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West's Nevada Revised Statutes Annotated
Title 18. State Executive Department (Chapters 223-233J)
Chapter 233B. Nevada Administrative Procedure Act (Refs & Annos)
General Provisions

N.R.S. 233B.032

233B.032. "Contested case" defined

Currentness

"Contested case" means a proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed.

Credits
Added by Laws 1977, p. 1382.

Notes of Decisions (4)

N. R. S. 233B.032, NV ST 233B.032
Current through the 2011 76th Regular Session of the Nevada Legislature, and technical corrections received from the Legislative Counsel Bureau (2012).

West's Nevada Revised Statutes Annotated
Title 18. State Executive Department (Chapters 223-233J)
Chapter 233B. Nevada Administrative Procedure Act (Refs & Annos)
General Provisions

N.R.S. 233B.035

233B.035. "Party" defined

Currentness

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any contested case.

Credits
Added by Laws 1977, p. 1383.

Notes of Decisions (2)

N. R. S. 233B.035, NV ST 233B.035
Current through the 2011 76th Regular Session of the Nevada Legislature, and technical corrections received from the Legislative Counsel Bureau (2012).

End of Document

West's Nevada Revised Statutes Annotated
Title 18. State Executive Department (Chapters 223-233J)
Chapter 233B. Nevada Administrative Procedure Act (Refs & Annos)
Adjudication of Contested Cases

N.R.S. **233B.130**

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

Effective: May 29, 2007
Currentness

1. Any party who is:

(a) Identified as a party of record by an agency in an administrative proceeding; and

(b) Aggrieved by a final decision in a contested case,

is entitled to judicial review of the decision. Where appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute. Any preliminary, procedural or intermediate act or ruling by an agency in a contested case is reviewable if review of the final decision of the agency would not provide an adequate remedy.

2. Petitions for judicial review must:

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

(b) Be instituted by filing a petition in the district court in and for Carson City, in and for the county in which the aggrieved party resides or in and for the county where the agency proceeding occurred; and

(c) Be filed within 30 days after service of the final decision of the agency.

Cross-petitions for judicial review must be filed within 10 days after service of a petition for judicial review.

3. The agency and any party desiring to participate in the judicial review must file a statement of intent to participate in the petition for judicial review and serve the statement upon the agency and every party within 20 days after service of the petition.

4. A petition for rehearing or reconsideration must be filed within 15 days after the date of service of the final decision. An order granting or denying the petition must be served on all parties at least 5 days before the expiration of the time for filing the petition for judicial review. If the petition is granted, the subsequent order shall be deemed the final order for the purpose of judicial review.

5. The petition for judicial review and any cross-petitions for judicial review must be served upon the agency and every party within 45 days after the filing of the petition, unless, upon a showing of good cause, the district court extends the time for such service. If the proceeding involves a petition for judicial review or cross-petition for judicial review of a final decision of the State Contractors' Board, the district court may, on its own motion or the motion of a party, dismiss from the proceeding any agency or person who:

(a) Is named as a party in the petition for judicial review or cross-petition for judicial review; and

(b) Was not a party to the administrative proceeding for which the petition for judicial review or cross-petition for judicial review was filed.

6. The provisions of this chapter are the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies.

Credits

Added by Laws 1965, p. 966. Amended by Laws 1969, p. 318; Laws 1975, p. 495; Laws 1977, p. 57; Laws 1981, p. 80; Laws 1989, p. 1651; Laws 1991, p. 465; Laws 2003, c. 337, § 17, eff. June 9, 2003; Laws 2005, c. 283, § 2; Laws 2007, c. 164, § 2, eff. May 29, 2007.

NOTES OF DECISIONS

West's Nevada Revised Statutes Annotated
Title 32. Revenue and Taxation (Chapters 360-377B)
Chapter 361. Property Tax (Refs & Annos)
Assessment
Equalization of Assessments Among the Several Counties

N.R.S. **361.333**

361.333. Procedure

Currentness

1. Not later than May 1 of each year, the Department shall:

(a) Determine the ratio of the assessed value of each type or class of property for which the county assessor has the responsibility of assessing in each county to:

(1) The assessed value of comparable property in the remaining counties.

(2) The taxable value of that type or class of property within that county.

(b) Publish and deliver to the county assessors and the boards of county commissioners of the counties of this state:

(1) A comparison of the latest median ratio, overall ratio and coefficient of dispersion of the median for:

(I) The total property for each of the 17 counties; and

(II) Each major class of property within each county.

(2) A determination whether each county has adequate procedures to ensure that all property subject to taxation is being assessed in a correct and timely manner.

(3) A summary for each county of any deficiencies that were discovered in carrying out the study of those ratios.

2. The Nevada Tax Commission shall allocate the counties into three groups such that the work of conducting the study is approximately the same for each group. The Department shall conduct the study in one group each year. The Commission may from time to time reallocate counties among the groups, but each county must be studied at least once in every 3 years.

3. In conducting the study the Department shall include an adequate sample of each major class of property and may use any statistical criteria that will indicate an accurate ratio of taxable value to assessed value and an accurate measure of equality in assessment.

4. During the month of May of each year, the board of county commissioners, or a representative designated by the board's chair, and the county assessor, or a representative designated by the assessor, of each county in which the study was conducted shall meet with the Nevada Tax Commission. The board of county commissioners and the county assessor, or their representatives, shall:

(a) Present evidence to the Nevada Tax Commission of the steps taken to ensure that all property subject to taxation within the county has been assessed as required by law.

(b) Demonstrate to the Nevada Tax Commission that any adjustments in assessments ordered in the preceding year as a result of the procedure provided in paragraph (c) of subsection 5 have been complied with.

5. At the conclusion of each meeting with the board of county commissioners and the county assessor, or their representatives, the Nevada Tax Commission may:

(a) If it finds that all property subject to taxation within the county has been assessed at the proper percentage, take no further action.

(b) If it finds that any class of property is assessed at less or more than the proper percentage, and if the board of county commissioners approves, order a specified percentage increase or decrease in the assessed valuation of that class on the succeeding tax list and assessment roll.

(c) If it finds the existence of underassessment or overassessment wherein the ratio of assessed value to taxable value is less than 32 percent or more than 36 percent in any of the following classes:

(1) Improvement values for the reappraisal area;

(2) Land values for the reappraisal area; and

(3) Total property values for each of the following use categories in the reappraisal area:

(I) Vacant;

(II) Single-family residential;

(III) Multi-residential;

(IV) Commercial and industrial; and

(V) Rural,

of the county which are required by law to be assessed at 35 percent of their taxable value, if in the nonreappraisal area the approved land and improvement factors are not being correctly applied or new construction is not being added to the assessment roll in a timely manner, or if the board of county commissioners does not agree to an increase or decrease in assessed value as provided in paragraph (b), order the board of county commissioners to employ forthwith one or more qualified appraisers approved by the Department. The payment of those appraisers' fees is a proper charge against the county notwithstanding that the amount of such fees has not been budgeted in accordance with law. The appraisers shall determine whether or not the county assessor has assessed all real and personal property in the county subject to taxation at the rate of assessment

required by law. The appraisers may cooperate with the Department in making their determination if so agreed by the appraisers and the Department, and shall cooperate with the Department in preparing a report to the Nevada Tax Commission. The report to the Nevada Tax Commission must be made on or before October 1 following the date of the order. If the report indicates that any real or personal property in the county subject to taxation has not been assessed at the rate required by law, a copy of the report must be transmitted to the board of county commissioners by the Department before November 1. The board of county commissioners shall then order the county assessor to raise or lower the assessment of such property to the rate required by law on the succeeding tax list and assessment roll.

6. The Nevada Tax Commission may adopt regulations reasonably necessary to carry out the provisions of this section.

7. Any county assessor who refuses to increase or decrease the assessment of any property pursuant to an order of the Nevada Tax Commission or the board of county commissioners as provided in this section is guilty of malfeasance in office.

Credits

Added by Laws 1967, p. 893. Amended by Laws 1973, p. 329; Laws 1975, p. 1661; Laws 1979, p. 81; Laws 1981, p. 794; Laws 1989, p. 808; Laws 1991, p. 699; Laws 1999, c. 81, § 1.

N. R. S. **361.333**, NV ST **361.333**

Current through the 2011 76th Regular Session of the Nevada Legislature, and technical corrections received from the Legislative Counsel Bureau (2012).

West's Nevada Revised Statutes Annotated
Title 32. Revenue and Taxation (Chapters 360-377B)
Chapter 361. Property Tax (Refs & Annos)
Equalization
Equalization by State Board of Equalization

N.R.S. **361.375**

361.375. State Board of Equalization: Composition; qualifications; terms; removal; compensation; quorum; adoption of and compliance with regulations; staff

Currentness

1. The State Board of Equalization, consisting of five members appointed by the Governor, is hereby created. The Governor shall designate one of the members to serve as Chair of the Board.

2. The Governor shall appoint:

(a) One member who is a certified public accountant or a registered public accountant.

(b) One member who is a property appraiser with a professional designation.

(c) One member who is versed in the valuation of centrally assessed properties.

(d) Two members who are versed in business generally.

3. Only three of the members may be of the same political party and no more than two may be from the same county.

4. An elected public officer or his or her deputy, employee or any person appointed by him or her to serve in another position must not be appointed to serve as a member of the State Board of Equalization.

5. After the initial terms, members serve terms of 4 years, except when appointed to fill unexpired terms. No member may serve more than two full terms consecutively.

6. Any member of the Board may be removed by the Governor if, in the opinion of the Governor, that member is guilty of malfeasance in office or neglect of duty.

7. Each member of the Board is entitled to receive a salary of not more than $80, as fixed by the Board, for each day actually employed on the work of the Board.

8. While engaged in the business of the Board, each member and employee of the Board is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

9. A majority of the members of the Board constitutes a quorum, and a majority of the Board shall determine the action of the Board. The Board may adopt regulations governing the conduct of its business.

10. The Board shall comply with any applicable regulation adopted by the Nevada Tax Commission.

11. The staff of the State Board of Equalization must be provided by the Department and the Executive Director is the Secretary of the Board.

Credits

Amended by Laws 1969, p. 887; Laws 1975, p. 1665; Laws 1977, pp. 1050, 1201; Laws 1981, pp. 65, 1980; Laws 1985, p. 416; Laws 1989, p. 1713; Laws 2005, c. 142, § 5.

Formerly section 6 of chapter 177 of Laws 1917 [part]; amended by Laws 1929, p. 341; Laws 1933, p. 248; Laws 1939, p. 279; Laws 1943, p. 81; Laws 1953, p. 576.

N. R. S. **361.375**, NV ST **361.375**

Current through the 2011 76th Regular Session of the Nevada Legislature, and technical corrections received from the Legislative Counsel Bureau (2012).

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

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

(a) Equalize property valuations in the State.

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

2. If the State Board of Equalization proposes to increase the valuation of any property on the assessment roll:

(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.

➥ 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.

[Part 4:177:1917; A 1929, 341; 1939, 279; 1953, 576] + [Part 6:177:1917; A 1929, 341; 1933, 248; 1939, 279; 1943, 81; 1953, 576]—(NRS A 1977, 605; 1981, 799; 1983, 1196; 1987, 294; 1993, 96; 2013, 2897)

REVISER'S NOTE.

Ch. 481, Stats. 2013, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of section 1 of this act [NRS 361.395] 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."

ATTORNEY GENERAL'S OPINIONS.

Board of original assessment may not change assessed valuations after transmittal to county assessors. The tax commission, while sitting as a board of original assessment, may not change assessed valuations found by it after transmittal of the same to county assessors; but such valuations may thereafter be changed by the commission while sitting as the state board of equalization. AGO 159 (9-22-1924)

County commissioners have no power to change assessed valuations. County commissioners have no power to change the assessed valuation of property. This can only be done by county and state boards of equalization. AGO 349 (8-27-1946)

Time for completion of work by county board of equalization is advisory. The time limit designated in the statute for completion of the work of a county board of equalization is advisory only, but hearings must be completed in such time as not to interfere with the work of the state board of equalization. AGO 94 (8-12-1955), cited, AGO 2001-17 (6-27-2001)

area the approved land and improvement factors are not being correctly applied or new construction is not being added to the assessment roll in a timely manner, or if the board of county commissioners does not agree to an increase or decrease in assessed value as provided in paragraph (b), order the board of county commissioners to employ forthwith one or more qualified appraisers approved by the Department. The payment of those appraisers' fees is a proper charge against the county notwithstanding that the amount of such fees has not been budgeted in accordance with law. The appraisers shall determine whether or not the county assessor has assessed all real and personal property in the county subject to taxation at the rate of assessment required by law. The appraisers may cooperate with the Department in making their determination if so agreed by the appraisers and the Department, and shall cooperate with the Department in preparing a report to the Nevada Tax Commission. The report to the Nevada Tax Commission must be made on or before October 1 following the date of the order. If the report indicates that any real or personal property in the county subject to taxation has not been assessed at the rate required by law, a copy of the report must be transmitted to the board of county commissioners by the Department before November 1. The board of county commissioners shall then order the county assessor to raise or lower the assessment of such property to the rate required by law on the succeeding tax list and assessment roll.

6. The Nevada Tax Commission may adopt regulations reasonably necessary to carry out the provisions of this section.

7. Any county assessor who refuses to increase or decrease the assessment of any property pursuant to an order of the Nevada Tax Commission or the board of county commissioners as provided in this section is guilty of malfeasance in office.

(Added to NRS by 1967, 893; A 1973, 329; 1975, 1661; 1979, 81; 1981, 794; 1989, 808; 1991, 699; 1999, 177)

ADMINISTRATIVE REGULATIONS.

Equalization of assessments among several counties, NAC 361.580

EQUALIZATION BY STATE BOARD OF EQUALIZATION

NAC 361.650 Definitions. (NRS 361.375, 361.395) As used in NAC 361.650 to 361.669, inclusive, unless the context otherwise requires, the words and terms defined in NAC 361.651 to 361.656, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by St. Bd. of Equalization by R153-09, eff. 4-20-2010)

NAC 361.651 "County board" defined. (NRS 361.375, 361.395) "County board" means a county board of equalization.

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.652 "Equalize property valuations" defined. (NRS 361.375, 361.395) "Equalize property valuations" means to ensure that the property in this State is assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law.

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.653 "Interested person" defined. (NRS 361.375, 361.395) "Interested person" means an owner of any relevant property, as indicated in the records of the county assessor of the county in which the property is located or, if the Commission establishes the valuation of the

property, as indicated in the records of the Department.

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.654 "Ratio study" defined. (NRS 361.375, 361.395) "Ratio study" means an evaluation of the quality and level of assessment of a class or group of properties in a county which compares the assessed valuation established by the county assessor for a sampling of those properties to:

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

2. The sales price of the property,

as appropriate.

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.655 "Secretary" defined. (NRS 361.375, 361.395) "Secretary" means the Secretary of the State Board.

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.656 "State Board" defined. (NRS 361.375, 361.395) "State Board" means the State Board of Equalization.

(Added to NAC by St. Bd. of Equalization by R153-09, eff. 4-20-2010)

NAC 361.657 Scope. (NRS 361.375, 361.395) The provisions of NAC 361.650 to 361.669, inclusive, govern the practice and procedure for proceedings before the State Board to carry out the provisions of NRS 361.395.

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.658 Adoption by reference of *Standard on Ratio Studies*; revision of publication after adoption. (NRS 361.375, 361.395)

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

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

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

(Added to NAC by St. Bd. of Equalization by R153-09, eff. 4-20-2010)

NAC 361.659 Annual sessions of State Board: Duties of State Board; adjournment. (NRS 361.375, 361.395)

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

(a) Review the tax roll of each county, as corrected by the county board;

(b) Determine whether the property in this State has been assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law;

(c) Determine whether the taxable values specified in the tax roll of any county must be increased or decreased to equalize property valuations in this State; and

(d) Take such additional actions as it deems necessary to carry out the provisions of NRS 361.395.

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

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.660 Information to be considered by State Board. (NRS 361.375, 361.395) In determining whether the property in this State has been assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law, the State Board will consider:

1. The tax roll of each county, as corrected by the county board and filed with the Secretary pursuant to NRS 361.390;

2. The central assessment roll prepared pursuant to NRS 361.3205;

3. The results of any relevant ratio study conducted by the Department pursuant to NRS 361.333;

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

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

6. Any information provided to the State Board pursuant to NAC 361.661, 361.662 and 361.663; and

7. Any other information the State Board deems relevant.

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.661 Provision of certain information by county assessor upon request of State Board. (NRS 361.375, 361.395)

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

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

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

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

(d) Land use codes for the county.

(e) Market areas in the county.

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

(g) The classification of quality for any improvements.

(h) The size of any improvements.

(i) The size of any lot.

(j) The zoning of any property.

(k) The date of the most recent sale of any property and the sales price of the property.

(l) Summary statistics concerning taxable values and assessed values for tax districts, market areas, neighborhoods and land use codes, including, without limitation, the applicable medians and modes.

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

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.662 Ratio studies and other statistical analyses: Performance upon request of and evaluation by State Board. (NRS 361.375, 361.395)

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

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

(a) Be performed in accordance with the provisions of the *Standard on Ratio Studies* adopted

by reference in NAC 361.658, except any specific provision of the *Standard on Ratio Studies* that conflicts or is inconsistent with the laws of this State or any regulations adopted by the State Board or the Commission;

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

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

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

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

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

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

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

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

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

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.663 Investigation and evaluation by Department of procedures and operation of county assessor. (NRS 361.375, 361.395) Before making any determination concerning whether the property in a county has been assessed uniformly in accordance with the methods of appraisal required by law, the State Board will require the Department to:

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

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

statute and the regulations of the Commission.

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.664 Preliminary finding that class or group of properties was not assessed uniformly in accordance with methods of appraisal and at level of assessment required by law: Scheduling and notice of hearing. (NRS 361.375, 361.395)

1. If the State Board, after considering the information described in NAC 361.660, makes a preliminary finding that any class or group of properties in this State was not assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law, the State Board will:

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

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

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

2. The notice of the hearing must state:

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

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

(c) The proposed order of the State Board.

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

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.665 Hearing on preliminary finding: Order of State Board; additional hearing following order for reappraisal. (NRS 361.375, 361.395)

1. Upon the completion of a hearing scheduled pursuant to NAC 361.664, the State Board will issue:

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

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

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

(d) Except as otherwise provided in this paragraph, if a ratio study or other statistical analysis performed pursuant to NRS 361.333 or NAC 361.662 indicates with a confidence level of at least 95 percent that the median assessment ratio for any class or group of properties is less than 32 percent or more than 36 percent, an order increasing or decreasing the assessed valuation of that class or group of properties by such a factor as the State Board deems to be appropriate to cause the median assessment ratio to be not less than 32 percent and not more than 36 percent. The State Board will not issue such an order if the application of the factor would cause the coefficient of dispersion calculated for the class or group of properties to fail to meet the recommendations set forth in the *Standard on Ratio Studies* adopted by reference in NAC 361.658.

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

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

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

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

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

(b) Require the Department to send by registered or certified mail, not less than 10 business days before the date of the additional hearing, notice of the date, time and location of the hearing to the county clerk, county assessor, district attorney and chair of the county board of the county in which the property is located. A legal representative of the county may waive the receipt of such notice.

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

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

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

(1) The class or group of properties affected;

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

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

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

specify:

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

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

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

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

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

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

(b) The Secretary shall provide:

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

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

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

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.666 Hearings: Provision of notice by Department. (NRS 361.375, 361.395)

1. The State Board will require the Department to place on the Internet website maintained by the Department, not less than 10 business days before the date of each hearing scheduled pursuant to NAC 361.664 or 361.665, a copy of the notice of the hearing and of the agenda for the meeting at which the State Board will conduct the hearing.

2. If the State Board proposes to issue an order increasing the valuation of any class or group of properties at any hearing scheduled pursuant to NAC 361.664 or 361.665, the State Board will require the Department to provide to each interested person the notice of the hearing required by subsection 2 of NRS 361.395. If the notice is not provided to an interested person by personal service and the mailing address of that person is not available, the Department must send the notice of the hearing by registered or certified mail to the address of the relevant property or, if the interested person has designated a resident agent pursuant to chapter 77 of NRS, the address of that resident agent as it appears in the records of the Secretary of State. For the purposes of subsection 2 of NRS 361.395, the State Board construes the term "interested person" to have the meaning ascribed to it in NAC 361.653.

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.667 Hearings: Persons required to appear; conduct. (NRS 361.375, 361.395)

1. The following persons shall appear at each hearing scheduled pursuant to NAC 361.664 or 361.665:

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

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

2. At each hearing scheduled pursuant to NAC 361.664 or 361.665:

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

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

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

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

3. A hearing scheduled pursuant to NAC 361.664 or 361.665 may be held by means of a video teleconference between two or more locations if the video technology used at the hearing provides the persons present at each location with the ability to hear and communicate with the persons present at each other location.

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

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.668 Order of State Board increasing or decreasing valuation of property: Duties of county assessor and Department. (NRS 361.375, 361.395) If the State Board orders any increase or decrease in the valuation of any property in a county pursuant to NAC 361.665:

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

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

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

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

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

NAC 361.669 Reconsideration of order of State Board. (NRS 361.375, 361.395) The State Board may reconsider any order issued pursuant to NAC 361.665 in the manner provided in NAC 361.7475, except that:

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

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

(Added to NAC by St. Bd. of Equalization by R153-09, 4-20-2010, eff. 10-1-2010)

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

STATE OF NEVADA, on relation of the STATE BOARD OF EQUALIZATION; WASHOE COUNTY; BILL BERRUM, Washoe County Treasurer,

Respondents.

Supreme Court Case No. 63581

District Court Case No. CV03-06922
consolidated with
District Court Case No. CV13-00522

Dept. 7

RESPONDENT STATE BOARD OF EQUALIZATION'S ANSWERING BRIEF

Catherine Cortez Masto
Attorney General
Dawn Buoncristiani
Deputy Attorney General
Nevada Bar No. 7771
100 North Carson Street
Carson City, Nevada 89701-4717
Phone: (775) 684-1129
Email: dbuoncristiani@ag.nv.gov
Attorneys for Respondent State of Nevada State Board of Equalization

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I. STATEMENT OF ISSUES ON APPEAL

The issues relating to the State Board of Equalization's (State Board) Equalization Order are matters of first impression as will be more fully explained within State Board's Answering Brief (Answer).

1. Whether the District Court correctly granted State Board's Motion to Dismiss Appellants' (Incline) Petition for Judicial Review of a State Board equalization decision?
2. Whether the District Court correctly denied Incline's Objections to the State Board of Equalization's Report and Order?
3. Whether Incline has a remedy for review of a State Board equalization decision?[1]
4. Whether the equalization regulations were lawfully applied retroactively?
5. Whether the reappraisal may be constitutionally performed treating similarly situated property owners similarly by applying the same statutes and same regulations applicable at the time of the tax year to be valued?
6. Whether the State Board equalization decision is void because there was more than one appraiser on the State Board?

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[1] State Board answers this issue in part in Answer to Intervenor's Opening Brief (Answer 2) at pp. 23-24, as well as in this Answer. Yes, Incline may seek review.

7. Whether the equalization hearings were performed upon improper procedure?

8. Whether a State Board equalization decision made pursuant to NRS 361.395 is a legislative action, not an adjudicative action?[2]

9. Whether the State Board's Equalization Order was an "intermediate order" subject to a petition for judicial review pursuant to NRS Chapter 233B?[3]

10. Whether property values derived from equalization are different from taxable value developed by assessment such that the taxable value of a property resulting from a Court order is still subject to equalization?[4]

11. Whether the State Board acted within its jurisdiction when it exercised its discretion to equalize?[5]

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[2] State Board answers this issue in Answer 2, pp. 12-15. Yes, because assessment and equalization are two different processes. Assessment sets an individual value and equalization deals with classes of property.

[3] State Board answers this issue in Answer 2, pp. 15-18. No, the State Board's Equalization Order is not subject to judicial review pursuant to NRS Chapter 233B because the State Board heard no contested cases at the equalization hearings.

[4] State Board answers this issue in Answer 2, pp. 18-23. Yes, the assessed taxable values of Incline's property as developed by the Assessor and adjusted by this Court in the *Bakst* and *Barta* cases are adjustable through an equalization action by the State Board because assessment and equalization are two different procedures for valuing property.

[5] State Board answers this issue in Answer 2, pp. 24-29. Yes, the State Board has complied with the Writ by lawfully exercising its discretion to equalize

II. STATEMENT OF THE CASE

This case has a long history dating back to 2003 including this Court's most recent Order in Case No. 56030 that resulted in a remand to the District Court for the State Board to conduct "public hearings with regard to statewide equalization." Respondent's Appendix (RA), Vol. I pp. 37-38. After the District Court issued a Writ of Mandamus (Writ) ordering the State Board to hold public hearings to hear taxpayer grievances, for tax years 2003-2010, the State Board held three hearings. Joint Appendix (JA), Vol. I, pp. 49-50, 79-83, 143-145, 228. At the final equalization hearing, the State Board issued a decision (Equalization Order) which required the Washoe County Assessor (Assessor) to reappraise certain parcels in Incline Village and Crystal Bay and report back to the State Board to present the resulting taxable values. JA, Vol. III, pp. 503-506. Such parcels were those identified as having any of four unconstitutional methods applied to determine the assessed taxable value. JA, Vol. III, p. 503. The State Board also ordered the Department of Taxation (Department) to perform a ratio study to be sure the resulting values were at the rate of assessment required by law. JA, Vol. III, p. 504. Incline then filed its Objections to State Board of Equalization Report (Objection) and a Petition for Judicial Review (PJR).

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property in the State resulting in the State Board ordering a reappraisal of certain Incline properties.

The matter for review before this Court includes the Objection and PJR that were consolidated based on the same facts but with some differences in the issues. The first case was filed by Incline with objections to the State Board's equalization action. JA, Vol. III, p. 569. The second case filed by Incline was a petition for judicial review of the same equalization action. JA, Vol. IV, p. 652. On June 14, 2013, the District Court admitted certain other Incline property owners as Intervenors. JA, Vol. VIII, p. 1412. Although Intervenors were similarly situated to some of the Incline members, intervention resulted in additional arguments made by Intervenors that have been added to those already presented by the two consolidated cases. JA, Vol. VI, p. 1133.[6]

The District Court granted State Board's Motion to Dismiss the PJR and denied Incline's Objection. JA, Vol. VIII, p. 1485. The District Court granted the Motion to Dismiss because "[d]eclining to rule on the petition at this time does not preclude the members of Village League from obtaining necessary relief, if any is required, in the future." Based on the same reasoning, the District Court denied Incline's Objections "for lack of ripeness." The District Court also noted

[6] The State Board, for the most part, included the arguments from the Motion to Dismiss the PJR in its Answer 2 along with responses to other arguments made by Intervenors. The State Board, for the most part, answers the issues included in Incline's Objection in this Answer in which minor repetition from Answer 2 occurs for the purposes of clarity and to respond to slightly different arguments.

that "the method of filing objections to the Board's order as opposed to seeking a second writ of mandamus appear to be procedurally dubious." JA, Vol. VIII, pp. 1493-1494.

III. STATEMENT OF FACTS

The following facts relate to the equalization hearings before the State Board. Because the State Board provided general facts about the equalization hearing in its Answer 2, the facts here are provided in response to Incline's Opening Brief (Brief). *See* Answer 2, pp. 2-10.

Incline states it had a limited time to speak or was "refused the opportunity to speak altogether" at the September and November hearings. *See* Brief, p. 13. State Board disagrees. At the September 18, 2012, hearing, the Chairman limited the time for a presentation to five minutes for all taxpayers with grievances because the entire State was noticed for hearing taxpayer grievances and due to the number of people present for the hearing. JA, Vol. I, pp. 100-101. Incline's attorney represented "approximately 1400 residential properties" and, therefore, requested time in addition to that provided to other taxpayers. *See* Brief, pp. 5-6. JA, Vol. I, p. 122. The Chairman denied the request stating "your information should be the same for all 1300...." JA, Vol. I, p. 122. The petition signed by each property owner was identical except for the signatures and address on each

petition. RA, Vol. I, pp. 40-71. After Incline's five-minute presentation, Incline responded to State Board questions for approximately 13 more pages of the transcript. JA, Vol. I, pp. 125-138. At the September 18, 2012, hearing, Incline received the same or more time to discuss its grievances as any other taxpayer. JA, Vol. I, pp. 95-96.

At the November hearing, Incline spoke at length. JA, Vol. I, pp. 155-166, 177-178, 186, 193-194. The record reflects Incline testified for 12 pages of transcript on November 5, 2012, at which time the Chairman noted for the record that such testimony was much longer than five minutes. JA, Vol. I, p. 166. The Chairman did not allow testimony once the State Board had gone into deliberations when he asked the State Board "do we want to take an action today?" JA, Vol. I, p. 186. Later, during the State Board deliberations, the Chairman did not permit Incline to interrupt the State Board discussions. JA, Vol. I, p. 191.

Incline submitted a nine-page brief on September 13, 2012, five days before the hearing. JA, Vol. I, pp. 84-92. In such brief, Incline requested the State Board furnish Incline's "massive record evidence" five days later, not citing to any authority requiring the Department or State Board provide the evidence for Incline's case. JA, Vol. I, pp. 90-91. Such evidence was Incline's individual appeal records for tax years 2003-2004, 2004-2005, 2005-2006, 2006-2007 and

2007-2008; the administrative records on appeal for judicial review cases for all five years; 49 volumes of record on appeal for the *Bakst* and *Barta* cases; the Lake Tahoe Study; the findings and rulings of the Supreme Court in *Bakst, Barta*, Village League, Otto I, and Otto II. JA, Vol. I, pp. 90-91.

Incline complains the State Board did not furnish Incline's evidence to support Incline's case because such information was not available at the September 18, 2012, hearing or completely furnished for the other hearings. *See* Brief, pp. 5, 13. Incline complains Incline could not adequately prepare for the hearings because "Counsel had no access to the records:" its own record in prior administrative cases or court cases. Apparently, Incline had access to these records because Incline states in its brief to the State Board that "since this massive record evidence is either a matter of public record or already in the Board's possession, taxpayers have not provided unnecessary duplicated materials. Taxpayers request that the Board make the evidence in its record available at the time of the hearing in this matter." JA, Vol. I, p. 91.

The information from prior administrative cases or court cases was not the information the State Board wanted in order to make its equalization decision. At the November hearing, Incline stated unconstitutional methods were used to value all of the properties in Incline Village and Crystal Bay. JA Vol. I, p. 157. When

the Chairman asked for the specific information or evidence that any methods declared unconstitutional by this Court were used on all Incline properties, Incline responded "[y]ou have all of that information in the records of this Board for those years." JA, Vol. I, p. 160. The Department, the state agency that maintains State Board records, testified that the records Incline requested to be placed in front of the State Board included only information relating to taxable values for properties which were appealed to the State Board in past years. NRS 361.375(11). JA, Vol. I, p. 180. RA, Vol. I, p. 72 to Vol. III, p. 631. The records did not contain information about other properties under consideration for equalization at Incline Village and Crystal Bay. JA, Vol. I, p. 180. Incline stated that the record would provide "more information, in terms of what was done at Incline for those years." JA, Vol. I, pp. 169,180. The State Board did not find Incline's argument persuasive. State Board members indicated an interest in information relating to those properties that were not previously appealed because the Writ addresses general equalization, **not individual appeals**. JA, Vol. I, pp. 169-171, 179-180, 186. RA, Vol. I, p. 72 to Vol. III, p. 631. *See* Brief, p. 13.

What the Chairman requested was "specific evidence of where the assessor has utilized adjustments, or methodologies, or units of measurement that are in

opposition to the law...."[7] JA, Vol. I, p. 136. The Chairman stated the same methods and units of measurement but different comparables are applied in Incline Village and Gerlach. JA, Vol. I, p. 136. *See* Brief, p. 5. A State Board member inquired if the Assessor was using the same methods that assessors in other counties were using. JA, Vol. II, pp. 322-323. The Department replied that "all of the assessors make adjustments to value to reflect the effect of a property characteristic that has significance in the local market. They might not make few [view] adjustments or beach adjustments or time adjustments. But they do make adjustments that are relevant to their market." JA, Vol. I, p. 168; Vol. II, p. 326.

Incline stated the use of view valuation, time adjustment, beach classification, and teardowns was improper or unlawful. JA, Vol. I, pp. 137-138, 163. The Chairman stated "you just can't say everybody in the entire 9,000—1300, 1000, whatever number you're looking at, everybody was wrongly done. You need the [to] actually prove that." *See* Brief, p. 5. JA, Vol. I, p. 135.

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[7] The Chairman, an appraiser, did "humbly disagree" with this Court's terminologies as discussed in the *Bakst* and *Barta* cases. *See* Brief, pp. 5, 13. *State Bd. of Equalization v. Bakst, et al.*, 122 Nev. 1403, 1406, 148 P.3d 717 (2006); *State Bd. of Equalization v. Barta*, 124 Nev. 612, 626, 188 P.3d 1092, 11-01-1102, (2008). The Chairman stated the Court said "the assessor used a methodology . . . there's a difference between a [appraisal] methodology and a[n] appraisal unit of measure . . . ." JA, Vol. I, pp. 133-134; Vol. II, p. 318. NRS 361.228(5)(a-c); NAC 361.1175. In *Bakst*, the assessor applied a unit of comparison (measure). JA, Vol. I, p. 133.

At the November 5, 2012, hearing, the Assessor testified "every free-standing single-family residential neighborhood in Incline Village and Crystal Bay...Those neighborhoods utilized one of the four contested methodologies. So those are the 2500 or so tax-paying parcels ...." JA, Vol. I, p. 205; RA Vol. I, p. 72 to Vol. III, p. 631. There were roughly 900 of 4000 condominiums with one of the unconstitutional methods applied. JA, Vol. I, pp. 150, 154, 205; RA Vol. I, p. 72 to Vol. III, p. 631.

Contrary to Incline's claim at the November hearing, Member Marnell raised the possibility that his motion may not result in a final State Board decision. *See* Brief, pp. 13, 50. After Member Marnell's motion to have the assessor value the identified properties by the method suggested by Incline, he stated, "We can go through the data on our own, like we always do ... and we all can say we either agree with the data or we don't. If we don't, there might be some more work to do. If we do we can finish this motion, and we can be done." JA, Vol. I, p. 224. At this point, contrary to Incline's allegation, Incline should have been on notice that there might be further discussion at the December 3, 2012, hearing regarding equalization. *See* Brief, pp. 13, 50.

For the December hearing, Incline submitted an eight-page brief with exhibits. JA, Vol. II, pp. 262-269. At such hearing, upon review of the Assessor's

lists of adjusted property values, the Chairman expressed a concern: "it doesn't make sense to me to roll everything back in [to] 2002 values when we know that the market was increasing dramatically but not as dramatically as it did in '03, '04, '05. The market was increasing back then." JA, Vol. II, p. 318. When Member Marnell expressed confusion as to taking a closer look at the resulting value, the Chairman explained the Chairman's concern. *See* Brief, pp. 11-12. "And my concern at this point looking at the numbers is that with the numbers that he's [Assessor] presented it throws it out of equalization and it's not fair and equitable values for '03-04, in my opinion." JA, Vol. II, pp. 350-351; RA, Vol. I, p. 22.

Member Marnell was satisfied with the Chairman's response. Member Marnell later stated that his belief at both the November and December hearings, was that reappraisal of the properties subject to any of the unconstitutional methods "feels like the absolute right thing to do. So we would hit the number spot on the money ... that way it's just fair across the board ...." JA, Vol. pp. 375-376, 383-384. Member Marnell, the member who moved to have the Assessor develop values by the remedy suggested by Incline, moved to have the Assessor reappraise the properties subject to one of the unconstitutional methods. JA, Vol. II, pp. 386-387. Contrary to Incline's allegation, the transcripts in the Joint Appendix make it evident that there was no behind the scenes decision as to how

the December hearing would proceed. *See* Brief, pp. 12-13.

Incline states the State Board itself reset "individual appeals to their 2002-2003 levels adjusted upward by the Tax Commission approved factor ...." Such State Board adjustments were made through the approval of settlements between the parties of individual appeals and then applying this same formula to other properties under appeal. *See* Brief, p. 8. JA, Vol. I, pp. 154, 213; RA, Vol. I, pp. 11-13, 23.

Incline raises an issue about tax liens and other matters unrelated to any authority of the State Board. *See* Brief, pp. 20, 36,-37. These issues are not properly before this Court because the State Board has no authority to address tax liens or other tax issues. These issues are separate from equalization. NRS 361.395. The State Board only certifies any changes to property value to the county tax receiver. NRS 361.405(4). RA, Vol. I, pp. 12, 25. Such tax lien and tax issues may be addressed in other forums.

IV. SUMMARY OF ARGUMENTS

The District Court correctly dismissed Incline's PJR and denied Incline's Objection. Incline has a remedy to seek review of a State Board equalization decision. After the State Board has equalized the residential property values in Incline Village and Crystal Bay, any property owner whose property value is

increased will be noticed for a hearing "where the person may appear and submit proof concerning the valuation of the property."[8] NRS 361.395(2). Once the State Board has equalized property values, review is available. Various states provide various means to review an equalization decision.

The State Board may apply the interpretive equalization regulations retroactively. The regulations are first-time interpretive regulations for NRS 361.395 that may be applied retroactively because they are procedural and remedial in nature. *S. California Edison Co.*, 770 F.2d at 783. Such regulations do not change past practice. *Cnty. of Clark v. LB Properties, Inc.*, 129 Nev. Adv. Op. 96 (Sept. 12, 2013). Therefore, the application of such regulations to pre-existing issues is permissible. *Id.*

Even if the equalization regulations do not apply to equalizing the properties in the current matter, this Court has concluded that in the absence of a regulation, a reasonable interpretation of the statute will be upheld. *State Farm Mut. Auto Ins. Co. v. Comm'r of Ins.*, 114 Nev. 535, 540, 543, 958 P.2d 733, 737 (1998). The State Board's interpretation of NRS 361.395 is reasonable because the State Board has wide latitude of judgment and discretion to equalize. *Carpenter v. State Bd. of*

[8] Contrary to Incline's argument Incline will have 30 days' notice to prepare for the hearing. *See* Brief, p. 27. NRS 361.395 (2)(a). This notice and hearing is not arbitrarily limited to the increase in value but it is consistent with the statute. *See* Brief, p. 28.

Equalization and Assessment, 134 N.W.2d 272, 277 (Neb. 1965) (citations omitted). The State Board's equalization decision was a reasonable and appropriate action ordering reappraisal of the values developed using any of the unconstitutional methods. *Village of Ridgefield Park v. Bergen County Bd. of Taxation*, 157 A.2d 829, 835 (N.J. 1960); *Coan v. Board of Assessors of Beverly,* 211 N.E.2d 50, 51-53 (Mass. 1965).

The reappraisal may be constitutionally performed. There will be no unconstitutional assessment or taxation of the Incline Village and Crystal Bay properties because such properties will be appraised/treated the same as those that were similarly situated during the disputed tax years. The use of the same regulations and same statutes available during the tax years of reappraisal will be consistent with the practice in the rest of Washoe County and the State. *Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n of Webster Cnty., W. Va.*, 488 U.S. 336, 343 (1989). Such use will not inherently lend itself to inconsistent application. *LB Properties, Inc.,* 129 Nev. Adv. Op. 96.

The qualifications, or lack thereof, of Member Johnson to sit on the State Board did not void the State Board's equalization action. Although Member Johnson was qualified to sit with the State Board, if he was not qualified, the equalization action was still valid because Member Johnson would have acted as a

de facto member of the State Board. *Faucette v. Gerlach*, 200 S.W. 279, 280 (1918); *Pennington v. Oliver*, 431 S.W.2d 843, 845 (Ark. 1968). Incline waived the right to make a claim about Member Johnson's qualifications to sit on the State Board. *In re Estate of de Escandon*, 159 P.3d 557, 560-561 (Ariz. Ct. App. 2007).

There was no improper procedure at the equalization hearings because the State Board provided time for Incline to testify and respond to questions. Since the State Board did not hear contested cases, NRS 233B.121 did not apply to the State Board's legislative information-gathering hearings. *May Dept. Stores Co. v. State Tax Commission,* 308 S.W.2d 748, 756 (Mo. 1958). The State Board was not required to look for specific evidence within Incline's massive record evidence to support Incline's position. *Eckis v. Linn Cnty.,* 821 P.2d 1127, 1129 (Or. Ct. App. 1991).

Accordingly, the State Board's equalization action is valid because such action ordering reappraisal was a reasonable and permissible construction of NRS 361.395. Such reasonable construction provides for constitutional valuations and remedies inequality within Washoe County and the State.

V. LEGAL ARGUMENTS

A. Standard of Review

The following is the standard to review the District Court Order granting

State Board's Motion to Dismiss Incline's PJR.

> In reviewing a motion to dismiss, this court is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief. In making its determination, this court is bound to accept all the factual allegations in the complaint as true. Further, a claim should not be dismissed . . . unless it appears to a certainty that the plaintiff is not entitled to relief under any set of facts which could be proved in support of the claim. (citations omitted) (quotation marks omitted).

Pemberton v. Farmers Ins. Exch., 109 Nev. 789, 792, 858 P.2d 380, 381 (1993).

B. Other States Have Employed Various Means To Review An Equalization Decision.

Since the issues in this case addressing statewide equalization are matters of first impression, there is no case law in Nevada providing for review of a State Board equalization decision. RA, Vol. I, pp37-38. Contrary to Incline's suggested standard of review, NRS Chapter 233B does not provide the standard to review an equalization action by the State Board. Since the State Board's equalization action was legislative and not an adjudicative action, there was no contested case; therefore, NRS Chapter 233B does not apply to review an equalization action.[9] *American Federation of State, County and Mun. Employees, Council 31, AFL-CIO v. Department of Cent. Management Services,* 681 N.E.2d 998, 1005-1006 (Ill.

[9] The State Board made this argument in its Answer 2 and such argument will not be repeated herein. *See* Answer 2, pp. 12-18.

App. 1 Dist., 1997).

NRS 361.395 does not provide a right to appeal a State Board equalization decision. This Court has opined the following regarding the right to appeal. "Generally, courts have no inherent appellate jurisdiction over official acts of administrative agencies except where the legislature has made some statutory provision for judicial review." *Washoe Cnty. v. Otto*, 282 P.3d 719, 724 (2012) reh'g denied (Oct. 16, 2012) (citation omitted) (quotation marks omitted). The Legislature did not provide for an appeal of an equalization decision; therefore, no appeal should be granted to Incline pursuant to NRS Chapter 233B. NRS 361.395.

The Legislature expressly provided for judicial review of an individual contested case. NRS 361.420. The Legislature did not provide such review for a State Board general equalization decision applying to classes of property. "The maxim of statutory construction, 'expressio unius est exclusio alterius,' applied to the judicial review provision of the Gaming Control Act. By expressly designating the areas to which NRS 463.315 shall apply, the legislature, by implication, excluded other areas therefrom." *O'Callaghan v. Eighth Judicial Dist. Court In and For Clark County,* 89 Nev. 33, 35, 505 P.2d 1215, 1216 (1973)(citations omitted). Similarly, the Legislature has not provided for judicial review of a State

Board equalization decision pursuant to NRS Chapter 233B.[10]

The *May* Court's rationale provides a sound basis for not providing appeal of an equalization decision pursuant to NRS Chapter 233B. The *May* Court held the administrative procedure act did not apply to an equalization legislative action. It explained its rationale:

> The first question which confronts us is whether the validity of the order of the Commission increasing valuations in St. Louis County, on July 6, 1955, may properly be considered in this action. We have determined that it may not. Equalization between counties was a duty expressly imposed upon the Commission by the mandate of § 138.390 [to classify and equalize property]. That order of the Commission did not constitute a 'contested case' within the meaning of § 536.100 [Administrative Procedure and Review] providing for judicial review of administrative decisions in such matters; §536.010 defines a 'contested case' as a 'proceeding * * * in which legal rights, duties or privileges of specific parties are required by statute to be determined after hearing.' In matters thus reviewable under Chapter 536, notice to the parties affected is expressly provided for (§536.090), and the petition for review must be filed within 30 days after the mailing or delivery of notice. **It would be wholly impracticable for the Commission to give notice of a blanket increase to all owners of real estate in 26 counties, or even in St. Louis County.** The order here affected counties and classes of taxpayers, and not 'specific parties'; and it was not a subject of contest, within the usual understanding of that term. We hold that the equalization order of July 6, 1955, was not a decision of which a review is contemplated under § 536.100 [Administrative Procedure and Review]. (Emphasis added).

May Dept. Stores Co., 308 S.W.2d at 756. The *May* court had jurisdiction as provided by the Missouri constitution "since the case involves construction of the

[10] In the *O'Callaghan* case, judicial review was not available pursuant to the applicable act; however, the court did not deny appellant equitable relief. *O'Callaghan*, 89 Nev. at 36.

revenue laws" and due to the monetary difference in the amount of the disputed taxes. *Id.* at 755. Other states have addressed review of an equalization decision various ways. Such states hold differing views on the means to review state board of equalization decisions. The following are just a few of such positions.

The *Staker* court opined that the legislature provided for appeals of an individual property dispute but "[t]here is no method of appeal pointed out by statute to secure review of the action [equalization of assessments] of said board. The writ of *certiorari* is the proper and only means of bringing such action before this court for review." *Idaho State Tax Com'n v. Staker*, 663 P.2d 270, 273 (Idaho 1982) (citation omitted). Review was limited to a showing of fraud or "so arbitrary as to amount to constructive fraud." *Id.* at 273-275. *See also*, *East St. Louis School Dist. No. 189 Bd. of Educ. v. East St. Louis School Dist. No. 189 Financial Oversight Panel,* 811 N.E.2d 692, 698 (Ill. App. 5 Dist., 2004) ("quasi-legislative actions of an administrative agency can be reviewed in a declaratory judgment action if it is alleged that the action is unlawful." (citation omitted)); *860 Executive Towers v. Board of Assessors of Nassau County*, 377 N.Y.S.2d 863, 868 (N.Y.Sup. 1975) ("the state rate once determined is the result of an administrative decision (RPTL s 202(1)(b)) not reviewable by the taxpayer but by the taxing district..." (citation omitted)); *Town of Riverhead v. New York State Office of Real Property*

Services, 802 N.Y.S.2d 698, 700 (N.Y.A.D. 2 Dept., 2005) (pursuant to §1218, "individual taxpayer such as Densieski lacks standing to challenge the methodology employed by the State Board to calculate equalization rates, even when those rates are calculated for the municipality in which the taxpayer owns property." (citations omitted)); *Pierce v. Green,* 294 N.W. 237, 254 (Iowa 1940) (property owner could bring suit to review equalization action in mandamus proceeding).

Finally, the *Linn* court, in spite of the fact that an equalization action was a legislative action, found review was available through the administrative procedure act. *Board of Sup'rs of Linn County v. Department of Revenue*, 263 N.W.2d 227, 240 (Iowa 1978). This ruling was made in a single statement without explanation or analysis. Accordingly, the foregoing provides examples of how other states review an equalization action.

C. THE STATE BOARD DID NOT EXCEED ITS STATUTORY OR REGULATORY AUTHORITY BECAUSE THE STATE BOARD MAY APPLY ITS FIRST-TIME INTERPRETIVE EQUALIZATION REGULATIONS RETROACTIVELY; WIDE LATITUDE OF JUDGMENT AND DISCRETION IS VESTED IN THE STATE BOARD TO EQUALIZE.

The State Board's discretionary actions taken in execution of the Writ did not exceed its jurisdiction, or its statutory or regulatory authority. Incline's constitutional rights to due process, equal protection, and uniformity of property taxation were not violated. *See* Brief, pp. 32-38; 38-42. Therefore, State Board's

Equalization Order 12-001 should not be vacated and remanded. JA, Vol. II, p. 399. The State Board has authority and procedures to equalize statewide pursuant to NRS 361.395 and NAC 361.650 through NAC 361.669; hence, the State Board's execution of the Writ is not void.

NRS 361.395 provides the only statutory authority for the State Board to equalize statewide as directed by this Court. *Bakst,* 122 Nev. at 1412; *Barta*, 124 Nev. at 626. Prior to the *Bakst* and the *Barta* cases and since at least 1975, the State Board heard individual cases and equalized property on the basis of the evidence received during individual hearings while the Nevada Tax Commission (NTC) equalized statewide. NRS 361.375 through NRS 361.435; NRS 361.333. When the State Board acted to equalize, such action was limited to a relatively small number of properties. The State Board acted for decades pursuant to this limited authority. This interpretation regarding the limited duty of the State Board to equalize statewide arose pursuant to Legislative action. The following analysis addresses several of Incline's issues by establishing that the assessment and equalization systems were based on relevant observations, study, and then, action by the Nevada Legislature.

In 1917, the Nevada Tax Commission (NTC) and assessors made up the State Board of Equalization (state board) and reviewed tax rolls that were based on

full cash value raising and lowering values that created the assessed value of such properties. Unlike today, the tax rolls provided enough information to equalize. NRS 361.025. The NTC heard appeals by property tax owners who thought the resulting assessed values were too high. Act of March 23, 1917, ch. 177, §1, 1917 Nev. Stat. 328, 332; §6, pp. 332-333. JA, Vol. V. pp. 799-811.

In 1939, the NTC still valued property. Act of March 25, 1939, ch. 179, §5, 1939 Nev. Stat. 281. However, the state board now reviewed the tax rolls submitted by the assessors as well as heard individual taxpayer appeals. Act of March 25, 1939, ch. 179, §4; 1939 Nev. Stat. 279, §6; 1939 Nev. Stat. 282, 283. The NTC no longer heard appeals nor was it permitted to raise or lower state board valuations unless property was escaping taxation. Act of March 25, 1939, ch. 179, §7, 1939 Nev. Stat. 284.

In 1960, a book (Report) was published which was authored by the Nevada Legislature Tax Study Group. R. A. Zubrow, et al., *Financing State and Local Government in Nevada,* (1960). The Report recognized that historically, there was a "[l]ow level of assessment on a highly variable and inequitable basis ...." *Id.* at p. 175. The state board, which consisted of the members of the NTC, had "full authority to equalize assessed valuations upon the complaint of taxpayers or on its own initiative ... reviewing the tax rolls and raising or lowering values to equalize

to full cash value." *Id.* at p. 187. NRS 361.025.

The Report noted that the assessment ratio study established by the 1955 Act had "significant implications with respect to the problem of equalizing the assessed valuations of property." *Id.* at p. 221. **An assessment ratio study "provides the best single guide to determining the facts regarding inequities in the assessment process."** *Id.* (Emphasis added). The assessment ratio study provided the data to indicate corrective measures that must be taken. *Id.* An equalization program required each county to adjust to required ratios of assessment. The assessment ratio study also provided a valuable tool to equalize within the counties. *Id.* at p. 227. Hence, in 1960, the state board, which was the NTC, would be aware of any equalization issues by virtue of its review of the assessment ratio study as the NTC.

In 1967, NRS 361.333 was adopted to provide for the assessment ratio study, "[a]n exterior equalization force ...." Act of April 10, 1967, ch. 322, § 13, 1967 Nev. Stat. 893. NRS 361.333 provided requirements to assure all property in the state had been assessed at "35% of its full cash value as required by law." *Id.* The NTC was to order an increase or decrease of any assessed valuation for any class of property that was more than or less than 35% of full cash value as designated in the segregation **tax roll** filed with the secretary of the state board of

equalization pursuant to NRS 361.90.[11] *Id.* at p. 894 (emphasis added). Under certain conditions for those properties out of equalization, the county board of commissioners was to order the assessor to make necessary adjustments to 35% of full cash value. *Id.* There was no provision for an individual appeal of general equalization decisions. *Id.* Contrary to Incline's allegation, a ratio study is a valuable to tool to assure equalization. *See* Brief, pp. 39-41.

In 1975, the State Board was created as an independent board. Its members were no longer the same as the NTC. The legislative history reveals that the purpose of the state board was twofold: to hear the appeals of taxpayers whose property was locally assessed and to hear those appeals that were centrally assessed. *See Hearing on A. B. 317 Before the Assembly Committee on Taxation*, 1975 Leg., 58th Sess. 4-5 (March 11, 1975). At a March 13, 1975, hearing of the same Committee, the ratio study was discussed and identified as the means to achieve "intercounty equality". *See Hearing on A. B. 317 Before the Assembly Committee on Taxation*, 1975 Leg., 58th Sess. 2 (March 13, 1975). The Department of Assessment Standards was a "watch dog" over the counties

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[11] If the NTC found "underassessment or overassessment which in the aggregate amounts to more than 5 percent of the total assessed valuation of the county . . . ," the NTC could order the board of county commissioners to employ an appraiser to determine if such was the case. The board of county commissioners could order the assessor to make the adjustment, if necessary. Act of April 10, 1967, ch. 322, § 13, 1967 Nev. Stat. 894.

performing a ratio study to assure "all property is assessed at 35% of the fair market value." *See Hearing on A. B. 317 Before the Assembly Committee on Taxation*, 1975 Leg., 58th Sess. 2 (March 11, 1975).

Hence, prior to the Nevada Supreme Court decisions in *Bakst* and *Barta*, and since at least 1967, pursuant to the statutory scheme, it is the NTC that has reviewed the assessment ratio study and raised or lowered assessment values to equalize among the counties. NRS 361.333. The NTC dealt with intercounty equalization while the State Board heard individual appeals.

The words in *Harrison v. Northern Trust Co.*, 317 U.S. 476, 479 (1943) are relevant when interpreting NRS 361.395. "But words are inexact tools at best and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how 'clear the words may appear on' superficial examination." [12] Therefore, "the legislative purpose (as reflected in the legislative history) was [is] used to ascribe an intent with respect to the specific facts at issue." Norman J. Singer, et al., *Statutes and Statutory Construction,* 386 (6th ed. 2003). *Harrison* is an example of legislative history used to support a broader purpose analysis when an "[a]pplication of the literal language" of NRS 361.395 "would dictate a result inconsistent with the architecture of" NRS Chapter 361

[12] The plain meaning rule has limitations in tax cases. *Statutes and Statutory Construction,* 386 (6th ed. 2003).

which sets up the property tax system. *Id.* at 383.

After examining the words of NRS 361.395 and the legislative history, it becomes evident that review of the tax rolls for the purpose of valuations/equalization by the State Board could no longer produce the results that it did in 1917. Contrary to Incline's allegation, a review of the current format of the tax rolls does not provide the State Board with enough information to adjust taxable value or to equalize. *See* Brief, pp. 33-34. JA, Vol. V. pp. 800-811. If the State Board is limited to reviewing the tax rolls, the State Board can take no equalization action. NRS 361.395(1)(b). The plain language of NRS 361.395 provides "no specific powers" to the State Board; therefore, Incline's citations to authority that the State Board exceeded its equalization authority are not persuasive.[13]

The Legislative intent was that NRS 361.395 provide a means to determine that property is valued in a uniform and equal manner. Therefore, the broader purpose analysis from *Harrison* is applied so that the purpose of the language in NRS 361.395 is not rendered nugatory or ineffectual. Since NRS 361.395 provided for equalization but not for the procedures to equalize statewide, the State

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[13] However, if such authority is persuasive, then such cases would suggest that the State Board cannot follow Incline's suggested remedy either because the State Board would be limited to reviewing the tax rolls. *See* Brief, p. 33-34.

Board had no statutory or regulatory direction to equalize statewide other than through the procedures and remedies provided by the lawfully-adopted regulations provided in NAC 361.650 through NAC 361.669 (equalization regulations).[14]

Incline incorrectly alleges that when the State Board acted pursuant to these regulations, the State Board acted outside its equalization authority granted by NRS 361.395, NRS 361.375(9), and State Board's actions should be void. *See* Brief, pp. 38-42. Contrary to Inclines' allegation, the equalization regulations were lawfully, uniformly, and equally applied retroactively to the equalization cases before the State Board. Such regulations do not cut off any of Incline's substantive rights as alleged or impose new rights or duties. The equalization regulations are interpretive regulations providing procedures and remedies for the equalization process pursuant to NRS 361.395.

"Retroactivity is not favored in the law. Thus, regulations generally only operate prospectively unless an intent to apply them retroactively is clearly manifested." *LB Properties, Inc.,* 129 Nev. Adv. Op. 96 (citations omitted) (quotations marks omitted). However, there are two kinds of regulations: legislative and interpretive. *Id.* "[A] substantive or legislative rule, pursuant to

[14] When the Supreme Court indicated that NRS 361.395 had a broader application than was previously thought, the State Board lawfully adopted such procedures and remedies for equalization purposes to provide the mechanism for such broad equalization actions. NAC 361.650 through NAC 361.669. *Bakst,* 122 Nev. at 1412; *Barta*, 124 Nev. at 626. NRS 361.375(9).

properly delegated authority, has the force of law, and creates new law or imposes new rights or duties." *LB Properties, Inc.,* 129 Nev. Adv. Op. 96. "Interpretative rules merely clarify or explain existing law or regulations and go to what the administrative officer thinks the statute or regulation means." *S. California Edison Co. v. F.E.R.C., 770 F.2d 779, 783 (9th Cir. 1985) (citation omitted) (quotation marks omitted).* "[I]f a regulation is a first-time interpretive regulation, application to pre-existing issues may be permissible." *LB Properties, Inc.,* 129 Nev. Adv. Op. 96, *citing, Smiley v. Citibank (South Dakota), N.A.,* 517 U.S. 735, 744, n.3. (1996).

Here, like the regulations in *S. California Edison Co.,* the equalization regulations are interpretive because they provide procedures and remedies.[15] *See S. California Edison Co.* (interpretive regulations were procedural because such regulations applied "to the **procedural** aspects of FERC's approval of BPA rates...." (emphasis added)). Such regulations do not create standards of conduct and impose new rights or duties. *LB Properties, Inc.,* 129 Nev. Adv. Op. 96. The State Board equalization regulations are a first time interpretation of

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[15] "[A] remedy is the means employed to enforce a right or redress a wrong." *Long Leaf Lumber, Inc. v. Svolos*, 258 So. 2d 121, 124 (La. Ct. App. 1972). The State Board applied the regulations to redress the wrong of the application of unconstitutional methods to develop taxable values. Therefore, the remedy was to order reappraisal of the property which had been subject to any of the unconstitutional methods applying the statutes and regulations used by the rest of the State.

NRS 361.395. NAC 361.650. Such equalization regulations clarify and explain the meaning of NRS 361.395 by providing procedures and remedies to equalize. Since the State Board has not previously issued an equalization order, there is no "explicit break from prior practice," nor has the State Board expressly stated the regulation could not be retroactively applied. *Id.* Therefore, pursuant to *LB Properties*, the equalization regulations may be applied to the preexisting equalization issues in this matter.

However, even if the equalization regulations do not apply to equalizing the properties in the current matter, this Court has concluded that in the absence of a regulation, a reasonable interpretation of the statute will be upheld. *State Farm Mut. Auto Ins. Co.*, 114 Nev. at 543. Here it was a reasonable interpretation of NRS 361.395 to follow the equalization regulations with the procedures and remedies available. The State Board voted to direct the Assessor to reappraise residential land in Incline Village and Crystal Bay where any of the methods were applied which had been declared unconstitutional in *Bakst*.[16] JA, Vol. I, p. 407.

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[16] Contrary to Incline's allegation, it is reasonable to follow the regulations as "guidance" even if they are not retroactive. *See* Brief, pp. 21, 39. "Where, however, a court is addressing transactions that occurred at a time when there was no clear agency guidance, it would be absurd to ignore the agency's current authoritative pronouncement of what the statute means." *Smiley v. Citibank (S. Dakota), N.A.*, 517 U.S. 744 n.3. There was no clear agency guidance during the disputed tax years 2003-2010. Therefore, it would be absurd to ignore the equalization regulations.

NAC 361.665. Such action interpreting NRS 361.395 is reasonable and lawful because pursuant to *Carpenter* and *Grant* the State Board has a wide latitude of judgment and discretion to equalize by adopting any reasonable method for such purpose. *State Farm Mut. Auto Ins. Co.*, 114 Nev. at 543.

> A wide latitude of judgment and discretion is vested in the Board. The Board is not bound by the actual record of the evidence taken before it. No particular method or procedure must be followed. No particular kind or standard of evidence is required. It may act upon the knowledge of its own members as to value, on any other information satisfactory to it and it is entitled to act upon the presumption that the abstracts of assessment returned by the various counties have conformed to the law.

Carpenter, 134 N.W.2d at 277 (citations omitted). *See also, Grant County v. State Bd. of Equalization and Assessment*, 63 N.W.2d 459, 467 (Neb. 1954) ("[T]he statute does not require any particular method of procedure to be followed by the State Board in equalizing the assessment of range and grazing lands between the various counties. It [state board] may adopt any reasonable method for that purpose.").[17]

Further, the State Board has jurisdiction to equalize by reappraisal because reappraisal is a reasonable interpretation of the statute and an appropriate remedy. Reappraisal is an appropriate remedy because it provides for nondiscriminatory intra-county equalization and inter-county equalization. *See Village of Ridgefield*

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[17] *See* Answering Brief, pp. 24-29, for discretion afforded boards of equalization.

Park, 157 A.2d at 835 (reappraisal remedies inequality county wide); *see also*, *Kindsfater v. Butte Cnty.*, 458 N.W.2d 347, 351 (S.D. 1990) (invalidity of the unconstitutional first assessment was cured by valid reassessment); *Coan,* 211 N.E.2d at 51-53 (revaluation appropriate where illegal and discriminatory practices alleged); *McNayr v. State ex rel. Dupont Plaza Center, Inc.*, 166 So.2d 142, 143, 145 (Fla. 1964) (reassessment is appropriate remedy where improper "method of fixing the valuation of property" was found to be discriminatory). If Incline's taxable values are not submitted to the equalization process, the remedy proposed by Incline may create an inequity with the rest of Washoe County and the State. *See* Brief, pp. 21-23. JA Vol. III, pp. 467, 485, 499; RA Vol. I, p. 22.

D. INCLINE'S CONSTITUTIONAL DUE PROCESS AND EQUAL PROTECTION RIGHTS WERE NOT VIOLATED BECAUSE INCLINE APPEARED AND SPOKE AT THE STATE BOARD HEARINGS AND BECAUSE INCLINE MAY APPEAR AND TESTIFY AT THE NAC 361.665 HEARING WHEN THE ASSESSOR REPORTS BACK TO THE STATE BOARD ON THE REAPPRAISAL; TO THE EXTENT THE VALUE MAY BE INCREASED, INCLINE SHALL RECEIVE NOTICE BY FIRST-CLASS MAIL.

Contrary to Incline's allegation, Incline has not been denied due process. *See* Brief, pp. 2, 10, 36-39, 44, 51. Incline has appeared and spoken at three State Board hearings on equalization and has appealed the District Court's decision to this Court. After the Assessor reappraises the identified parcels, at least one additional hearing will be held at which Incline may be heard. NAC 361.653; NAC 361.665; NAC 361.667. This is more process than the property owner in

Linn was provided before an equalization action was issued. *Bi-metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445 (1915) (in an equalization action, individuals do not have a right to be heard where all are equally concerned nor should all have a direct voice in the adoption of an equalization action "if government is to go on").

Pursuant to NRS 361.395, if any of the properties are reappraised at a higher value, the property owner shall be notified by "first-class mail." Accordingly, Incline's due process rights have not been violated and will not be violated even though Incline does not like the statutory requirements for notice and hearing for equalization purposes. *Cincinnati, N.O. & T.P.R. Co. v. Commonwealth*, 115 U.S. 321, 335-36 (1885).

However, Incline still alleges that somehow a reappraisal violates Incline's due process and equal protection rights. *See* Brief, pp. 32-39. To the contrary, the lawfully-adopted equalization regulations provide not only Incline but the rest of the property owners in the State of Nevada with a uniform and equal means to equalize property valuations consistent with the *Bakst* and *Barta* cases. Uniformity and equality will be achieved by treating all similarly situated properties the same. Otherwise, the equalization process without expressly stated procedures could be haphazardly applied in the hopes of achieving uniformity and equalization.

Applying such equalization procedures provides the uniformity and equality required by the Nevada Constitution, *Bakst* case, and *Barta* case. Nev. Const. Art. 10, Section 1; *Bakst,* 122 Nev. at 1413, 1417; *see also*, *Barta*, 124 Nev. at 626.

E. THE CODIFIED APPRAISAL METHODS AVAILABLE DURING THE DISPUTED TAX YEARS ARE CONSTITUTIONAL UNDER THE *BAKST* AND *BARTA* CASES BECAUSE SUCH METHODS WERE APPLIED TO THE REST OF THE STATE TO VALUE PROPERTY.

When the State Board ordered reappraisal of the Incline Village and Crystal Bay properties, the constitutional and, hence, codified statutes and regulations to be applied, were those applied to properties in the rest of the state.[18] *See* Brief, pp. 46-50. JA, Vol. II, p. 407. Therefore, the facts in this case are distinguishable from those in *Bakst* where the Court found the Incline Village and Crystal Bay property owners were treated differently than those in Douglas County, the rest of Washoe County, and the State. *Bakst,* 122 Nev. at 417, n.38.

Any inadequacy in such statues or regulations, as alleged by Incline, will be applied uniformly and equally across the State. Such uniform and equal treatment will result in a constitutional assessment. As a result, taxation will, in fact, bear equally on all such property owners and properties in Incline Village and Crystal Bay. There will be no unconstitutional assessment or taxation of the Incline Village and Crystal Bay properties because such properties will be appraised just

[18] Historically, new appraisals have been ordered to correct taxable values that were too low in Douglas County. RA, Vol. I, pp. 18-19.

like those that were similarly situated.[19] *See Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1116 (9th Cir. 2000) (citation omitted) (no discrimination where individuals claiming discrimination are treated equally with others similarly situated). Equal protection "only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances." *Cincinnati, N.O. & T.P.R. Co.,* 115 U.S. at 337. *See also, Allegheny Pittsburgh Coal Co.*, 488 U.S. at 343; *State Bd. of Tax Comm'rs of Ind. v. Jackson*, 283 U.S. 527, 542 (1931).

Unlike the methods used in the *Bakst* case where "the assessor used a unique method to adjust property values—one not consistent with others used throughout the state," here, the Assessor will be applying the same regulations and statutes available to value properties in the rest of the county and State. *LB Properties, Inc.,* 129 Nev. Adv. Op. 96 (citation omitted). All will be treated the same. As in *LB Properties*, the reappraisal will not "lead to unequal taxation ...." *Id.*

Finally, "[n]either *Bakst* nor *Barta* state that *only* formal regulations may establish methods for assessing value. Since the Assessor's approach did not conflict with existing statute or practice, we conclude that the Assessor's methods

[19] Incline agrees by averment that equalization "'means making sure that similarly situated taxpayers are treated the same.'" Nev. Atty. Gen. Opin. No. 99-32 (September 13, 1999). JA Vol. I, p. 24.

did not violate the Constitution." *LB Properties, Inc.,* 129 Nev. Adv. Op. 96. Here, the use of the same regulations and same statutes available during the tax year of reappraisal will not violate the constitution because such use will be consistent with the practice in the rest of Washoe County and the State. Such will not conflict with NRS 361.395. Such use of the same regulations and statutes will "not inherently lend itself to inconsistent application." *Id.* Further, any variations in assessment are acceptable because "*Bakst* and *Barta* also recognize that the wide and varied differences in each property make it impossible to devise an absolute formula to determine value." *Id. citing Bakst,* 122 Nev. at 1412; *citing Barta,* 124 Nev. at 622 (upholding *Bakst* generally).

Accordingly, application of the same codified statutes and regulations in use during the disputed tax years will result in properties being treated similarly regardless of any inadequacies Incline alleges. Hence, uniformity and equality will be achieved.

F. THE STATE BOARD'S ORDER FOR REAPPRAISAL IS VALID BECAUSE MEMBER JOHNSON "IS VERSED IN THE VALUATION OF CENTRALLY ASSESSED PROPERTY;" EVEN IF MEMBER JOHNSON IS NOT QUALIFIED, THE STATE BOARD'S EQUALIZATION DECISION IS VALID BECAUSE MEMBER JOHNSON WAS A DE FACTO MEMBER OF THE STATE BOARD.

Incline's objections to Member Johnson filling the position of the State Board member who is "versed in valuation of centrally assessed properties," are without merit. NRS 361.375(2)(c). *See* Brief, pp. 42-46. Centrally assessed

properties are "such classes of property as are enumerated in NRS 361.320, except for private car lines...." NRS 361.3205. Taxable value is developed through appraisal for centrally assessed properties. NRS 361.320; NAC 361.200–NAC 361.508.

The fact that Member Johnson has experience in the appraisal of centrally assessed properties is consistent with NRS 361.375(2)(c). JA, Vol. V, pp. 816-818. The Governor of Nevada has lawfully appointed Member Johnson to this position. NRS 361.375(2)(c). JA, Vol. V, pp. 819-820. Member Johnson has lawfully executed the oath of office before a notary. JA, Vol. V, pp. 821-822. The Governor has found Member Johnson qualified for appointment to sit on the State Board. Member Johnson is lawfully and correctly appointed to the State Board.

Incline's allegation that there can be only one appraiser on the State Board is made without any legal authority or other support and need not be considered by this Court. *See Humane Soc. of Carson City and Ormsby County v. First Nat. Bank of Nevada,* 92 Nev. 474, 478, 553 P.2d 963, 965 (Nev. 1976) (when party cites no authority to support its contention, Court need not consider it.) There is no support in the Brief to indicate that having more than one fee appraiser would create a domination of the State Board by appraisers as the State Board complies

with its duty to equalize property.[20] *See* Brief, p. 45. To the contrary, in response to a claim of too many appraisers on a board, the *Fuller* court made the following response. Appraisers are "public officers...better qualified as members of the Board of Equalization...under the law they must be presumed to be honest, [and] they will readily correct their own errors of judgment by consultation with their fellow members of the Board." *Fuller v. Bd. of Sup'rs of Wayne Cnty*, 185 N.W. 157, 158 (1921).

Even if Member Johnson is in possession of the office without a right in fact, the State Board's equalization decision is valid because Member Johnson would have been a de facto member of the State Board at the equalization hearings. *Faucette*, 200 S.W. at 280 ("the general rule is that the official acts of de facto judicial officers, within the scope of their jurisdiction, are as valid and binding as if they were the acts of de jure officers."). *See also, Lueck v. Teuton*, 125 Nev. 674, 685, 219 P.3d 895, 902 n.3 (2009). A de facto officer is defined in *Pennington* where members of a board of equalization were found to be de facto members and

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[20] Incline questions comments by "two appraiser members" who were concerned about the full cash values developed by the Assessor applying the remedy suggested by Incline. Incline states such concerns by the appraisers were unwarranted. *See* Brief, p. 45. However, the two appraisers were correctly concerned about the resulting full cash value of the properties since equalization related to the land value of Incline's property which the law requires be in equalization with others properties similarly situated. Nev. Const. Art. 10, Section 1; NRS 361.333; NRS 361.395; NAC 361.652. *Bakst,* 122 Nev. at 1413, 1417; *see also, Barta,* 124 Nev. at 626.

their actions valid. "A person who enters into an office and undertakes the performance of the duties thereof by virtue of an election or appointment is an officer de facto, though he was ineligible at the time he was elected or appointed..." *Pennington*, 431 S.W.2d at 845; *see also*, *State v. Harmon,* 38 Nev. 5, 143 P. 1183, 1184 (1914).

Collateral attack on the validity of a member's status to void a board of equalization action is not an appropriate action to dispute a property assessment. "To permit the question to be decided in this proceeding [dispute of property assessment] as to whether the board of review and the board of assessors are severally legally constituted bodies would be to authorize such issue to be raised and tried in a collateral proceeding. Such issue must be made by a direct proceeding, and cannot be inquired into in the present cause." *People ex rel. Wangelin v. Gillespie*, 192 N.E. 664, 665 (1934); *see also*, *State Nat. Bank v. City of Memphis*, 94 S.W. 606, 610 (1906) ("it is insisted that the action of the board of equalization was void, because one of their number was a nonfreeholder; whereas the act requires that the board shall be composed of freeholders. Such a question cannot be made in a collateral attack, as the present is, upon the action of the board"); *Harmon,* 38 Nev. 5, 143 P. at 1184 ("title to office cannot, as a general rule, be tried by other than direct proceeding ..."). Member Johnson's appointment

must be challenged directly. Incline waived its claim regarding Member Johnson's appointment by not raising such claim in the equalization hearings. *In re Estate of de Escandon*, 159 P.3d at 560-561. JA, Vol. I, pp. 93-225; Vol. II, pp. 311-393. Here, a collateral attack is not an appropriate claim to void the State Board's equalization action.

Many of Incline's claims against Member Johnson and the number of appraisers argument are based on conjecture and assumptions including an example of Member Johnson's centrally assessed work as being "undoubtedly typical." *See* Brief, pp. 43-44. Such conjecture and assumptions are unsupported by authority and should not be considered by this Court. *See Montes v. State*, 95 Nev. 891, 897-898, 603 P.2d 1069, 1074 (1979)("since appellant has cited no authorities in support of his positions, we [Supreme Court] need not consider them."). This Court should not consider Incline's arguments unsupported by authority.

The cases Incline cites do not support the allegation that the State Board may not have two fee appraisers under the law of Nevada; therefore, the State Board is deprived of jurisdiction in this matter. *See* Brief, p. 46. Incline's cases are distinguishable from the facts in this matter. In *Vuagniaux v. Department of Professional Regulation*, 802 N.E.2d 1156, 1164, (Ill., 2003), the board was

improperly constituted because the board itself improperly appointed a member and such appointment was impermissible as the board had no statutory or constitutional authority to make the appointment. *Id.* In this matter, Member Johnson was properly appointed by the Governor. The State Board's order is valid and should be given effect.

In *Kaemmerer v. St. Clair County Electoral Bd.*, 776 N.E.2d 900, 904 (Ill. App. 5 Dist., 2002), the court found the legally appointed replacement board members had conflicts of interest; therefore, they could not sit on the board. Incline has alleged no conflicts of interest that would prevent Member Johnson from hearing this matter. *Davis v. Rhode Island Bd. of Regents for Ed.,* 399 A.2d 1247, 1250 (R.I., 1979) is distinguishable from this matter because the court held the board was improperly constituted because of "the failure of all school committee members to attend each hearing session..." as required by statute.[21] In this matter, the full State Board was present; however, only a quorum is required for any action to occur. JA, Vol. pp. 94, 147; Vol. II, p. 311. NRS 361.375(9). The State Board was not illegally constituted under any of the cases that Incline cites.

Contrary to Incline's allegation, in practice, more than one fee appraiser has

[21] State Board does not address Incline's fourth case because the citation does not produce the *Dubaldo* case at 522 A.2d 813 (Conn. 1989).

been on the State Board numerous times.[22] *See* Brief, pp. 42-43. RA, Vol. I, pp. 1, 7, 14, 27.[23] As a matter of fact, Incline appeared before the State Board at these hearings where two appraisers were State Board members: the August 19, 2003 hearing, the March 27, 2009 hearing, and the June 10, 2009, hearing. RA, Vol. I, pp. 1-6, 7-10, 27-28. Contrary to Incline's allegation, Russ Hofland, who previously filled the centrally assessed position, was a fee appraiser. *See* Brief, p. 43. JA, Vol. III, p. 642. Therefore, there are many years when the State Board has been composed of two appraisers.

It is reasonable that two appraisers sit on the State Board just as similarly five business men and women sit on the State Board but the requirement is that there be only "[t]wo members who are versed in business generally." NRS 361.375. It is evident that State Board members each possess more than one qualification for which they may be appointed to the State Board. Accordingly, the State Board's order for reappraisal of the Village League is not void. Even if NRS

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[22] Michael Cheshire, Stephen R. Johnson, Anthony J. Wren, and Shelli Lowe are certified appraisers. James R. Hoflland was a certified appraiser. *See*, https://www.asc.gov/National-Registry/FindAnAppraiser.aspx

[23] These pages are from the Record for Writ of Mandamus Hearing in Imaged Format (3 CDs) and Agency Certification (ROW), Fulstone Correspondence 2012, Files from AG 9-28, Harris 1st JD 08-OC-00032 1B – ROA Vol. IV, p. 746; ROW, CD 3, CD WC v. SBE 1st JD 09-OC-00494 1B, B. 06-508 Hearing Record, p. 2157; ROW, CD 3, CD WC v. SBE 1st JD 09-OC-00494 1B, D. Briefs & Exhibits, 8-25-06, Assessor Exhibits, p. 232.

361.375 was not complied with in certain respects, the State Board's Equalization Order is valid. *Pennington,* 431 *S.*W.2d at 845.

G. THE STATE BOARD OF EQUALIZATION ORDER WAS NOT MADE UPON IMPROPER PROCEDURE.

Contrary to Incline's allegations, the State Board Equalization Order was not made upon improper procedure. *See* Brief, pp. 50-52. NRS Chapter 233B did not apply to the equalization hearings because the hearings were legislative in nature not adjudicative. *See* Brief, p. 52. *American Federation of State, County and Mun. Employees,* 681 N.E.2d at 1005-1006; *see also Bi-Metallic Inv. Co.*, 239 U.S. at 444-445. Incline admitted at the November hearing that "[t]his hearing is about equalization. It is not about methodologies. **It is not an individual hearing**." (Emphasis added). JA, Vol. I, p. 155. At the December hearing, Incline maintained "the issue is the use of unconstitutional methodologies...it is a function of methodology that the valuations are unconstitutional." JA, Vol. I, p. 359. Because there was no individual contested case, the requirements of NRS 233B.121 did not apply to the State Board equalization hearing. *Citizens for Honest & Responsible Gov't,* 116 Nev. at 951-52; *see also May Dept. Stores Co,* 308 S.W.2d at 756. Contrary to Incline's allegation, the Department spoke at the hearing to provide information, not as a party, because there was no contested case

pursuant to NRS Chapter 233B.[24] *Id. See* Brief, pp. 37, 40, 51. Consequently, no one was an adversary party at the equalization hearing. NRS 233B.035.

Contrary to Incline's allegation, Incline had the opportunity to provide the State Board with evidence to support its claims. *See* Brief, p. 51. When the Chairman asked for the specific information or evidence that any methods declared unconstitutional by this Court were used on all Incline properties, Incline responded "[y]ou have all of that information in the records of this Board for those years." JA, Vol. I, p. 160. The State Board is not required to go through Incline's evidence to find information to support Incline's claims. *Eckis,* 821 P.2d at 1129 (board "is not required to search the record, looking for evidence with which the parties are presumably already familiar. The identification of the evidence is part of advocacy.").

Contrary to Incline's allegation, Incline had access to the evidence from the State Board files because such files were Incline's records, not the record of others. The State Board provided the information Incline requested but, since these were Incline records, Incline certainly must have had copies of their own as suggested in Incline's first brief. "Since this massive record evidence is either a matter of public record or already in the Board's possession, taxpayers have not provided unnecessary duplicated materials. Taxpayers request that the Board make the

[24] *See* Answer 2, pp. 15-18.

evidence in its record available at the time of the hearing in this matter." JA, Vol. I, p. 91.

Contrary to Incline's allegation, the State Board's November 5, 2012, decision was not final. *See* Brief, p. 50. After Member Marnell's motion to have the assessor value the identified properties applying the formula suggested by Incline, he stated "we can go through the data on our own, like we always do...and we all can say we either agree with the data or we don't. If we don't, **there might be some more work to do**. If we do we can finish this motion, and we can be done." (Emphasis added). JA, Vol. I, p. 224.

Contrary to Incline's allegation, Incline had the opportunity to respond to the information the Assessor provided the State Board. *See* Brief, p. 51. For the December hearing, Incline submitted an eight page brief with exhibits. JA, Vol. II, pp. 262-269. At such hearing, Incline requested time for a rebuttal and the Chairman granted time for a rebuttal. JA, Vol. III, p. 455. Incline testified and then responded to questions from the State Board. JA, Vol. III, pp. 455-466; 468-470; 475-477; 481-485. After Incline's rebuttal, the Chairman asked, "[a]nything else, before I close the hearing? Because once I close the hearing, I'm not going to accept any more testimony today." JA, Vol. III, p. 485. No one responded and the Chairman closed the hearing. JA, Vol. III, p. 485.

Incline had the opportunity to respond to the information the Assessor presented at the December hearing.

Accordingly, Incline was not denied meaningful access to evidence in State Board records. Incline should not have been surprised by the State Board's decision not to adopt the Assessor's values as developed pursuant to Incline's requested remedy. Incline was not denied the opportunity to respond to the Assessor's information. *See* Brief, p. 51.

Incline provides no support for its allegation that the Equalization Order was never reviewed or approved by the State Board; therefore, the Court need not consider this argument. *See* Brief, p. 51. NAC 361.747. *In re Discipline of Schaefer*, 31 P.3d 365 (2001).

Incline's allegations that the State Board side-stepped the Writ by relying on the Assessor to reappraise the property, are without merit. *See* Brief, pp. 32-35, 52-53. The Assessor may reappraise the properties with the applicable statutes and regulations available at the time. Such reassessment results in nondiscriminatory uniform assessments which "enjoy a presumption of validity." *Kindsfater,* 58 N.W.2d at 351. The first assessment is "cured by the valid reassessment." *Id.*

Finally, Incline incorrectly alleges State Board is bound by precedent to equalize pursuant to Incline's request. *See* Brief, pp. 41, 52-53. "[E]ven if the

[agency] has failed to follow some of its prior decisions, the [agency] has not thereby abused its discretion. In Nevada, administrative agencies are not bound by stare decisis." *Desert Irr., Ltd. v. State,* 113 Nev. 1049, 1058, 944 P.2d 835, 841 (1997). The State Board is not bound to follow its prior decisions.

Accordingly, the issues before this Court relating to equalization pursuant to NRS 361.395 are matters of first impression. The District Court correctly granted State Board's Motion to Dismiss because Incline is not entitled to relief under any set of facts which could be proved in support of Incline's PJR.[25] The District Court correctly denied Incline's Objection. The equalization regulations are procedural and remedial, interpreting NRS 361.395 for the first time. Therefore, such regulations may be applied to issues existing at the time such regulations were adopted because there was no prior practice for equalizing and such regulations are consistent with NRS 361.395. Even if such regulations are not applicable to preexisting issues, the State Board's interpretation of NRS 361.395 is reasonable because the State Board has a wide latitude of judgment and discretion to equalize. The State Board's equalization decision was an appropriate action ordering

[25] The Court's decision in this matter will determine if property owners from large portions of the state each have an individual right to appeal an equalization order. If yes, pursuant to NRS Chapter 233B, such will result in the right to individual notice and a hearing through a contested case at an equalization hearing which is impracticable. *Bi-metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. at 445.

reappraisal of property values developed using any of the unconstitutional methods because such action was a reasonable construction of NRS 361.395. The equalization decision is valid even if Member Johnson was not correctly appointed to his position because Member Johnson would still qualify as a de facto member of the State Board. Incline has a remedy to review any resulting increase in the value of Incline's property and for further review of such equalization decision.

VI. CONCLUSION

Based on the foregoing reasoning and authorities, the State Board respectfully requests the Court uphold the District Court's Order granting the Motion to Dismiss the PJR and denying the Objection. Further, the State Board respectfully requests the Court deny Incline relief, lift the stay on the reappraisal of the properties, remand the matter back to the State Board to continue the equalization process, permit the reappraisal to move forward within the time limit provided by the State Board, and for such other and further relief the Court may deem just and proper.

CATHERINE CORTEZ MASTO
Attorney General

By: Dawn Buoncristiani
DAWN BUONCRISTIANI
Deputy Attorney General
Attorneys for Respondent
State Board of Equalization

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Miscrosoft Word 2010 in Times New Roman, 14-pt;

[ ] This brief has been prepared in a monospaced typeface using [state name and version of word-processing program] with [state number of characters per inch and name of type style].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 12,084 words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[ ] Does not exceed _____ pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 15th day of January, 2014.

CATHERINE CORTEZ MASTO
Attorney General

By: 
DAWN BUONCRISTIANI
Deputy Attorney General
Attorneys for Respondent
State Board of Equalization

ADDENDUM

The following are printouts of the relevant Nevada Revised Statutes and Nevada Administrative Codes in Respondent's to Answering Brief.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and on this 15th day of January 2014, I served a copy of the foregoing, **RESPONDENT STATE BOARD OF EQUALIZATION'S ANSWERING BRIEF,** by mailing a copy thereof, postage-prepaid, addressed to:

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

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

Herbert Kaplan, Deputy District Attorney
Washoe County District Attorney's Office
Post Office Box 11130
Reno, NV 89520
Attorneys for Respondents Washoe County and Bill Berrum

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

Dated: January 15, 2014.

Mary C. Wilson

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