

Tahoe tax revolt files again with Nevada Supreme Court

Kevin MacMillan
BONANZA EDITOR
kmacmillan@tahoebonanza.com

INCLINE VILLAGE, Nev. — Incline Village's fight against improper taxation regarding the 2006-07 tax year is once again back in the Nevada Supreme Court.

According to a motion filed Oct. 26 by the Village League to Save Incline Assets, the nonprofit group of Incline Village tax revolters is challenging a written decision handed down by the Nevada Department of Taxation, regarding a summer decision by the Nevada Board of Equalization to roll back assessed property values for 8,700 Incline Village/Crystal Bay properties to the 2002-2003 tax year.

The “motion to correct clerical errors” argues the state taxation department's decision — signed by Executive Director Dino DiCiano — is faulty because it attempts to exclude certain taxpayers from receiving the refund granted by its board.

“By law, the Department acts only as the State Board's staff. The department has no authority, legal or otherwise, to exercise its ‘judgment’ as to which taxpayers should be included or excluded. To the extent the department's written “decision” purports to make such exclusions, those clerical errors must be corrected and the decision conformed so that it “truly speaks” the actual determination made by the State Board.”

Case history

A July 20 decision by the Nevada Board of Equalization affirmed a previous decision handed down by the Washoe County Board of Equalization, ordering Washoe County to roll back taxes. The ruling was based on a case involving the 2006-2007 tax year, in which the Washoe County Assessor's office challenged a Washoe County Board of Equalization decision to refund the Incline/Crystal Bay residents. The case eventually went to the state Supreme Court, which granted the state board jurisdiction to rule on the case.

An Oct. 6 ruling from Washoe County District Court Judge Brent Adams affirmed both the state and county rulings.

At that time, county treasurer Bill Berrum reiterated he would begin the refund process once Adams' written decision and a written decision from the state taxation department regarding the July 20 ruling were filed.

It could take months to a year before refunds are sent up the hill, the county has said.



A large Incline crowd gathered in January 2008 at the Nevada Supreme Court in Carson City.
Bonanza File Photo

Supporting Document:

Following are 3 documents supporting this article that was also published on the North Lake Tahoe Bonanza Website

1. Village League's motion to correct clerical errors, pages 3 through 11
2. Nevada Taxation Department's Oct. 9 written decision, pages 12 through 18
3. Washoe County District Court Judge Brent Adams' Oct. 6 ruling, pages 19 through 22

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IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE ASSETS,
INC., CHUCK OTTO and V PARK, LLC,

Petitioners,

v.

STATE OF NEVADA *ex rel.* STATE BOARD OF
EQUALIZATION, an agency of the State of Nevada,

Respondent,

and

WASHOE COUNTY, WASHOE COUNTY
BOARD OF EQUALIZATION and WASHOE
COUNTY TREASURER,

Real Parties in Interest.

Case No. 49358

FILED

OCT 26 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY _____
DEPUTY CLERK

NOTICE OF TAXPAYERS' MOTION TO CORRECT CLERICAL ERRORS

Please take notice that taxpayers have filed a motion with the State Department of Taxation to correct certain clerical errors in the written decision issued by the Department, a copy of which was provided to this Court on October 14, 2009. A copy of the motion is attached.

DATED this 26th day of October, 2009.

MORRIS PETERSON

By Suellen Fulstone
Suellen Fulstone, NV Bar #1615
6100 Neil Rd., Suite 555
Reno, NV 89511
(775) 829-6009
Attorneys for Petitioners



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

TAXPAYERS' MOTION TO CORRECT CLERICAL ERRORS

CASE NO. 06-508

RECEIVED
OCT 26 2009
STATE OF NEVADA
DEPARTMENT OF TAXATION

Submitted on October 26, 2009 by:

SUELLEN FULSTONE
MORRIS PETERSON
6100 Neil Road., Suite 555
Reno, NV 89511
(775) 829-6009

Attorneys for Taxpayers

SBOE Case No. 06-508

MOTION TO CORRECT CLERICAL ERRORS

Pursuant to NAC 361.747(6), Taxpayers move the Department of Taxation in its capacity as the staff of the State Board of Equalization to correct clerical errors in the written decision issued on October 9, 2009.¹ The "decision" as written fails to conform to the decision actually made by the State Board of Equalization and reflected in the transcript of the hearing. A copy of the transcript is attached as Exhibit A for the convenience of Department staff.

1. In the fourth full paragraph on page 3, the written decision states that the Board "denied Assessor's motion to not recognize any of the "300" taxpayers who previously received relief from the County and State Boards." The written decision, however, omits the subsequent decision of the Board affirmatively to include all approximately 9000 Incline Village/Crystal Bay residential taxpayers. After stating that he believed that "all parties should be considered in this hearing," Board Member Marnell formally amended his motion "to include all the 9,000 residential houses in the Crystal Bay area and Incline Village area." **Transcript, p. 53, lns. 20-21; p. 54, lns. 1-3.** That motion was seconded by Member Meservy and carried unanimously. **Id., p. 54, lns. 4-11.**² As noted in the Department's written "decision," counsel for taxpayers subsequently withdrew

¹ Taxpayers reserve the right to object to the written decision as untimely and unlawful on the grounds that it violates the requirement of NAC 361.747 that it be served upon the parties of record and their representatives within 60 days of the date of the oral decision. The written decision was not served on any of the parties or their representatives within the 60 period mandated by the SBOE's own regulation. Furthermore, more than 90 days has now passed and the written decision has not yet been served on the 300 taxpayers who were made additional parties of record by motion during the course of the July 20, 2009 hearing.

² Member Marnell's previous motion was a motion to include the 8700 residential taxpayers that had been noticed by the Department as parties to the proceeding. **Transcript, p. 47, lns. 14-15.** Member Marnell's motion was in response to the motion of the Assessor to exclude any taxpayer who was not present for the hearing, who had not filed notices with the Board or for whom counsel appearing for taxpayers had no agent representation, as well as those residential taxpayers who had filed individual appeals. **Id., p. 46, lns. 23- p. 47, ln. 3.** As Member Marnell stated it, "My motion would be that they are [all] absolutely included in this process." That initial motion was also approved unanimously. **Id., p. 47, lns. 16-23.**

the taxpayers' objection to "the failure to include the '300' taxpayers." As stated at the hearing, that objection was withdrawn expressly because that issue was "resolved" with the Board's decision to include the 300 as parties of record to the hearing. **Id., p. 65, lns. 8-11.**

2. At the bottom of page 3 and continuing on to page 4, the Department's written "decision" describes the testimony of the Assessor, in part, as follows:

He noted that the "300" cases had previously been resolved by the State Board through a stipulated agreement.

This statement is incorrect and must be withdrawn from the decision. As the transcript reflects, the Assessor never mentioned any "stipulated agreement." When the Assessor began to discuss the "resolution" of the 300 individual taxpayer cases, taxpayer counsel objected on the grounds of the Board's previous ruling not to take additional evidence. **Transcript, p. 73, ln. 12 – p. 74, ln. 2.** Consistent with the previous ruling, the Board Chairman precluded the Assessor from providing further testimony along such lines. For that reason, taxpayer counsel was likewise not in a position to offer additional evidence with respect to any such resolution of the individual taxpayer cases. Any such attempt would have been improper under the Board's ruling on additional evidence.

3. The last sentence of the first full paragraph on page 4 states that "In response to questions from the State Board, the Assessor testified that the '8700' properties were not assessed by unconstitutional methods." That statement is both inaccurate and misleading and fails to provide the context of the purported testimony. In fact, as reflected by the transcript, although that question was directed to the Assessor, the Assessor did not make the response. Before the Assessor could respond, counsel for the Assessor interjected, first refusing to answer the question (**Transcript, p. 87, ln. 23 – p. 90, ln. 11**) and then, at the Board's insistence on an answer, testified as follows:

The answer is no, because we cannot ascertain that from the record that was before the county board, nor before the State Board, nor before the Supreme Court. The answer is clearly no. Your question cannot be answered in the affirmative. **Transcript, p. 90, lns. 14-18.**

The Assessor himself subsequently testified but his testimony did not address the methods used to value the 8700 residential parcels. **Transcript, p. 90, ln. 20 – p. 91, ln. 18.**

4. The last sentence of the second full paragraph on page 4 states that "In response to questions from the State Board, Certain Taxpayers testified that the '8700' properties were assessed by unconstitutional methods," citing to page 97 of the Transcript. The citation is erroneous or, at least, incomplete. The actual testimony about the use of unconstitutional methods is at page 101 of the Transcript as follows:

I asked to have that record included before the Board. The Board declined that. I feel a little bit awkward going beyond that record, but to the extent that the Assessor did -- I mean, I will represent to the Board that the evidence before the County Board at the time of this decision was that all of the properties were valued unconstitutionally using one or more of those four methodologies. **Transcript, p. 101, lns. 7-14.**

The full discussion is found at **Transcript, p. 100, ln. 12 – p. 101, ln. 14.**

5. Finding of Fact No. 6 in the Department's written "decision" states as follows:

The State Board found the decision of the County Board appealed by the Assessor applied to 8700 Incline Village and Crystal Bay properties.

No such finding was made. No such finding could have been made. As required by law, the Washoe County Clerk transmitted and certified to the State Board of Equalization the "complete record" of the decision of the County Board of Equalization which gave rise to the Assessor's appeal in this matter identified as SBOE Case No. 06-508. That record includes the Affidavit of Jaime Dellera, from the County Clerk's Office, which states, in part, as follows:

On January 19, 2007 the Washoe County Assessor's Office provided me with an Excel spreadsheet listing all of the property owners of record in their office as of July 1, 2006 who were affected by the March 8, 2006 decision of the Washoe County Board of Equalization:

On the 23rd day of January, 2007 I provided said list to the Washoe County Mailroom for their use in mailing copies of the Notice of Decision 06-101E to the affected property owners of record. . . .
Record, SBE 06-508, p. 1067.

The Washoe County Assessor's list of property owners follows Ms. Dellera's Affidavit in the

Record at pages 1069-1342. There are exactly 8108 parcels identified on that list. The owners of those parcels were notified by the County that the valuation of their respective parcels had been reduced to 2002-2003 levels by order of the County Board of Equalization.

In an earlier hearing, the Board approved the request of attorney Norm Azevedo to remove his clients from that list. Other than approve specific requests from taxpayers to be removed, the State Board of Equalization took no action to alter the County Assessor's list of properties encompassed by the County Board's equalization order in any way. The transcript of the hearing in July of 2009, when the State Board made its final decision on the Assessor's appeal of that equalization order, contains no discussion of even any such proposed or possible action. The motion made by Member Marnell was to "uphold the County Board of Equalization of Washoe County's decision, to roll back the 8700 taxpayers of Incline Village and Crystal Bay." **Transcript, p. 126, ln. 23 – p. 127, ln. 1.** That motion was unanimously approved. **Id., p. 127, lns. 2-10.** "The 8700 taxpayers of Incline Village and Crystal Bay" was clearly both intended and understood to mean "all" of the residential taxpayers of Incline Village and Crystal Bay as identified by the Washoe County Assessor, just as the County Board decision that was being affirmed included all such residential taxpayers. **See Finding of Fact No. 5.**

6. The Department's written "decision" directs the Washoe County Comptroller to certify the assessment roll of the county "using Exhibit A as the list of Taxpayers that are affected by this Decision." To the extent that "Exhibit A" as attached to the Department's written "decision" differs from the Assessor's list of included parcels/taxpayers as provided by Washoe County and found at pages 1069-1342 of the Record, it must be corrected.

The County Assessor prepared the list of properties included by the County Board's decision. The County provided notice to the taxpayer owners of those properties of the decision to reduce their property valuations to 2002-2003 levels as a matter of equalization. The Department has no legal authority to alter that list. Exhibit A to the written "decision" must be corrected to conform to the County's certified list of included properties removing only the names and properties of Mr. Azevedo's clients and of any other taxpayers whose specific request to be removed from the list was

approved by the Board.

7. The Department's Certificate of Service of its written "decision" shows service upon the Washoe County Assessor, the Washoe County District Attorney's Office, Suellen Fulstone as attorney for "Certain Taxpayers," D. G. Menchetti, Robert Angres, and Norm Azevedo with copies to the Washoe County Clerk, the Washoe County Comptroller and the Washoe County Treasurer. That Certificate needs to be corrected to reflect service as required by NAC 361.747(5) upon

"each party of record, any representative of a party of record and each member of the State Board, in person or by certified mail, within 60 days after the date of the decision."

Both the parties of record and the members of the State Board have been omitted. Those "parties of record" necessarily include the "300" taxpayers who were not provided notice of the hearing but who were added as parties of record by motion of the Board as cited above. The Department's written "decision" cannot be "final" for purposes of judicial review until those mandatory requirements of service have been satisfied.

As defined by the Nevada Supreme Court, a "clerical error" is a mistake which is not the result of the exercise of the judicial, or in the case of the State Board of Equalization, the quasi-judicial function. Smith v. Epperson, 72 Nev. 66, 294 P.2d 362 (1956) (Court distinguished between an error of judgment which was a faulty determination as a matter of law and a clerical error which was simply a failure to make the judgment truly speak the determination which had been made); Channel 13 of Las Vegas, Inc. v. Ettlinger, 94 Nev. 578, 580, 583 P.2d 1085, 1086 (1978). The instant motion requires the Department as the staff of the State Board to correct the written "decision" so that it "truly speaks" the determination made by the Board. Board Members, both individually and collectively, stated and voted their intention that their decision be inclusive of all residential properties at Incline Village and Crystal Bay. **Transcript, p. 43, ln. 25 - p. 47, ln. 23; p. 52, ln. 2 - p. 54, ln. 12; p. 121, ln. 14 - p. 127, ln. 10.** As Chairman Wren articulated it, this case

"comes down to: Do we uphold the County Board of Equalization or do we overturn them?"

Transcript, p. 125, Ins. 21-23. The County Board's decision unequivocally applied to all residential property owners at Incline Village and Crystal Bay. **See Finding of Fact No. 5; Record, SBE, p. 158.** The County Assessor prepared the list of such property owners. In affirming the County Board's decision, the State Board's decision was equally all-inclusive. If the State Board had made or intended to exclude any Incline Village/Crystal Bay property owners, there would have been a discussion as well as a vote to support any such exclusion. Neither such discussion or vote occurred.

By law, the Department acts only as the State Board's staff. The Department has no authority, legal or otherwise, to exercise its "judgment" as to which taxpayers should be included or excluded. To the extent the Department's written "decision" purports to make such exclusions, those clerical errors must be corrected and the decision conformed so that it "truly speaks" the actual determination made by the State Board.

Dated this 26th day of October, 2009.

MORRIS PETERSON

By 

Suellen Fulstone
Nevada State Bar #1615
6100 Neil Road, Suite 555
Reno, NV 89511
(775) 829-6009

CERTIFICATE OF SERVICE

I certify that I am an employee of the law firm of Morris Peterson and that on this day I caused the foregoing Motion to Correct Clerical Errors to be hand delivered to:

Terry Rubald
State Board of Equalization
1550 College Parkway
Carson City, NV 89706

and that I deposited a copy of the Motion to Correct Clerical Errors in the U.S. Postal Service addressed to:

Josh Wilson
Washoe County Assessor
1001 E. 9th Street
Reno, NV 89512

David Creekman
Washoe County District Attorney's Office
P.O. Box 30083
Reno, NV 89520

Dawn Kemp
Attorney General's Office
100 N. Carson St.
Carson City, NV 89701

D.G. Menchetti
341 Sky Way
Incline Village, NV 89451

Robert J. Angres
2650 Friesian Ct.
Reno, NV 89521

Norm Azevedo
510 W. Fourth St.
Carson City, NV 89703

DATED this 26th day of October, 2009.


Employee of Morris Peterson



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

JIM GIBBONS
Governor

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7921
Telephone (775) 684-2160
Fax (775) 684-2020
In-State Toll Free: 800-992-0900

DINO DICIANNO
Secretary

In the Matter of

COUNTY OF WASHOE and
JOSHUA WILSON,
Washoe County Assessor
PETITIONER

LARRY D. AND MARYANNE B.
INGEMANSON TRUST
APN 130-241-21
RESPONDENT

Appeal of the Decision of the
WASHOE COUNTY
BOARD OF EQUALIZATION

Consolidated Case Numbers
07-333 and 07-168

NOTICE OF DECISION

Appearances

Joshua Wilson, Washoe County Assessor; Terrance Shea, Washoe County Deputy District Attorney and Rigo Lopez, Senior Appraiser, appeared on behalf of the Washoe County Assessor's Office (Assessor).

Maryanne Ingemanson and Suellen Fulstone appeared on behalf of the Larry D. and Maryanne B. Ingemanson Trust (Taxpayer).

Summary

The matter of the Assessor's petitions for review of property valuations established by the Washoe County Board of Equalization (County Board) within Washoe County, Nevada, came before the State Board of Equalization (State Board) for hearing in Carson City, Nevada, on August 16, 2007. The matter was subsequently continued to September 13, 2007 and September 28, 2007.

At the hearing on September 13, 2007, the State Board consolidated case number 333 and 168 into one appeal in which the Assessor was listed as the appellant and the Taxpayer was listed as the respondent. See *Tr.*, 9-13-07, p. 230, ll. 1-12; p. 232, l. 13 through p. 234, l. 4.

At the hearing on September 28, 2007, the State Board consolidated the appeals of taxpayers listed on the agenda as Section B, "Appeals from Action of a County Board of Equalization Pursuant to NRS 361.400, Tax Year 2007-2008", Group 2, Taxpayers represented by Ms. Fulstone. Case number 07-118, Richard M. and Dawn L. Devereaux, was designated by the State Board as the lead case under the consolidation. See *Tr.*, 9-28-07, p. 30, *ll.* 24-25; p. 31, *ll.* 1-12. Consolidated case numbers 333 and 168 were further consolidated with the Group 2 Taxpayers described above.

NRS 361.260 (5) provides that for any property not reappraised in the current assessment year, the county assessor shall determine its assessed value for that year by applying a factor for land to the assessed value for the preceding year. The factor is developed by the county assessor and approved by the Nevada Tax Commission (Commission). The factor for land must be so chosen that the median ratio of the assessed value of the land to the taxable value of the land in each area subject to the factor is not less than 30 percent nor more than 35 percent. (See *Tr.*, 9-28-07, p. 38, *ll.* 19-24).

The Assessor testified that 723 land sales in Area 1 were analyzed. The ratio of the previous year's assessed value of sold properties compared to the actual sale prices in Area 1 produced a median ratio of 26.1 percent. On November 13, 2006, the Assessor recommended and the Nevada Tax Commission reviewed and adopted a land factor of 1.15 to apply to all residential properties in Area 1 in order to bring the median ratio within the statutory range, except lakefront properties had a factor of 1.0 based on 7 sales. (See *Tr.*, 9-28-07, p. 38, *l.* 15 through p. 39, *l.* 4; see also *Record, Washoe County Record, Attachments A and B, bates stamp pages 32-40; Attachment D, Department of Taxation Land Factor Report, bates stamp page 77-78 (pages 26 and 26-a of the Report)*). The Assessor noted that the appropriate time and place to have objected to the factor was at the November 13, 2006 hearing of the Commission, but no one objected. See *Tr.*, 9-28-07, p. 53, *l.* 13 through p. 54, *l.* 6). Taxpayers responded that the three days' notice of the Commission hearing is inadequate and the place the factor has to be challenged is at the Boards of Equalization because there is no effective way of challenging at the Commission hearing. See *Tr.*, 9-28-07, p. 86, *l.* 2-20.

On March 1, 2007, the County Board set aside the application of the 2007-2008 land factor of 1.15 to only a portion of Area 1 or the 1.0 lakefront factor, namely those properties located in Incline Village and Crystal Bay, Nevada. The County Board based its decision "upon inappropriate derivation of construction of the factor rate values in non-comparable properties. It was further ordered that the factor be adjusted to 1 and that the factor be applied to the current 2006-2007 land values on the roll." See *Record, Case Number 07-118 Devereaux, bates stamp page 26; Tr.*, 9-28-07, p. 54, *ll.* 12-15.

The Assessor testified that the factoring process requires the assessor to determine a factor so that the median ratio of the assessed value to the taxable value of the land is not less than 30 nor more than 35 percent, regardless of what the base year assessed value is to which the factor is applied. *Tr.*, 9-28-07, p. 44, *ll.* 11-15. He also testified that, based on the *Bakst*¹ decision, the "Supreme Court recognized that factoring is an appropriate method of valuing property in nonreappraisal years." *Tr.*, 9-28-07, p. 48, *ll.* 4-11. He also testified "The approved factors are applied throughout the county and not just to Incline Village. By the very fact that the median land assessment ratio in all five major factor areas has been brought to the minimum 35 percent ratio, the entire county as a whole is in equalization." *Tr.* 9-28-07, p. 39, *ll.* 5-10. The Assessor also was concerned with "whether or not the County Board of Equalization has the authority to overturn a Nevada Tax Commission approved factor that was applied to the area subject to the factor." See *Tr.*, 9-28-07, p. 52, *ll.* 15-19.

The Assessor asserted there was no evidence in the record to show that the application of the factor resulted in any individual property exceeding full cash value. See *Tr.*, 9-28-07, p. 60, *l.* 1 through p. 61, *l.* 6.

¹ *State ex rel State Bd. of Equalization v. Bakst*, 148 P.3rd 717 (Nev. 2006).

The Assessor pointed out that it was necessary to refer to the 2006-2007 settlement agreement because that settlement agreement used the 2002-2003 assessed value as the base taxable value rather than the 2006-2007 taxable value established by the Assessor. See *Tr.*, 9-28-07, p. 34, *ll.* 23-25; p. 35, *l.* 1; p. 37, *l.* 21 through p. 38, *l.* 1. The Taxpayer objected to any reference to the 2006-2007 settlement agreement. See *Tr.*, 9-28-07, p. 35, *ll.* 13-21. The Assessor further testified that had the *Bakst* decision been rendered by the Supreme Court prior to the adoption of the recommended land factor by the Commission, the land factors for the Tahoe area would have been different than for the rest of Area 1 because the assessed values in the Tahoe area were reduced to the 2002-2003 levels, while the rest of Area 1 was at the 2006-2007 assessed value level. See *Tr.*, 9-28-07, p. 39, *ll.* 11-17. The Taxpayers responded that the rollback of assessed values to the 2002-2003 tax year as noted in the *Bakst* decision was the result of a determination that unlawful methodologies were used throughout Incline Village and Crystal Bay. Therefore the fact that there is greater lack of equalization after the rollback has no bearing on the issues before the State Board. See *T.*, 9-28-07, p. 62, *ll.* 15-25.

The Taxpayers responded there were two main issues before the State Board. First, improper methodologies were used in the initial valuation; and second, improper methodologies were also used in the determination and application of the land factors. See *Tr.*, p. 63, *ll.* 1-4. The Taxpayers asserted that the Assessor inappropriately established the factors by using sales of properties torn down ("teardowns") as if they were vacant land sales; sales of property that were never listed; and sales of property too small to be comparable. See *Tr.*, p. 63, *ll.* 5-25.

The Taxpayers responded that the factored property value is still incorrect when the base value to be factored is not the correct and constitutional taxable value. See *Tr.*, p. 64, *l.* 15 through p. 65, *l.* 8; p. 69, *ll.* 5-7. The Taxpayers also asserted that rolling back the taxable value to the 2002-2003 tax year and then applying factors for the succeeding years is not a methodology approved by regulation and therefore has no legal basis. See *Tr.*, p. 65, *ll.* 15-23. Taxpayers asserted there has never been a determination that the values established in 2002-2003 were constitutional. See *Tr.*, 9-28-07, p. 65, *l.* 24 through p. 66, *l.* 16. Taxpayers asserted that the State Board should affirm the County Board's decision to roll back values to 2002-2003, stating that the State Board's decision is not to determine whether the rollback is constitutional but rather whether to uphold the County Board's decision. See *Tr.*, 9-28-07, p. 80, *l.* 18 through p. 81, *l.* 2.

The Assessor rebutted that the way to measure whether taxable values are uniform and equal via factoring is to measure those values against the market, to ensure that "people having the same value of property are paying roughly their share of the tax burden equally." See *Tr.*, 9-28-07, p. 91, *l.* 6 through p. 92, *l.* 3. The assessed value derived from factoring is not invalid because the measure is whether the full cash value has been exceeded as a result of the factoring. See *Tr.*, 9-28-07, p. 92, *l.* 24 through p. 93, *l.* 19.

At the hearing on September 28, 2007, Mrs. Ingemanson made additional remarks regarding her property. Mrs. Ingemanson asserted her taxable value exceeded \$6.5 million. See *Tr.*, 9-28-07, p. 139, *l.* 25 through p. 140, *l.* 8. In addition, she asserted the Assessor did not use any vacant land sales to establish value, even though two vacant land sales were available for comparison. See *Tr.*, 9-28-07, p. 140, *ll.* 9-15. She discussed the comparable land sales. See *Tr.*, 9-28-07, pp. 141-144. Mrs. Ingemanson also asserted there is a lack of equalization between Douglas and Washoe Counties. She discussed three comparable properties in Douglas County. See *Tr.*, 9-28-07, pp. 145-147. Taxpayer wanted a taxable value of \$3,509,206. See *Tr.*, 9-28-07, p. 152, *ll.* 17-21.

The Assessor responded that the value of the land portion of the subject property established by the State Board in the consolidated appeal is about \$3.8 million, not the \$6.5 million asserted by Mrs. Ingemanson. See *Tr.*, 9-28-07, p. 147, *l.* 21 through p. 148, *l.* 6. The Assessor rebutted each factual comparison made by Mrs. Ingemanson, concluding that the Taxpayer's comparisons were faulty in that they did not recognize the differences in tax rates between the counties and the application of the tax cap. See *Tr.*, 9-28-07, p. 148, *l.* 9 through p. 150, *l.* 20. In addition, the taxpayer's figures were for

assessed value while the Assessor spoke of taxable value. See *Tr.*, 9-28-07, p. 155, ll. 19-22. The Assessor restated that the principal issue in this matter is the factor issue. In the case of the subject property, a factor of 1.0 was applied to all lakefront properties resulting in no change for the 07-08 tax year from the 06-07 tax year. See *Tr.*, 9-28-07, p. 150, l. 21 through p. 151, l. 4.

The State Board, having considered all evidence, documents and testimony pertaining to the valuation of the property in accordance with NRS 361.227, 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 hear all appeals of property tax assessments pursuant to NRS 361.360.
- 3) The Taxpayer and the Assessor were given adequate, proper and legal notice of the time and place of the hearing before the State Board, and the matter was properly noticed for September 28, 2007 pursuant to the Open Meeting Law, at NRS 241.020.
- 4) The State Board found the Nevada Tax Commission reviewed and adopted the 2007-2008 land factor for Area 1 in Washoe County pursuant to statute. The land factor for Area 1 was derived by first comparing the 2006-2007 assessed values of 723 sold properties in Area 1 prior to the rollback ordered by the Supreme Court in *Bakst* to the sales prices of those properties. The median ratio of the comparison of 26.1 percent fell below the range required by statute and as a result, the Tax Commission approved a factor of 1.15 that would bring the median ratio to within the statutory range. See *Tr.*, 9-28-07, p. 38, l. 15 through p. 39, l. 4; p. 102, ll. 5-12; p. 83, ll. 14-15; p. 98, ll. 9-16; p. 101, ll. 20-22; *Record, Washoe County Record, Attachment D, Department of Taxation Land Factor Report, bates stamp pages 77-78; Attachment E, Analysis of Sales, bates stamp pages 80-107.*
- 5) The State Board found the County Board erred when it determined that the land factor of 1.15, or 1.0 as applicable, was defective as to only a portion of Area 1. The State Board found that if the County Board held the factor defective, it should have found the factor defective for all properties in Area 1. Instead, the County Board selected one group of taxpayers and placed their properties out of equalization with the rest of Area 1. See *Tr.*, 9-28-07, p. 105, l. 11 through p. 106, l. 5; p. 82, l. 5 through p. 83, l. 22.
- 6) The State Board found the County Board made no determination that a taxable value had been derived using an illegal or unconstitutional methodology. See *Tr.*, 9-28-07, p. 109, l. 15 through p. 110, l. 25; p. 114, ll. 17-24.
- 7) The Assessor presented sufficient evidence to support a value different from that established by the County Board. See *Tr.*, 9-28-07, p. 98, ll. 9-22; *Record, Washoe County Record, bates stamp pages 30-302.*
- 8) The State Board found where unconstitutional methods were applied, taxable values must reflect the direction of the Supreme Court (Court) in the *Bakst* case by rolling back the taxable values to the 2002-2003 year values. The factors for the succeeding tax years as approved by the Commission should then be applied to the 2002-2003 value resulting in a value for the 2007-2008 tax year. For properties where no unconstitutional methods were applied, the 2007-2008 factor approved by the Commission must be applied to the 2006-2007 assessed value

established by the Assessor. See *Tr.*, 9-28-07, p. 99, 3-14; p. 100, ll. 3-8; p. 102, ll. 13-20; p. 104, ll. 2-15; p. 106, ll. 20-23; p. 107, ll. 4-5. The State Board found unconstitutional methodologies were used on the subject property which were corrected by rolling back the taxable value to 2002-2003 year value pursuant to *Bakst*. See *Tr.*, 9-28-07, p. 157, l. 4 through-20.

- 9) The State Board found the taxable value of the subject property was \$3,862,486 based on its decision for the 2006-2007 year. The application of the factor of 1.0 for the 2007-2008 tax year results in no change in the taxable value from the prior year. See *Tr.*, 9-28-07, p. 153, ll. 3-11.
- 10) The State Board found that the differences between Douglas and Washoe County taxable values were the result of differences in tax rates, the effects of the tax cap, and lack of comparability to the subject property. See *Tr.*, 9-28-07, p. 156, ll. 18-25; p. 157, l. 23 through p. 158, l. 18.
- 11) The assessed values as adjusted are 35% of taxable value.
- 12) 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 Assessor timely filed a notice of appeal, and the State Board accepted jurisdiction to determine this matter.
- 2) The Taxpayer and the Assessor are subject to the jurisdiction of the State Board.
- 3) The State Board has the authority to determine the taxable values in the State.
- 4) The State Board has the authority to determine matters necessary to carry out the power conferred on the State Board by statute. *Checker, Inc. et al v. Public Service Commission*, 84 Nev. 623, 629-630, 446 P.2d 981 (1968). The valuation formula established by the State Board is consistent with the Court's *Bakst* decision and recognizes the prerogative of the Tax Commission to review and adopt land factors proposed by county assessors pursuant to NRS 361.260(5).
- 5) The County Board decision to overturn the land factor for a select group of taxpayers was in excess of the statutory authority of the County Board pursuant to NRS 361.345(1) which states that the county board of equalization may not reduce the assessment of the county assessor unless it is established by a preponderance of the evidence that the valuation established by the county assessor exceeds the full cash value of the property or is inequitable. The County Board action placed Incline Village and the Crystal Bay area out of equalization with the rest of Area 1. See *Tr.*, 9-28-07, p. 40, ll. 18-24; p. 101, ll. 1-7; p. 105, ll. 11-15; p. 106, ll. 1-5.
- 6) With the 2007-2008 land factor restored and the Commission approved factors for the tax years preceding 2007-2008 applied either to the 2002-2003 taxable value where unconstitutional methods were applied or to the 2006-2007 value established by the Assessor where unconstitutional methods were not applied, the subject property is valued and equalized in accordance with *Bakst*, NRS 361.227, NRS 361.260, and NRS 361.395. See *Tr.*, 9-28-07, p. 37, ll. 2-9; p. 101, ll. 1-24; p. 103, ll. 17-24; p. 104, ll. 2-11..

- 7) 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.

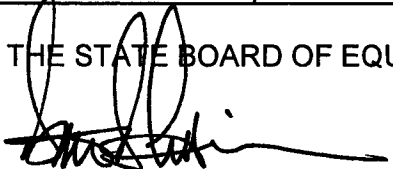
DECISION

The Petition of the Assessor is granted in part based on the above Findings of Fact and Conclusions of Law. The Washoe County Comptroller is instructed to certify the assessment roll of the county consistent with this decision.

2007-2008

	Taxable Value		Assessed Value	
Parcel Number 130-241-21	Established by County Board of Equalization	Revised By State Board	Established by County Board of Equalization	Revised by State Board
Land Value	\$3,506,249	\$3,862,485	\$1,227,187	\$1,351,870

BY THE STATE BOARD OF EQUALIZATION THIS 21st DAY OF DECEMBER, 2007.



Dino DiCianno
Secretary to the State Board
DD/ter/dp

CERTIFICATE OF SERVICE
MARYANNE INGEMANSON - Case No. 07-333/168

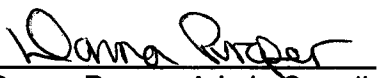
I hereby certify on the 24th day of December, 2007 I served the foregoing Findings of Fact, Conclusions of Law, and Decision by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Certified Mail: 7006 0100 0002 3088 8975
Taxpayer
07-333/168
MARYANNE INGEMANSON
1165 VIVIAN LANE
INCLINE VILLAGE NV 89451

Certified Mail: 7006 0100 0002 3081 6305
Representative
07-333/168
MARYANNE INGEMANSON
LITTLER MENDELSON
SUELLEN FULSTONE
50 W LIBERTY STREET, STE 400
RENO NV 89511

Certified Mail: 7006 0100 0002 3081 6312
Assessor
JOSHUA WILSON
WASHOE COUNTY ASSESSOR
PO BOX 11130
RENO, NV 89520-0027

Copy: Washoe County Clerk
Washoe County Comptroller
Washoe County Treasurer


Donna Proper, Admin Coordinator
State Board of Equalization

3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES OTTO, Trustee of the Otto Family Trust; TODD LOWE, Trustee of the Lowe Family Trust; V PARK LLC, a Nevada limited liability company, for themselves and on behalf of similarly situated residential property owners and taxpayers at Incline Village/Crystal Bay, Washoe County, Nevada;)	Case No. CV09-02534
)	
)	Dept. No. 6
)	
)	
)	
)	
Petitioners.)	
v.)	
)	
BILL BERRUM, Washoe County Treasurer,)	
)	
Respondent.)	
)	

ORDER AND ISSUANCE OF WRIT OF MANDATE

This matter came on for hearing on the petition of Charles Otto, Trustee of the Otto Family Trust, Todd Lowe, Trustee of the Lowe Family Trust, and V Park LLC, a Nevada limited liability company, for themselves and on behalf of all similarly situated residential property owners and taxpayers at Incline Village/Crystal Bay, Washoe County, Nevada, for a writ of mandamus, the issuance and service upon the respondent, Bill Berrum, Washoe County Treasurer, of an order to show cause why the writ should not issue, and the appearance and submission of evidence and argument by counsel for petitioners and respondent. The Court, having considered

1 the petition, the evidence presented, and the arguments of counsel, finds and concludes as follows:

2 1. Petitioners were owners of residential parcels in Incline Village and Crystal Bay in
3 Washoe County valued and assessed for property taxes in the 2006-2007 tax year.

4 2. Respondent Washoe County Treasurer is, and was for the 2006-2007 tax year and
5 subsequent years, the tax receiver responsible for the collection and receipt of all taxes assessed
6 upon the county's real property assessment roll and for the refund of excess taxes paid. NRS
7 §361.475, §361.485, §361.486.

8 3. On March 8, 2006, the Washoe County Board of Equalization made a decision
9 pursuant to its obligation of geographic equalization ordering that the 2006/2007 valuation of all
10 residential properties in Incline Village and Crystal Bay "be reduced to the 2002/03 taxable values
11 for equalization purposes, that any parcel reduced subsequent to 2002 that was a lower amount be
12 rolled back to the lower of the two values, and that any improvements subsequent to 2002/03 be
13 adjusted accordingly."

14 4. The immediate implementation of the County Board of Equalization's March 8,
15 2006 decision was stayed by the Nevada Supreme Court.

16 5. The only basis for property taxation is the county assessment roll. NRS 361.445.
17 Because of the Supreme Court's stay order, the March 8, 2006 decision of the County Board of
18 Equalization reducing taxable values of all residential properties at Incline Village and Crystal
19 Bay was not reflected in the 2006-2007 assessment roll. The respondent Washoe County
20 Treasurer calculated, billed and collected taxes for the 2006-2007 tax year on the unreduced
21 taxable values of those properties.

22 6. In January of 2007, after the Supreme Court's December 2006 decision in State ex
23 rel State Board of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006), became final, the
24 stay of the March 2006 County Board of Equalization decision expired. Accordingly, on January
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1 23, 2007, the clerk of the Washoe County Board of Equalization issued its formal written notice
2 of the March 8, 2006 decision. (Exhibit 1)

3 7. In January of 2007, pursuant to the March 8, 2006 order of the Washoe County
4 Board of Equalization as memorialized in the January 23, 2007 Notice of Decision, the Washoe
5 County Assessor corrected the assessment roll for the 2006-2007 tax year.

6
7 8. Based on the corrected assessment roll, the respondent Washoe County Treasurer
8 had billed and collected excess amounts of property taxes from the owners of residential property
9 at Incline Village and Crystal Bay for the 2006-2007 tax year. Because of the application of the
10 property tax cap, additional excess amounts of property taxes were billed to and collected from
11 the Incline Village/Crystal Bay residential property owners for subsequent years.

12
13 9. The respondent Washoe County Treasurer has a mandatory, non-discretionary duty
14 to refund excess taxes billed and collected by his office. NRS §360.2935; §361.485; §361.486.

15 10. Pursuant to his statutory duty, the Washoe County Treasurer has kept a record of
16 each tax payment made by or on behalf of the residential property owners of Incline Village and
17 Crystal Bay for the tax year 2006-2007 and subsequent years.

18
19 11. The March 8, 2006 decision and order of the Washoe County Board of
20 Equalization as memorialized in the January 23, 2007 Notice of Decision, is in effect and is not
21 the subject of any stay.

22 12. Petitioners have no plain, speedy or other adequate remedy in the ordinary course
23 of law.

24 ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that the petition for
25 writ of mandamus is granted, and the respondent. Bill Berrum, Washoe County Treasurer, is
26 mandated and commanded to forthwith comply with the March 8, 2006 decision and order of the
27 Washoe County Board of Equalization as memorialized in the Notice of Decision issued on
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1 January 23, 2007, and as reflected on the real property assessment roll for Washoe County as
2 corrected by the Washoe County Assessor in January of 2007, by calculating the amount of excess
3 taxes paid by the owners of all Incline Village and Crystal Bay residential property for the tax year
4 2006-2007 and subsequent years, and refunding to taxpayers the amount of those excess taxes
5 with interest calculated pursuant to NRS §361.486 at the rate of 0.5 percent per month, or fraction
6 thereof, from the last day of the calendar month in which the overpayment was made to the last
7 day of the calendar month in which the refund is made.
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9 DATED this 23rd day of October, 2009.

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11 
12 DISTRICT JUDGE
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