

Blame follows \$40M tax fiasco in Incline Finger point in many directions

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Even in good economic times, a \$40 million refund to property owners in Incline Village would have been a big check for Washoe County to write.

But these are not good economic times.

Some wonder whether county officials should've cut their losses to avoid racking up \$6 million in interest costs while the dispute over residential property values dragged on.

County officials seemed unable to give in, said supporters of Incline Village taxpayers.

"Here they are in a \$40 million pickle and there's nothing but finger-pointing and 'woe is me,' " said Chuck Otto, an Incline resident whose name is on the lawsuit that successfully challenged the county's property assessments.

The Nevada Supreme Court ended the court battle earlier this month when justices ordered the Washoe County treasurer to pay refunds to 8,700 homeowners in Incline Village and Crystal Bay.

The five-year legal battle started after a group of property owners filed suit saying that the methods used to include Lake Tahoe views and beaches in their property value weren't approved by the state.

In March 2006, the county's tax board voted to roll back property values to what they were in the 2002-2003 tax year, a decision the county continued to fight.

Public officials involved say they followed the law and don't deserve all the blame.

"With a stroke of a pen, they rolled back the values," said former Washoe County Treasurer Bill Berrum of the state Supreme Court. He had hoped the court would recognize that, as part of the county's legal argument, Incline residential properties were undervalued.

Berrum was the defendant.

"The right thing hasn't been done," he said. "I was hoping someone would wake up and

see the mistake that was made. This is black robe syndrome. It's like God talking."

But it was a high-stakes gamble.

"Once you're talking 9,000 taxpayers, then the tax dollars get serious," said Suellen Fulstone, lawyer for the Village League to Save Incline Assets who won the cases. "It's only fair. The assessor used the wrong methods for 9,000 taxpayers. It's not that you have constitutional rights only if you file an appeal."

For the county's \$17 million share, the commission is considering raising motor vehicle registration fees by a full percentage point -- a 25 percent increase -- until all the refunds are paid. That means, for example, a county resident who registers a 2-year-old car purchased for \$20,000 would pay \$60 more a year. The ordinance to enable this will be discussed in September.

County Commission Chairman John Breternitz, who represents Incline Village, said he doesn't believe other entities should have to share in the \$6 million interest cost because they had no part in the series of decisions leading to the lost appeals.

The Washoe County School District, the state, the Incline General Improvement District, the North Tahoe fire district as well as the county benefitted from the overpaid taxes. A resolution for the treasurer to take the entities' incoming property tax dollars to pay their share of the refunds must be approved unanimously.

That also is expected to be considered in September

Incline General Improvement officials are balking at paying the interest costs, saying they set aside money each year to pay for the refunds.

Finger-pointing and blame

At the center of the debate are former County Assessor Robert McGowan, Washoe

District Attorney Richard Gammick and former Treasurer Berrum.

Depending on whom you ask in Incline Village, responsibility for the \$40 million in tax refunds falls on the former assessor who established the rules used to value the properties; the county attorney who kept filing appeals on behalf of the county; or the county treasurer who did not adjust the Incline homeowners taxes in line with the rolled-back values.

And some blame the Nevada Tax Commission for not being clear in its rules on valuing property.

Maryanne Ingemanson, president of the Village League to Save Incline Assets, said Gammick unnecessarily kept up the fight.

In several prior cases, the county already had paid \$6.1 million in tax refunds to 1,090 Incline property owners.

When the County Board of Equalization voted to roll back property values for 8,700 homeowners in March 2006, it did so to equalize, or to be fair, after rolling back property values in 287 appeals by other homeowners. It was advised by the state Supreme Court to follow the reasoning of Carson District Court Bill Maddox in a recent case.

That case was the turning point in the entire Incline Village tax fight. On Jan. 13, 2006, Maddox struck down rules used by the former assessor to judge Tahoe views and beaches for the 2006-07 tax year, saying the rules had not been sanctioned by the state.

Named after Alvin Bakst, one of 17 homeowners who filed the case, the Bakst decision was upheld by the Supreme Court nearly a year later. And in lawsuits filed for two tax years after the Bakst case, two other judges ruled similarly, ordering tax refunds.

"He was determined he was going to win even though he kept losing. How many times did we have to win before someone woke up to smell the coffee?" Ingemanson said of Gammick. "I think huge egos were involved.

"At least the fire district, schools and IVGID had sense enough to set money aside. The county made no effort."

Les Barta, a leader in the Village League to Save Incline Assets, said the issue could have

been resolved before the first of a dozen lawsuits were filed in 2003 if McGowan had agreed to seek the approval of the Nevada Tax Commission for rules used to judge Incline Village homes.

Instead, McGowan steadfastly argued that his appraisers were professionals, applying national standards set by their professional association, Barta said.

County Manager Katy Simon, Gammick and other county officials also blame the tax commission for not having the proper rules in place.

"This isn't a situation where someone flagrantly made a mistake," Simon said.

She said that after the residents initially protested the rules in appeals hearings, the Nevada Tax Commission didn't change the regulations for years after that. And then the tax refund case for the 8,700 homeowners lingered in the courts.

"To say the county unilaterally should bear a burden for the extended interest costs, we just don't agree with," she said.

McGowan's responsibility

McGowan said he was caught in the middle in the initial battles. He was either going to be sued by the Incline Village property owners or the state for not assessing property high enough.

He said Nevada laws did not provide any relief to others in Incline Village for a red-hot real estate market when dot.com billionaires bought lakefront homes and tore them down to build mansions, raising values for everyone.

In 2003-04, the assessor raised Incline property values at average of 31 percent to catch up with the market. In 2002, the median price of a single-family home at Incline was \$691,000, up from \$429,500 in 1998.

McGowan said the state taxation department, in its audits, never told his office he was doing anything wrong in raising these values.

Still, he shoulders the blame, mostly.

"The responsibility lies with the person in charge. I was the person in charge," McGowan said. "But the assessor does not operate in a vacuum."

Residents repeatedly complained the assessor was operating outside the law in creating unique rules to judge Tahoe views, beaches, tear-downs and old home sales -- rules used no where else in the county or state.

McGowan said he was shocked when the Supreme Court in late 2006 struck down those rules as unconstitutional because they were not approved by the tax commission.

"The fact that the rules weren't codified. That would have been such a simple thing to do," McGowan said.

He still insists the land values weren't wrong.

"But that's why they are called the Supremes," he said.

The appeals

Gammick said all of the county's appeals were based in law.

"There wasn't a single appeal that we did not have a major discussion on before we did it," he said, Gammick said he consulted with the county assessor, treasurer and others.

The district attorney said he has never in his 27-year legal career seen a case go "down the procedural road this one did."

Gammick said that in its July 7 decision, the Supreme Court ordered the tax refunds to be paid even though it hasn't decided on the county's appeal of some aspects of the case.

Ingemanson, Village League president, said the county could have settled for \$55,000 to resolve complaints from 128 people nearly 10 years ago.

Gammick said he would have jumped at that chance if it would have ended the dispute once and for all, but he believes that offer was never made.

Gammick said the Village League has refused to participate in settlement conferences for cases to be heard by the Nevada Supreme Court in the Incline tax dispute.

Chief Deputy District Attorney David Creekman, who tried the cases, said in a 2010 letter that he couldn't pin down Fulstone on how many clients she represented at the lake.

In several cases, however, Fulstone said the settlement judge decided there was no room for compromise. The Village League wanted tax refunds, not a moral victory, she said.

Technically, Berrum said there's a still a chance the tax refunds could be given and then taken back.

Washoe County filed the lawsuit to appeal the mass rollback of property values for the 8,700 residents. Carson District Judge James Wilson ruled the county had not adequately provided notice in sending small postcards to Incline Village homeowners. The county has appealed to the Supreme Court and the case has been fully briefed.

Normally, the county assessor would be the one to appeal. But current Assessor Josh Wilson decided not to appeal the state board of equalization's decision upholding the county board's decision to roll back the values for the 8,700 homeowners. "I accepted the decision of the two boards rather than drag it out any further," he said.

After the Supreme Court upheld the Bakst case in December 2006, Wilson rolled back the property values to levels in 2002-03 on Jan. 23, 2007.

But Berrum and current Treasurer Tammi Davis did not adjust the taxes to the rolled-back values. That's possible because of the appeals and because property taxes are now pegged to what homeowners paid the year before in taxes under Nevada's property tax-cap law.

Incline and Crystal Bay properties were not appraised using the new state-approved values for lakes and beaches adopted in 2004 until the 2008-09 tax year. That was after the Supreme Court struck down the old rules. And the delay was also due to the county's five-year appraisal cycle in use at the time. Now all of the county is reappraised every year.

Tax board's role

The root of the problem is the Nevada Tax Commission did not have rules in place for assessors to follow in putting values on property from the early 1990s until just recently, Gammick said.

"So instead of 17 counties having rules to follow, making taxes uniform and equal in the state, each assessor had to do it his own way," he said.

Terry Rubald, Nevada Taxation Department's division chief for assessment

standards, said that's not true. Rules were in place, she said.

She said the Supreme Court found the tax commission did not have sufficient regulations in the Bakst case.

The board adopted 10 sets of regulations since 2002. Three of those sets address standards to value land, she said.

County commissioners have asked for further study to determine whether the state should be sued for not having sufficient rules on the books.

"(McGowan) had no guidance from the tax commission," Berrum said. "If you want to slap anybody, the tax commission should be paying back that interest."

Barta agreed the tax commission is partly to blame.

"But it's like the criminal blaming a police officer for not punishing him," he said.

Berrum, however, said trying to blame the assessor (McGowan) for all that's happened is the biggest travesty, miscarriage of justice, I've seen."

He said Incline Village residents pay taxes on 38-40 percent of their land's market value while the rest in the county pays 68-90 percent.

"That group receiving refunds is getting preferential treatment," Berrum said.



From left: Chuck Otto, Todd Lowe, Maryanne Ingemanson, and Dale Akers walk on Ingemanson's private pier Wednesday in Incline Village. / Liz Margerum / RGJ

how much are the properties worth?

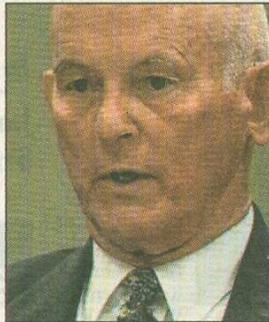
Residential properties getting tax refunds have taxable values ranging from under \$100,000 for small condos to more than \$10 million for mansions, according to the county assessor's office.

KEY PLAYERS



**FORMER COUNTY ASSESSOR
ROBERT MCGOWAN**

established the rules used to value the properties. In 2003-04, the assessor raised Incline property values at average of 31 percent to catch up with the market. He still maintains the land values were accurate.



**WASHOE DISTRICT ATTORNEY
RICHARD GAMMICK**

continued to file appeals on behalf of the county. Maryanne Ingemanson, Village League to Save Incline Assets president, said Gammick unnecessarily kept up the fight against paying the refunds.



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