good morning, counsel.

20 Bailiff, let's take 14 people in the first row and
21 invite them to occupy the more comfortable chairs in the jury
22 box. Then we will bring some people in from the hallway to
23 fill those seats.

24 (Interruption while reseating people.)

1 THE COURT: All right. Thank you very much. Thank
2 you, counsel.

3 I want to start by complimenting the attorneys for
4 the briefs that they filed here. They were well thought out,
5 well researched, informative, and certainly of assistance to
6 the Court. I commend the attorneys for their good work.

7 We are here on a Petition for Judicial Review with
8 the State Board of Equalization's decision of February 8,
9 2013, which was the result of a writ of mandamus that this
10 Court issued on August 21st, 2013, in which this Court
11 ordered the State Board of Equalization to take such actions
12 that are required to notice and hold a public hearing or
13 hearings as may be necessary.

14 This Court ordered the Board to hear and determine
15 the grievances of the property owner taxpayers regarding the
16 failure or lack of equalization of real property valuations
17 throughout the state for the 2003-2004 tax year, and each
18 subsequent tax year, to and including 2010 and 2011. And to
19 raise, lower or leave unchanged the taxable value of any
20 property for purposes of equalization.

21 This Court order takes such actions over public
22 equalization hearing not more than 60 days after the issuance
23 of this writ. And, of course, if in the course of the
24 equalization hearing if the Board proposed to increase the

1 valuation of any property on the assessment, the Board was
2 ordered to take such actions as are required to comply with
3 the provisions of NRS 361.395(2).

4 The Board held three hearings pursuant to these
5 writs. The Board held a hearing on September 18th, 2012;
6 November 5th, 2012; December 3rd, 2012. As a result of those
7 hearings, the Board issued its decision on February 8th,
8 2013. On March 8th, 2013, the Village League filed a
9 Petition for Judicial Review of the State Board of
10 Equalization's February 8th decision.

11 The Village League argues that the State Board's
12 decision violates constitutional statutory provisions,
13 exceeds the statutory authority of the State Board, was made
14 upon improper procedure.

15 The Village League avers that the State Board was
16 unlawfully constituted, improperly applied 2010 regulations
17 retroactively, that the State Board's decision is contrary to
18 the Nevada Supreme Court rulings, is erroneous in view of the
19 evidence, is arbitrary and capricious, and constitutes an
20 abuse of discretion.

21 The League concedes that the decision is not a
22 final decision and thereby -- and therefore review was sought
23 pursuant to 233B.130, which states in part that an
24 interlocutory, for lack of a better word, interlocutory order

1 is appealable if review of the final decision of the agency
2 would not provide an adequate remedy.

3 The Village League avers that the decision calls
4 for a reappraisal of all residential property at Incline
5 Village-Crystal Bay, calls for hearings on any increase in
6 property values, it calls for preparation of ratios, studies.

7 The Village League claims that waiting is an
8 inadequate remedy, thereby seeking the review pursuant to the
9 above-cited statute.

10 The Village League seeks in relief that this Court
11 certify this action as a class action. That it review,
12 reverse and set aside the February 8th decision and remand
13 it, remand this matter to the State Board for a lawful
14 determination of equalization grievances.

15 This Court has reviewed the February 21st, 2013,
16 objections filed by the Village League to the State Board's
17 order. Essentially it's citing to those three decisions --
18 excuse me, three hearings, September, November and December,
19 claiming that the decision to quote, reappraise, close quote
20 would set aside the Bakst and Barta valuations in settlement
21 which will lead us to the intervenor's request. We will
22 address that later on.

23 The State Board of Equalization and the Village
24 League claims the State Board of Equalization lacks the

1 jurisdiction to order a reappraisal, citing that the only
2 authority the State Board has is pursuant to 361.395(1)(b).
3 That is to review the tax rules and to raise or lower
4 equalizing taxable value of property. That there's no
5 authority to reappraise property, that there's no authority
6 to extend its jurisdiction by a regulation.

7 The Court has reviewed the recent filings as of
8 yesterday of the United States Supreme Court case, and we can
9 address the Chevron issue later on in the proceedings.

10 The Village League claims that the Nevada tax
11 system does not permit a reappraisal of property that has
12 already been appraised for the tax year in question, and that
13 mass reappraisal employed retroactively over ten years would
14 create havoc with the lien system, title policy guarantees,
15 and the collection of additional taxes.

16 The State Board of Equalization -- the Village
17 League claims that the State Board of Equalization was
18 unlawfully constituted and had no jurisdiction because two of
19 its members were property appraisers. That, as opposed to
20 just one under the makeup of the Board.

21 That the use of the 2010 equalization regulations
22 retroactively is prohibited, and that the reappraisal process
23 denies taxpayers due process and equal protections because
24 mass appraisals were not approved until 2008.

1 That there is no provision to taxpayers to
2 challenge the appraisal valuations if it is greater than
3 prior unconstitutional valuations, and that the order is not
4 clear as to which regulation the Washoe County Assessor is to
5 use.

6 The Village League argues that it would be an undue
7 burden on the Washoe County Assessor to comply with the order
8 of the State Board.

9 The Village League argues that there's no reason to
10 assume the new appraisals will satisfy constitutional
11 requirements, and that there are no constitutional
12 reappraisals that can be performed under the 2002 or 2004
13 regulations, because one, there's no vacant land sales to
14 support comparable sales analysis and therefore, ergo, the
15 need for alternative valuation methodologies. That the order
16 violates the writ of mandate issued by this Court.

17 And then there's the issue of the condominiums, the
18 valuation of the condominiums. The Village League proposes
19 an historical geographical basis of equalization resetting
20 all residential values at the 2002-2003 levels with localized
21 decisions reducing valuations on Millcreek and the lakefront
22 in Incline Village.

23 On April 4th, 2013, the State Board of Equalization
24 filed its Motion to Dismiss, and that's the motion we're

1 hearing today. The State Board argues that there's no basis
2 in law to appeal an equalization order.

3 The State Board argues that its action is a
4 legislative action and not an adjudicatory action, that there
5 was no contempt to the case pursuant to NRS 233B.130.

6 That there is no right to an appeal -- excuse me,
7 there's no right to appeal an equalization action of the
8 State Board, and that the State Board's action is not subject
9 to judicial review.

10 It cites the Bi-Metallic case defining what an
11 adjudicatory function is. We can discuss quasi legal
12 proceedings, as well as quasi legislative proceedings as
13 well, citing the May County Department Stores case.

14 The State Board argues that this Court lacks
15 jurisdiction, because this is not a contested case pursuant
16 to the statute, and therefore, this is not a proper
17 procedural vehicle to review the equalization order.

18 A contested case is defined as a proceeding in
19 which the parties are entitled to participate, take evidence,
20 cross-examine witnesses.

21 The State Board argues that what the Board of
22 Equalization did in those three hearings was its legislative
23 function; it just received evidence and information. And
24 under that analysis, that rubric, there is no right to a

1 Petition for Judicial Review.

2 On April 4th, 2013, the defendant Washoe County,
3 joined and filed its Motion to Dismiss pursuant to NRS
4 12(b)(5) and 12(b)(6). It outlined the genesis of this case,
5 noting that on February 24th, 2012, the Nevada Supreme Court
6 affirmed this district court's decision and reversed it on a
7 discrete ground.

8 This Court then, following the mandate of the
9 Nevada Supreme Court, held a hearing and issued its mandate
10 of August 21st, 2012, directing the State Board of
11 Equalization to provide notice, to hold a public hearing, to
12 hear grievances of the property owners regarding
13 equalization, and to raise, lower or leave unchanged the
14 taxable values of the properties for purposes of
15 equalization.

16 Washoe County argues that the State Board held
17 those hearings, gave that notice, and issued its decision
18 regarding the evaluation of properties.

19 Now NRCP 12.5 says that a complaint can be
20 dismissed if no relief can be provided. What Washoe County
21 focused on is that the issues raised in the Village League's
22 Petition for Judicial Review were not right for a review by a
23 district court at this time.

24 Washoe County argues that the State Board has not

1 acted with any finality. And Washoe County argues that not
2 all administrative orders are subject to judicial review;
3 that this is not a contested case; that the State Board was
4 not even required to hold hearings on equalization.

5 Washoe County also argues that the Petition for
6 Judicial Review should be dismissed because it fails to name
7 all parties in the State Board of Equalization action, and
8 therefore this district court is without jurisdiction to
9 entertain this petition.

10 With respect to the Village League's request for
11 class action certification pursuant to Nevada Rule of Civil
12 Procedure 23, there are four requirements for class action
13 certification.

14 The County argues that the Village League does not
15 have standing to bring a class action because it's a
16 non-profit organization and it doesn't own any property in
17 Incline Village or Washoe County.

18 Washoe County points out that not one taxpayer can
19 represent everyone in a refund action, in a refund
20 proceeding, that each taxpayer is individual, and each remedy
21 sought by each taxpayer is individualistic, and that property
22 disputes rarely are appropriate for class action
23 certification.

24 Now, Nevada Rule of Civil Procedure 12(b)(6),

1 combined with Nevada Rule of Civil Procedure 19, talks about
2 joining the indispensable parties. What NRCP 12(b)(6) says
3 is that a case should be dismissed if it fails to include
4 indispensable parties to an action.

5 And Washoe County argues that Village League's
6 failure to join the other counties in a statewide
7 equalization order is fatal to these proceedings, that that
8 failure to join as indispensable parties the other counties
9 provides a further basis for dismissal of this Petition for
10 Judicial Review.

11 Now on April 22nd, 2013, Village League filed its
12 Points and Authorities in opposition to the County's Motion
13 to Dismiss. Village League argues that there are specific
14 statutory provisions for the appeal of an interlocutory, not
15 a final, but an interlocutory agency decision. That, they
16 claim, defeats a challenge on rightness.

17 Village League argues that this is a contested case
18 because the hearings were held pursuant to this Court's
19 order. Village League claims it did name all the parties
20 that were on the State Board of Equalization's Certificate of
21 Service. And the Village League disputes the County's
22 challenge to class action certification claiming that that
23 challenge to a Rule 23 certification is not appropriate in
24 the procedural posture of a Motion to Dismiss, Motion to

1 Dismiss a Petition for Judicial Review.

2 On April 23rd, 2013, Village League filed Points
3 and Authorities in opposition to the State Board's Motion to
4 Dismiss citing Marvin v. Fitch, a Nevada Supreme Court case
5 found at 232 P.3d 425, pointing out, at least in that
6 particular case, the Nevada Supreme Court found that the
7 State Board members were entitled to absolute immunity from
8 suit, because the functions that they were performing in an
9 equalization process were quasi judicial in nature, and
10 therefore the matter is appropriate for judicial review.

11 On May 3rd the Defendant State Board of
12 Equalization filed its reply to the Village's opposition
13 arguing again that the State Board's action was legislative
14 in nature and not judicial, therefore not subject to a
15 Petition for Judicial Review; that this is not a contested
16 case; that there was no contested case before.

17 And I use "contested case" as a term of legal art.
18 No, open quote, contested, close quote, case before the State
19 Board of Equalization, therefore there's no right to appeal.

20 The State Board argues that a case becomes
21 "contested," when a decision is made to raise values. At
22 that time they're entitled, the subject property owners are
23 then entitled to notice an opportunity to be heard before a
24 decision is made. And then at that time, the Petition for

1 Judicial Review is appropriate.

2 The Board goes on to distinguish the Marvin case.
3 However, prior to the time a decision is made -- according to
4 the State Board, prior to the time that a decision is made to
5 raise the rates, the function the Board is performing is
6 legislative in nature and not quasi judicial, and therefore
7 an appeal is premature.

8 The State Board goes on to argue that valuations
9 developed by assessment are appealable, but a State Board's
10 equalization action is not, it's just not practical.

11 Notice of hearing of every property owner taxpayer
12 in the state is just impractical, and the State Board of
13 Equalization's action is not appealable through a Petition
14 for Judicial Review. As of now, the State Board argues, the
15 State Board of Equalization has not heard individual
16 contested cases on appeal from a county assessment. If they
17 do, and then at that time they determine that the taxable
18 value should be raised, then it comes a contested case with
19 notice, opportunity to be heard, and a hearing pursuant to
20 NRS 361.395(2).

21 The State Board argues that this is not a dispute
22 over individual assessments, that this is a statewide
23 equalization action ordered pursuant to this Court's writ of
24 mandamus, and thus at this time an appeal is not available.

1 On May 10th, 2013, the Petitioner filed its
2 response to the Pershing County motions to dismiss. There
3 have been several notices by various other counties around
4 the state of their intent not to participate in this case.

5 On May 17th, 2013, this Court ordered the
6 consolidation and transfer of the case from Department 3 into
7 this court, to consolidate these matters in one proceeding
8 before one judge.

9 On June 3rd, 2013, the Village League filed its
10 Notice of Deficit to the Administrative Record. The State
11 Board filed its supplement on June 10th, 2013, regarding the
12 expansion of the Chevron standard in deference to an agency's
13 determination of its own jurisdiction.

14 On June 11th this Court entered its order on the
15 Motion to Intervene inviting the intervenors to participate
16 in this proceeding, trying to keep it on track and just one
17 proceeding. And on June 13th, yesterday, Village League
18 filed its response to the State Board of Equalization's
19 supplemental pleadings regarding Chevron, the Chevron's
20 standard of deference to an agency's determination.

21 Have there been any other filings?

22 MS. FULSTONE: I think you've covered it, Your
23 Honor.

24 MS. BUONCRISTIANI: No, Your Honor.

1 THE COURT: All right. Ms. Fulstone.

2 MS. FULSTONE: Thank you, Your Honor. First of
3 all, and I understand the confusion, but when we set this
4 case for a hearing today, it was pursuant to a request for
5 hearing that I had filed with the Court for hearing on the
6 objections to the State Board's compliance with the writ of
7 mandamus. The counsel for the attorney general specified
8 that it would just be limited to the objection.

9 I understood that to mean that we weren't going to
10 be arguing the motion to dismiss on the companion, so to
11 speak, Petition for Judicial Review case. Clearly the Court
12 has reviewed those. I didn't prepare to argue those, but I
13 can, if that's where the Court is, you know, if that is what
14 the Court is wanting to hear. I can wing it. But this
15 hearing was to be on the objections, which is -- the way this
16 came about, because the writ of mandamus includes a
17 requirement that the State Board report, and it did so
18 report. On behalf of taxpayers, the Village League filed
19 objections to that report because the time was also running
20 on a Petition for Judicial Review. As a protective matter,
21 we also filed a Petition for Judicial Review, thinking that
22 if the objections were found to be valid that would move the
23 Petition for Judicial Review.

24 Now the State has filed the record, but it's

1 incomplete. So when the State files a complete record on
2 judicial review, assuming the petition has not been mooted,
3 we would then go and brief the Petition for Judicial Review
4 and proceed under the statutory provisions for judicial
5 review, assuming the motions to dismiss are not granted.

6 So that's kind of where I'm coming from. As I
7 said, I can argue those motions. It might be a little bit of
8 an ad hoc.

9 THE COURT: All right. Let me hear from the State
10 Board, let me hear from the County.

11 MS. BUONCRISTIANI: Your Honor, I didn't know until
12 the day before yesterday, I wasn't aware that the Motion to
13 Dismiss would be on the calendar today, but I am, as well,
14 prepared to go forward if that is what the Court would like
15 to do.

16 THE COURT: Let me hear from the County.

17 MR. CREEKMAN: Your Honor, I was under the belief
18 that we were going to be discussing every issue before the
19 Court today. The taxpayer objections, the Motion to Dismiss,
20 the Petition for Judicial Review, and Mr. Azevedo's
21 intervention request. So I'm ready for all three, Your
22 Honor.

23 THE COURT: Okay. Mr. Azevedo, your turn.

24 MR. AZEVEDO: Good morning, Your Honor. Thank you

1 for allowing me to be heard. I'm here on behalf of the
2 intervenors. My understanding was consistent with
3 Ms. Fulstone regarding the objections and potentially my
4 Motion to Intervene.

5 THE COURT: Let me ask you, Maybe we can just peel
6 this issue off. In terms of the Motion to Intervene, I
7 notice that you also filed an Association of Counsel. Did
8 that moot the motion for intervention?

9 MR. AZEVEDO: I don't believe so, Your Honor. I'm
10 associated in the Petition for Judicial Review. Assuming
11 that goes forward today with regard to the writ, we're trying
12 to intervene and be a party in this case.

13 THE COURT: All right. Well, let's see if we can't
14 do this. Let's talk about the intervention here.

15 MR. AZEVEDO: Yes, sir.

16 THE COURT: What makes you think that Ms. Fulstone's
17 position won't encapsulate your clients' position?

18 MR. AZEVEDO: Can I come to the podium, Your Honor?

19 THE COURT: Certainly.

20 MR. AZEVEDO: I'm an attorney without a home.

21 THE COURT: Go ahead.

22 MR. AZEVEDO: Thank you.

23 THE COURT: That's quite all right.

24 MR. AZEVEDO: First and foremost, on behalf of

1 Bakst intervenors, with the exception of Mr. Barta, and what
2 I refer to as Bakst I, he was the only petitioner/plaintiff
3 in that case.

4 THE COURT: He was like in the van diagram, he's in
5 the middle.

6 MR. AZEVEDO: Okay.

7 THE COURT: He is in both.

8 MR. AZEVEDO: The League and the parties of that
9 case, if you look at their objections, look at the papers
10 they filed, they have issued and addressed points that are
11 global to all 8700 parcels. My clients have issues that are
12 really specific to them. Each client participated in Bakst I
13 and Bakst II, the second case, on issues that were specific
14 to them and with regard to four unconstitutional methods. To
15 date those issues have not been brought forward.

16 Similarly, when Bakst I and Bakst II went forward,
17 each property owner had the right to its own counsel and to
18 bring those issues before those courts and the Supreme Court
19 ultimately on those issues. So potentially, could they?
20 Sure.

21 My clients want assurance that our issues are
22 brought forward before the Court to specifically address
23 whether Ms. Fulstone has time to get to those issues or not,
24 and the League.

1 THE COURT: Thank you, Mr. Azevedo.

2 Mr. Creekman, what's your position on --

3 MR. CREEKMAN: On the intervention, quite frankly,
4 Washoe County was really surprised to see the motion for
5 intervention. And that's because Ms. Fulstone for the last
6 ten years in this very case has represented to the Court, to
7 all the courts in the state, that she represents all
8 similarly-situated property owners.

9 I fail to see, without a clear definition of
10 "similarly situated," how Mr. Azevedo's clients are not
11 similarly situated. On the grandest sense anyone who owns
12 residential property in Incline Village or Crystal Bay,
13 subject to what ultimately was declared an unconstitutional
14 valuation methodology used by the assessor, is similarly
15 situated with all of his or her other property owners.

16 So we were quite taken back, and that's why we
17 joined in the State's motion which indicated there was a
18 timeliness problem, and a belief that these people were
19 already a part of the action.

20 I want to remind you, though, that -- and, Your
21 Honor is already aware of this, that under the Barta case,
22 the Supreme Court clearly delineated two separate functions
23 performed by the State Board; its appellant function and its
24 equalization function.

1 It is Washoe County's position today, and it will
2 remain Washoe County's position, that anything that occurred
3 as part of the equalization function -- excuse me, as part of
4 the appellate function and resulted in a final decision has
5 absolutely no res judicata or collateral estoppel effect on
6 what the Supreme Court declared as the separate equalization
7 function.

8 So it's Washoe County's position, and I don't know
9 if the State would concur with me on this or not, but it's
10 Washoe County's position that the two functions provide two
11 separate opportunities for modification, ultimate
12 modification of the assessed valuation of the taxpayers'
13 properties anywhere within the state of Nevada. Not that it
14 will necessarily occur, but there are these two roads to
15 travel to an ultimate determination as to what the property's
16 value is.

17 THE COURT: All right.

18 MR. CREEKMAN: But beyond that, if the Bakst
19 plaintiffs want to get some sort of formal order allowing
20 them to intervene in a case in which I believe they're
21 already a party, it's fine with us.

22 THE COURT: Let me hear from the State.

23 Ms. Buoncristiani, what's your position with
24 respect to the Motion to Intervene?

1 MS. BUONCRISTIANI: Your Honor, the State's
2 position is that even with the comments from counsel for the
3 intervenors that they really haven't shown that there isn't
4 an identity of interest.

5 Under the American Home Assurance Company there's
6 four elements that have to be met, and the adequacy of
7 representation, they're just saying that there is something,
8 they haven't really specifically identified anything. And
9 the presumption is that when there is an identity of
10 interest, that there isn't an adequate representation.

11 The State doesn't believe they've overcome that
12 presumption for the burden that they carry. And the delay in
13 intervening suggests that they were comfortable with the
14 representation for this in length of time.

15 The other thing is that in terms of timeliness,
16 they haven't really demonstrated why they are waiting so late
17 in this proceeding and met the three elements, because there
18 is a lot of water that's gone under the bridge in terms of
19 where the case is or the stage of the proceedings. And these
20 three factors are found in the League case.

21 And in League, the Court found that because there
22 were so many court procedures that had taken place, that it
23 was not -- it was not timely, because the stage of the
24 proceedings was so late.

1 Similarly in this case we have come through a lot
2 of proceedings, it's been to the Supreme Court twice, and the
3 Bakst intervenors have never moved to intervene. They
4 intervened after the September noticing for the hearing,
5 which the rest of the State got, but they didn't intervene
6 until there was almost a threat present then, because they
7 weren't happy with the way that order went.

8 And under the case law that goes against them
9 intervening, because they haven't really stated the reason
10 why they waited so long, And they knew earlier, at least in
11 September when the rest of the state got notice, that there
12 was the possibility that something -- the State Board may act
13 in contrast to their interest or in conflict to their
14 interest.

15 And so on the basis of the law, American Home
16 Assurance, the end relief factors, the State Board would be
17 opposed to the intervention.

18 THE COURT: All right. Thank you, Counsel.
19 Counsel.

20 MR. AZEVEDO: Thank you, Your Honor. And I'll go
21 back, because I was answering your specific question
22 initially, and I'll address some of the points raised.

23 First to the County's point. My clients are
24 different, with the exception of Mr. Barta. Actually, in the

1 Barta case, the initial one, Barta-Bakst I had his own
2 counsel. We are not similarly situated. We have a final
3 decision from the Nevada Supreme Court which makes those
4 arguments unique to my clients. And I'll get into the briefs
5 on collateral estoppel and res judicata.

6 THE COURT: Those arguments are raised by
7 Ms. Fulstone as well in her pleadings.

8 MR. AZEVEDO: And then, I guess, Your Honor, to the
9 second point is to what point will they take those arguments
10 to the full and natural conclusion? I mean Les Barta,
11 Mr. Barta, was the only taxpayer present in Bakst I.

12 Second, as far as not participating in proceedings
13 earlier, and this is why my clients basically came together
14 to jump into the process at this time. If you look, the
15 February 8, 2013, equalization order was issued. 46 days
16 later we made our motion.

17 Prior to that, there was a hearing before the State
18 Board of Equalization where the Washoe County Assessor was
19 charged with the obligation to bring back a list for each of
20 their respective tax years delineating and outlining which
21 cases would be subject to potential equalization actions
22 because they had one of the four unconstitutional methods.

23 In that regard if you look at those lists, which I
24 submitted electronically, because they're quite voluminous,

1 for one of my clients, the condominium owner, Mr. Schwartz,
2 he was not even listed on that list as being subject to any
3 potential equalization action.

4 Furthermore, the balance of my clients, the
5 potential equalization action was shown as zero. So as far
6 as us getting forward, been coming forward earlier, the
7 question is why would we?

8 When we looked at that, either the property was not
9 listed on the list of equalization or in the alternative the
10 action they would be taking would be zero. It was only when
11 the February 8th, 2013, decision or order of the State Board
12 of Equalization came out there was a change in circumstances
13 did we know that now the State Board was going to go back,
14 and they've ordered the Washoe County Assessor to do a
15 reappraisal.

16 And just from a historical standpoint, if you look
17 at that, that is the beginning of the process that was the
18 genesis of the Bakst I and Bakst II decision. So in essence
19 what we're doing is we're going back to where we were in 2002
20 and starting over. So that was the basis for the timing of
21 the motion.

22 If you look at the statute, NRS 12.130, which is
23 one grounds for intervention, or NRCP 24, this Court has the
24 ability under two different options to allow these parties to

1 participate. The State focuses on intervention as a matter
2 of right. They say, well, Ms. Fulstone -- this is the
3 question you asked, Your Honor -- can adequately represent my
4 clients' interest.

5 But it goes further. It says, basically, under
6 12.130 a person has interest in the matter being litigated.
7 Quite candidly, I can't think of an individual more than Dr.
8 Alvin Bakst and those intervenors who have an interest in
9 this matter. They started this case, took it all the way to
10 the Nevada Supreme Court. And within the context of those
11 decisions, the issue regarding equalization under 361.395 was
12 raised, the issue of a potential reappraisal was raised, and
13 ultimately at the end of the day the Supreme Court said, no
14 it's an unconstitutional valuation; Dr. Bakst, you get a
15 refund.

16 And then the brief that far out is under the County
17 Commissioner decision we're talking about the same cause of
18 action when you're looking at collateral estoppel and res
19 judicata. It's the same tax year. Those concepts apply;
20 it's a tax context, but the same year. So really what the
21 State and County have to establish is, is how can you open up
22 that tax year for any ground, whether it's equalization,
23 otherwise, because under the Sunnen decision, which our
24 Supreme Court has accepted in a non-published opinion, that

1 case was over for that year, whether the issue was raised or
2 not.

3 I brought some of the briefs forward for the
4 Court's consideration, because these issues were raised in
5 the context of those two cases. The Supreme Court could have
6 addressed them and said, no, go back for a reappraisal.
7 Instead they chose not to and ordered my clients a refund.
8 That's very specific to these particular taxpayers.

9 Ms. Fulstone is a very able counsel. I will not
10 dispute that, but I believe they've been entitled to have
11 their voice heard. I've been out of this case for six years,
12 Your Honor.

13 THE COURT: Welcome back.

14 MR. AZEVEDO: I was on the ranch. But we looked at
15 it. We monitored it. And it wasn't until February of 2013
16 did we know the State Board was planning to disregard our
17 decisions.

18 And what I would submit respectfully in conclusion.
19 For a taxpayer to take a case to the Nevada Supreme Court on
20 property tax, not once, but twice, it is a significant
21 undertaking. To receive favorable decisions, not once, but
22 twice; and now to have the State Board of Equalization and
23 the County supporting it to start the process over again,
24 number one, that's in violation of Sunnen in the principle

1 espoused in there as to res judicata, but number two, it
2 certainly gives us the opportunity to be a party in this
3 case.

4 Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 A party may intervene in an action in one of
7 several ways. But intervention is governed by Nevada Rules
8 of Civil Procedure 24 and Nevada Revised Statute 12.130.
9 24(b)(2) provides that the Court may permit a party to
10 intervene when the applicant's claim or defense and the main
11 action have a question of law or fact in common. That
12 statute directs the district court to consider whether or not
13 that intervention will unduly delay or prejudice the
14 adjudication of the rights of the original party.

15 The Court has heard arguments of counsel,
16 considered the pleadings, have read the pleadings. And the
17 Court finds that the intervention will not delay or unduly
18 prejudice the adjudication of the rights here, and the Court
19 will grant the motion for the parties to intervene.

20 So we've got that done today. Ms. Fulstone, what
21 else do you want us to do here today?

22 Let me say this: I'm here for you. I'm prepared
23 to address any of the issues, but I don't want to unduly
24 press you into arguing something you're not prepared to argue

1 for today. So I'd be more than happy to reschedule this
2 matter to a time that's convenient to all parties to address
3 the Motion to Dismiss, if you wish. If you want to just
4 focus on the issue that you're prepared for, I'll hear that.

5 Tell me what you want to do.

6 MS. FULSTONE: Thank you, Your Honor. I feel
7 exactly the converse, like I'm here to do what you want to
8 do. And I can do whatever that is. You know, I have been
9 with this case for a number of years, and to the extent that
10 I might be required to argue something on the wing, I'm
11 pretty familiar with the arguments, the background, the
12 facts, it's not something that I can't do.

13 In my mind, you know, I thought that the Motion to
14 Dismiss on the Judicial Review Petition would probably be
15 decided by the Court without argument because the arguments
16 are outlined in the sworn briefs and opposing briefs. I'm
17 not sure what I can add to what I've already argued with
18 respect to the Motion to Dismiss, but I will answer any
19 questions the Court might have regarding those motions at
20 this time.

21 THE COURT: All right. Well let's go ahead with
22 your presentation.

23 MS. FULSTONE: Before I start, I just want to get
24 the Court's feel on, you know, we have raised three or four

1 separate issues by way of objections. Do you want me to
2 argue all of them at one time and then sit down or do you
3 want to argue them one at a time and allow the County and
4 State to respond to them as I argue them?

5 THE COURT: All at one time.

6 MS. FULSTONE: Our first issue is the issue of
7 jurisdiction to order reappraisal. This is as simple and
8 straightforward an argument as exists in the law. The State
9 Board of Equalization is a creature of statute. The Court is
10 familiar with that term of art. As such, it has the powers
11 granted by statute. The power to reappraise is not expressly
12 granted by statute. Therefore, it must be implied.

13 Implied powers are the powers that are necessary.
14 There can be no credible argument here that the power to
15 order mass reappraisal is a necessary function of the State
16 Board of Equalization. The State Board of Equalization has
17 operated for approximately 100 years or so as it exists now,
18 and its predecessor, without ever ordering a reappraisal.

19 So it's not a necessary part of what the State
20 Board does in terms of equalization. And since it's not
21 expressly provided for, and you cannot satisfy the standard
22 of being implied, therefore it does not exist. It is outside
23 the statutory jurisdiction of the State Board of
24 Equalization.

1 Now, that's a simple argument on the law. I can
2 argue the policy as well.

3 THE COURT: Address this question: Given the fact
4 that reappraisal is not in the statute, the statute provides
5 the State Board of Equalization with the power to raise or
6 lower or leave unchanged. But if the Nevada Supreme Court
7 has found the original assessment to be based upon an
8 unconstitutional evaluative methodology, doesn't that void
9 that assessment completely? Therefore, this is not -- when
10 the Board orders this to be reevaluated, it's not a
11 reappraisal, it's an appraisal, and it starts right from the
12 beginning.

13 For example, as you know in medical malpractice
14 cases, the statute requires that before a person can file a
15 lawsuit against a doctor, they're required to have an
16 affidavit of another doctor in that same field to be filed
17 with that complaint. And the failure to file that affidavit
18 of that doctor with that complaint against the other doctor
19 for malpractice voids the complaint completely ab initio, as
20 if it never happened.

21 Therefore, address the issue that this is not a
22 reappraisal, this essentially is an appraisal done according
23 to constitutional methodologies, and therefore it's not
24 outside the statute.

1 MS. FULSTONE: It is outside the statute. No
2 question about that, because --

3 THE COURT: If it's a reappraisal.

4 MS. FULSTONE: No. If it's an appraisal. The
5 State Board of Equalization has no authority to order
6 appraisals either. It has no authority to void existing
7 appraisals. Its authority is to raise, lower, leave alone.

8 What the Supreme Court said in Bakst was that when
9 an appraisal is based on unconstitutional methods, the remedy
10 is a refund. When a tax statute or a tax decision is
11 unconstitutional, the remedy is not to go back and let the
12 assessor have a free redo. It is a refund. It is go back to
13 the most recent constitutional level of taxation, do the
14 math, find the difference, and base a refund on the
15 difference.

16 This notion that what the Supreme Court did was
17 void all of the 2003-4, 2004-5, 2005, you know, all of those
18 appraisals for that five-year period is mistaken, because --
19 I think the taxpayers would have liked that, as a matter of
20 fact.

21 What the taxpayers think is they read the Supreme
22 Court decision, and they say, you know, appraisals based on
23 any of these unconstitutional methodologies or any other
24 unconstitutional methodology are void, should be set aside,

1 and everybody should go back do '02-'03 for every one of
2 those five years.

3 But what happened here, and what is reflected in
4 the 2006 equalization decision is that, you know, decisions
5 that were not specifically addressed by the Court in the
6 Bakst and Barta cases, and subsequently by the lower court in
7 other cases, but by the Supreme Court in those two initial
8 cases, went ahead, the assessor or the treasurer collected
9 the taxes. Nothing happened to those assessments. They
10 weren't treated as void, they weren't taken to the State
11 Board of Equalization. The State Board of Equalization would
12 have no authority anyway.

13 But, you know, at the time that individuals,
14 including Dr. Bakst, proceeded with their individual cases,
15 the equalization case which we're here on today was also
16 filed. That was seeking equalization relief on behalf of all
17 other property owners, residential property owners at Incline
18 Village and Crystal Bay.

19 Now equalization relief was not based on the use of
20 unconstitutional methodology, that was the decision of the
21 State Board. They said -- and I don't -- I don't want to act
22 like I fault them for this, because Board Member Marnell was
23 concerned about unconstitutional evaluations, and I think he
24 was appropriately concerned about that. If I was a member on

1 that board, I would have been concerned about that. Rather
2 than just say, oh, well, you know, too much time has passed,
3 and we're not going to do anything here.

4 He said these eight people have, at least to the
5 extent that the assessor has admitted with respect to maybe
6 5,000 of the 8,000 properties at Incline Village, that they
7 were unconstitutionally valued just under the four
8 methodologies that were identified in Bakst. Not, you know,
9 I mean, as I pointed out in my brief, the Board didn't look
10 further.

11 There are, you know, the -- all of the properties
12 as we tried to argue to them, all of the properties at
13 Incline Village and Crystal Bay in that 2002 appraisal for
14 the following five years were unconstitutionally valued. All
15 of the methods used in valuing the property at Incline
16 Village-Crystal Bay, all properties, not just single-family
17 residences, but condominiums as well, were methodologies that
18 had not been approved by the tax commission and articulated
19 in regulations for uniform application across the state.

20 Now that aside. The point is, what the -- what the
21 State Board did order here was not original appraisals. If
22 they had, they would have gone back to all of the statutory
23 protections that are given to original appraisals. When the
24 assessor makes an appraisal, the property owner gets notice.

1 The property owner has the opportunity to go and talk to the
2 assessor, or whatever deputy assessor does the appraisal.

3 The property owner has the right to get all of the
4 information on which the assessment, the valuation is based.

5 The property owner has the right to go to the
6 County Board, and failing at the County Board to go to the
7 State Board. There is a lot of due process, and
8 appropriately so. Under the, you know, under the Fifth
9 Amendment, under its equivalent in Nevada statutes for
10 protecting people's property rights when taxation is the form
11 of taking your property, when a taxing authority proposes to
12 value your property for purposes of taxation, you have due
13 process rights.

14 Those are all kind of set aside by this order,
15 which assumes that the next time the assessor does it, he's
16 going to follow constitutional methodologies, but nobody gets
17 to challenge that, because we don't have his process. The
18 only ones that go to a hearing are ones increased from the
19 prior void appraisal. It isn't like we start over and
20 everyone gets to challenge every single appraisal for its
21 methodology.

22 What happens is only those that go up -- Just to
23 use round numbers, a property that was assessed in violation
24 of the constitution at \$100, you know, can now come in at

1 \$99, and nothing will happen, notwithstanding the fact that
2 the first valuation is completely unconstitutional and void.
3 It's only if the next valuation comes in at \$101 that there
4 is a hearing.

5 And even if there is a hearing, what the taxpayer
6 gets is ten days, doesn't get notice of the valuation as it
7 would under an original valuation, doesn't get the
8 opportunity to meet with the assessor, to get the assessor's
9 information and the basis for the valuation, doesn't -- you
10 know, first hearing before the State Board on the increase in
11 ten days.

12 So, you know, that's part of our objection here in
13 terms of what they did. And it's part of -- you know, the
14 policy that's reflected in the statutes not to allow for
15 reappraisals. The tax commission doesn't have the power to
16 order reappraisals. The State Board of Equalization
17 certainly doesn't have that power. It cannot give itself
18 that power with regulations, its power is its ability to
19 adopt regulations specifically limited to its own procedure
20 and the procedure before the County Board. So, you know,
21 can't do it by regulation. It doesn't exist in the statute,
22 and it doesn't exist for a reason.

23 Going back to reappraise, you know, raises all of
24 these constitutional due process issues. They're

1 unavoidable. And, you know, it's enough of a problem. As
2 Mr. Azevedo said, each tax year is discrete. Enough of a
3 problem for the assessors in this state to appraise every
4 year all the properties, not just residential, but commercial
5 within their jurisdiction.

6 To make it possible to go back one year, nine
7 years, ten years and do mass reappraisals of any set of group
8 of properties, it's just not authorized, because it's bad
9 policy. It's also bad policy, because, again, as Mr. Azevedo
10 said, you know, for a taxpayer to take a challenge to a tax
11 valuation to the Supreme Court, not once but twice, and two
12 victories in these decisions, and then turn around and find
13 that what happens is that, you know, after successfully
14 challenging the assessor for an, you know, for his
15 performance of unconstitutional appraisals, he gets a new
16 appraisal that's effectively unchallengeable, that may be
17 just as unconstitutional, maybe even be higher than what he
18 had before, may likely be higher than what he had before,
19 because the assessor has no reason to not make it higher.

20 Certainly the State Board here was looking at
21 higher valuations for these properties. And now we have a
22 higher valuation. The taxpayer's reward, so to speak, for
23 asserting his constitutional rights, for successfully
24 challenging the assessor's unconstitutional actions is

1 another unconstitutional appraisal at a higher level they
2 can't challenge.

3 That's really -- that's not the way the system
4 should work, it's not the way the system is designed to work,
5 it's not what the statute says.

6 THE COURT: I imagine that the State Board will
7 probably contest that characterization. But the fact of the
8 matter is, if it starts out as an appraisal, not just a
9 reappraisal, that certainly would trigger all of those rights
10 that any taxpayer would have to challenge that appraisal,
11 wouldn't it?

12 MS. FULSTONE: Not under this order, it doesn't.

13 THE COURT: Okay. I understand your argument on
14 that point.

15 MS. FULSTONE: And I don't know how it could. It
16 would be hard to go back to '03-'04, '04-'05, '05-'06 here
17 and call these original appraisals and bring out all these
18 opportunities for challenge again.

19 THE COURT: Okay. I understand that point. Let's
20 move on to your point that the State Board was unlawfully
21 constituted and had no jurisdiction.

22 MS. FULSTONE: Again, the argument is very simple
23 and straightforward. The statute is precise. The State
24 Board is to be constituted of one property appraiser, one

1 person versed in the valuation of centrally-assessed
2 properties, one CPA, two business people. What we have here,
3 not at the start of these hearings, not in September, but
4 coming on in November was a second fee appraiser, property
5 appraiser.

6 So this particular board had two property
7 appraisers, no person versed in the valuation of
8 centrally-assessed properties and, you know, a CPA and two
9 business people. An unlawfully constituted board. A board
10 constituted in violation of the specific statutory provision
11 can't take a valid action.

12 The State tries to make the argument well, this
13 Mr. Johnson may be a property appraiser, but he also has
14 experience with centrally-assessed properties. But the
15 experience is experience with assessing the real property in
16 terms of easement interest or land that's owned by
17 centrally-assessed properties. Centrally-assessed properties
18 are, as the Court knows, railroads, electric companies, other
19 utilities, mining companies, and so on. They own real
20 property, but their assessment for property tax purposes is
21 done entirely differently.

22 And it's an elaborate procedure. I've provided the
23 forms that need to be filled out, copies of them, to the
24 Court. You know, nothing something about the appraisal of

1 easements is not constituting -- versed in the valuation of
2 centrally-assessed properties.

3 And the clearest expression of that is the history
4 of that position on the Board of Equalization. It has always
5 been held by a person who has worked for years in some
6 centrally-assessed industry; mining, a utility, a railroad
7 company, telegraph, so on. It's always been someone who has
8 actual experience with the valuation of centrally-assessed
9 property. Not someone who comes in disguise, essentially,
10 who's just really another fee, property fee appraiser.

11 THE COURT: Okay. Thank you. You've touched upon
12 the due process, equal protection argument.

13 MS. FULSTONE: Yes. I want to talk first about the
14 retroactive application of the regulations, which is a
15 problem for several reasons.

16 One. Again, the State Board of Equalization is a
17 creature of statute. It has only those powers and
18 authorities granted to it by statute. NRS 230B, the
19 Administrative Procedure Act, establishes that an agency has
20 only the powers to regulate or to create regulations that are
21 granted by the statute. The statute gives the State Board of
22 Equalization the authority to create regulation for
23 procedures before the County board, procedures before the
24 State Board. It has no substantive authority for

1 regulations. All of that authority is vested by the Nevada
2 Legislature in the tax commission.

3 What happened here is not that the -- we all, I
4 guess, start here by saying the State Board adopted
5 regulations for equalization in 2010. What it did here was
6 not to use those regulations or follow those regulations.
7 Did not even attempt to do that. Those regulations are
8 elaborate. You know, I got in trouble before the State Board
9 in my characterization of those regulations. But, you know,
10 they have several levels. I've already argued them before
11 this Court before.

12 They have several levels of hearings. They exclude
13 virtually all participation by taxpayers. Taxpayers are not
14 allowed to be part of the record, taxpayers are not --
15 taxpayers get to make public comment, if they're lucky, as an
16 interested person. The whole design of those regulations,
17 equalization regulations, was to exclude taxpayer
18 participation. Taxpayers can't initiate an equalization
19 action.

20 One of the things we did when we drafted the writ
21 of mandate at the Court's direction was to provide for the
22 Board of Equalization to determine equalization grievances
23 brought by taxpayers. So the Board never attempted to apply
24 its 2010 regulations.

1 What they did instead at the behest of the
2 Department was to take the definition of equalization that
3 was adopted in 2010. Now a definition is by any definition
4 substantive, It's not procedural. The only agency with the
5 authority to define equalization is the tax commission. It's
6 not a function of the procedure of the State Board of
7 Equalization, it is a substantive regulation which they have
8 no authority and which is invalid on its face.

9 So that's what they tried to go to, and they wanted
10 to follow here, and they wanted to follow it, because it
11 brings in, again at the behest of the tax department, ratio
12 studies, which is to say they can validate.

13 A ratio study is a statistical study done by the
14 Department. I've looked at those ratio studies in a
15 different case. Basically they're like all matters involving
16 statistics; they can be and are regularly manipulated. But
17 the idea, the problem with the definition, it's retroactive.

18 In Barta, in the second case decided by the Supreme
19 Court, the State and the County again argued that well, the
20 2004 regulations are in place now, we can validate these
21 property valuations using the 2004 regulations. The Court
22 said no, No retroactive application of regulation.

23 In this case the 2010 regulations were by their own
24 terms expressly perspective. They didn't apply even when

1 they were adopted, they were applied to the following tax
2 year. So there's no argument that anybody intended them to
3 be retroactive. There's no argument that, you know, no
4 credible argument, that the definition was validly -- of
5 equalization was validly, or it was within the authority of
6 the State Board of Equalization to approve.

7 And there's no precedent whatsoever for the
8 piecemeal application of regulations. If they're going to
9 say, well we're not applying it retroactively, we're applying
10 it to this existing case; one, there are no provisions in the
11 2010 regulations for equalization grievances. None whatsoever.

12 As I said before, the whole idea of those
13 regulations is to exclude the taxpayers. So you can't apply
14 those regulations to the hearing and determination of
15 taxpayer grievances, because they have no provision for that.

16 But if they were going to apply them, and if they
17 could apply them, they have to apply them. They can't say we
18 like this part, but let's do this. And we like this part,
19 but let's just do that. And so we're going to take those two
20 parts and apply those. That's unprecedented. There's no
21 authority for that. That's argument.

22 THE COURT: All right. Thank you.

23 MS. FULSTONE: I think I've covered the
24 constitutional issue.

1 THE COURT: Yes.

2 MS. FULSTONE: I can argue about how -- how -- what
3 this particular order does.

4 THE COURT: Why don't you address the condominium
5 issue that you raised.

6 MS. FULSTONE: Okay.

7 THE COURT: The problem with the valuation of the
8 condominiums.

9 MS. FULSTONE: The State Board of Equalization --
10 and it has done this before, and we have taken it to the
11 Supreme Court before, and we have gotten the matter remanded
12 before, not this matter, a different matter -- they want to
13 look at the four methodologies that the Court found
14 unconstitutional in Bakst. And they want to take the
15 position or they do take the position that those are the only
16 four unconstitutional methodologies that exist in the world.

17 If we just look at all the properties that the
18 assessor admits were valued using one or more of those
19 unconstitutional methodologies, then we're good. When in
20 fact what the Supreme Court did in Bakst was not say we're
21 going to find these four methodologies unconstitutional, and
22 everything else is constitutional. What they said was, we
23 looked at these four methods. The only methods that are
24 brought before us are these four methods, and we find them to

1 be unconstitutional. And then they went on to establish
2 what's a standard for what's an unconstitutional methodology.

3 They didn't say just these four. They said a
4 methodology is unconstitutional if it's not articulated in a
5 regulation adopted by the tax commission for uniform use
6 throughout the state. A regulation is unconstitutional -- a
7 methodology is unconstitutional if it's not used throughout
8 the county, if it's not used in the same way in other
9 counties, if, you know, if other counties value similar
10 properties using different methodologies.

11 The whole idea of the Bakst and Barta cases, and I
12 know the State Board disagrees with this, but the Supreme
13 Court is actually right here. They're not just right because
14 they have the power to be right, they're right because
15 they're right.

16 In a taxable system, in a taxable value system,
17 which is not a market value system, constitutional uniformity
18 absolutely depends on the uniformity of methodology.

19 So if you look at the methods that were used to
20 value the condominiums at the Lake for the 2002 appraisal
21 that's good for the following five years, what you'll see is
22 that they used a land to ratio allocation method, land to
23 building ratio, when it has no authority in the statutes.

24 That is, you know, if you look at Douglas County --

1 and I had the occasion to depose the assessor of Douglas
2 County on this issue -- valued condominiums at the Lake
3 differently.

4 If what the focus of the State Board of
5 Equalization was going to be was we're going to fix
6 properties that have been unconstitutionally valued, then
7 they should have. It's not like the condominium owners
8 didn't file petitions for grievances. They should have
9 looked at, had the assessor come in and explain, had the
10 Douglas County Assessor explain -- looked at -- if that was
11 the premise of which they were going to base their decision,
12 they shouldn't have just said, okay, the assessor admits this
13 is unconstitutional, so everything else must be fine. We're
14 not going any further. They should have looked at the
15 condominium methodologies if that was going to be their
16 premise.

17 Part of the problem here is that we were kind of,
18 as taxpayer representatives, as taxpayers, surprised by
19 the -- where the State Board went, although they had done it
20 before, and they had been told before not to do it. In 2006,
21 you know, they looked at the County Board's decision to reset
22 every property at Incline Village-Crystal Bay to 2002-2003
23 levels based on equalization. And they said, no, we're going
24 to send this back to the County Board we're going to have

1 them tell us which ones use these unconstitutional methods,
2 how the 2004 regulations come to play here and so on.

3 We took that to the Supreme Court on a writ of
4 prohibition, and they said, no, that's not what you're
5 supposed to do here, you're supposed to look at the record
6 made before the County Board, which is 300 cases of
7 unconstitutional methodologies confirmed, reset to '02-'03,
8 and the remainder of cases at Incline Village as an exercise
9 in equalization also set to 2002-2003, you know. On the
10 remand the State Board affirmed what the County Board did.

11 The basis of the equalization was that some people
12 got 2002-3 values, and some people didn't, which is all there
13 needs to be for equalization.

14 THE COURT: All right. Thank you.

15 MS. FULSTONE: I get excited.

16 THE COURT: It's all right. Thank you. Thank you
17 very much. Let me hear from the County.

18 MR. CREEKMAN: Thank you, Your Honor. My comments
19 actually are fairly brief. But in direct response to
20 Ms. Fulstone's comments on the four issues that Your Honor
21 asked that she address, she contends that she has addressed
22 the constitutional concerns. Well, she may have addressed
23 the constitutional concerns of the taxpayers, but there's one
24 significant constitutional concern that she's choosing to

1 ignore, and that is the separation of powers doctrine.

2 If viewed in relation to this -- the reason why
3 we're in this court today, the reason why we're in this court
4 today is because the taxpayers successfully obtained a writ
5 of mandamus to compel the State Board of Equalization to
6 perform a mandatory function. Your Honor, back in August,
7 issued that writ to the State Board. The State Board acted
8 with, frankly, a previously unseen amazing level of speed and
9 responsibility in responding to that, at least for a
10 government agency.

11 THE COURT: Court orders have that effect on some.

12 MR. CREEKMAN: At least for a government agency,
13 Your Honor.

14 And as soon as the Board acts with an element of
15 certainty, and I'm not going to say with an element of
16 finality, but with an element of certainty, the taxpayers run
17 into the court lodging their objections to how the State
18 Board is performing its obligatory or its mandatory function
19 in direct contravention, in my estimation, of the separation
20 of powers doctrine, which also derives from the constitution.

21 Just two weeks ago yesterday, Your Honor, I don't
22 know if anyone in the court is familiar with the case, but
23 the Nevada Supreme Court had occasion to review and speak of
24 the importance of the separation of powers doctrine in a case

1 captioned City of Sparks versus Sparks Municipal Court. I've
2 got one paragraph to read to you from that case:

3 Each governmental branch has certain inherent
4 powers by virtue of its sheer existence and as a co-equal
5 branch of government to carry out its basic function. The
6 authority is broader and more fundamental than the inherent
7 power conferred by separation of powers. Thus, in addition
8 to the specific powers assigned to the governmental branches,
9 each branch has inherent ministerial powers which includes,
10 in quotes, 'methods of implementation to accomplish or to put
11 into effect the basic function of that branch of government.
12 Within these ministerial functions, the powers of the
13 branches may sometimes overlap. To the extent any
14 duplication of authority can be tracked back to the
15 individual branches essential functions and basic source of
16 power, the overlapping may be valid, but it is essential to
17 the balance of powers that each branch, including the
18 judicial branch, be careful not to impinge on the authority
19 of the other branches even in the smallest and seemingly most
20 insignificant of matters.

21 And what she's actually asking, the taxpayers are
22 asking is that this Court impinge on the authority of a
23 coordinate branch of government insofar as how they perform
24 their function.

1 It could well be, Your Honor, that the State Board
2 will ultimately, after the appraisals are conducted, opine in
3 a manner not offensive to these taxpayers. It could well be,
4 Your Honor.

5 (Laughter in the courtroom.)

6 THE COURT: Just a minute. Now, now. I'm here to
7 listen to all sides. We all deserve to respect the ability
8 of everybody to be heard also. All right.

9 MR. CREEKMAN: It could be. Your Honor, I can't
10 say with any degree of certainty whatsoever what the State
11 Board is going to conclude, but it is for this reason that
12 the State Supreme Court has essentially rejected what is
13 called the collateral order doctrine allowing this sort of
14 interlocutory action in the middle of an administrative
15 action stating that the burdens of the proliferation of
16 premature appeals outweigh any possible benefits that could
17 result from the adoption of the collateral order doctrine.

18 I tend to agree with Your Honor with respect to the
19 question or the definition of reappraisals or appraisals,
20 whatever you want to call these. The Court did invalidate
21 the 2003 appraisals, which tells me that what the Board is
22 ordering are brand-new appraisals of that property up there.
23 But I think it's a distinction without a difference, and it's
24 without a difference because the authority to order accurate

1 valuations of Incline Village property is a necessary
2 attribute to the State Board of Equalization's function in
3 equalizing property values across the state of Nevada.

4 It's absurd to argue that they don't have the
5 authority to go out or send someone out to determine what the
6 value of property is, when that's what their assigned mission
7 is, to determine constitutional, the constitutionality of
8 values.

9 The taxpayers make a big deal throughout their
10 pleadings about the responsibility for valuing these
11 properties being assigned to the county assessors. In fact,
12 they use the phrase, "It's like the fox guarding the hen
13 house."

14 I'm here to represent to you that even though the
15 county assessor is not a party to the '03 action, he was
16 dropped from the amended complaint as a party. He was a
17 party originally to the '03 action, then they filed an
18 amended complaint that dropped him. Even though he's not a
19 party to the '03 action, the State Board does have
20 jurisdiction over the assessor. The State Board has ordered
21 the assessor, under the terms of the order that Your Honor
22 stayed, to value those properties up there in Incline Village
23 for the 2003 year.

24 If the taxpayers are concerned that the assessor is

1 the fox in the hen house, the assessor has assured me that he
2 will acquiesce to the taxpayers' desire that he not be
3 involved in the appraisal process, that they hire a
4 third-party appraiser, subject to the approval of the State
5 Board, the taxpayers and the assessor, he will wash his hands
6 of this process, but he will be available to provide -- to
7 provide records and any requested assistance. Because he is
8 the keeper of the records.

9 If the fox in the hen house syndrome is what's
10 running this, the assessor is more than happy to extricate
11 himself from the day-to-day responsibilities of performing
12 those valuations going back to 2003. It's not, Your Honor,
13 as if the assessor has nothing else to do ten years later in
14 the assessor's office.

15 I've spoken with counsel for the State about this
16 idea, and I believe that there would be a willingness, since
17 the equalization function is a State function, to join
18 together with the State to possibly go to whoever it is that
19 approves requests for payments of this nature. I believe
20 that that would occur through the State Board of Examiners,
21 Your Honor.

22 Now, I don't want to represent to you that we have
23 final, sealed-in-stone authority for this. But I will
24 represent to you that we're certainly willing to work

1 together to help the State Board perform this, help the State
2 Board see that this accurate valuation process is actually
3 completed.

4 Beyond that, I think I'll sit down, and I'll defer
5 to the deputy attorney general that -- particularly with
6 regard to the unlawful composition of the State Board.
7 They're not my client.

8 THE COURT: All right. Thank you, Mr. Creekman.
9 Ms. Buoncristiani.

10 MS. BUONCRISTIANI: Your Honor, I'm going to start
11 with the jurisdictional issue. And the Chevron case comes
12 into that jurisdictional issue in the State's opinion.

13 The State is looking at this from two different
14 positions, two different points of view, in terms of the
15 having jurisdiction to order the appraisals and the ratio
16 studies. One is to having authority under the statutes, NRS
17 361.395; and one is doing it pursuant to the regulations.

18 First of all, the United States Supreme Court
19 issued City of Arlington in May 2013 was expanding on the
20 Chevron standard which the Nevada Supreme Court used as a
21 reference to give State agencies deference.

22 And the Chevron standard states that if the statute
23 is ambiguous or if it is silent, and the State or the agency
24 uses a permissible construction that the Court would defer or

1 provide deference to the agency's construction of that
2 statute. In other words, as in the City of Arlington case,
3 the Court held that jurisdictional issues are also included
4 within the ambit of the Chevron standard.

5 And with that said, the State's position with
6 regard to NRS 361.395 that it was a permissible construction
7 for the State to order the appraisal of the Incline
8 properties and the Crystal Bay properties, because it would
9 remedy and correct the unconstitutional practices that took
10 place that were alleged by Incline and Crystal Bay or the
11 Petitioners.

12 Second, the State takes the position that it's a
13 permissible construction, because the case law supports the
14 fact that when the equalization statute is silent that any
15 reasonable means may be used to equalize property. This is
16 Grant, Boyd and Carpenter.

17 Also the State's position is that it's a
18 permissible construction of the statute NRS 361.395 to order
19 appraisal, because the ratio study will determine the quality
20 and uniformity of the values that the appraisal would come up
21 with.

22 The City of Arlington said that the agency's answer
23 is based on a permissible construction of the statute. That
24 is the end of the matter. The Court does not have to puzzle

1 over whether it has jurisdiction or not. A jurisdictional
2 issue is given the same deference under Chevron now in the
3 City of Arlington that other issues have in the
4 interpretation of the statute which the agency administers.

5 Village League made a comment in their response to
6 my supplement or the State's supplement that this is
7 responding to, and the Court stated in the City of Arlington
8 that there is no case where the agency has no making or
9 adjudicatory authority, and the Chevron standard did not
10 apply. This is at the note ten on those -- there are no
11 citations except ten.

12 The State Board does have authority under NRS
13 361.395 to equalize. And that statute only allows the State
14 Board to review the tax rolls. And in the State's response
15 in Exhibit 2, the State provided a copy of the tax rolls for
16 one of the counties, and there's very little information upon
17 which the State could equalize.

18 So it is a permissible construction for the State
19 Board, in order to create constitutional values, to order an
20 appraisal and a ratio study.

21 In looking at the regulations, it's the State's
22 position that the -- the regulations, equalization
23 regulations, are procedural and remedial in nature, and that
24 based on the fact that rulings of statutory construction

1 apply to regulations that they could be applied
2 retroactively, and that because they don't change substantive
3 rights, but they're providing a procedure, and they're
4 providing a remedy which is the appraisal and the ratio
5 study. They were seeking to redress wrongs.

6 And the State's position is that when the State
7 Board is given authority to write regulations to conduct its
8 business, its business, and the Supreme Court in Barta and
9 Bakst said it's supposed to equalize statewide. So those
10 regulations provide for equalization statewide.

11 The State Board couldn't resolve the regulations,
12 because I think it's understandable that the writ of mandamus
13 creates a special situation, a special set of circumstances
14 where all of the procedures may not apply.

15 Be that as it may, the State Board did use the
16 noticing requirements in their end call parties. Interested
17 parties are allowed to testify. The taxpayer, in the State's
18 opinion, is not totally blocked out from participation there.
19 They're not entitled to an open meeting law statement.
20 Taxpayers and property owners, and Petitioners in this case
21 were allowed to testify, they were given more time than most
22 of the taxpayers. And there was an entire hearing on
23 December 3rd in regard to this matter, and most of the
24 November 5th hearing was dedicated to hearing this matter.

1 In terms of Member Johnson not being qualified to
2 sit on the Board, the State provides the evidence in their
3 exhibits to show that he was unduly appointed by the
4 governor. He filled out all of the paperwork. He was
5 vetted, he was backed by the Department of Taxation.

6 I would like to point out that the cases that the
7 Petitioner provided to void -- to say that the membership is
8 invalid, the State Board, one case says that the Board
9 appointed a member. Member Johnson wasn't appointed by the
10 State Board. So that case doesn't apply. Member Johnson
11 doesn't have any conflicts of interest, as another case
12 points out. And there is no statutory requirement that State
13 Board members attend every hearing.

14 Member Johnson, it's true, wasn't present for the
15 first hearing, but there is a transcript that he can read of
16 every word that was stated at the hearing that he missed. So
17 being absent from that hearing wouldn't seem to really be
18 something that would hinder him from participating fully.

19 In its reply, Petitioner argues the statute itself
20 is authority. There's no support for more than one member.
21 But the State doesn't agree with that. It says one member --
22 one member is an appraiser, one member is a CPA, one member
23 is centrally assessed, and two are generally in business.

24 One of the previous members for this spot was an

1 appraiser, as well as representing -- as well as working for
2 the mining industry in the past. The former CEO didn't know
3 how to appraise centrally-assessed properties. He was the
4 CEO of a company, a rural electric company. So it's not like
5 they need to know how to understand the complex issues of the
6 unitary value system. Member Johnson probably has more
7 knowledge of centrally-assessed properties, because he is an
8 appraiser.

9 Also, the State made the point in its brief that
10 every one of the members on the Board at the current time are
11 business people. It's not just two of the spots that are
12 filed by people who are in business generally. All of the
13 Board members are in business for themselves.

14 So if we're going to say we can only have one
15 appraiser, likewise how are we ever going to get people when
16 you have to figure out they can't have any of the other
17 requirements? That would be unreasonable to say.

18 Also, Petitioner had cited Marvin as authority for
19 the Member Johnson not to be made a part -- or be
20 invalidated. The Marvin court read into the case the
21 requirements of what the five members should be. The Marvin
22 case wasn't about whether there should more than one
23 appraiser on the Board.

24 And in reference, that section of Marvin is in

1 regard to political influence. It talks about how two
2 members -- no more than three members can be from the same
3 party, and no more than two members can be from one county.

4 So it's not like they were specifically saying and
5 holding that there could only be one appraiser or comply
6 consistently and specifically only with that statute.

7 Also, I'd like to get back to the condo argument.
8 I believe that's -- it's on that particular argument.

9 The State Board would like to point out and agree
10 with what the County has stated earlier in this hearing, and
11 that is that assessment and equalization are two entirely
12 different functions. This is supported by the Bakst, Barta,
13 Staker and Linn County courts.

14 The assessment by an assessor is finding the
15 original valuation through appraisal, and they're setting the
16 value. And in the cases that the State has supplied to the
17 Court the assessor sets the value. The taxpayers go through
18 the appeal process that Petitioner has talked about, and that
19 is in Chapter 361 in the State of Nevada. After those values
20 are established, then the State Board looks at equalization
21 to determine if any group or category or any class of
22 property is out of equalization.

23 At that point in time the State Board is not
24 looking at specific cases. And they're totally separate,

1 because once the assessor is finished, it's as the County
2 stated, he's done. He can't do anything else. He can't
3 change the value. There's many times they bring a case in
4 front of the State Board, because they found a mistake to ask
5 the Board to change the value, because it's up to the Board
6 to change value at that point in time.

7 The individual protest for the right to appeal as
8 provided by statute, and the petitioner is saying well, we're
9 not going to be able to do anything, we're not going to be
10 able to appeal individually. That's correct, because by
11 statute the only notice is going to go out to somebody whose
12 property value was raised. However, that doesn't mean that
13 other methods of review are not available. It just means
14 that they do not have -- the statute doesn't provide a right
15 for them to individually appeal the equalization order.

16 Now what the -- what hasn't happened in this state
17 yet, but what counsel for the State Board sees, if this gets
18 to the point where there is equalization every year, and that
19 is a question that the State Board was looking at and the
20 Department of Taxation, is that when the State Board
21 equalized it, if it's after all of these hearings, then will
22 the taxpayer have a chance to appeal the next year.

23 These are still things that have to be worked out
24 at this point in time, because certainly some method of

1 review is available, but it's not through those procedures in
2 Chapter 361 that applies to appeals from county boards of
3 equalization.

4 And I want to make it really clear that NRS 361.395
5 provides the right for the taxpayer to come for another
6 hearing if those values are too high, if they are greater
7 than what the original value was, be that as it may, it is an
8 unconstitutional value.

9 The State also would like to point out to the Court
10 at this point, too, that in the case law provided to the
11 Court, these cases call it "reappraisal" when the assessor
12 has gone out and reappraised. It did cure the Boyd
13 assessment.

14 There are cases where after the equalization action
15 there was no method of appeal provided, and that is in Linn
16 County, but they allowed a writ of cert for review of an
17 equalization action.

18 In my Motion to Dismiss it discusses at length
19 different cases for reviewing an equalization action. The
20 states, various states -- I think I included about eight
21 different states there -- all have different ways that people
22 have brought reviews of an equalization action.

23 So to conclude on that particular subject.
24 Equalization is an entirely different species that we really

1 haven't seen in this state. It is an action for large groups
2 of people, for large groups of a similar class, and it is not
3 establishing that original assessment.

4 As in this case, we're looking at a class of
5 property owners that came in front of the State Board that
6 said in their brief that there were four methods by Bakst and
7 Barta that were called unconstitutional. If you look at
8 Petitioners' brief, they said that these methods were applied
9 to all properties in Incline Village and Crystal Bay, and the
10 State Board specifically asked Petitioners' counsel, "Show me
11 in the record where it was applied to all of them." And
12 State -- and counsel just said, "Well, it's in there."

13 But it wasn't in there, because the only records
14 that the State Board had were of prior appeals, not of all
15 the 8,700 properties at Incline. So the State Board didn't
16 have evidence of there being unequal or these four methods
17 being applied to absolutely every property at Incline.

18 Also, the condominium issue was not brought up in
19 the original brief or the hearing. Petitioners only
20 discussed the four methods, and that's why the State Board
21 focused on it. And if she brought those four methods up, it
22 wasn't clear to the State Board that she brought the four
23 methods up, because they were in her brief, and she testified
24 if not once, twice, that they were applied to every property

1 up there.

2 There was no evidence brought forward of other
3 unconstitutional methods. If you look in the record -- or
4 what the State Board looked at in every case --

5 THE COURT: Didn't the assessor carve out a portion
6 of the -- let's just say on these condominiums, that were
7 not --

8 MS. BUONCRISTIANI: Yes. Some of the condominiums
9 had one of the four -- one or more of the four methods used
10 on it.

11 THE COURT: It says out of 4,060 condominiums up
12 there some 3,150 were not assessed, and you have to go back
13 and look at the other 902. So there was some evidence.

14 MS. BUONCRISTIANI: But that was one of the four.
15 If I'm understanding Petitioners' argument, it sounds like
16 the State Board has a duty to go kind of ferret out other
17 unconstitutional methods.

18 But the State Board only -- the only issues they
19 addressed were the issues that were brought to them. If you
20 look at the records for all the taxpayers that came, what the
21 taxpayer grievance was, was what the State Board addressed.

22 THE COURT: Okay.

23 MS. BUONCRISTIANI: If the State Board only had the
24 authority to, that the Petitioner claims, of rolling back

1 properties to their '02-'03 value, such as the Barta court
2 and the Bakst court did with the cases that came in front of
3 them, there would have been no discretion for the State Board
4 to act. This Court could have by law just simply said, okay,
5 one of those four methods was used, just roll those cases
6 back to '02-'03.

7 The State instead -- this Court referred this
8 matter to the State Board so it could use its discretion to
9 act. And it looked for those four methods, asked the
10 assessor to identify the four methods. There was no evidence
11 to the contrary that any other property had one of those four
12 methods used on it.

13 There was no reason for the Board not to rely on
14 the information. They asked for evidence from the taxpayer,
15 and the taxpayer said to look at the record.

16 Also, to the extent that Barta and Bakst are
17 applicable, they did identify that four methodologies were
18 unconstitutional. And they did say that if a method of
19 appraisal is not in a regulation that it is unconstitutional.

20 But what Bakst and Barta don't list was that
21 section of property that was subject to appraisal by the
22 assessor. Bakst and Barta cases were not addressing
23 statewide equalization of large classes of property. It was
24 a distinctly different type of procedure.

1 Also in response to Petitioner, the chairman of the
2 State Board specifically asked the assessor at the hearing if
3 the properties were reappraised, what was the likelihood that
4 the method would change. And the Washoe County Assessor said
5 that it's very likely they would remain the same, regardless
6 of what kind of method you use, because value is value. They
7 should come within a range.

8 I mean, on a very large property there might be
9 several thousand dollars difference, smaller property not as
10 much. But the appraisal, you know, they're roughly going to
11 come in around a figure. An appraisal is not an exact
12 science, like adding two and three and you get five. A lot
13 of it is opinion as well.

14 The taxpayers complained that the regulations were
15 not identified. The State Board directed the assessor to use
16 the regulations that were applied in the rest of the State,
17 use the statutes and the regulations that applied in the rest
18 of the State. Using the statutes and the regulations that
19 applied in the rest of the State creates equity.

20 If there was something missing, then all of the
21 properties in the state of Nevada received the same
22 inequitable treatment. They're all treated the same.

23 THE COURT: They're all treated wrongly?

24 MS. BUONCRISTIANI: It's true. It's absolutely

1 true. And there are cases that I cited to the Court where,
2 you know, where there was something where someone claimed an
3 inequity, but when it was looked and seen that everybody was
4 treated the same, you know, if we are going to treat -- we
5 don't have a way to treat Incline differently, because that's
6 all that was available at the time. And so in that way the
7 State Board sought to treat Incline the same as everyone else
8 in the state.

9 If you'll bear with me just a moment while I look
10 at my notes.

11 THE COURT: Okay.

12 MS. BUONCRISTIANI: I'm addressing statements that
13 the Petitioners made at this particular -- in open court, but
14 a couple of these that were in her brief. I think I have
15 pretty much covered everything.

16 The State Board -- Petitioner mentioned in her
17 brief, if I'm understanding what she said, that the State
18 Board might have looked at methods throughout the state, but
19 the State Board didn't have -- the State Board did what this
20 Court said: Asked the taxpayers, sent out notice for
21 taxpayer grievances to be heard; and it listened to every
22 taxpayer grievance that came forward, and it made decisions
23 based on those.

24 I want to also add that what the -- as far as the

1 County stating that these hearings aren't over yet, and that
2 the State Board has done its best to comply with this Court's
3 order to be timely, the appraisal would take some time, and
4 this is the best that the Board could do in order to achieve
5 equity in the situation.

6 Also with one final comment. A taxpayer does note
7 that in a previous action the State Board rolled back all of
8 Incline, but the State Board and the State agencies aren't
9 bound by stare decisis or precedent. And so just because
10 they rolled the entire area back one time, it doesn't create
11 a precedence. And that's in Desert Irrigation at 113 Nevada
12 1049. There is no precedence.

13 And so the State Board, as I started out in this,
14 it is the State's position the State Board has authority to
15 order an appraisal or reappraisal, and the inter-ratio study,
16 and we would ask the Court to lift the stay so this procedure
17 could go forward.

18 THE COURT: All right. Thank you very much.

19 Ms. Fulstone. Just a minute.

20 Mr. Azevedo.

21 MR. AZEVEDO: If I may, Your Honor.

22 THE COURT: Yes, please.

23 MR. AZEVEDO: Thank you. I'll be brief. There are
24 a few points.

1 THE COURT: I've heard that before.

2 MR. AZEVEDO: I'll try to be brief, Your Honor.

3 THE COURT: All right. Thank you.

4 MR. AZEVEDO: The first point is on the topic
5 whether there was an appraisal/reappraisal. The Court
6 started that discussion. Looking to the Bakst I language
7 that says -- well it voided those appraisals, therefore we're
8 restarting.

9 In Bakst, from my perspective being counsel for
10 Dr. Alvin Bakst, I would have really enjoyed that, because if
11 the Supreme Court would have also ordered a refund, it would
12 have been a refund of all the taxes. It only voided the
13 appraisal in part going back to the previous year, 2002-2003.
14 That's how they calculated the refund.

15 They did find the method unconstitutional, but, in
16 fact, had they voided it ab initio as the Court mentions,
17 there would have been no appraisal. And accordingly, to
18 calculate the refund, it would have been the total amount of
19 the tax paid, just not the difference between 2002-2003 and
20 2003-2004.

21 Mr. Creekman raised a point on the separation of
22 powers doctrine. And I have not read the decision decided.
23 The City of --

24 THE COURT: Justice Hardesty's 48-page one. I

1 recommend it to your attention if you're trying to sleep at
2 night.

3 Go ahead.

4 MR. AZEVEDO: Maybe I'll skip it then, Your Honor.

5 But on that particular point, what I would
6 respectfully submit as far as what the Court referred to as
7 interlocutory orders of 233B.130 refers to as nonfinal
8 orders -- I wouldn't imagine that decision touches on that --
9 233B does contemplate that type of issue, and the Nevada
10 Legislature did give taxpayers the opportunity to move
11 forward, when there is a nonfinal order.

12 So to the extent the City of Sparks versus that
13 court has any relevance, I would respectfully submit 233B
14 would be more appropriate for the Court's consideration.

15 A point that I think is very important from my
16 clients' perspective, as well as any taxpayer in the state of
17 Nevada, on the topic of retroactive regulations or
18 regulations for that matter being applied retroactively.

19 The regulations adopted by the State Board of
20 Equalization, without getting into the distinction between
21 substantive or procedural, they're charged to adopt
22 regulations by statute, and it specifies what kind of regs
23 they can adopt.

24 But getting beyond that, 233B, and I believe it's

1 .040 and .070 are very specific as to when an administrative
2 regulation that is adopted by a state agency has the force of
3 law. And it doesn't permit, whether procedural or
4 substantive, the ability to go back in time, let alone in
5 this circumstance for my client, seven years back in time.
6 You figure the tax year we are talking about, the initial tax
7 year, 2003-2004, in essence those regulations were adopted
8 and filed with the Secretary of State in 2010. We're
9 reaching back into that process a long time.

10 And so again, when we look at the actual ability to
11 apply those regulations, I respectfully submit 233B is very
12 clear on that particular point.

13 I would also state there are other taxes and other
14 provisions that allow agencies to go back retroactively under
15 limited circumstances. That is not present here in this case
16 in Chapter 361.

17 The State Board of Equalization's counsel made a
18 very interesting statement to the Court in that she stated
19 very accurately that, in fact, the State Board has rolled
20 back in other years and other matters to the 2002-2003
21 values. As a matter of fact, it is a correct statement, but
22 then she proceeded to say stare decisis is inapplicable.

23 While that is the case possibly with State
24 decisions, I'd respectfully submit under NRS 360.299(1)(a)