



www.TahoeBonanza.com, November 5, 2008, front page

Officials weigh in on Supreme Court Order

High court's ruling could lead to refund of about \$12 million for all Incline/Crystal Bay residents

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November 5, 2008

The Nevada Supreme Court handed down an opinion last week that could result in a \$12 million refund to 8,700 Incline Village and Crystal Bay residents in what many are calling the biggest decision in the history of the community's six-year tax revolt.

And Washoe County has a plan to shoulder the bill, should it be called upon by the Nevada State Board of Equalization to do so, said Washoe County Manager Katy Simon in a Tuesday e-mail interview.

When asked if the county has considered how it might shave \$12 million from its budget, Simon said "yes." However, until the county is ordered to pay the money, the plan's details could remain in the dark — although Simon did say she doesn't think Washoe County ever would go bankrupt if asked to pay off millions of dollars in court-ruled taxation debt.

"That decision will be made if and when it is necessary," said Simon, about a potential payback plan. "No county in Nevada has ever technically gone bankrupt that we know of, and we don't expect Washoe County to go bankrupt. We have already cut \$54 million in spending over the past three years in prudent response to the economic downturn. Services would be reduced to offset the amount of refunds, if required."

Regarding the Supreme Court's decision, which was issued Thursday and affects some 9,000 parcel holders in Incline Village and Crystal

Bay, Simon went on to say that the Incline Village/Crystal Bay tax revolt is just one of many potential situations in which the county plans for the worst.

"We plan for all contingencies that could affect our budget — natural disasters, changes in federal and state legislation, economic recession, state budget reductions that cut our funding, litigation, increases in the price of fuel, etc.," Simon said.

Thursday's decision, and some history behind it

The Nevada Supreme Court's Thursday opinion deals with the 2006-2007 taxation year, in which the Village League to Save Incline Assets is representing 9,000 Incline Village and Crystal Bay parcel holders.

On March 8, 2006, the Washoe County Board of Equalization issued a general equalization decision for the 2006-2007 tax year, rolling back taxable valuations for about 8,700 IV/CB properties. The Washoe County Assessor (at the time, Bob McGowan) appealed the decision to the SBOE, which failed to consider the case until April 2007, and subsequently remanded the case to the WCBOE. The other 300 parcel holders involved in the 2006-2007 tax year are awaiting a proposed settlement.

The Village League then filed suit against the state board, Washoe County, the Washoe County Assessor and Washoe County Treasurer, asking for the Supreme Court to issue a writ of certiorari or mandamus, declaring the SBOE's decision to remand the case to the WCBOE to be in "excess

of its jurisdiction or an arbitrary exercise of its discretion,” the opinion reads.

According to Thursday’s opinion — which can be viewed in its entirety in a PDF format at tahoebonanza.com — the court agreed the SBOE did have jurisdiction to hear the cases and granted the writ of mandamus, demanding the SBOE “vacate its remand order and proceed with its consideration of the Assessor’s appeal of the County Board’s equalization decision on the merits.”

A “writ of mandamus” can be legally be described as a higher body, the Supreme Court, mandating a lower body, SBOE, to act on something.

The decision is huge, said Village League President Maryanne Ingemanson.

“This powerful Supreme Court Decision vindicates six years of efforts by the Village League to obtain uniform and equal property taxation for all 8,700 of the residential property owners in Incline Village and Crystal Bay,” she said. “After equalization, refunds and interest estimated by the State Department of Taxation at approximately \$12 million for over-collected taxes will be owed by Washoe County to the taxpayers.”

What does the decision mean?

Gina Session, chief deputy attorney general of Nevada, commented on behalf of state Attorney General Catherine Cortez Masto, who is named in the suit as the chief representing attorney for SBOE.

“We’re happy with this decision; the court said the state board should hear the cases, and that’s a good decision, to leave it up to the (state) board to hear and equalize this case,” Session said.

But before the SBOE can hear the case, and before Ingemanson’s hope of a pro-Village League decision is realized, the board needs to ensure it has enough members — or has quorum — to hear the case, something it has lacked now for months regarding cases involving the IV/CB tax revolt.

The board has been without quorum since mid-August, when it had to postpone hearings on about 1,350 cases involving IV/CB residents’ petitions of assessed property values from the 2008-2009 fiscal year. It postponed because the board, which has five members and needs at least

three to hear a case, was left with two since two of the five board members are personally named in a lawsuit filed by the Village League regarding assessed values from the 2007-2008 fiscal year. Therefore, because of a conflict of interest, they could not hear the cases.

Furthermore, a third member of the board, Richard Mason, had received a decision from the Nevada Ethics Commission that he might be perceived to have a financial interest in the outcome because he owns property rights in the Incline Village area. Mason recused himself from the hearings, leaving only two members.

SBOE member Michael Cheshire also faces an ethics commission meeting (1 p.m. Friday at the Nevada Commission on Ethics office in Carson City) to determine whether he can stay on the board to hear any tax revolt-related cases.

The decision to appoint people to the SBOE only can come from Gov. Jim Gibbons. Phone calls to Ben Kieckhefer, Gibbons’ press secretary, went unreturned as of press time.

While it is unknown when the SBOE can hear the case of 8,700 residents, involving the most recent Nevada Supreme Court decision, Session said it is the position of the state Attorney General’s Office to get things moving swiftly.

“We’d like to get this done as quickly as logistically possible,” Session said.

However, whenever an SBOE hearing does take place, Ingemanson said she doesn’t see how a decision could go against the Village League.

“I don’t think they will rule against us because this is such a huge decision from the Supreme Court,” Ingemanson said.

If SBOE does vote in favor of the Village League, it could be a \$12 million decision. According to Thursday’s opinion, “In oral argument before this court, the State Board noted that the County Board’s equalization decision (2006) affected \$12 million in revenue.”

That could translate to \$12 million being divided among the 9,000 parcel holders involved — or, without counting potential interests, about \$1,333 per parcel holder.

Washoe County District Attorney Dick Gammick represented the county defendants in the case.

While Gammick said his office couldn’t speculate about SBOE’s pending decision, he did say Thursday’s decision by the Supreme Court was the right one.

“This is a decision that needed to go to the state board — it’s the board that has the responsibility to do these larger equalizations,” Gammick said. “Our next step, for the folks up at Incline, we just want to see the rules and laws put in place ... so everyone gets a fair shake. That’s what we’re after. We want a good system going, and we’re working toward that. We will wait to see what that next step is.”

The High Court’s conclusion

Below is the verbatim conclusion offered by the Nevada Supreme Court in regard to this case. The entire piece of litigation can be viewed in PDF format at tahoebonanza.com.

“Because the State Board retained jurisdiction over the Assessor’s appeal, we deny the Taxpayers’ request for a writ of certiorari. We grant the Taxpayers’ petition with respect to their alternative request for a writ of mandamus, however, because they demonstrated that they are without other adequate legal remedy and that the State Board arbitrarily exercised its discretion. Therefore, we direct the clerk of this court to issue a writ of mandamus instructing the State Board to vacate its remand order and proceed with its consideration of the Assessor’s appeal of the County Board’s equalization decision on the merits.”

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