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## Stage set for property tax showdown

Washoe County controversy only 'tip of the iceberg'

John Dougherty

RENO — The seven-year, no-holds-barred, legal battle between Washoe County and Lake Tahoe property owners will reach a crucial turning point Tuesday.

Hanging in the balance isn't just the tens of millions in property tax dollars that the county doesn't want to refund to thousands of residents in the wealthy North Shore Communities of Incline Village and Crystal Bay.

The scorched-earth legal attack, experts say, has revealed serious, fundamental problems with the state's property tax system, raising the specter it is unconstitutional and will have to be scrapped.

The question before Washoe County District Court Judge Brent Adams, however, is whether to order the Washoe County Treasurer to immediately refund approximately \$20 million in property taxes and interest to 8,700 North Shore property owners.

Tuesday's hearing is the latest chapter in a fierce \$1 million legal war that began in December 2002 with a simple disagreement over a handful of property tax assessments that county and state officials subsequently ignored.

Faced with skyrocketing valuations in their property assessments, however, North Shore residents did not go away. Instead, they banded together and launched a flurry of lawsuits, winning several Supreme Court decisions, including the groundbreaking 2006 Bakst case.

The victories not only stunned and frustrated Washoe County and state tax officials, but have taken on statewide significance by exposing fundamental constitutional problems with Nevada's "taxable value" system, a unique and complex method for assessing property taxes.

The Supreme Court's Bakst decision, for example, exposed the longstanding failure of the Nevada Tax Commission to fulfill legislative and constitutional

mandates to create uniform property tax assessment regulations for the state's 17 county assessors to use.

In the absence of uniform assessment methods, Nevada property owners have little protection against arbitrary variations in the methodologies used by county assessors to determine valuations of similar properties. Different methods may lead to wide differences in the valuation of the same property. The Nevada Constitution requires a "uniform and equal rate of assessment" of state and local taxes.

Suellen Fullstone, a Reno attorney who has represented North Shore residents in more than a dozen cases, says Incline Village and Crystal Bay are the "tip of the iceberg" of the problems with the state property tax system. The root issue, she says, is that despite the Supreme Court rulings, the state Tax Commission still "has not promulgated the kind of valuation regulations that are necessary to ensure constitutional property taxation in Nevada."

Ms. Fullstone says that the commission's failure to pass assessment regulations, combined with the complexity of the state's property tax system, leaves the state vulnerable to a constitutional challenge.

"Sooner or later, if the case is brought ... the taxable value system itself will be determined unconstitutional," she says. "It just cannot work, certainly not the way it is presently set up."

Former Tax Commission Chairman Tom Sheets disputes Ms. Fullstone's assertion that the state has failed to pass sufficient regulations to guide county assessors. "My argument would be we have in fact given the assessors the methodology or the direction to use so they can be consistent from the top to the bottom of the state,"

says Sheets. He stepped down last month as commission chairman.

County assessors, however, say there has long been a lack of guidance from the state on how to implement property tax regulations. In interviews, several said they would welcome more direction from the state Department of Taxation, which implements regulations passed by the commission.

"We want guidance in carrying out these statutes and regulations consistently and appropriately," says Washoe County Assessor Josh Wilson.

The Nevada Legislature adopted the state's "taxable value" system in 1981 to thwart an effort by voters to pass an initiative similar to California's Proposition 13, which limits property taxes to 1 percent of the sales price of property, with annual increases capped at 2 percent.

Instead, the Nevada Legislature created a bifurcated property tax system in which land is valued separately from improvements. The formula was intended to provide a property tax break to residents of older homes to reduce the likelihood that rising property values would force them to sell their homes.

Nevada is the one state in the nation that still attempts to make the taxable value system work. Under it, land is supposed to be valued at market price, while buildings are valued at their replacement cost as determined by a manual of construction costs published annually by a private company. Once the replacement cost of the buildings or improvements is determined, that cost is then reduced by the age of the building multiplied by 1.5 percent depreciation per year.

County assessors then add the land value to the replacement cost minus the depreciation value to get the total taxable value of the property. Two more steps are required to determine the property tax. Taxable value is multiplied by 35 percent — a rate set by the Nevada Legislature — to calculate the property's assessed value. Finally, that assessed value is multiplied by the local property tax rate to determine the overall property tax bill.

Tax experts say Nevada's use of the costing service manual published by the private firm Marshall & Swift is an unreliable way to determine the value of improvements. "Who is to say how accurate they are?" asks Richard R. Almy, former executive director of the International Association of Assessing Officers. "This is a weak foundation for a tax system."

Determining the value of land on which an improvement sits has also become more difficult. As Nevada's population has expanded and land has been developed, county assessors have fewer sales of undeveloped land parcels that can guide their land valuations. This shifts a great deal of discretion to the

assessors who must still determine the fair market value of land.

In every other state in the country, assessors simply look at readily available comparable sales of property that include land and improvements. In Nevada, however, assessors frequently rely on complex valuation methodologies to determine the value of land separate from the improvements. These methodologies often vary from county to county, state Department of Taxation records reveal.

In Incline Village and Crystal Bay, the lack of undeveloped land sales became a crucial factor in the dispute between property owners and the Washoe County assessor.

The county would occasionally designate certain North Shore properties as "tear downs," when it expected that the purchaser of a property intended to replace the current home with a new structure. In these cases, the county assigned the full purchase price of the property to the land, thereby greatly increasing the land valuations for all property owners in the area. In some cases, the county designated a property a "tear down" even though the new owner had not leveled the home but was in fact living in it for years.

Incline Village resident Todd Lowe says he bought a lakefront property, never intending to tear it down. But four years later, because of asbestos contamination, he changed his mind. Nevertheless, says Lowe, years before the house was actually razed the county valued his house as a "tear down."

"They put an extra \$2.3 million in value on the land," he says, dramatically increasing his and his neighbors' property taxes.

"I was appalled," Lowe says. "That first year they raised my property taxes 60 percent and they raised all my neighbors'."

The experience led Lowe to join the Village League to Save Incline Village Assets, a nonprofit group of North Shore homeowners that has spearheaded the property tax revolt.

Beginning in the multi-million mansions along Lakeshore Drive, that revolt is now poised to spread throughout the rest of the state.

Tuesday's court hearing will focus on the Village League's demand for immediate payment of a portion of the property taxes residents already paid for 2006-07. After a protracted, three-year legal struggle with the State Board of Equalization, which included intervention by the Supreme Court, the League won a crucial ruling before the board last July 20.

In a 5-0 decision, the state board upheld a 2006 ruling by the Washoe County Board of Equalization that ordered the Washoe County assessor to roll back property

assessments for 8,700 Incline Village and Crystal Bay property owners to 2002-03 levels.

In August, the Village League demanded tax refunds from Washoe County Treasurer Bill Berrum. However, Berrum ignored the refund demand, leading the Village League to file another lawsuit seeking a court order directing the treasurer to issue the refunds. This case will be heard Tuesday before Judge Adams.

The state Board of Equalization, meanwhile, has not yet issued a written notice of decision from the July 20 hearing explaining its legal reasoning for approving a rollback of the assessments on parcels in one of the wealthiest enclaves in the nation. The board is violating state regulations requiring the notice to be published within 60 days of the hearing.

In a separate attempt to block implementation of the state board's July 20 vote, Washoe County assessor Wilson appears poised to appeal the state board's written decision, once issued. Wilson says that while he would like to settle the case, he's going to follow the legal advice of his attorneys. If history is any guide, that means appealing the state board's written ruling in hopes a court will overturn the board's July decision and allow the county to keep the \$20 million.

Village League officials vow to continue to fight until all Incline Village and Crystal Bay taxpayers receive tax refunds. League leaders say if the county refuses to comply with the state board's decision to roll back property assessments and issue refunds, the League will pursue other legal options that could increase the county's potential tax-refund liability by an additional \$40 million.

"The county wishes I would die or move," says Village League president Maryanne Ingemanson, who has maintained strict vigilance over a complex series of legal maneuvers during the last seven years.

"I intend to do neither," says Ingemanson, a former concert pianist and prominent commercial real estate investor.

The possibilities of arbitrarily different assessment practices within, and between, counties are not the only source of concerns that Nevada's entire state property tax system does not meet the "uniform and equal" constitutional standard. Also raising questions is the state board's decision to roll back property tax assessments to 2002-03 levels for 8,700 residents in one of the wealthiest communities in the country while all other Nevadans carry the burden of much higher, recent property tax assessment levels.

"If you were to say the whole state is out of equalization, that's the worse-case scenario," says former state Tax Commission chairwoman Barbara Campbell Smith. She chose not to speculate on whether that is in fact the case but acknowledged that it is "a very good question."

The Village League property tax revolt has provided a rare window into the murky world of property tax assessment in Nevada. Not only has it raised serious questions about the inherent fairness and constitutionality of the state's taxable value system, but the upheaval has triggered quiet discussions among state property tax experts of whether it is time to replace taxable value with a market-based system.

Over the next several months, InvestigativeMedia.com and the Nevada Policy Research Institute will report on the roots of the tax revolt, the systemic problems that tax officials face when they attempt to assess Nevada property taxes, the impact of the 2005 property tax abatement and the political implications of fundamental property tax reform.

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