

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, BOARD OF
EQUALIZATION; THE STATE OF NEVADA
DEPARTMENT OF TAXATION; WASHOE
COUNTY; WASHOE COUNTY ASSESSOR;
AND WASHOE COUNTY TREASURER,

Appellants,

vs.

VILLAGE LEAGUE TO SAVE INCLINE
ASSETS, INC.; A NON-PROFIT
CORPORATION, ON BEHALF OF THE
OWNERS OF RESIDENTIAL PROPERTY AT
INCLINE VILLAGE/CRYSTAL BAY; DEAN R.
INGEMANSON, TRUSTEE OF THE LARRY D.
AND MARYANNE INGEMANSON TRUST; V
PARK, LLC; TODD A LOWE; J. CARL
COOPER; ANDREW WHYMAN; DAN
SCHWARTZ; CHARLES A. DOWD; DONNA
GOFF; ELLEN BAKST; JANE BARNHART;
CAROL BUCK; LARRY WATKINS; DON
WILSON; PATRICIA WILSON; AND
AGNIESZKA WINKLER,

Respondents.

Electronically Filed
Dec 16 2019 02:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 80092

DOCKETING STATEMENT CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department 1

County Washoe County Judge Kathleen Drakulich

District Ct. Case No. CV03-06922 – Case was placed into this closed case after venue was transferred from the First Judicial District Court, 17OC002721B sua sponte by Judge Russell

2. Attorney filing this docketing statement:

Attorney Herbert B. Kaplan, Deputy District Attorney Telephone (775) 337-5716

Firm Washoe County District Attorney's Office

Address One South Sierra Street, Reno NV 89501

Client(s) Washoe County, Washoe County Assessor, Washoe County Treasurer

Attorney Michelle D. Briggs/Dennis L. Belcourt Telephone (702)486-3809

Firm Office of the Attorney General

Address 555 E. Washington, Ste. 3900, Las Vegas, NV 89101

Client(s) State of Nevada ex rel. State Board of Equalization, State of Nevada Department of Taxation

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Suellen Fulstone Telephone (775) 785-5440

Firm Snell & Wilmer

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Client(s) VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC.; a Nevada non-profit corporation; DEAN R. INGEMANSON, Trustee of the Larry D. and Maryanne Ingemanson Trust; V PARK, LLC; TODD A. LOWE; J. CARL COOPER; ANDREW WHYMAN; DAN SCHWARTZ; CHARLES A. DOWD; DONNA GOFF; and ROBERT GOFF

Attorney Norman J. Azevedo and Jessica C. Prunty Telephone (775) 885-1896

Firm DYER, LAWRENCE, FLAHERTY, DONALDSON & PRUNTY

Address 2805 Mountain Street, Carson City, NV 89703

Client(s) ELLEN BAKST; JANE BARNHART; CAROL BUCK; LARRY WATKINS; DON WILSON; PATRICIA WILSON; and AGNIESZKA WINKLER

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Divorce Decree |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following? No

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

The instant petition for judicial review has not been the subject of an appeal to or original writ proceeding in the Supreme Court or Court of Appeals. The State Board's statewide equalization process was the subject of *Village League to Save Incline Assets, Inc. v. State*, Supreme Court Docket No. 63581, 133 Nev. 1, 388 P.3d 218 (2017).

However, there are related, independent actions that have been the subject of the following appeals:

- *State of Nevada ex rel. State Board of Equalization, et al. v. Bakst*, Supreme Court Docket No. 46752, 122 Nev. 1403, 148 P.3d 717 (2006)

- *State of Nevada ex rel. State Board of Equalization, et al. v. Barta*, Supreme Court Docket No. 47397/47398/47399 /47401, 124 Nev.58, 188 P.3d 1092 (2008)
- *Village League to Save Incline Assets, Inc., et al. v. State of Nevada ex rel. Board of Equalization, et al.*, Supreme Court Docket No 49358, 124 Nev. 1079, 194 P.3d 1254 (2008)
- *Marvin, et al. v. Fitch, et al.*, Supreme Court Docket No. 52447, 126 Nev. , 232 P.3d 425 (2010)
- *Berrum v. Otto, et al.*. Supreme Court Docket No. 54947, 127 Nev. , 255 P.3d 1269 (2011)
- *Village League to Save Incline Assets, Inc. v. State of Nevada Board of Equalization*, Supreme Court Docket No. 73835, 430 P.3d 532 (Table)(2018).
- *Village League To Save Incline Assets, Inc. ex rel. their members v. State ex rel. State Bd. of Equalization*, Supreme Court Docket No. 56030128 Nev. 942, 381 P.3d 673 (Table)(2012)
- *Village League to Save Incline Assets, Inc. v. State, Department of Taxation, et al.*, Supreme Court Docket No. 43441, 125 Nev. 1086 (2009)
- *Village League to Save Incline Assets, Inc. v. Second Judicial District Court*, Supreme Court Docket No. 73573, 400 P.3d 249 (Table)(2017)(original writ petition)

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Pending related, independent proceeding--*Village League to Save Incline Assets, Inc., et al., v. State of Nevada ex rel. State Board of Equalization, et al.*, First Judicial District Court, Case No. 05-01451, no final disposition. That case deals only with the 2005-2006 tax year for Incline Village/Crystal Bay properties.

Prior proceedings—Prior proceedings—Second Judicial District Court:

Village League To Save Incline Assets, Inc. v. State of Nevada, Board of Equalization, Case No. CVO3-06922 (resulted in two appeals to the Supreme Court, Docket Nos. 43441 and 56030).

Village League to Save Incline Assets, Inc. v. State of Nevada, Board of Equalization, Case No. CV 13-00522 was a petition for judicial review of the State Board of Equalization's February 8, 2013 decision. Case No. CVO3-06922 and CV13-00522 were consolidated on May 17, 2013. These consolidated cases were appealed to the Supreme Court twice (Docket Nos. 63581 and 73835).

Ingemanson v. McGowan, Second Judicial District Court, CV05-02241 (seeking removal of Robert McGowan from office)

Lowe v. Washoe County. 627 F.3d 1151, 1155 (9th Cir. 2010), resulting from case filed in United States District Court, Case 3:08-cv-00217.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This case is a complaint/petition for judicial review pursuant to NRS 361.410 and NRS 233B challenging an equalization decision from the State Board of Equalization. The State Board had been ordered to hold an equalization hearing to allow taxpayers statewide to air grievances concerning equalization for prior years when no public hearing had occurred. Certain taxpayers in Incline Village/Crystal Bay had challenged their property taxes and received a rollback of their taxes to 2002 values. (*State Bd. of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006) and *State Bd. of Equalization v. Barta*, 124 Nev. 58, 188 P.3d 1092 (2008)). Other taxpayers as part of an entity (Village League to Save Incline Assets, Inc.) filed a lawsuit in 2003 instead of first taking their challenge to the County Board of Equalization. The 2003 case was dismissed and the complaint was amended to allow the sole claim of a writ of mandamus to the State Board to hold public hearings on equalization for specific prior years. The State Board first held those mandated hearings in 2012. The State Board's interim order to have properties reappraised was overturned by this Court in 2017 and the matter was remanded to the State Board to complete the equalization process. The State Board concluded no equalization problem existed and made no change to the taxable values.

Other related actions have been before this Court on four prior occasions. This appeal is taken from the district court's order which granted the petition for judicial review, vacated the equalization order of the State Board, and ordered refunds of property taxes for presumably all residential taxpayers in Incline Village/Crystal Bay whether they were part of the hearing before the State Board or not.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the district court failed to afford appropriate deference to the State Board's equalization decision.
2. Whether the district court exceeded its authority by ordering equalization in Incline Village/Crystal Bay without consideration of the effect the action would have on the rest of Washoe County and the rest of the State of Nevada.
3. Whether the district court erred in finding that the State Board had ordered changed any values in its 2017 Equalization Order, thereby making the Bakst Petitioners aggrieved parties.
4. Whether the district court erred by finding that the petition was appropriately brought pursuant to NRS 361.410, to the exclusion of NRS 361.420.
5. Whether the district court erred by finding that the payment under protest doctrine does not apply to the equalization action.
6. Whether the district court erred in finding that the State Board, or the district court, had authority to equalize property values pursuant to NRS 361.395 based on a judicial decision in another case.

7. Whether the district court erred in finding that the State Board, or the district court, had authority to equalize property values years after the expiration of the State Board's annual session for the relevant tax years.

8. Whether the district court erred in finding that the State Board members were concerned with the loss of tax revenue if it implemented the motion to roll back the property values to 2002-2003 values.

9. Whether the district court had valid jurisdiction over the petition for judicial review, as the petitioners failed to name as respondents all parties of record in the administrative process.

10. Whether the district court erred in finding that the State Board was bound in this statewide equalization matter, by prior actions it took in connection with individual appeals by extending relief to taxpayers who had failed to exhaust their administrative remedies.

11. Whether the district court erred in finding that the petitioners were not precluded from arguing the issue of the methodologies based on the Supreme Court dismissal of that claim in the March 2009 Order.

12. Whether the district court erred in finding that the holdings of *Bakst* and *Barta* were not limited to the properties owned by the taxpayers who brought those cases forward.

13. Whether the district court erred in finding that the lack of the tax rolls in the record invalidates the equalization action it took pursuant to NRS 361.395(1).

14. Whether the district court erred in finding that the State Board's refusal to equalize properties in Incline Village/Crystal Bay was unjust and inequitable.

15. Whether the district court erred in finding that the State Board's action was arbitrary and contrary to Nevada law.

16. Whether the district court erred in finding that the State Board violated the Taxpayers' Bill of Rights by not acting in a manner consistent with the action taken in 2006-2007.

17. Whether the district court erred in finding that the *Bakst* Petitioners had standing.

18. Whether the district court erred in finding that the State Board's equalization action was a collateral attack on the judgments rendered in *Bakst* and *Barta*.

19. Whether the district court erred in finding that the State Board's 2017 Equalization Order affirmed and adopted the unconstitutional values established by the Assessor which *Bakst* and *Barta* declared void.

20. Whether the district court had valid jurisdiction over the petition for judicial review where the State Board made no change to the valuation of property under NRS 361.395.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question If so, explain:

This case involves Article 10 Section 1 of the Nevada Constitution, which guarantees a “uniform and equal rate of assessment and taxation” and under that constitutional mandate, “methods used for assessing taxes throughout the state must be ‘uniform.’” The issue presented in this case involves the Nevada State Board of Equalization’s duty to perform statewide equalization on an annual basis pursuant to NRS 361.395. The district court ignored the State Board’s review of the grievance in the context of statewide equalization, instead “equalizing” property values in Incline Village/Crystal Bay in a vacuum, ignoring the effect that that action would have on the remainder of Washoe County and the rest of the State of Nevada. This is a substantial issue of first impression, with the potential to undo the extensive property tax system the Legislature has provided in NRS Chapter 361.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is neither presumptively retained by the Supreme Court under NRAP 17 nor presumptively assigned to the Court of Appeals. It should be retained by the Supreme Court because it involves the prior decisions of the Supreme Court and issues of first impression.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

This is an action for judicial review of an administrative body. Argument was conducted by

the district court on May 10, 2019, and June 5, 2019.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Justice Pickering has voluntarily recused herself in the prior appeals in connection with the Village League to Save Incline Assets, as that entity was represented in this matter in the district court at one time by the law firm of Morris Pickering & Peterson.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from October 21, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served October 22, 2019

Was service

☐ by: Delivery

☐ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev._____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed November 20, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Joint notice of appeal filed by all Appellants.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|--|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input checked="" type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1)—district court entered a final order on the statewide equalization issue in this case.

NRS 233B.150—this was an action for judicial review pursuant to NRS 233B.130. NRS 233B.150 authorizes this appeal of the decision of the district court.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., a Nevada non-profit corporation, on behalf of the owners of residential property at Incline Village/Crystal Bay, Nevada; DEAN R. INGEMANSON, Trustee of the Larry D. and Maryanne Ingemanson Trust; V PARK, LLC; TODD A. LOWE; J. CARL COOPER; ANDREW WHYMAN; DAN SCHWARTZ; CHARLES A. DOWD; DONNA GOFF; ROBERT GOFF; ELLEN BAKST; JANE BARNHART; CAROL BUCK; LARRY WATKINS; DON WILSON; PATRICIA WILSON; and AGNIESZKA WINKLER, STATE OF NEVADA, on relation of its STATE BOARD OF EQUALIZATION; STATE OF NEVADA on relation of the DEPARTMENT OF TAXATION; WASHOE COUNTY ASSESSOR; WASHOE COUNTY TREASURER,

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

The underlying action was a complaint/petition for judicial review of the State Board of Equalization's 2017 equalization order. The district court issued its Findings of Fact, Conclusions of Law, Decision and Order on October 21, 2019.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross- claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

AARON D. FORD
Attorney General

CHRISTOPHER J. HICKS
District Attorney

By /s/Michelle D. Briggs
MICHELLE D. BRIGGS
Senior Deputy Attorney General
DENNIS L. BELCOURT
Deputy Attorney General

By /s/Herbert B. Kaplan
HERBERT B. KAPLAN
Deputy District Attorney

ATTORNEYS FOR STATE OF
NEVADA, STATE BOARD OF
EQUALIZATION AND
DEPARTMENT OF TAXATION

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

CERTIFICATE OF SERVICE

I certfy thata on the 16th day of December, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

David Wasick
P.O. Box 568
Glenbrook, NV 89413

☒ By electronic service to the following:

Michelle D. Briggs, Esquire

Norman Azevedo, Esquire

Dennis L. Belcourt, Esquire

Jessica Prunty, Esquire

Adam Laxalt, Esquire

William Peterson, Esquire

Suellen Fulstone, Esquire

Dated this 16th day of December 2019.

/s/ M. Coin

M. Coin

INDEX OF ATTACHMENTS

ATTACHMENT 1	Complaint under NRS §361.410 and Petition for Judicial Review under NRS §233B.130
ATTACHMENT 2	Findings of Fact, Conclusions of Law, Decision and Order entered October 21, 2019
ATTACHMENT 3	Notice of Entry of Findings of Fact, Conclusions of Law, Decision and Order dated October 22, 2019

INDEX OF ATTACHMENTS

ATTACHMENT 1

ATTACHMENT 1

CV03-06922
DC-09900087254-114
CONSOLIDATED: VILLAGE LEAGUE 15 Pages
District Court 08/07/2018 03:41 PM
Washoe County 1425
KTORRGM

FILED

2018 AUG -7 PM 3:41

JACQUELINE BRYANT
CLERK OF THE COURT

DEPUTY

REC'D & FILED

2017 DEC 29 PM 3:16

SUSAN MERRIWETHER

BY

DEPUTY

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Agnieszka Winkler

20 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

21 IN AND FOR CARSON CITY

22
23 VILLAGE LEAGUE TO SAVE INCLINE)
24 ASSETS, INC., a Nevada non-profit corporation,)
on behalf of the owners of residential properties)
25 at Incline Village/Crystal Bay, Nevada; DEAN R.)
INGEMANSON, Trustee of the Larry D. and)
26 Maryanne B. Ingemanson Trust; V PARK, LLC;)
TODD A. LOWE; J. CARL COOPER;)
27 ANDREW WHYMAN; DAN SCHWARTZ;)
CHARLES A. DOWD; DONNA GOFF;)
28 ROBERT GOFF; ELLEN BAKST; JANE)
BARNHART; CAROL BUCK; LARRY)

Case No.: 170C002721B

Dept. No.: I

COMPLAINT UNDER
NRS §361.410 AND
PETITION FOR
JUDICIAL REVIEW
UNDER NRS §233B.130

CV03 06922

b8

1 WATKINS; DON WILSON; PATRICIA
2 WILSON; and AGNIESZKA WINKLER,

3 Plaintiffs/Petitioners,

4 vs.

5 STATE OF NEVADA on relation of the STATE
6 BOARD OF EQUALIZATION; STATE OF
7 NEVADA on relation of the DEPARTMENT OF
8 TAXATION; WASHOE COUNTY ASSESSOR;
9 WASHOE COUNTY TREASURER,

10 Defendants/Respondents.

11 **COMPLAINT UNDER NRS §361.410 AND**
12 **PETITION FOR JUDICIAL REVIEW UNDER NRS §233B.130**

13 Plaintiffs/Petitioners, in their individual and/or representative capacities, allege as follows:

14 **PARTIES AND JURISDICTION**

15 1. Plaintiffs/Petitioners bring this complaint and petition pursuant to NRS §361.410
16 and NRS §233B.130 for judicial review of the decision of the State Board of Equalization dated
17 October 30, 2017, and served on November 30, 2017, ("the 2017 State Board decision"). A copy
18 of the 2017 State Board decision is attached as Exhibit 1; a copy of the corrected certificate of
19 service is attached as Exhibit 2. Incline Village/Crystal Bay residential property taxpayers
20 represented by the Village League to Save Incline Assets, Inc. and the other individuals and
21 entities named here as Plaintiffs/Petitioners and other similarly situated residential property
22 taxpayers have been denied relief by the 2017 State Board decision and are aggrieved by that
23 decision.

24 2. This complaint and petition is timely as filed within 30 days of service of the 2017
25 State Board decision as provided by NRS §233B.130(2)(c).

26 3. Plaintiff/Petitioner Village League to Save Incline Assets, Inc. ("Village League")
27 is a nonprofit corporation organized and existing under the laws of the State of Nevada, whose
28 members own or have owned residential property at Crystal Bay and/or Incline Village, in
Washoe County, Nevada, and pay or have paid taxes on that property as assessed, imposed and
collected by the defendant/respondent Washoe County. Village League brings this action for

1 equalization on behalf of the taxpayer owners of residential properties at Incline Village/Crystal
2 Bay for the 2003-2004, 2004-2005 and 2005-2006 tax years. Village League has been recognized
3 by the district court and by the defendant/respondent State Board of Equalization as the
4 representative of the residential property owners and taxpayers of Incline Village/Crystal Bay.

5 4. Plaintiffs/Petitioners Dean R. Ingemanson, as Trustee of the Larry D. and
6 Maryanne B. Ingemanson Trust; V. Park LLC; Todd A. Lowe; J. Carl Cooper; Andrew Whyman;
7 Dan Schwartz; Charles A. Dowd; Donna Goff and Robert Goff, (collectively with Village
8 League, "Village League Plaintiffs/Petitioners") are individuals or entities or successors in
9 interest to individuals or entities who owned, either directly or beneficially, and paid property
10 taxes on residential real property at Incline Village, Washoe County, Nevada, during the 2003-
11 2004, 2004-2005, and 2005-2006 tax years and who were denied equalization for those years by
12 the 2017 State Board decision and are aggrieved.

13 5. Plaintiffs/Petitioners Ellen Bakst, Jane Barnhart, Carol Buck, Dan Schwartz, Larry
14 Watkins, Don Wilson, Patricia Wilson and Agnieszka Winkler ("Bakst Plaintiffs/Petitioners") are
15 individuals who owned, either directly or beneficially, and paid property taxes on residential real
16 property at Incline Village, Washoe County, Nevada, during the 2003-2004, 2004-2005 and
17 2005-2006 tax years encompassed by the 2017 State Board decision. Values of the properties of
18 Bakst Plaintiffs/Petitioners and more than a thousand other Incline Village/Crystal Bay residential
19 property owners represented by Village League have been adjudicated and determined by Nevada
20 courts for the 2003-2004, 2004-2005 and/or 2005-2006 tax years and now have been put at risk
21 by the 2017 State Board decision.

22 6. Defendant/Respondent State Board of Equalization ("State Board"), established by
23 the Nevada Legislature as codified in NRS §361.375, is an agency of the State of Nevada vested
24 with the statutory responsibility and mandate under NRS §361.395 annually to equalize real
25 property valuations throughout the State.

26 7. Defendant/Respondent State Department of Taxation ("Department") is a state
27 agency created by the Nevada Legislature as codified in NRS §361.120. The Department provides
28 the staff for the State Board pursuant to NRS §361.375(11). Although the Department's role is

1 limited by statute to staff functions, the Department is named and sued as a party in this action
2 because the State Board improperly allowed it to participate as a party adverse to taxpayers in the
3 administrative proceeding. NRS §233B.130 requires all parties to the proceeding to be named and
4 NRS §361.410(2) authorizes suit against the Department.

5 8. Defendant/Respondent Washoe County ("County") is and was, at all relevant
6 times, a political subdivision of the State of Nevada. Defendant/Respondent Washoe County
7 Assessor ("Assessor") is a public office created by the Nevada Legislature pursuant to NRS
8 Chapter 250. The Assessor is responsible for the assessment of property within Washoe County in
9 compliance with the regulations adopted by the Tax Commission. Defendant/Respondent Washoe
10 County Treasurer ("Treasurer") is a public office created by the Nevada Legislature pursuant to
11 NRS Chapter 249. Among other duties, the Treasurer acts as the county tax receiver and collects
12 taxes assessed on real property.

13 HISTORY AND BACKGROUND

14 9. Under Nevada's property tax system, land and improvements are valued
15 separately. In 2003, the Assessor performed new appraisals of the land portion of residential
16 property on a five-year cycle. The land value for the first year of the cycle was determined by an
17 appraisal. For each of years 2 through 5 of the cycle, the Assessor developed a "factor" to account
18 for inflation and market changes. After approval by the Tax Commission, the Assessor
19 determined the current year's land value by applying the factor to the prior year's value. The
20 appraised value remained the base value for the five-year period as adjusted by a factor or
21 succession of factors after the first year.

22 10. The 2003-2004 tax year was an appraisal year for Incline Village/Crystal Bay
23 residential properties, the first year of the five-year cycle. Residential property owners across
24 Incline Village/Crystal Bay saw their land values increase substantially but inconsistently. Incline
25 Village/Crystal Bay homeowners also saw that their land values were significantly greater than
26 land values for similar properties in the Douglas County portion of Lake Tahoe.

27 11. In 2003, Incline Village/Crystal Bay residential property owners challenged their
28 2003-2004 property valuations and were denied relief by both the County and State Boards of

1 Equalization. In 2003 as well, neither the County nor the State Board attempted any sort of
2 equalization at Incline Village/Crystal Bay. Individual property owners pursued their individual
3 challenges in the court system and Village League brought the original complaint in this matter
4 seeking, among other claims, on behalf of Incline Village/Crystal Bay residential property
5 taxpayers to compel the State Board to perform its statewide equalization mandate under NRS
6 §361.395 for the 2003-2004 tax year ("the equalization action").

7 12. Over the next nine years, the equalization action was twice dismissed, twice
8 appealed to the Nevada Supreme Court, and twice reversed as to the equalization claim and
9 remanded to the district court. *Village League v. State, Dep't of Taxation*, Docket No. 43441
10 (Order Affirming in Part, Reversing in Part and Remanding, March 19, 2009); *Village League v.*
11 *State. Board of Equalization*, Docket No. 56030 (Order Affirming in Part, Reversing in Part and
12 Remanding, February 24, 2012).

13 13. By 2012, when the equalization action was remanded to the district court for the
14 second time, the State Board had failed to perform its equalization duty for the tax years from
15 2003-2004 through 2010-2011. After the 2012 reversal and remand, the district court issued a
16 writ of mandamus directing the State Board to "hear and determine" equalization grievances of
17 property owner taxpayers throughout the state for each of the tax years 2003-2004 through 2010-
18 2011, inclusive. A copy of the writ of mandamus is attached as Exhibit 3.

19 14. During the nine years the equalization action bounced back and forth between the
20 district court and the Supreme Court, Incline Village/Crystal Bay residential property owners
21 continued to challenge their property valuations, filing appeals for the 2004-2005, 2005-2006,
22 2006-2007 and later tax years. During those nine years as well, the Supreme Court and the district
23 courts made important rulings on property valuations at Incline Village/Crystal Bay as well as the
24 actions and failures to act of the County and State Boards of Equalization.

25 15. In *State ex rel. State Bd. of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717
26 (2006) (*Bakst*), the Supreme Court affirmed the district court decision that, in 2003-2004, the
27 Assessor had valued the land portion of certain residential properties at Incline Village/Crystal
28 Bay using unlawful methodologies not authorized by governing regulations. The Court held that

1 assessments based on those unlawful valuations violated the Nevada Constitution's guaranty of
2 uniformity and were unconstitutional and void. Rejecting arguments to return the matter to the
3 State Board or to the Assessor, the Court reset the values of the involved properties to their prior
4 year (2002-2003) unchallenged and presumed constitutional levels ("the Bakst remedy").

5 16. In *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 616, 188 P.3d
6 1092, 1095 (2008) (*Barta*), the Supreme Court addressed the Assessor's valuations of Incline
7 Village/Crystal Bay residential properties for the following tax year, 2004-2005. The 2004-2005
8 tax year was the second year in the five-year cycle and the first "factored" year. For the 2004-
9 2005 tax year, the Washoe County Assessor developed a factor of 1. A factor of "1" means no
10 change in values. The land values for 2004-2005 at Incline Village/Crystal Bay were determined
11 simply by multiplying the 2003-2004 values by 1.

12 17. When taxpayers challenged the 2004-2005 values, the Assessor argued that, even
13 if the underlying valuations were null and void as determined in *Bakst*, the 2004-2005 values
14 were valid because "factoring" was a lawful and constitutional method of valuation. The *Barta*
15 Court rejected that argument, writing that factoring "simply adjusts the previous year's assessed
16 value based on a mathematical analysis of the general market trend." In the case of Incline
17 Village/Crystal Bay residential property owners, the "previous year's assessed values" were "null
18 and void" because they were developed using unconstitutional methods and "null and void values
19 could not be validly adjusted" by factors or otherwise. The *Barta* Court found no distinction with
20 *Bakst*, set aside the Assessor's 2004-2005 valuations as null and void, and applied the Bakst
21 remedy, resetting the land values to 2002-2003 levels.

22 18. For the 2005-2006 tax year, the district court, hearing more than a thousand
23 individual appeals from Incline Village/Crystal Bay residential property owners, followed the
24 Supreme Court's *Bakst* and *Barta* decisions, found the valuations unconstitutional and void and
25 ordered the Bakst remedy, resetting property values in those individual 2005-2006 appeals at
26 2002-2003 constitutional levels. Because 2005-2006 was a "factor" year, the district court applied
27 that year's 8% factor to the 2002-2003 values to determine the final valuations.
28

1 19. The 2006-2007 tax year was the fourth year in the Assessor's five-year cycle and,
2 over the objections of Incline Village/Crystal Bay property owners, residential property
3 valuations at Incline Village/Crystal Bay were still being based on the 2003-2004 unconstitutional
4 valuations. The district court's Bakst decision was issued before the Washoe County Board of
5 Equalization met to hear appeals for the 2006-2007 tax year. With the district court's Bakst
6 decision on appeal, the Supreme Court issued an order directing the County Board of
7 Equalization to comply with that district court decision in determining Incline Village/Crystal
8 Bay tax appeal but staying implementation of those determinations.

9 20. Under the Bakst district court decision and the Supreme Court order, the County
10 Board of Equalization replaced unconstitutional and void 2006-2007 values for Incline
11 Village/Crystal Bay residential properties in individual appeals with constitutional 2002-2003
12 values and then, in the performance of its equalization duty, applied the Bakst remedy, resetting
13 all residential properties at Incline Village/Crystal Bay to 2002-2003 levels. After an appeal by
14 the County, the County Board's 2006-2007 equalization decision was affirmed by the State
15 Board. The County's subsequent appeal to the district court was dismissed and that dismissal was
16 affirmed by the Supreme Court. *Washoe County v. Otto*, 128 Nev. 424, 282 P.3d 719 (2012).

17 21. The County Board equalized residential properties across Incline Village/Crystal
18 Bay to constitutional 2002-2003 levels. Under the writ of mandate, Incline Village/Crystal Bay
19 residential property taxpayers sought similar equalization for the three prior tax years -- 2003-
20 2004, 2004-2005 and 2005-2006.

21 22. The State Board held hearings on taxpayer equalization grievances, including the
22 Incline Village/Crystal Bay grievances, on September 18 and November 5, 2012. The Board
23 framed the Incline Village/Crystal Bay issue around the use of the unconstitutional valuation
24 methodologies identified in *Bakst*.

25 23. At the close of the November 5 hearing, the Board determined that there was a
26 lack of equalization at Incline Village/Crystal Bay for each of the 2003-2004, 2004-2005 and
27 2005-2006 tax years. The Board voted unanimously to implement the Bakst remedy and reset the
28 land values of Incline Village/Crystal Bay residential properties affected by the use of

1 unconstitutional valuation methodologies for the 2003-2004, 2004-2005, and 2005-2006 tax years
2 to constitutional 2002-2003 levels as factored. The Board asked the Assessor to prepare lists for
3 each of the three tax years of those Incline Village/Crystal Bay residential properties that had
4 been valued using the unconstitutional methodologies.

5 24. At a third hearing on December 3, 2012, the Assessor provided three lists of
6 properties at Incline Village/Crystal Bay that had been valued using unconstitutional
7 methodologies for the 2003-2004, 2004-2005, and 2005-2006 tax years. Each list contained more
8 than 5,000 properties. Each list also included properties of Bakst Plaintiffs/Petitioners and
9 similarly situated Incline Village/Crystal Bay property owners whose property values had already
10 been judicially reset to constitutional levels.

11 25. After receiving the Assessor's lists, the Board ignored its previous decision to
12 adopt the Bakst remedy and, over taxpayer objections, instead ordered the Assessor to reappraise
13 all the listed properties, including the properties with adjudicated constitutional values, for each
14 of the three years. The Assessor was given one year to perform the reappraisals and report back to
15 the Board.

16 26. The written State Board decision was served on February 8, 2013 ("the 2013 State
17 Board decision"). A copy of the 2013 State Board decision is attached as Exhibit 4. The Board
18 "determined that no statewide equalization was required . . . but certain regional or property type
19 equalization was required [at Incline Village/Crystal Bay]" and ordered the reappraisal of "all
20 residential properties located in Incline Village and Crystal Bay to which an unconstitutional
21 methodology was applied to derive taxable value during the tax years 2003-2004, 2004-2005 and
22 2005-2006."

23 27. Village League and Incline Village/Crystal Bay residential property owners, for
24 themselves and all similarly situated taxpayers, brought a petition for judicial review challenging
25 the order for reappraisal (the Village League 2013 petition). Bakst Plaintiffs/Petitioners sought
26 and were granted permission to intervene to protect their rights in their judicially determined
27 property valuations. No cross-petitions for judicial review were filed. No challenge was made to
28 any of the State Board's findings of fact.

1 28. The district court dismissed the Village League 2013 petition on the basis that the
2 2013 State Board decision was not final and did not meet the statutory requirements for
3 interlocutory review. Village League Plaintiffs/Petitioners and Bakst Plaintiffs/Petitioners
4 appealed to the Supreme Court which reversed the district court dismissal in *Village League to*
5 *Save Incline Assets v. State, Board of Equalization (Ingemanson)*, 133 Nev. Adv. Op. 1, 388 P.3d
6 218, 226 (2017).

7 29. In *Ingemanson*, the Supreme Court held that the State Board lacked the statutory
8 authority to order reappraisals. It also held that the State Board's retroactive use of its 2010
9 equalization regulations in making the 2013 decision was improper. The Supreme Court
10 remanded the matter back to the district court with instructions to grant the petition for judicial
11 review, vacate the reappraisal order, and conduct further proceedings to effect equalization.

12 30. Rather than conduct the further proceedings itself, and again over the objections of
13 taxpayers, the district court instead remanded the matter to the State Board to "conduct [the]
14 further proceedings." A copy of the district court's remand order is attached as Exhibit 5.

15 **REMAND HEARING AND ORDER**

16 31. The State Board scheduled, noticed and held a hearing on the remand order on
17 August 29, 2017. At the close of the hearing, the State Board voted in favor of an action adverse
18 to Plaintiffs/Petitioners and to all residential property owners and taxpayers at Incline
19 Village/Crystal Bay. Approximately three months later, the 2017 State Board decision was
20 served. See Exhibits 1, 2.

21 32. The 2017 State Board decision found no lack of equalization at Incline
22 Village/Crystal Bay directly contradicting the unchallenged findings and conclusions of 2013
23 State Board as well as the Assessor's lists and the admittedly unconstitutional and void valuations
24 and assessments at Incline Village/Crystal Bay not found elsewhere in the state.

25 33. Nothing in the remand order from the Supreme Court in *Ingemanson* or in the
26 remand order from the district court authorized the State Board to alter the unchallenged findings
27 of fact from the 2013 State Board decision or to make new and conflicting findings of fact. The
28 County had its opportunity to challenge that finding on the first petition for judicial review and

1 appeal in this matter. The "finding" of the 2017 State Board that there was no lack of equalization
2 at Incline Village/Crystal Bay is invalid because it exceeds the statutory authority and the
3 jurisdiction of the Board under the remand order and violates the principles of administrative res
4 judicata and collateral estoppel.

5 34. The finding of the 2017 State Board that there was no lack or failure of
6 equalization at Incline Village/Crystal Bay was not supported by the evidence in the record. The
7 equalization issue was framed by the Board itself as an issue of the use of unconstitutional
8 valuations methods. In addition to the undisputed evidence of the use of unconstitutional
9 valuation methods on the majority of Incline Village/Crystal Bay residential properties, there is
10 also substantial evidence in the record of a lack of equalization across the geographic area of
11 Incline Village/Crystal Bay based on the judicially mandated adjustment of values of more than a
12 thousand properties to 2002-2003 values and of a lack of equalization between the valuations of
13 residential properties at Incline Village/Crystal Bay in Washoe County and the much lower
14 constitutional valuations of similarly situated properties at and around Lake Tahoe in Douglas
15 County.

16 35. A majority of the members of the State Board who made the 2017 State Board
17 decision did not participate in any of the previous hearings. None of the members of the State
18 Board who made the 2017 State Board decision read the record in the equalization matter before
19 them. See Exhibit 1, pp. 1-2 (members "reviewed" the record "from prior proceedings").

20 36. Under NRS §233B.124, when

21 a majority of the officials of the agency who are to render the final
22 decision have not heard the case or read the record, the decision, if
23 adverse to a party to the proceeding other than the agency itself,
24 shall not be made until a proposal for decision is served upon the
25 parties, and an opportunity is afforded to each party adversely
26 affected to file, within 20 days, exceptions and present briefs and
27 oral argument to the officials who are to render the decision. The
28 proposal for decision shall contain a statement of the reasons
therefor and of each issue of fact or law necessary to the proposed
decision, prepared by the person who conducted the hearing or one
who has read the record.

27 Plaintiffs/Petitioners advised the State Board of the requirements of NRS §233B.124 prior to the
28 hearing and objected to any failure of compliance with those requirements. The State Board

1 ignored those requirements and issued a purportedly "final" decision without serving a proposal
2 for decision, without allowing Plaintiffs/Petitioners opportunity for briefing and argument, and
3 without otherwise complying with the due process requirements of NRS §233B.124.

4 37. The 2017 State Board decision is invalid because the State Board denied and
5 deprived Plaintiffs/Petitioners and other similarly situated owners of residential property at
6 Incline Village/Crystal Bay of their due process rights to a fair hearing, including, without
7 limitation, by (1) inadequate notice of actions the Board intended to consider preventing
8 Plaintiffs/Petitioners from preparing properly for the hearing; (2) violating the law of
9 administrative res judicata and unlawfully issuing new and conflicting "factual" findings; (3)
10 retroactively applying a new standard for equalization not adopted by regulation in force during
11 the tax years in issue and not used by the Board during those years; (4) the failure of one member
12 to disclose that he had worked for the Washoe County Assessor during a time when the unlawful
13 valuation methodologies were used to value the property of Plaintiffs/Petitioners; (5) failing to
14 take into consideration the remedies already afforded Bakst Plaintiffs/Petitioners and similarly
15 situated residential property taxpayers at Incline Village/Crystal Bay and the effect those
16 remedies should have on the equalization process for the area as directed by the Supreme Court;
17 and (6) allowing the Department to participate in effect as a "party" adverse to Incline
18 Village/Crystal Bay taxpayers rather than limiting them to the staff role prescribed by statute.

19 38. The 2017 State Board decision is invalid because the Board was improperly
20 constituted in violation of Nevada law. Under NRS §361.375, the five-member Board must
21 consist of (a) One member who is a certified public accountant or a registered public accountant,
22 (b) One member who is a property appraiser with a professional designation, (c) One member
23 who is versed in the valuation of centrally assessed properties, and (d) Two members who are
24 versed in business generally. At the time of the 2017 State Board decision, the State Board
25 consisted of three property appraisers with the MAI professional designation and two CPAs.

26 39. The substantial rights of Plaintiffs/Petitioners and all Incline Village/Crystal Bay
27 residential property owners have been prejudiced by the 2017 State Board decision and that
28 decision must be set aside because it:

- (1) violates constitutional and statutory provisions;
- (2) exceeds the statutory authority of the State Board;
- (3) is made upon improper procedure and invalidated by other error of law;
- (4) is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and
- (5) is arbitrary, capricious and, to the extent it involved the exercise of the State Board's discretion, constitutes an abuse of that discretion.

40. The 2017 State Board decision must be set aside because the valuations established in that decision are unjust and inequitable. The Washoe County Assessor has admitted and acknowledged that the valuations approved by the State Board in its 2017 decision were established using unconstitutional, nonuniform methods. As determined by the Supreme Court, "a property value determined using unconstitutional, nonuniform methods is necessarily unjust and inequitable." *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 616, 188 P.3d 1092, 1095 (2008) (*Barta*). In upholding the "assessor's unconstitutional methodologies, the State Board [has applied] a fundamentally wrong principle" and its decision must be set aside. *Barta*, 124 Nev. at 626, 188 P.3d at 1102.

41. The 2017 State Board decision violates the due process rights of Plaintiffs/Petitioners and the other residential property owners at Incline Village/Crystal Bay and violates Nevada statutes, the Nevada Constitution and the decisions of the Nevada Supreme Court. That decision must be set aside.

42. NRS §361.410(1) provides that "[n]o taxpayer may be deprived of any remedy or redress in a court of law" in seeking redress from the findings of the State Board. Under NRS §361.410(2), the State Board's actions must be just and equitable.

43. The State Board's refusal to equalize the values of all Incline Village/Crystal Bay residential properties to the properties of Bakst Plaintiffs/Petitioners results in a non-uniform and non-equal rate of assessment and taxation in violation of Article 10 Section 1(1) of the Nevada Constitution and is unjust and inequitable.

1 44. The State Board's refusal to equalize the values of all Incline Village/Crystal Bay
2 residential properties to the properties of Bakst Plaintiffs/Petitioners violates the Taxpayer Bill of
3 Rights requiring that taxpayers be treated with fairness and uniformity and is unjust and
4 inequitable.

5 WHEREFORE PLAINTIFFS/PETITIONERS PRAY AS FOLLOWS:

6 1. That the Court remand this matter to the State Board for compliance with NRS
7 §233B.124.

8 2. That the Court review, reverse and set aside the 2017 State Board decision,
9 reinstate the original and unchallenged findings and conclusions, reset the null and void values of
10 all Incline Village/Crystal Bay residential properties on the Assessor's lists to constitutional
11 2002-2003 values as factored, and enter a lawful order for geographic equalization of residential
12 property values across Incline Village/Crystal Bay to 2002-2003 factored values for the 2003-
13 2004, 2004-2005 and 2005-2006 tax years.

14 3. That the Court issue an order declaring that the judgments received by Bakst
15 Plaintiffs/Petitioners and others taxpayers with adjudicated property values are final and not
16 subject to collateral attack.

17 4. That the Court issue an order declaring that the State Board's failure to equalize
18 the values of all Incline Village/Crystal Bay residential properties to the properties of Bakst
19 Plaintiffs/Petitioners is unjust and inequitable.

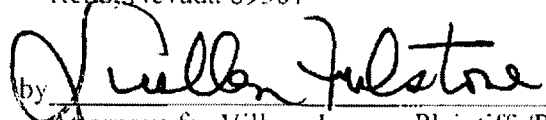
20 5. That Plaintiffs/Petitioners recover their costs of suit and be awarded such other and
21 further relief as they may be adjudged entitled to in the premises.

22 ///

23 ///

1 DATED this 29th day of December, 2017.

2
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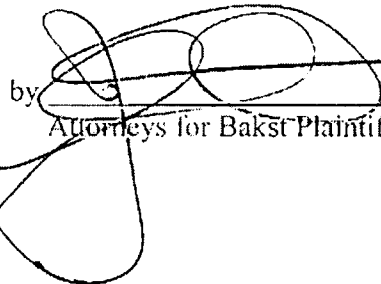
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20 by 
21 Attorneys for Bakst Plaintiffs/Petitioners
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23
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Exhibit List

- | | | |
|----|----------------------------------|----------|
| 1. | 2017 State Board decision | 8 pages |
| 2. | Corrected certificate of service | 1 page |
| 3. | Writ of mandamus | 2 pages |
| 4. | 2013 State Board decision | 12 pages |
| 5. | District court's remand order | 3 pages |

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STATE OF NEVADA
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DEONNE E. CONTINE
Secretary

In the Matter of:

Proceedings Regarding Equalization of
Real Property throughout the State of
Nevada from 2003-2004 Tax Year
through 2010-2011 Tax Year

)
) Hearing on Remand ordered by:
) Second Judicial District Court
) Department No. 7
) Order Granting Petition
) for Judicial Review,
) Case No. CV03-06922, consolidated with
) Case No. CV13-00522

EQUALIZATION ORDER

Appearances

Suellen Fulstone appeared on behalf of Village League to Save Incline Assets, Inc. and Incline Village and Crystal Bay residential taxpayers.

Norman Azevedo appeared on behalf of the "Bakst Intervenors."

Herbert Kaplan, Washoe County District Attorney's Office, appeared on behalf of Washoe County.

Heather Drake appeared on behalf of the Department of Taxation (Department).

Summary

On August 29, 2017, the State Board of Equalization (State Board) continued with its equalization proceedings last held on December 3, 2012. The State Board's prior Equalization Order 12-001 directed the Washoe County Assessor to conduct reappraisals for residential property located in Incline Village and Crystal Bay, but that portion of the order was vacated by Order dated July 17, 2017 by the Honorable Judge Patrick Flanagan, in accordance with the Nevada Supreme Court's Decision in *Village League to Save Incline Assets, Inc. v. State Board of Equalization*, 133 Nev. Adv. Op. 1, 388 P.3d 218 (2017) ("Village League 2017"). Judge Flanagan's Order directed the State Board to "conduct further proceedings pursuant to its statutory authority under NRS 361.395." Notice of this proceeding was sent to all parties to the court matter by certified mail on August 7, 2017.

Chairman Meservy acknowledged the State Board received objections to the proceedings from Ms. Fulstone. As the proceeding began, each member of the State Board

stated on the record that they reviewed the record from the prior proceedings held on September 18, 2012, November 5, 2012 and December 3, 2012. The proceeding continued with each party having approximately 15 minutes to address the State Board and additional time to offer rebuttal testimony.

Summary of Testimony by Norman Azevedo:

The prior judgment received by the Bakst Intervenor from the Nevada Supreme Court was explained. The State Board should respect the prior judgment. The cases involving his clients referred to the taxable values determined using unconstitutional methodologies as void. The State Board should not use the definition of equalization stated by the Supreme Court in Village League 2017. Instead, "you have to determine the taxable value on the initial threshold and then the equalization statute governs your functions and it's very clear." (Transcript of Proceedings 66:22-25, Aug. 29, 2017). The State Board has "no inherent power but is limited to the powers conferred by" statute. (Transcript 68:9-10). No statute in NRS 361 allows the State Board to adjust the Bakst Intervenor's values. To achieve "uniform taxation" the other owners in Incline Village and Crystal Bay should be treated the same.

Suellen Fulstone submitted a written version of her remarks.

Summary of Testimony by Suellen Fulstone:

It was an "irrefutable fact" that there is a lack of equalization at Incline Village/Crystal Bay for the tax years 2003-04, 2004-05, and 2005-06 due to the Washoe County Assessor using unconstitutional valuation methods for those years. The Assessor was on a five year appraisal cycle and used the methodologies in its 2002 appraisals and used that appraisal for subsequent tax years. As the Supreme Court remedy in Bakst and Barta, "going back to 2002 constitutional values is the... remedy the Supreme Court has given this board and the court of this state for the unconstitutional void valuations." (Transcript 75:7-10). The State Board tried to order reappraisals, but the Supreme Court said it did not have that authority. The only remedy available is to roll the taxes back to 2002-3 levels. "[T]he only constitutional values that you have to use are the 2002 values." (Transcript 76:10-11). The State Board has two duties: to hear individual valuation appeals; and equalization. "Equalization applies when the government, when the county assessor is this case, has made an error that applies to more than a single taxpayer." (Transcript 76:24-25, 77:1). The State Board should look at its 2004 decision involving an individual appeal from the Trujillo's where the State Board found an error and "corrected the assessor's error for all of the properties on Tiller Drive without any individual taxpayers filing individual tax appeals." (Transcript 77:20-23). The error by the Washoe County Assessor in this matter can only be fixed through equalization. You cannot do a statistical analysis as that was not done for the Tiller Drive properties.

Additional comments by Mr. Azevedo:

The Supreme Court has said that the Nevada Constitution guarantees a uniform and equal rate of assessment and taxation.

Additional comments by Ms. Fulstone:

"[I]n terms of equalization, what you're required to do here is replace unconstitutional void values with constitutional values following the guidelines of the Supreme Court." (Transcript 86:3-5). Other properties would not be put out of equalization by lowering Incline Village /

Crystal Bay, because other properties were valued using constitutional methodologies.

Summary of Testimony by Herbert Kaplan:

In 2012, the State Board recognized that if valuations were rolled back for Incline Village to 2002-03 levels it would create an equalization problem "not only in the Washoe County but the State of Nevada." (Transcript 87:21-22). Performing the equalization function is different from challenging an assessment. Petitioners sound like they are abandoning their claim that all property in Incline Village/Crystal Bay be equalized and are focusing now only on those where unconstitutional methodologies were used for the 2003-04 tax year, and asserting that the taxable values for those parcels be reduced to 2002-03 levels for 2003-04, 2004-05, and 2005-06. This is not equalization. They are asking this Board to "extend the findings in the Bakst case to all other similarly-situated properties," even though those other properties failed to follow the process to challenge their assessments. The 17 property owners in the Bakst case did follow the statutory process to challenge their assessments for the 2003-04 tax year – first challenging their assessments at the county board.¹ In contrast, prior to filing its complaint with the district court, the Village League property owners did not first exhaust their administrative remedies by going to the Washoe County Board and the State Board. Those claims challenging the assessment and valuation were dismissed, which was upheld by the Supreme Court in 2009. The decision in Bakst was issued on December 28, 2006. It was not self-executing. Only those individuals who went through the process to challenge their assessment were given the remedy in Bakst. It was not extended to other owners.

There is a process for challenging assessments "to allow the governmental entities to budget" and "to allow them to know what revenue they're going to have to budget." (Transcript 93:5-7). Taxes must be paid under protest to challenge them for a refund. That was not done here. Rolling back 5,500 properties would cost Washoe County \$1.5 billion and it will create an equalization problem. No action is required at this point. There is nothing to suggest that the values are too high, just that the process to determine them was not regulated. The State Board must look at the tax rolls as required by statute and ratio studies may also be considered. There was a special study performed for the Incline Village area that indicated the values were too low, but they are not asking that the values be increased.

Summary of Testimony from Heather Drake:

The Supreme Court in Village League 2017 remanded the case for further proceedings pursuant to NRS 361.395. The District Court July 17 Order states the same. NRS 361.395 has nothing to do with how those values were set. The equalization process is about "reviewing the taxable values and performing an equalization process." (Transcript 101:12-13). The statute requires the State Board look at the tax rolls. The Supreme Court also stated in the decision that the ratio studies carried out by the Department of Taxation can be considered by the State Board. According to the Supreme Court, the "equalization process involves an adjustment of the value of the property assessed to conform to its real value." (Transcript 102:14-16). This is what the Department does in ratio studies. The Department looks at the value and compares it to the true tax value or real value and computes a ratio. The "ratio can determine equalization." (Transcript 102:20).

Equalization is based on two statistics. "One is the median ratio, the mid-point of the ratio." (Transcript 103:3-4). "Half of the ratios fall below it and half of the ratios fall above."

¹ As noted by Ms. Fulstone, the Barta case involved a total of 37 taxpayers. (Transcript 163:11).

(Transcript 103:4-5). The second statistic that is considered is the coefficient of dispersion. "It helps spread out those levels ratios [sic] around that median or mid-point of the ratios and that tells us whether there's uniformity of assessment." Ratio studies are performed under NRS 361.333. From the Supreme Court, the equalization process is a review of "the assessment rolls pursuant to NRS 361.395, the assessed value of a taxpayer's property is adjusted so that it bears the same relationship of assessment value to the true tax value of the properties within the taxing jurisdiction." (Transcript 104:2-7). Based on that, you review the tax rolls "regardless of how those values were based on." (Transcript 104:10-12). Then "they're directing that you can look at that relationship of the assessment value of the true tax value, which is our ratio study, and... from that there would be a determination of whether there was equalization." (Transcript 104:12-16).

Ms. Rubald, the former deputy director of the Department, testified to the State Board at its previous hearing that "reviving any valuations that were derived using that constitutional methodology... also ensure that the level of assessment for the area be measured through an additional ratio study so that these properties are at the same level of assessment as the rest of the county." (Transcript 106:3-11). You would need to make sure any change in value does not change the relationship to true tax value which would create an equalization problem.

Ratios of assessed value to taxable value must be within the range of 32 and 36 percent per NRS 361.333.

The taxable land values for Incline Village/Crystal Bay properties for which the unconstitutional methodologies were used for 2005-06 in the aggregate was \$2,397,341,684. (Transcript 108:12). If a rollback occurred to 2002-03 taxable values and applying the Tax Commission factor for Washoe County – the reduction would be down to \$1,833,507,678. (Transcript 108:17). The ratio study performed by the Department of Taxation for 2005-06 included Washoe County and the median ratio was 34.7 percent for improved land. (Transcript 110:10). So overall, the level of assessment for Washoe County in 2005-06 was at the required range of between 32 and 36 percent. (Transcript 109:23-25).

The Department of Taxation completed the Lake Tahoe Special Study on March 13, 2006. (Transcript 111:2-3). The study shows a median ratio for residential properties in Lake Tahoe was at 25.6 and 25.3 percent. (Transcript 111:18-19). At that time, the "properties were already substantially below the range looked for in the overall ratio from the ratio study." (Transcript 111:20-22). "[T]hey were at 25.3 when the requirement overall from the county level from the Department of Taxation's perspective is 32 to 36 percent." (Transcript 111:23-25).

Analysis of Numbers in the Record

Ms. Drake put together an analysis of the figures in the record as a way to look at the "ratio or the relationship between assessed value and the real value or the true tax value." (Transcript 114: 23-25). To get the ratio or relationship, she looked at the total taxable value for Incline Village/Crystal Bay properties (\$2,397,341,684) in Washoe County for 2005-06; the assessed value (which is 35% of the taxable value in Nevada); and "a relationship between that assessed value and the median ratio to say what does that indicate that the true tax value would be based on the Lake Tahoe special study." (Transcript 115:10-12). The analysis included a mathematical calculation of these figures. Ms. Fulstone objected based on an open meeting law violation because the calculations constituted new evidence. (Transcript 113:4-10, 116:6-19). The board did not admit the written analysis.

Ms. Drake explained that her analysis was to show how reducing the Incline Village/Crystal Bay taxable values would create a larger gap between the median ratio in Washoe County as the properties are already substantially below the acceptable range based on the special study.

Ms. Drake concluded her testimony by stating that the relationship between assessed values and true value for the Incline Village/Crystal Bay area are already below the median ratio for Washoe County and reducing them lower will increase that disparity.

Rebuttal Testimony from Suellen Fulstone

Ms. Drake is misinterpreting the Supreme Court's definition of equalization in Village League 2017. "You don't want to get into true value and true tax value and real value, because those aren't Nevada law." (Transcript 129:1-2). The Lake Tahoe special study "is completely discredited. It was never accepted. It's not official. It cannot be relied upon." (Transcript 129:25, 130:1). Terry Rubald's testimony from December 2012 was based on the 2010 regulations that cannot be used. The 2005-06 ratio study includes Washoe County, but may not include Incline Village/Crystal Bay. "There is no statistical analysis that can be done because there's no statistics to use and you can't create new ones." (Transcript 130:14-16). "There's no evidence that going back to 2002 values at Incline Village for those void unconstitutional values would create a new lack of equalization." (Transcript 130:21-24). In prior meetings of the State Board for this equalization proceeding, methodologies were considered and were the focus, as they should be. "Nothing in the Supreme Court decision says methodologies isn't a proper focus for equalization." (Transcript 132:21-23). Unconstitutionally valued properties are void and must be replaced with constitutional values. The county has known about this issue since 2003 or 2004. The taxpayers did not cause the problem. The State Board has already made a finding that there is an equalization problem, so it must take action.

Rebuttal Testimony from Norman Azevedo

The Bakst and Barta remedy of a roll back to 2002 levels is appropriate for a value that is determined unconstitutionally. "And that's equalization." (Transcript 144:22).

Rebuttal Testimony by Herbert Kaplan

The methodologies determined to be unconstitutional by the Supreme Court were used into the 90's by the Washoe County Assessor, so the 2002 value is also based on unconstitutional methodologies. A roll back would allow those property owners to avoid the appreciation that was occurring throughout Nevada at that time. That would not be equalization.

Rebuttal Testimony by Suellen Fulstone

"The Supreme Court decided that the 2002 values were the most recent unchallenged and therefore constitutional values." (Testimony 153:16-18).

FINDINGS OF FACT

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

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

3) The State Board must complete its equalization process as required by Order dated July 17, 2017 by the Honorable Judge Patrick Flanagan.

4) The State Board may not order reappraisals of the property in Incline Village/Crystal Bay in order to complete its equalization function pursuant to NRS 361.395. *Village League to Save Incline Assets, Inc. v. State Board of Equalization*, 133 Nev. Adv. Op. 1, 388 P.3d 218 (2017). However, that "statute does not prohibit the State Board from reviewing other information available, such as assessment ratio studies, in carrying out its equalization function." *Id.* n.9.

5) The State Board considered the tax rolls and the assessment ratio studies, in addition to the documents in the record, to determine how it should perform its equalization function.

6) Village League requested a rollback for the Incline Village/Crystal Bay residential land values from 2003-04, 2004-05, and 2005-06 to 2002-03 levels as was done for Bakst and Barta petitioners. *State Bd. of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006); *State Bd. of Equalization v. Barta*, 124 Nev. 612, 188 P.3d 1092 (2008).

7) Village League members did not follow the statutory process to challenge their assessments, which procedure was followed by the Bakst and Barta petitioners. *Bakst*, 122 Nev. at 1405-7 (finding that the "seventeen taxpayers" had "filed individual petitions for review of the assessed valuations" to the county board, and then appealed to the state board, for the 2003-04 tax year); *Barta*, 124 Nev. at 615 (finding that the appealing taxpayers had "administratively challenged" their assessments for the 2004-05 tax year).

8) During 2002 to 2006, appreciation rates were significant statewide.

9) There is a "clear indication" that assessments were low and that, if any change was to be made as a result of equalization action, it would likely involve increasing taxable values as opposed to lowering them. The substantial evidence supports the conclusion that rolling back land values for Incline Village and Crystal Bay to the requested level of 2002-2003 for the years in question would make the median ratio of values well below the statutory range of 32 to 36 percent, and would exacerbate the discrepancy between the median ratio in Washoe County relative to the Incline Village/Crystal Bay properties.

10) No evidence was presented that taxable value exceeded market value.

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

CONCLUSIONS OF LAW

1) The State Board has jurisdiction to equalize property valuations in the State of Nevada under NRS 361.395.

2) In Nevada the valuation of land is based on "[t]he full cash value of: (i) Vacant land by considering the uses to which it may lawfully be put, any legal or physical restrictions upon those uses, the character of the terrain, and the uses of other land in the vicinity. (ii)

Improved land consistently with the use to which the improvements are being put." NRS 361.227(1)(a).

3) "Full cash value" is a market value measure, defined as "the most probable price which property would bring in a competitive and open market under all conditions requisite to a fair sale." NRS 361.025.

4) The ratio studies and other substantial evidence and information in the record indicate the assessed residential land values in Incline Village and Crystal Bay are within the ratio rate and range of ratios required by law.

5) The contention that rolling taxable values back to 2002-03 levels would achieve equalization is not supported by substantial evidence. The 2002-03 values were obsolete in 2003 as that value was based on appraisals that were done five years earlier and only factored in the interim years. Factoring tends to underestimate value increases compared with appraisals.

6) Rolling taxable values back to 2002-03 levels would allow the Incline Village/Crystal Bay properties in Washoe County to have factoring applied to an appraisal from 1997 when factoring was only intended to be used for a five year period before the next appraisal.

7) Applying a rollback as requested by petitioners would cause a large equalization problem within Washoe County, between the Lake Tahoe Basin and the balance of the County and the state as a whole as the relationship of assessment value to the true tax value would not be the same.

8) The tax rolls, ratio studies and other documents in the record do not indicate an equalization problem in Incline Village/Crystal Bay.

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

ORDER

Based on a preponderance of the evidence in the administrative record, the testimony during the proceeding, the above Findings of Fact and Conclusions of Law, the State Board held, by a vote of 4-1 (Member Harper opposed), that there is not an equalization problem in the Incline Village/Crystal Bay area of Washoe County for the tax years 2003-04, 2004-05, 2005-06 and further that providing the relief requested by Village League would create an equalization problem for Washoe County and statewide. The State Board ordered that the property valuations for Incline Village/Crystal Bay for the tax years 2003-04, 2004-05, 2005-06 are equalized based on the tax rolls, the ratio studies, and the evidence before the State Board.

BY THE STATE BOARD OF EQUALIZATION THIS 30th DAY OF October, 2017.

Deonne Contine
Deonne Contine, Secretary

CERTIFICATE OF SERVICE

Village League to Save Incline Assets, Inc., Et Al, Remand

I hereby certify on the 20th day of October, 2017, I served the foregoing Findings of Fact, Conclusions of Law, and Decision by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

CERTIFIED MAIL – 7013 1090 0000 7280 7975

Suellen Fulstone, Esq.
C/O Snell & Wilmer L.L.P.
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Norman Azevedo
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Herb Kaplan, Washoe Co Deputy District Attorney
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Dennis L. Belcourt
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Electronic Copy: Michelle D. Briggs, Senior Deputy Attorney General


Christina Griffith, Program Officer
Department of Taxation
State Board of Equalization

CV03-06922 DC-09500087254-116
CONSOLIDATED: VILLAGE LEAGUE 2 Pages
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Ex 2

CORRECTED CERTIFICATE OF SERVICE

Village League to Save Incline Assets, Inc., Et Al, Remand

The Findings of Fact, Conclusions of Law, and Decision of the above mentioned case that was noticed as being served to the following on the 30th of October was placed in the United States Mail, postage prepaid, and properly addressed to the following on the 30th of November.

CERTIFIED MAIL – 7013 1090 0000 7280 7975

Suellen Fulstone, Esq.
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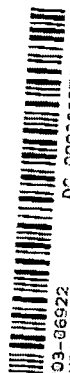
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Dennis L. Belcourt
Deputy Attorney General
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555 E. Washington Street, Suite 3900
Las Vegas, NV 89101

Electronic Copy: Michelle D. Briggs, Senior Deputy Attorney General



Jeffrey P. Mitchell, Interim Deputy Executive Director
Department of Taxation



CV93-96922 DC-0900087254-117
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Ex 3

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Joey Orduna Hastings
Clerk of the Court
Transaction # 3166671

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

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

Petitioners,

vs.

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

Respondents

Case No.: CV-03-06922

Dept. No. 7

WRIT OF MANDAMUS

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

AND TO WASHOE COUNTY AND THE WASHOE COUNTY TREASURER:

YOU ARE COMMANDED BY THIS COURT AS FOLLOWS:

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

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

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

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

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

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

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

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

By Patrick Flanagan
District Judge

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CONSOLIDATED VILLAGE LEAGUE 13 Pages
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EX 4



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

BRIAN SANDOVAL
Governor

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

CHRISTOPHER G.
NIELSEN
Secretary

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

EQUALIZATION ORDER

Appearances

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

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

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

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

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

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

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

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

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

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

Summary

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

Notice, Agendas, and Attendance

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

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

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

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

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

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

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

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

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

Clark County Grievances and Responses

City Hall, LLC Grievance

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

Response to City Hall, LLC grievance

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

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

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

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

Louise Modarelli Grievance

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

Response to Modarelli grievance.

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

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

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

Douglas County Grievances and Responses

William Brooks Grievance

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

Response to Brooks Grievance

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

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

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

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

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

Esmeralda County Grievances and Responses

Queen/Rupp Grievance

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

Response to Queen/Rupp Grievance

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

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

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

Washoe County Grievances and Responses

Village League Grievance

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

Response to Village League Grievance

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

CONCLUSIONS OF LAW

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

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

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

ORDER

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

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

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

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

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



Christopher G. Nielsen, Secretary

CGF/ter

CERTIFICATE OF SERVICE
Equalization Order 12-001

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

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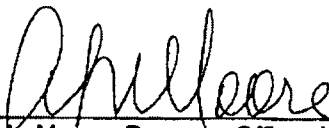
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Anita L. Moore, Program Officer I
State Board of Equalization

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EX 5

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

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

11 Petitioners,

12 vs.

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

15 Respondents.
16

Case No.: CV03-06922

Dept. No.: 7

Consolidated with
Case No. CV13-00522

17 ORDER

18 This Court met in open court on May 1, 2017, for a status conference, and then
19 on May 30, 2017, for oral argument on the interpretation of the Supreme Court's
20 January 26, 2017 decision in *Village League to Save Incline Assets, Inc., et al. v. State*
21 *of Nevada, Board of Equalization, et al.*, 133 Nev. Adv. Op. 1, 388 P.3d 218 (2017)
22 ("Remand Order") as well as the Village League's *Motion for Entry of Judgment*
23 *Under Supreme Court Remand Order*. Suellen Fulstone and William Peterson, of
24 Snell & Wilmer, appeared on behalf of the Village League and individual Petitioners
25 ("Village League"); Norm Azevedo, appeared on behalf of the Bakst Intervenors;
26 Michelle Briggs, Deputy Attorney General, and Dennis Belcourt, Deputy Attorney
27 General, appeared on behalf of the State Board of Equalization; and Herbert B.
28 Kaplan, Deputy District Attorney, appeared on behalf of the Washoe County

1 Respondents. The Court having considered the filings of all parties in this matter
2 regarding the intent of the Remand Order's direction to the district court, and hearing
3 arguments from all counsel on that preliminary issue, and good cause appearing,
4 hereby **ORDERS** as follows:

- 5 1. The Petition for Judicial Review filed by the Village League is **GRANTED**.
- 6 2. The Equalization Order issued by the State Board of Equalization is
7 **VACATED** with respect to the direction for new appraisals and the application
8 of the 2010 regulations.
- 9 3. This Court's June 2, 2017, *Order* is hereby **VACATED**.
- 10 4. Under the clear language of NRS 361.395, the appropriate forum for this
11 matter is the State Board of Equalization. Therefore, as directed by the
12 Supreme Court, this matter is hereby **REMANDED** to the State Board of
13 Equalization to conduct further proceedings pursuant to its statutory
14 authority under NRS 361.395.

15 **IT IS SO ORDERED.**

16 DATED this 17 day of July, 2017.

17 
18 PATRICK FLANAGAN
19 District Judge
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3 CERTIFICATE OF SERVICE

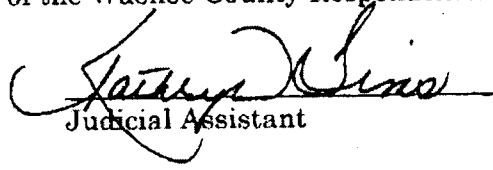
4 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
5 Judicial District Court of the State of Nevada, County of Washoe; that on this
6 17th day of July, 2017, I electronically filed the following with the Clerk of the
7 Court by using the ECF system which will send a notice of electronic filing to the
8 following:

9 Suellen Fulstone Esq., and William Peterson Esq., on behalf of Village
10 League and individual Petitioners ("Village League");

11 Norm Azevedo, Esq., on behalf of the Bakst Intervenors;

12 Michelle Briggs Esq., and Dennis Belcourt Esq., on behalf of the State Board
13 of Equalization; and

14 Herbert B. Kaplan Esq., on behalf of the Washoe County Respondents.

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Judicial Assistant

ATTACHMENT 2

ATTACHMENT 2

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

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

Plaintiffs/Petitioners,

Case No.: CV03-06922

vs.

Dept. No: 1

STATE OF NEVADA on relation of its
STATE BOARD OF EQUALIZATION, *et*
al,

Defendants/Respondents.

FINDINGS OF FACT, CONCLUSION OF LAW, DECISION AND ORDER

This matter came before the Court on Petitioners' *Petition for Judicial Review* filed on December 27, 2017. The matter has been fully briefed and oral argument held on May 10 and June 5, 2019, with all parties having a full opportunity to present all arguments in support of their respective positions. Based on the pleadings on file, the administrative record and oral argument, this Court makes the following Finding of Facts, Conclusions of Law and Order:

FINDINGS OF FACT

1. This case involves the judicial review of the final statewide equalization decision ("2017 Equalization Order") of the State Board of Equalization ("State Board") issued on November 30, 2017,¹ involving residential property valuations in the Incline Village/Crystal Bay area of Washoe County for

¹ Dated October 30, 2017; served November 30, 2017. See Compl. & Pet. Exs. 1 & 2.

1 the 2003-2004, 2004-2005, and 2005-2006 tax years. *See* Equal. Ord (Cited Excerpts of Record
2 (“CER”)² IV at 960-966).³

3 **A. Summation**

4 2. In valuing residential properties in Incline Village/Crystal Bay for the 2003-2004, 2004-
5 2005, 2005-2006 tax years, the Washoe County Assessor (“Assessor”) created and utilized
6 methodologies that were not used anywhere else in Washoe County or in the State of Nevada. *State ex*
7 *rel. State Bd. of Equalization, et al v. Bakst et al*, 122 Nev. 1403, 1416, 148 P.3d 717, 726 (2006)
8 (“*Bakst*”); *State ex rel. State Board of Equalization, et al v. Barta, et al*, 124 Nev. 616, 620-21, 628, 188
9 P.3d 1092, 1099, 1103 (2008) (“*Barta*”).

10 3. In 2003, Taxpayers began filing individual appeals contesting the Assessor’s valuations
11 for the years in question as being unconstitutional, arbitrary and incorrect, among other grounds, and
12 seeking the Washoe County Board of Equalization (“County Board”) and the State Board of Equalization
13 (“State Board”) to engage in their equalization functions. *See Bakst*, 122 Nev. at 1406, 148 P.3d at 719-
14 20; *Barta*, 124 Nev. at 618, 627-28, 188 P.3d at 1096, 1102; *Village League to Save Incline Assets, et al*
15 *v. State, Board of Equalization, et al*, 133 Nev. Adv. Op. 1 at 2, 388 P.3d 218, 219-220 (2017)
16 (“*Ingemanson*”).

17 4. The County Board and State Board were on notice in 2003 that there could be systemic
18 errors in the Assessor’s valuation and assessment of residential properties in Incline Village/Crystal Bay
19 when the Assessor conducted his reappraisal of those properties in 2002 for the 2003-2004 tax year.

20 5. The County and State Boards denied the individual Taxpayer appeals⁴ and did not engage
21 in their equalization functions within the 2003-2004, 2004-2005, 2005-2006 tax years. *See Bakst*, 122
22 Nev. at 1406, 148 P.3d at 719-20; *Barta*, 124 Nev. at 618, 627-28, 188 P.3d at 1096, 1102-03;
23 *Ingemanson*, 133 Nev. Adv. Op. 1 at 2, 388 P.3d at 219-220.

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27 ² The parties to this action jointly prepared and submitted a compilation of excerpts from the administrative record cited in
the briefs of the parties.

28 ³ The residential properties referenced herein include all impacted residential properties and all vacant residential land in
Incline Village/Crystal Bay.

⁴ Some property owners did receive limited relief for factual errors, *i.e.*, incorrect square footage, wrong number of bathrooms,
etc.

1 6. After nine years of litigation, the State Board was judicially compelled to engage in its
2 statewide equalization function pursuant to NRS 361.395 for tax years 2003-2004 through 2010-2011
3 tax years. *See Village League v. State, Board of Equalization*, Nevada Supreme Court Docket No. 56030
4 (Order Affirming in Part, Reversing in Part and Remanding, February 24, 2012) (“2012 Village
5 League”); Order and Judgment for Issuance of Writ of Mandamus, Writ of Mandamus (August 21, 2012)
6 (CER III at 551-555).

7 7. Five years later, after the issuance of *Ingemanson* in 2017, the State Board was ordered to
8 complete those equalization proceedings for the 2003-2004, 2004-2005, 2005-2006 tax years.⁵
9 *Ingemanson*, 133 Nev. Adv. Op. 1 at 18, 388 P.3d at 226; Order, (July 17, 2017) (remanding to State
10 Board to “conduct further proceedings pursuant to its statutory authority under NRS 361.395”).

11 8. In the meantime, numerous individual taxpayers prevailed on their individual appeals for
12 the one or more of the years in question as the result of *Bakst* and *Barta*.

13 9. The 2006 *Bakst* Court held that “none of the four methodologies used by the Assessor in
14 2002 to assess property values in Incline Village and Crystal Bay were constitutional.” 122 Nev. at 1416,
15 148 P.3d at 726. The Court held that “any Taxpayers who paid taxes under the 2003-2004 assessment
16 are entitled to a refund because they have met their burden and have shown that their 2003-2004 property
17 tax assessments are unconstitutional as based on nonuniform valuation methods. The district court
18 appropriately declared those valuations null and void.” *Id.* at 1416, 148 P.3d at 726. The Court held that
19 “the district court properly ordered that their [the Taxpayers’] 2003-2004 valuations be set to the 2002-
20 2003 level.” *Id.* at 1416, 148 P.3d at 726.

21 10. In 2008, the *Barta* Court considered 2004-2005 taxable values in Incline Village/Crystal
22 Bay, which the Assessor derived by adjusting the 2003-2004 values by a factor. 124 Nev. at 628, 188
23 P.3d at 1103. The Court held that “nothing significant distinguishes these cases, factually or legally,
24 from *Bakst*.” *Id.* The Court held that “2004-2005 values were affected by the same unconstitutional
25 infirmities as the 2003-2004 values and, like those values, are unjust and inequitable.” *Id.* at 624, 188
26 P.3d at 1100. The Court rejected the argument of the State Board and County that the Court “should not
27 roll back the Taxpayers’ properties’ taxable values to the 2002-2003 values.” *Id.* at 627, 188 P.3d at
28

⁵ “Only three years are at issue in this case because the State Board dealt with the remaining years outside of this case.” *Ingemanson*, 133 Nev. Adv. Op. 1 at 7-8, 388 P.3d at 222 n4.

1 1102. The Court held that the Taxpayers were entitled to the same relief granted in *Bakst*, and affirmed
2 the district court order “declaring the Taxpayers’ 2004-2005 assessments void, and setting their assessed
3 values for 2004-2005 to the 2002-2003 levels.” *Id.* at 628, 188 P.3d at 1103. The Court concluded that
4 the “Taxpayers are entitled to refunds of all excess taxes paid and ... interest.” *Id.* at 628, 188 P.3d at
5 1103.

6 11. By the time the State Board commenced its statewide equalization proceeding for the
7 2003-2004, 2004-2005, 2005-2006 tax years in 2012, the Bakst Petitioners and more than a thousand
8 other Incline Village/Crystal Bay residential property owners represented by Village League had their
9 values adjudicated by Nevada courts for the 2003-2004, 2004-2005 and/or 2005-2006 tax years in
10 accordance with *Bakst* and *Barta*.⁶

11 12. In January of 2017, the *Ingemanson* Court reiterated the holding of *Bakst* and *Barta* “that
12 assessment methods used in 2002 to value properties at Incline Village and Crystal Bay for real estate
13 tax purposes were unconstitutional . . . [and] as a remedy, that because property is physically reappraised
14 once every five years and the assessment methods used in 2002 were unconstitutional, the taxable values
15 for the unconstitutionally appraised properties were void for the tax years beginning in 2003-2004 and
16 ending in 2007-2008.” 133 Nev. Adv. Op. 1 at 4, 388 P.3d at 220.

17 13. In its 2017 Equalization Order, the State Board did not make any finding of fact or
18 conclusion of law recognizing that the taxable values of residential properties in Incline Village/Crystal
19 Bay were unconstitutional as determined by *Bakst* and *Barta* and reiterated in *Ingemanson*. *See generally*
20 Equal. Ord. (CER IV at 964-66).

21 14. The State Board did not to equalize the taxable values of the residential properties in
22 Incline Village/Crystal Bay for the 2003-2004, 2004-2005, 2005-2006 tax years to constitutional 2002-
23 2003 values, as factored. Equal. Ord. at 6-7 (CER IV at 965-967).

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27 ⁶ 2003-2004: 107 individual appeals (CER III at 664 (TOP 7:17 *Bakst* d.ct oral arg), CER IV 721-28 (State Board decision
28 for 2003-2004 tax year appeals)); 2004-2005: 400+ appeals. *See* Admin Rec. 2nd Supp. Cert. 2.6.13-Master case files; 2005-
2006: 1000+ appeals. *See* Admin Rec. 2nd Supp. Cert. 2.6.13-Master case files, Tom Hall binder 1.

1 15. Citing to *Bakst* and *Barta*, the State Board found that “Village League members did not
2 follow the statutory process to challenge their assessments, which procedure was followed by the Bakst
3 and Barta petitioners.” Equal. Ord. at 6 (CER IV at 965).

4 16. The State Board determined “providing the relief requested by Village League would
5 create an equalization problem for Washoe County and statewide.” Equal. Ord. at 7 (CER IV at 966).

6 17. The State Board’s finding and decision in 2017 is a reversal of its prior action taken in the
7 2012 hearings in this equalization case, wherein it voted to extend relief to all residential taxpayers with
8 unconstitutional values in Incline Village/Crystal Bay for the tax years in question. Amend. Not. of
9 Filing of Cert. Copies of Trans. (“Bd. Trans.”) (Nov. 5, 2012) at 105:1-23, 113:13-24.

10 18. In previous equalization decisions, the State Board has equalized properties to correct a
11 systemic error brought to its attention through individual taxpayer appeals, granting relief to all impacted
12 taxpayers, including those who did not individually challenge their property valuations. *See Washoe*
13 *County, et al v. Ross Pendergraft Trust, et al*, Notice of Decision (Oct. 14, 2003) (Equalized values of
14 101 parcels to correct error after appeals by owners of 24 parcels) (CER IV at 856-859); *In re:*
15 *Equalization of Properties Located on Tiller Drive*, Equalization Order (July 12, 2004) (Equalized values
16 of 35 parcels to correct error after appeals by owners of 3 parcels) (CER IV at 842-848); *In re:*
17 *Consideration of Assessor’s Appeal of Equalization Decision*, Notice of Equalization Decision (Oct. 9,
18 2009)(Equalized values of all “8700” residential properties in Incline Village/Crystal Bay to correct error
19 (unconstitutional values for 2006-2007 tax year) after appeals by owners of 300 parcels) (CER II at 438-
20 447).

21 19. Upon questioning by this Court, the State Board represented that it could have granted the
22 same equalization as it did in these prior decisions to all impacted property owners, but it exercised its
23 “discretion” and decided not to do so in this case. TOP (May 10, 2019) at 127:15-24, 128:1-24, 129:1-
24 24, 130:1-2.

25 20. The State Board stated it “considered the tax rolls and the assessment ratio studies, in
26 addition to the documents in the record, to determine how it should perform its equalization function.”
27 Equal. Ord. at 6 (CER IV at 965).

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1 21. There is no dispute that tax rolls for the 2003-2004, 2004-2005, and 2006-2007 are not in
2 the record and that the State Board did not review them. Bd. Brf. at 14; Cty. Brf. at 37.

3 22. The State Board and County represented to this Court that the taxable values of the
4 individuals that had values adjudicated under the *Bakst* template for relief (void unconstitutional values
5 replaced with constitutional 2002-2003 values, as factored) were never subsequently corrected on the
6 County tax rolls for the years in question. Bd. Brf. at 14; Cty. Brf. at 37.

7 23. The remedy dictated in *Bakst* and *Barta* necessarily required the County to correct the tax
8 rolls to replace unconstitutional taxable values with constitutional values for any residential property
9 owner in Incline Village/Crystal Bay whose values had been adjudicated in *Bakst* and/or *Barta*, or any
10 other final court or agency decision applying the *Bakst* template for relief for one or more of the three
11 years in question.

12 24. The State Board commonly orders the County to correct tax rolls to reflect adjustments in
13 value after discharging its equalization function. See *Ross Pendergraft Trust, et al*, Notice of Decision
14 (CER IV at 856-859); *In re: Equalization of Properties Located on Tiller Drive*, (CER IV at 842-848);
15 *In re: Consideration of Assessor's Appeal of Equalization Decision*, (CER II at 438-447).

16 25. “The State Board ordered that the property tax values for Incline Village/Crystal Bay for
17 the tax years 2003-04, 2004-05, 2005-06 are equalized based on the tax rolls, the ratio studies, and the
18 evidence before the State Board.” Equal. Ord. at 7 (CER IV at 966).

19 26. The tax rolls were never adjusted to reflect constitutional taxable values, thus, the State
20 Board’s 2017 Equalization Order affirmed, and in instances of individual property owners who received
21 judicial relief in one or more of the years in question, reinstated, the Assessor’s unconstitutional
22 residential property tax values for the 2003-2004, 2004-2005, 2005-2006 tax years for all residential
23 properties in Incline Village/Crystal Bay.

24 27. The Village League and Bakst Plaintiffs/Petitioners⁷ timely sought judicial review of the
25 2017 Equalization Order by filing a Complaint under NRS 361.410 and a Petition for Judicial Review
26 under NRS 233B.130 (“Petition”) on December 29, 2017.

27
28 ⁷ Collectively referred to as “Petitioners” and separately as “Village League Petitioners” and “Bakst Petitioners.” The Village
League Petitioners are the Village League to Save Incline Assets, Inc. (“Village League”), Dean R. Ingemanson, V. Park LLC,
Todd A. Lowe, J. Carl Cooper, Andrew Whyman, Dan Schwartz, Charles A. Dowd, Donna Goff and Robert Goff. The Bakst

1 **B. The Village League**

2 28. The Village League is a nonprofit corporation organized and existing under the laws of
3 the State of Nevada and is the recognized representative of the residential property owners and taxpayers
4 of Incline Village/Crystal Bay.

5 29. Individual Village League Petitioners are individuals or entities or successors in interest
6 to individuals or entities who owned, directly or beneficially, and paid property taxes on residential real
7 property at Incline Village, Washoe County, Nevada, during the 2003-2004, 2004-2005, and 2005-2006
8 tax years.

9 30. The Village League, on behalf of all similarly situated residents of Incline Village/Crystal
10 Bay, brought the original complaint for relief in this case requesting that the State Board engage in its
11 statewide equalization function pursuant to NRS 361.395. *See Comp. for Decl. and Related Relief,*
12 *CV03-06922 (Nov. 13, 2003).*

13 **C. The Bakst Petitioners**

14 31. Individual Bakst Petitioners are individuals who owned, either directly or beneficially,
15 and paid property taxes on residential real property at Incline Village, Washoe County, Nevada, during
16 the 2003-2004, 2004-2005 and 2005-2006 tax years and were parties in *Bakst* and/or *Barta*.

17 32. The Bakst Petitioners unconstitutional values for the 2003-2004, 2004-2005 and/or 2005-
18 2006 tax years were adjudicated by *Bakst* and *Barta* and they received refunds for the years where they
19 filed an individual appeal.

20 33. However, not every Bakst Petitioner filed an individual appeal in each of the three years
21 in questions.⁸

22 34. The State Board's initial equalization decision in 2012 to replace unconstitutional 2003-
23 2004, 2004-2005, 2005-2006 values with constitutional 2002-2003 values, as factored, would have
24 encompassed and provided relief to the Bakst Petitioners to the extent that they had not been afforded
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26
27 Petitioners are Ellen Bakst, Jane Barnhardt, Carol Buck, Dan Schwartz, Larry Watkins, Don Wilson, Patricia Wilson and
28 Agnieszka Winkler.

⁸ With the exception of Carol Buck, the Bakst Petitioners were all parties in *Bakst*; all the Bakst Petitioners, with the exception
of Dan Schwartz, were parties in *Barta*.

1 full relief for all three years in question under their individual appeals. *See* Bd. Trans. (Nov. 5, 2012) at
2 105-1-23, 113:13-24.

3 35. The State Board then ordered the reappraisal of all residential properties “to which an
4 unconstitutional methodology was applied to derive taxable value during the 2003-2004, 2004-2005,
5 2005-2006 tax years.” *See* Ord. at 9 (February 8, 2013) (“2012 Equalization Order”) (CER IV at 951).

6 36. The scope of the 2012 Equalization Order included the Bakst Petitioners’ properties
7 whose values were adjudicated by *Bakst* and *Barta* as unconstitutional in one or more of the three years
8 in question.

9 37. When the Village League petitioned for judicial review of the State Board’s 2012
10 Equalization Order, the Bakst Petitioners proceeded on an independent basis, intervening to protect their
11 final judgments received in *Bakst* and *Barta*. *Ingemanson*, 133 Nev. Adv. Op. 1 at 6-7, 388 P.3d at 221.

12 38. The Bakst Petitioners argued that preclusive effect must be given to *Bakst* and *Barta* in
13 the statewide equalization of the taxable values of all similarly situated property owners in Incline
14 Village/Crystal Bay for the three years in question. *Ingemanson*, 133 Nev. Adv. Op. 1 at 13-14, 388 P.3d
15 at 224 n.8 (the Court declined to reach the preclusion arguments raised).

16 39. The State Board in 2017 refused to consider the preclusive effect of *Bakst* and *Barta* and
17 denied relief to all taxpayers who had not proceeded with an individual appeal, including certain
18 individual Bakst Petitioners in one or more of the tax years at issue. Equal. Ord. at 6 (CER IV at 965);
19 Bd. Trans. (Aug. 29, 2017) at 157:12-25; 158:10-12.

20 40. The State Board affirmed that the unconstitutional values had not been corrected on the
21 tax rolls.

22 41. The Bakst Petitioners, and similarly situated property owners in Incline Village/Crystal
23 Bay, were aggrieved by the 2017 Equalization Order because (1) the State Board, in discharging its
24 equalization function, refused to correct a systemic constitutional infirmity, *i.e.*, granting relief to all
25 property owners, regardless if an individual appeal had previously been taken, and (2) the State Board
26 reinstated unconstitutional taxable values for the years in question of any property owner whose
27 unconstitutional taxable values had been previously adjudicated.

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1 **D. Valuation and Assessment of Residential Property in Incline**
2 **Village/Crystal Bay for the Years in Question**

3 42. In Nevada, improvements and land are valued separately; this matter involves the
4 valuation of land in Incline Village/Crystal Bay for the three years in question. *See* NRS 361.227.

5 43. The residential land in Incline Village/Crystal Bay is in the class of all residential property
6 in the State of the Nevada.

7 1. *2003-2004 Tax Year*

8 44. The 2003-2004 tax year was the first year of a five-year appraisal cycle for Incline
9 Village/Crystal Bay residential properties and in 2002, the “Assessor performed a mass reappraisal of the
10 properties in that area to determine their taxable values for the 2003-2004 tax year.” *Bakst*, 122 Nev. at
11 1405, 148 P.3d at 719.

12 45. At that time, the Nevada Tax Commission (“NTC”) had failed to fully comply with its
13 statutory obligations to adopt regulations proscribing uniform valuation methodologies. *Bakst*, 122 Nev.
14 at 1414, 148 P.3d at 724.

15 46. In the void left by the NTC, county assessors knew they had few state-sanctioned tools to
16 appraise residential properties when comparative sales data was insufficient to establish an accurate
17 taxable value. *Bakst*, 122 Nev. at 1415-1416, 148 P.3d at 725-26.

18 47. The Assessor could have petitioned the Department to adopt acceptable appraisal
19 methodologies through the regulatory process to determine taxable values of properties; he chose not to
20 do so. *See* NRS 360.215(2).

21 48. “Concerned that it would be difficult to determine comparable sales for land in the Incline
22 Village/Crystal Bay area for the 2003-2004 tax year, the Assessor decided to use four methodologies to
23 adjust comparable sales for the reappraisal period.” *Bakst*, 122 Nev. at 1406, 148 P.3d at 719.

24 49. The Assessor “created a set of methodologies that were unique to the Incline Village and
25 Crystal Bay areas.” *Bakst*, 122 Nev. at 1416, 148 P.3d at 726.

26 50. “These disputed methodologies adjusted the comparable sales for (1) a parcel’s view of
27 Lake Tahoe, using a point system to classify each parcel and increasing the values accordingly; (2) a
28 five-step ‘rock’ classification, which raised the value of the land based on its relationship to the lakefront;
(3) a ‘paired sales [time adjustment] analysis’ which estimated the value of a subject property based on

1 previous sales of comparable properties adjusted, however, as though those properties had sold currently;
2 and (4) for properties with residences slated to be demolished for rebuilding, the Assessor adopted a
3 'teardown' method to determine comparable sales in which the entire value of an improved property was
4 assigned to the land." *Bakst*, 122 Nev. at 1406, 148 P.3d at 719.

5 51. The appraisal methodologies the Assessor created for residential properties in Incline
6 Village/Crystal Bay were not used in the rest of the County, or the rest of the State of Nevada. *Bakst*,
7 122 Nev. at 1412, 148 P.3d at 723-26.

8 52. The individual Village League and Bakst Petitioners, along with other similarly situated
9 residents of Incline Village/Crystal Bay, received notices of value from the Assessor that in many
10 instances increased the taxable value of their homes for the 2003-2004 tax year. *Bakst*, 122 Nev. at 1405,
11 148 P.3d at 719 ("After receiving dramatically increased tax bills [for the 2003-2004 tax year], the
12 Taxpayers questioned the methods utilized by the Assessor to value their real property.").

13 2. *2004-2005, 2005-2006 Tax Years*

14 53. The 2004-2005 and 2005-2006 tax years, years two and three of the five-year appraisal
15 cycle for residential properties in Incline Village/Crystal Bay, were both factor years.

16 54. In a factor year, the "Assessor was not compelled to physically reappraise each property's
17 value. If the Assessor did not reappraise a property, he was required by statute to determine the property's
18 current assessed value by multiplying the prior year's assessed value by a factor . . . developed by the
19 Assessor and approved by the Tax Commission." *Barta*, 124 Nev. at 618, 188 P.3d at 1096.

20 55. The factor developed by the Assessor for 2004-2005 was 1.0 and the factor for 2005-2006
21 was 1.08, and the Assessor established the taxable values of residential properties in Incline
22 Village/Crystal Bay by using the 2003-2004 base value as adjusted by the factors for each year. *See* Bd.
23 Trans. (Nov. 5, 2012) at 101:14-25; Bd. Trans. (Dec. 3, 2012) at 6 (testimony of then-Assessor Josh
24 Wilson in both hearings); (CER I at 55, 63).

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1 **E. Procedural History**

2 56. Beginning in 2003, many property owners pursued their individual challenges through the
3 administrative and/or court system for the tax years in question. *See Bakst*, 122 Nev. at 1406, 148 P.3d
4 at 719-20; *Barta*, 124 Nev. at 618, 627-28, 188 P.3d at 1096, 1102; *Village League to Save Incline Assets*
5 *v. State, Board of Equalization (Ingemanson)*, 133 Nev. Adv. Op. 1 at 2-3, 388 P.3d 218, 219-220 (2017).

6 57. In 2003, the Village League brought the original complaint in this matter seeking, among
7 other claims, to compel the State Board to perform its statewide equalization mandate under NRS 361.395
8 for the 2003-2004 tax year to address the Assessor's systemic errors. Comp. for Decl. and Related Relief,
9 (Nov. 13, 2003).

10 58. The Village League's complaint was twice dismissed, twice appealed to the Nevada
11 Supreme Court, and twice reversed as to the equalization claim and remanded to this Court. *Village*
12 *League v. State, Dep't of Taxation, Docket no. 43441* (Order Affirming in Part, Reversing in Part and
13 Remanding, March 19, 2009) ("2009 Village League"); 2012 Village League.

14 59. In 2012, when Nevada Supreme Court remanded the equalization action to this Court for
15 the second time, the Court had found that the State Board had failed to "to conduct public hearings with
16 regard to statewide equalization" and "no hearings have been held to equalize all property values in the
17 state." 2012 Village League at 5.

18 60. This Court issued a writ of mandamus directing the State Board to engage in its
19 equalization function for each of the tax years, 2003-2004 through 2010-2011, inclusive, and to hold
20 hearings on the equalization grievances brought forward by taxpayers. Order and Judgment for Issuance
21 of Writ of Mandamus, Writ of Mandamus (August 21, 2012) (CER 551-555)

22 61. During the nine years the equalization action bounced back and forth between the district
23 court and the Supreme Court, many Incline Village/Crystal Bay residential property owners continued to
24 challenge their property valuations, filing appeals for the 2004-2005, 2005-2006 and/or later tax years.

25 62. The Bakst Petitioners, and other impacted property owners, including some of the
26 individual Village League Petitioners, were among those who contested their taxable values as
27 determined by the Assessor for the tax years 2003-2004, 2004-2005, and/or 2005-2006 tax years.

28 ///

1 63. Taxpayers were awarded two judgments, affirmed by the Court in *Bakst* and *Barta*,
2 holding that the respective taxable values of their residential properties for those tax years had been
3 determined in violation of Art. 10 § 1 of the Nevada Constitution.

4 1. *First Nevada Supreme Court Decision – Bakst*

5 64. The Nevada Supreme Court, on December 28, 2006, rendered its decision in *Bakst* holding
6 that the Assessor had violated the Nevada Constitution when he used non-uniform methods to value
7 residential properties in Incline Village/Crystal Bay for the 2003-2004 tax year. 122 Nev. at 1409, 148
8 P.3d at 719-720.

9 65. The *Bakst* Court held that Article 10 Section 1 of the Nevada Constitution guarantees a
10 “uniform and equal rate of assessment and taxation” and under that constitutional mandate, “methods
11 used for assessing taxes throughout the state must be ‘uniform.’” 122 Nev. at 1413, 148 P.3d at 724.

12 66. The Court held that the NTC had been derelict in its duties when it failed to adopt
13 regulations that allowed the Assessor to perform his statutory and constitutional function. *Bakst*, 122
14 Nev. at 1416-1417, 148 P.3d at 725-26.

15 67. The Court found that the appraisal methodologies the Assessor created for residential
16 properties in Incline Village/Crystal Bay were not used in the rest of the County, or the rest of the State
17 of Nevada, and concluded that “none of the four methodologies used by the Assessor in 2002 to assess
18 property values in Incline Village and Crystal Bay were constitutional”. *Bakst*, 122 Nev. at 1416, 148
19 P.3d at 726.

20 68. The Court, affirming the district court below, held that the unconstitutional 2003-2004
21 valuations were “null and void.” *Bakst*, 122 Nev. at 1416, 148 P.3d at 726.

22 69. The Court ordered that the 2003-2004 valuations be replaced with constitutional 2002-
23 2003 values.

24 70. The Court also affirmed the order of the district court that the taxpayers were entitled to
25 refunds with interest on the excess funds collected. *Bakst*. 122 Nev. at 1417, 148 P.3d at 726.

26 2. *Second Nevada Supreme Court Decision – Barta*

27 71. The County and the State Board upheld the Assessor’s unconstitutional values in the next
28 succeeding tax year, 2004-2005, claiming that because the 2004-2005 taxable values of the residential

1 properties in Incline Village/Crystal Bay had been determined utilizing a statutorily prescribed method
2 of valuation, “factoring,” that it was a constitutional methodology. *Barta*, 124 Nev. at 616, 188 P.3d at
3 1095.

4 72. The Court held that nothing significant distinguished the cases before it, factually or
5 legally, from *Bakst*. *Barta*, 124 Nev. at 616, 188 P.3d at 1095.

6 73. The 2004-2005 values suffered from the same infirmity because they were based upon an
7 adjustment of the prior tax year’s unconstitutional valuation. *Barta*, 124 Nev. at 616, 188 P.3d at 1095.

8 74. In *Barta*, the Nevada Supreme Court again rejected all of the arguments of the County and
9 State and affirmed the district court’s order that the petitioners were entitled to a refund for the 2004-
10 2005 tax year. 124 Nev. at 628, 188 P.3d at 1103.

11 75. The Court in *Barta* held that “Nevada’s Constitution guarantees ‘a uniform and equal rate
12 of assessment and taxation.’ That guarantee of equality should be the boards of equalization’s
13 predominant concern[.]” *Barta*, 124 Nev. at 627, 188 P.3d at 1102.

14 76. *Barta* recognized that the State Board “clearly has a duty to equalize property valuations
15 throughout the state[.]” a duty separate from its duty to “hear appeals of decisions made by the county
16 boards of equalization.” *Barta*, 124 Nev. at 627, 188 P.3d at 1102.

17 77. The Taxpayers argued “that if the State Board had performed its duty to equalize property
18 values statewide, then it would have recognized the unequal property taxation between them and the
19 taxpayers in the rest of the state.” *Barta*, 124 Nev. at 628, 188 P.3d at 1102-3.

20 78. The Court found that “[t]he record reflects that the State Board failed to explain how it
21 equalized property values for the 2004-2005 tax year, if indeed it did so[.]” *Barta*, 124 Nev. at 628, 188
22 P.3d at 1103.

23 **F. Prior State Board Equalization Decisions**

24 79. It is common practice for the County and/or State Boards to equalize property valuations
25 to correct a widespread error in the Assessor’s valuation and assessment of real property brought to their
26 attention through an individual property owner appeal.

27 80. In such instances, the County and/or State Boards corrected errors for all impacted
28 residential property owners, not just the individual property owner who brought the challenge:

1 1. *Washoe County, et al v. Ross Pendergraft Trust, et al, Notice of*
2 *Decision (Oct. 14, 2003) (CER IV at 856-859)*

3 81. This State Board decision involved one hundred and one (101) residential lakefront
4 properties in Incline Village: twenty-four (24) individual property owners had appealed their property
5 tax valuation to the County Board; the other seventy-seven (77) property owners did not challenge their
6 values. Dec. at 1 (CER IV at 856).

7 82. The County Board determined that the Incline Village lakefront properties did not
8 appreciate during the prior tax year as determined by the Assessor and, thus, had been improperly valued.
9 Dec. at 1 (CER at 856).

10 83. The County Board made a ten percent (10%) downward adjustment in taxable values for
11 all 101 properties. Dec. at 1-2 (CER IV at 856-57).

12 84. The Assessor appealed to the State Board. Dec. at 1 (CER IV at 856).

13 85. The State Board concluded that it had the “authority to determine and equalize the taxable
14 values in the State.” Dec. at 3 (CER IV at 858).

15 86. The State Board found the County Board’s decision to equalize all 101 lakefront Incline
16 properties impacted by the Assessor’s error to be “reasonable and supported by evidence in the record.”
17 Dec. at 2 (CER IV at 857).

18 87. The State Board upheld the County Board decision and instructed the County Comptroller
19 to “certify the assessment roll of the county consistent with this decision.” Dec. at 3 (CER IV at 858).

20 2. *In re: Equalization of Properties Located on Tiller Drive, Equalization*
21 *Order (July 12, 2004) (CER IV at 842-848)*

22 88. This matter involved the State Board discharging its equalization function to address
23 errors in the Assessor’s valuation of properties in a certain neighborhood in the Mill Creek subdivision
24 in Incline Village. Ord. at 1 (CER IV at 842).

25 89. There were a total of thirty-five (35) parcels in the Tiller Drive area of the Mill Creek
26 subdivision. Ord. at 3-4 & Ex. A (CER IV at 844-46).

27 90. Individual taxpayers who owned three of the 35 parcels in the Tiller Drive area challenged
28 their property valuations, asserting “their properties had been inequitably treated compared to other
properties in the Mill Creek subdivision.” Ord. at 1 (CER IV at 842).

1 91. The other Tiller Drive area property owners did not file individual appeals. Ord. at 1-2
2 (CER IV at 842-43).

3 92. The State Board found that “all properties in the Tiller Drive area of the Mill Creek
4 subdivision should have a lower base lot value to be consistent with the comparable sales found
5 throughout the Mill Creek subdivision.” Ord. at 2 (CER IV at 843).

6 93. The State Board concluded that it “has the authority to determine the taxable values in the
7 State and to equalize property pursuant to the requirements of NRS 361.395.” Ord. at 2 (CER IV at 843).

8 94. The State Board ordered that all 35 of the Tiller Drive area “properties be equalized by
9 reducing the base lot value. The Washoe County Comptroller is instructed to correct the assessment roll
10 by adjusting the assessed valuation[s].” Ord. at 3 (CER IV at 844).

11 3. *In re: Consideration of Assessor’s Appeal of Equalization Decision,*
12 *Notice of Equalization Decision (Oct. 9, 2009) (CER II at 438-47)*

13 95. In this matter, the State Board, affirmed the County Board decision, equalizing all
14 residential property values in Incline Village/Crystal Bay for the 2006-07 tax year, the fourth year in the
15 five-year appraisal cycle, to constitutional levels (2002-2003 tax year, as factored.) Dec. at 1 (CER II at
16 438).

17 96. The County Board had granted relief to 300 individual taxpayers who filed appeals of the
18 property tax valuations for the 2006-2007 tax year in accordance with *Bakst*. Dec. at 1 (CER II at 438).

19 97. When the County replaced void unconstitutional 2006-2007 taxable values with
20 constitutional 2002-2003 values, as factored, for the three hundred individual appealing taxpayers, the
21 County Board determined that it “had created an unequal rate of taxation for the 2006-2007 tax year.”
22 Dec. at 1 (CER II at 438).

23 98. The County Board did not limit the scope of its equalization order to only those properties
24 who had undisputed unconstitutional values, but to all properties in Incline Village/Crystal Bay to cure
25 the disparity between the valuation and assessment between the 300 parcels and the remainder of the
26 area. Dec. at 1-2, 5 (CER II at 438-39, 442); *Village League to Save Incline Assets v. State ex rel Bd. of*
27 *Equal.*, 124 Nev. 1079, 1090, 194 P.3d 1254, 1261-62 (2008) (“2008 Village League”).

28 ///

1 99. Discharging its equalization function, the County Board reset the taxable values for the
2 approximately 8,700 other properties in the Incline Village and Crystal Bay areas to 2002-2003 levels.
3 Dec. at 1, 5 (CER II at 438, 442) (quoting County Board).

4 100. The Assessor appealed to the State Board. Dec. at 2 (CER II at 439).

5 101. The State Board initially remanded to the County Board, which was contested by
6 Taxpayers. In the *2008 Village League* case, the Court granted taxpayers' writ of mandate and directed
7 the State Board to consider the Assessor's appeal of County Board's equalization decision. 124 Nev. at
8 1091, 194 P.3d at 1262.

9 102. The *2008 Village League* Court rejected the argument of the State Board that the County
10 Board had to make findings that all residential properties in Incline Village/Crystal Bay were
11 unconstitutionally valued: (1) the County Board had made specific findings that the 300 properties
12 subject to individual appeals were unconstitutionally valued and the values reset to 2002-2003 levels,
13 and (2) the County Board reduced the values of all other properties in Incline Village to those same levels
14 to make them equal. 124 Nev. at 1090, 194 P.3d at 1261-62.

15 103. On remand, the State Board found that the "Assessor did not present sufficient evidence
16 to support a value different from that established by the equalization action of the County Board. The
17 State Board found the County Board's decision to lower the Assessor's value on 8,700 properties to the
18 same level as other properties previously decided, should be upheld." Dec. at 5 (CER II at 442).

19 104. The State Board found that the County Board changed the values of the 300 individual
20 property owners "because of the use of unconstitutional methods of valuation by the Assessor; equity
21 and fairness requires all properties in the same geographic area receive the same treatment." Dec. at 5
22 (CER II at 442).

23 105. The State Board concluded that the Assessor had failed to carry his burden of proof that
24 the County's decision reducing valuations for all Incline Village/Crystal Bay was "unjust and
25 inequitable" because "the values for the '8700' properties were inconsistent with the values for the
26 '300'." Dec. at 5 (CER II at 442).

27 106. The State Board concluded that "[p]ursuant to the Taxpayer's Bill of Rights [NRS
28 361.291(1)(a)], each taxpayer has the right to be treated by officers and employees of the Department

1 with courtesy, fairness, uniformity, consistency and common sense. In the absence of regulations
2 regarding the equalization, the State Board employed a fairness standard in determining whether the
3 County Board's decision should be overturned." Dec. at 6 (CER II at 443).

4 107. The State Board denied the Assessor's petition and ordered the County Comptroller to
5 "certify the assessment roll of the county consistent with this decision[.]" Dec. at 6 (CER II at 443).

6 108. The 2009 Equalization Decision equalizing all 2005-2006 taxable values of Incline
7 Village/Crystal Bay properties to constitutional 2002-2003 levels, as factored, is a final decision of the
8 State Board.⁹

9 **G. Proceedings Leading to 2017 Equalization Order**

10 109. On August 21, 2012, this Court issued a writ of mandate to the State Board, compelling
11 the State Board to "notice and hold a public hearing, or hearings as may be necessary, to hear and
12 determine the grievances of property owner taxpayers regarding the failure, or lack, of equalization of
13 real property valuations throughout the State of Nevada for the 2003-2004 tax year and each subsequent
14 tax year to and including the 2010-2011 tax year and to raise, lower or leave unchanged the taxable value
15 of any property for the purpose of equalization." Writ. at 1 (CER III at 554).

16 110. The Court mandated the State Board to certify any change made in property valuations to
17 the County, Assessor and Treasurer, and upon receipt, the County was mandated to "issue such additional
18 tax statement(s) or tax refund(s) as the changed valuation may require to satisfy the statutory provisions
19 for the collection of property taxes." Writ. at 2 (CER III at 555).

20 *1. 2012 State Board Hearings*

21 111. Pursuant to the writ of mandate, the State Board held three hearings: September 18,
22 November 5 and December 3, 2012. CER I at 1-4 (hearing notices).

23 *a. November Hearing*

24 112. At the November 5, 2012 hearing, the Assessor testified that for the 2003-2004, 2004-
25 2005 and 2005-2006 tax years, one or more constitutional valuation methodologies identified in *Bakst*
26
27

28 ⁹ The County and Assessor did petition for judicial review, but the appellants failed to name and serve all taxpayers and on that basis, the district court dismissed the petition for judicial review; the district court's decision was affirmed by the Nevada Supreme Court. *See Washoe County v. Otto*, 128 Nev. 424, 282 P.3d. 719 (2012).

1 and *Barta* had been used to value every stand-alone single family residence in the Incline Village/Crystal
2 Bay area as well as approximately 900 condominiums. Bd. Trans. (Nov. 5, 2012) at 94:8-21.

3 113. At the end of its November 5, 2012 hearing, the State Board took action by passing the
4 following motion made by Member Marnell:

5 I'm going to make a motion that . . . for any taxpayer within Incline Village and Crystal
6 Bay that was unconstitutionally assessed for the '03'04, '04-05, '05-'06 years . . .that
7 number one, my motion would be first that the assessor confirm that the data is accurate,
8 and those people who were unconstitutionally assessed. Part two is that we would go back
to the last constitutional year, which I believe is the '02-'03 years.[.]

9 Bd. Trans. (Nov. 5, 2012) at 100:10-23.

10 114. The then-Assessor, Josh Wilson, and State Board Chairman Wren, both concurred (Mr.
11 Wilson by nodding and Chairman Wren by verbal confirmation) that the 2002-2003 tax year was the last
12 constitutionally valued and assessed year. Bd. Trans (Nov. 5, 2012) at 100:24-25.

13 115. There was additional discussion that the values for 2004-2005 and 2005-2006 would be
14 factored, which Member Marnell incorporated into his motion. Bd. Trans. Trans. (Nov. 5, 2012) at 101:1-
15 25.

16 116. Member Marnell made it clear that his motion applied not just to property owners who
17 had filed appeals but also to all impacted property owners: "to be equal for all those who had an
18 unconstitutional appraisal." Bd. Trans. (Nov. 5, 2012) at 105:17-23.

19 117. The motion passed unanimously. Bd. Trans. (Nov. 5, 2012) at 113:20-21.

20 118. The State Board's action was consistent with *Bakst* and *Barta*, which set the template for
21 relief in discharging the State Board's equalization function: replacement of unconstitutional values with
22 constitutional values, and payment of the resulting refund of tax collected on the difference between the
23 two values (assuming values were lowered).

24 b. December Hearing

25 119. At the hearing on December 3, 2012, pursuant to the State Board's directive (part one of
26 Member Marnell's motion), the Assessor provided three lists of approximately 5,500 properties at Incline
27 Village/Crystal Bay that he determined had been valued using unconstitutional methodologies for the
28 2003-2004, 2004-2005, and 2005-2006 tax years. Bd. Trans. (Dec.3, 2012) at 5-6; CER III 545-550 (first

1 and last pages of lists of unconstitutionally valued properties in Incline Village/Crystal Bay for three
2 years in question).

3 120. The Assessor represented to the Board that if the unconstitutional taxable values of the
4 identified properties on the lists were replaced with constitutional 2002-2003 values, as factored, there
5 would be a reduction in value in each of the three years of approximately \$698 million (2003-2004), \$657
6 million (2004-2005) and \$564 million (2005-2006). Bd. Trans. (Dec.3, 2012) at 5-6.

7 121. The State Board members were concerned with the loss of tax revenue if it implemented
8 the motion unanimously passed at the November 5, 2012 hearing.

9 122. Member Johnson stated "we're coming back to a solution that's going to reduce the
10 taxable rolls in Washoe County by 1.9 billion dollars and I struggle with that." Bd. Trans. (Dec.3, 2012)
11 at 73.

12 123. Member Marnell made motion to have the Assessor "reappraise all properties for those
13 three tax years that were unconstitutionally appraised or identified as unconstitutionally appraised and to
14 determine the new taxable value." Bd. Trans. (Dec.3, 2012) at 77.

15 124. Member Marnell stated "I'm assuming that that's going to cost them [the County] some
16 money. But I'm sure it's far better than a 1.5 billion dollar property tax drop." Bd. Trans. (Dec.3, 2012)
17 at 77.

18 125. No action was taken by the State Board to vacate the decision made at the November 5,
19 2012 hearing to equalize unconstitutional values to constitutional levels for the three years in question
20 (part two of Member Marnell's motion). See Bd. Trans. (Dec 3, 2012) at 58-80.

21 2. *2012 Equalization Order*

22 126. In its 2012 Equalization Order after the December hearing, dated February 3, 2013, the
23 State Board found that residential properties in Incline Village/ Crystal Bay were valued in each of the
24 2003-2004, 2004-2005, and 2005-2006 tax years using methodologies that were unconstitutional under
25 *Bakst* and *Barta*. 2012 Ord. at 8 (CER IV at 950).

26 127. The State Board found "no evidence to show methods found to be unconstitutional by the
27 Nevada Supreme Court in the *Bakst* decision were used outside the Incline Village and Crystal Bay area."
28 2012 Ord. at 8 (CER IV at 950).

1 128. The State Board “determined that no statewide equalization was required. However, . . .
2 the State Board determined certain regional or property type equalization [in Incline Village/Crystal Bay]
3 was required.” 2012 Ord. at 9 (CER IV at 951).

4 129. The State Board ordered the Assessor “to reappraise all residential properties located in
5 Incline Village and Crystal Bay to which an unconstitutional methodology was applied to derive taxable
6 value during the tax years 2003-2004, 2004-2005, 2005-2006.” 2012 Ord. at 9 (CER IV at 951).

7 3. *Petition for Judicial Review of 2012 Equalization Order*

8 130. In March of 2013, the Village League Petitioners petitioned this Court for judicial review
9 of the reappraisal portion of the 2012 Equalization Order.

10 131. The Bakst Petitioners, “whose property values had already been established, filed a
11 motion to intervene in the district court action, arguing that the 2012 Equalization Order directing
12 reappraisal of their properties threatened the previous final judgments. The district court granted the
13 motion to intervene.” *Ingemanson*, 133 Nev. Adv. Op. 1 at 6-7, 388 P.3d at 221.

14 132. This Court dismissed the 2013 petition for judicial review on the basis that the 2012
15 Equalization Order was not final. *Ingemanson*, 133 Nev. Adv. Op. 1 at 6-7, 388 P.3d at 221.

16 133. The Village League Petitioners and Bakst Petitioners appealed.

17 4. *Nevada Supreme Court’s Decision in Ingemanson*

18 134. On January 26, 2017, the Nevada Supreme Court issued *Ingemanson*, reversing the
19 dismissal of the petition for judicial review. 133 Nev. Adv. Op. 1, 388 P.3d.

20 135. The *Ingemanson* Court stated:

21 [i]n Barta and Bakst, this court concluded, as a remedy, that because property is physically
22 reappraised once every five years and the assessment methods used in 2002 were
23 unconstitutional, the taxable values for the unconstitutionally appraised properties were
24 void for the tax years beginning in 2003–04 and ending in 2007–08. As a result, property
taxes in those years were to be based on the taxable values previously established for the
2002–03 tax year.

25 133 Nev. Adv. Op. 1 at 4, 388 P.3d at 220 (internal citations omitted).

26 136. The Court stated that:

27 The State Board was clearly attempting to engage in its equalization function pursuant to
28 NRS 361.395(1) when it ordered reappraisals. As such, an appeal directly to the State
Board would be the only way for a taxpayer to challenge the reappraised taxable value. .
. . [H]owever, only taxpayers whose valuations rise as a result of the reappraisal process

1 are entitled to a hearing. But this remedy fails to take into consideration the remedies
2 already afforded the Bakst intervenors and the affect those remedies have on the
equalization process for the region.

3 *Ingemanson*, 133 Nev. Adv. Op. 1 at 13, 338 P.3d at 224.

4 137. The *Ingemanson* Court found that the State Board’s jurisdiction is restricted “to equalizing
5 the property values and hearing appeals from the county board valuations, not determining matters of law
6 unrelated to valuation. Therefore, the Bakst intervenor . . . would not be allowed to raise their issue or
7 claim preclusion arguments to the State Board.” 133 Nev. Adv. Op. 1 at 13-14, 338 P.3d at 224.

8 138. The State Board and County argued that the Court did not have jurisdiction to review the
9 2012 Equalization Order on two grounds: (1) the State Board was not acting in a legislative, non-
10 adjudicative capacity, and (2) the order was not a final order in a contested case. *Ingemanson*, 133 Nev.
11 Adv. Op. 1 at 7, 338 P.3d at 222.

12 139. The Court rejected both arguments, concluding that: (1) when the State Board is
13 performing its equalization function, it is acting in a quasi-judicial capacity, and (2) the 2012 Equalization
14 Order was a ruling in a contested case and review of the final equalization decision after the reappraisal
15 was not an adequate remedy at law for the Village League and Bakst Petitioners. *Ingemanson*, 133 Nev.
16 Adv. Op. 1 at 8-14, 338 P.3d at 222-24.

17 140. The Court concluded that “NRS 361.395 does not provide the State Board with authority
18 to order reappraisals and the 2010 regulation purporting to provide the State Board with such authority
19 does not apply retroactively to the tax years at issue in this case.” *Ingemanson*, 133 Nev. Adv. Op. 1 at
20 18, 388 P.3d at 226.

21 141. The Nevada Supreme Court reversed this Court’s dismissal of the petition for judicial
22 review and remanded “this matter to the district court with instructions for it to grant the petition for
23 judicial review, vacate the Equalization Order directing new appraisals, and conduct further proceedings
24 to satisfy the requirements of NRS 361.395.” *Ingemanson*, 133 Nev. Adv. Op. 1 at 18, 388 P.3d at 226.

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1 5. *Remand to this Court*

2 142. Upon remand to this Court, the Village League filed a motion requesting that this Court
3 enter an order returning Incline Village and Crystal Bay residential property values for the 2003-2004,
4 2004-2005, and 2005-2006 years to their 2002-2003 constitutional levels and require its implementation
5 by the County Assessor and Treasurer. Mot. for Entry of Judg., (April 25, 2017).

6 143. The State Board and the County both opposed the motion.

7 144. The County collaterally attacked the judgments of the Bakst Petitioners and similarly
8 situated property owners in Incline Village/Crystal Bay with adjudicated taxable values for the 2003-
9 2004, 2004-2005, 2005-2006 tax years, stating that “the only viable actions this Court could take is to
10 take no action at all, or to raise the values of the *Bakst* properties.” Cty. Opp. at 22:7-8 (May 12, 2017).

11 145. The Bakst Petitioners filed a response requesting that this Court determine the legal issues
12 of the finality of their judgments and the preclusive effect of those judgments, issues which the State
13 Board did not have the authority to determine per *Ingemanson*, to protect the Bakst Petitioners judgments
14 from further collateral attack. See Bakst Resp. (May 25, 2017).

15 146. Over the objections of taxpayers, this Court remanded the matter to the State Board to
16 “conduct further proceedings pursuant to its statutory authority under NRS 361.395.” Order (July 17,
17 2017).

18 147. This Court did not address the Bakst Petitioners’ finality and preclusion issues.

19 6. *2017 Equalization Hearing*

20 148. The State Board scheduled, noticed and held a hearing on August 29, 2017. CER IV at
21 967-69.

22 149. The 2017 State Board hearing was a continuation and completion of the equalization
23 proceeding (as corrected by the Nevada Supreme Court’s decision in *Ingemanson*) that the State Board
24 began in 2012.

25 150. The State Board heard no new evidence and the proceeding was limited to oral
26 presentations by the parties, including the Village League and Bakst Petitioners. Bd. Trans (Aug. 29,
27 2017) at 59:17-25, 60:1-25, 61:1-22.

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1 151. At the hearing, the Petitioners argued that, as confirmed by the Nevada Supreme Court in
2 *Ingemanson, Bakst and Barta*, the Nevada Constitution guarantees a uniform and equal rate of assessment
3 and taxation, which requires the State Board to equalize unconstitutional taxable values for the three
4 years in question to constitutional levels. Bd. Trans. (Aug. 29, 2017) at 69:9-16; 70:1-25, 71:1-2; 75:1-
5 12; 80:1-7.

6 152. The Bakst Petitioners, citing to the *Barta* decision, argued that the State Board's
7 "predominant concern" is the constitutional guarantee of equality. Bd. Trans. (Aug. 29, 2017) at 69:21-
8 23.

9 153. The Bakst Petitioners argued that NRS 361.395 and *Ingemanson* bound the State Board,
10 and accordingly, the State Board is required "to take certain rolls, not all rolls, not the rolls that are
11 adjusted by the Nevada Supreme Court, but certain rolls that were adjusted by the county, and perform
12 [its] functions contained therein." Bd. Trans. (Aug. 29, 2017) at 68:18-25.

13 154. During the hearing, State Board Member Schiffmacher inquired of State Board counsel
14 whether the "judicial remedy" afforded the Bakst or Barta property owners set a precedent for the State
15 Board, and counsel responded that the State Board was not "obligated by Bakst" and "the [*Ingemanson*]
16 Court didn't say that you are." See Bd. Trans. (Aug. 29, 2017) 157:12-25; 158:10-12.

17 **H. 2017 Equalization Order**

18 155. Approximately three months after the August 2017 hearing, the State Board issued and
19 served the 2017 Equalization Order on November 30, 2017 (which was dated October 30, 2017),
20 concluding that there was not a lack of equalization at Incline Village/Crystal Bay for the three tax years
21 in question. Ord. at 7 (CER IV at 966).

22 156. The State Board represented that it had "considered the tax rolls and the assessment ratio
23 studies, in addition to the documents in the record, to determine how it should perform its equalization
24 function" and "[t]he tax rolls, ratio studies and other documents in the record do not indicate an
25 equalization problem in Incline Village/Crystal Bay." Ord. at 6, 7 (CER IV at 965, 966).

26 157. The tax rolls for the 2003-2004, 2004-2005, and 2005-2006 were not in the administrative
27 record before the State Board. Bd. Brf. at 14; Cty. Brf. at 37.

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1 158. The ratio studies purportedly relied upon by the State Board did not include Incline
2 Village/Crystal Bay for the 2003-2004, 2004-2005 tax year, and for the 2005-2006 tax year, to the extent
3 the ratio study covered all areas of Washoe County, the sample size was so small it was not statistically
4 significant for any particular area of the County. CER II at 448-66, III at 467-28; TOP (May 10, 2017)
5 at 84-88.

6 159. The State Board concluded “[a]pplying a rollback as requested by petitioners would cause
7 a large equalization problem within Washoe County, between the Lake Tahoe Basin and the balance of
8 the County and the state as a whole as the relationship of assessment value to the true tax value would
9 not be the same.” Ord. at 7 (CER IV at 966).

10 160. The State Board’s conclusion is contradictory to the conclusions reached by the State
11 Board in the 2012 Equalization Order that (1) there was an equalization problem in Incline
12 Village/Crystal Bay resulting from the use of unconstitutional methodologies, (2) those methodologies
13 were only used in Incline Village/Crystal Bay, and (3) there was not an equalization problem in the rest
14 of Washoe County or the State. 2012 Ord. at 8-9 (CER IV at 950-51).

15 161. The final “Order” portion of the State Board’s decision states:

16 Based on a preponderance of the evidence in the administrative record, the testimony
17 during the proceeding . . . the State Board held, by a vote of 4-1 (Member Harper
18 opposed), that there is not an equalization problem in the Incline Village/Crystal Bay area
19 of Washoe County for the tax years 2003-2004, 2004-2005, 2005-2006 and further that
20 providing the relief requested by Village League would create an equalization problem
21 for Washoe County and statewide. The State Board ordered that the property valuations
for Incline Village/Crystal Bay for the tax years 2003-2004, 2004-2005, 2005-2006 are
equalized based on the tax rolls, the ratio studies, and the evidence before the State Board.

22 Equal. Ord. at 7 (CER IV at 966).

23 162. The Petitioners timely sought judicial review of the 2017 Equalization Order by filing the
24 Petition on December 29, 2017.¹⁰

25 163. This Court finds that the majority of the above Findings of Fact are undisputed as
26 established in Nevada Supreme Court decisions, the State Board’s orders and the admissions of the State
27 Board and County.

28

¹⁰ The Petition was filed in the First Judicial District Court, with a “protective” Notice and Petition for Review of State Board
Action on Remand made in this Court. The First Judicial Court later entered an order transferring venue to this Court.

1 **CONCLUSIONS OF LAW**

2 **A. Jurisdiction**

3 1. The Petition brought pursuant to NRS 361.410 and NRS 233B.130 was timely filed within
4 thirty (30) days of service of the Equalization Order in accordance with NRS 233B.130(2).

5 2. The County and State both argue that this Court does not have jurisdiction to review the
6 2017 Equalization Order.

7 3. The County argues that the 2017 Equalization Order is not reviewable because it is not a
8 final decision in a contested case and there is no process for an individual taxpayer to petition the State
9 Board for equalization of their property. Cty. Brf. at 3, 13.

10 4. The State Board argues that the 2017 Equalization is not reviewable by this Court because
11 the State Board did not increase any taxable values when it equalized properties in Incline Village/Crystal
12 Bay. Bd. Brf. at 17:12, 17-18.

13 5. This Court concludes as a matter of law that the arguments of the County and State are
14 without merit.

15 6. Taxpayers are not required to petition the State Board to conduct its statewide equalization
16 function because NRS 361.395(1) mandates the State Board to discharge its equalization function on an
17 annual basis.

18 7. During the mandamus proceeding leading to the Court's 2012 Village League decision,
19 the State Board admitted to the Supreme Court that it had never engaged in its statewide equalization
20 function under NRS 361.395, resulting in the Court's remand and district court's issuance of the writ of
21 mandate compelling the State Board to conduct statewide equalization proceedings. 2012 Village
22 League, Lexis 279 at 5-6; Ord. & Writ (CER III at 551-555).

23 8. The final action an agency takes under mandate of the court is subject to review;
24 otherwise, an agency would avoid judicial scrutiny. *See Estate of Adams v. Fallini*, 132 Nev. Adv. Op.
25 81, 386 P.3d 621 (2016) (mandate rule requires lower courts to effectuate a high court's ruling on
26 remand).

27 9. *Ingemanson* held that when the State Board engages in its statewide equalization function,
28 it is an "adjudicative quasi-judicial function" because it notices hearings, takes evidence and hears

1 testimony, and issues findings of fact and conclusions of law. 133 Nev. Adv. Op. 1 at 8-9, 388 P.3d at
2 222-23.

3 10. *Ingemanson* noted the “adversarial nature of the State Board’s annual meetings because
4 they are open to the public, permit individual taxpayers to challenge a property tax assessment, require
5 public notice, and allow taxpayers to be represented by an attorney.” 133 Nev. Adv. Op. 1 at 9, 388 P.3d
6 at 222 (citing *Marvin v. Finch*, 126 Nev. 168, 177, 232 P.3d 425, 431 (2010)).

7 1. *NRS 361.395(2) does not preclude judicial review.*

8 11. NRS 361.395(2) affords a separate administrative process for taxpayers who were not
9 participants in an equalization proceeding and whose property values will be raised because of the
10 equalization:

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

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

15 (b) In a proceeding to resolve an appeal or other complaint before the Board pursuant to
16 NRS 361.360, 361.400, 361.402 or 361.403 [appeals of decisions of county boards of
equalization, the Department of Taxation or NTC], it shall give 10 days’ notice to
interested persons by registered or certified mail or by personal service.

17 A notice provided pursuant to this subsection must state the time when and place where
18 the person may appear and submit proof concerning the valuation of the property. A
19 person waives the notice requirement if he or she personally appears before the Board and
is notified of the proposed increase in valuation.

20 12. NRS 361.395(2) does not speak to or foreclose judicial review of the State Board’s
21 statewide equalization decision.

22 13. The additional administrative process set forth in NRS 361.395(2) provides due process
23 to taxpayers whose values will be raised as a result of an Equalization Decision; taxpayers who personally
24 appeared at the State Board hearing are not entitled to the separate due process notice.

25 14. The Petition was brought pursuant to NRS 361.410, entitled “Judicial review: Availability
26 and restrictions.” Subsection (1) of NRS 361.410 provides:

27 1. No taxpayer may be deprived of any remedy or redress in a court of law relating to the
28 payment of taxes, but all such actions must be for redress from the findings of the State
Board of Equalization, and no action may be instituted upon the act of a county assessor

1 or of a county board of equalization or the Nevada Tax Commission until the State Board
2 of Equalization has denied complainant relief. This subsection must not be construed to
3 prevent a proceeding in mandamus to compel the placing of nonassessed property on the
4 assessment roll.

5 15. The State Board was requested by the Village League, to equalize residential properties
6 in Incline Village/Crystal Bay for the 2003-2004, 2004-2005, 2005-2006 tax years by replacing void
7 unconstitutional values with 2002-2003 constitutional values, as factored.

8 16. The State Board denied the relief requested and “ordered that the property tax values for
9 Incline Village/Crystal Bay for the tax years 2003-04, 2004-05, 2005-06 are equalized based on the tax
10 rolls, the ratio studies, and the evidence before the State Board.” Equal. Ord. at 7 (CER IV at 966).

11 17. This Court has jurisdiction over this matter under NRS 361.410(1). The Petition seeks
12 “remedy” and “redress” from this “court of law relating to the payment of taxes” and this is an action
13 “for redress from findings of the State Board of Equalization.”

14 2. *NRS 233B*

15 18. NRS 233B.130(1) provides that:

16 Any party who is:

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

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

24 19. “Contested case” means a proceeding, including but not restricted to rate making and
25 licensing, in which the legal rights, duties or privileges of a party are required by law to be determined
26 by an agency after an opportunity for hearing[.] NRS 233B.032.

27 20. The Court in *Ingemanson* has already determined that this matter is a contested case when
28 it held that it had jurisdiction to review the State Board’s interim 2012 Equalization Order pursuant to
NRS 233B.130(1)’s provisions providing for review of an interim order in a “contested case.” 133 Nev.
Adv. Op. 1, 388 P.3d at 223.

1 21. When *Ingemanson* considered the 2012 hearings and 2012 Equalization Order, it
2 concluded that the State Board heard testimony, received evidence and considered the oral presentations
3 of the parties. 133 Nev. Adv. Op. 1, 388 P.3d at 222-23. This matter involves the continuation and final
4 decision of the equalization proceedings that began in 2012.

5 22. At the 2017 hearing, the State Board heard testimony and oral argument by the parties,
6 including the Village League and the Bakst Petitioner who proceeded separately from the Village League
7 after the 2012 State Board equalization hearings.

8 23. As a matter of law, nothing distinguishes the 2017 Equalization Order from the 2012
9 Equalization Order, except the 2017 Equalization Order is undisputedly a final agency decision.

10 24. This matter has a seventeen-year history, which culminated in the interim 2012
11 Equalization Order and the final 2017 Equalization Order.

12 25. This Court concludes that Petitioners seek judicial review of a final agency decision in a
13 contested case.

14 26. This Court has jurisdiction over this matter pursuant to NRS 233B.130.

15 **B. Standard of Review**

16 1. *NRS 361.410*

17 27. This is a judicial review action challenging the State Board's Decision under NRS
18 361.410, which provides that "[n]o taxpayer may be deprived of any remedy or redress in a court of law
19 relating to the payment of taxes, but all such actions must be for redress from the findings of the State
20 Board of Equalization." NRS 361.410(1).

21 28. The burden of proof falls on the taxpayer "to show by clear and satisfactory evidence that
22 any valuation established by the Nevada Tax Commission or the Department or equalized by the State
23 Board of Equalization is unjust and inequitable." NRS 361.410(2).

24 29. The State Board and County argue that NRS 361.410 is not applicable to the judicial
25 review of statewide equalization decisions of the State Board, and that Petitioners were required to
26 proceed under NRS 361.420. Bd. Brf. at 10; Cty. Brf. at 16.

27 30. NRS 361.410 provides for direct "judicial review" of actions of the State Board.

28 ///

1 31. NRS 361.420 sets forth the exhaustion requirements, the grounds for judicial review, and
2 the process for an individual taxpayer to contest decisions of the State Board determining appeals by
3 individual property owners of decisions of county boards of equalization, the Department of Taxation or
4 the NTC.

5 32. This is the judicial review of a statewide equalization action affecting all residential
6 properties in Incline Village/Crystal Bay, not the judicial review of a denial of individual taxpayer appeals
7 of their taxes under NRS 361.420.

8 33. NRS 361.420(2) contains exhaustion language similar to NRS 361.410 in that suit may
9 only be brought after the State Board has denied the property owner relief: “property owner, . . . having
10 been denied relief by the State Board of Equalization, may commence suit . . . against the State and
11 county[.]” *Compare* NRS 361.420 (2) with NRS 361.410(1)(“[n]o taxpayer may be deprived of any
12 remedy or redress in a court of law relating to the payment of taxes, but all such actions must be for
13 redress from the findings of the State Board of Equalization.”).

14 34. NRS 361.430 sets forth the burden of proof for suits brought under NRS 361.420: “In
15 every action brought under the provisions of NRS 361.420, the burden of proof shall be upon the plaintiff
16 to show by clear and satisfactory evidence that any valuation established by the Nevada Tax Commission
17 or the county assessor or equalized by the county board of equalization or the State Board of Equalization
18 is unjust and inequitable.”

19 35. NRS 361.430’s burden of proof is identical to that contained in NRS 361.410(2).
20 *Compare* NRS 361.430 with NRS 361.410(2) (“show by clear and satisfactory evidence that any
21 valuation established by the Nevada Tax Commission or the Department or equalized by the State Board
22 of Equalization is unjust and inequitable.”).

23 36. When the State Board engages in equalization under NRS 361.395, it discharges its
24 exclusive statutory equalization obligation.

25 37. The State Board’s statewide equalization obligation is distinct and separate from its other
26 statutory obligation, to hear individual appeals of decisions of county boards and the NTC. *See* NRS
27 361.395; NRS 361.400, NRS 361.420; *Barta*, 124 Nev. at 628, 188 P.3d at 1103.

28 ///

1 38. Neither NRS 361.420 nor NRS 361.430 address judicial review of decisions of the State
2 Board of Equalization when it is discharging its statewide equalization function under NRS 361.395.

3 39. The Legislature says what it means. *State v. Palm*, 128 Nev. 34, 272 P.3d 668 (2012)
4 (“[W]e presume that the Legislature was aware of the commonly understood effect of the language of [a
5 statute] when it drafted the statute, this is how it must be construed”); *Beazer Homes Nevada, Inc. v. Dist.*
6 *Ct.*, 120 Nev. 575, 580-81, 97 P.3d 1132, 1135-36 (2004) (“When a legislature adopts language that has
7 a particular meaning or history, rules of statutory construction . . . indicate that a court may presume that
8 the legislature intended the language to have meaning consistent with previous interpretations of the
9 language.”).

10 40. The Legislature would not have enacted different statutes with duplicative language
11 setting forth two burdens of proof and two exhaustion requirements for judicial review of a State Board
12 decision, unless it was drawing a distinction between the types of State Board decisions to be reviewed
13 under the two judicial review statutes.

14 41. The Legislature recognized that judicial review of the State Board’s equalization function
15 would need to be separately addressed.

16 42. This Court concludes that the Petition was properly brought under NRS 361.410(1).

17 43. This Court denies the County’s Motion to Dismiss to the extent it asserts the Petition was
18 not proper under NRS 361.410(1).

19 44. NRS 361.410(1) sets forth the applicable standard for review of this matter: “clear and
20 satisfactory evidence that any valuation . . . equalized by the State Board of Equalization is unjust and
21 inequitable.” NRS 361.410(1).

22 2. *NRS 233B*

23 45. This is also an action for judicial review taken under NRS 233B.130, which authorizes
24 any aggrieved party to a final decision of an agency to seek judicial review of that decision.

25 46. Pursuant to NRS 233B.135(3), a court may set aside a final decision of an agency if the
26 substantial rights of the petitioner have been prejudiced because the final decision of the agency is: (a) in
27 violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency;
28 (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the

1 reliable, probative and substantial evidence on the whole record; or (f) arbitrary or capricious or
2 characterized by abuse of discretion. NRS 233B.135(3).

3 47. Courts conduct de novo review of conclusions of law made by administrative agencies on
4 legal issues, including matters of statutory and regulatory interpretation. *See City of Reno v. Bldg &*
5 *Constr. Trades*, 127 Nev. Adv. Op. 10, 251 P.3d 718 (2011).

6 48. This Court conducts its NRS 233B review of this matter within the bound of the specific
7 equity-based standard of review set forth in NRS 361.410: determining whether the valuations
8 “equalized” by the State Board are just and equitable. *See State Tax Comm’n ex rel. Dep’t of Taxation*
9 *v. Am. Home Shield of Nev., Inc.*, 127 Nev. 382, 388, 254 P.3d 601, 605 (2011) (“A specific statute
10 controls over a general statute.”).

11 3. *Presumption of Validity*

12 49. Generally, “[i]n reviewing orders resolving petitions for judicial review that challenge
13 State Board decisions, the State Board’s determinations are presumed valid.” *Montage Mktg, LLC v.*
14 *Washoe Cty Bd of Equalization*, 134 Nev. Adv. Op. 39, 419 P.3d 129, 131 (2018) (citing *Bakst*, 122 Nev.
15 at 1408, 148 P.3d at 721).

16 50. However, “that presumption [only] remains until there is competent evidence to the
17 contrary presented...and [then] the presumption disappears.” *Constructors, Inc. v. Cass County Bd of*
18 *Equalization*, 606 N.W.2d 786, 871 (Neb. 2000) (Discussing “presumption that a county board of
19 equalization has faithfully performed its official duties in making an assessment and has acted upon
20 sufficient competent evidence to justify its action.”).

21 51. The undisputed facts of this case show the 2017 Equalization Order is not entitled to a
22 presumption of validity. There is competent and undisputed evidence that (1) the State Board did not
23 follow its prior decisions in equalizing taxable values for a body of taxpayers outside of those taxpayers
24 who filed individual appeals, and (2) the State Board affirmed unconstitutional taxable values.

25 52. The State Board and the County assert that the general presumption of validity of the State
26 Board’s decisions may only be overcome if the State Board applied a fundamentally wrong principle or
27 refused to exercise its best judgment. Bd. Brf. at 10; Cty Brf. at 14-15.

28 ///

1 53. This is a case involving statewide equalization. The cases cited by the County and State
2 are distinguishable as they involved instances where the State Board was acting in an appellate capacity
3 in reviewing decisions of a particular county board of equalization. *See Montage Mktg. LLC v. Washoe*
4 *County Bd of Equalization*, 134 Nev. Adv. Op. 39, 419 P.3d 129 (2018) (judicial review of State Board
5 decision deciding appeal of decision of Washoe County Board of Equalization denying taxpayer's
6 petition for review of their assessment); *Canyon Villas Apts. v. State*, 124 Nev. 832, 192 P.3d 746 (2008)
7 (judicial review of State Board decision deciding appeal of decision of Clark County Board of
8 Equalization partially denying taxpayer's petition for review of their assessment); *Imperial Palace v.*
9 *Department of Taxation*, 108 Nev. 1060, 843 P.2d 813 (1992) (judicial review of State Board decision
10 deciding appeal of a decision of the Clark County Board of Equalization denying the taxpayer's petition
11 for review of its assessment); *Kelly v. State*, 91 Nev. 150, 532 P.2d 1029 (1975) (judicial review of State
12 Board decision deciding appeal of a decision of Douglas County denying the taxpayer's petition for
13 review of its assessment).

14 54. In this case, contrary to the cases relied upon by the State Board and the County, the State
15 Board is not acting as the final administrative arbiter of an assessment dispute between a single taxpayer
16 and a county deciding an appeal from a county board of equalization's decision. It was engaging in its
17 statewide equalization function under NRS 361.395.

18 55. In individual contested cases, the State Board's "appellate" decision is then subject to
19 review under NRS 361.420 and 361.430.

20 56. Here, the State Board is performing its own statutory function under NRS 361.395, which
21 is subject to direct review by the Court. The only statute governing that standard of review is NRS
22 361.410.

23 57. The State Board's 2017 Equalization Order is not entitled to a presumption of validity.

24 **C. Nevada's Constitutional Guarantee of Uniform and Equal Assessment**
25 **and Taxation**

26 58. Article 10, Section 1 of the Nevada Constitution provides in pertinent part:

27 The legislature shall provide by law for a uniform and equal rate of assessment and
28 taxation, and shall prescribe such regulations as shall secure a just valuation for taxation
 of all property, real, personal and possessory.

 ...

1 Nev. Const. Art 10 § 1.

2 59. The Nevada Supreme Court has long required uniformity in taxation and assessment of
3 similarly situated individuals. *See List v. Whisler*, 99 Nev. 133, 138, 660 P.2d 104, 106-107 (1983);
4 *United States v. State ex rel. Beko*, 88 Nev. 76, 86-87, 493 P.2d 1324 (1972); *Boyne v. State ex rel.*
5 *Dickerson*, 80 Nev. 160, 166, 390 P.2d 225 (1964); *State of Nevada v. Eastabrook*, 3 Nev. 173 (1867).

6 60. The *Bakst* Court held that:

7 By using the mandatory term “shall,” the Constitution clearly and unambiguously requires
8 that the methods used for assessing taxes throughout the state must be “uniform.” Unless
9 ambiguous, the language of a constitutional provision is applied in accordance with its
10 plain meaning. Thus, county assessors must use uniform standards and methodologies for
assessing property values throughout the state.

11 122 Nev. at 1413, 148 P.3d at 724; *see also County of Clark V. LB Props., Inc.*, 129 Nev. Adv. Op. 96,
12 315 P.3d 294, 297(2013) (“methods used to value taxpayers’ properties play a material role in ensuring
13 that the constitutional guarantee of a uniform and equal rate of assessment’ exist in property valuations.”
14 *quoting Barta*, 124 Nev. at 624, 188 P.3d at 1100).

15 61. The “prevailing requirement [is] that similarly situated taxpayers should not be
16 deliberately treated differently by taxing authorities.” *Clifton v. Allegheny County*, 969 A.2d 1197, 1212
17 (Pa. 2009) (*quoting Downingtown Area Sch Dist. v. Chester County Bd. of Assessment*, 913 A. 2d 194,
18 201 (Pa. 2006)).

19 1. *The constitutional guarantee of uniformity and equality has primacy*

20 62. The Nevada Constitution is the “supreme law” of this State and its dictates must be
21 enforced. *MDC Rests., LLC v. Eighth Judicial District Court*, 132 Nev. Adv. Op. 76, 383 P.3d 262, 267
22 (2016).

23 2. *Non-uniform and unequal assessment and valuation is not excused*
24 *because the resulting taxable value does not exceed full cash value*

25 63. The guarantee of uniformity can only be satisfied if similarly situated properties are valued
26 and assessed uniformly and proportionately with the same standards and methodologies, even if the
27 taxable value is less than full cash value. *Barta*, 124 Nev. at 628; 188 P.3d at 1103 (“A taxable value
28 may be unjust and inequitable despite being less than the full cash value of the property.”).

1 3. *While mathematical exactitude is not required, similarly situated*
2 *properties must be valued and assessed using the same*
3 *methodologies and standards*

4 64. The Nevada Supreme Court recognized that the Supreme Court of Kansas, which is
5 another jurisdiction with a “virtually identical” Uniform and Equal Clause, has reached a similar
6 construction of the constitutional guarantee. *See List*, 99 Nev. at 138, 660 P.2d 106-7 (*citing State ex rel.*
7 *Stephan v. Martin*, 608 P.2d 880, 886 (Kan. 1980); *Wheeler v. Weightman*, 149 P. 977 (Kan. 1915)).

8 65. The Kansas Supreme Court held that:

9 Uniformity in taxing implies equality in the burden of taxation, and this equality cannot
10 exist without uniformity in the basis of assessment as well as in the rate of taxation. The
11 duty to assess at full value is not supreme but yields to the duty to avoid discrimination.

12 *Addington v. Board of County Comm'rs*, 382 P.2d 315, 319, (Kan. 1963) (remedy portion of decision
13 superseded by statute).

14 66. The *Addington* Court held that while uniformity and equality in the constitutional sense
15 do not require “mathematical exactitude” and certain errors or mistakes may not rise to a violation, at a
16 minimum:

17 It is apparent that uniformity is necessary in valuing property for assessment purposes so
18 that the burden of taxation will be equal. It makes no difference what basis of valuation is
19 used, that is, what percentage of full value may be adopted, provided it be applied to all
20 alike.

21 ...
22 *Uniformity of taxation does not permit a systematic, arbitrary or intentional valuation of*
23 *the property of one or a few taxpayers at a substantially higher valuation than that placed*
24 *on other property within the same taxing district; however, this uniformity and equality*
25 *in a constitutional and statutory sense does not require mathematical exactitude in the*
26 *assessment valuation of property for taxation. In the instant case if all the property in the*
27 *county had been assessed at thirty per cent of its true value, plaintiff would have no cause*
28 *to complain. The fraud upon plaintiff's rights resulted from the arbitrary distinction made*
 between his elevator property and other property in the county. Mere excessiveness of an
 assessment or errors in judgment or mistakes in making unequal assessments will not
 invalidate an assessment, but the inequality or lack of uniformity, if knowingly high or
 intentionally or fraudulently made, will entitle the taxpayer to relief.

Addington, 382 P.2d at 319 (emphasis added).

///

1 67. In a later case addressing actual valuation methods (or the lack thereof), the Kansas
2 Supreme Court addressed an assessor's actions in valuing leased lands where the court had "determined
3 that the haphazard fashion that was used by the appraiser to discover leased lands and to determine which
4 of the leased lands should be subject to an increased valuation was improper [and] resulted in a
5 nonuniform and unequal valuation of similar property." The court in that case reiterated the admonition
6 of *Addington*:

7 Uniformity in taxation *implies equality in the burden of taxation, and this equality cannot*
8 *exist without uniformity in the basis of valuation.* Uniformity in taxation does not permit
9 a systematic, arbitrary, or intentional higher valuation than that placed on other similar
 property within the same taxing district.

10 *Board of County Comm'rs v. Greenhaw*, 734 P.2d 1125, 1131(Kan. 1989)(emphasis added)("Under the
11 facts of this case, the assessment of Greenhaw's land was so arbitrary and grossly discriminatory that it
12 destroyed uniformity and equality in the manner of fixing the assessed valuation and was illegal.").

13 68. The mandate of the Nevada Constitution's Uniform and Equal Clause, which our Supreme
14 Court has found to be "virtually identical" to that in the Kansas Constitution, is clear: "Uniformity in
15 taxation implies *equality* in the *burden* of taxation, and this equality cannot exist without *uniformity* in
16 the *basis* of valuation." *Greenhaw*, 734 P.2d at 1131; *Addington*, 382 P.2d at 319 (emphasis added).

17 4. *The guarantee of uniformity extends to statutes, regulations and acts*
18 *of valuation by assessors alike—an assessor cannot create non-*
19 *uniform methods of valuing property in the same class.*

20 69. Whether it be scrutinizing a statute or "valuation by assessing officers[.]" the uniformity
21 analysis is the same. *Cass County*, 606 N.W.2d at 873 (rules of uniformity apply to acts of the legislature
22 and assessing officers and "[d]iscrimination in valuation, where it exists, does not necessarily result from
23 the terms of the tax statute, but may be caused by the acts of the taxing officer or officers").

24 70. When an assessing officer establishes "two methods of valuation of property in the same
25 class for taxation purposes [it] results in a want of uniformity within the constitutional prohibition[.]"
26 *Cass County*, 606 N.W.2d at 874.

27 71. The Nevada Supreme Court concluded in *Barta*:

28 when the owner of one of two nearly identical neighboring properties pays more in taxes
 than her neighbor because nonuniform methods have been used to assign differing taxable

1 values to the two properties, the owner with the greater tax burden has suffered an injury,
2 regardless of whether her property's taxable value exceeded its full cash value. The owner
3 with the lesser tax burden has likewise suffered an injury, in that his property was not
4 valued uniformly with his neighbor's; however, that injurious assessment is less likely to
be challenged. *Even more salient is the injury when nonuniform methods cause the
unequal taxation of an entire assessment group.*

5 *Barta*, 124 Nev. at 626, 188 P.3d at 1101 (emphasis added).

6 72. In *Cass County*, the Nebraska Supreme Court held that an assessor's selective valuation
7 of mineral interests violated the constitutional requirement for uniformity where it did not rest on a
8 substantial difference of situation between the litigants whose mineral rights were assigned an assessed
9 value and other property owners whose minerals rights were attributed to have no value for assessment.
10 *Cass County*, 606 N.W.2d at 794.

11 73. Similar to *Barta*, the *Cass County* court stated:

12 Property of the same character must be taxed the same. Differential tax treatment can
13 only be based on the use or nature of the property, not upon who controls the property,
14 i.e., mining companies versus farmers. Schulte [an appraiser] testified that there were
15 other lands with limestone interests, but he stopped attributing value to these interests
beyond the Kerford Limestone property holdings. Thus, the adjacent landowners escaped
the increased tax that burdened their neighbor, even though both are similarly situated as
property owners with subsurface mineral interests.

16 606 N.W.2d at 794.

17 74. The *Cass County* Court could not justify a heavier burden on taxpayers who were
18 neighbors of those who "escaped the increased tax[.]" 606 N.W.2d at 794.

19
20 **D. *Bakst* and *Barta* Established that the Assessor Used Unconstitutional**
21 **Methodologies to Establish Taxable Values of the Residential**
22 **Properties in Incline Village/Crystal Bay for the Three Years in**
Question

23 75. The *Bakst* Court held that "[b]y using the mandatory term 'shall,' the Constitution clearly
24 and unambiguously requires that the methods used for assessing taxes throughout the state must be
25 uniform. . . . Thus, county assessors must use uniform standards and methodologies for assessing property
26 values throughout the state." 122 Nev. at 1413; 148 P.3d at 724.

27 76. The *Bakst* Court found that the Assessor's methodologies were invalid and violated the
28 Nevada Constitution because they were not consistent with methods used throughout Washoe County

1 and because they were not the same as the methods used by assessors in other counties in the State. 122
2 Nev. at 1416; 148 P.3d at 726.

3 77. The Court, affirming the district court below, held that the 2003-2004 valuations were
4 “null and void” and the Court held that the only remedy available was to replace void unconstitutional
5 values with 2002-03 constitutional values and grant refunds. 122 Nev. at 1416; 148 P.3d at 726.

6 78. In *Barta*, the Court found that use of the factoring method by the Assessor to develop the
7 2004-2005 values was not constitutional because factoring “merely adjusts the prior year’s assessed
8 values en mass by a certain percentage.” 124 Nev. at 623-24; 188 P.3d at 1100.

9 79. The prior year’s values had already been declared null and void and therefore, could not
10 be validly adjusted, hence, the Court held that the “2004-2005 values were affected by the same
11 unconstitutional infirmities as the 2003-2004 values, and, like those values, are unjust and inequitable.”
12 124 Nev. at 624; 188 P.3d at 1100. The Court affirmed the district court, declaring the Bakst Petitioners’
13 2004-2005 assessments void and resetting the assessed values for 2004-2005 to the 2002-2003 levels.

14 80. The holdings of *Bakst* and *Barta*, interpreting the Uniform and Equal Clause of the Nevada
15 Constitution as to the validity of the taxable values established by the Assessor in 2003-04, 2004-05, and
16 2005-06, were not limited to the properties owned by the taxpayers who brought those cases forward.

17 81. *Bakst* and *Barta*, declared that the Assessor violated the constitution’s uniformity
18 guarantee when he systemically employed unconstitutional methodologies in valuing residential
19 properties in the Incline Village/Crystal Bay area of the County, but did not apply those same
20 methodologies to any other properties in the County and no other Assessor in the State employed similar
21 methodologies. *Bakst*, 122 Nev. at 1416, 148 P.3d at 726; *Barta*, 124 Nev. at 627, 188 P.3d at 1102.

22 82. The Court in *Ingemanson* reiterated the holdings of *Bakst* and *Barta*: “assessment methods
23 used in 2002 to value properties at Incline Village and Crystal Bay for real estate tax purposes were
24 unconstitutional . . . [and] as a remedy, that because property is physically reappraised once every five
25 years and the assessment methods used in 2002 were unconstitutional, the taxable values for the
26 unconstitutionally appraised properties were void for the tax years beginning in 2003-2004 and ending
27 in 2007-2008.” 133 Nev. Adv. Op. 1 at 4, 388 P.3d at 220.

28 ///

1 83. The Nevada Supreme Court has held that “[t]he Nevada Constitution is the supreme law
2 of the state. And as a court, our role is not to create the law but simply to declare what the law is.” *MDC*
3 *Rests, LLC*, 132 Nev. Adv. Op. 76, 383 P.3d at 267. Thus, if the Nevada Supreme Court has issued a
4 decision “interpreting a constitutional provision, . . . [it] is necessarily retroactive [from the date of the
5 unconstitutional act] rather than from the date of [the] decision.” *Id.* In other words, the act was always
6 unconstitutional and thus, must be remedied.

7 84. In this case, *Bakst* and *Barta* declared what the law has always been (Article 10 Section
8 1’s guarantee of equal and uniform taxation and assessment) in determining whether the Assessors use
9 of discriminatory taxable values only in Incline Village/Crystal Bay violated the Uniform and Equal
10 Clause of the Constitution. Those declarations are applicable to the three tax years in question in this
11 case.

12 **E. Equalization is the Means to Ensure Assessors Uniformly Value and to**
13 **Assess Real Property**

14 85. The collection of property taxes under NRS Chapter 361 are the only taxes in the State
15 that are government imposed and collected. All other taxes administered by the Department and NTC,
16 such as sales and use taxes, room taxes and commerce taxes, are self-reported and collected by the
17 taxpayers.

18 *1. A system of checks and balances*

19 86. Thus, the Legislature has created a system of checks and balances to ensure that real
20 property in the state is assessed uniformly and equally.

21 87. After annually determining the taxable values of real property and preparation of the
22 secured tax rolls/assessment rolls, the county assessors must complete and file an affidavit that the
23 properties on the rolls were assessed “equally and uniformly.” NRS 361.310(1).

24 88. Assessors must also attest under separate affidavit that certifying the assessment of
25 property complied with NTC regulations. NRS 360.250(3).

26 89. Upon completion of the rolls, the county boards of equalization must “meet to equalize
27 assessments[.]” NRS 361.340(1).

28 90. The last check in the system is the State Board.

1 2. *The State Board's Equalization Obligation*

2 91. The State Board is the administrative body in this State vested with the statutory authority
3 to conduct statewide equalization. *Ingemanson*, 133 Nev. Adv. Op. 1 at 14-15, 388 P.3d at 225.

4 92. As concluded in *Barta*:

5 Under NRS 361.395(1), the State Board clearly has a duty to equalize property valuations
6 throughout the state: "the [State Board] shall . . . [e]qualize property valuations in the
7 State." Furthermore, NRS 361.400 establishes a requirement, separate from the
8 equalization duty, that the State Board hear appeals from decisions made by the county
9 boards of equalization. The two statutes create separate functions: equalizing property
10 valuations throughout the state and hearing appeals from the county boards. The
11 Taxpayers argue that if the State Board had performed its duty to equalize property values
statewide, then it would have recognized the unequal property taxation between them and
taxpayers in the rest of the state. The record reflects that the State Board failed to explain
how it equalized property values for the 2004-2005 tax year, if indeed it did so[.]

12 124. Nev. at 627, 188 P.3d at 1102-3.

13 93. NRS 361.395(1), the State Board's statewide equalization statute, provides:

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

16 (a) Equalize property valuations in the State.

17 (b) Review the tax rolls of the various counties as corrected by the county boards of
18 equalization thereof and raise or lower, equalizing and establishing the taxable value of
19 the property, for the purpose of the valuations therein established by all the county
20 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.

21
22 NRS 361.395(1) (emphasis added).

23 94. "Nevada's Constitution guarantees 'a uniform and equal rate of assessment and taxation.'
24 That guarantee of equality should be the boards of equalization's predominant concern[.]" *Barta*, 124
25 Nev. at 627, 188 P.3d at 1102.

26 95. Therefore, unlike other taxes, the injuries, harm, mistakes and ultimately the systemic
27 failure of the ad valorem property tax systems falls on the State Board.

28 ///

1 96. The “goal of equalization is to produce uniformity in taxation.” 84 C.J.S., Taxation, §
2 700 (2010). The adjusting of values, however, must be for the sole purpose of bringing valuation to a
3 common point of equality, and not just for raising or lowering as desired. 84 C.J.S. Taxation § 709 (*citing*
4 *Parrott & Co. v. City and County of San Francisco*, 280 P.2d 881 (1st Dist. 1955)) (emphasis added).

5 3. *The State Board equalizes to taxable value*

6 97. NRS 361.395 requires the State Board to equalize to “taxable value” which is a term
7 defined by NRS 361.043.

8 98. *Ingemanson* quotes to CJS’s general definition of equalization as a process involving the
9 adjustment of values to “real value” or “true tax value.” *Ingemanson*, 133 Nev. Adv. Op. 1 at 15, 388
10 P.3d at 225. The CJS Taxation § 701 cites were to cases in Nebraska (using “actual value”), California
11 (“real value”) and Indiana (“true tax value”). See CJS Taxation § 701 (Bakst. Pet. Reply Brf. Ex. 1.

12 99. The Court in *Ingemanson* was explaining the concept of equalization and did not
13 supersede or declare invalid existing statutes.

14 4. *The State Board must consider the tax rolls in discharging its*
15 *statewide equalization function*

16 100. *Ingemanson* concluded that NRS 361.395 requires the State Board to consider the tax rolls
17 in performing its statewide equalization function. *Ingemanson*, 133 Nev. Adv. Op. 1, 388 P.3d at 225;
18 NRS 361.395(1)(b).

19 101. The tax rolls are not in the record and therefore the State Board could not have reviewed
20 the tax rolls. The State Board violated NRS 361.395(1) and its action is unlawful.

21 5. *The State Board is not time-barred from equalizing taxable values*
22 *for the 2003-2004, 2004-2005, 2005-2006 tax years*

23 102. The County asserts that the tax years in question are closed and therefore, the State Board
24 is foreclosed from performing its statewide equalization function.

25 103. This argument is without merit. The 2003-2004, 2004-2005, and 2005-2006, tax rolls are
26 still open.

27 104. These tax years have been the subject of litigation over the past 17 years and the litigation
28 is not resolved.

1 105. The State Board has ordered the County to correct tax rolls to reflect adjustments in value
2 after discharging its equalization function after the close of the tax year when there was an open challenge
3 or court action. *In re: Consideration of Assessor's Appeal of Equalization Decision*, (CER II at 438-447)
4 (decided in 2009 for 2006-2007 tax year).

5 106. Nevada property tax statutes contemplate the adjustment of tax rolls after the close of a
6 tax year to make necessary corrections. *See* NRS 361.765, NRS 361.768.

7 **F. The 2017 Equalization Order is Unconstitutional**

8 107. There is no dispute that the Assessor used non-uniform and unequal methodologies,
9 resulting in unconstitutional values for Incline Village/Crystal Bay residential property owners.

10 108. This Court concludes any unconstitutional value is a void value. *Bakst*, 122 Nev. at 1416,
11 148 P.3d at 726; *Barta*, 124 Nev. at 628, 188 P.3d at 1103; *Greenhaw*, 734 P.2d at 1127-1128 (“We agree
12 that a valuation contrary to the principles of the Constitution is an illegal or void valuation.”)

13 109. The State Board affirmed and reinstituted the unconstitutional values of Bakst Petitioners,
14 and more than a thousand other Incline Village/Crystal Bay residential property owners represented by
15 Village League had their values adjudicated by Nevada courts for the 2003-2004, 2004-2005 and/or
16 2005-2006 tax years in accordance with *Bakst* and *Barta*.

17 110. The State Board’s action is a violation of the Uniform and Equal Clause of the Nevada
18 Constitution. *See Barta*, 124. Nev. at 626, 188 P.3d at 1101 (“Even more salient is the [constitutional]
19 injury when nonuniform methods cause the unequal taxation of an entire assessment group.”).

20 111. The State Board’s decision must be vacated under NRS 233B.135(3) as it is “in violation
21 of constitutional . . . provisions.”

22 112. Clear and convincing evidence exists that the State Board violated the Nevada
23 Constitution. The 2017 Equalization is unjust and inequitable and must be set aside.

24 **G. A Taxpayer is not Required to “Petition” to Enforce the Constitution’s**
25 **Uniform and Equal Rate of Taxation and Assessment Guarantee**

26 113. The County and State have argued that any constitutional infirmities in the taxable values
27 of Incline Village/Crystal Bay properties for the three years in question cannot be addressed outside the
28 context of an individual taxpayer appeal. Bd. Br. at 14; Cty. Brf. at 18. In other words, the County and
State are advancing an exhaustion of administrative remedies argument.

1 114. At the hearing before this Court, the State Board argued that if an unconstitutional taxable
2 value is not “challenged, then it becomes ‘constitutional’ regardless if it was uniformly and equally
3 established.” Transcript of Proceeding (May 10, 2019) at 121:3-4.

4 115. As a matter of law, and in accord with the reasoning of the Pennsylvania Supreme Court
5 in *Clifton v. Allegheny County*, 969 A.2d 1197 (Pa. 2009), “when the inequity is pervasive,” the taxing
6 authority “cannot satisfy the proportionality requirement by shifting the burden of achieving uniformity
7 to the taxpayer” to file individual assessment appeals. 969 A.2d at 1227-28.

8 116. Similarly, as a matter of law, the appeals process alone followed by certain taxpayers in
9 Incline Village/Crystal Bay for the years in question did not ensure that all the properties in that area
10 were uniformly and equally assessed and valued.

11 117. The Nevada Supreme Court agrees that strict adherence to the statutory claims process is
12 not required if doing so deprives a taxpayer of a fundamental constitutional right. *See Metropolitan Water*
13 *District v. State, Department of Taxation* 99 Nev. 506, 665 P.2d 262 (1983).

14 118. In *Metropolitan Water*, the Court undertook a review of allegedly discriminatory actions
15 of the Clark County Assessor taken against the taxpayer over the course of 40 years. 99 Nev. at 509, 665
16 P.2d at 263. After disposing of the argument that the taxpayer failed to exhaust his administrative
17 remedies as there was no way the taxpayer could have known he was singled out for discriminatory
18 treatment, the Court held:

19 We have previously held that a county’s claims statutes should not apply where to do so
20 would deny property owners due process rights. Similar reasoning requires that the three
21 month limitation period specified in NRS 361.420(3) should not be held to apply where
22 to do so would deprive the Water District of a fundamental constitutional right, that of
equal protection under the law.

23 99 Nev. at 509, 665 P.2d at 263.

24 119. As a matter of law, this Court concludes that individual residential property owners did
25 not have to file and pursue appeals of their property tax valuations and assessments for the years in
26 question to ensure that the County and State abided by their constitutional obligations under Article 10
27 Section 1 of the Nevada Constitution.

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1 120. The State Board did not fulfill its predominant duty of ensuring a uniform and equal rate
2 of assessment and taxation in Incline Village/Crystal Bay for the years in question.

3 **H. The State Board Acted Arbitrarily and Capriciously and in Violation**
4 **of the Law by Refusing to Grant Equalization Relief on the Basis that**
5 **Those Property Owners had not all Filed Individual Appeals**

6 121. The State Board cannot refuse to provide equalization relief to correct an admitted
7 systemic error in the valuation and assessment of real property in a geographic area on the basis that not
8 every property owner in that area filed individual taxpayer appeals.

9 122. It is common practice for the County and/or State Boards to equalize property valuations
10 to correct a widespread error in the Assessor's valuation and assessment of real property brought to their
11 attention through an individual property owner appeal.

12 123. In such instances, the County and/or State Boards corrected errors for all impacted
13 residential property owners, not just the individual property owner who brought the challenge. *See*
14 *Washoe County, et al v. Ross Pendergraft Trust, et al*, Notice of Decision (Oct. 14, 2003) (Equalized
15 values of 101 parcels to correct error after appeals by owners of 24 parcels) (CER IV at 856-859); *In re:*
16 *Equalization of Properties Located on Tiller Drive*, Equalization Order (July 12, 2004) (Equalized values
17 of 35 parcels to correct error after appeals by owners of 3 parcels) (CER IV at 842-848); *In re:*
18 *Consideration of Assessor's Appeal of Equalization Decision*, Notice of Equalization Decision (Oct. 9,
19 2009) (Equalized values of all 8700 residential properties in Incline Village/Crystal Bay to correct error
20 (unconstitutional values for 2006-2007 tax year) after appeals by owners of 300 parcels) (CER II at 438-
21 447).

22 124. Upon questioning by this Court, the State Board represented that it could have granted the
23 same equalization as it did in these prior decisions to all impacted property owners, but it exercised its
24 "discretion" not to do so. TOP (May 10, 2019) at 129:10-23.

25 125. Using the 2006-2007 decision granting relief to all 8,700 Incline Village/Crystal Bay
26 residents, this Court asked if the reason for the exercise of discretion was the financial impact. TOP
27 (May 10, 2019) at 130:2-22.

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1 126. The State Board represented that it was concerned about “what that would do to the rest
2 of Washoe County if every one of these over 5,000 property owners got the remedy that a few hundred
3 got.” TOP (May 10, 2019) at 130:2-22.

4 127. This Court concludes that the State Board was concerned with the loss of tax revenue if it
5 implemented the previously voted-upon *Bakst* template for relief. Bd. Trans. (Dec.3, 2012) at 73, 77.

6 128. Nowhere in state law is the State Board authorized to take into account the financial
7 impact upon the government it discharging its equalization function.

8 129. “An agency’s decision is arbitrary and capricious if the agency fails to follow its own
9 precedent or fails to give a sufficient explanation for failing to do so.” *Zhao v. Holder*, 728 F.3d 1144,
10 1148 (9th Cir. 2013).

11 130. There was no factual or legal basis for the State Board to not act consistent with its prior
12 decisions and equalize the values of all properties in Incline Village/Crystal Bay to constitutional levels.

13 131. The State Board’s refusal to equalize properties in Incline Village/Crystal Bay is unjust
14 and inequitable in violation of NRS 361.410(1).

15 132. The State Board’s action is arbitrary and contrary to Nevada law, and therefore must be
16 vacated and set aside under NRS 233B.135(3).

17 **I. The State Board Violated the Taxpayers’ Bill of Rights**

18 133. Similar to the Nevada Constitution’s guarantee of uniformity, the Nevada Taxpayers’ Bill
19 of Rights also requires that taxpayers be treated in a uniform and consistent manner. NRS 360.291(1).

20 134. The State Board is bound by the Taxpayers’ Bill of Rights to treat similarly situated
21 taxpayers the same.

22 135. The State Board has previously recognized and acted in accordance with its obligations
23 under the Taxpayers’ Bill of Rights in discharging its equalization function in a case in Incline
24 Village/Crystal Bay for the 2006-2007 tax year (the fourth year of the appraisal cycle) that is factually
25 and legally indistinguishable to the case at hand. *See In re: Consideration of Assessor’s Appeal of*
26 *Equalization Decision, Notice of Equalization Decision (Oct. 9, 2009) (CER II at 438-47).*

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1 136. The State Board concluded that “[p]ursuant to the Taxpayer’s Bill of Rights [NRS
2 361.291(1)(a)], each taxpayer has the right to be treated by officers and employees of the Department
3 with courtesy, fairness, uniformity, consistency and common sense.” Dec. at 6 (CER II at 443).

4 137. The State Board sustained the County Board decision to reset all residential property
5 values in Incline Village/Crystal Bay to 2002-2003 levels after 300+ taxpayers individually appealed and
6 had their void unconstitutional taxable values replaced with constitutional 2002-2003 taxable values (the
7 *Bakst* template for relief) because “equity requires that all properties in the same geographic area receive
8 the same treatment” and because to do otherwise would create an “unequal rate of taxation for the 2006-
9 2007 tax year.” Dec. at 1, 5 (CER II at 438, 442).

10 138. As a matter of law, this Court concludes the State Board violated the Taxpayers’ Bill of
11 Rights in by not acting consistently with its 2006-2007 decision equalizing the taxable values of all
12 residential properties in Incline Village/Crystal Bay to constitutional levels.

13 139. As a matter of law, this Court concludes that the State Board violated the Taxpayers’ Bill
14 of Rights when it created an “unequal rate of taxation,” a result the County and State Board deemed
15 unlawful and unconstitutional for the 2006-2007 tax year.

16 140. Clear and convincing evidence exists that the State Board violated the Taxpayer Bill of
17 Rights; the 2017 Equalization is unjust and inequitable and must be set aside.

18 141. The State Board’s decision must be vacated under NRS 233B.135(3) as it is “in violation
19 of . . . statutory provisions.”

20 **J. Bakst Petitioners Have Standing**

21 142. The County and State have argued that Bakst Petitioners do not have standing because
22 they were not parties in the equalization action and are not “aggrieved” by the 2017 Equalization Order.
23 Cty. Brf. at 3 (integrating Mot. To Dismiss); Bd. Brf. at 16-18. The County’s and State’s arguments are
24 without merit.

25 143. NRS 361.410 provides that “[n]o taxpayer may be deprived of any remedy or redress in a
26 court of law relating to the payment of taxes, but all such actions must be for redress from the findings
27 of the State Board of Equalization.” NRS 361.410(1).

28 ///

1 144. NRS 233B.130(1) provides that any party (a) identified as a party of record by an agency
2 in an administrative proceeding, and (b) who is aggrieved by a final decision in a contested case, or by a
3 preliminary, procedural or intermediate act or ruling by an agency in a contested case, if review of the
4 final decision of the agency would not provide an adequate remedy, is entitled to judicial review.

5 145. Interpreting NRS 233B.130(1), the Court has held that a party is “aggrieved” where it
6 “was affected” by the administrative agency’s decision, *Capital Indem. v. State Dep’t Bus. & Indus.*, 122
7 Nev. 815, 820 n.26, 138 P.3d 516, 519 n.26 (2006).

8 146. Courts in states with the same statutory elements for standing to review administrative
9 agency decisions interpreting the term “aggrieved,” have emphasized that although an aggrieved person
10 need to have suffered a particularized injury, the determination of such must be made “in context” of the
11 factual situation and the statutory scheme, including consideration of whether the legislature has
12 expressed an intent that such an interest should be given judicial review. *Nelson v. Bayroot, LLC*, 953
13 A.2d 378 (Me. 2008); *Multonomah County v. Talbot*, 641 P.2d 617 (Or. Ct. App. 1983); *Marbet v.*
14 *Portland Gen. Elect.*, 561 P.2d 154 (Or. 1977).

15 147. In *Marbet*, an individual intervened as allowed by statute to present his views in a
16 proceeding before the Energy Facility Siting Council, which was responsible for determining the location
17 of nuclear power facilities. 561 P.2d at 449. He later sought judicial review of the Council’s decision.
18 561 P.2d at 449.

19 148. The Oregon Supreme Court considered the statute authorizing the intervention of “any
20 person . . . who appears to have an interest in the results of a hearing or who represents a public interest
21 in such results,” stating that this statute “express[ed] the legislature’s judgment that the important
22 decisions of public policy entrusted to the . . . Council are not to be treated as a dispute between opposing
23 private interests.” *Marbet*, 561 P.2d at 159 (citing ORS 469.380).

24 149. In *Nelson*, the Supreme Judicial Court of Maine, in making the determination of whether
25 the agency action operated prejudicially and directly upon the party’s property or rights, making the party
26 “aggrieved,” stated that “[w]e examine the issue of standing *in context* to determine whether the asserted
27 effect on the party’s rights genuinely flows from the challenged agency action.” *Id.* at 382. *Nelson*
28 involved a land use commission’s decision to approve a developer’s application to amend a subdivision

1 plan in which a leaseholder's developed lot was located. The amendment proposed to relocate certain
2 undeveloped lots. To consider the full context, the court examined the terms of the lease agreement to
3 understand the nature of the leaseholder's interest in the undeveloped land. It determined that
4 leaseholders entered into their agreements with the expectation that they would have particular rights to
5 make use of the remaining lands, subject to the restrictions specified in the lease agreement, and those
6 such rights were distinguishable from those of the general public. *Id.* at 383. The court, therefore,
7 concluded that the leaseholders had standing. *Id.* The court came to this conclusion despite the fact that
8 the leaseholder's developed lot was not contiguous with the relocated lots whose terms were changed.

9 150. In *Multnomah County*, the Oregon Court of Appeals considered whether a county tax
10 assessor had standing to challenge the date on which the state preservation officer classified certain
11 property as historic, thus freezing its assessed value. The court stated that a basic element in determining
12 whether a party was aggrieved was "whether the party seeking relief has 'alleged such a personal stake
13 in the outcome of the controversy as to assure that concrete adverseness which sharpened the presentation
14 of issues'" exists in the proceeding. 641 P.2d at 621-22 (*quoting Flast v. Cohen*, 392 U.S. 83, 99, 88 S.
15 Ct. 1942 (1968)).

16 1. *All taxpayers whose properties are subject to an equalization action*
17 *have standing to petition for judicial review of the State Board's*
18 *decision*

19 151. The context of the State Board's action must be considered.

20 152. This is a statewide equalization action under NRS 361.395, not an individual taxpayer
21 appeal.

22 153. The scope of the State Board's equalization action extends to all residential properties in
23 the Incline Village/Crystal Bay area.

24 154. The State Board's equalization hearings must be publicly noticed and provide for
25 participation by the public.

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155. The statewide equalization relief requested by Village League and Bakst Petitioners, if granted by the State Board, would have reset the taxable values of all residential Incline Village/Crystal Bay to 2002-2003 levels.¹¹

156. The State Board denied the relief, affirming the unconstitutional assessment and valuation of residential properties in Incline Village/Crystal Bay.

157. As a matter of law, this Court concludes that all Incline Village/Crystal Bay residential property owners are “affected by” and have an interest in the results of the State Board’s statewide equalization hearing.

158. This Court concludes that individual Incline Village/Crystal Bay taxpayers, including the Bakst Petitioners, or their successors in interest, who owned, either directly or beneficially, and paid property taxes on residential real property at Incline Village, Washoe County, Nevada, during the 2003-2004, 2004-2005 and 2005-2006 tax years have standing to bring judicial review of the 2017 Equalization Order.

2. *Bakst Petitioners did not file individual appeals in each of the three years in question*

159. Not every Bakst Petitioner filed an individual appeal in each of the three years in questions: (1) Bakst Petitioner Carol Buck did not file an individual appeal for the 2003-2004 tax year and was not a party to *Bakst*, (2) Bakst Petitioner Dan Schwartz did not file an individual appeal for the 2004-2005 tax year and was not a party to *Barta*, and (3) Bakst Petitioners Jane Barnhardt, Dan Schwartz, Larry Watkins and Agnieszka Winkler did not file individual appeals for the 2005-2006 tax year. See *Bakst* and *Barta*.

160. The County and State have not asserted that any of the other residential property owners who did not file individual appeals and are collectively represented by the Village League lack standing.

161. Nothing distinguishes any Bakst Petitioner who did not file an individual appeal in one or more of the three tax years in question from the other residential property owners in Incline Village/Crystal Bay who did not file an individual appeal in one or more of the three tax years in question.

¹¹ The Bakst Petitioners participated in the 2012 (as represented by Village League) and 2017 (independently represented) equalization proceedings as parties.

1 162. The State Board refused to grant the relief requested.

2 163. As a matter of law, the Bakst Petitioners who did not file administrative appeals are
3 directly (1) “affected by the action” and are aggrieved under NRS 233B.130, and (2) are taxpayers
4 seeking redress from the findings of the State Board “relating to the payment of taxes.” This Court
5 concludes they have standing.

6 3. *The Bakst Petitioners have final judgments for one or more of the*
7 *three years in question*

8 a. Collateral Attack

9 164. The Nevada Supreme Court has long emphasized the importance of the finality of
10 judgments. *Trujillo v. State*, 310 P.3d 594, 601 (Nev. 2013). “The policy supporting the finality of
11 judgments recognizes that, in most instances, society is best served by putting an end to litigation after a
12 case has been tried and judgment entered.” *Bonnell v. Lawrence*, 128 Nev. 394, 401, 282 P.3d 712, 716
13 (2012)(quoting *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 653, 218 P.3d 853, 858 (2009))(internal
14 quotations omitted).

15 165. “The bar against relitigation of already-decided issues is, in essence, an entitlement not
16 to stand trial or face the other burdens of litigation and should be resolved at the earliest stage in
17 litigation.” *Bonnell v. Lawrence*, 128 Nev. 394, 401, 282 P.3d 712, 716 (2012)(quoting *Butler v. Bayer*,
18 123 Nev. 450, 458, 168 P.3d 1055, 1061 (2007))(internal quotations omitted).

19 166. Allowing collateral attacks on prior judgments fosters endless litigation and makes
20 judgments forever subject to attack and is contrary to traditional principles of res judicata and collateral
21 estoppel. *Markoff v. New York Life Ins. Co.*, 92 Nev. 268, 271, 549 P.2d 330, 332 (1976).

22 167. Only a void judgment is susceptible to collateral attack. *State v. Sustacha*, 108 Nev. 223,
23 226, 826 P.2d 959, 961, n.3 (1992)(internal citation omitted). A judgment is only void and subject to
24 collateral attack if the issuing court lacked personal or subject matter jurisdiction. *Id.*; *State ex rel. Smith*
25 *v. Sixth Judicial Dist. Court*, 63 Nev. 249, 256, 167 P.2d 648, 651 (1946).

26 168. The judgments the Bakst Petitioners, and similarly situated Incline Village/Crystal Bay
27 residential property owners, received in *Bakst* and *Barta* are final, are not void and not subject to collateral
28 attack.

1 169. *Bakst* and *Barta* ordered that unconstitutional taxable values in one or more of the three
2 years in question are null and void and must be replaced with constitutional 2002-2003 taxable values.

3 170. The County and State Board represent that the judicial mandate of *Bakst* and *Barta* was
4 not implemented: (1) the tax rolls for the 2003-2004, 2004-2005, 2005-2006 tax years were never
5 corrected, and (2) the unconstitutional null and void values of Bakst Petitioners and similarly situated
6 Incline Village/Crystal Bay residential property owners for those tax years remain on the tax rolls. Bd.
7 Brf. at 14; Cty. Brf. at 37. This Court accepts the representations of the County and State that the tax rolls
8 from the three years in question are not in the administrative record.

9 171. As a matter of law, the failure of the County to correct the tax rolls constitutes a collateral
10 attack and is sufficient basis to conclude the Bakst Petitioners have standing to defend their judgments.

11 172. The State Board equalized residential properties to the unconstitutional values on the tax
12 rolls, which had not been corrected by the County after *Bakst* and *Barta*, reinstating the unconstitutional
13 taxable values of the Bakst Petitioners, and similarly situated Incline Village/Crystal Bay residential
14 property owners.

15 173. As a matter of law, this Court concludes that the State Board collaterally attacked the
16 Bakst Petitioners' judgments when it equalized all property values based on the tax rolls.

17 174. The County, before admitting that the values of the Bakst Petitioners properties had not
18 been corrected on the tax rolls, on remand from *Ingemanson*, urged this Court to raise the values of the
19 Bakst Petitioners.

20 175. As a matter of law, the County's action constituted a collateral attack on the final
21 judgments of the Bakst Petitioners and similarly situated residential property owners in Incline
22 Village/Crystal Bay.

23 176. As a matter of law, the State Board order of the reappraisal of all unconstitutionally valued
24 Incline Village/Crystal Bay residential properties in its 2012 Equalization Order, including those of the
25 Bakst Petitioners, constituted a collateral attack.

26 b. Preclusive Effect

27 177. The Bakst Petitioners have argued that preclusive effect must be given to *Bakst* and *Barta*
28 in the statewide equalization action for any Bakst Petitioner or similarly situated residential property

owner in Incline Village/Crystal Bay who did not file an individual appeal in one or more of the tax years in question. *Ingemanson*, 133 Nev. Adv. Op. 1 at 13-14, 388 P.3d at 224 n.8 (the Court declined to reach the preclusion arguments raised); Bakst Resp. (May 25, 2017); Pet. Opn. Brf. at 28-31. The Bakst Petitioners' legal preclusion issues have not been addressed.

178. The State Board in 2017 refused to consider the preclusive effect of *Bakst* and *Barta* and denied relief to all taxpayers who had not proceeded with an individual appeal, which would include certain individual Bakst Petitioners in one or more of the tax years at issue. Equal. Ord. at 6 (CER IV at 965); Bd. Trans. (Aug. 29, 2017) at 157:12-25; 158:10-12.

179. As a matter of law, the Bakst Petitioners have standing as they were aggrieved and affected by the State Board's decision not to give preclusive effect to their final judgments for one or more of the three tax years in question.

180. The County's Motion to Dismiss the Bakst Petitioners is denied.

K. The Appropriate Remedy is the Equalization of All Residential Properties in Incline Village/Crystal Bay to Constitutional 2002-2003 Levels, with Refunds Issued

1. Bakst and Barta set the template for relief to cure the State Board's Affirmation and Reinstatement of Unconstitutional Values

181. *Bakst* and *Barta* both found that the only remedy for the Assessor's constitutional violation was to declare the unconstitutional taxable values void, order them replaced with 2002-03 constitutional values and order a refund of the unconstitutional taxes collected. *Bakst*, 122 Nev. at 1416, 148 P.3d at 726; *Barta*, 124 Nev. at 628, 188 P.3d at 1103.

182. Voiding unconstitutional values and refunding taxes paid thereon is the only remedy to address such systemic constitutional errors. *Bakst*, 122 Nev. at 1416, 148 P.3d at 726; *Barta*, 124 Nev. at 628, 188 P.3d at 1103; *see also Greenhaw*, 734 P.2d at 1127-1128 ("We agree that a valuation contrary to the principles of the Constitution is an illegal or void valuation.").

a. Preclusion

183. In tax cases, the legal principles of preclusion are applicable to prohibit vexatious litigation by the government adverse to taxpayers, as well as prohibiting taxpayers from re-litigating the same issue repeatedly. *See Commr. v. Sunnen*, 331 U.S. 591 (1948).

1 184. In *Montana v. United States*, 440 U.S. 147 (1979), a federal contractor was hired to build
2 a federal dam. *Id.* at 151-52. Pursuant to Montana law, contractors were required to pay a 1% gross
3 receipts tax on public projects while private contractors were exempt from any such tax. *Id.* A federal
4 contractor in state court brought the first suit against the State of Montana, but the federal government
5 financed and controlled the suit. *Id.* When the State of Montana won the first case, the federal government
6 pursued a similar action in its own name in federal district court. *Id.*

7 185. The Court rejected the federal government's attempts to distinguish the state decision on
8 grounds that the contractual provisions at issue in the federal suit were different. The Court went on to
9 enumerate three questions that were to be answered before issue preclusion was invoked in a tax case:
10 (1) whether the issues in the second case were "in substance" the same as those involved in the first
11 proceeding; (2) whether the controlling facts or legal principles had changed significantly since the first
12 case was decided; and (3) whether any "special circumstances" warranted an exception from the normal
13 rules of issue preclusion. *Montana*, 440 U.S. at 155, 974-75.

14 186. The Ninth Circuit in *Starker v. United States*, 603 F.2d 1341 (9th Cir. 1979), the Ninth
15 Circuit relied on *Montana* in ruling that issue preclusion foreclosed the federal government from claiming
16 that a taxpayer owed taxes on certain land transfers after a previous ruling in favor of the taxpayer's
17 family on the issue. *Id.* at 1350. The Ninth Circuit applied the doctrine of issue preclusion even though
18 the parties and the land at issue differed in the two cases because the court found that the legal issues and
19 facts were so similar. *Id.*

20 187. The *Barta* Court has already applied the doctrine of issue preclusion to the legal issues
21 and facts currently before this Court: "Bakst controls the outcome of these cases" and that "[t]o the extent
22 that the Assessor developed the Taxpayers' properties' 2004-2005 values by using the same methods we
23 declared unconstitutional . . . , the Bakst analysis controls[.]"

24 188. The State Board affirmed and adopted the unconstitutional values established by the
25 Assessor which *Bakst* and *Barta* declared void.

26 189. There is nothing, factually or legally, which distinguish the remedy issues in this case
27 from those in *Bakst* and *Barta*: (1) the 2003-04, 2004-05, and 2005-06 taxable values established by the
28 Assessor for residential properties in Incline Village/Crystal Bay all suffer from the same constitutional

1 infirmities, (2) the Nevada Supreme Court in *Bakst* and *Barta* held that the Assessor's values were
2 "unconstitutional", "null and void," (3) *Bakst* and *Barta* held that because there were no uniform
3 regulations for methods to establish taxable value, the only remedy for the constitutional violation was
4 to replace unconstitutional values with constitutional values, as factored, and afford a refund, and (3)
5 uniformity is not met by "merely ensuring that a property's taxable value does not exceed its full cash
6 value." *Barta*, 124 Nev. at 626; 188 P.3d at 1102.

7 190. *Bakst* and *Barta* are decisions setting the preclusive template for relief if a taxable value
8 is unconstitutionally derived.

9 191. The State Board was precluded from adopting unconstitutional values and refusing to
10 grant constitutional relief as required by *Bakst* and *Barta*.

11 2. *The State Board's 2006-2007 Tax Year Equalization Decisions Sets*
12 *the Template for Relief in Equalization*

13 192. *Ingemanson* required the State Board to consider "the remedies already afforded the *Bakst*
14 *Intervenors* and the affect those remedies have on the equalization process for the region." 133 Nev. Adv.
15 Op. 1 at 15-16, 338 P.3d at 224.

16 193. The State Board had previously considered the impact of the void 2006-2007
17 unconstitutional values being replaced with constitutional 2002-2003 values for the Incline
18 Village/Crystal Bay areas in its 2006-2007 Equalization Decision.

19 194. For the 2006-2007 tax year, the fourth year of the five-year appraisal cycle in Incline
20 Village/Crystal Bay, the State Board, affirmed the County Board decision, equalizing all 8,700+
21 residential properties values in Incline Village/Crystal Bay to constitutional 2002-2003 levels. Dec. at 1
22 (CER II at 438).

23 195. The County Board had granted relief to 300 individual taxpayers who filed appeals of the
24 property tax valuations of the 2006-2007 tax year pursuant in accordance with the dictates of *Bakst*. Dec.
25 at 1 (CER II at 438).

26 196. When the County replaced void, unconstitutional 2006-2007 taxable values with
27 constitutional 2002-2003 values, as factored, for the three hundred individual appealing taxpayers, the
28 County Board determined that it "had created an unequal rate of taxation for the 2006-2007 tax year."
Dec. at 1 (CER II at 438).

1 197. Discharging its equalization function, the County Board reset the taxable values for the
2 approximately 8,700 other properties in the Incline Village and Crystal Bay areas to 2002-2003 levels.
3 Dec. at 1, 5 (CER II at 438, 442) (quoting County Board).

4 198. The County Board did not limit the scope of its equalization order to only those properties
5 who had undisputed unconstitutional values. Its scope included all properties in Incline Village/Crystal
6 Bay to cure the disparity between the valuation and assessment between the 300 parcels and the remainder
7 of the area. Dec. at 1-2, 5 (CER II at 438-39, 442); *Village League to Save Incline Assets v. State ex rel*
8 *Bd. of Equal.*, 124 Nev. 1079, 1090, 194 P.3d 1254, 1261-62 (2008) (“2008 Village League”).

9 199. The 2009 Equalization Decision equalizing all 2005-2006 taxable values of Incline
10 Village/Crystal Bay properties to constitutional 2002-2003 levels, as factored, is a final decision of the
11 State Board.

12 200. Here, over a thousand Incline Village/Crystal Bay residential property owners have
13 received adjudicated relief for the 2002-2003, 2003-2004 and/or 2005-2006 tax years. The State Board
14 was required to consider those remedies in discharging its equalization function, just as it did for the
15 2006-2007 tax year, to ensure an equal rate of taxation and assessment in Incline Village/Crystal Bay.

16 201. The State Board was obligated to apply the 2006-2007 equalization template for relief that
17 it used to rectify the unequal and unconstitutional valuations and assessments in Incline Village/Crystal
18 Bay to the three preceding tax years at issue in this case.

19 202. The State Board’s disregard of its 2006-2007 decision equalizing properties in Incline
20 Village/Crystal Bay to cure the undisputed unequal rate of taxation and assessment is arbitrary and an
21 abuse of discretion.

22 203. The State Board was required to equalize to constitutional 2002-2003 levels and afford
23 refunds; any other result is unjust and inequitable.

24 204. NRS 361.410(1) requires this Court to determine whether the equalization decision of the
25 State Board is just and equitable.

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205. The decision of the State Board is both unjust and inequitable as it validated the use of unconstitutionally determined taxable values and validated the creation of two classes of residential property in Incline Village/Crystal Bay: those properties who received administrative and judicial relief and all other properties.

ORDER

Therefore, for good cause, it is HEREBY ORDERED that:

(1) The Complaint and Petition for Judicial Review is granted;

(2) The State Board Equalization Order dated October 30, 2017 and served on November 30, 2017 is vacated in its entirety;

(3) The land values for Incline Village/Crystal Bay residential properties for the 2003-04, 2004-2005, 2005-2006 tax years were determined using valuations methods found to be unconstitutional and are void;

(4) The State Board is ordered to equalize the 2003-2004, 2004-2005, 2005-2006 taxable values of all Incline Village/Crystal Bay residential properties to constitutional 2002-2003 levels, as factored;

(5) The Assessor is directed to replace unconstitutional 2003-2004, 2004-2005 and 2005-2006 taxable land values for residential parcels, in Incline Village and Crystal Bay with 2002-2003 taxable land values and to apply the Commission approved factor of .08% to the 2002-2003 taxable land values for the 2005-2006 tax year, except that any residential property value reduced between 2002-2003 and any of the three subsequent tax years shall be reset at the lower of the two values;

(6) The Washoe County Assessor shall correct and adjust the tax rolls for 2003-2004, 2004-2005, 2005-2006 tax years to reflect the replaced constitutional taxable values;

(7) The Washoe County Treasurer is directed to calculate the excess taxes paid by Incline Village/Crystal Bay residential property owner/taxpayers for the 2003-2004 tax year going forward and to refund those excess taxes to such owner/taxpayers with interest as required by law;

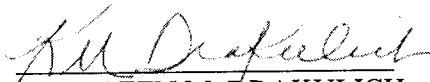
(8) The Washoe County Treasurer is further ordered to provide the Court within 90 days of the date of this order with a proposed schedule for the payment of refunds to Incline Village/Crystal Bay owner/taxpayers before the completion of one year from the date of this order. The Court shall review

1 and modify and/or approve the proposed schedule and require the Treasurer to report monthly on its
2 compliance with said schedule; and

3 (9) The adjudicated property values of the Bakst Plaintiffs/Petitioners along with those of all
4 similarly situated Incline Village/Crystal Bay residential property owner/taxpayers with adjudicated land
5 values for any and all of the three tax years 2003-2004, 2004-2005 and 2005-2006 are ratified and
6 confirmed.

7 IT IS SO ORDERED

8 DATED this 21st day of October, 2019.

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10 
11 KATHLEEN M. DRAKULICH
12 District Court Judge
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CERTIFICATE OF SERVICE

CASE NO. CV03-06922

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 21st day of October, 2019, I electronically filed the **FINDINGS OF FACT, CONCLUSION OF LAW, DECISION AND ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

SUELLEN FULSTONE, ESQ. for ANDREW WHYMAN, KATHY NELSON TRUST,
VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., LARRY D AND
MARYANNE B INGEMANSON TRUST

JESSICA PRUNTY, ESQ. for AGNIESZKA WINKLER, LARRY J. WATKINS,
CAROL BUCK, DON WILSON, PATRICIA WILSON, ELLEN SUSAN BAKST,
JANE A. BARNHART, DAN SCHWARTZ

NORMAN AZEVEDO, ESQ. for AGNIESZKA WINKLER, LARRY J. WATKINS,
CAROL BUCK, DON WILSON, PATRICIA WILSON, ELLEN SUSAN BAKST,
JANE A. BARNHART, DAN SCHWARTZ


HERBERT KAPLAN, ESQ. for WASHOE COUNTY

JORDAN DAVIS, ESQ. for CITY HALL, LLC

WILLIAM MCKEAN for CITY HALL, LLC

MICHELLE BRIGGS, ESQ. for STATE BOARD OF EQUALIZATION

Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]


DANIELLE KENT
Department 1 Judicial Assistant

ATTACHMENT 3

ATTACHMENT 3

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2 JESSICA C. PRUNTY
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7 Attorneys for Bakst Petitioners

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

10
11 VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC.,)
a Nevada non-profit corporation, on behalf of the)
12 owners of residential properties at Incline Village/)
Crystal Bay, Nevada; DEAN R. INGEMANSON,)
13 Trustee of the Larry D. and Maryanne B. Ingemanson)
Trust; V PARK, LLC; TODD A. LOWE; J. CARL)
14 COOPER; ANDREW WHYMAN; DAN SCHWARTZ;)
CHARLES A. DOWD; DONNA GOFF; ROBERT)
15 GOFF; ELLEN BAKST; JANE BARNHART; CAROL)
BUCK; LARRY WATKINS; DON WILSON;)
16 PATRICIA WILSON; and AGNIESZKA WINKLER,)

17 Plaintiffs/Petitioners,)

18 vs.)

19 STATE OF NEVADA on relation of its STATE)
BOARD OF EQUALIZATION; STATE OF NEVADA)
20 on relation of the DEPARTMENT OF TAXATION;)
WASHOE COUNTY ASSESSOR; WASHOE COUNTY)
21 TREASURER,)

22 Defendants/Respondents.)
23

Case No.: CV03-06922

Dept. No.: 1

24
25
26 NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSION OF LAW, DECISION AND ORDER
27
28

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DATED this 22nd day of October, 2019.

By: Norman J. Azevedo
Nevada Bar No. 3204
Jessica C. Prunty
Nevada Bar No. 6926
Attorneys for Bakst Petitioners

- 2 -

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2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896


CERTIFICATE OF SERVICE

I hereby certify pursuant to NRCP 5(b) that I am an employee of DYER LAWRENCE, LLP and that on the 22nd day of October, 2019, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSION OF LAW, DECISION AND ORDER** to be deposited in the U.S. Mail, first-class postage prepaid to each of the following:

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INDEX OF EXHIBITS

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CV03-06922
2019-10-22 04:33:44 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7552318

EXHIBIT "1"

EXHIBIT "1"

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

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

Plaintiffs/Petitioners,

Case No.: CV03-06922

vs.

Dept. No: 1

STATE OF NEVADA on relation of its
STATE BOARD OF EQUALIZATION, *et*
al,

Defendants/Respondents. /

FINDINGS OF FACT, CONCLUSION OF LAW, DECISION AND ORDER

This matter came before the Court on Petitioners' *Petition for Judicial Review* filed on December 27, 2017. The matter has been fully briefed and oral argument held on May 10 and June 5, 2019, with all parties having a full opportunity to present all arguments in support of their respective positions. Based on the pleadings on file, the administrative record and oral argument, this Court makes the following Finding of Facts, Conclusions of Law and Order:

FINDINGS OF FACT

I. This case involves the judicial review of the final statewide equalization decision ("2017 Equalization Order") of the State Board of Equalization ("State Board") issued on November 30, 2017,¹ involving residential property valuations in the Incline Village/Crystal Bay area of Washoe County for

¹ Dated October 30, 2017; served November 30, 2017. See Compl. & Pet. Exs. 1 & 2.

1 the 2003-2004, 2004-2005, and 2005-2006 tax years. See Equal. Ord (Cited Excerpts of Record
2 (“CER”)² IV at 960-966).³

3 **A. Summation**

4 2. In valuing residential properties in Incline Village/Crystal Bay for the 2003-2004, 2004-
5 2005, 2005-2006 tax years, the Washoe County Assessor (“Assessor”) created and utilized
6 methodologies that were not used anywhere else in Washoe County or in the State of Nevada. *State ex*
7 *rel. State Bd. of Equalization, et al v. Bakst et al*, 122 Nev. 1403, 1416, 148 P.3d 717, 726 (2006)
8 (“*Bakst*”); *State ex rel. State Board of Equalization, et al v. Barta, et al*, 124 Nev. 616, 620-21, 628, 188
9 P.3d 1092, 1099, 1103 (2008) (“*Barta*”).

10 3. In 2003, Taxpayers began filing individual appeals contesting the Assessor’s valuations
11 for the years in question as being unconstitutional, arbitrary and incorrect, among other grounds, and
12 seeking the Washoe County Board of Equalization (“County Board”) and the State Board of Equalization
13 (“State Board”) to engage in their equalization functions. See *Bakst*, 122 Nev. at 1406, 148 P.3d at 719-
14 20; *Barta*, 124 Nev. at 618, 627-28, 188 P.3d at 1096, 1102; *Village League to Save Incline Assets, et al*
15 *v. State, Board of Equalization, et al*, 133 Nev. Adv. Op. 1 at 2, 388 P.3d 218, 219-220 (2017)
16 (“*Ingemanson*”).

17 4. The County Board and State Board were on notice in 2003 that there could be systemic
18 errors in the Assessor’s valuation and assessment of residential properties in Incline Village/Crystal Bay
19 when the Assessor conducted his reappraisal of those properties in 2002 for the 2003-2004 tax year.

20 5. The County and State Boards denied the individual Taxpayer appeals⁴ and did not engage
21 in their equalization functions within the 2003-2004, 2004-2005, 2005-2006 tax years. See *Bakst*, 122
22 Nev. at 1406, 148 P.3d at 719-20; *Barta*, 124 Nev. at 618, 627-28, 188 P.3d at 1096, 1102-03;
23 *Ingemanson*, 133 Nev. Adv. Op. 1 at 2, 388 P.3d at 219-220.

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26 _____
27 ² The parties to this action jointly prepared and submitted a compilation of excerpts from the administrative record cited in
the briefs of the parties.

28 ³ The residential properties referenced herein include all impacted residential properties and all vacant residential land in
Incline Village/Crystal Bay.

⁴ Some property owners did receive limited relief for factual errors, *i.e.*, incorrect square footage, wrong number of bathrooms,
etc.

1 6. After nine years of litigation, the State Board was judicially compelled to engage in its
2 statewide equalization function pursuant to NRS 361.395 for tax years 2003-2004 through 2010-2011
3 tax years. *See Village League v. State, Board of Equalization*, Nevada Supreme Court Docket No. 56030
4 (Order Affirming in Part, Reversing in Part and Remanding, February 24, 2012) ("2012 Village
5 League"); Order and Judgment for Issuance of Writ of Mandamus, Writ of Mandamus (August 21, 2012)
6 (CER III at 551-555).

7 7. Five years later, after the issuance of *Ingemanson* in 2017, the State Board was ordered to
8 complete those equalization proceedings for the 2003-2004, 2004-2005, 2005-2006 tax years.⁵
9 *Ingemanson*, 133 Nev. Adv. Op. 1 at 18, 388 P.3d at 226; Order, (July 17, 2017) (remanding to State
10 Board to "conduct further proceedings pursuant to its statutory authority under NRS 361.395").

11 8. In the meantime, numerous individual taxpayers prevailed on their individual appeals for
12 the one or more of the years in question as the result of *Bakst* and *Barta*.

13 9. The 2006 *Bakst* Court held that "none of the four methodologies used by the Assessor in
14 2002 to assess property values in Incline Village and Crystal Bay were constitutional." 122 Nev. at 1416,
15 148 P.3d at 726. The Court held that "any Taxpayers who paid taxes under the 2003-2004 assessment
16 are entitled to a refund because they have met their burden and have shown that their 2003-2004 property
17 tax assessments are unconstitutional as based on nonuniform valuation methods. The district court
18 appropriately declared those valuations null and void." *Id.* at 1416, 148 P.3d at 726. The Court held that
19 "the district court properly ordered that their [the Taxpayers'] 2003-2004 valuations be set to the 2002-
20 2003 level." *Id.* at 1416, 148 P.3d at 726.

21 10. In 2008, the *Barta* Court considered 2004-2005 taxable values in Incline Village/Crystal
22 Bay, which the Assessor derived by adjusting the 2003-2004 values by a factor. 124 Nev. at 628, 188
23 P.3d at 1103. The Court held that "nothing significant distinguishes these cases, factually or legally,
24 from *Bakst*." *Id.* The Court held that "2004-2005 values were affected by the same unconstitutional
25 infirmities as the 2003-2004 values and, like those values, are unjust and inequitable." *Id.* at 624, 188
26 P.3d at 1100. The Court rejected the argument of the State Board and County that the Court "should not
27 roll back the Taxpayers' properties' taxable values to the 2002-2003 values." *Id.* at 627, 188 P.3d at

28

⁵ "Only three years are at issue in this case because the State Board dealt with the remaining years outside of this case." *Ingemanson*, 133 Nev. Adv. Op. 1 at 7-8, 388 P.3d at 222 n4.

1 1102. The Court held that the Taxpayers were entitled to the same relief granted in *Bakst*, and affirmed
2 the district court order “declaring the Taxpayers’ 2004-2005 assessments void, and setting their assessed
3 values for 2004-2005 to the 2002-2003 levels.” *Id.* at 628, 188 P.3d at 1103. The Court concluded that
4 the “Taxpayers are entitled to refunds of all excess taxes paid and ... interest.” *Id.* at 628, 188 P.3d at
5 1103.

6 11. By the time the State Board commenced its statewide equalization proceeding for the
7 2003-2004, 2004-2005, 2005-2006 tax years in 2012, the Bakst Petitioners and more than a thousand
8 other Incline Village/Crystal Bay residential property owners represented by Village League had their
9 values adjudicated by Nevada courts for the 2003-2004, 2004-2005 and/or 2005-2006 tax years in
10 accordance with *Bakst* and *Barta*.⁶

11 12. In January of 2017, the *Ingemanson* Court reiterated the holding of *Bakst* and *Barta* “that
12 assessment methods used in 2002 to value properties at Incline Village and Crystal Bay for real estate
13 tax purposes were unconstitutional ... [and] as a remedy, that because property is physically reappraised
14 once every five years and the assessment methods used in 2002 were unconstitutional, the taxable values
15 for the unconstitutionally appraised properties were void for the tax years beginning in 2003-2004 and
16 ending in 2007-2008.” 133 Nev. Adv. Op. 1 at 4, 388 P.3d at 220.

17 13. In its 2017 Equalization Order, the State Board did not make any finding of fact or
18 conclusion of law recognizing that the taxable values of residential properties in Incline Village/Crystal
19 Bay were unconstitutional as determined by *Bakst* and *Barta* and reiterated in *Ingemanson*. *See generally*
20 Equal. Ord. (CER IV at 964-66).

21 14. The State Board did not to equalize the taxable values of the residential properties in
22 Incline Village/Crystal Bay for the 2003-2004, 2004-2005, 2005-2006 tax years to constitutional 2002-
23 2003 values, as factored. Equal. Ord. at 6-7 (CER IV at 965-967).

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27 ⁶ 2003-2004: 107 individual appeals (CER III at 664 (TOP 7:17 *Bakst* d.ct oral arg), CER IV 721-28 (State Board decision
28 for 2003-2004 tax year appeals)); 2004-2005: 400+ appeals. *See* Admin Rec. 2nd Supp. Cert. 2.6.13-Master case files; 2005-
2006: 1000+ appeals. *See* Admin Rec. 2nd Supp. Cert. 2.6.13-Master case files, Tom Hall binder 1.

1 15. Citing to *Bakst* and *Barta*, the State Board found that “Village League members did not
2 follow the statutory process to challenge their assessments, which procedure was followed by the Bakst
3 and Barta petitioners.” Equal. Ord. at 6 (CER IV at 965).

4 16. The State Board determined “providing the relief requested by Village League would
5 create an equalization problem for Washoe County and statewide.” Equal. Ord. at 7 (CER IV at 966).

6 17. The State Board’s finding and decision in 2017 is a reversal of its prior action taken in the
7 2012 hearings in this equalization case, wherein it voted to extend relief to all residential taxpayers with
8 unconstitutional values in Incline Village/Crystal Bay for the tax years in question. Amend. Not. of
9 Filing of Cert. Copies of Trans. (“Bd. Trans.”) (Nov. 5, 2012) at 105-1-23, 113:13-24.

10 18. In previous equalization decisions, the State Board has equalized properties to correct a
11 systemic error brought to its attention through individual taxpayer appeals, granting relief to all impacted
12 taxpayers, including those who did not individually challenge their property valuations. *See Washoe*
13 *County, et al v. Ross Pendergraft Trust, et al*, Notice of Decision (Oct. 14, 2003) (Equalized values of
14 101 parcels to correct error after appeals by owners of 24 parcels) (CER IV at 856-859); *In re:*
15 *Equalization of Properties Located on Tiller Drive*, Equalization Order (July 12, 2004) (Equalized values
16 of 35 parcels to correct error after appeals by owners of 3 parcels) (CER IV at 842-848); *In re:*
17 *Consideration of Assessor’s Appeal of Equalization Decision*, Notice of Equalization Decision (Oct. 9,
18 2009)(Equalized values of all “8700” residential properties in Incline Village/Crystal Bay to correct error
19 (unconstitutional values for 2006-2007 tax year) after appeals by owners of 300 parcels) (CER II at 438-
20 447).

21 19. Upon questioning by this Court, the State Board represented that it could have granted the
22 same equalization as it did in these prior decisions to all impacted property owners, but it exercised its
23 “discretion” and decided not to do so in this case. TOP (May 10, 2019) at 127:15-24, 128:1-24, 129:1-
24 24, 130:1-2.

25 20. The State Board stated it “considered the tax rolls and the assessment ratio studies, in
26 addition to the documents in the record, to determine how it should perform its equalization function.”
27 Equal. Ord. at 6 (CER IV at 965).

28 ///

1 21. There is no dispute that tax rolls for the 2003-2004, 2004-2005, and 2006-2007 are not in
2 the record and that the State Board did not review them. Bd. Brf. at 14; Cty. Brf. at 37.

3 22. The State Board and County represented to this Court that the taxable values of the
4 individuals that had values adjudicated under the *Bakst* template for relief (void unconstitutional values
5 replaced with constitutional 2002-2003 values, as factored) were never subsequently corrected on the
6 County tax rolls for the years in question. Bd. Brf. at 14; Cty. Brf. at 37.

7 23. The remedy dictated in *Bakst* and *Barta* necessarily required the County to correct the tax
8 rolls to replace unconstitutional taxable values with constitutional values for any residential property
9 owner in Incline Village/Crystal Bay whose values had been adjudicated in *Bakst* and/or *Barta*, or any
10 other final court or agency decision applying the *Bakst* template for relief for one or more of the three
11 years in question.

12 24. The State Board commonly orders the County to correct tax rolls to reflect adjustments in
13 value after discharging its equalization function. *See Ross Pendergraft Trust, et al*, Notice of Decision
14 (CER IV at 856-859); *In re: Equalization of Properties Located on Tiller Drive*, (CER IV at 842-848);
15 *In re: Consideration of Assessor's Appeal of Equalization Decision*, (CER II at 438-447).

16 25. "The State Board ordered that the property tax values for Incline Village/Crystal Bay for
17 the tax years 2003-04, 2004-05, 2005-06 are equalized based on the tax rolls, the ratio studies, and the
18 evidence before the State Board." Equal. Ord. at 7 (CER IV at 966).

19 26. The tax rolls were never adjusted to reflect constitutional taxable values, thus, the State
20 Board's 2017 Equalization Order affirmed, and in instances of individual property owners who received
21 judicial relief in one or more of the years in question, reinstated, the Assessor's unconstitutional
22 residential property tax values for the 2003-2004, 2004-2005, 2005-2006 tax years for all residential
23 properties in Incline Village/Crystal Bay.

24 27. The Village League and Bakst Plaintiffs/Petitioners⁷ timely sought judicial review of the
25 2017 Equalization Order by filing a Complaint under NRS 361.410 and a Petition for Judicial Review
26 under NRS 233B.130 ("Petition") on December 29, 2017.

27
28 ⁷ Collectively referred to as "Petitioners" and separately as "Village League Petitioners" and "Bakst Petitioners." The Village
League Petitioners are the Village League to Save Incline Assets, Inc. ("Village League"), Dean R. Ingemanson, V. Park LLC,
Todd A. Lowe, J. Carl Cooper, Andrew Whyman, Dan Schwartz, Charles A. Dowd, Donna Goff and Robert Goff. The Bakst

1 **B. The Village League**

2 28. The Village League is a nonprofit corporation organized and existing under the laws of
3 the State of Nevada and is the recognized representative of the residential property owners and taxpayers
4 of Incline Village/Crystal Bay.

5 29. Individual Village League Petitioners are individuals or entities or successors in interest
6 to individuals or entities who owned, directly or beneficially, and paid property taxes on residential real
7 property at Incline Village, Washoe County, Nevada, during the 2003-2004, 2004-2005, and 2005-2006
8 tax years.

9 30. The Village League, on behalf of all similarly situated residents of Incline Village/Crystal
10 Bay, brought the original complaint for relief in this case requesting that the State Board engage in its
11 statewide equalization function pursuant to NRS 361.395. *See* Comp. for Decl. and Related Relief,
12 CV03-06922 (Nov. 13, 2003).

13 **C. The Bakst Petitioners**

14 31. Individual Bakst Petitioners are individuals who owned, either directly or beneficially,
15 and paid property taxes on residential real property at Incline Village, Washoe County, Nevada, during
16 the 2003-2004, 2004-2005 and 2005-2006 tax years and were parties in *Bakst* and/or *Barta*.

17 32. The Bakst Petitioners unconstitutional values for the 2003-2004, 2004-2005 and/or 2005-
18 2006 tax years were adjudicated by *Bakst* and *Barta* and they received refunds for the years where they
19 filed an individual appeal.

20 33. However, not every Bakst Petitioner filed an individual appeal in each of the three years
21 in questions.⁸

22 34. The State Board's initial equalization decision in 2012 to replace unconstitutional 2003-
23 2004, 2004-2005, 2005-2006 values with constitutional 2002-2003 values, as factored, would have
24 encompassed and provided relief to the Bakst Petitioners to the extent that they had not been afforded
25

26
27 Petitioners are Ellen Bakst, Jane Barnhardt, Carol Buck, Dan Schwartz, Larry Watkins, Don Wilson, Patricia Wilson and
Agnieszka Winkler.

28 ⁸ With the exception of Carol Buck, the Bakst Petitioners were all parties in *Bakst*; all the Bakst Petitioners, with the exception
of Dan Schwartz, were parties in *Barta*.

1 full relief for all three years in question under their individual appeals. *See* Bd. Trans. (Nov. 5, 2012) at
2 105-1-23, 113:13-24.

3 35. The State Board then ordered the reappraisal of all residential properties “to which an
4 unconstitutional methodology was applied to derive taxable value during the 2003-2004, 2004-2005,
5 2005-2006 tax years.” *See* Ord. at 9 (February 8, 2013) (“2012 Equalization Order”) (CER IV at 951).

6 36. The scope of the 2012 Equalization Order included the Bakst Petitioners’ properties
7 whose values were adjudicated by *Bakst* and *Barta* as unconstitutional in one or more of the three years
8 in question.

9 37. When the Village League petitioned for judicial review of the State Board’s 2012
10 Equalization Order, the Bakst Petitioners proceeded on an independent basis, intervening to protect their
11 final judgments received in *Bakst* and *Barta*. *Ingemanson*, 133 Nev. Adv. Op. 1 at 6-7, 388 P.3d at 221.

12 38. The Bakst Petitioners argued that preclusive effect must be given to *Bakst* and *Barta* in
13 the statewide equalization of the taxable values of all similarly situated property owners in Incline
14 Village/Crystal Bay for the three years in question. *Ingemanson*, 133 Nev. Adv. Op. 1 at 13-14, 388 P.3d
15 at 224 n.8 (the Court declined to reach the preclusion arguments raised).

16 39. The State Board in 2017 refused to consider the preclusive effect of *Bakst* and *Barta* and
17 denied relief to all taxpayers who had not proceeded with an individual appeal, including certain
18 individual Bakst Petitioners in one or more of the tax years at issue. Equal. Ord. at 6 (CER IV at 965);
19 Bd. Trans. (Aug. 29, 2017) at 157:12-25; 158:10-12.

20 40. The State Board affirmed that the unconstitutional values had not been corrected on the
21 tax rolls.

22 41. The Bakst Petitioners, and similarly situated property owners in Incline Village/Crystal
23 Bay, were aggrieved by the 2017 Equalization Order because (1) the State Board, in discharging its
24 equalization function, refused to correct a systemic constitutional infirmity, *i.e.*, granting relief to all
25 property owners, regardless if an individual appeal had previously been taken, and (2) the State Board
26 reinstated unconstitutional taxable values for the years in question of any property owner whose
27 unconstitutional taxable values had been previously adjudicated.

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D. Valuation and Assessment of Residential Property in Incline Village/Crystal Bay for the Years in Question

42. In Nevada, improvements and land are valued separately; this matter involves the valuation of land in Incline Village/Crystal Bay for the three years in question. *See* NRS 361.227.

43. The residential land in Incline Village/Crystal Bay is in the class of all residential property in the State of the Nevada.

1. 2003-2004 Tax Year

44. The 2003-2004 tax year was the first year of a five-year appraisal cycle for Incline Village/Crystal Bay residential properties and in 2002, the "Assessor performed a mass reappraisal of the properties in that area to determine their taxable values for the 2003-2004 tax year." *Bakst*, 122 Nev. at 1405, 148 P.3d at 719.

45. At that time, the Nevada Tax Commission ("NTC") had failed to fully comply with its statutory obligations to adopt regulations proscribing uniform valuation methodologies. *Bakst*, 122 Nev. at 1414, 148 P.3d at 724.

46. In the void left by the NTC, county assessors knew they had few state-sanctioned tools to appraise residential properties when comparative sales data was insufficient to establish an accurate taxable value. *Bakst*, 122 Nev. at 1415-1416, 148 P.3d at 725-26.

47. The Assessor could have petitioned the Department to adopt acceptable appraisal methodologies through the regulatory process to determine taxable values of properties; he chose not to do so. *See* NRS 360.215(2).

48. "Concerned that it would be difficult to determine comparable sales for land in the Incline Village/Crystal Bay area for the 2003-2004 tax year, the Assessor decided to use four methodologies to adjust comparable sales for the reappraisal period." *Bakst*, 122 Nev. at 1406, 148 P.3d at 719.

49. The Assessor "created a set of methodologies that were unique to the Incline Village and Crystal Bay areas." *Bakst*, 122 Nev. at 1416, 148 P.3d at 726.

50. "These disputed methodologies adjusted the comparable sales for (1) a parcel's view of Lake Tahoe, using a point system to classify each parcel and increasing the values accordingly; (2) a five-step 'rock' classification, which raised the value of the land based on its relationship to the lakefront; (3) a 'paired sales [time adjustment] analysis' which estimated the value of a subject property based on

1 previous sales of comparable properties adjusted, however, as though those properties had sold currently;
2 and (4) for properties with residences slated to be demolished for rebuilding, the Assessor adopted a
3 'teardown' method to determine comparable sales in which the entire value of an improved property was
4 assigned to the land." *Bakst*, 122 Nev. at 1406, 148 P.3d at 719.

5 51. The appraisal methodologies the Assessor created for residential properties in Incline
6 Village/Crystal Bay were not used in the rest of the County, or the rest of the State of Nevada. *Bakst*,
7 122 Nev. at 1412, 148 P.3d at 723-26.

8 52. The individual Village League and Bakst Petitioners, along with other similarly situated
9 residents of Incline Village/Crystal Bay, received notices of value from the Assessor that in many
10 instances increased the taxable value of their homes for the 2003-2004 tax year. *Bakst*, 122 Nev. at 1405,
11 148 P.3d at 719 ("After receiving dramatically increased tax bills [for the 2003-2004 tax year], the
12 Taxpayers questioned the methods utilized by the Assessor to value their real property.").

13 2. 2004-2005, 2005-2006 Tax Years

14 53. The 2004-2005 and 2005-2006 tax years, years two and three of the five-year appraisal
15 cycle for residential properties in Incline Village/Crystal Bay, were both factor years.

16 54. In a factor year, the "Assessor was not compelled to physically reappraise each property's
17 value. If the Assessor did not reappraise a property, he was required by statute to determine the property's
18 current assessed value by multiplying the prior year's assessed value by a factor . . . developed by the
19 Assessor and approved by the Tax Commission." *Barta*, 124 Nev. at 618, 188 P.3d at 1096.

20 55. The factor developed by the Assessor for 2004-2005 was 1.0 and the factor for 2005-2006
21 was 1.08, and the Assessor established the taxable values of residential properties in Incline
22 Village/Crystal Bay by using the 2003-2004 base value as adjusted by the factors for each year. *See Bd.*
23 *Trans.* (Nov. 5, 2012) at 101:14-25; *Bd. Trans.* (Dec. 3, 2012) at 6 (testimony of then-Assessor Josh
24 Wilson in both hearings); (CER I at 55, 63).

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1 **E. Procedural History**

2 56. Beginning in 2003, many property owners pursued their individual challenges through the
3 administrative and/or court system for the tax years in question. *See Bakst*, 122 Nev. at 1406, 148 P.3d
4 at 719-20; *Barta*, 124 Nev. at 618, 627-28, 188 P.3d at 1096, 1102; *Village League to Save Incline Assets*
5 *v. State, Board of Equalization (Ingemanson)*, 133 Nev. Adv. Op. 1 at 2-3, 388 P.3d 218, 219-220 (2017).

6 57. In 2003, the Village League brought the original complaint in this matter seeking, among
7 other claims, to compel the State Board to perform its statewide equalization mandate under NRS 361.395
8 for the 2003-2004 tax year to address the Assessor's systemic errors. Comp. for Decl. and Related Relief,
9 (Nov. 13, 2003).

10 58. The Village League's complaint was twice dismissed, twice appealed to the Nevada
11 Supreme Court, and twice reversed as to the equalization claim and remanded to this Court. *Village*
12 *League v. State, Dep't of Taxation, Docket no. 43441* (Order Affirming in Part, Reversing in Part and
13 Remanding, March 19, 2009) ("2009 Village League"); 2012 Village League.

14 59. In 2012, when Nevada Supreme Court remanded the equalization action to this Court for
15 the second time, the Court had found that the State Board had failed to "to conduct public hearings with
16 regard to statewide equalization" and "no hearings have been held to equalize all property values in the
17 state." 2012 Village League at 5.

18 60. This Court issued a writ of mandamus directing the State Board to engage in its
19 equalization function for each of the tax years, 2003-2004 through 2010-2011, inclusive, and to hold
20 hearings on the equalization grievances brought forward by taxpayers. Order and Judgment for Issuance
21 of Writ of Mandamus, Writ of Mandamus (August 21, 2012) (CER 551-555)

22 61. During the nine years the equalization action bounced back and forth between the district
23 court and the Supreme Court, many Incline Village/Crystal Bay residential property owners continued to
24 challenge their property valuations, filing appeals for the 2004-2005, 2005-2006 and/or later tax years.

25 62. The Bakst Petitioners, and other impacted property owners, including some of the
26 individual Village League Petitioners, were among those who contested their taxable values as
27 determined by the Assessor for the tax years 2003-2004, 2004-2005, and/or 2005-2006 tax years.

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1 63. Taxpayers were awarded two judgments, affirmed by the Court in *Bakst* and *Barta*,
2 holding that the respective taxable values of their residential properties for those tax years had been
3 determined in violation of Art. 10 § 1 of the Nevada Constitution.

4 1. *First Nevada Supreme Court Decision – Bakst*

5 64. The Nevada Supreme Court, on December 28, 2006, rendered its decision in *Bakst* holding
6 that the Assessor had violated the Nevada Constitution when he used non-uniform methods to value
7 residential properties in Incline Village/Crystal Bay for the 2003-2004 tax year. 122 Nev. at 1409, 148
8 P.3d at 719-720.

9 65. The *Bakst* Court held that Article 10 Section 1 of the Nevada Constitution guarantees a
10 “uniform and equal rate of assessment and taxation” and under that constitutional mandate, “methods
11 used for assessing taxes throughout the state must be ‘uniform.’” 122 Nev. at 1413, 148 P.3d at 724.

12 66. The Court held that the NTC had been derelict in its duties when it failed to adopt
13 regulations that allowed the Assessor to perform his statutory and constitutional function. *Bakst*, 122
14 Nev. at 1416-1417, 148 P.3d at 725-26.

15 67. The Court found that the appraisal methodologies the Assessor created for residential
16 properties in Incline Village/Crystal Bay were not used in the rest of the County, or the rest of the State
17 of Nevada, and concluded that “none of the four methodologies used by the Assessor in 2002 to assess
18 property values in Incline Village and Crystal Bay were constitutional”. *Bakst*, 122 Nev. at 1416, 148
19 P.3d at 726.

20 68. The Court, affirming the district court below, held that the unconstitutional 2003-2004
21 valuations were “null and void.” *Bakst*, 122 Nev. at 1416, 148 P.3d at 726.

22 69. The Court ordered that the 2003-2004 valuations be replaced with constitutional 2002-
23 2003 values.

24 70. The Court also affirmed the order of the district court that the taxpayers were entitled to
25 refunds with interest on the excess funds collected. *Bakst*, 122 Nev. at 1417, 148 P.3d at 726.

26 2. *Second Nevada Supreme Court Decision – Barta*

27 71. The County and the State Board upheld the Assessor’s unconstitutional values in the next
28 succeeding tax year, 2004-2005, claiming that because the 2004-2005 taxable values of the residential

1 properties in Incline Village/Crystal Bay had been determined utilizing a statutorily prescribed method
2 of valuation, "factoring," that it was a constitutional methodology. *Barta*, 124 Nev. at 616, 188 P.3d at
3 1095.

4 72. The Court held that nothing significant distinguished the cases before it, factually or
5 legally, from *Bakst*. *Barta*, 124 Nev. at 616, 188 P.3d at 1095.

6 73. The 2004-2005 values suffered from the same infirmity because they were based upon an
7 adjustment of the prior tax year's unconstitutional valuation. *Barta*, 124 Nev. at 616, 188 P.3d at 1095.

8 74. In *Barta*, the Nevada Supreme Court again rejected all of the arguments of the County and
9 State and affirmed the district court's order that the petitioners were entitled to a refund for the 2004-
10 2005 tax year. 124 Nev. at 628, 188 P.3d at 1103.

11 75. The Court in *Barta* held that "Nevada's Constitution guarantees 'a uniform and equal rate
12 of assessment and taxation.' That guarantee of equality should be the boards of equalization's
13 predominant concern[.]" *Barta*, 124 Nev. at 627, 188 P.3d at 1102.

14 76. *Barta* recognized that the State Board "clearly has a duty to equalize property valuations
15 throughout the state[.]" a duty separate from its duty to "hear appeals of decisions made by the county
16 boards of equalization." *Barta*, 124 Nev. at 627, 188 P.3d at 1102.

17 77. The Taxpayers argued "that if the State Board had performed its duty to equalize property
18 values statewide, then it would have recognized the unequal property taxation between them and the
19 taxpayers in the rest of the state." *Barta*, 124 Nev. at 628, 188 P.3d at 1102-3.

20 78. The Court found that "[t]he record reflects that the State Board failed to explain how it
21 equalized property values for the 2004-2005 tax year, if indeed it did so[.]" *Barta*, 124 Nev. at 628, 188
22 P.3d at 1103.

23 **F. Prior State Board Equalization Decisions**

24 79. It is common practice for the County and/or State Boards to equalize property valuations
25 to correct a widespread error in the Assessor's valuation and assessment of real property brought to their
26 attention through an individual property owner appeal.

27 80. In such instances, the County and/or State Boards corrected errors for all impacted
28 residential property owners, not just the individual property owner who brought the challenge:

1 1. *Washoe County, et al v. Ross Pendergraft Trust, et al, Notice of*
2 *Decision (Oct. 14, 2003) (CER IV at 856-859)*

3 81. This State Board decision involved one hundred and one (101) residential lakefront
4 properties in Incline Village: twenty-four (24) individual property owners had appealed their property
5 tax valuation to the County Board; the other seventy-seven (77) property owners did not challenge their
6 values. Dec. at 1 (CER IV at 856).

7 82. The County Board determined that the Incline Village lakefront properties did not
8 appreciate during the prior tax year as determined by the Assessor and, thus, had been improperly valued.
9 Dec. at 1 (CER at 856).

10 83. The County Board made a ten percent (10%) downward adjustment in taxable values for
11 all 101 properties. Dec. at 1-2 (CER IV at 856-57).

12 84. The Assessor appealed to the State Board. Dec. at 1 (CER IV at 856).

13 85. The State Board concluded that it had the "authority to determine and equalize the taxable
14 values in the State." Dec. at 3 (CER IV at 858).

15 86. The State Board found the County Board's decision to equalize all 101 lakefront Incline
16 properties impacted by the Assessor's error to be "reasonable and supported by evidence in the record."
17 Dec. at 2 (CER IV at 857).

18 87. The State Board upheld the County Board decision and instructed the County Comptroller
19 to "certify the assessment roll of the county consistent with this decision." Dec. at 3 (CER IV at 858).

20 2. *In re: Equalization of Properties Located on Tiller Drive, Equalization*
21 *Order (July 12, 2004) (CER IV at 842-848)*

22 88. This matter involved the State Board discharging its equalization function to address
23 errors in the Assessor's valuation of properties in a certain neighborhood in the Mill Creek subdivision
24 in Incline Village. Ord. at 1 (CER IV at 842).

25 89. There were a total of thirty-five (35) parcels in the Tiller Drive area of the Mill Creek
26 subdivision. Ord. at 3-4 & Ex. A (CER IV at 844-46).

27 90. Individual taxpayers who owned three of the 35 parcels in the Tiller Drive area challenged
28 their property valuations, asserting "their properties had been inequitably treated compared to other
properties in the Mill Creek subdivision." Ord. at 1 (CER IV at 842).

1 91. The other Tiller Drive area property owners did not file individual appeals. Ord. at 1-2
2 (CER IV at 842-43).

3 92. The State Board found that “all properties in the Tiller Drive area of the Mill Creek
4 subdivision should have a lower base lot value to be consistent with the comparable sales found
5 throughout the Mill Creek subdivision.” Ord. at 2 (CER IV at 843).

6 93. The State Board concluded that it “has the authority to determine the taxable values in the
7 State and to equalize property pursuant to the requirements of NRS 361.395.” Ord. at 2 (CER IV at 843).

8 94. The State Board ordered that all 35 of the Tiller Drive area “properties be equalized by
9 reducing the base lot value. The Washoe County Comptroller is instructed to correct the assessment roll
10 by adjusting the assessed valuation[s].” Ord. at 3 (CER IV at 844).

11 3. *In re: Consideration of Assessor's Appeal of Equalization Decision,*
12 *Notice of Equalization Decision (Oct. 9, 2009) (CER II at 438-47)*

13 95. In this matter, the State Board, affirmed the County Board decision, equalizing all
14 residential property values in Incline Village/Crystal Bay for the 2006-07 tax year, the fourth year in the
15 five-year appraisal cycle, to constitutional levels (2002-2003 tax year, as factored.) Dec. at 1 (CER II at
16 438).

17 96. The County Board had granted relief to 300 individual taxpayers who filed appeals of the
18 property tax valuations for the 2006-2007 tax year in accordance with *Bakst*. Dec. at 1 (CER II at 438).

19 97. When the County replaced void unconstitutional 2006-2007 taxable values with
20 constitutional 2002-2003 values, as factored, for the three hundred individual appealing taxpayers, the
21 County Board determined that it “had created an unequal rate of taxation for the 2006-2007 tax year.”
22 Dec. at 1 (CER II at 438).

23 98. The County Board did not limit the scope of its equalization order to only those properties
24 who had undisputed unconstitutional values, but to all properties in Incline Village/Crystal Bay to cure
25 the disparity between the valuation and assessment between the 300 parcels and the remainder of the
26 area. Dec. at 1-2, 5 (CER II at 438-39, 442); *Village League to Save Incline Assets v. State ex rel Bd. of*
27 *Equal.*, 124 Nev. 1079, 1090, 194 P.3d 1254, 1261-62 (2008) (“2008 Village League”).

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1 99. Discharging its equalization function, the County Board reset the taxable values for the
2 approximately 8,700 other properties in the Incline Village and Crystal Bay areas to 2002-2003 levels.
3 Dec. at 1, 5 (CER II at 438, 442) (quoting County Board).

4 100. The Assessor appealed to the State Board. Dec. at 2 (CER II at 439).

5 101. The State Board initially remanded to the County Board, which was contested by
6 Taxpayers. In the *2008 Village League* case, the Court granted taxpayers' writ of mandate and directed
7 the State Board to consider the Assessor's appeal of County Board's equalization decision. 124 Nev. at
8 1091, 194 P.3d at 1262.

9 102. The *2008 Village League* Court rejected the argument of the State Board that the County
10 Board had to make findings that all residential properties in Incline Village/Crystal Bay were
11 unconstitutionally valued: (1) the County Board had made specific findings that the 300 properties
12 subject to individual appeals were unconstitutionally valued and the values reset to 2002-2003 levels,
13 and (2) the County Board reduced the values of all other properties in Incline Village to those same levels
14 to make them equal. 124 Nev. at 1090, 194 P.3d at 1261-62.

15 103. On remand, the State Board found that the "Assessor did not present sufficient evidence
16 to support a value different from that established by the equalization action of the County Board. The
17 State Board found the County Board's decision to lower the Assessor's value on 8,700 properties to the
18 same level as other properties previously decided, should be upheld." Dec. at 5 (CER II at 442).

19 104. The State Board found that the County Board changed the values of the 300 individual
20 property owners "because of the use of unconstitutional methods of valuation by the Assessor; equity
21 and fairness requires all properties in the same geographic area receive the same treatment." Dec. at 5
22 (CER II at 442).

23 105. The State Board concluded that the Assessor had failed to carry his burden of proof that
24 the County's decision reducing valuations for all Incline Village/Crystal Bay was "unjust and
25 inequitable" because "the values for the '8700' properties were inconsistent with the values for the
26 '300'." Dec. at 5 (CER II at 442).

27 106. The State Board concluded that "[p]ursuant to the Taxpayer's Bill of Rights [NRS
28 361.291(1)(a)], each taxpayer has the right to be treated by officers and employees of the Department

1 with courtesy, fairness, uniformity, consistency and common sense. In the absence of regulations
2 regarding the equalization, the State Board employed a fairness standard in determining whether the
3 County Board's decision should be overturned." Dec. at 6 (CER II at 443).

4 107. The State Board denied the Assessor's petition and ordered the County Comptroller to
5 "certify the assessment roll of the county consistent with this decision[.]" Dec. at 6 (CER II at 443).

6 108. The 2009 Equalization Decision equalizing all 2005-2006 taxable values of Incline
7 Village/Crystal Bay properties to constitutional 2002-2003 levels, as factored, is a final decision of the
8 State Board.⁹

9 **G. Proceedings Leading to 2017 Equalization Order**

10 109. On August 21, 2012, this Court issued a writ of mandate to the State Board, compelling
11 the State Board to "notice and hold a public hearing, or hearings as may be necessary, to hear and
12 determine the grievances of property owner taxpayers regarding the failure, or lack, of equalization of
13 real property valuations throughout the State of Nevada for the 2003-2004 tax year and each subsequent
14 tax year to and including the 2010-2011 tax year and to raise, lower or leave unchanged the taxable value
15 of any property for the purpose of equalization." Writ. at 1 (CER III at 554).

16 110. The Court mandated the State Board to certify any change made in property valuations to
17 the County, Assessor and Treasurer, and upon receipt, the County was mandated to "issue such additional
18 tax statement(s) or tax refund(s) as the changed valuation may require to satisfy the statutory provisions
19 for the collection of property taxes." Writ. at 2 (CER III at 555).

20 *I. 2012 State Board Hearings*

21 111. Pursuant to the writ of mandate, the State Board held three hearings: September 18,
22 November 5 and December 3, 2012. CER I at 1-4 (hearing notices).

23 *a. November Hearing*

24 112. At the November 5, 2012 hearing, the Assessor testified that for the 2003-2004, 2004-
25 2005 and 2005-2006 tax years, one or more constitutional valuation methodologies identified in *Bakst*
26
27

28 ⁹ The County and Assessor did petition for judicial review, but the appellants failed to name and serve all taxpayers and on that basis, the district court dismissed the petition for judicial review; the district court's decision was affirmed by the Nevada Supreme Court. See *Washoe County v. Otto*, 128 Nev. 424, 282 P.3d. 719 (2012).

1 and *Barta* had been used to value every stand-alone single family residence in the Incline Village/Crystal
2 Bay area as well as approximately 900 condominiums. Bd. Trans. (Nov. 5, 2012) at 94:8-21.

3 113. At the end of its November 5, 2012 hearing, the State Board took action by passing the
4 following motion made by Member Marnell:

5 I'm going to make a motion that . . . for any taxpayer within Incline Village and Crystal
6 Bay that was unconstitutionally assessed for the '03-'04, '04-'05, '05-'06 years . . . that
7 number one, my motion would be first that the assessor confirm that the data is accurate,
8 and those people who were unconstitutionally assessed. Part two is that we would go back
9 to the last constitutional year, which I believe is the '02-'03 years.[.]

9 Bd. Trans. (Nov. 5, 2012) at 100:10-23.

10 114. The then-Assessor, Josh Wilson, and State Board Chairman Wren, both concurred (Mr.
11 Wilson by nodding and Chairman Wren by verbal confirmation) that the 2002-2003 tax year was the last
12 constitutionally valued and assessed year. Bd. Trans. (Nov. 5, 2012) at 100:24-25.

13 115. There was additional discussion that the values for 2004-2005 and 2005-2006 would be
14 factored, which Member Marnell incorporated into his motion. Bd. Trans. (Nov. 5, 2012) at 101:1-
15 25.

16 116. Member Marnell made it clear that his motion applied not just to property owners who
17 had filed appeals but also to all impacted property owners: "to be equal for all those who had an
18 unconstitutional appraisal." Bd. Trans. (Nov. 5, 2012) at 105:17-23.

19 117. The motion passed unanimously. Bd. Trans. (Nov. 5, 2012) at 113:20-21.

20 118. The State Board's action was consistent with *Bakst* and *Barta*, which set the template for
21 relief in discharging the State Board's equalization function: replacement of unconstitutional values with
22 constitutional values, and payment of the resulting refund of tax collected on the difference between the
23 two values (assuming values were lowered).

24 b. December Hearing

25 119. At the hearing on December 3, 2012, pursuant to the State Board's directive (part one of
26 Member Marnell's motion), the Assessor provided three lists of approximately 5,500 properties at Incline
27 Village/Crystal Bay that he determined had been valued using unconstitutional methodologies for the
28 2003-2004, 2004-2005, and 2005-2006 tax years. Bd. Trans. (Dec. 3, 2012) at 5-6; CER III 545-550 (first

1 and last pages of lists of unconstitutionally valued properties in Incline Village/Crystal Bay for three
2 years in question).

3 120. The Assessor represented to the Board that if the unconstitutional taxable values of the
4 identified properties on the lists were replaced with constitutional 2002-2003 values, as factored, there
5 would be a reduction in value in each of the three years of approximately \$698 million (2003-2004), \$657
6 million (2004-2005) and \$564 million (2005-2006). Bd. Trans. (Dec.3, 2012) at 5-6.

7 121. The State Board members were concerned with the loss of tax revenue if it implemented
8 the motion unanimously passed at the November 5, 2012 hearing.

9 122. Member Johnson stated "we're coming back to a solution that's going to reduce the
10 taxable rolls in Washoe County by 1.9 billion dollars and I struggle with that." Bd. Trans. (Dec.3, 2012)
11 at 73.

12 123. Member Marnell made motion to have the Assessor "reappraise all properties for those
13 three tax years that were unconstitutionally appraised or identified as unconstitutionally appraised and to
14 determine the new taxable value." Bd. Trans. (Dec.3, 2012) at 77.

15 124. Member Marnell stated "I'm assuming that that's going to cost them [the County] some
16 money. But I'm sure it's far better than a 1.5 billion dollar property tax drop." Bd. Trans. (Dec.3, 2012)
17 at 77.

18 125. No action was taken by the State Board to vacate the decision made at the November 5,
19 2012 hearing to equalize unconstitutional values to constitutional levels for the three years in question
20 (part two of Member Marnell's motion). See Bd. Trans. (Dec 3, 2012) at 58-80.

21 2. 2012 Equalization Order

22 126. In its 2012 Equalization Order after the December hearing, dated February 3, 2013, the
23 State Board found that residential properties in Incline Village/ Crystal Bay were valued in each of the
24 2003-2004, 2004-2005, and 2005-2006 tax years using methodologies that were unconstitutional under
25 *Bakst* and *Barta*. 2012 Ord. at 8 (CER IV at 950).

26 127. The State Board found "no evidence to show methods found to be unconstitutional by the
27 Nevada Supreme Court in the *Bakst* decision were used outside the Incline Village and Crystal Bay area."
28 2012 Ord. at 8 (CER IV at 950).

1 128. The State Board “determined that no statewide equalization was required. However, . . .
2 the State Board determined certain regional or property type equalization [in Incline Village/Crystal Bay]
3 was required.” 2012 Ord. at 9 (CER IV at 951).

4 129. The State Board ordered the Assessor “to reappraise all residential properties located in
5 Incline Village and Crystal Bay to which an unconstitutional methodology was applied to derive taxable
6 value during the tax years 2003-2004, 2004-2005, 2005-2006.” 2012 Ord. at 9 (CER IV at 951).

7 3. *Petition for Judicial Review of 2012 Equalization Order*

8 130. In March of 2013, the Village League Petitioners petitioned this Court for judicial review
9 of the reappraisal portion of the 2012 Equalization Order.

10 131. The Bakst Petitioners, “whose property values had already been established, filed a
11 motion to intervene in the district court action, arguing that the 2012 Equalization Order directing
12 reappraisal of their properties threatened the previous final judgments. The district court granted the
13 motion to intervene.” *Ingemanson*, 133 Nev. Adv. Op. 1 at 6-7, 388 P.3d at 221.

14 132. This Court dismissed the 2013 petition for judicial review on the basis that the 2012
15 Equalization Order was not final. *Ingemanson*, 133 Nev. Adv. Op. 1 at 6-7, 388 P.3d at 221.

16 133. The Village League Petitioners and Bakst Petitioners appealed.

17 4. *Nevada Supreme Court's Decision in Ingemanson*

18 134. On January 26, 2017, the Nevada Supreme Court issued *Ingemanson*, reversing the
19 dismissal of the petition for judicial review. 133 Nev. Adv. Op. 1, 388 P.3d.

20 135. The *Ingemanson* Court stated:

21 [i]n Barta and Bakst, this court concluded, as a remedy, that because property is physically
22 reappraised once every five years and the assessment methods used in 2002 were
23 unconstitutional, the taxable values for the unconstitutionally appraised properties were
24 void for the tax years beginning in 2003–04 and ending in 2007–08. As a result, property
25 taxes in those years were to be based on the taxable values previously established for the
26 2002–03 tax year.

133 Nev. Adv. Op. 1 at 4, 388 P.3d at 220 (internal citations omitted).

26 136. The Court stated that:

27 The State Board was clearly attempting to engage in its equalization function pursuant to
28 NRS 361.395(1) when it ordered reappraisals. As such, an appeal directly to the State
Board would be the only way for a taxpayer to challenge the reappraised taxable value. .
.. [H]owever, only taxpayers whose valuations rise as a result of the reappraisal process

1 are entitled to a hearing. But this remedy fails to take into consideration the remedies
2 already afforded the Bakst intervenors and the affect those remedies have on the
equalization process for the region.

3 *Ingemanson*, 133 Nev. Adv. Op. 1 at 13, 338 P.3d at 224.

4 137. The *Ingemanson* Court found that the State Board's jurisdiction is restricted "to equalizing
5 the property values and hearing appeals from the county board valuations, not determining matters of law
6 unrelated to valuation. Therefore, the Bakst intervenor . . . would not be allowed to raise their issue or
7 claim preclusion arguments to the State Board." 133 Nev. Adv. Op. 1 at 13-14, 338 P.3d at 224.

8 138. The State Board and County argued that the Court did not have jurisdiction to review the
9 2012 Equalization Order on two grounds: (1) the State Board was not acting in a legislative, non-
10 adjudicative capacity, and (2) the order was not a final order in a contested case. *Ingemanson*, 133 Nev.
11 Adv. Op. 1 at 7, 338 P.3d at 222.

12 139. The Court rejected both arguments, concluding that: (1) when the State Board is
13 performing its equalization function, it is acting in a quasi-judicial capacity, and (2) the 2012 Equalization
14 Order was a ruling in a contested case and review of the final equalization decision after the reappraisal
15 was not an adequate remedy at law for the Village League and Bakst Petitioners. *Ingemanson*, 133 Nev.
16 Adv. Op. 1 at 8-14, 338 P.3d at 222-24.

17 140. The Court concluded that "NRS 361.395 does not provide the State Board with authority
18 to order reappraisals and the 2010 regulation purporting to provide the State Board with such authority
19 does not apply retroactively to the tax years at issue in this case." *Ingemanson*, 133 Nev. Adv. Op. 1 at
20 18, 388 P.3d at 226.

21 141. The Nevada Supreme Court reversed this Court's dismissal of the petition for judicial
22 review and remanded "this matter to the district court with instructions for it to grant the petition for
23 judicial review, vacate the Equalization Order directing new appraisals, and conduct further proceedings
24 to satisfy the requirements of NRS 361.395." *Ingemanson*, 133 Nev. Adv. Op. 1 at 18, 388 P.3d at 226.

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1 5. *Remand to this Court*

2 142. Upon remand to this Court, the Village League filed a motion requesting that this Court
3 enter an order returning Incline Village and Crystal Bay residential property values for the 2003-2004,
4 2004-2005, and 2005-2006 years to their 2002-2003 constitutional levels and require its implementation
5 by the County Assessor and Treasurer. Mot. for Entry of Judg., (April 25, 2017).

6 143. The State Board and the County both opposed the motion.

7 144. The County collaterally attacked the judgments of the Bakst Petitioners and similarly
8 situated property owners in Incline Village/Crystal Bay with adjudicated taxable values for the 2003-
9 2004, 2004-2005, 2005-2006 tax years, stating that “the only viable actions this Court could take is to
10 take no action at all, or to raise the values of the *Bakst* properties.” Cty. Opp. at 22:7-8 (May 12, 2017).

11 145. The Bakst Petitioners filed a response requesting that this Court determine the legal issues
12 of the finality of their judgments and the preclusive effect of those judgments, issues which the State
13 Board did not have the authority to determine per *Ingemanson*, to protect the Bakst Petitioners judgments
14 from further collateral attack. See Bakst Resp. (May 25, 2017).

15 146. Over the objections of taxpayers, this Court remanded the matter to the State Board to
16 “conduct further proceedings pursuant to its statutory authority under NRS 361.395.” Order (July 17,
17 2017).

18 147. This Court did not address the Bakst Petitioners’ finality and preclusion issues.

19 6. *2017 Equalization Hearing*

20 148. The State Board scheduled, noticed and held a hearing on August 29, 2017. CER IV at
21 967-69.

22 149. The 2017 State Board hearing was a continuation and completion of the equalization
23 proceeding (as corrected by the Nevada Supreme Court’s decision in *Ingemanson*) that the State Board
24 began in 2012.

25 150. The State Board heard no new evidence and the proceeding was limited to oral
26 presentations by the parties, including the Village League and Bakst Petitioners. Bd. Trans (Aug. 29,
27 2017) at 59:17-25, 60:1-25, 61:1-22.

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1 151. At the hearing, the Petitioners argued that, as confirmed by the Nevada Supreme Court in
2 *Ingemanson, Bakst and Barta*, the Nevada Constitution guarantees a uniform and equal rate of assessment
3 and taxation, which requires the State Board to equalize unconstitutional taxable values for the three
4 years in question to constitutional levels. Bd. Trans. (Aug. 29, 2017) at 69:9-16; 70:1-25, 71:1-2; 75:1-
5 12; 80:1-7.

6 152. The Bakst Petitioners, citing to the *Barta* decision, argued that the State Board's
7 "predominant concern" is the constitutional guarantee of equality. Bd. Trans. (Aug. 29, 2017) at 69:21-
8 23.

9 153. The Bakst Petitioners argued that NRS 361.395 and *Ingemanson* bound the State Board,
10 and accordingly, the State Board is required "to take certain rolls, not all rolls, not the rolls that are
11 adjusted by the Nevada Supreme Court, but certain rolls that were adjusted by the county, and perform
12 [its] functions contained therein." Bd. Trans. (Aug. 29, 2017) at 68:18-25.

13 154. During the hearing, State Board Member Schiffmacher inquired of State Board counsel
14 whether the "judicial remedy" afforded the Bakst or Barta property owners set a precedent for the State
15 Board, and counsel responded that the State Board was not "obligated by Bakst" and "the [*Ingemanson*]
16 Court didn't say that you are." See Bd. Trans. (Aug. 29, 2017) 157:12-25; 158:10-12.

17 **H. 2017 Equalization Order**

18 155. Approximately three months after the August 2017 hearing, the State Board issued and
19 served the 2017 Equalization Order on November 30, 2017 (which was dated October 30, 2017),
20 concluding that there was not a lack of equalization at Incline Village/Crystal Bay for the three tax years
21 in question. Ord. at 7 (CER IV at 966).

22 156. The State Board represented that it had "considered the tax rolls and the assessment ratio
23 studies, in addition to the documents in the record, to determine how it should perform its equalization
24 function" and "[t]he tax rolls, ratio studies and other documents in the record do not indicate an
25 equalization problem in Incline Village/Crystal Bay." Ord. at 6, 7 (CER IV at 965, 966).

26 157. The tax rolls for the 2003-2004, 2004-2005, and 2005-2006 were not in the administrative
27 record before the State Board. Bd. Brf. at 14; Cty. Brf. at 37.

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1 158. The ratio studies purportedly relied upon by the State Board did not include Incline
2 Village/Crystal Bay for the 2003-2004, 2004-2005 tax year, and for the 2005-2006 tax year, to the extent
3 the ratio study covered all areas of Washoe County, the sample size was so small it was not statistically
4 significant for any particular area of the County. CER II at 448-66, III at 467-28; TOP (May 10, 2017)
5 at 84-88.

6 159. The State Board concluded “[a]pplying a rollback as requested by petitioners would cause
7 a large equalization problem within Washoe County, between the Lake Tahoe Basin and the balance of
8 the County and the state as a whole as the relationship of assessment value to the true tax value would
9 not be the same.” Ord. at 7 (CER IV at 966).

10 160. The State Board’s conclusion is contradictory to the conclusions reached by the State
11 Board in the 2012 Equalization Order that (1) there was an equalization problem in Incline
12 Village/Crystal Bay resulting from the use of unconstitutional methodologies, (2) those methodologies
13 were only used in Incline Village/Crystal Bay, and (3) there was not an equalization problem in the rest
14 of Washoe County or the State. 2012 Ord. at 8-9 (CER IV at 950-51).

15 161. The final “Order” portion of the State Board’s decision states:

16 Based on a preponderance of the evidence in the administrative record, the testimony
17 during the proceeding . . . the State Board held, by a vote of 4-1 (Member Harper
18 opposed), that there is not an equalization problem in the Incline Village/Crystal Bay area
19 of Washoe County for the tax years 2003-2004, 2004-2005, 2005-2006 and further that
20 providing the relief requested by Village League would create an equalization problem
21 for Washoe County and statewide. The State Board ordered that the property valuations
22 for Incline Village/Crystal Bay for the tax years 2003-2004, 2004-2005, 2005-2006 are
23 equalized based on the tax rolls, the ratio studies, and the evidence before the State Board.

24 Equal. Ord. at 7 (CER IV at 966).

25 162. The Petitioners timely sought judicial review of the 2017 Equalization Order by filing the
26 Petition on December 29, 2017.¹⁰

27 163. This Court finds that the majority of the above Findings of Fact are undisputed as
28 established in Nevada Supreme Court decisions, the State Board’s orders and the admissions of the State
Board and County.

¹⁰ The Petition was filed in the First Judicial District Court, with a “protective” Notice and Petition for Review of State Board Action on Remand made in this Court. The First Judicial Court later entered an order transferring venue to this Court.

CONCLUSIONS OF LAW

A. Jurisdiction

1. The Petition brought pursuant to NRS 361.410 and NRS 233B.130 was timely filed within thirty (30) days of service of the Equalization Order in accordance with NRS 233B.130(2).

2. The County and State both argue that this Court does not have jurisdiction to review the 2017 Equalization Order.

3. The County argues that the 2017 Equalization Order is not reviewable because it is not a final decision in a contested case and there is no process for an individual taxpayer to petition the State Board for equalization of their property. Cty. Brf. at 3, 13.

4. The State Board argues that the 2017 Equalization is not reviewable by this Court because the State Board did not increase any taxable values when it equalized properties in Incline Village/Crystal Bay. Bd. Brf. at 17:12, 17-18.

5. This Court concludes as a matter of law that the arguments of the County and State are without merit.

6. Taxpayers are not required to petition the State Board to conduct its statewide equalization function because NRS 361.395(1) mandates the State Board to discharge its equalization function on an annual basis.

7. During the mandamus proceeding leading to the Court's 2012 Village League decision, the State Board admitted to the Supreme Court that it had never engaged in its statewide equalization function under NRS 361.395, resulting in the Court's remand and district court's issuance of the writ of mandate compelling the State Board to conduct statewide equalization proceedings. 2012 Village League, Lexis 279 at 5-6; Ord. & Writ (CER III at 551-555).

8. The final action an agency takes under mandate of the court is subject to review; otherwise, an agency would avoid judicial scrutiny. *See Estate of Adams v. Fallini*, 132 Nev. Adv. Op. 81, 386 P.3d 621 (2016) (mandate rule requires lower courts to effectuate a high court's ruling on remand).

9. *Ingemanson* held that when the State Board engages in its statewide equalization function, it is an "adjudicative quasi-judicial function" because it notices hearings, takes evidence and hears

1 testimony, and issues findings of fact and conclusions of law. 133 Nev. Adv. Op. 1 at 8-9, 388 P.3d at
2 222-23.

3 10. *Ingemanson* noted the “adversarial nature of the State Board’s annual meetings because
4 they are open to the public, permit individual taxpayers to challenge a property tax assessment, require
5 public notice, and allow taxpayers to be represented by an attorney.” 133 Nev. Adv. Op. 1 at 9, 388 P.3d
6 at 222 (citing *Marvin v. Finch*, 126 Nev. 168, 177, 232 P.3d 425, 431 (2010)).

7 1. *NRS 361.395(2) does not preclude judicial review.*

8 11. NRS 361.395(2) affords a separate administrative process for taxpayers who were not
9 participants in an equalization proceeding and whose property values will be raised because of the
10 equalization:

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

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

15 (b) In a proceeding to resolve an appeal or other complaint before the Board pursuant to
16 NRS 361.360, 361.400, 361.402 or 361.403 [appeals of decisions of county boards of
equalization, the Department of Taxation or NTC], it shall give 10 days’ notice to
interested persons by registered or certified mail or by personal service.

17 A notice provided pursuant to this subsection must state the time when and place where
18 the person may appear and submit proof concerning the valuation of the property. A
19 person waives the notice requirement if he or she personally appears before the Board and
is notified of the proposed increase in valuation.

20 12. NRS 361.395(2) does not speak to or foreclose judicial review of the State Board’s
21 statewide equalization decision.

22 13. The additional administrative process set forth in NRS 361.395(2) provides due process
23 to taxpayers whose values will be raised as a result of an Equalization Decision; taxpayers who personally
24 appeared at the State Board hearing are not entitled to the separate due process notice.

25 14. The Petition was brought pursuant to NRS 361.410, entitled “Judicial review: Availability
26 and restrictions.” Subsection (1) of NRS 361.410 provides:

27 1. No taxpayer may be deprived of any remedy or redress in a court of law relating to the
28 payment of taxes, but all such actions must be for redress from the findings of the State
Board of Equalization, and no action may be instituted upon the act of a county assessor

1 or of a county board of equalization or the Nevada Tax Commission until the State Board
2 of Equalization has denied complainant relief. This subsection must not be construed to
3 prevent a proceeding in mandamus to compel the placing of nonassessed property on the
4 assessment roll.

5 15. The State Board was requested by the Village League, to equalize residential properties
6 in Incline Village/Crystal Bay for the 2003-2004, 2004-2005, 2005-2006 tax years by replacing void
7 unconstitutional values with 2002-2003 constitutional values, as factored.

8 16. The State Board denied the relief requested and "ordered that the property tax values for
9 Incline Village/Crystal Bay for the tax years 2003-04, 2004-05, 2005-06 are equalized based on the tax
10 rolls, the ratio studies, and the evidence before the State Board." Equal. Ord. at 7 (CER IV at 966).

11 17. This Court has jurisdiction over this matter under NRS 361.410(1). The Petition seeks
12 "remedy" and "redress" from this "court of law relating to the payment of taxes" and this is an action
13 "for redress from findings of the State Board of Equalization."

14 2. *NRS 233B*

15 18. NRS 233B.130(1) provides that:

16 Any party who is:

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

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

24 19. "Contested case" means a proceeding, including but not restricted to rate making and
25 licensing, in which the legal rights, duties or privileges of a party are required by law to be determined
26 by an agency after an opportunity for hearing[.] NRS 233B.032.

27 20. The Court in *Ingemanson* has already determined that this matter is a contested case when
28 it held that it had jurisdiction to review the State Board's interim 2012 Equalization Order pursuant to
NRS 233B.130(1)'s provisions providing for review of an interim order in a "contested case." 133 Nev.
Adv. Op. 1, 388 P.3d at 223.

1 21. When *Ingemanson* considered the 2012 hearings and 2012 Equalization Order, it
2 concluded that the State Board heard testimony, received evidence and considered the oral presentations
3 of the parties. 133 Nev. Adv. Op. 1, 388 P.3d at 222-23. This matter involves the continuation and final
4 decision of the equalization proceedings that began in 2012.

5 22. At the 2017 hearing, the State Board heard testimony and oral argument by the parties,
6 including the Village League and the Bakst Petitioner who proceeded separately from the Village League
7 after the 2012 State Board equalization hearings.

8 23. As a matter of law, nothing distinguishes the 2017 Equalization Order from the 2012
9 Equalization Order, except the 2017 Equalization Order is undisputedly a final agency decision.

10 24. This matter has a seventeen-year history, which culminated in the interim 2012
11 Equalization Order and the final 2017 Equalization Order.

12 25. This Court concludes that Petitioners seek judicial review of a final agency decision in a
13 contested case.

14 26. This Court has jurisdiction over this matter pursuant to NRS 233B.130.

15 **B. Standard of Review**

16 1. *NRS 361.410*

17 27. This is a judicial review action challenging the State Board's Decision under NRS
18 361.410, which provides that "[n]o taxpayer may be deprived of any remedy or redress in a court of law
19 relating to the payment of taxes, but all such actions must be for redress from the findings of the State
20 Board of Equalization." NRS 361.410(1).

21 28. The burden of proof falls on the taxpayer "to show by clear and satisfactory evidence that
22 any valuation established by the Nevada Tax Commission or the Department or equalized by the State
23 Board of Equalization is unjust and inequitable." NRS 361.410(2).

24 29. The State Board and County argue that NRS 361.410 is not applicable to the judicial
25 review of statewide equalization decisions of the State Board, and that Petitioners were required to
26 proceed under NRS 361.420. Bd. Brf. at 10; Cty. Brf. at 16.

27 30. NRS 361.410 provides for direct "judicial review" of actions of the State Board.

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1 31. NRS 361.420 sets forth the exhaustion requirements, the grounds for judicial review, and
2 the process for an individual taxpayer to contest decisions of the State Board determining appeals by
3 individual property owners of decisions of county boards of equalization, the Department of Taxation or
4 the NTC.

5 32. This is the judicial review of a statewide equalization action affecting all residential
6 properties in Incline Village/Crystal Bay, not the judicial review of a denial of individual taxpayer appeals
7 of their taxes under NRS 361.420.

8 33. NRS 361.420(2) contains exhaustion language similar to NRS 361.410 in that suit may
9 only be brought after the State Board has denied the property owner relief: "property owner, . . . having
10 been denied relief by the State Board of Equalization, may commence suit . . . against the State and
11 county[.]" *Compare* NRS 361.420 (2) with NRS 361.410(1)("no taxpayer may be deprived of any
12 remedy or redress in a court of law relating to the payment of taxes, but all such actions must be for
13 redress from the findings of the State Board of Equalization.").

14 34. NRS 361.430 sets forth the burden of proof for suits brought under NRS 361.420: "In
15 every action brought under the provisions of NRS 361.420, the burden of proof shall be upon the plaintiff
16 to show by clear and satisfactory evidence that any valuation established by the Nevada Tax Commission
17 or the county assessor or equalized by the county board of equalization or the State Board of Equalization
18 is unjust and inequitable."

19 35. NRS 361.430's burden of proof is identical to that contained in NRS 361.410(2).
20 *Compare* NRS 361.430 with NRS 361.410(2) ("show by clear and satisfactory evidence that any
21 valuation established by the Nevada Tax Commission or the Department or equalized by the State Board
22 of Equalization is unjust and inequitable.").

23 36. When the State Board engages in equalization under NRS 361.395, it discharges its
24 exclusive statutory equalization obligation.

25 37. The State Board's statewide equalization obligation is distinct and separate from its other
26 statutory obligation, to hear individual appeals of decisions of county boards and the NTC. *See* NRS
27 361.395; NRS 361.400, NRS 361.420; *Barta*, 124 Nev. at 628, 188 P.3d at 1103.

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1 38. Neither NRS 361.420 nor NRS 361.430 address judicial review of decisions of the State
2 Board of Equalization when it is discharging its statewide equalization function under NRS 361.395.

3 39. The Legislature says what it means. *State v. Palm*, 128 Nev. 34, 272 P.3d 668 (2012)
4 (“[W]e presume that the Legislature was aware of the commonly understood effect of the language of [a
5 statute] when it drafted the statute, this is how it must be construed”); *Beazer Homes Nevada, Inc. v. Dist.*
6 *Ct.*, 120 Nev. 575, 580-81, 97 P.3d 1132, 1135-36 (2004) (“When a legislature adopts language that has
7 a particular meaning or history, rules of statutory construction . . . indicate that a court may presume that
8 the legislature intended the language to have meaning consistent with previous interpretations of the
9 language.”).

10 40. The Legislature would not have enacted different statutes with duplicative language
11 setting forth two burdens of proof and two exhaustion requirements for judicial review of a State Board
12 decision, unless it was drawing a distinction between the types of State Board decisions to be reviewed
13 under the two judicial review statutes.

14 41. The Legislature recognized that judicial review of the State Board's equalization function
15 would need to be separately addressed.

16 42. This Court concludes that the Petition was properly brought under NRS 361.410(1).

17 43. This Court denies the County's Motion to Dismiss to the extent it asserts the Petition was
18 not proper under NRS 361.410(1).

19 44. NRS 361.410(1) sets forth the applicable standard for review of this matter: “clear and
20 satisfactory evidence that any valuation . . . equalized by the State Board of Equalization is unjust and
21 inequitable.” NRS 361.410(1).

22 2. *NRS 233B*

23 45. This is also an action for judicial review taken under NRS 233B.130, which authorizes
24 any aggrieved party to a final decision of an agency to seek judicial review of that decision.

25 46. Pursuant to NRS 233B.135(3), a court may set aside a final decision of an agency if the
26 substantial rights of the petitioner have been prejudiced because the final decision of the agency is: (a) in
27 violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency;
28 (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the

1 reliable, probative and substantial evidence on the whole record; or (f) arbitrary or capricious or
2 characterized by abuse of discretion. NRS 233B.135(3).

3 47. Courts conduct de novo review of conclusions of law made by administrative agencies on
4 legal issues, including matters of statutory and regulatory interpretation. *See City of Reno v. Bldg &*
5 *Constr. Trades*, 127 Nev. Adv. Op. 10, 251 P.3d 718 (2011).

6 48. This Court conducts its NRS 233B review of this matter within the bound of the specific
7 equity-based standard of review set forth in NRS 361.410: determining whether the valuations
8 “equalized” by the State Board are just and equitable. *See State Tax Comm’n ex rel. Dep’t of Taxation*
9 *v. Am. Home Shield of Nev., Inc.*, 127 Nev. 382, 388, 254 P.3d 601, 605 (2011) (“A specific statute
10 controls over a general statute.”).

11 3. *Presumption of Validity*

12 49. Generally, “[i]n reviewing orders resolving petitions for judicial review that challenge
13 State Board decisions, the State Board’s determinations are presumed valid.” *Montage Mktg, LLC v.*
14 *Washoe Cty Bd of Equalization*, 134 Nev. Adv. Op. 39, 419 P.3d 129, 131 (2018) (citing *Bakst*, 122 Nev.
15 at 1408, 148 P.3d at 721).

16 50. However, “that presumption [only] remains until there is competent evidence to the
17 contrary presented...and [then] the presumption disappears.” *Constructors, Inc. v. Cass County Bd of*
18 *Equalization*, 606 N.W.2d 786, 871 (Neb. 2000) (Discussing “presumption that a county board of
19 equalization has faithfully performed its official duties in making an assessment and has acted upon
20 sufficient competent evidence to justify its action.”).

21 51. The undisputed facts of this case show the 2017 Equalization Order is not entitled to a
22 presumption of validity. There is competent and undisputed evidence that (1) the State Board did not
23 follow its prior decisions in equalizing taxable values for a body of taxpayers outside of those taxpayers
24 who filed individual appeals, and (2) the State Board affirmed unconstitutional taxable values.

25 52. The State Board and the County assert that the general presumption of validity of the State
26 Board’s decisions may only be overcome if the State Board applied a fundamentally wrong principle or
27 refused to exercise its best judgment. Bd. Brf. at 10; Cty Brf. at 14-15.

28 ///

1 53. This is a case involving statewide equalization. The cases cited by the County and State
2 are distinguishable as they involved instances where the State Board was acting in an appellate capacity
3 in reviewing decisions of a particular county board of equalization. *See Montage Mktg. LLC v. Washoe*
4 *County Bd of Equalization*, 134 Nev. Adv. Op. 39, 419 P.3d 129 (2018) (judicial review of State Board
5 decision deciding appeal of decision of Washoe County Board of Equalization denying taxpayer's
6 petition for review of their assessment); *Canyon Villas Apts. v. State*, 124 Nev. 832, 192 P.3d 746 (2008)
7 (judicial review of State Board decision deciding appeal of decision of Clark County Board of
8 Equalization partially denying taxpayer's petition for review of their assessment); *Imperial Palace v.*
9 *Department of Taxation*, 108 Nev. 1060, 843 P.2d 813 (1992) (judicial review of State Board decision
10 deciding appeal of a decision of the Clark County Board of Equalization denying the taxpayer's petition
11 for review of its assessment); *Kelly v. State*, 91 Nev. 150, 532 P.2d 1029 (1975) (judicial review of State
12 Board decision deciding appeal of a decision of Douglas County denying the taxpayer's petition for
13 review of its assessment).

14 54. In this case, contrary to the cases relied upon by the State Board and the County, the State
15 Board is not acting as the final administrative arbiter of an assessment dispute between a single taxpayer
16 and a county deciding an appeal from a county board of equalization's decision. It was engaging in its
17 statewide equalization function under NRS 361.395.

18 55. In individual contested cases, the State Board's "appellate" decision is then subject to
19 review under NRS 361.420 and 361.430.

20 56. Here, the State Board is performing its own statutory function under NRS 361.395, which
21 is subject to direct review by the Court. The only statute governing that standard of review is NRS
22 361.410.

23 57. The State Board's 2017 Equalization Order is not entitled to a presumption of validity.

24 **C. Nevada's Constitutional Guarantee of Uniform and Equal Assessment**
25 **and Taxation**

26 58. Article 10, Section 1 of the Nevada Constitution provides in pertinent part:

27 The legislature shall provide by law for a uniform and equal rate of assessment and
28 taxation, and shall prescribe such regulations as shall secure a just valuation for taxation
 of all property, real, personal and possessory.

...

1 Nev. Const. Art 10 § 1.

2 59. The Nevada Supreme Court has long required uniformity in taxation and assessment of
3 similarly situated individuals. *See List v. Whisler*, 99 Nev. 133, 138, 660 P.2d 104, 106-107 (1983);
4 *United States v. State ex rel. Beko*, 88 Nev. 76, 86-87, 493 P.2d 1324 (1972); *Boyne v. State ex rel.*
5 *Dickerson*, 80 Nev. 160, 166, 390 P.2d 225 (1964); *State of Nevada v. Eastabrook*, 3 Nev. 173 (1867).

6 60. The *Bakst* Court held that:

7 By using the mandatory term “shall,” the Constitution clearly and unambiguously requires
8 that the methods used for assessing taxes throughout the state must be “uniform.” Unless
9 ambiguous, the language of a constitutional provision is applied in accordance with its
10 plain meaning. Thus, county assessors must use uniform standards and methodologies for
assessing property values throughout the state.

11 122 Nev. at 1413, 148 P.3d at 724; *see also County of Clark V. LB Props., Inc.*, 129 Nev. Adv. Op. 96,
12 315 P.3d 294, 297(2013) (“‘methods used to value taxpayers’ properties play a material role in ensuring
13 that the constitutional guarantee of a uniform and equal rate of assessment’ exist in property valuations.”
14 *quoting Barta*, 124 Nev. at 624, 188 P.3d at 1100).

15 61. The “‘prevailing requirement [is] that similarly situated taxpayers should not be
16 deliberately treated differently by taxing authorities.’” *Clifton v. Allegheny County*, 969 A.2d 1197, 1212
17 (Pa. 2009) (*quoting Downingtown Area Sch Dist. v. Chester County Bd. of Assessment*, 913 A. 2d 194,
18 201 (Pa. 2006)).

19 1. *The constitutional guarantee of uniformity and equality has primacy*

20 62. The Nevada Constitution is the “supreme law” of this State and its dictates must be
21 enforced. *MDC Rests., LLC v. Eighth Judicial District Court*, 132 Nev. Adv. Op. 76, 383 P.3d 262, 267
22 (2016).

23 2. *Non-uniform and unequal assessment and valuation is not excused*
24 *because the resulting taxable value does not exceed full cash value*

25 63. The guarantee of uniformity can only be satisfied if similarly situated properties are valued
26 and assessed uniformly and proportionately with the same standards and methodologies, even if the
27 taxable value is less than full cash value. *Barta*, 124 Nev. at 628; 188 P.3d at 1103 (“A taxable value
28 may be unjust and inequitable despite being less than the full cash value of the property.”).

1 3. *While mathematical exactitude is not required, similarly situated*
2 *properties must be valued and assessed using the same*
3 *methodologies and standards*

4 64. The Nevada Supreme Court recognized that the Supreme Court of Kansas, which is
5 another jurisdiction with a “virtually identical” Uniform and Equal Clause, has reached a similar
6 construction of the constitutional guarantee. *See List*, 99 Nev. at 138, 660 P.2d 106-7 (citing *State ex rel.*
7 *Stephan v. Martin*, 608 P.2d 880, 886 (Kan. 1980); *Wheeler v. Weightman*, 149 P. 977 (Kan. 1915)).

8 65. The Kansas Supreme Court held that:

9 Uniformity in taxing implies equality in the burden of taxation, and this equality cannot
10 exist without uniformity in the basis of assessment as well as in the rate of taxation. The
11 duty to assess at full value is not supreme but yields to the duty to avoid discrimination.

12 *Addington v. Board of County Comm'rs*, 382 P.2d 315, 319, (Kan. 1963) (remedy portion of decision
13 superseded by statute).

14 66. The *Addington* Court held that while uniformity and equality in the constitutional sense
15 do not require “mathematical exactitude” and certain errors or mistakes may not rise to a violation, at a
16 minimum:

17 It is apparent that uniformity is necessary in valuing property for assessment purposes so
18 that the burden of taxation will be equal. It makes no difference what basis of valuation is
19 used, that is, what percentage of full value may be adopted, provided it be applied to all
20 alike.

21 ...
22 *Uniformity of taxation does not permit a systematic, arbitrary or intentional valuation of*
23 *the property of one or a few taxpayers at a substantially higher valuation than that placed*
24 *on other property within the same taxing district; however, this uniformity and equality*
25 *in a constitutional and statutory sense does not require mathematical exactitude in the*
26 *assessment valuation of property for taxation. In the instant case if all the property in the*
27 *county had been assessed at thirty per cent of its true value, plaintiff would have no cause*
28 *to complain. The fraud upon plaintiff's rights resulted from the arbitrary distinction made*
 between his elevator property and other property in the county. Mere excessiveness of an
 assessment or errors in judgment or mistakes in making unequal assessments will not
 invalidate an assessment, but the inequality or lack of uniformity, if knowingly high or
 intentionally or fraudulently made, will entitle the taxpayer to relief.

Addington, 382 P.2d at 319 (emphasis added).

///

1 67. In a later case addressing actual valuation methods (or the lack thereof), the Kansas
2 Supreme Court addressed an assessor's actions in valuing leased lands where the court had "determined
3 that the haphazard fashion that was used by the appraiser to discover leased lands and to determine which
4 of the leased lands should be subject to an increased valuation was improper [and] resulted in a
5 nonuniform and unequal valuation of similar property." The court in that case reiterated the admonition
6 of *Addington*:

7 Uniformity in taxation *implies equality in the burden of taxation, and this equality cannot*
8 *exist without uniformity in the basis of valuation.* Uniformity in taxation does not permit
9 a systematic, arbitrary, or intentional higher valuation than that placed on other similar
 property within the same taxing district.

10 *Board of County Comm'rs v. Greenhaw*, 734 P.2d 1125, 1131 (Kan. 1989) (emphasis added) ("Under the
11 facts of this case, the assessment of Greenhaw's land was so arbitrary and grossly discriminatory that it
12 destroyed uniformity and equality in the manner of fixing the assessed valuation and was illegal.").

13 68. The mandate of the Nevada Constitution's Uniform and Equal Clause, which our Supreme
14 Court has found to be "virtually identical" to that in the Kansas Constitution, is clear: "Uniformity in
15 taxation implies *equality in the burden of taxation, and this equality cannot exist without uniformity in*
16 *the basis of valuation.*" *Greenhaw*, 734 P.2d at 1131; *Addington*, 382 P.2d at 319 (emphasis added).

17 4. *The guarantee of uniformity extends to statutes, regulations and acts*
18 *of valuation by assessors alike—an assessor cannot create non-*
19 *uniform methods of valuing property in the same class.*

20 69. Whether it be scrutinizing a statute or "valuation by assessing officers[.]" the uniformity
21 analysis is the same. *Cass County*, 606 N.W.2d at 873 (rules of uniformity apply to acts of the legislature
22 and assessing officers and "[d]iscrimination in valuation, where it exists, does not necessarily result from
23 the terms of the tax statute, but may be caused by the acts of the taxing officer or officers").

24 70. When an assessing officer establishes "two methods of valuation of property in the same
25 class for taxation purposes [it] results in a want of uniformity within the constitutional prohibition[.]"
26 *Cass County*, 606 N.W.2d at 874.

27 71. The Nevada Supreme Court concluded in *Barta*:

28 when the owner of one of two nearly identical neighboring properties pays more in taxes
 than her neighbor because nonuniform methods have been used to assign differing taxable

1 values to the two properties, the owner with the greater tax burden has suffered an injury,
2 regardless of whether her property's taxable value exceeded its full cash value. The owner
3 with the lesser tax burden has likewise suffered an injury, in that his property was not
4 valued uniformly with his neighbor's; however, that injurious assessment is less likely to
be challenged. *Even more salient is the injury when nonuniform methods cause the*
unequal taxation of an entire assessment group.

5 *Barta*, 124 Nev. at 626, 188 P.3d at 1101 (emphasis added).

6 72. In *Cass County*, the Nebraska Supreme Court held that an assessor's selective valuation
7 of mineral interests violated the constitutional requirement for uniformity where it did not rest on a
8 substantial difference of situation between the litigants whose mineral rights were assigned an assessed
9 value and other property owners whose minerals rights were attributed to have no value for assessment.
10 *Cass County*, 606 N.W.2d at 794.

11 73. Similar to *Barta*, the *Cass County* court stated:

12 Property of the same character must be taxed the same. Differential tax treatment can
13 only be based on the use or nature of the property, not upon who controls the property,
14 i.e., mining companies versus farmers. Schulte [an appraiser] testified that there were
15 other lands with limestone interests, but he stopped attributing value to these interests
beyond the Kerford Limestone property holdings. Thus, the adjacent landowners escaped
the increased tax that burdened their neighbor, even though both are similarly situated as
property owners with subsurface mineral interests.

16 606 N.W.2d at 794.

17 74. The *Cass County* Court could not justify a heavier burden on taxpayers who were
18 neighbors of those who "escaped the increased tax[.]" 606 N.W.2d at 794.

19
20 **D. *Bakst* and *Barta* Established that the Assessor Used Unconstitutional**
21 **Methodologies to Establish Taxable Values of the Residential**
22 **Properties in Incline Village/Crystal Bay for the Three Years in**
23 **Question**

24 75. The *Bakst* Court held that "[b]y using the mandatory term 'shall,' the Constitution clearly
25 and unambiguously requires that the methods used for assessing taxes throughout the state must be
26 uniform. . . . Thus, county assessors must use uniform standards and methodologies for assessing property
27 values throughout the state." 122 Nev. at 1413; 148 P.3d at 724.

28 76. The *Bakst* Court found that the Assessor's methodologies were invalid and violated the
Nevada Constitution because they were not consistent with methods used throughout Washoe County

1 and because they were not the same as the methods used by assessors in other counties in the State. 122
2 Nev. at 1416; 148 P.3d at 726.

3 77. The Court, affirming the district court below, held that the 2003-2004 valuations were
4 "null and void" and the Court held that the only remedy available was to replace void unconstitutional
5 values with 2002-03 constitutional values and grant refunds. 122 Nev. at 1416; 148 P.3d at 726.

6 78. In *Barta*, the Court found that use of the factoring method by the Assessor to develop the
7 2004-2005 values was not constitutional because factoring "merely adjusts the prior year's assessed
8 values en mass by a certain percentage." 124 Nev. at 623-24; 188 P.3d at 1100.

9 79. The prior year's values had already been declared null and void and therefore, could not
10 be validly adjusted, hence, the Court held that the "2004-2005 values were affected by the same
11 unconstitutional infirmities as the 2003-2004 values, and, like those values, are unjust and inequitable."
12 124 Nev. at 624; 188 P.3d at 1100. The Court affirmed the district court, declaring the Bakst Petitioners'
13 2004-2005 assessments void and resetting the assessed values for 2004-2005 to the 2002-2003 levels.

14 80. The holdings of *Bakst* and *Barta*, interpreting the Uniform and Equal Clause of the Nevada
15 Constitution as to the validity of the taxable values established by the Assessor in 2003-04, 2004-05, and
16 2005-06, were not limited to the properties owned by the taxpayers who brought those cases forward.

17 81. *Bakst* and *Barta*, declared that the Assessor violated the constitution's uniformity
18 guarantee when he systemically employed unconstitutional methodologies in valuing residential
19 properties in the Incline Village/Crystal Bay area of the County, but did not apply those same
20 methodologies to any other properties in the County and no other Assessor in the State employed similar
21 methodologies. *Bakst*, 122 Nev. at 1416, 148 P.3d at 726; *Barta*, 124 Nev. at 627, 188 P.3d at 1102.

22 82. The Court in *Ingemanson* reiterated the holdings of *Bakst* and *Barta*: "assessment methods
23 used in 2002 to value properties at Incline Village and Crystal Bay for real estate tax purposes were
24 unconstitutional . . . [and] as a remedy, that because property is physically reappraised once every five
25 years and the assessment methods used in 2002 were unconstitutional, the taxable values for the
26 unconstitutionally appraised properties were void for the tax years beginning in 2003-2004 and ending
27 in 2007-2008." 133 Nev. Adv. Op. 1 at 4, 388 P.3d at 220.

28 ///

1 83. The Nevada Supreme Court has held that “[t]he Nevada Constitution is the supreme law
2 of the state. And as a court, our role is not to create the law but simply to declare what the law is.” *MDC*
3 *Rests., LLC*, 132 Nev. Adv. Op. 76, 383 P.3d at 267. Thus, if the Nevada Supreme Court has issued a
4 decision “interpreting a constitutional provision, . . . [it] is necessarily retroactive [from the date of the
5 unconstitutional act] rather than from the date of [the] decision.” *Id.* In other words, the act was always
6 unconstitutional and thus, must be remedied.

7 84. In this case, *Bakst* and *Barta* declared what the law has always been (Article 10 Section
8 1’s guarantee of equal and uniform taxation and assessment) in determining whether the Assessors use
9 of discriminatory taxable values only in Incline Village/Crystal Bay violated the Uniform and Equal
10 Clause of the Constitution. Those declarations are applicable to the three tax years in question in this
11 case.

12 **E. Equalization is the Means to Ensure Assessors Uniformly Value and to**
13 **Assess Real Property**

14 85. The collection of property taxes under NRS Chapter 361 are the only taxes in the State
15 that are government imposed and collected. All other taxes administered by the Department and NTC,
16 such as sales and use taxes, room taxes and commerce taxes, are self-reported and collected by the
17 taxpayers.

18 **I. A system of checks and balances**

19 86. Thus, the Legislature has created a system of checks and balances to ensure that real
20 property in the state is assessed uniformly and equally.

21 87. After annually determining the taxable values of real property and preparation of the
22 secured tax rolls/assessment rolls, the county assessors must complete and file an affidavit that the
23 properties on the rolls were assessed “equally and uniformly.” NRS 361.310(1).

24 88. Assessors must also attest under separate affidavit that certifying the assessment of
25 property complied with NTC regulations. NRS 360.250(3).

26 89. Upon completion of the rolls, the county boards of equalization must “meet to equalize
27 assessments[.]” NRS 361.340(1).

28 90. The last check in the system is the State Board.

1 2. *The State Board's Equalization Obligation*

2 91. The State Board is the administrative body in this State vested with the statutory authority
3 to conduct statewide equalization. *Ingemanson*, 133 Nev. Adv. Op. 1 at 14-15, 388 P.3d at 225.

4 92. As concluded in *Barta*:

5 Under NRS 361.395(1), the State Board clearly has a duty to equalize property valuations
6 throughout the state: "the [State Board] shall . . . [e]qualize property valuations in the
7 State." Furthermore, NRS 361.400 establishes a requirement, separate from the
8 equalization duty, that the State Board hear appeals from decisions made by the county
9 boards of equalization. The two statutes create separate functions: equalizing property
10 valuations throughout the state and hearing appeals from the county boards. The
11 Taxpayers argue that if the State Board had performed its duty to equalize property values
statewide, then it would have recognized the unequal property taxation between them and
taxpayers in the rest of the state. The record reflects that the State Board failed to explain
how it equalized property values for the 2004-2005 tax year, if indeed it did so[.]

12 124. Nev. at 627, 188 P.3d at 1102-3.

13 93. NRS 361.395(1), the State Board's statewide equalization statute, provides:

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

16 (a) Equalize property valuations in the State.

17 (b) Review the tax rolls of the various counties as corrected by the county boards of
18 equalization thereof and raise or lower, equalizing and establishing the taxable value of
19 the property, for the purpose of the valuations therein established by all the county
20 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.

21
22 NRS 361.395(1) (emphasis added).

23 94. "Nevada's Constitution guarantees 'a uniform and equal rate of assessment and taxation.'
24 That guarantee of equality should be the boards of equalization's predominant concern[.]" *Barta*, 124
25 Nev. at 627, 188 P.3d at 1102.

26 95. Therefore, unlike other taxes, the injuries, harm, mistakes and ultimately the systemic
27 failure of the ad valorem property tax systems falls on the State Board.

28 ///

1 96. The “goal of equalization is to produce uniformity in taxation.” 84 C.J.S., Taxation, §
2 700 (2010). The adjusting of values, however, must be for the sole purpose of bringing valuation to a
3 common point of equality, and not just for raising or lowering as desired. 84 C.J.S. Taxation § 709 (*citing*
4 *Parrott & Co. v. City and County of San Francisco*, 280 P.2d 881 (1st Dist. 1955)) (emphasis added).

5 3. *The State Board equalizes to taxable value*

6 97. NRS 361.395 requires the State Board to equalize to “taxable value” which is a term
7 defined by NRS 361.043.

8 98. *Ingemanson* quotes to CJS’s general definition of equalization as a process involving the
9 adjustment of values to “real value” or “true tax value.” *Ingemanson*, 133 Nev. Adv. Op. 1 at 15, 388
10 P.3d at 225. The CJS Taxation § 701 cites were to cases in Nebraska (using “actual value”), California
11 (“real value”) and Indiana (“true tax value”). See CJS Taxation § 701 (Bakst. Pct. Reply Brf. Ex. 1.

12 99. The Court in *Ingemanson* was explaining the concept of equalization and did not
13 supersede or declare invalid existing statutes.

14 4. *The State Board must consider the tax rolls in discharging its*
15 *statewide equalization function*

16 100. *Ingemanson* concluded that NRS 361.395 requires the State Board to consider the tax rolls
17 in performing its statewide equalization function. *Ingemanson*, 133 Nev. Adv. Op. 1, 388 P.3d at 225;
18 NRS 361.395(1)(b).

19 101. The tax rolls are not in the record and therefore the State Board could not have reviewed
20 the tax rolls. The State Board violated NRS 361.395(1) and its action is unlawful.

21 5. *The State Board is not time-barred from equalizing taxable values*
22 *for the 2003-2004, 2004-2005, 2005-2006 tax years*

23 102. The County asserts that the tax years in question are closed and therefore, the State Board
24 is foreclosed from performing its statewide equalization function.

25 103. This argument is without merit. The 2003-2004, 2004-2005, and 2005-2006, tax rolls are
26 still open.

27 104. These tax years have been the subject of litigation over the past 17 years and the litigation
28 is not resolved.

1 105. The State Board has ordered the County to correct tax rolls to reflect adjustments in value
2 after discharging its equalization function after the close of the tax year when there was an open challenge
3 or court action. *In re: Consideration of Assessor's Appeal of Equalization Decision*, (CER II at 438-447)
4 (decided in 2009 for 2006-2007 tax year).

5 106. Nevada property tax statutes contemplate the adjustment of tax rolls after the close of a
6 tax year to make necessary corrections. *See* NRS 361.765, NRS 361.768.

7 **F. The 2017 Equalization Order is Unconstitutional**

8 107. There is no dispute that the Assessor used non-uniform and unequal methodologies,
9 resulting in unconstitutional values for Incline Village/Crystal Bay residential property owners.

10 108. This Court concludes any unconstitutional value is a void value. *Bakst*, 122 Nev. at 1416,
11 148 P.3d at 726; *Barta*, 124 Nev. at 628, 188 P.3d at 1103; *Greenhaw*, 734 P.2d at 1127-1128 ("We agree
12 that a valuation contrary to the principles of the Constitution is an illegal or void valuation.")

13 109. The State Board affirmed and reinstituted the unconstitutional values of *Bakst* Petitioners,
14 and more than a thousand other Incline Village/Crystal Bay residential property owners represented by
15 Village League had their values adjudicated by Nevada courts for the 2003-2004, 2004-2005 and/or
16 2005-2006 tax years in accordance with *Bakst* and *Barta*.

17 110. The State Board's action is a violation of the Uniform and Equal Clause of the Nevada
18 Constitution. *See Barta*, 124 Nev. at 626, 188 P.3d at 1101 ("Even more salient is the [constitutional]
19 injury when nonuniform methods cause the unequal taxation of an entire assessment group.").

20 111. The State Board's decision must be vacated under NRS 233B.135(3) as it is "in violation
21 of constitutional . . . provisions."

22 112. Clear and convincing evidence exists that the State Board violated the Nevada
23 Constitution. The 2017 Equalization is unjust and inequitable and must be set aside.

24 **G. A Taxpayer is not Required to "Petition" to Enforce the Constitution's
25 Uniform and Equal Rate of Taxation and Assessment Guarantee**

26 113. The County and State have argued that any constitutional infirmities in the taxable values
27 of Incline Village/Crystal Bay properties for the three years in question cannot be addressed outside the
28 context of an individual taxpayer appeal. Bd. Br. at 14; Cty. Brf. at 18. In other words, the County and
State are advancing an exhaustion of administrative remedies argument.

1 114. At the hearing before this Court, the State Board argued that if an unconstitutional taxable
2 value is not “challenged, then it becomes ‘constitutional’ regardless if it was uniformly and equally
3 established.” Transcript of Proceeding (May 10, 2019) at 121:3-4.

4 115. As a matter of law, and in accord with the reasoning of the Pennsylvania Supreme Court
5 in *Clifton v. Allegheny County*, 969 A.2d 1197 (Pa. 2009), “when the inequity is pervasive,” the taxing
6 authority “cannot satisfy the proportionality requirement by shifting the burden of achieving uniformity
7 to the taxpayer” to file individual assessment appeals. 969 A.2d at 1227-28.

8 116. Similarly, as a matter of law, the appeals process alone followed by certain taxpayers in
9 Incline Village/Crystal Bay for the years in question did not ensure that all the properties in that area
10 were uniformly and equally assessed and valued.

11 117. The Nevada Supreme Court agrees that strict adherence to the statutory claims process is
12 not required if doing so deprives a taxpayer of a fundamental constitutional right. *See Metropolitan Water*
13 *District v. State, Department of Taxation* 99 Nev. 506, 665 P.2d 262 (1983).

14 118. In *Metropolitan Water*, the Court undertook a review of allegedly discriminatory actions
15 of the Clark County Assessor taken against the taxpayer over the course of 40 years. 99 Nev. at 509, 665
16 P.2d at 263. After disposing of the argument that the taxpayer failed to exhaust his administrative
17 remedies as there was no way the taxpayer could have known he was singled out for discriminatory
18 treatment, the Court held:

19 We have previously held that a county’s claims statutes should not apply where to do so
20 would deny property owners due process rights. Similar reasoning requires that the three
21 month limitation period specified in NRS 361.420(3) should not be held to apply where
22 to do so would deprive the Water District of a fundamental constitutional right, that of
equal protection under the law.

23 99 Nev. at 509, 665 P.2d at 263.

24 119. As a matter of law, this Court concludes that individual residential property owners did
25 not have to file and pursue appeals of their property tax valuations and assessments for the years in
26 question to ensure that the County and State abided by their constitutional obligations under Article 10
27 Section 1 of the Nevada Constitution.

28 ///

1 120. The State Board did not fulfill its predominant duty of ensuring a uniform and equal rate
2 of assessment and taxation in Incline Village/Crystal Bay for the years in question.

3 **H. The State Board Acted Arbitrarily and Capriciously and in Violation**
4 **of the Law by Refusing to Grant Equalization Relief on the Basis that**
5 **Those Property Owners had not all Filed Individual Appeals**

6 121. The State Board cannot refuse to provide equalization relief to correct an admitted
7 systemic error in the valuation and assessment of real property in a geographic area on the basis that not
8 every property owner in that area filed individual taxpayer appeals.

9 122. It is common practice for the County and/or State Boards to equalize property valuations
10 to correct a widespread error in the Assessor's valuation and assessment of real property brought to their
11 attention through an individual property owner appeal.

12 123. In such instances, the County and/or State Boards corrected errors for all impacted
13 residential property owners, not just the individual property owner who brought the challenge. *See*
14 *Washoe County, et al v. Ross Pendergraft Trust, et al*, Notice of Decision (Oct. 14, 2003) (Equalized
15 values of 101 parcels to correct error after appeals by owners of 24 parcels) (CER IV at 856-859); *In re:*
16 *Equalization of Properties Located on Tiller Drive*, Equalization Order (July 12, 2004) (Equalized values
17 of 35 parcels to correct error after appeals by owners of 3 parcels) (CER IV at 842-848); *In re:*
18 *Consideration of Assessor's Appeal of Equalization Decision*, Notice of Equalization Decision (Oct. 9,
19 2009) (Equalized values of all 8700 residential properties in Incline Village/Crystal Bay to correct error
20 (unconstitutional values for 2006-2007 tax year) after appeals by owners of 300 parcels) (CER II at 438-
21 447).

22 124. Upon questioning by this Court, the State Board represented that it could have granted the
23 same equalization as it did in these prior decisions to all impacted property owners, but it exercised its
24 "discretion" not to do so. TOP (May 10, 2019) at 129:10-23.

25 125. Using the 2006-2007 decision granting relief to all 8,700 Incline Village/Crystal Bay
26 residents, this Court asked if the reason for the exercise of discretion was the financial impact. TOP
27 (May 10, 2019) at 130:2-22.

28 ///

1 126. The State Board represented that it was concerned about “what that would do to the rest
2 of Washoe County if every one of these over 5,000 property owners got the remedy that a few hundred
3 got.” TOP (May 10, 2019) at 130:2-22.

4 127. This Court concludes that the State Board was concerned with the loss of tax revenue if it
5 implemented the previously voted-upon *Bakst* template for relief. Bd. Trans. (Dec.3, 2012) at 73, 77.

6 128. Nowhere in state law is the State Board authorized to take into account the financial
7 impact upon the government it discharging its equalization function.

8 129. “An agency’s decision is arbitrary and capricious if the agency fails to follow its own
9 precedent or fails to give a sufficient explanation for failing to do so.” *Zhao v. Holder*, 728 F.3d 1144,
10 1148 (9th Cir. 2013).

11 130. There was no factual or legal basis for the State Board to not act consistent with its prior
12 decisions and equalize the values of all properties in Incline Village/Crystal Bay to constitutional levels.

13 131. The State Board’s refusal to equalize properties in Incline Village/Crystal Bay is unjust
14 and inequitable in violation of NRS 361.410(1).

15 132. The State Board’s action is arbitrary and contrary to Nevada law, and therefore must be
16 vacated and set aside under NRS 233B.135(3).

17 **I. The State Board Violated the Taxpayers’ Bill of Rights**

18 133. Similar to the Nevada Constitution’s guarantee of uniformity, the Nevada Taxpayers’ Bill
19 of Rights also requires that taxpayers be treated in a uniform and consistent manner. NRS 360.291(1).

20 134. The State Board is bound by the Taxpayers’ Bill of Rights to treat similarly situated
21 taxpayers the same.

22 135. The State Board has previously recognized and acted in accordance with its obligations
23 under the Taxpayers’ Bill of Rights in discharging its equalization function in a case in Incline
24 Village/Crystal Bay for the 2006-2007 tax year (the fourth year of the appraisal cycle) that is factually
25 and legally indistinguishable to the case at hand. *See In re: Consideration of Assessor’s Appeal of*
26 *Equalization Decision, Notice of Equalization Decision (Oct. 9, 2009) (CER II at 438-47).*

27 ///

28 ///

1 136. The State Board concluded that “[p]ursuant to the Taxpayer’s Bill of Rights [NRS
2 361.291(1)(a)], each taxpayer has the right to be treated by officers and employees of the Department
3 with courtesy, fairness, uniformity, consistency and common sense.” Dec. at 6 (CER II at 443).

4 137. The State Board sustained the County Board decision to reset all residential property
5 values in Incline Village/Crystal Bay to 2002-2003 levels after 300+ taxpayers individually appealed and
6 had their void unconstitutional taxable values replaced with constitutional 2002-2003 taxable values (the
7 *Bakst* template for relief) because “equity requires that all properties in the same geographic area receive
8 the same treatment” and because to do otherwise would create an “unequal rate of taxation for the 2006-
9 2007 tax year.” Dec. at 1, 5 (CER II at 438, 442).

10 138. As a matter of law, this Court concludes the State Board violated the Taxpayers’ Bill of
11 Rights in by not acting consistently with its 2006-2007 decision equalizing the taxable values of all
12 residential properties in Incline Village/Crystal Bay to constitutional levels.

13 139. As a matter of law, this Court concludes that the State Board violated the Taxpayers’ Bill
14 of Rights when it created an “unequal rate of taxation,” a result the County and State Board deemed
15 unlawful and unconstitutional for the 2006-2007 tax year.

16 140. Clear and convincing evidence exists that the State Board violated the Taxpayer Bill of
17 Rights; the 2017 Equalization is unjust and inequitable and must be set aside.

18 141. The State Board’s decision must be vacated under NRS 233B.135(3) as it is “in violation
19 of . . . statutory provisions.”

20 **J. Bakst Petitioners Have Standing**

21 142. The County and State have argued that Bakst Petitioners do not have standing because
22 they were not parties in the equalization action and are not “aggrieved” by the 2017 Equalization Order.
23 Cty. Brf. at 3 (integrating Mot. To Dismiss); Bd. Brf. at 16-18. The County’s and State’s arguments are
24 without merit.

25 143. NRS 361.410 provides that “[n]o taxpayer may be deprived of any remedy or redress in a
26 court of law relating to the payment of taxes, but all such actions must be for redress from the findings
27 of the State Board of Equalization.” NRS 361.410(1).

28 ///

1 144. NRS 233B.130(1) provides that any party (a) identified as a party of record by an agency
2 in an administrative proceeding, and (b) who is aggrieved by a final decision in a contested case, or by a
3 preliminary, procedural or intermediate act or ruling by an agency in a contested case, if review of the
4 final decision of the agency would not provide an adequate remedy, is entitled to judicial review.

5 145. Interpreting NRS 233B.130(1), the Court has held that a party is “aggrieved” where it
6 “was affected” by the administrative agency’s decision, *Capital Indem. v. State Dep’t Bus. & Indus.*, 122
7 Nev. 815, 820 n.26, 138 P.3d 516, 519 n.26 (2006).

8 146. Courts in states with the same statutory elements for standing to review administrative
9 agency decisions interpreting the term “aggrieved,” have emphasized that although an aggrieved person
10 need to have suffered a particularized injury, the determination of such must be made “in context” of the
11 factual situation and the statutory scheme, including consideration of whether the legislature has
12 expressed an intent that such an interest should be given judicial review. *Nelson v. Bayroot, LLC*, 953
13 A.2d 378 (Me. 2008); *Multnomah County v. Talbot*, 641 P.2d 617 (Or. Ct. App. 1983); *Marbet v.*
14 *Portland Gen. Elect.*, 561 P.2d 154 (Or. 1977).

15 147. In *Marbet*, an individual intervened as allowed by statute to present his views in a
16 proceeding before the Energy Facility Siting Council, which was responsible for determining the location
17 of nuclear power facilities. 561 P.2d at 449. He later sought judicial review of the Council’s decision.
18 561 P.2d at 449.

19 148. The Oregon Supreme Court considered the statute authorizing the intervention of “any
20 person . . . who appears to have an interest in the results of a hearing or who represents a public interest
21 in such results,” stating that this statute “express[ed] the legislature’s judgment that the important
22 decisions of public policy entrusted to the . . . Council are not to be treated as a dispute between opposing
23 private interests.” *Marbet*, 561 P.2d at 159 (citing ORS 469.380).

24 149. In *Nelson*, the Supreme Judicial Court of Maine, in making the determination of whether
25 the agency action operated prejudicially and directly upon the party’s property or rights, making the party
26 “aggrieved,” stated that “[w]e examine the issue of standing *in context* to determine whether the asserted
27 effect on the party’s rights genuinely flows from the challenged agency action.” *Id.* at 382. *Nelson*
28 involved a land use commission’s decision to approve a developer’s application to amend a subdivision

1 plan in which a leaseholder's developed lot was located. The amendment proposed to relocate certain
2 undeveloped lots. To consider the full context, the court examined the terms of the lease agreement to
3 understand the nature of the leaseholder's interest in the undeveloped land. It determined that
4 leaseholders entered into their agreements with the expectation that they would have particular rights to
5 make use of the remaining lands, subject to the restrictions specified in the lease agreement, and those
6 such rights were distinguishable from those of the general public. *Id.* at 383. The court, therefore,
7 concluded that the leaseholders had standing. *Id.* The court came to this conclusion despite the fact that
8 the leaseholder's developed lot was not contiguous with the relocated lots whose terms were changed.

9 150. In *Multnomah County*, the Oregon Court of Appeals considered whether a county tax
10 assessor had standing to challenge the date on which the state preservation officer classified certain
11 property as historic, thus freezing its assessed value. The court stated that a basic element in determining
12 whether a party was aggrieved was "whether the party seeking relief has 'alleged such a personal stake
13 in the outcome of the controversy as to assure that concrete adverseness which sharpened the presentation
14 of issues'" exists in the proceeding. 641 P.2d at 621-22 (*quoting Flast v. Cohen*, 392 U.S. 83, 99, 88 S.
15 Ct. 1942 (1968)).

16 1. *All taxpayers whose properties are subject to an equalization action*
17 *have standing to petition for judicial review of the State Board's*
18 *decision*

19 151. The context of the State Board's action must be considered.

20 152. This is a statewide equalization action under NRS 361.395, not an individual taxpayer
21 appeal.

22 153. The scope of the State Board's equalization action extends to all residential properties in
23 the Incline Village/Crystal Bay area.

24 154. The State Board's equalization hearings must be publicly noticed and provide for
25 participation by the public.

26 ///

27 ///

28 ///

1 155. The statewide equalization relief requested by Village League and Bakst Petitioners, if
2 granted by the State Board, would have reset the taxable values of all residential Incline Village/Crystal
3 Bay to 2002-2003 levels.¹¹

4 156. The State Board denied the relief, affirming the unconstitutional assessment and valuation
5 of residential properties in Incline Village/Crystal Bay.

6 157. As a matter of law, this Court concludes that all Incline Village/Crystal Bay residential
7 property owners are “affected by” and have an interest in the results of the State Board’s statewide
8 equalization hearing.

9 158. This Court concludes that individual Incline Village/Crystal Bay taxpayers, including the
10 Bakst Petitioners, or their successors in interest, who owned, either directly or beneficially, and paid
11 property taxes on residential real property at Incline Village, Washoe County, Nevada, during the 2003-
12 2004, 2004-2005 and 2005-2006 tax years have standing to bring judicial review of the 2017 Equalization
13 Order.

14 2. *Bakst Petitioners did not file individual appeals in each of the three*
15 *years in question*

16 159. Not every Bakst Petitioner filed an individual appeal in each of the three years in
17 questions: (1) Bakst Petitioner Carol Buck did not file an individual appeal for the 2003-2004 tax year
18 and was not a party to *Bakst*, (2) Bakst Petitioner Dan Schwartz did not file an individual appeal for the
19 2004-2005 tax year and was not a party to *Barta*, and (3) Bakst Petitioners Jane Barnhardt, Dan Schwartz,
20 Larry Watkins and Agnieszka Winkler did not file individual appeals for the 2005-2006 tax year. *See*
21 *Bakst* and *Barta*.

22 160. The County and State have not asserted that any of the other residential property owners
23 who did not file individual appeals and are collectively represented by the Village League lack standing.

24 161. Nothing distinguishes any Bakst Petitioner who did not file an individual appeal in one or
25 more of the three tax years in question from the other residential property owners in Incline
26 Village/Crystal Bay who did not file an individual appeal in one or more of the three tax years in question.

27
28 ¹¹ The Bakst Petitioners participated in the 2012 (as represented by Village League) and 2017 (independently represented)
equalization proceedings as parties.

1 162. The State Board refused to grant the relief requested.

2 163. As a matter of law, the Bakst Petitioners who did not file administrative appeals are
3 directly (1) “affected by the action” and are aggrieved under NRS 233B.130, and (2) are taxpayers
4 seeking redress from the findings of the State Board “relating to the payment of taxes.” This Court
5 concludes they have standing.

6 3. *The Bakst Petitioners have final judgments for one or more of the*
7 *three years in question*

8 a. Collateral Attack

9 164. The Nevada Supreme Court has long emphasized the importance of the finality of
10 judgments. *Trujillo v. State*, 310 P.3d 594, 601 (Nev. 2013). “The policy supporting the finality of
11 judgments recognizes that, in most instances, society is best served by putting an end to litigation after a
12 case has been tried and judgment entered.” *Bonnell v. Lawrence*, 128 Nev. 394, 401, 282 P.3d 712, 716
13 (2012)(quoting *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 653, 218 P.3d 853, 858 (2009))(internal
14 quotations omitted).

15 165. “The bar against relitigation of already-decided issues is, in essence, an entitlement not
16 to stand trial or face the other burdens of litigation and should be resolved at the earliest stage in
17 litigation.” *Bonnell v. Lawrence*, 128 Nev. 394, 401, 282 P.3d 712, 716 (2012)(quoting *Butler v. Bayer*,
18 123 Nev. 450, 458, 168 P.3d 1055, 1061 (2007))(internal quotations omitted).

19 166. Allowing collateral attacks on prior judgments fosters endless litigation and makes
20 judgments forever subject to attack and is contrary to traditional principles of res judicata and collateral
21 estoppel. *Markoff v. New York Life Ins. Co.*, 92 Nev. 268, 271, 549 P.2d 330, 332 (1976).

22 167. Only a void judgment is susceptible to collateral attack. *State v. Sustacha*, 108 Nev. 223,
23 226, 826 P.2d 959, 961, n.3 (1992)(internal citation omitted). A judgment is only void and subject to
24 collateral attack if the issuing court lacked personal or subject matter jurisdiction. *Id.*; *State ex rel. Smith*
25 *v. Sixth Judicial Dist. Court*, 63 Nev. 249, 256, 167 P.2d 648, 651 (1946).

26 168. The judgments the Bakst Petitioners, and similarly situated Incline Village/Crystal Bay
27 residential property owners, received in *Bakst* and *Barta* are final, are not void and not subject to collateral
28 attack.

1 169. *Bakst* and *Barta* ordered that unconstitutional taxable values in one or more of the three
2 years in question are null and void and must be replaced with constitutional 2002-2003 taxable values.

3 170. The County and State Board represent that the judicial mandate of *Bakst* and *Barta* was
4 not implemented: (1) the tax rolls for the 2003-2004, 2004-2005, 2005-2006 tax years were never
5 corrected, and (2) the unconstitutional null and void values of *Bakst* Petitioners and similarly situated
6 Incline Village/Crystal Bay residential property owners for those tax years remain on the tax rolls. Bd.
7 Brf. at 14; Cty. Brf. at 37. This Court accepts the representations of the County and State that the tax rolls
8 from the three years in question are not in the administrative record.

9 171. As a matter of law, the failure of the County to correct the tax rolls constitutes a collateral
10 attack and is sufficient basis to conclude the *Bakst* Petitioners have standing to defend their judgments.

11 172. The State Board equalized residential properties to the unconstitutional values on the tax
12 rolls, which had not been corrected by the County after *Bakst* and *Barta*, reinstating the unconstitutional
13 taxable values of the *Bakst* Petitioners, and similarly situated Incline Village/Crystal Bay residential
14 property owners.

15 173. As a matter of law, this Court concludes that the State Board collaterally attacked the
16 *Bakst* Petitioners' judgments when it equalized all property values based on the tax rolls.

17 174. The County, before admitting that the values of the *Bakst* Petitioners properties had not
18 been corrected on the tax rolls, on remand from *Ingemanson*, urged this Court to raise the values of the
19 *Bakst* Petitioners.

20 175. As a matter of law, the County's action constituted a collateral attack on the final
21 judgments of the *Bakst* Petitioners and similarly situated residential property owners in Incline
22 Village/Crystal Bay.

23 176. As a matter of law, the State Board order of the reappraisal of all unconstitutionally valued
24 Incline Village/Crystal Bay residential properties in its 2012 Equalization Order, including those of the
25 *Bakst* Petitioners, constituted a collateral attack.

26 b. Preclusive Effect

27 177. The *Bakst* Petitioners have argued that preclusive effect must be given to *Bakst* and *Barta*
28 in the statewide equalization action for any *Bakst* Petitioner or similarly situated residential property

1 owner in Incline Village/Crystal Bay who did not file an individual appeal in one or more of the tax years
2 in question. *Ingemanson*, 133 Nev. Adv. Op. 1 at 13-14, 388 P.3d at 224 n.8 (the Court declined to reach
3 the preclusion arguments raised); Bakst Resp. (May 25, 2017); Pet. Opn. Brf. at 28-31. The Bakst
4 Petitioners' legal preclusion issues have not been addressed.

5 178. The State Board in 2017 refused to consider the preclusive effect of *Bakst* and *Barta* and
6 denied relief to all taxpayers who had not proceeded with an individual appeal, which would include
7 certain individual Bakst Petitioners in one or more of the tax years at issue. Equal. Ord. at 6 (CER IV at
8 965); Bd. Trans. (Aug. 29, 2017) at 157:12-25; 158:10-12.

9 179. As a matter of law, the Bakst Petitioners have standing as they were aggrieved and affected
10 by the State Board's decision not to give preclusive effect to their final judgments for one or more of the
11 three tax years in question.

12 180. The County's Motion to Dismiss the Bakst Petitioners is denied.

13 **K. The Appropriate Remedy is the Equalization of All Residential**
14 **Properties in Incline Village/Crystal Bay to Constitutional 2002-2003**
15 **Levels, with Refunds Issued**

16 1. *Bakst and Barta set the template for relief to cure the State Board's*
17 *Affirmation and Reinstatement of Unconstitutional Values*

18 181. *Bakst* and *Barta* both found that the only remedy for the Assessor's constitutional
19 violation was to declare the unconstitutional taxable values void, order them replaced with 2002-03
20 constitutional values and order a refund of the unconstitutional taxes collected. *Bakst*, 122 Nev. at 1416,
21 148 P.3d at 726; *Barta*, 124 Nev. at 628, 188 P.3d at 1103.

22 182. Voiding unconstitutional values and refunding taxes paid thereon is the only remedy to
23 address such systemic constitutional errors. *Bakst*, 122 Nev. at 1416, 148 P.3d at 726; *Barta*, 124 Nev. at
24 628, 188 P.3d at 1103; *see also Greenhaw*, 734 P.2d at 1127-1128 ("We agree that a valuation contrary
25 to the principles of the Constitution is an illegal or void valuation.").

26 a. Preclusion

27 183. In tax cases, the legal principles of preclusion are applicable to prohibit vexatious
28 litigation by the government adverse to taxpayers, as well as prohibiting taxpayers from re-litigating the
same issue repeatedly. *See Commr. v. Sunnen*, 331 U.S. 591 (1948).

1 184. In *Montana v. United States*, 440 U.S. 147 (1979), a federal contractor was hired to build
2 a federal dam. *Id.* at 151-52. Pursuant to Montana law, contractors were required to pay a 1% gross
3 receipts tax on public projects while private contractors were exempt from any such tax. *Id.* A federal
4 contractor in state court brought the first suit against the State of Montana, but the federal government
5 financed and controlled the suit. *Id.* When the State of Montana won the first case, the federal government
6 pursued a similar action in its own name in federal district court. *Id.*

7 185. The Court rejected the federal government's attempts to distinguish the state decision on
8 grounds that the contractual provisions at issue in the federal suit were different. The Court went on to
9 enumerate three questions that were to be answered before issue preclusion was invoked in a tax case:
10 (1) whether the issues in the second case were "in substance" the same as those involved in the first
11 proceeding; (2) whether the controlling facts or legal principles had changed significantly since the first
12 case was decided; and (3) whether any "special circumstances" warranted an exception from the normal
13 rules of issue preclusion. *Montana*, 440 U.S. at 155, 974-75.

14 186. The Ninth Circuit in *Starker v. United States*, 603 F.2d 1341 (9th Cir. 1979), the Ninth
15 Circuit relied on *Montana* in ruling that issue preclusion foreclosed the federal government from claiming
16 that a taxpayer owed taxes on certain land transfers after a previous ruling in favor of the taxpayer's
17 family on the issue. *Id.* at 1350. The Ninth Circuit applied the doctrine of issue preclusion even though
18 the parties and the land at issue differed in the two cases because the court found that the legal issues and
19 facts were so similar. *Id.*

20 187. The *Barta* Court has already applied the doctrine of issue preclusion to the legal issues
21 and facts currently before this Court: "Bakst controls the outcome of these cases" and that "[t]o the extent
22 that the Assessor developed the Taxpayers' properties' 2004-2005 values by using the same methods we
23 declared unconstitutional . . . , the Bakst analysis controls[.]"

24 188. The State Board affirmed and adopted the unconstitutional values established by the
25 Assessor which *Bakst* and *Barta* declared void.

26 189. There is nothing, factually or legally, which distinguish the remedy issues in this case
27 from those in *Bakst* and *Barta*: (1) the 2003-04, 2004-05, and 2005-06 taxable values established by the
28 Assessor for residential properties in Incline Village/Crystal Bay all suffer from the same constitutional

1 infirmities, (2) the Nevada Supreme Court in *Bakst* and *Barta* held that the Assessor's values were
2 "unconstitutional", "null and void," (3) *Bakst* and *Barta* held that because there were no uniform
3 regulations for methods to establish taxable value, the only remedy for the constitutional violation was
4 to replace unconstitutional values with constitutional values, as factored, and afford a refund, and (3)
5 uniformity is not met by "merely ensuring that a property's taxable value does not exceed its full cash
6 value." *Barta*, 124 Nev. at 626; 188 P.3d at 1102.

7 190. *Bakst* and *Barta* are decisions setting the preclusive template for relief if a taxable value
8 is unconstitutionally derived.

9 191. The State Board was precluded from adopting unconstitutional values and refusing to
10 grant constitutional relief as required by *Bakst* and *Barta*.

11 2. *The State Board's 2006-2007 Tax Year Equalization Decisions Sets*
12 *the Template for Relief in Equalization*

13 192. *Ingemanson* required the State Board to consider "the remedies already afforded the *Bakst*
14 *Intervenors* and the affect those remedies have on the equalization process for the region." 133 Nev. Adv.
15 Op. 1 at 15-16, 338 P.3d at 224.

16 193. The State Board had previously considered the impact of the void 2006-2007
17 unconstitutional values being replaced with constitutional 2002-2003 values for the Incline
18 Village/Crystal Bay areas in its 2006-2007 Equalization Decision.

19 194. For the 2006-2007 tax year, the fourth year of the five-year appraisal cycle in Incline
20 Village/Crystal Bay, the State Board, affirmed the County Board decision, equalizing all 8,700+
21 residential properties values in Incline Village/Crystal Bay to constitutional 2002-2003 levels. Dec. at 1
22 (CER II at 438).

23 195. The County Board had granted relief to 300 individual taxpayers who filed appeals of the
24 property tax valuations of the 2006-2007 tax year pursuant in accordance with the dictates of *Bakst*. Dec.
25 at 1 (CER II at 438).

26 196. When the County replaced void, unconstitutional 2006-2007 taxable values with
27 constitutional 2002-2003 values, as factored, for the three hundred individual appealing taxpayers, the
28 County Board determined that it "had created an unequal rate of taxation for the 2006-2007 tax year."
Dec. at 1 (CER II at 438).

1 197. Discharging its equalization function, the County Board reset the taxable values for the
2 approximately 8,700 other properties in the Incline Village and Crystal Bay areas to 2002-2003 levels.
3 Dec. at 1, 5 (CER II at 438, 442) (quoting County Board).

4 198. The County Board did not limit the scope of its equalization order to only those properties
5 who had undisputed unconstitutional values. Its scope included all properties in Incline Village/Crystal
6 Bay to cure the disparity between the valuation and assessment between the 300 parcels and the remainder
7 of the area. Dec. at 1-2, 5 (CER II at 438-39, 442); *Village League to Save Incline Assets v. State ex rel*
8 *Bd. of Equal.*, 124 Nev. 1079, 1090, 194 P.3d 1254, 1261-62 (2008) (“2008 Village League”).

9 199. The 2009 Equalization Decision equalizing all 2005-2006 taxable values of Incline
10 Village/Crystal Bay properties to constitutional 2002-2003 levels, as factored, is a final decision of the
11 State Board.

12 200. Here, over a thousand Incline Village/Crystal Bay residential property owners have
13 received adjudicated relief for the 2002-2003, 2003-2004 and/or 2005-2006 tax years. The State Board
14 was required to consider those remedies in discharging its equalization function, just as it did for the
15 2006-2007 tax year, to ensure an equal rate of taxation and assessment in Incline Village/Crystal Bay.

16 201. The State Board was obligated to apply the 2006-2007 equalization template for relief that
17 it used to rectify the unequal and unconstitutional valuations and assessments in Incline Village/Crystal
18 Bay to the three preceding tax years at issue in this case.

19 202. The State Board’s disregard of its 2006-2007 decision equalizing properties in Incline
20 Village/Crystal Bay to cure the undisputed unequal rate of taxation and assessment is arbitrary and an
21 abuse of discretion.

22 203. The State Board was required to equalize to constitutional 2002-2003 levels and afford
23 refunds; any other result is unjust and inequitable.

24 204. NRS 361.410(1) requires this Court to determine whether the equalization decision of the
25 State Board is just and equitable.

26 ///

27 ///

28 ///

205. The decision of the State Board is both unjust and inequitable as it validated the use of unconstitutionally determined taxable values and validated the creation of two classes of residential property in Incline Village/Crystal Bay: those properties who received administrative and judicial relief and all other properties.

ORDER

Therefore, for good cause, it is HEREBY ORDERED that:

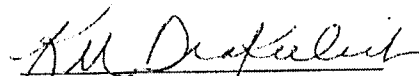
- (1) The Complaint and Petition for Judicial Review is granted;
- (2) The State Board Equalization Order dated October 30, 2017 and served on November 30, 2017 is vacated in its entirety;
- (3) The land values for Incline Village/Crystal Bay residential properties for the 2003-04, 2004-2005, 2005-2006 tax years were determined using valuations methods found to be unconstitutional and are void;
- (4) The State Board is ordered to equalize the 2003-2004, 2004-2005, 2005-2006 taxable values of all Incline Village/Crystal Bay residential properties to constitutional 2002-2003 levels, as factored;
- (5) The Assessor is directed to replace unconstitutional 2003-2004, 2004-2005 and 2005-2006 taxable land values for residential parcels, in Incline Village and Crystal Bay with 2002-2003 taxable land values and to apply the Commission approved factor of .08% to the 2002-2003 taxable land values for the 2005-2006 tax year, except that any residential property value reduced between 2002-2003 and any of the three subsequent tax years shall be reset at the lower of the two values;
- (6) The Washoe County Assessor shall correct and adjust the tax rolls for 2003-2004, 2004-2005, 2005-2006 tax years to reflect the replaced constitutional taxable values;
- (7) The Washoe County Treasurer is directed to calculate the excess taxes paid by Incline Village/Crystal Bay residential property owner/taxpayers for the 2003-2004 tax year going forward and to refund those excess taxes to such owner/taxpayers with interest as required by law;
- (8) The Washoe County Treasurer is further ordered to provide the Court within 90 days of the date of this order with a proposed schedule for the payment of refunds to Incline Village/Crystal Bay owner/taxpayers before the completion of one year from the date of this order. The Court shall review

1 and modify and/or approve the proposed schedule and require the Treasurer to report monthly on its
2 compliance with said schedule; and

3 (9) The adjudicated property values of the Bakst Plaintiffs/Petitioners along with those of all
4 similarly situated Incline Village/Crystal Bay residential property owner/taxpayers with adjudicated land
5 values for any and all of the three tax years 2003-2004, 2004-2005 and 2005-2006 are ratified and
6 confirmed.

7 IT IS SO ORDERED

8 DATED this 21st day of October, 2019.

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10 
11 KATHLEEN M. DRAKULICH
12 District Court Judge
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CERTIFICATE OF SERVICE

CASE NO. CV03-06922

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 21st day of October, 2019, I electronically filed the **FINDINGS OF FACT, CONCLUSION OF LAW, DECISION AND ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

SUELLEN FULSTONE, ESQ. for ANDREW WHYMAN, KATHY NELSON TRUST,
VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., LARRY D AND
MARYANNE B INGEMANSON TRUST

JESSICA PRUNTY, ESQ. for AGNIESZKA WINKLER, LARRY J. WATKINS,
CAROL BUCK, DON WILSON, PATRICIA WILSON, ELLEN SUSAN BAKST,
JANE A. BARNHART, DAN SCHWARTZ

NORMAN AZEVEDO, ESQ. for AGNIESZKA WINKLER, LARRY J. WATKINS,
CAROL BUCK, DON WILSON, PATRICIA WILSON, ELLEN SUSAN BAKST,
JANE A. BARNHART, DAN SCHWARTZ

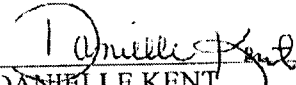
HERBERT KAPLAN, ESQ. for WASHOE COUNTY

JORDAN DAVIS, ESQ. for CITY HALL, LLC

WILLIAM MCKEAN for CITY HALL, LLC

MICHELLE BRIGGS, ESQ. for STATE BOARD OF EQUALIZATION

Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]


DANIELLE KENT
Department 1 Judicial Assistant