

NRS 361.4722 Partial abatement of taxes levied on property for which assessed valuation has been established or on remainder parcel of real property.

1. Except as otherwise provided in or required to carry out the provisions of subsection 3 and [NRS 361.4725](#) to [361.4729](#), inclusive, the owner of any parcel or other taxable unit of property, including property entered on the central assessment roll, for which an assessed valuation was separately established for the immediately preceding fiscal year is entitled to a partial abatement of the ad valorem taxes levied in a county on that property each fiscal year equal to the amount by which the product of the combined rate of all ad valorem taxes levied in that county on the property for that fiscal year and the amount of the assessed valuation of the property which is taxable in that county for that fiscal year, excluding any increase in the assessed valuation of the property from the immediately preceding fiscal year as a result of any improvement to or change in the actual or authorized use of the property, exceeds the sum obtained by adding:

(a) The amount of all the ad valorem taxes:

(1) Levied in that county on the property for the immediately preceding fiscal year; or

(2) Which would have been levied in that county on the property for the immediately preceding fiscal year if not for any exemptions from taxation that applied to the property for that prior fiscal year but do not apply to the property for the current fiscal year,

↳ whichever is greater; and

(b) A percentage of the amount determined pursuant to paragraph (a) which is equal to:

(1) The greater of:

(I) The average percentage of change in the assessed valuation of all the taxable property in the county, as determined by the Department, over the fiscal year in which the levy is made and the 9 immediately preceding fiscal years;

(II) Twice the percentage of increase in the Consumer Price Index for all Urban Consumers, U.S. City Average (All Items) for the immediately preceding calendar year; or

(III) Zero; or

(2) Eight percent,

↳ whichever is less.

2. Except as otherwise provided in or required to carry out the provisions of [NRS 361.4725](#) to [361.4729](#), inclusive, the owner of any remainder parcel of real property for which no assessed valuation was separately established for the immediately preceding fiscal year, is entitled to a partial abatement of the ad valorem taxes levied in a county on that property for a fiscal year equal to the amount by which the product of the combined rate of all ad valorem taxes levied in that county on the property for that fiscal year and the amount of the assessed valuation of the property which is taxable in that county for that fiscal year, excluding any amount of that assessed valuation attributable to any improvement to or change in the actual or authorized use of the property that would not have been included in the calculation of the assessed valuation of the property for the immediately preceding fiscal year if an assessed valuation had been separately established for that property for that prior fiscal year, exceeds the sum obtained by adding:

(a) The amount of all the ad valorem taxes:

(1) Which would have been levied in that county on the property for the immediately preceding fiscal year if an assessed valuation had been separately established for that property for that prior fiscal year based upon all the assumptions, costs, values, calculations and other factors and considerations that would have been used for the valuation of that property for that prior fiscal year; or

(2) Which would have been levied in that county on the property for the immediately preceding fiscal year if an assessed valuation had been separately established for that property for that prior fiscal year based upon all the assumptions, costs, values, calculations and other factors and considerations that would have been used for the valuation of that property for that prior fiscal year, and if not for any

exemptions from taxation that applied to the property for that prior fiscal year but do not apply to the property for the current fiscal year,

↳ whichever is greater; and

(b) A percentage of the amount determined pursuant to paragraph (a) which is equal to:

(1) The greater of:

(I) The average percentage of change in the assessed valuation of all the taxable property in the county, as determined by the Department, over the fiscal year in which the levy is made and the 9 immediately preceding fiscal years;

(II) Twice the percentage of increase in the Consumer Price Index for all Urban Consumers, U.S. City Average (All Items) for the immediately preceding calendar year; or

(III) Zero; or

(2) Eight percent,

↳ whichever is less.

3. The provisions of subsection 1 do not apply to any property for which the provisions of subsection 1 of [NRS 361.4723](#) or subsection 1 of [NRS 361.4724](#) provide a greater abatement from taxation.

4. Except as otherwise required to carry out the provisions of [NRS 361.4732](#) and any regulations adopted pursuant to [NRS 361.4733](#), the amount of any reduction in the ad valorem taxes levied in a county for a fiscal year as a result of the application of the provisions of subsections 1 and 2 must be deducted from the amount of ad valorem taxes each taxing entity would otherwise be entitled to receive for that fiscal year in the same proportion as the rate of ad valorem taxes levied in the county on the property by or on behalf of that taxing entity for that fiscal year bears to the combined rate of all ad valorem taxes levied in the county on the property by or on behalf of all taxing entities for that fiscal year.

5. The Nevada Tax Commission shall adopt such regulations as it deems appropriate to ensure that this section is carried out in a uniform and equal manner.

6. For the purposes of this section, “remainder parcel of real property” means a parcel of real property which remains after the creation of new parcels of real property for development from one or more existing parcels of real property, if the use of that remaining parcel has not changed from the immediately preceding fiscal year.

(Added to NRS by [2005, 39](#); A [2005, 1750](#); [2007, 1885](#), [1888](#); [2009, 1221](#))

Abatement for Remainder Parcels

NAC 361.61002 Definitions. ([NRS 360.090](#), [361.4722](#)) As used in [NAC 361.61002](#) to [361.61038](#), inclusive, unless the context otherwise requires, the words and terms defined in [NAC 361.61004](#) to [361.6103](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61004 “Abatement percentage” defined. ([NRS 360.090](#), [361.4722](#)) “Abatement percentage” means the percentage determined pursuant to paragraph (b) of subsection 2 of [NRS 361.4722](#).

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61006 “Agricultural use” defined. ([NRS 360.090](#), [361.4722](#)) “Agricultural use” has the meaning ascribed to it in [NRS 361A.030](#).

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61008 “Commercial or industrial use” defined. ([NRS 360.090](#), [361.4722](#)) “Commercial or industrial use” means any use:

1. Conducted primarily for profit, except for any agricultural use, open-space use, residential use, institutional use, recreational use or use as vacant land held for development; and
2. Any other use that does not constitute any agricultural use, open-space use, residential use, institutional use, recreational use or use as vacant land held for development.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.6101 “Current year” defined. ([NRS 360.090](#), [361.4722](#)) “Current year” means the fiscal year for which a determination of the application of the partial abatement of taxes for any new parcel is being made.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61012 “Institutional use” defined. ([NRS 360.090](#), [361.4722](#)) “Institutional use” means any civic, charitable or religious use, including, without limitation, use as a church, cemetery or hospital.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61014 “New parcel” defined. ([NRS 360.090](#), [361.4722](#)) “New parcel” means a parcel for which a new or different assessor parcel number has been assigned from the prior year as a result of the division of any previously existing parcel or parcels, the combination of any previously existing parcels, or any change in the configuration of any parcels or of lot size or lot boundaries, by means of a parcel map, subdivision map, certificate of land division, long-term lease, action of any governmental entity or any other means.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61016 “New parcel for development” defined. ([NRS 360.090](#), [361.4722](#)) “New parcel for development” means each new parcel which is not eligible for the partial abatement in the current year.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61018 “Open-space use” defined. ([NRS 360.090](#), [361.4722](#)) “Open-space use” has the meaning ascribed to it in [NRS 361A.050](#).

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.6102 “Partial abatement” defined. ([NRS 360.090](#), [361.4722](#)) “Partial abatement” means the partial abatement of taxes provided pursuant to subsection 2 of [NRS 361.4722](#).

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61022 “Prior year” defined. ([NRS 360.090](#), [361.4722](#)) “Prior year” means the fiscal year immediately preceding the current year.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61024 “Recreational use” defined. ([NRS 360.090](#), [361.4722](#)) “Recreational use” means any active or passive recreational use, including, without limitation, use as a trail, park, community garden, playground or athletic field.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61026 “Remainder parcel” defined. ([NRS 360.090](#), [361.4722](#)) “Remainder parcel” means each new parcel which is eligible for the partial abatement in the current year.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61028 “Residential use” defined. ([NRS 360.090](#), [361.4722](#)) “Residential use” means use as a dwelling or for personal, family or household purposes, whether rented to particular persons or not, including, without limitation, use as a single-family detached housing unit, townhouse, condominium unit, mobile home or multifamily unit. The term includes the use of lots in a residential subdivision for which a final map has been recorded and on which residential improvements will be constructed, but does not include the use of parcels which are not yet divided into individual residential lots by the filing of a final map.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.6103 “Vacant land held for development” defined. ([NRS 360.090](#), [361.4722](#)) “Vacant land held for development” means land which is held for investment or future development and has not previously been held for residential use, commercial or industrial use, institutional use or recreational use.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61032 Scope and purpose. ([NRS 360.090](#), [361.4722](#)) The provisions of [NAC 361.61002](#) to [361.61038](#), inclusive, set forth the methodology that must be followed to carry out the provisions of subsection 2 of [NRS 361.4722](#) in evaluating each new parcel for the purposes of applying the partial abatement of taxes provided by that subsection.

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

NAC 361.61034 New parcels: Evaluation; determination of change in use; effect of determination. ([NRS 360.090](#), [361.4722](#))

1. Each new parcel must be separately evaluated to determine whether there has been any change in the use of the property that comprises the parcel.

2. A determination that there is a change in the use of the property must be based on a finding that:

(a) The property was being used as vacant land held for development as of the commencement of the prior year and:

(1) As the result of the recording of a subdivision map creating individual lots for residential development, the property is held for residential use as of the commencement of the current year; or

(2) As the result of new construction on the parcel sufficient to allow for an identification of the use of the property, the property is in agricultural use, open-space use, residential use, commercial or industrial use, institutional use or recreational use as of the commencement of the current year; or

(b) The use of the property as of the commencement of the current year for agricultural use, open-space use, residential use, commercial or industrial use, institutional use or recreational use is different from the use of the property as of the commencement of the prior year.

3. If the use of the property:

(a) Has not changed, the parcel is a remainder parcel.

(b) Has changed, the parcel is a new parcel for development.

4. As used in this section, “use of the property” means the principal use of the property for one of the following purposes:

(a) Agricultural use;

(b) Open-space use;

- (c) Residential use;
 - (d) Commercial or industrial use;
 - (e) Institutional use;
 - (f) Recreational use; or
 - (g) Use as vacant land held for development.
- (Added to NAC by Tax Comm'n by R001-07, eff. 3-23-2007)

NAC 361.61036 Calculation of amount of abatement and maximum amount of property taxes.
 ([NRS 360.090](#), [361.4722](#))

1. The partial abatement for a remainder parcel must be calculated as follows:
 - (a) Determine the amount of net property taxes attributable to the land area of and any improvements to the remainder parcel for the prior year as provided in [NAC 361.61038](#).
 - (b) Multiply the net property taxes determined in accordance with subsection 1 by the abatement percentage applicable to the remainder parcel for the current year.
 - (c) Add the amounts determined pursuant to paragraphs (a) and (b). If the sum is:
 - (1) Less than the amount of taxes that would have been assessed on the remainder parcel for the current year without the abatement, the difference constitutes the amount of the partial abatement for the remainder parcel for the current year.
 - (2) Greater than or equal to the amount of taxes that would have been assessed on the remainder parcel for the current year without the abatement, then there is no partial abatement for the remainder parcel for the current year.
2. The maximum amount of property taxes which may be levied on a remainder parcel for the current year must be calculated as follows:
 - (a) Determine the amount of property taxes to be added to the tax roll in the current year attributable to:
 - (1) An incremental change in land value resulting from a change in the actual or authorized use of the remainder parcel; or
 - (2) A new improvement to the remainder parcel,

↳ that would not have been included in the calculation of the assessed value of the remainder parcel for the prior year had a separate valuation for the remainder parcel been established in the prior year.
 - (b) Add the amounts determined pursuant to paragraph (a) and paragraphs (a) and (b) of subsection 1 to determine that maximum amount.

(Added to NAC by Tax Comm'n by R001-07, eff. 3-23-2007)

NAC 361.61038 Determination of amount of net property taxes attributable to remainder parcel for prior year; appeal of determination. ([NRS 360.090](#), [361.4722](#), [361.4734](#))

1. Except as otherwise provided in subsection 2, the amount of net property taxes attributable to the land area of and any improvements to a remainder parcel for the prior year must be determined as follows:
 - (a) Identify each of the parcels which contained the land area of the remainder parcel in the prior year.
 - (b) Determine the pro rata percentage that the remainder parcel's land and improvements contributed to the assessed value of each of the parcels identified in paragraph (a) for the prior year.
 - (c) Multiply the percentage determined in paragraph (b) for each of the parcels identified in paragraph (a) by the total amount of taxes levied, or which would have been levied but for any exemptions from taxation, in the prior year on that parcel.

(d) The amount of net property taxes attributable to the remainder parcel for the prior year is the sum of the products determined pursuant to paragraph (c) for each of the parcels identified in paragraph (a).

2. The owner of a remainder parcel may appeal to the Nevada Tax Commission pursuant to [NRS 361.4734](#) and any regulations adopted to carry out that section to show that the method prescribed in subsection 1 produces an inequitable result. Pursuant to such an appeal, the Nevada Tax Commission may use an alternative method that provides an equitable result.

3. As used in this section, “total amount of taxes levied” means the lower of the total amount of property taxes assessed to a parcel or the total amount of property taxes assessed as the result of a final decision on an appeal, less the amount of any partial abatement of property taxes applied to that parcel pursuant to [NRS 361.4722](#), [361.4723](#) or [361.4724](#).

(Added to NAC by Tax Comm’n by R001-07, eff. 3-23-2007)

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY, NEVADA, A
POLITICAL SUBDIVISION OF THE
STATE OF NEVADA; AND THE CLARK
COUNTY ASSESSOR,
Appellants,
vs.
STATE OF NEVADA, EX REL. NEVADA
TAX COMMISSION; AND HOWARD
HUGHES PROPERTIES, INC., A
NEVADA CORPORATION,
Respondents.

No. 64587

FILED

FEB 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for judicial review of a Nevada Tax Commission property tax decision. First Judicial District Court, Carson City; James E. Wilson, Judge.

Hughes Properties owned a 46.59 acre parcel of land (the master parcel) during the 2005-2006 fiscal year. Prior to the commencement of the 2006-2007 fiscal year, Hughes partitioned the master parcel into eight separate parcels. The 3.62 acre parcel at issue in this case (the subject parcel) is one of those eight parcels, and was subsequently designated as "vacant." The Assessor did not abate taxes on the subject parcel pursuant to NRS 361.4722.

Hughes filed a series of administrative petitions for review seeking partial tax abatement for the subject parcel pursuant to NRS 361.4722. Hughes argued that the subject parcel's use had not changed in the prior fiscal year and that according to the new "remainder

regulations,”¹ the subject parcel was a “remainder parcel” that was entitled to partial tax abatement. The Nevada Tax Commission (NTC) referred the case to a Chief Administrative Law Judge (ALJ).

The ALJ held a hearing, at which Hughes submitted approximately 20 exhibits demonstrating other instances in which the Assessor retroactively applied the remainder regulations, and as a result, either treated the “smaller” newly created parcel as the remainder parcel or allowed for all newly created parcels to be categorized as the remainder parcel. In response, the Assessor explained that it attempted to effectuate the legislative purpose behind NRS 361.4722 by trying to determine the property owner’s intent; and in this case, because another newly created parcel was, at a size of 16.62 acres, much larger than the subject parcel, it appeared that the owner’s intent was for the subject parcel to be a “new parcel for development” (NPD). In sum, the primary issue was whether the Assessor should evaluate only whether the parcel’s use has changed, as provided in NAC 361.61034(3), or whether the Assessor should evaluate the relative size of the new parcels along with other circumstantial

¹The so-called “remainder regulations” were promulgated by the Nevada Tax Commission—effective March 23, 2007—to provide a methodology to evaluate whether a newly created parcel is eligible for a partial abatement of property taxes. NAC 361.61032. Specifically, NAC 361.61034(1) states that all new parcels “must be separately evaluated to determine whether there has been any change in the use of the property.” The remainder regulations require this evaluation because NAC 361.61034(3) provides that if a newly created parcel’s use has changed, then the parcel is a “new parcel for development,” and may not receive a tax abatement, whereas if the use has not changed, then it is a remainder parcel, which may receive a tax abatement. NAC 361.61034(3).

considerations to determine if any parcels “remained” after the owner partitioned the NPDs.

The ALJ submitted his proposed findings of fact, conclusions of law, and decision (ALJ proposed decision) to the NTC, finding that the subject parcel should be treated as a remainder parcel, and therefore subject to the tax abatement. The ALJ found that treating the subject parcel as a remainder parcel was “in accordance with NRS 361.4722, and NAC 361.61002 to 361.61038.” The ALJ also recommended that the amount of the abatement should be determined using the apportionment formula set forth in NAC 361.61036. The NTC did not initially adopt the ALJ proposed decision, finding instead that the Assessor’s original interpretation of the statutes was appropriate (the first NTC decision).

After two separate petitions for judicial review, the district court voided the NTC’s decision. The district court found that the ALJ decision was logical and well written, and that the Assessor’s methodology applied different standards to different properties, equating to a non-uniform taxation in violation of Article X, Section 1, of the Nevada Constitution. Following two district court remands, the NTC ultimately reversed course and adopted the ALJ’s proposed decision in its entirety (the third NTC decision).

The district court affirmed the third NTC decision, concluding that the Assessor had not met its burden of demonstrating that the decision was unsupported by substantial evidence or was arbitrary or capricious. Specifically, the district court found that the NTC did not retroactively apply the remainder regulations. Instead, it found that the NTC “applied the same standard as the remainder regulation[s], not because the standard had been codified, but because it was a reasonable

standard for determining whether the [s]ubject [p]arcel was a[n] [NPD].” (internal quotations omitted). As a result, the district court ruled that “in the absence of development activity [the subject parcel] should be treated as a remainder parcel.” The Assessor now appeals.

Standard of review

“On appeal from orders deciding petitions for judicial review, this court reviews the administrative decision in the same manner as the district court,” and without deference to the district court’s decision. *Nassiri v. Chiropractic Physicians’ Bd.*, 130 Nev. ___, ___, 327 P.3d 487, 489 (2014); *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006) (“[T]his court affords no deference to the district court’s ruling in judicial review matters.”).

“We review the factual determinations of administrative agencies for clear error ‘in view of the reliable, probative and substantial evidence on the whole record’ or for an ‘abuse of discretion.” *Nassiri*, 122 Nev. at ___, 146 P.3d at 489 (quoting NRS 233B.135(3)(e), (f)). “Thus, factual findings will only be overturned if they are not supported by substantial evidence, which, we have explained, is evidence that a reasonable mind could accept as adequately supporting the agency’s conclusions.” *Id.*

We review questions of law de novo. *City of N. Las Vegas v. Warburton*, 127 Nev. ___, ___, 262 P.3d 715, 718 (2011). However, “[a]lthough statutory construction is generally a question of law reviewed de novo, this court ‘defer[s] to an agency’s interpretation of its governing statutes or regulations if the interpretation is within the language of the statute.” *Taylor v. Dep’t of Health & Human Servs.*, 129 Nev. ___, ___, 314 P.3d 949, 951 (2013) (quoting *Dutchess Bus. Servs., Inc. v. Nev. State*

Bd. of Pharmacy, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008) (alteration in original)). “[This] court may remand or affirm [a] final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is . . . [i]n violation of . . . statutory provisions.” NRS 233B.135(3)(a). When interpreting an unambiguous statute we “impart it with [its] ordinary meaning and [do] not go beyond that meaning.” *Star Ins. Co. v. Neighbors*, 122 Nev. 773, 776, 138 P.3d 507, 510 (2006).

The NTC erred when it adopted the ALJ proposed decision because the ALJ proposed decision misapplied NRS 361.4722(6)

The Assessor argues that the ALJ proposed decision and, subsequently, the third NTC decision, misinterpreted NRS 361.4722(6). The Assessor alleges that NRS 361.4722(6) requires a two prong analysis and that the aforementioned decisions ignored the first prong and mistakenly determined only the second prong. We agree.²

NRS 361.4722(6) defines a remainder parcel as:

[A] parcel of real property which remains after the creation of new parcels of real property for

²Another key point of contention in this case is whether or not the remainder regulations were applied retroactively. See *Cnty. of Clark v. LB Props., Inc.*, 129 Nev. ___, ___, 315 P.3d 294, 296 (2013) (explaining that legislative regulations generally may not be applied retroactively). We conclude, however, that whether or not the remainder regulations were applied retroactively is inconsequential at this point. As explained in this order, NRS 361.4722(6) requires a two prong analysis. The ALJ proposed decision ignored the first prong. Because we are reversing the district court order due to the ALJ’s misapplication of NRS 361.4722(6), the issue of whether the ALJ retroactively applied the remainder regulations is moot.

development from one or more existing parcels of real property, if the use of that remaining parcel has not changed from the immediately preceding fiscal year.

Under this definition, a remainder parcel cannot exist without the formation of an NPD. And a parcel cannot be a remainder parcel if it underwent a change in use. Thus, the statute creates a two prong test for determining whether a parcel of land is a remainder parcel.

Under the first prong, upon the division of a larger parcel, the Assessor must determine if one of the subdivided parcels is an NPD. The Assessor must first identify if there is an NPD, because under NRS 361.4722(6), there cannot be a *remainder* parcel unless one of the other subdivided parcels is an NPD. For example, if fictional parcel A was completely divided into parcels B and C, both B and C cannot be remainder parcels because one must be an NPD. In other words, for B to be a remainder parcel, C would have to be an NPD, and vice versa. To determine whether a parcel is an NPD, the Assessor applies a multifactor approach. *See Cnty. of Clark*, 129 Nev. at ___, 315 P.3d at 296-97 (approving of the Assessor's multifactor approach in determining taxable value). The multifactor approach includes consideration of the size of the parcel, the money spent separating the parcel, how the parcel aligns with developed parcels in that area, and the zoning of the parcel. Upon completion of this analysis, after the Assessor determines which of the subdivided parcels is an NPD, the Assessor may proceed to NRS 361.4722(6)'s second prong with regard to the non-NPD parcels.

Under the second prong, once another parcel has been classified as an NPD, the Assessor examines whether the use of the subject parcel has changed, in order to determine if it is indeed a remainder parcel. *See* NRS 361.4722(6) (explaining that "if the use of that

remaining parcel has not changed from the immediately preceding fiscal year” then it is a remainder parcel (emphasis added)). If the parcel’s use has changed, the parcel cannot be a remainder parcel.

In the present case, when the 46.59 acre master parcel was split, the Assessor applied the multi-prong approach and determined that the 3.62 acre subject parcel was an NPD and, thus, was not a remainder parcel. The ALJ proposed decision, however, which the NTC adopted and the district court affirmed, found that the subject parcel’s use did not change and it, therefore, was a remainder parcel under NRS 361.4722.

We conclude that the reasoning applied by the ALJ proposed decision, which was subsequently adopted in the third NTC decision, is at odds with NRS 361.4722(6) because it merely takes into consideration the second prong, use change, and not the first prong, whether an NPD was created by the partition. Specifically, prior to determining that the subject parcel was a remainder parcel, the ALJ proposed decision did not determine whether another parcel partitioned from the master parcel was an NPD. Instead, the ALJ proposed decision concluded that the subject parcel was a remainder parcel simply because its use did not change. This one-sided analysis violated NRS 361.4722(6).³ See NRS 233B.135(3)(a).

³Hughes argues that “there is no evidence in the record regarding whether the other seven parcels that were created at the same time as the subject parcel were considered remainder parcels or [NPDs].” Therefore, Hughes contends that the Assessor’s argument that the ALJ proposed decision failed to comply with NRS 361.4722(6)’s two prong analysis is not justiciable because the argument is based on hypothetical facts, specifically that the other seven sub-divided parcels from the master parcel were designated as remainder parcels as well, thus requiring that the subject parcel be designated as an NPD. Hughes’ justiciability
continued on next page . . .

Therefore, we conclude that the ALJ proposed decision, which the NTC adopted and the district court affirmed, was decided in err and prejudiced substantial rights of the Assessor.⁴ Accordingly we,

ORDER the third NTC decision, which the district court affirmed, REVERSED AND REMAND this matter for proceedings consistent with this order.

Douglas, J.
Douglas
Cherry, J.
Cherry
Gibbons, J.
Gibbons
Pickering, J.
Pickering

... continued

argument, however, does not affect our conclusion because we are not basing our decision on how the other seven parcels were designated. We are simply concluding that the ALJ proposed decision misinterpreted NRS 361.4722(6) by failing to apply its first prong. That said, it is likely that on remand the administrative law judge will have to determine how the other seven parcels were classified in order to assess the first prong of NRS 361.4722(6). *Day v. Washoe Cnty. Sch. Dist.*, 121 Nev. 387, 389, 116 P.3d 68, 69 (2005) (“[T]his court has the inherent authority to remand administrative agency cases for factual determinations.” (internal quotations omitted)).

⁴We have considered the parties’ remaining arguments and conclude that it is unnecessary for us to reach their merits.

cc: Hon. James E. Wilson, District Judge
Clark County District Attorney/Civil Division
Fennemore Craig, P.C./Reno
Attorney General/Las Vegas
Carson City Clerk

SAITTA, J., with whom HARDESTY, C.J., and PARRAGUIRRE, J., agree, dissenting:

This case began over seven years ago. Prior to arriving at this court, this case was before an administrative law judge, the NTC multiple times, and various district court judges. Throughout this entire process, the primary issues have been: (1) how to assess “use change” in order to determine whether the subject parcel was a remainder parcel or an NPD, and (2) how to best calculate a tax abatement, if necessary. Now the majority chooses to shift the focus to whether or not one of the other seven sub-divided parcels of the master parcel was ever classified as an NPD, a fact not currently contained in the record. In analyzing this narrow issue, the majority fails to give the ALJ proposed decision proper deference, which led the majority to mistakenly reverse and remand. Instead, in my view, the third NTC decision should be affirmed because the ALJ proposed decision properly determined that the subject parcel was a remainder parcel and set forth the best methodology for calculating the requisite tax abatement.

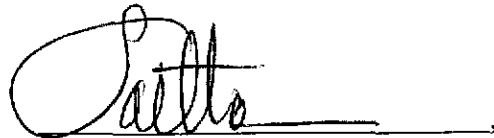
The majority improperly reversed and remanded this case because it failed to afford proper deference to the ALJ’s interpretation of NRS 361.4722(6). *See Taylor v. Dep’t of Health & Human Servs.*, 129 Nev. ___, ___, 314 P.3d 949, 951 (2013) (“[T]his court defer[s] to an agency’s interpretation of its governing statutes or regulations if the interpretation is within the language of the statute.” (alteration in original) (internal quotations omitted)). Assuming that the majority’s plain language reading of NRS 361.4722(6) is correct and that a two prong analysis is required, the ALJ proposed decision only satisfied the second prong because those were the only facts made available to it. The ALJ could not

decide whether any of the other seven sub-divided parcels split from the master parcel were ever classified as an NPD because the Assessor did not submit the requisite evidence for making that decision. Although perhaps not as complete as the majority would prefer, the ALJ's interpretation of NRS 361.4722(6) was within the language of NRS 361.4722(6). Consequently, once afforded the proper level of deference, the ALJ's interpretation of NRS 361.4722(6) was satisfactory and reversal and remand was unnecessary.


The ALJ proposed decision properly decided both primary issues and should have been affirmed. First, the ALJ utilized a proper methodology for assessing "use change." The ALJ, making it clear that he was using the remainder regulations as guidance and not precedent, implemented a more objective approach than the approach proposed by the Assessor, because he considered construction activity on the property. Then, in accordance with his methodology, the ALJ properly classified the subject parcel as a remainder parcel. Further, the subject parcel's classification as a remainder parcel conformed with the consistency, uniformity, and predictability requirements of NRS 360.291. Second, the ALJ's decision to implement the apportionment formula codified in the remainder regulations is preferable to the Assessor's comparable sales approach. Once again the ALJ acted properly because he simply used the remainder regulations as guidance.¹ Therefore, the ALJ proposed decision properly decided the primary issues and should have been affirmed.

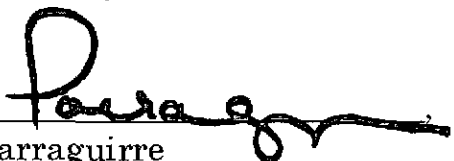
¹The ALJ's handling of both issues was proper because he did not apply the remainder regulations retroactively in either instance. See *Cnty. of Clark v. LB Props., Inc.*, 129 Nev. ___, ___, 315 P.3d 294, 296
continued on next page . . .

In sum, today's reversal and remand essentially starts this seven year litigation anew with no clarity as to the primary issues. The majority's failure to show the ALJ proposed decision the proper deference has created a scenario where this court will likely face the exact same questions once again after this case goes through another round of administrative hearings and district court proceedings. Therefore, I dissent.

 _____, J.
Saitta

We concur:

 _____, C.J.
Hardesty

 _____, J.
Parraguirre

... continued

(2013) (explaining that a regulation may only be applied prospectively unless an intent to apply it retroactively was clearly manifested or the regulation does not establish a substantive rule that creates a standard of conduct and imposes new rights or duties).

IN THE SUPREME COURT OF THE STATE OF NEVADA

COUNTY OF CLARK, NEVADA, AND
MARK SCHOFIELD, IN HIS OFFICIAL
CAPACITY AS CLARK COUNTY
ASSESSOR,
Appellants,
vs.
LB PROPERTIES, INC., AN ILLINOIS
CORPORATION,
Respondent.

No. 57082

FILED

DEC 12 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

Appeal from a district court order setting aside the Nevada Tax Commission's decision upholding the County Assessor's assessment of a remainder parcel for tax abatement purposes. First Judicial District Court, Carson City; Robert E. Rose, Senior Judge.

Reversed.

Steven B. Wolfson, District Attorney, and Paul D. Johnson, Deputy District Attorney, Clark County,
for Appellants.

Lionel Sawyer & Collins and William J. McKean, Reno; Frazer Ryan Goldberg & Arnold LLP and Douglas S. John, Phoenix, Arizona,
for Respondent.

BEFORE THE COURT EN BANC.

OPINION¹

By the Court, PICKERING, C.J.:

In this appeal we consider whether a regulation promulgated by the Nevada Tax Commission to value remainder parcels of real property for tax abatement purposes applies retroactively.

I.

In 2005, the Legislature enacted NRS 361.4722, which caps real property taxes by providing partial tax abatements calculated with reference to assessed valuations for the preceding fiscal year on, as relevant here, remainder parcels of real property.² The abatement statute generally requires a remainder parcel's prior-year assessed valuation to be determined as if it "had been separately established for that property for that prior fiscal year based upon all the assumptions, costs, values, calculations and other factors and considerations that would have been used for the valuation of that property for that prior fiscal year." NRS 361.4722(2)(a)(1). The Legislature did not provide additional specifics. Instead, it delegated authority to the Nevada Tax Commission (NTC) to adopt implementing regulations. See NRS 361.4722(5) ("The Nevada Tax

¹We originally resolved this appeal in a nonprecedential order of reversal. Appellant filed a motion to publish the order as an opinion. We grant the motion and replace our earlier order with this opinion. See NRAP 36(f).

²"[R]emainder parcel of real property' means a parcel of real property which remains after the creation of new parcels of real property for development from one or more existing parcels of real property, if the use of that remaining parcel has not changed from the immediately preceding fiscal year." NRS 361.4722(6).

Commission shall adopt such regulations as it deems appropriate to ensure that this section is carried out in a uniform and equal manner.”).

Exercising its delegated authority, the NTC promulgated NAC 361.61038, effective March 23, 2007, which sets forth an apportionment formula for calculating remainder-parcel property values for purposes of NRS 361.4722. Both the regulation’s valuation method and the assessor’s prior approach are complex, but they can be summarized as follows: The regulation adopts an apportionment formula and calculates taxable value by determining the percent of value the smaller parcel contributed to the larger parcel during the fiscal year, thus assigning a pro-rata share to the remainder parcel. The assessor’s prior approach had been to determine taxable value by calculating what the property would have been worth had it existed as a separate piece of land during the relevant tax year, and included consideration of factors such as size, shape, topography, and the value of comparable parcels.

The parcel at issue is owned by respondent LB Properties, Inc. It was divided from a larger piece of land before the regulation’s enactment and, the parties concede, is properly characterized as a “remainder parcel” under NRS 361.4722(6), *reprinted supra* note 2. Appellant, the Clark County Assessor, valued the land under the multifactored approach he used before NAC 361.61038 was enacted. Seeking application of the new regulation’s apportionment formula, LB Properties appealed to the NTC. The NTC assigned an administrative law judge to the case, who determined that NAC 361.61038 should apply. The NTC disagreed. It upheld the Assessor’s valuation and declined to apply its new regulation retroactively. LB Properties petitioned for judicial

review. The district court reversed the NTC and directed it to apply NAC 361.61038 to LB Properties' remainder parcel.

II.

The parties primarily dispute whether NAC 361.61038 applies retroactively and, if so, whether it conflicts with the Nevada Constitution, Article 10, Section 1, and is void as a result.³ Because the regulation does not apply retroactively, this court need not reach the Assessor's challenge to its constitutionality. We also reject LB Properties' constitutional challenge to the Assessor's preregulation, multifactor approach.

A.

"Retroactivity is not favored in the law." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). Thus, regulations generally only operate prospectively "unless an intent to apply them retroactively is clearly manifested." *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 622, 188 P.3d 1092, 1099 (2008); *accord Bowen*, 488 U.S. at 208 (statutory "enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result").

There are two types of regulations: legislative and interpretive. *Fmali Herb, Inc. v. Heckler*, 715 F.2d 1385, 1387 (9th Cir. 1983). Interpretive regulations construe, but do not expand upon, the terms of a statute. Legislative regulations, by contrast, are adopted under power delegated by the Legislature to an agency and establish substantive

³Article 10, Section 1 of the Nevada Constitution declares that "[t]he Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory."

rules that create standards of conduct and impose new rights or duties. See, e.g., *Jerri's Ceramic Arts, Inc. v. Consumer Prod. Safety Comm'n*, 874 F.2d 205, 207 (4th Cir. 1989) (“[A] substantive or legislative rule, pursuant to properly delegated authority, has the force of law, and creates new law or imposes new rights or duties.”); *Slippery Rock Area Sch. Dist. v. Unemployment Comp. Bd. of Review*, 983 A.2d 1231, 1236 (Pa. 2009) (“[A] legislative regulation establishes ‘a substantive rule creating a controlling standard of conduct.’” (quoting *Borough of Pottstown v. Pa. Mun. Ret. Bd.*, 712 A.2d 741, 743 (Pa. 1998))).

Despite the general rule against retroactivity, if a regulation is a first-time interpretive regulation, application to preexisting issues may be permissible. *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 744 n.3 (1996). Thus, in *Smiley*, the Supreme Court approved application of an interpretive regulation that clarified an ambiguity the Legislature left for the agency to resolve, namely the definition of “interest.” *Id.* at 740-41. Compare *Pauly v. U.S. Dep’t of Agric.*, 348 F.3d 1143, 1152 (9th Cir. 2003) (holding that first-time interpretive regulations are not generally retroactive and where the new regulation is an explicit break from prior practice or the agency has expressly stated application would be impermissibly retroactive, it may not be retroactively applied), with *Pope v. Shalala*, 998 F.2d 473, 483 (7th Cir. 1993) (holding that an agency pronouncement that “simply clarif[ies] an unsettled or confusing area of the law . . . does not change the law” and hence may be applied without having impermissible retroactive effect), *overruled on other grounds by Johnson v. Apfel*, 189 F.3d 561 (7th Cir. 1999).

LB Properties argues that NAC 361.61038 constitutes an interpretive regulation that should be accorded retroactive effect. We

cannot agree. NAC 361.61038 was promulgated by the NTC at the express direction of the Legislature in NRS 361.4722(5). It establishes a substantive rule for assessing and valuing remainder properties; it does not merely construe the meaning of the statute. Thus, NAC 361.61038 is legislative, not interpretive. NAC 361.61038's apportionment formula for valuing remainder parcels represents an explicit break from the approach taken by the Assessor, which, in the absence of the regulation, considered generally applicable factors such as land size and shape and looked at the separate value of the individual piece. Finally, NRS 361.4722(5) does not authorize, and NAC 361.61038 does not provide for, retroactive application. Indeed, the NTC ruled *against* LB Properties' contention that NAC 361.61038—a regulation that the NTC itself promulgated—applies to this matter.

Because NAC 361.61038 was not enacted until 2007 and the valuation at issue occurred prior to that time, application of the regulation would be impermissibly retroactive. The district court therefore erred by ordering the NTC to follow the administrative law judge's initial recommendation and value the land according to the apportionment formula set forth in the regulation.

B.

In the absence of an applicable regulatory method of assessment, the question becomes whether the method the Assessor used was proper or whether it was itself in violation of Nevada law.

LB Properties argues that the Assessor's valuation method violated the holdings in *Barta* and *State ex rel. State Board of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006), because it was an "ad hoc standard" rather than a method formally promulgated by the agency. The district court determined, without analysis, that the

Assessor's method of calculation was in violation of *Bakst*. We disagree, because the pre-2007 method does not inherently lend itself to inconsistent application.

Bakst and *Barta* dealt with a county assessor's authority under NRS 361.260 to substantially deviate from statutorily mandated methods of assessing land. See *Bakst*, 122 Nev. at 1414-15, 148 P.3d at 725; *Barta*, 124 Nev. at 620-21, 188 P.3d at 1098. In *Bakst*, the assessor used a unique method to adjust property values—one not consistent with others used throughout the state. 122 Nev. at 1406, 1411, 1414, 1416, 148 P.3d at 719, 722-23, 725-26. In deeming the assessor's methods unconstitutional, this court held that our Constitution requires "that the methods used for assessing taxes throughout the state must be uniform." *Id.* at 1413, 148 P.3d at 724 (internal quotations omitted); see also *Barta*, 124 Nev. at 624, 188 P.3d at 1100 (citing *Bakst* and stating that "methods used to value taxpayers' properties play a material role in ensuring that the constitutional guarantee of a uniform and equal rate of assessment" exist in property valuations).

But *Bakst* and *Barta* also recognize that the wide and varied differences in each property make it impossible to devise an absolute formula to determine value. *Bakst*, 122 Nev. at 1412, 148 P.3d at 723; see also *Barta*, 124 Nev. at 622, 188 P.3d at 1099 (upholding *Bakst* generally). Moreover, NRS 361.228(3) encourages consideration of property attributes "such as zoning, location, water rights, view and geographic features" in valuing a property, suggesting that valuations should account for all relevant attributes—perhaps even where consideration of a particular attribute is not codified by statute or regulation.

In contrast to *Bakst* and *Barta*, the record here supports the conclusion that the Assessor's method did not lead to unequal taxation—to the contrary, both the administrative law judge and the NTC recognized that it likely led to more equitable taxation than did the method set forth in NAC 361.61038. Indeed, the Assessor's method appears to be the one generally used prior to the regulation's enactment and appears in harmony with NRS 361.4722(2)(a)(1). Neither *Bakst* nor *Barta* states that *only* formal regulations may establish methods for assessing value. Since the Assessor's approach did not conflict with existing statute or practice, we conclude that the Assessor's methods did not violate the Constitution.

We therefore reverse.

Pickering, C.J.
Pickering

We concur:

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

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Property Information
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Property Information
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 Address: North Las Vegas - 89030
 Date: 07/2016
 Area: \$2,480,500
 Lot Size: 9.49
 Year: 2016
 Doc Number: 20161003-00002966
 Date: 04/05/2016

- Description
- Ownership History
- Commercial Information
- Address
- Zone
- Permitted Officials
- Info

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- Layers in State Plane ft
- Scale: 2 Y: 26789337
- Date: Most Current Flight
- View: Parcel



**PROPOSED REGULATION OF
THE NEVADA TAX COMMISSION**

March 5, 2007

AUTHORITY: NRS 361.4722(5).

Section 1. This regulation sets forth the methodology that must be followed pursuant to NRS 361.4722(2) in evaluating each parcel for which a new or different assessor parcel number has been assigned from the prior year as a result of the division of previously-existing parcel or parcels, the combination of previously-existing parcels, or any change in configuration of parcels or of lot size or lot boundaries, by means of a parcel map, subdivision map, certificate of land division, long-term lease, action of any governmental entity, or otherwise, for purposes of applying the partial abatement of taxes provided by the 73rd Session of the Nevada Legislature in Assembly Bill No. 489 and Senate Bill No. 509.

Sec. 2. Definitions.

1. The term “new parcels for development” as used in NRS 361.4722(6)(b) means:

- a) Vacant lots, parcels, sites, units, or plots created by recorded map that cannot be further divided pursuant to existing local government regulations into smaller units or parcels (final lots);
- b) Commercial or industrial subdivision lots, parcels, sites, units, or plots defined in NRS 278.325 recorded with local government approval to further divide by deed, if the subdivider chooses, will be considered the final lot with no further division. (The subsequent deeded parcels will be treated as remainders.) (Commercial/Industrial Subdivision Lot);
- c) Vacant lots, parcels, sites, units, or plots created by recorded map that can be further divided pursuant to existing local government regulations, but that now make provision for roads or easements of access and easements for utilities or drainage as necessary in preparation for development. (Pad For Development);

2. The term “use of the property” as used in NRS 361.4722(6)(b) means the principal use of the property for one of the following purposes: agricultural use, open-space use, single-family residential use, multi-family residential use, commercial use, industrial use, institutional use, recreational use or vacant land held for development.

2. “Agricultural use” has the meaning ascribed to it in NRS 361A.030.

3. “Open-space use” has the meaning ascribed to it in NRS 361A.050.

4. “Single-family residential use” means use as a dwelling or for personal, family or household purposes with not more than four dwelling units, whether rented to particular persons or not, including, without limitation, single family detached housing units, townhouses, condominium units, and mobile homes.

5. “Multi-family residential use” means properties having five or more units used as dwellings or for personal, family or household purposes.

6. “Commercial or industrial use” means any use conducted primarily for profit, except for agricultural use, open space use, single-family residential use, multi-family residential use, institutional use, recreational use or vacant land.

7. "Institutional use" means any civic, charitable or religious use including, without limitation, churches, cemeteries, and hospitals.

8. "Recreational use" means any active or passive recreational use including, without limitation, trails, parks, community gardens, playgrounds, and athletic fields.

9. "Vacant land" means land on which there is either no improvements or any such improvements are not sufficient to establish a use as single family residential use, multi-family residential use, commercial use, industrial use, institutional use, or recreational use.

10. "Net property taxes" means the lower of the total amount of property taxes assessed to a parcel, or the total amount of property taxes assessed as the result of a final decision on an appeal, less the amount of any partial abatement of property taxes applied to that parcel pursuant to NRS 361.4722, NRS 361.4723, or NRS 361.4724.

11. "Current year" means the fiscal year for which a determination of the application of the partial abatement of taxes for any property for which a new or different assessor parcel number has been assigned is being made.

12. "Prior year" means the fiscal year immediately preceding the current year.

Sec. 3. Methodology for evaluating property with a new or different assessor parcel number.

1. Each parcel for which a new or different assessor parcel number has been assigned must be separately evaluated to determine:

(a) if it is a new parcel for development as defined in Section 2.

(b) whether there has been any change in the use of the property that comprises the parcel pursuant to Section 3(2).

2. A determination that there is a change in the use of the property must be based on a finding that the use of the property has changed from any one of the following uses at the commencement of the prior year to any other of the following uses at the commencement of the current year:

- (a) single-family residential use;
- (b) multi-family residential use;
- (c) commercial or industrial use;
- (d) institutional use;
- (e) recreational use;
- (f) agricultural use;
- (g) open space use;
- (h) vacant land.

3. If the parcel is not a new parcel for development as defined in Section 2 and the use of the property has not changed as determined in Section 3(2), then the parcel is a remainder parcel and the calculation of the abatement shall be made as if the parcel had been on the tax roll in the prior year.

4. If the parcel is determined to be new parcel for development as defined in Section 2 or if the use of the property has changed as determined in Section 3(2), then the parcel is not a remainder parcel and shall not receive a tax abatement in the current tax year.

5. The owner of a parcel that is not a remainder parcel based on a determination pursuant to Section 2 (1)(c) or Section 3 (2) may no later than 60 days after the mailing of the initial or a revised tax bill for such parcel apply to the Assessor for the county in which the property is situated for reconsideration upon providing a statement that the parcel is a remainder and acknowledging that if the parcel is developed within the current tax year, the parcel will be

subject to payment of the abated tax for the current year. The form of such application shall be prepared by the Assessor and submitted to the Department for approval.

Sec. 4. Methodology for calculating the abatement for a remainder parcel. The abatement for a remainder parcel shall be calculated as follows:

1. Determine the amount of net property taxes attributable to the land area and any improvements of the remainder parcel for the prior year as provided in section 5 of this regulation.

2. Multiply the net property taxes determined in subsection 1 by the abatement percentage applicable to the remainder parcel for the current year.

3. Add the amounts determined pursuant to subsections 1 and 2.

(a) If the sum is less than the amount of taxes that would have been assessed on the remainder parcel for the current year without the abatement, the difference constitutes the amount of the abatement for the remainder parcel for the current year.

(b) If the sum is greater than or equal to the amount of taxes that would have been assessed on the remainder parcel for the current year without the abatement, then there is no abatement for the remainder parcel for the current year.

4. Determine the amount of property taxes to be added to the tax roll in the current year attributable to an incremental change in value resulting from any improvement to or change in the actual or authorized use of the remainder parcel that would not have been included in the calculation of the assessed value of the remainder parcel for the prior year had a separate valuation for the remainder parcel been established in the prior year.

5. Add the taxes from subsection 3 and the taxes to be added in subsection 4 to derive the total net taxes in the current year.

Section 5. Methodology for calculating the net property taxes attributable to the remainder parcel for the prior year.

1. The amount of net property taxes attributable to the remainder parcel for the prior year shall be derived as follows:

(a) Identify the parcel or parcels which contained the land area of the remainder parcel and the total taxable value of such parcel or parcels in the prior year.

(b) Determine the total amount of taxes assessed, or which would have been assessed but for any exemptions from taxation, in the prior year for the parcel or parcels identified in paragraph (a).

(c) Calculate the effective tax rate for the remainder parcel for the prior year by dividing the total amount of taxes in paragraph (b) by the total taxable value identified in paragraph (a).

(d) Determine a taxable value for the remainder parcel for the prior year based on all the assumptions, costs, values, calculations, and other factors and considerations that would have been used for the valuation of that property for that prior fiscal year.

(e) Multiply the taxable value for the remainder parcel calculated in paragraph (d) by the effective tax rate calculated in paragraph (c) to determine the taxes that would have been levied in the county on that property in the prior year.

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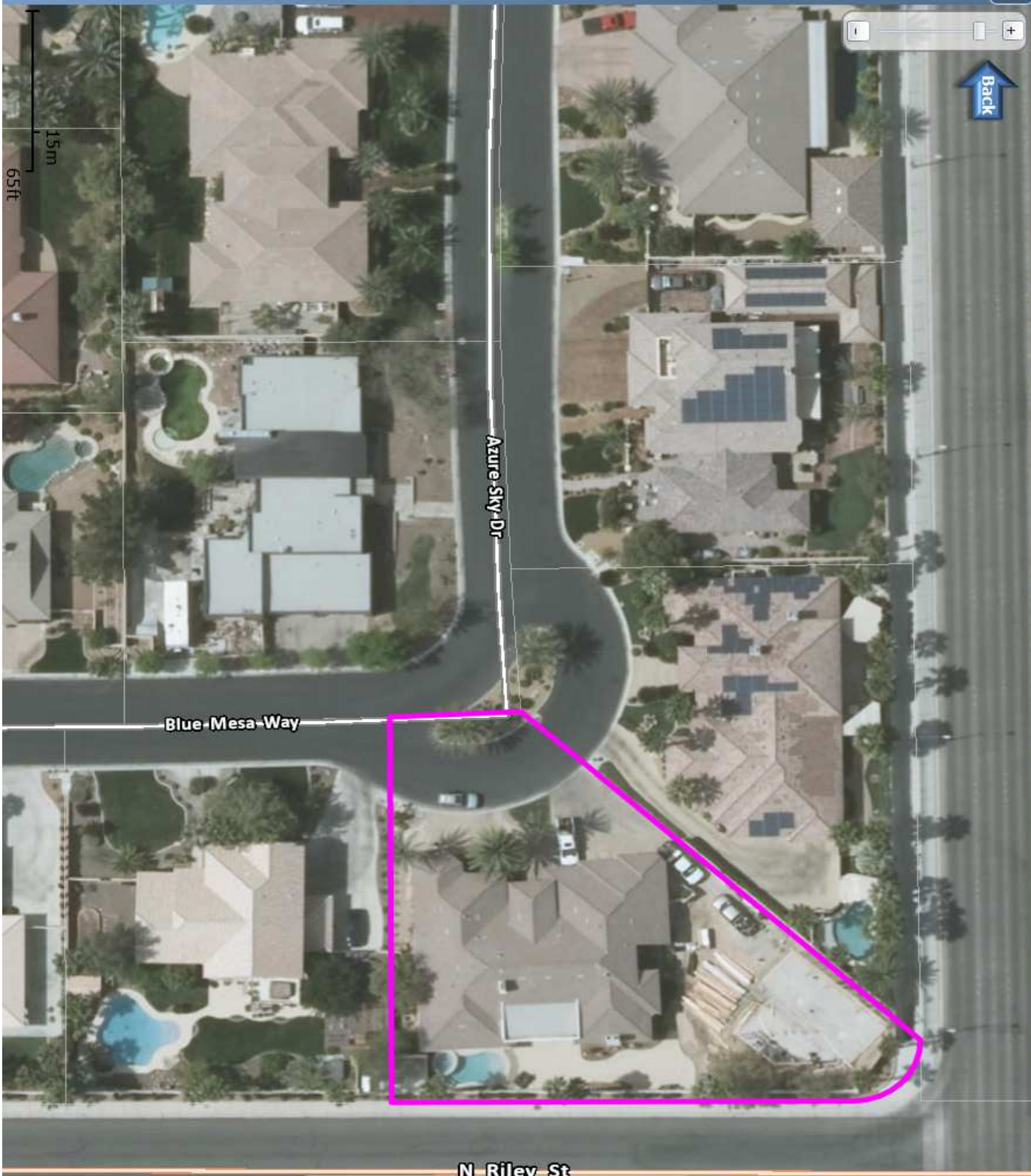
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