

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 VILLAGE LEAGUE TO SAVE INCLINE
3 ASSETS, INC.; *et. al*

4 Appellants,

5 vs.

6 THE STATE OF NEVADA, BOARD
7 OF EQUALIZATION; CELESTE
8 HAMILTON, PERSHING COUNTY
9 ASSESSOR, *et. al.*

10 Respondents.

) Supreme Court Case No. 63581

) District Court Case No. 03-0169 Filed

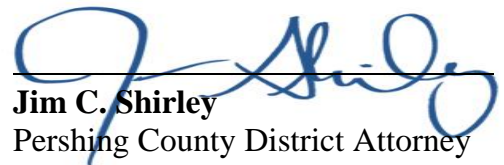
Jan 23 2014 11:01 a.m.

Tracie K. Lindeman
Clerk of Supreme Court

11 **REPLY RE: RESPONSE TO MOTION TO DISMISS CELESTE HAMILTON AS A**
12 **PARTY TO THIS APPEAL OR EXTEND THE TIME TO FILE AN ANSWERING**
13 **BRIEF**

14 **COMES NOW** Celeste Hamilton, Pershing County Assessor, by and through
15 counsel, Jim C. Shirley, Pershing County District Attorney, and does hereby submit this
16 Reply to the Response to the Motion to Dismiss Ms. Hamilton as a party to the above
17 entitled matter. The basis for this Reply is set forth in the attached Memorandum of Points
18 and Authorities. This Motion is not pursued for any improper purpose. Dismissal is
19 appropriate under the circumstances of this case.
20

21 DATED THIS 22nd DAY OF JANUARY, 2014.

22
23 
24 **Jim C. Shirley**

25 Pershing County District Attorney
26 Pershing County Courthouse
27 400 Main Street

28 P.O. Box 299
Lovelock, Nevada 89419

(775) 273 2613

Facsimile (775) 273 7058

Email JShirley@pershingcounty.net

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

Ms. Hamilton filed a Motion to Dismiss in the proceedings before the District Court. *See* Appellant's Appendix Vol. 6, pp. 1010-1015. The Motion was not ruled on by the District Court before the Court dismissed the matter entirely. As it relates to the hearings before the Board of Equalization, the agenda sets forth the hearings on particular appeals that were held. *See* Attached Exhibits #1 and #2; *See also* Appellant's Appendix Vol. 1, pp. 79-83, 143-45, & 228. A review of the agendas reveals that each hearing on an "appeal" from a County Board of Equalization is identified as a different agenda item, as were other portions of the hearings. This is no different than a district court or this Court having distinct times in which each "case" is heard. Each Board of Equalization case is heard on its own merits. *See* Exhibits #1 and 2. The transcripts of the hearings also show that the matters are considered separately. *See* Appellant's Appendix at Vol. I, pp. 93-140, 146-225, & 311-393; Respondent's Appendix, Vol. I, pp. 1-10, 14-19, and 27-33.. Furthermore, the February Ruling from the Board of Equalization shows that there was absolutely no participation by Pershing County Assessor Hamilton or impact upon her office. Appellant's Appendix Vol. 2, pp. 394-410.

II. LEGAL ANALYSIS

Prior to indicating that they have no objection to dismissal of Ms. Hamilton as a party to the appeal, Appellants argue that Ms. Hamilton appeared and therefore was subject to the appeal in this matter. While Ms. Hamilton supports the dismissal of her as a party to the appeal, there is trouble with Appellant's argument in that they ignore that Ms. Hamilton's appearance before the District Court was in the form of a Motion to Dismiss and in that Ms. Hamilton was never a party to the administrative proceedings on these parcels of property in Washoe County¹. Because the District Court never heard the Motion to Dismiss, there was never an adjudication on the merits of whether Ms. Hamilton was in fact a party of record in the administrative hearing. A review of the transcripts and the agenda's in relation to the administrative hearings reveals that Pershing County Assessor Hamilton was never a party to the hearings on the parcels

¹ For that matter, Churchill County was not a party and its Motion to Dismiss was not heard.

1 in Washoe County and never participated in those hearings. The District Court would have
2 been correct in granting the Motion to Dismiss.

3 In the hearings on the specific parcels of property before the Board of Equalization,
4 Pershing County Assessor Celeste Hamilton had rendered no appraisal as to parcels of property
5 that were the subject of the hearings before the Board of Equalization. Appellants are correct
6 that NRS 233B.130(2)(a) requires that the petition for judicial review name all parties who were
7 part of the administrative proceeding. Appellants are also correct that this Court has mandated
8 strict compliance with the provisions of NRS 233B.130(2)(a). However, Appellants misread
9 and over-apply the provisions of NRS 233B.130(2)(a) and Otto.

10 In Otto, the Court was dealing with numerous parties who appeared before the
11 administrative body on a single agenda item. The Court found that all the parties who
12 participated in the particular hearings on the particular parcels of property were parties to the
13 record of the administrative proceeding. Given the fact that Pershing County Assessor
14 Hamilton did not appear before the Board of Equalization on matters relating to parcels of
15 property in Washoe County and was not otherwise a party to the proceedings dealing with
16 parcels in Washoe County, there is no basis to conclude that she was a party of record in the
17 administrative proceedings. When the Board of Equalization separately hears multiple matters
18 pertaining to numerous parcels of property in separate and distinct counties, it is unrealistic to
19 infer or hold that all the parties to hearings which are unrelated to a particular parcel of property
20 in a particular county become parties to an appeal of the ruling on the unrelated particular parcel
21 of property in a particular county.

22 Such a ruling would require the inclusion of enormous numbers of individuals and
23 entities who have no stake in the outcome of the Petition for Judicial Review. These individuals
24 would be included merely because they have a matter heard on the same agenda. This would be
25 akin to requiring that every person who has a case on a docket before the district court to be
26 included on an appeal from a single unrelated case on the same docket. "Statute[s] should
27 always be construed to avoid absurd results." Del Papa v. Bd. of Regents of Univ. & Cmty.
28 Coll. Sys. of Nevada, 114 Nev. 388, 392, 956 P.2d 770, 774 (1998) (citations omitted).

1 In the instant case, it would be an absurd rule to require a party who does not appear or
2 participate in an administrative hearing before the Board of Equalization to become a party to
3 the action merely because they were sent a notice of the hearing. While a person may become a
4 party to an administrative hearing because the decision might adversely impact the person, the
5 fact that an adverse impact may occur does not cause a person to become a party of record in the
6 absence of some participation in the administrative hearing or some justifiable exception that
7 excuses participation (i.e. a lack of notice or service). The requirement as advocated by the
8 Appellants would be contrary to the Court's determinations long ago recognizing the principle
9 of waiver. In State v. Cheney, 24 Nev. 222, 52 P.12, 13 (1898), the Court held:

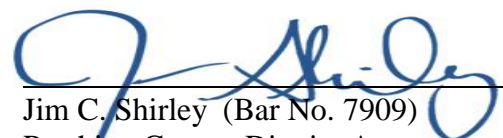
10 We must therefore hold that, where rights of either party to an action under this statute
11 are limited in time, the failure of either to exercise such rights within the limited time,
12 unless the same is preserved by some authorized act, operates as a waiver of the same
13 and the attempted determination of such rights upon the merits over the proper objection
is without authority.

14 If Pershing County Assessor Hamilton had appropriate notice of the hearing and chose
15 not to participate, she would not be a party to the proceedings because she would have waived
16 her right to be heard. Even if the subject matter had been something that affected the interests
17 of the Pershing County Assessor, there is no basis to conclude that she made herself a party to
18 the administrative hearings in this case and February order does not relate to an appeal from a
19 Pershing County assessment. The matter should be dismissed as to Pershing County Assessor
20 Hamilton.

21 **III. CONCLUSION**

22 In the conclusion of the Response, Appellants indicate that they have no opposition to
23 the dismissal of Ms. Hamilton as a party to the appeal. Accordingly, it would be appropriate to
24 dismiss Ms. Hamilton as a party. Ms. Hamilton should be dismissed because she was not a
25 party of record to the proceedings before the Board of Equalization.

26 Dated this 22nd day of January, 2014.

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Jim C. Shirley (Bar No. 7909)
Pershing County District Attorney
See Address and Other Information above

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Certificate of Service

Pursuant to the Rules of Appellate Procedure, I certify that, on this date, I filed the foregoing Motion with the Court utilizing the Court's e-filing system, which will serve the following parties electronically (this Motion was also mailed to the following on the 22nd day of January, 2014):

Suellen Fullerton, Esq.
SNELL AND WILMER, L.L.P.
50 West Liberty St. Suite 510
Reno, NV 89501
Attorney for Appellants

Dawn Buoncristianai, Esq.
Office of the Attorney General
100 North Carson St.
Carson City, NV 89107

Herby Kaplan, Esq.
Washoe County District Attorney's Office
P.O. Box 30083
Reno, NV 89520

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

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

DATED this 14th day of January, 2014.


JIM C. SHIRLEY

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ASSETS, INC.; <i>et. al</i>) District Court No. CV03-06922
Appellants,)
vs.)
)
THE STATE OF NEVADA, BOARD)
OF EQUALIZATION; CELESTE)
HAMILTON, PERSHING COUNTY)
ASSESSOR, <i>et. al.</i>)
Respondents.)
<hr/>)

Exhibit #1

POSTED: October 31, 2012

STATE BOARD OF EQUALIZATION AGENDA
November 5, 2012
9:00 a.m.

State Legislative Building
401 S Carson St, Room 4100
Carson City, Nevada

Beginning at 1 p.m., the State Board session will also be video-conferenced to the following location:

Legislative Counsel Bureau
Grant Sawyer State Office Building
Room 4401
555 E. Washington Avenue
Las Vegas, Nevada

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

STACKED AGENDA: Each listed hearing is one of several hearings scheduled at the same time as part of a regular meeting of the State Board that is expected to last from 9:00 a.m. until 5:00 p.m. Thus, any particular hearing may be continued until later in the day or from day to day. It is each taxpayer's or his representative's responsibility to be present when the case is called. If the taxpayer or his representative is not present when his hearing is called, the State Board will invoke the requirements of NRS 361.385 and NAC 361.708(4). The State Board may (a) proceed with the hearing; (b) dismiss the proceeding with or without prejudice; or (c) recess the hearing for a period to be set by the State Board to enable the party to attend.

NOTE (1): "Notice of Appearance" cases are cases in which the State Board must first determine if it can accept jurisdiction. If the State Board determines it can accept jurisdiction, the parties must be prepared to proceed on the merits of the case immediately.

NOTE (2): Appellants are advised that decisions may be rendered at any time subsequent to a hearing; the staff or a deputy attorney general may be queried at the time requesting additional information or legal points on the matter.

NOTE (3): No action will be taken on any matters during public comment. Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual, the Board may refuse to consider public comment. See NRS 233B.126. Public comment will be limited to comments of three minutes or less; and relevant to and within the authority of the State Board.

NOTE (4): The State Board of Equalization may take any case or item in a different order than the way the case is listed on the agenda. Items may be combined for consideration by the State Board of Equalization. Items may be removed from the agenda at any time or discussion on any item may be delayed until a later time.

The following order of presentation will ordinarily be used for each appeal:

- 1. Administration of the Oath;**
- 2. Review of Taxpayer Notices designating an authorized agent; consideration of deficient agent authorization notices;**
- 3. Consideration of Appellant or Respondent Preliminary Objections, if any;**
- 4. Consideration of Appellant or Respondent Preliminary Motions, if any;**
- 5. Consideration of State Board Preliminary Motions, if any;**
- 6. Motions to accept or deny late-filed evidence and documents pursuant to NAC 361.723 (5);**
- 7. Introduction of new evidence pursuant to NAC 361.739;**
- 8. Brief Orientation by the County Assessor or his staff (NAC 361.741);**
- 9. A presentation of not more than 15 minutes by the petitioner;**

10. A presentation of not more than 15 minutes by the respondent;
11. A rebuttal of not more than 5 minutes by the petitioner;
12. Questions by the State Board;
13. Official Notice of matters recited in NAC 361.720; rules, regulations, official reports, decisions and orders of the Commission, State Board or any agency; matters of common knowledge and technical or scientific facts of established character; pertinent official documents; matters judicially noticed by the Courts; and
14. Closure of hearing; discussion, consideration, and vote by the State Board. The parties may not participate in the discussion of the State Board.

Action may be taken on the following agenda items and appeals of property tax valuation in BOLD:

- A. Opening Remarks by the Chairman; introduction of State Board members, Swearing-in
- B. Public Comment (See Note 3)

<u>CASE NUMBER</u>	<u>PETITIONER</u>	<u>PROPERTY TYPE</u>	<u>RESPONDENT</u>
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C. For Possible Action: DIRECT APPEAL OF PROPERTY ON THE UNSECURED ROLL PURSUANT TO NRS 361.360(3)

12	102*	Enel Salt Wells, LLC	Mine Property	Department of Taxation
12	103*	Enel Stillwater, LLC	Mine Property	Department of Taxation
12	472*	Magma Energy U.S. Corp	Mine Property	Department of Taxation

* Churchill County and Churchill County Assessor are intervenors in these cases.

D. For Possible Action: CONSENT AGENDA, RECOMMENDATIONS BY THE SECRETARY TO DISMISS TAXPAYERS' APPEALS PURSUANT TO NAC 361.7014, Untimely Filed Appeals for 2010-2011 Net Proceeds of Minerals Unsecured Tax Roll; Determination of Jurisdiction of State Board. See Note (1)

12	465	Queenstake Resources	Net proceeds of Minerals	Department of Taxation
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E. APPEAL OF NET PROCEEDS OF MINERALS CERTIFICATION, 2011-12 Net Proceeds of Minerals Unsecured Tax Roll

12	466	Queenstake Resources	Net proceeds of Minerals	Department of Taxation
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F. For Possible Action: APPEALS FROM ACTION OF A COUNTY BOARD OF EQUALIZATION PURSUANT TO NRS 361.400, TAX YEAR 2012-13, Secured Roll

12	290	Nevada Land, LLC	Commercial Property	Washoe County Assessor
12	323A	James B. House dba North Summit Co., LLC	Personal Property	Washoe County Assessor

G. For Possible Action: CONSENT AGENDA, RECOMMENDATIONS BY THE SECRETARY TO DISMISS TAXPAYERS' APPEALS PURSUANT TO NAC 361.7014, Untimely Filed Appeals or Appeals not Heard by County Board; Determination of Jurisdiction of State Board. See Note (1)

12	323B	James B. House dba North Summit Co., LLC	Personal Property	Washoe County Assessor
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1:00 p.m.

H. For Possible Action: Pursuant to the Writ of Mandamus filed on August 21, 2012, Village League to Save Incline Assets, Inc. v. State Board of Equalization, et al, the State Board will hear responses of county assessors to grievances of property owner taxpayers regarding the equalization of real property valuations in Nevada for the 2003-2004 tax year through each subsequent tax year to and including 2010-2011. Responses may include, but are not limited to, the following complaints:

1. Valuation procedures used on APN 162-24-811-82, Louise H. Modarelli including information regarding the comparable sales used to establish the base lot value of the neighborhood and whether any adjustments were made to the base lot value for this property (Clark County);
2. Valuation procedures used to value exempt properties and in particular APN 139-34-501-003, owned by City Hall LLC (Clark County);
3. Proper valuation of property designated as agricultural property (Douglas County);
4. Property tax system in Nevada (Esmeralda County); and
5. Use of unconstitutional valuation methodologies for properties in Incline Village and Crystal Bay (Washoe County).

The State Board may raise, lower or leave unchanged the taxable value of any property for the purpose of equalization pursuant to NAC 361.650 through NAC 361.667, as applicable.

I. For Possible Action: Briefing to and from the Board and the Secretary and Staff

- Briefing Schedules
- Proposed Hearing Schedules and Docket Management

J. State Board of Equalization Comments (see Note 3)

K. Public Comment (See Note 3)

L. Adjournment

The Department is pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Department of Taxation in writing or call (775) 684-2160 prior to the meeting.

Notice agendas were posted at the following locations:

DEPARTMENT OF TAXATION LOCATIONS: 1550 E. College Parkway, Carson City; 4600 Kietzke Lane, Bldg L, Ste 235, Reno; 555 E. Washington Ave, #1300, Las Vegas; 2550 Paseo Verde Parkway, Suite 180, Henderson; Also: CLARK COUNTY GOVERNMENT CENTER, 500 S. Grand Central Parkway, Las Vegas; LAS VEGAS LIBRARY, 833 Las Vegas Blvd, Las Vegas; STATE LIBRARY & ARCHIVES, 100 Stewart St, Carson City.

POSTED: October 31, 2012

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10. A presentation of not more than 15 minutes by the respondent;
11. A rebuttal of not more than 5 minutes by the petitioner;
12. Questions by the State Board;
13. Official Notice of matters recited in NAC 361.720; rules, regulations, official reports, decisions and orders of the Commission, State Board or any agency; matters of common knowledge and technical or scientific facts of established character; pertinent official documents; matters judicially noticed by the Courts; and
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1:00 p.m.

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2. Valuation procedures used to value exempt properties and in particular APN 139-34-501-003, owned by City Hall LLC (Clark County);
3. Proper valuation of property designated as agricultural property (Douglas County);
4. Property tax system in Nevada (Esmeralda County); and
5. Use of unconstitutional valuation methodologies for properties in Incline Village and Crystal Bay (Washoe County).

The State Board may raise, lower or leave unchanged the taxable value of any property for the purpose of equalization pursuant to NAC 361.650 through NAC 361.667, as applicable.

I. For Possible Action: Briefing to and from the Board and the Secretary and Staff

- Briefing Schedules
- Proposed Hearing Schedules and Docket Management

J. State Board of Equalization Comments (see Note 3)

K. Public Comment (See Note 3)

L. Adjournment

The Department is pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Department of Taxation in writing or call (775) 684-2160 prior to the meeting.

Notice agendas were posted at the following locations:

DEPARTMENT OF TAXATION LOCATIONS: 1550 E. College Parkway, Carson City; 4600 Kietzke Lane, Bldg L, Ste 235, Reno; 555 E. Washington Ave, #1300, Las Vegas; 2550 Paseo Verde Parkway, Suite 180, Henderson; Also: CLARK COUNTY GOVERNMENT CENTER, 500 S. Grand Central Parkway, Las Vegas; LAS VEGAS LIBRARY, 833 Las Vegas Blvd, Las Vegas; STATE LIBRARY & ARCHIVES, 100 Stewart St, Carson City.

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HAMILTON, PERSHING COUNTY)
ASSESSOR, <i>et. al.</i>)
Respondents.)
<hr/>)

Exhibit #2

REVISED STATE BOARD OF EQUALIZATION AGENDA
December 3, 2012 9:00 a.m.

Nevada Department of Education
Boardroom #101
700 E. Fifth Street
Carson City, Nevada

The State Board session will also be video-conferenced to the following location:

Nevada Department of Education
Boardroom #228
9890 South Maryland Parkway Suite 221
Las Vegas, Nevada

You may also call in your comments by telephone to the meeting. Please call the Department at (775) 684-2160 for the call-in number and reservation to speak.

Action may be taken on the following agenda items and appeals of property tax valuation in BOLD:

- A. Opening Remarks by the Chairman; introduction of State Board members, Swearing-in
- B. Public Comment (See Note 1)
- C. **For Possible Action: Equalization of Incline Village and Crystal Bay properties in Washoe County.**
 - a. Report of the Washoe County Assessor regarding revised valuations of properties located in Incline Village and Crystal Bay for the 2003-2004, 2004-2005, and 2005-2006 tax years pursuant to the direction of the State Board at a hearing held on November 5, 2012;
 - b. **Rebuttal of any affected party to the Report of the Washoe County Assessor and to any proposed equalization action;**
 - c. **Equalization of properties located at Incline Village and Crystal Bay; pursuant to the Writ of Mandamus filed on August 21, 2012, Village League to Save Incline Assets, Inc. v. State Board of Equalization, et al, the State Board may raise, lower or leave unchanged the taxable value of any property for the purpose of equalization pursuant to NAC 361.650 through NAC 361.667, as applicable.**
- D. **For Possible Action: Statewide Equalization**
- E. **Briefing to and from the Board and the Secretary and Staff**
 - Briefing Schedules
 - Proposed Hearing Schedules and Docket Management
- F. Public Comment (See Note 1)
- G. **Adjournment**

NOTE (1): No action will be taken on any matters during public comment. Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual, the Board may refuse to consider public comment. See NRS 233B.126. Public comment will be limited to comments of three minutes or less; and relevant to and within the authority of the State Board.

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