



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

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DEONNE E. CONTINE
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In the Matter of:

Proceedings Regarding Equalization of
Real Property throughout the State of
Nevada from 2003-2004 Tax Year
through 2010-2011 Tax Year

)
) Hearing on Remand ordered by:
) Second Judicial District Court
) Department No. 7
) Order Granting Petition
) for Judicial Review,
) Case No. CV03-06922, consolidated with
) Case No. CV13-00522

EQUALIZATION ORDER

Appearances

Suellen Fulstone appeared on behalf of Village League to Save Incline Assets, Inc. and Incline Village and Crystal Bay residential taxpayers.

Norman Azevedo appeared on behalf of the "Bakst Intervenors."

Herbert Kaplan, Washoe County District Attorney's Office, appeared on behalf of Washoe County.

Heather Drake appeared on behalf of the Department of Taxation (Department).

Summary

On August 29, 2017, the State Board of Equalization (State Board) continued with its equalization proceedings last held on December 3, 2012. The State Board's prior Equalization Order 12-001 directed the Washoe County Assessor to conduct reappraisals for residential property located in Incline Village and Crystal Bay, but that portion of the order was vacated by Order dated July 17, 2017 by the Honorable Judge Patrick Flanagan, in accordance with the Nevada Supreme Court's Decision in *Village League to Save Incline Assets, Inc. v. State Board of Equalization*, 133 Nev. Adv. Op. 1, 388 P.3d 218 (2017) ("Village League 2017"). Judge Flanagan's Order directed the State Board to "conduct further proceedings pursuant to its statutory authority under NRS 361.395." Notice of this proceeding was sent to all parties to the court matter by certified mail on August 7, 2017.

Chairman Meservy acknowledged the State Board received objections to the proceedings from Ms. Fulstone. As the proceeding began, each member of the State Board

stated on the record that they reviewed the record from the prior proceedings held on September 18, 2012, November 5, 2012 and December 3, 2012. The proceeding continued with each party having approximately 15 minutes to address the State Board and additional time to offer rebuttal testimony.

Summary of Testimony by Norman Azevedo:

The prior judgment received by the Bakst Intervenors from the Nevada Supreme Court was explained. The State Board should respect the prior judgment. The cases involving his clients referred to the taxable values determined using unconstitutional methodologies as void. The State Board should not use the definition of equalization stated by the Supreme Court in Village League 2017. Instead, "you have to determine the taxable value on the initial threshold and then the equalization statute governs your functions and it's very clear." (Transcript of Proceedings 66:22-25, Aug. 29, 2017). The State Board has "no inherent power but is limited to the powers conferred by" statute. (Transcript 68:9-10). No statute in NRS 361 allows the State Board to adjust the Bakst Intervenor's values. To achieve "uniform taxation" the other owners in Incline Village and Crystal Bay should be treated the same.

Suellen Fulstone submitted a written version of her remarks.

Summary of Testimony by Suellen Fulstone:

It was an "irrefutable fact" that there is a lack of equalization at Incline Village/Crystal Bay for the tax years 2003-04, 2004-05, and 2005-06 due to the Washoe County Assessor using unconstitutional valuation methods for those years. The Assessor was on a five year appraisal cycle and used the methodologies in its 2002 appraisals and used that appraisal for subsequent tax years. As the Supreme Court remedy in Bakst and Barta, "going back to 2002 constitutional values is the... remedy the Supreme Court has given this board and the court of this state for the unconstitutional void valuations." (Transcript 75:7-10). The State Board tried to order reappraisals, but the Supreme Court said it did not have that authority. The only remedy available is to roll the taxes back to 2002-3 levels. "[T]he only constitutional values that you have to use are the 2002 values." (Transcript 76:10-11). The State Board has two duties: to hear individual valuation appeals; and equalization. "Equalization applies when the government, when the county assessor is this case, has made an error that applies to more than a single taxpayer." (Transcript 76:24-25, 77:1). The State Board should look at its 2004 decision involving an individual appeal from the Trujillo's where the State Board found an error and "corrected the assessor's error for all of the properties on Tiller Drive without any individual taxpayers filing individual tax appeals." (Transcript 77:20-23). The error by the Washoe County Assessor in this matter can only be fixed through equalization. You cannot do a statistical analysis as that was not done for the Tiller Drive properties.

Additional comments by Mr. Azevedo:

The Supreme Court has said that the Nevada Constitution guarantees a uniform and equal rate of assessment and taxation.

Additional comments by Ms. Fulstone:

"[I]n terms of equalization, what you're required to do here is replace unconstitutional void values with constitutional values following the guidelines of the Supreme Court." (Transcript 86:3-5). Other properties would not be put out of equalization by lowering Incline Village /

Crystal Bay, because other properties were valued using constitutional methodologies.

Summary of Testimony by Herbert Kaplan:

In 2012, the State Board recognized that if valuations were rolled back for Incline Village to 2002-03 levels it would create an equalization problem “not only in the Washoe County but the State of Nevada.” (Transcript 87:21-22). Performing the equalization function is different from challenging an assessment. Petitioners sound like they are abandoning their claim that all property in Incline Village/Crystal Bay be equalized and are focusing now only on those where unconstitutional methodologies were used for the 2003-04 tax year, and asserting that the taxable values for those parcels be reduced to 2002-03 levels for 2003-04, 2004-05, and 2005-06. This is not equalization. They are asking this Board to “extend the findings in the Bakst case to all other similarly-situated properties,” even though those other properties failed to follow the process to challenge their assessments. The 17 property owners in the Bakst case did follow the statutory process to challenge their assessments for the 2003-04 tax year – first challenging their assessments at the county board.¹ In contrast, prior to filing its complaint with the district court, the Village League property owners did not first exhaust their administrative remedies by going to the Washoe County Board and the State Board. Those claims challenging the assessment and valuation were dismissed, which was upheld by the Supreme Court in 2009. The decision in Bakst was issued on December 28, 2006. It was not self-executing. Only those individuals who went through the process to challenge their assessment were given the remedy in Bakst. It was not extended to other owners.

There is a process for challenging assessments “to allow the governmental entities to budget” and “to allow them to know what revenue they’re going to have to budget.” (Transcript 93:5-7). Taxes must be paid under protest to challenge them for a refund. That was not done here. Rolling back 5,500 properties would cost Washoe County \$1.5 billion and it will create an equalization problem. No action is required at this point. There is nothing to suggest that the values are too high, just that the process to determine them was not regulated. The State Board must look at the tax rolls as required by statute and ratio studies may also be considered. There was a special study performed for the Incline Village area that indicated the values were too low, but they are not asking that the values be increased.

Summary of Testimony from Heather Drake:

The Supreme Court in Village League 2017 remanded the case for further proceedings pursuant to NRS 361.395. The District Court July 17 Order states the same. NRS 361.395 has nothing to do with how those values were set. The equalization process is about “reviewing the taxable values and performing an equalization process.” (Transcript 101:12-13). The statute requires the State Board look at the tax rolls. The Supreme Court also stated in the decision that the ratio studies carried out by the Department of Taxation can be considered by the State Board. According to the Supreme Court, the “equalization process involves an adjustment of the value of the property assessed to conform to its real value.” (Transcript 102:14-16). This is what the Department does in ratio studies. The Department looks at the value and compares it to the true tax value or real value and computes a ratio. The “ratio can determine equalization.” (Transcript 102:20).

Equalization is based on two statistics. “One is the median ratio, the mid-point of the ratio.” (Transcript 103:3-4). “Half of the ratios fall below it and half of the ratios fall above.”

¹ As noted by Ms. Fulstone, the Barta case involved a total of 37 taxpayers. (Transcript 163:11).

(Transcript 103:4-5). The second statistic that is considered is the coefficient of dispersion. "It helps spread out those levels ratios [sic] around that median or mid-point of the ratios and that tells us whether there's uniformity of assessment." Ratio studies are performed under NRS 361.333. From the Supreme Court, the equalization process is a review of "the assessment rolls pursuant to NRS 361.395, the assessed value of a taxpayer's property is adjusted so that it bears the same relationship of assessment value to the true tax value of the properties within the taxing jurisdiction." (Transcript 104:2-7). Based on that, you review the tax rolls "regardless of how those values were based on." (Transcript 104:10-12). Then "they're directing that you can look at that relationship of the assessment value of the true tax value, which is our ratio study, and... from that there would be a determination of whether there was equalization." (Transcript 104:12-16).

Ms. Rubald, the former deputy director of the Department, testified to the State Board at its previous hearing that "reviving any valuations that were derived using that constitutional methodology... also ensure that the level of assessment for the area be measured through an additional ratio study so that these properties are at the same level of assessment as the rest of the county." (Transcript 106:3-11). You would need to make sure any change in value does not change the relationship to true tax value which would create an equalization problem.

Ratios of assessed value to taxable value must be within the range of 32 and 36 percent per NRS 361.333.

The taxable land values for Incline Village/Crystal Bay properties for which the unconstitutional methodologies were used for 2005-06 in the aggregate was \$2,397,341,684. (Transcript 108:12). If a rollback occurred to 2002-03 taxable values and applying the Tax Commission factor for Washoe County – the reduction would be down to \$1,833,507,678. (Transcript 108:17). The ratio study performed by the Department of Taxation for 2005-06 included Washoe County and the median ratio was 34.7 percent for improved land. (Transcript 110:10). So overall, the level of assessment for Washoe County in 2005-06 was at the required range of between 32 and 36 percent. (Transcript 109:23-25).

The Department of Taxation completed the Lake Tahoe Special Study on March 13, 2006. (Transcript 111:2-3). The study shows a median ratio for residential properties in Lake Tahoe was at 25.6 and 25.3 percent. (Transcript 111:18-19). At that time, the "properties were already substantially below the range looked for in the overall ratio from the ratio study." (Transcript 111:20-22). "[T]hey were at 25.3 when the requirement overall from the county level from the Department of Taxation's perspective is 32 to 36 percent." (Transcript 111:23-25).

Analysis of Numbers in the Record

Ms. Drake put together an analysis of the figures in the record as a way to look at the "ratio or the relationship between assessed value and the real value or the true tax value." (Transcript 114: 23-25). To get the ratio or relationship, she looked at the total taxable value for Incline Village/Crystal Bay properties (\$2,397,341,684) in Washoe County for 2005-06; the assessed value (which is 35% of the taxable value in Nevada); and "a relationship between that assessed value and the median ratio to say what does that indicate that the true tax value would be based on the Lake Tahoe special study." (Transcript 115:10-12). The analysis included a mathematical calculation of these figures. Ms. Fulstone objected based on an open meeting law violation because the calculations constituted new evidence. (Transcript 113:4-10, 116:6-19). The board did not admit the written analysis.

Ms. Drake explained that her analysis was to show how reducing the Incline Village/Crystal Bay taxable values would create a larger gap between the median ratio in Washoe County as the properties are already substantially below the acceptable range based on the special study.

Ms. Drake concluded her testimony by stating that the relationship between assessed values and true value for the Incline Village/Crystal Bay area are already below the median ratio for Washoe County and reducing them lower will increase that disparity.

Rebuttal Testimony from Suellen Fulstone

Ms. Drake is misinterpreting the Supreme Court's definition of equalization in Village League 2017. "You don't want to get into true value and true tax value and real value, because those aren't Nevada law." (Transcript 129:1-2). The Lake Tahoe special study "is completely discredited. It was never accepted. It's not official. It cannot be relied upon." (Transcript 129:25, 130:1). Terry Rubald's testimony from December 2012 was based on the 2010 regulations that cannot be used. The 2005-06 ratio study includes Washoe County, but may not include Incline Village/Crystal Bay. "There is no statistical analysis that can be done because there's no statistics to use and you can't create new ones." (Transcript 130:14-16). "There's no evidence that going back to 2002 values at Incline Village for those void unconstitutional values would create a new lack of equalization." (Transcript 130:21-24). In prior meetings of the State Board for this equalization proceeding, methodologies were considered and were the focus, as they should be. "Nothing in the Supreme Court decision says methodologies isn't a proper focus for equalization." (Transcript 132:21-23). Unconstitutionally valued properties are void and must be replaced with constitutional values. The county has known about this issue since 2003 or 2004. The taxpayers did not cause the problem. The State Board has already made a finding that there is an equalization problem, so it must take action.

Rebuttal Testimony from Norman Azevedo

The Bakst and Barta remedy of a roll back to 2002 levels is appropriate for a value that is determined unconstitutionally. "And that's equalization." (Transcript 144:22).

Rebuttal Testimony by Herbert Kaplan

The methodologies determined to be unconstitutional by the Supreme Court were used into the 90's by the Washoe County Assessor, so the 2002 value is also based on unconstitutional methodologies. A roll back would allow those property owners to avoid the appreciation that was occurring throughout Nevada at that time. That would not be equalization.

Rebuttal Testimony by Suellen Fulstone

"The Supreme Court decided that the 2002 values were the most recent unchallenged and therefore constitutional values." (Testimony 153:16-18).

FINDINGS OF FACT

- 1) The State Board is an administrative body created pursuant to NRS 361.375.

2) The State Board is mandated to equalize property valuations in the state pursuant to NRS 361.395.

3) The State Board must complete its equalization process as required by Order dated July 17, 2017 by the Honorable Judge Patrick Flanagan.

4) The State Board may not order reappraisals of the property in Incline Village/Crystal Bay in order to complete its equalization function pursuant to NRS 361.395. *Village League to Save Incline Assets, Inc. v. State Board of Equalization*, 133 Nev. Adv. Op. 1, 388 P.3d 218 (2017). However, that “statute does not prohibit the State Board from reviewing other information available, such as assessment ratio studies, in carrying out its equalization function.” *Id.* n.9.

5) The State Board considered the tax rolls and the assessment ratio studies, in addition to the documents in the record, to determine how it should perform its equalization function.

6) Village League requested a rollback for the Incline Village/Crystal Bay residential land values from 2003-04, 2004-05, and 2005-06 to 2002-03 levels as was done for Bakst and Barta petitioners. *State Bd. of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006); *State Bd. of Equalization v. Barta*, 124 Nev. 612, 188 P.3d 1092 (2008).

7) Village League members did not follow the statutory process to challenge their assessments, which procedure was followed by the Bakst and Barta petitioners. *Bakst*, 122 Nev. at 1405-7 (finding that the “seventeen taxpayers” had “filed individual petitions for review of the assessed valuations” to the county board, and then appealed to the state board, for the 2003-04 tax year); *Barta*, 124 Nev. at 615 (finding that the appealing taxpayers had “administratively challenged” their assessments for the 2004–05 tax year).

8) During 2002 to 2006, appreciation rates were significant statewide.

9) There is a “clear indication” that assessments were low and that, if any change was to be made as a result of equalization action, it would likely involve increasing taxable values as opposed to lowering them. The substantial evidence supports the conclusion that rolling back land values for Incline Village and Crystal Bay to the requested level of 2002-2003 for the years in question would make the median ratio of values well below the statutory range of 32 to 36 percent, and would exacerbate the discrepancy between the median ratio in Washoe County relative to the Incline Village/Crystal Bay properties.

10) No evidence was presented that taxable value exceeded market value.

11) 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 State Board has jurisdiction to equalize property valuations in the State of Nevada under NRS 361.395.

2) In Nevada the valuation of land is based on “[t]he full cash value of: (i) Vacant land by considering the uses to which it may lawfully be put, any legal or physical restrictions upon those uses, the character of the terrain, and the uses of other land in the vicinity. (ii)

Improved land consistently with the use to which the improvements are being put." NRS 361.227(1)(a).

3) "Full cash value" is a market value measure, defined as "the most probable price which property would bring in a competitive and open market under all conditions requisite to a fair sale." NRS 361.025.

4) The ratio studies and other substantial evidence and information in the record indicate the assessed residential land values in Incline Village and Crystal Bay are within the ratio rate and range of ratios required by law.

5) The contention that rolling taxable values back to 2002-03 levels would achieve equalization is not supported by substantial evidence. The 2002-03 values were obsolete in 2003 as that value was based on appraisals that were done five years earlier and only factored in the interim years. Factoring tends to underestimate value increases compared with appraisals.

6) Rolling taxable values back to 2002-03 levels would allow the Incline Village/Crystal Bay properties in Washoe County to have factoring applied to an appraisal from 1997 when factoring was only intended to be used for a five year period before the next appraisal.

7) Applying a rollback as requested by petitioners would cause a large equalization problem within Washoe County, between the Lake Tahoe Basin and the balance of the County and the state as a whole as the relationship of assessment value to the true tax value would not be the same.

8) The tax rolls, ratio studies and other documents in the record do not indicate an equalization problem in Incline Village/Crystal Bay.

9) 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.

ORDER

Based on a preponderance of the evidence in the administrative record, the testimony during the proceeding, the above Findings of Fact and Conclusions of Law, the State Board held, by a vote of 4-1 (Member Harper opposed), that there is not an equalization problem in the Incline Village/Crystal Bay area of Washoe County for the tax years 2003-04, 2004-05, 2005-06 and further that providing the relief requested by Village League would create an equalization problem for Washoe County and statewide. The State Board ordered that the property valuations for Incline Village/Crystal Bay for the tax years 2003-04, 2004-05, 2005-06 are equalized based on the tax rolls, the ratio studies, and the evidence before the State Board.

BY THE STATE BOARD OF EQUALIZATION THIS 30th DAY OF October, 2017.


Deonne Contine, Secretary