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Long and bitter tax-appeal season expected

Tax commissioner: Legislature no help

John Dougherty

LAS VEGAS — Nevada Tax Commissioner and Elko rancher Hank Vogler says the state's property tax system is on a collision course with economic reality that could force state lawmakers to enact fundamental reforms needed to ensure fair and equitable taxation.

Discussing a wide range of property tax issues in a recent interview, Vogler distinguished himself as the only current member of the eight-person commission to agree to an interview with NPRI as part of its ongoing series on Nevada property taxes.

Vogler, who was appointed to the commission in 2003, paints a portrait of a property tax system struggling under a weak legal framework, a disengaged Legislature, assessors under pressure from elected officials to increase revenue, an undermanned and under-funded tax department unable to implement needed regulations, overwhelmed state and county boards of equalization and angry and confused taxpayers.

All the while, Vogler insists, he and his fellow commissioners comprise a dedicated and intelligent cadre striving to protect Nevada taxpayers.

Ground zero for Nevada's contentious property tax debate is the wealthy, Lake Tahoe enclave of Incline Village, Vogler said.

"If you want to really get into the hornet's nest, look at the difference between Washoe County and Douglas County with Incline Village and Lake Tahoe," he said.

In the mid-2000s, property taxes for Washoe County homes in Incline Village and adjoining Crystal Bay along the North Shore of Lake Tahoe were running triple those for similar high-end properties along the South Shore of the lake in Douglas County. The differences in

taxes, Vogler suggested, was based on how the assessors in each county interpreted state laws to assess property.

"In Douglas County, that tax assessor, God bless him, looked at it one way," Vogler said. That way, according to state and county records, was a very conservative approach to valuing property, under which property tax increases remained relatively modest even in the real estate boom of the mid 2000s.

But a different story played out in Washoe, where county commissioners were faced with surging budget needs to meet the demands of a rapidly expanding population centered in Reno. Vogler said it appears that Washoe County looked to Incline Village as an easy fix for budget shortfalls.

"With an expanding Reno, maybe the county looked at Incline Village as a revenue source," Vogler said. "Their properties were all worth millions of dollars, so hell, if you could afford a million dollar property, what's wrong with getting jabbed with a few more taxes?"

The widely varying approaches used by the Douglas County and Washoe County assessors to value Lake Tahoe homes is the most vivid example of how county assessors use different interpretations of state statutes and tax-commission regulations in ways that can produce wide variations in property taxes for similarly situated properties.

This freewheeling approach by county assessors runs contrary to recent landmark Supreme Court rulings that require county assessors to only use appraisal methodologies that have been formally adopted by the Nevada Tax Commission. But assessors have not warmly embraced the court rulings, said Vogler.

"There seems to be some hesitancy, at times, on the part of the assessors, because they are independently elected, over what their interpretation is versus the Supreme Court — versus what the tax commission expresses," Vogler said.

Rather than demand that assessors follow the tax commission's interpretation of state statute and Supreme Court rulings, Vogler said the commission instead has avoided confrontation by only making suggestions to assessors.

"It is our job, I would say, to advise the assessors," Vogler said.

Vogler said the Supreme Court rulings in *Bakst vs. State Board of Equalization* in 2006 and *State Board of Equalization vs. Barta* in 2008 have provided some direction to the commission as far as being required to pass regulations that are supposed to be followed by the county assessors. But there is still uncertainty over whether the commission has any enforcement, or policing powers, over the assessors.

"Yeah, the Supreme Court said, 'Straighten it out.' OK, that was nice of them," Vogler said. "Did the Legislature step up and add any clarity there? Well, no."

The commission's hands-off approach is vividly demonstrated by its 10-year failure to publish a policies and procedures manual for assessors to follow. A state statute requires the commission to publish the manual.

Vogler said the commission has discussed the need to reissue the 350-page manual "again and again and again," but nothing has happened. He suggested that a lack of regulatory staff at the Department of Taxation, which implements regulations passed by the commission, is partially to blame.

The Nevada administrative procedures law requires the entire manual to go through a tedious and cumbersome regulatory process that property tax experts said would take years to complete, at best.

"Obviously, there is no extra revenue to go around and hire some good people" to help address the regulatory demands faced by the tax department — even without attempting to codify the policy and procedures manual.

Adding to the state's property tax crisis, Vogler said, is Nevada's bifurcated tax system where property and improvements are separately valued. Nevada is the only state in the nation that does not use a market-based system to determine the assessed value of property.

"I should tell you personally, that I find it rather strange," he said.

Nevada's assessors use market value to determine land values. Improvements are determined by using a building-cost manual provided by a private company.

The value of improvements is then reduced 1.5 percent per year depending on the age of the building. The land and improvement values, added together, determine a parcel's "taxable value."

Vogler said the state should consider ditching the taxable value system and moving to a market-based system.

"In my personal opinion, we have to step up, clean this deal up and go on," he said. "This separation of the two (property and improvements) is kind of goofy."

The taxable value system has also created a nightmare of regulatory issues for the Legislature, the commission, the courts, the tax department and citizens, he said.

"You talk about a pain in the backside, I mean, it is for everybody," he said.

In the meantime, the commission, Vogler said, is attempting to do the best job it can do while ferreting out a wide range of contentious arguments extending from those of irate taxpayers to those of county and local governments strapped for funds.

"The state of Nevada is extremely lucky to have the minds they have on that commission and the people do have empathy with the taxpayer," he said.

But empathy for taxpayers isn't likely to keep property owners happy as they review their property tax assessments for 2010-2011 that should have been mailed to every property owner by Dec. 18. Taxpayers have only until January 15 to file appeals with county boards of equalization to contest their property tax assessments that will be the basis for property taxes that will be levied in July.

Vogler said he expects a record number of property owners will challenge the assessors' valuations on their homes and business this year.

If "properties are going for 50 cents on the dollars or 25 cents or whatever it is going for, and you get your tax (assessment) what's your first thought? Go to the board of equalization!" Vogler said.

It will be at the board of equalization hearings where the political collision between assessors and public will be most vivid, he said.

"The assessors have their mandate from the fire departments and the schools and everybody, 'Hey, we have to have more money!'" Vogler said.

"And the board of equalization has the taxpayer yelling, 'Hey you guys, the guy across the street just sold his house - it sold for \$300,000 two years ago and sold it for \$80,000 yesterday. And your going to say my taxes should go up to compensate for that? Bullshit!'"

Vogler said the writing is on the wall for a long and bitter tax appeal season next spring.

"I can't see anything else that can possibly happen," he said.

If taxpayers win more appeals than they lose, local jurisdictions including schools, fire departments, libraries, irrigation districts and city and county governments will see a decline in revenue. Vogler predicts there will then be a march to the Legislature to come up with a solution.

"And so every entity that has a taxing mill against those property taxes is going to be short-funded," he said. "And who are they going to turn to? The lovely and talented Legislature."

Faced with the prospect of cutting services or raising taxes, the Legislature may decide to also overhaul the state's entire property tax system, Vogler said.

"Maybe this is a big enough crisis," he said. "Somebody is going to have to step and say, 'You know what? We need to clear our plate here.'"

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.

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