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The birth of a rebellion

Why Nevada's property-tax system may soon crumble

John Dougherty

INCLINE VILLAGE, Nev. — A Washoe County property-tax revolt that has already won court orders for more than \$20 million in refunds and threatens to implode the state's entire property-tax system began with a single phone call.

In late 2002, retired state court Judge Leonard Gang called his friend and Carson City attorney, Norm Azevedo, and asked about an unusual description on his property-tax notice regarding the valuation of views from his home in this affluent town on the North Shore of Lake Tahoe. Judge Gang hadn't seen this particular view classification before on tax-appraisal reports, and was wondering why it was suddenly impacting the assessed value of his property so much.

Azevedo was the right man to call. A former attorney for major accounting firms who later served as counsel to the Nevada Tax Commission for 10 years, Azevedo was an expert on state tax law. And looking at the methods being used by the Washoe County assessor to determine property values for the 2003-04 tax year, Azevedo reached a startling conclusion.

The county assessor, Azevedo discovered, was using the same comparable sales to determine valuations for property in the 2003-04 tax year as he did for the 2002-03 tax year, but with one big difference: The valuations for 2003-04 were much higher — in some cases more than 100 percent higher.

How could property values change so much from year to year, when the same comparable sales were used as a basis for the assessors' appraisal? The answer: The assessor simply changed the appraisal rules, with a

specific goal in mind. "They changed the rules to derive a higher tax value," Azevedo said.

Making matters worse, discovered Azevedo, the assessor's new rules were not being used anywhere else in Washoe County — or anywhere else in the rest of the state.

"We found that none of the rules were contained in the (state Department of Taxation) regulations," Azevedo said. "None of the rules were supported by statutes."

Without a court order, however, the Washoe County assessor's appraisals were the ones North Shore residents were required to meet. Then, further investigation discovered that not even the rules that had been customized for the North Shore were being applied equally.

The assessor's office was ostensibly determining the value of views of Lake Tahoe from lakeside homes. But — Azevedo discovered — of the view valuations made by the assessor, approximately 39 out of 40 had been calculated incorrectly and later were adjusted during administrative appeals.

The astonishingly high error rate, said Azevedo, should have been a signal to the county that something was amiss.

"That's when someone should have leaped into action" to fix an obvious problem and address growing concerns among North Shore property owners that they were not being fairly taxed, he said. "They could have fixed it one year."

Instead, Washoe County and state tax officials refused to act, forcing property owners to band together

and seek legal redress. Seven years later, and after more than \$1 million in legal fees, the monumental effort finally paid off last Friday, Oct. 23. That was when Reno district court Judge Brent Adams issued an order requiring Washoe County Treasurer Bill Berrum to issue refunds to about 9,000 taxpayers. The order requires Washoe County to reduce the 2006/2007 valuations of all residential properties in Incline Village and Crystal Bay to their 2002/03 taxable values.

"It was a very simple case, but to go from there to here was a Herculean effort," Azevedo said.

Judge Adams' order requires Berrum to issue refunds to property owners for the 2006/07 tax year and subsequent tax years that are now impacted because of the 2006/07 rollback to 2002/03 values. The order also requires the county to pay 6 percent annual interest to property owners from the date the excess funds were collected to the date they are refunded.

The Village League to Save Incline Assets, Inc., a nonprofit taxpayers group spearheading the North Shore property-tax revolt, estimates the refund will total approximately \$20 million. Berrum said that it will be several months before refunds will begin to be issued, and "it is very likely" that it will take at least a year for them all to be issued.

Judge Adams' order is most likely not the end of the struggle for North Shore property owners. Washoe County is expected to appeal the ruling and it will most likely end up, once again, before the Nevada Supreme Court, said Maryanne Ingemanson, president of the Village League.

The Village League's grueling and expensive effort not only discovered inequities in Washoe County, but has led to landmark Supreme Court decisions that have exposed fundamental constitutional problems with Nevada's unique and complex property-tax system that separately values land and improvements, a method used nowhere else in the country.

If Washoe County appeals Judge Adams' order, it will not be the first time the county or the state has appealed court decisions that ruled in favor of taxpayers. Appeals and administrative delaying tactics have consistently been the course of action followed by the state and county over the years, in what appears to be an effort to simply avoid paying refunds to taxpayers.

The ongoing legal haggling over the 2006/07 property tax assessments for Incline Village and Crystal Bay provides a snapshot of the difficulty that

taxpayers face when they challenge county and state property tax authorities.

The root of the 2006/07 challenge goes back to late 2002, when the Washoe County assessor conducted the first mass appraisal of the two towns in five years. After taxpayers like Judge Gang became concerned about the sharp increases in their property valuations, the Village League filed its first lawsuit in October 2003 challenging the valuation methods used by then-Washoe County assessor Robert McGowan. But the Village League didn't stop there.

Its leaders also became actively involved in the development of new property-tax rules, attending dozens of Department of Taxation regulatory workshops and making recommendations. At the same time, the group began lobbying the Nevada Legislature for property-tax reforms and played a key role in passing a 2005 bill that strengthens the Department of Taxation's oversight of county assessors. The Village League also hired highly regarded appraisal experts to review the property valuation methodologies used by Washoe County.

The experts included Marvin L. Wolverton, professor emeritus and former distinguished professor of real estate at Washington State University, who has authored dozens of articles for academic and professional journals and real estate practitioner publications; and Richard Almy, former executive director of the International Association of Assessing Officers, an organization that sets standards for property valuations.

In September 2004, Wolverton presented a report to the Nevada Tax Commission based on his analysis of Washoe County's property valuations for Incline Village and Crystal Bay. Wolverton's study showed that Incline Village and Crystal Bay's tax values were systematically higher and less consistent when compared with Lake Tahoe properties in Douglas County on the south end of the lake. He also showed that Incline Village and Crystal Bay property values were out of equalization with each other and with the rest of Washoe County. His report provided powerful evidence from an outside expert that Washoe County was violating the Nevada Constitution's requirement for a uniform and equal rate of assessment and taxation.

Wolverton's report foreshadowed a crucial ruling by state court Judge William Maddox in January 2006. Judge Maddox ruled that Washoe County had not used state-approved rules to appraise Incline Village and Crystal Bay properties for the 2003/04 tax year. The

court also ruled that the inconsistent application of the disputed appraisal methodologies "illustrates the high probability that the taxes were not assessed on an equal and uniform basis, as required by the Constitution."

The Maddox court reversed a state Board of Equalization ruling that earlier upheld the methods of Washoe County assessor McGowan. Maddox rolled back property valuations to 2002/03 levels and ordered refunds to taxpayers who had paid more than the 2002/03 amounts, plus interest. It was a major victory for the Village League, but any celebration was still premature. The Maddox decision was appealed to the Supreme Court, and there 17 taxpayers squared off against Washoe County, the Washoe County Assessor, the state Board of Equalization, the state Department of Taxation and the Nevada Tax Commission.

Two months after Judge Maddox's ruling eviscerated the valuation methodologies used by Washoe County, the Village League challenged the assessor's valuations for nearly 9,000 parcels for the 2006/07 tax year before the Washoe County Board of Equalization. Taking a cue from the Maddox ruling, the county board unanimously voted in March 2006 to roll back the Washoe County assessor's valuations for 9,000 properties for the 2006/07 tax year to 2002/03 tax levels. Rather than agree to the rollback, Washoe County would later appeal the decision to the state Board of Equalization.

Despite the Maddox and county board rulings in favor of the Village League, the property-tax battle was far from over, although a crucial turning point was coming. In December 2006, the Nevada Supreme Court issued a scathing opinion that stunned state and county tax officials. The high court ruled 6-0, upholding Judge Maddox's decision.

In the State Board of Equalization vs. Bakst decision, the Supreme Court ruled that four of the Washoe County assessor's appraisal methods were invalid because they were never approved in regulations passed by the Nevada Tax Commission. The court determined that the "2003-2004 valuations, that were based on these methodologies, are therefore unjust and inequitable." The Supreme Court also upheld the Maddox order to roll property taxes back to 2002-03 levels and stated that taxpayers were entitled to refunds for over-collected taxes, plus interest.

The Supreme Court ruling also focused on the failure of the Nevada Tax Commission to establish appraisal regulations adequate to guide county assessors in cases where determining property valuations are difficult. The court noted that the Tax

Commission had failed to update appraisal regulations since 1983. Without guidance from the Tax Commission, county assessors "had to develop their own methods for assessing property values in their respective counties," the court stated. However, said the Supreme Court, county assessors "did not have the authority to create individualized valuation methodologies in 2002."

Nevada's high court placed the blame for the dilemma faced by county assessors — who were compelled to make decisions without sufficient regulations — squarely on the Tax Commission. Concluding its decision, the Supreme Court stated:

The Nevada Tax Commission failed to fulfill its statutory duty to update general and uniform regulations governing the assessment of property. Without uniform regulations from the Tax Commission, the Assessor, understandably, created the methodologies he deemed necessary to assess the properties in the Incline Village and Crystal Bay areas. Those methodologies are unconstitutional, however, because they are inconsistent with the methodologies used in other parts of Washoe County and the entire state.

The Supreme Court ruling still shocks former Washoe County assessor McGowan. McGowan, who served as assessor from 1983 through 2006, said in August that he believes that his office was following state regulations and did nothing wrong. He also asserts that his appraisers did not overvalue Incline Village and Crystal Bay properties, and, in fact, they were and remain undervalued for property-tax purposes. "Personally, I still think we were doing it right," he said. "But the Supremes, they get to make the final decision. I don't want to be too contradictory to the Supreme Court."

While McGowan doesn't like the Supreme Court ruling, the decision was an astounding victory for the Village League and signaled a significant turning point in the property-tax battle. Important as the decision was, the refunds only applied to the 17 taxpayers who had participated in the legal challenge. Village League leaders were determined to make sure all taxpayers in Incline Village and Crystal Bay were afforded the same property-tax relief. The best way to accomplish that goal was to enforce the March 2006 Washoe County Board of Equalization ruling that rolled back property valuations for 9,000 property owners to 2002/03 levels.

Washoe County, however, had other plans. In January 2007, the county appealed the county board ruling to the state Board of Equalization. But rather

than make a ruling, the state board voted to send the case back to the county board for further review. The Village League filed an emergency appeal to the Nevada Supreme Court, and successfully halted the county board meeting scheduled for May 2007.

The Village League won another appeal before the Supreme Court in October 2008 when the court ordered the state board to rule on Washoe County's appeal of the county board's March 2006 ruling. In July 2009, the state board unanimously agreed to uphold the county board's ruling and rolled back valuations for the 2006/07 tax year for 9,000 property owners to 2002/03. The state board's decision set the stage for the Village League to seek the order from Judge Adams requiring the Washoe County treasurer to issue refunds.

The complex legal wrangling over the 2006/07 tax year is just one of about a dozen lawsuits filed by the Village League that are still pending on property-tax appeals and other property-tax-related matters, including a civil rights case filed against former members of the state board pending in the Nevada Supreme Court. Reno attorney Suellen Fulstone is representing the Village League in all of the pending cases and has become one of the state's leading experts on property-tax law.

Fulstone said the barrage of rulings stemming from the Village League lawsuits raise serious doubts about the constitutionality of the state's entire property-tax system. The root of the problem, she said, is the state's bifurcated valuation system — known as the "taxable value system" — where land is valued separately from improvements.

So far, the Village League has not filed a case aimed specifically at having the state's property-tax system declared unconstitutional. Fulstone said while there is a "pretty good case" to be made to challenge the state's taxable value system, "it is not the desire of the Village League to take down Nevada's property-tax system. It is just to get a fair tax for Incline Village."

But Fulstone said she has little doubt that if such a case is brought, it would succeed. The fundamental problem, she said, is that Nevada's property-tax system creates valuation differences with "no rational basis whatsoever."

While the Village League's effort is focused on gaining refunds and creating fair and equitable property taxes in Washoe County, the legal precedents set so far have laid the groundwork for a broad constitutional challenge to Nevada's taxable value system. And there is no sign that the Village League's pending litigation is

about to end, increasing the likelihood that future Supreme Court rulings could further undermine the state's property-tax system.

Prior to the state board's July meeting, the Village League offered to drop all its pending litigation if Washoe County assessor Josh Wilson withdrew his appeal of the 2006 county board order to roll back valuations for 9,000 property owners to 2002/03. Wilson refused the offer and the state board subsequently ruled in favor of the Village League. Rather than ending the seven-year rebellion, the property-tax revolt and litigation continues.

After years of acrimony and bitter exchanges between the Village League and Washoe County officials, the revolt has become more than just a battle over money. "We are not making any money on this," says Incline Village resident and Village League member Les Barta. "This is a matter of justice. This is a matter of principle. We want to see this through to the end. We are confident we will win."

After serving as co-counsel with Fulstone on the 2006 Supreme Court Bakst case, Carson City attorney Azevedo is no longer involved in the day-to-day litigation on behalf Incline Village and Crystal Bay residents. To this day, however, Azevedo is deeply troubled about how the state and county continue to fight taxpayers every step of the way. "No taxpayer should ever have to go through ... what those taxpayers went through to obtain uniform and equal valuation," he said.

And the fact that the state and county are still opposing efforts to equalize property tax valuations between the 17 plaintiffs that participated in the Bakst case and the remaining 9,000 residents who have been fighting for more than three years for equal treatment is equally galling, he said.

"It is impossible to reconcile how Dr. Bakst can be rolled back to 02-03 levels and his neighbors with properties adjacent to his remain taxed at a higher level," Azevedo said. "That makes no sense. I believe the state board and tax commission had a duty to address this."

John Dougherty is the principal of InvestigativeMedia.com and has long been one of America's leading investigative reporters. He has been retained by the Nevada Policy Research Institute to report on critical issues of Nevada governance.

Read More

The above is the second article written by John Dougherty. Go back to the News Articles web page to read the first article.

- Oct 5: **Stage set for property tax showdown**

Webmaster's Note

The above article was published On the front page of the Lake Tahoe Bonanza Newspaper on November 5, 2009, along with an editor's note plus a quote from Suellen Fulstone and three file photos as follows:

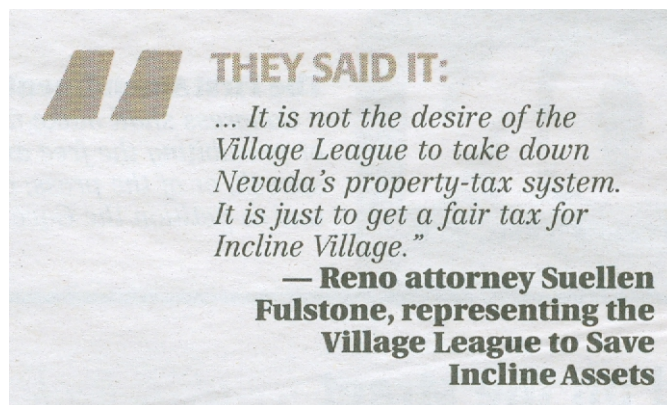
EDITOR'S NOTE:

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 marketbased 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 asses? Nevada property taxes, the impact of the 2005 property tax abatement and the political implicaations of fundamental property tax reform.

This story is the second article penned by John Dougherty, and due to space constraints, an abbreviated version of it is running into today's print edition. To view the entire story online, visit tahoebonanza.com/taxreevolthistory2, or look for the second part of this story in next week's print edition.

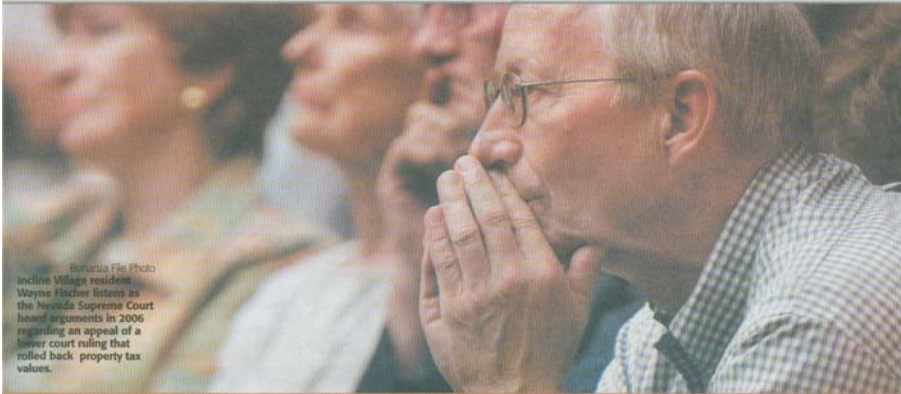
To read Dougherty's first story, visit tahoebonanza.com/taxreevolthistory1.



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COMING NEXT WEEK | The long-awaited environmental impact study for proposed Crystal Bay development Boulder Bay is scheduled to be released this week. Read analysis and find out how you can offer feedback in next week's *Bonanza*.



Bonanza File Photo
Incline Village resident
Wayne Fischer listens as
the Nevada Supreme Court
hears arguments in 2006
regarding an appeal of a
lower court ruling that
rolled back property tax
values.

Why Nevada's property-tax system may soon crumble
BIRTH OF A REBELLION



Bonanza File Photo

Hundreds of Incline residents attended a Nevada Supreme Court hearing about one of the tax revolt cases in January 2008. The saga has been ongoing for more than six years, and now it seems to be stretching farther than just Washoe County.



Bonanza File Photo

Washoe County Assessor Josh Wilson, seen here at a 2008 Supreme Court Case in Carson City involving one of the Village League cases.

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