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1 Case No. 03-01501A

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BY J. HARKLEBORN CLEA
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6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR CARSON CITY**

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9 ALVIN BAKST, JANE BARNHART,
10 LESLIE BARTA, ROBERT BENDER,
11 ROGER LEACH, PAUL LEVY, BYE BYE
12 BENTON, LLC., MAUREEN MORIARTY,
13 ZOE MYERSON, JAMES NAKADA,
14 TOOMAS REBANE, DANIEL
15 SCHWARTZ, JERRY STEWART, LARRY
16 WATKINS, DONALD WILSON,
17 AGNIESZKA WINKLER, and ESMAL
18 ZANJANI,

19 Plaintiffs/Petitioners,

20 vs.

21 STATE OF NEVADA, ex rel., STATE
22 BOARD OF EQUALIZATION, an agency
23 of the State of Nevada; WASHOE
24 COUNTY, a subdivision of the State of
25 Nevada; WASHOE COUNTY ASSESSOR;
26 NEVADA TAX COMMISSION; and
27 NEVADA DEPARTMENT OF
28 TAXATION,

Defendants/Respondents.

ORDER

23 THIS MATTER comes before this Court pursuant to Petitioner's Opening Brief
24 filed on July 9, 2004. The State of Nevada and the State Board of Equalization filed a
25 Reply Brief with the Court on July 30, 2004. Washoe County and the Washoe County
26 Assessor also filed a Response Brief Regarding NRS 233B with the Court on July 30,
27 2004. Plaintiff's Reply Brief was filed with the Court on August 20, 2004. Petitioners
28 subsequently filed Petitioner's [sic] Motion for Remand with Instructions with the Court

1 on November 23, 2005. A Stipulation to Enlarge Time for the State of Nevada to File Its
2 Opposition to Petitioner's [sic] Motion for Remand with Instructions was filed on
3 December 2, 2005, and another stipulation to enlarge time was filed on December 13,
4 2005. Petitioners Bakst, Levy, and Bye Bye Benton, LLC, filed a Joinder in Petitioners'
5 Motion for Remand with Instructions on December 15, 2005. Respondent State's Motion
6 to Dismiss Petitioners' Motion for Remand was filed on December 16, 2005. Petitioner
7 Barta filed a Joinder in Motion for Remand with Instructions, on December 19, 2005. The
8 State of Nevada filed a Notice of Non-Opposition to Joinder in Petitioners' Motion for
9 Remand with Instructions on December 20, 2005. Washoe County then filed a Motion to
10 Supplement Points and Authorities Based Upon the Recent Decision of the Nevada
11 Supreme Court in Mineral County v. State Board of Equalization, 119 P.3d 706 and
12 Renewed Motion to Dismiss the Petition for Judicial Review Pursuant to NRS 233B on
13 December 21, 2005. Washoe County also filed an Opposition to Petitioner's [sic] Motion
14 for Remand with Instructions on December 21, 2005. Petitioners then filed Petitioners'
15 Reply to Oppositions to Motion for Remand with Instructions on December 28, 2005.
16 The State then filed the State's Joinder in Washoe County's Renewed Motion to Dismiss
17 the Petition for Judicial Review on December 29, 2005. This Court has held oral
18 arguments on the opening briefs and the motion to remand. This Court has read the case
19 file as well as the law applicable to the issues raised. The Court, deeming itself fully
20 advised of the matter, hereby enters its Findings of Fact, Conclusions of Law, Discussion,
21 and Judgment as follows:

22 **FINDINGS OF FACT**

23 The Washoe County Assessor ("Assessor") performed a reappraisal of Incline
24 Village and Crystal Bay properties during 2002 to determine the taxable values for the
25 2003-2004 tax year. The last reappraisal of Incline Village and Crystal Bay occurred
26 during the 1998-1999 tax year. Once the reappraisal concluded on November 27, 2002,
27 the Assessor sent the property owners notice of the recent determinations of taxable
28 value.

1 During this reappraisal, the Assessor used up to four disputed appraisal
2 methodologies that were not prescribed by the Commission or promulgated by the
3 Nevada Legislature. The disputed methodologies used by the Assessor are: 1) view
4 classification standards; 2) lakefront rock classifications; 3) tear-down methodology; and
5 4) time adjustment methodology. The use of these methodologies have allegedly lead to
6 assessments that are neither equal or uniform. There is evidence that these methodologies
7 were actually used by appraisers in the Assessor's office during the reappraisal of Incline
8 Village and Crystal Bay properties in 2002.

9 Despite these methodologies not being codified in any regulation or statute, the
10 State Board of Equalization ("State Board") supported the use of these methodologies as
11 appropriate appraisal tools and standards during this reappraisal. The State Board further
12 opined that the methodologies did not need to be included in a regulation or statute in
13 order to be utilized by the Assessor.

14 The view classification standards are disputed by the Plaintiffs/Petitioners
15 ("Plaintiffs") because they are not found in any promulgated standard. The Assessor
16 allegedly adopted new standards based upon a picture book. This picture book detailed
17 twelve different view classifications, which doubled the previous six view classifications
18 found in generally accepted appraisal standards. The view classification standards are
19 further disputed because the picture book depicts the view from inside the residence, but
20 the reappraisals performed by the Assessor were not performed from inside each and
21 every residence, but rather by doing a 'drive-by' or 'windshield' appraisal. According to
22 the senior appraiser for the Assessor's office, the only proper implementation of the view
23 classifications as depicted in the picture book is for the assessing appraiser to be inside
24 the residence. There was further disagreement between State Board members Lowe and
25 Johnson and the senior appraiser on the proper implementation of the view classification
26 standards, which has led to inconsistent application of these classifications.

27 The lakefront rock classifications are also disputed because there no standards,
28 either written or pictorially, enumerated in any regulation, statute, or book in which

1 homeowners and appraisers can determine what classification to apply to the property.
2 The Assessor broke down lakefront property into five rock classifications of the land
3 immediately adjoining the lake water. These five (5) classifications consist of: 1) sandy;
4 2) sandy-cobble; 3) cobble; 4) cobble-rocky; and 5) rocky. The Plaintiffs allege that these
5 lakefront rock classifications can affect land values up to twenty-three percent (23%).

6 The tear-down methodology the Assessor implemented is also disputed
7 because there is no regulatory or statutory authority to implement this methodology as the
8 Assessor did during the reappraisal of Incline Village and Crystal Bay. One appraiser
9 stated that if an improved parcel was sold and the residence was demolished at a later date
10 or if the buyer expressed some intent to demolish a portion of the structure at a future
11 time, then the sale of the improved property was deemed to be a vacant land sale, even if
12 at the time of the appraisal the structure was occupied. Another appraiser opined that an
13 improved land sale becomes a tear down when the house is actually torn down. An
14 appraiser stated that the only reason that this classification came about was because there
15 were insufficient vacant land sales in and around Incline Village and Crystal Bay.

16 The Plaintiffs' final dispute arises from the Assessor's time adjustment
17 methodology. The Assessor used a 'paired-sales analysis' when determining the taxable
18 value of some properties. When using this methodology, the Assessor used properties
19 that had sold up to eight years prior in an effort to estimate what the property would sell
20 for today. Plaintiffs also cite a treatise published by the International Association of
21 Assessing Officers in which the treatise explains that paired-sales analysis, while proper
22 for a single appraisal, is too tedious for a mass appraisal.

23 There are several positions taken by the various parties to this lawsuit. The
24 Taxpayer's position is that the Assessor and the State Board allegedly failed to follow
25 statutory and regulatory authority in assessing their properties, and that this alleged failure
26 amounts to ad hoc rule making which has led to taxable values that are not uniform, not
27 equal, and inaccurate. The Assessor's position is that each individual assessor is
28 allegedly governed by generally accepted appraisal methodologies and not Nevada

1 statutes or regulations and that these methodologies do not have to be consistent as
2 between assessors as the individual assessors can adopt different standards for appraisal
3 at any time. The State Board's position is that the State Board may allegedly adopt any
4 standards, rules, directives, or statements of general applicability without adhering to the
5 process contemplated in NRS 233B, even if these newly adopted items are in direct
6 contravention to existing regulations and statutes. The Executive Director of the
7 Department of Taxation's position is that the Executive Director can allegedly create and
8 establish standards of appraisal to determine taxable value of land in direct contravention
9 to the Commission's and State Board's regulations and rules. The Commission's position
10 is that an agency must allegedly adhere to its own rules and regulations in implementing
11 their effect and must adhere to their own policy with regards to changing any such policy.

12 Plaintiffs are now before this Court after exhausting their administrative remedies
13 through the State Board requesting: 1) a declaratory order be issued that the standards do
14 not apply to determinations of taxable value by appraisers from county assessor offices
15 for property tax purposes until such standards are adopted by the Tax Commission
16 pursuant to the regulation-making process set forth in NRS 233B; 2) a declaratory order
17 be issued ruling that the State Board and the County Assessor have violated the Plaintiffs'
18 rights under the Taxpayer Bill of Rights; 3) the assessment and levy of taxes upon the
19 Plaintiffs 2003-2004 tax year be declared null and void and that tax values be set at last
20 year's value, and that any Plaintiff who has paid any or all of the property taxes for 2003-
21 2004 receive a full refund of those taxes paid in excess of the property calculated taxes
22 between last year's taxable values; 4) all taxes paid by each of the Plaintiffs that are in
23 excess of the just amount of taxes due based upon a fair and equitable determination of
24 taxable value of the subject properties be refunded to Plaintiffs, together with interest at
25 the rate of six percent per annum as provided by NRS 361.420 or as required by NRS
26 360.2935, whichever is applicable; 5) costs of the suit; and 6) any further relief the
27 Court deems just and proper, including Plaintiffs' reasonable attorneys' fees.

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1 CONCLUSIONS OF LAW

2 A. Assessment of Property for Taxable Value in General

3 The County Assessor is required every year to determine the taxable value of all
4 the property located within that county. NRS 361.045. The Assessor is required to
5 comply with the regulations prescribed by the Tax Commission when determining the
6 taxable values of the property within the county. NRS 360.250(2). These regulations of
7 the Tax Commission are intended to ensure uniformity and equality. NRS 360.215(2).
8 The Assessor is further required to reappraise the property within the county at least once
9 every five years. NRS 361.260(6).

10 "The members of the Nevada Tax Commission shall prescribe regulations for
11 carrying on the business of the Nevada Tax Commission and of the Department." NRS
12 360.090.

13 An agency is "an agency, bureau, board, commission, department, division, officer
14 or employee of the Executive Department of the State Government authorized by law to
15 make regulations or to determine contested cases." NRS 233B.031.

16 A contested case is a "proceeding, including but not restricted to rate making and
17 licensing, in which the legal rights, duties or privileges of a party are required by law to
18 be determined by an agency after an opportunity for hearing, or in which an
19 administrative penalty may be imposed." NRS 233B.032.

20 Improved land is land "on which there is an improvement sufficient to allow the
21 identification of or establish actual use." NAC 361.113.

22 A regulation is defined as the following:

23 (a) An agency rule, standard, directive or statement of general
24 applicability which effectuates or interprets law or policy, or
25 describes the organization, procedure or practice requirements of any
agency;

26 (b) A proposed regulation;

27 (c) The amendment or repeal of a prior regulation; and

28 (d) The general application by an agency of a written policy,
interpretation, process or procedure to determine whether a person is

1 in compliance with a federal or state statute or regulation in order to
2 assess a fine, monetary penalty or monetary interest. NRS 233B.040.

3 Full cash value is the "most probable price which a property would bring in a
4 competitive and open market under all conditions requisite to a fair sale." NRS 361.025.
5 When the initial assessed taxable value exceeds the full cash value of the property, "the
6 person determining taxable value shall examine the taxable value determined for the land,
7 and if the land is properly valued, he shall appropriately reduce the taxable values
8 determined for the improvements." NAC 361.131. "If any further reduction is needed,
9 the value of the land may also be reduced." *Id.*

10 Agencies that promulgate or enforce regulations shall, in addition to the
11 regulation-making requirements imposed by law, "adopt rules of practice, setting forth the
12 nature and requirements of all formal and informal procedures available, including a
13 description of all forms and instructions used by the agency." NRS 233B.050(a).

14 Agencies shall also "make available for public inspection all rules of practice and
15 regulations adopted or used by the agency in the discharge of its functions and that part of
16 the Nevada Administrative Code which contains its regulations." NRS 233B.050(b).

17 The State Board of Equalization, Washoe County, the Washoe County Assessor's
18 Office, the Nevada Tax Commission, and the Nevada Department of Taxation are not
19 expressly exempt from the provisions and requirements of NRS 233B. NRS 233B.039.

20 B. Regulation Codification Requirements (233B)

21 The Legislative intent behind enacting NRS 233B was "to establish minimum
22 procedural requirements of the regulation-making and adjudication procedure of all
23 agencies of the Executive Department of the State Government and for judicial review of
24 both functions, except those agencies expressly exempted." NRS 233B.020(1). Further,
25 the intent of the Legislature was not to confer "additional regulation-making authority
26 upon an agency," except "to the extent provided in NRS 233B.050(1)." *Id.* Furthermore,
27 "this chapter does not abrogate or limit additional requirements imposed on such agencies
28 by statute or otherwise recognized by law." NRS 233B.020(2).

1 Adopting, amending, or appealing either permanent or temporary regulations
2 requires that an agency give at least thirty (30) days notice of the intended action. NRS
3 233B.060.

4 Prior to any proposed regulation being adopted, "all interested persons must be
5 afforded a reasonable opportunity to submit data, views or arguments upon a proposed
6 regulation, orally or in writing." NRS 233B.061(1). A proposed regulation requires that a
7 public workshop be held to solicit comments from interested area residents and
8 businesses about one or more topics addressed by the proposed regulations. NRS
9 233B.061(2). "As for substantive regulations, the agency shall set a time and place for an
10 oral public hearing." NRS 233B.061(3).

11 For a temporary regulation to become a permanent regulation, the agency must
12 first provide a second notice and opportunity for a hearing, and the language of the
13 permanent regulation must first be approved by the Legislative Counsel and the entire
14 regulation is subject to review by the Legislative Commission. NRS 233B.069(2).

15 A permanent regulation "becomes effective when the Legislative Counsel files
16 with the Secretary of State the original of the final draft or revision of a regulation." NRS
17 233B.070(1). A temporary regulation cannot be filed with the Secretary of State's office
18 "until 35 days after the date on which the temporary regulation was adopted by the
19 agency," NRS 233B.070(2).

20 An agency makes a rule when it does nothing more than state its official position
21 on how it interprets a requirement already provided for and how it proposes to administer
22 its statutory function. *Coury v. Whittlesea-Bell Luxury Limousine*, 102 Nev. 302, 304,
23 721 P.2d 375, 376 (1986); citing *K-Mart Corp. v. State Indus. Ins. Sys.*, 101 Nev. 12,
24 693 P.2d 562 (1985). Such rule making has been concluded as 'ad hoc' rule making and
25 violates the rule-making process of NRS 233B. *Id.*

26 In addressing the effectiveness of a formal rule making process versus a judicial
27 process of a case by case basis, a trial judge stated:

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1 "If an administrative agency needs to adopt a regulation which comes
2 within the definition of that term as found in the Administrative
3 Procedure Act, then it is, in my opinion, essential that the agency
4 proceed in accordance with the provisions of the Act. This is required,
5 in my opinion, because of the great scope of authority vested in
6 administrative agencies, the broad discretion allowed to them in the
7 exercise of that authority, because of the impact of their actions on the
8 vital interest of all citizens of this state, including the business entities
9 and other persons who come before that agency, and because the
10 deference accorded their determinations by the courts on judicial review.

11 If the procedures of 233B are followed there will be adequate notice
12 given to all persons who will be immediately or may be in the future
13 affected by the proposed regulation. They will be afforded an
14 opportunity to appear at hearings and to offer evidence and argument in
15 support of or in opposition to the proposed regulation. The agency and
16 its staff will have the benefit of various opposing views on the subject,
17 and who knows, in the process the agency might even change its
18 position and modify or even withdraw a proposed regulation. . . . *Public*
19 *Serv. Comm'n. Of Nevada v. Sierra Pac. Power Co.*, 99 Nev. 268, 273,
20 662 P.2d 624, 627 (1983).

21 C. Accepted Assessment Methodologies

22 "The Legislature shall provide by law for a uniform and equal rate of assessment
23 and taxation, and shall prescribe such regulations as shall secure a just valuation for
24 taxation of all property, real, personal and possessory, except mines and mining claims."
25 Nev. Const. Art. X Sec. 1.

26 The State Board of Equalization is permitted to value property by any method of
27 appraisal approved by law, *Washoe County v. Golden Road Motor Inn*, 105 Nev. 402,
28 406 (1989). Properly promulgated regulations have the full force of a law. NRS
233B.040(1).

Improved lands that are being used in an inconsistent manner "with the zoning of
the land or with the general use of land in the surrounding area, the value of the improved
land must be established by considering the value of land that: (a) is most comparable to
the improved land; (b) has the same or similar use; and (c) is affected by the same or
similar restrictions." NAC 361.122(1). Only the area of land to be valued according to
the use of the improvements is the area actually covered by the improvement, plus the

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1 surrounding area necessary to use the improvement," while all additional land must be
2 valued as vacant. NAC 361.122(2).

3 The sales comparison approach is an appropriate methodology for assessing the
4 taxable value of vacant land in Nevada. NAC 361.118. While NAC 361.118 enumerates
5 the process in which to apply this approach, NAC 361.119 details approved
6 methodologies for when NAC 361.118 is inapplicable or unable to be properly
7 implemented. NAC 361.118; NAC 361.119.

8 Methods to assess the taxable value of property have been enumerated in detail in
9 the Nevada Revised Statutes. NRS 360.227. The County Assessor shall establish
10 standards for appraising and reappraising land pursuant to the Nevada Revised Statutes.
11 NRS 361.360(7). However, "the Nevada Tax Commission shall adopt formulas and
12 incorporate them in its records, providing the method or methods pursued in fixing and
13 establishing the taxable value of all real property assessed by it." NRS 361.320(5). These
14 formulas must be adopted but can be changed, but "the formulas must in any event show
15 all the elements of value considered by the Nevada Tax Commission in arriving at and
16 fixing the value for any class of property assessed by it." *Id.* Furthermore, "the taxable
17 amount may not exceed the cost of replacement as appropriately depreciated." *Id.*

18 D. Taxpayer Challenges

19 A taxpayer who has been aggrieved by the action of "the county board of
20 equalization in equalizing, or failing to equalize, the value of his property, or property of
21 others, may file an appeal with the State Board of Equalization." NRS 361.360(1). The
22 State Board of Equalization "shall hear and determine all appeals from the action of each
23 county board of equalization." NRS 361.400.

24 When a taxpayer properly disputes the assessed value of a property, a county board
25 of equalization shall hear the complaint and "make an independent determination of the
26 valuation of the property assessed." NAC 361.627(1). Furthermore, the State Board of
27 Equalization will "remand to a county board any complaint which was denied because it

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1 was too complex or based on a method of appraisal required by law or for which evidence
2 of taxable value was not reviewed." *Id.*

3 "The Nevada Tax Commission or the Department, in that name and in proper
4 cases, may sue and be sued, and the Attorney General shall prosecute and defend all such
5 cases. NRS 361.410(2). In these suits, "the burden of proof is upon the complainant to
6 show by clear and satisfactory evidence that any valuation established by the Nevada Tax
7 Commission or the Department, or equalized by the State Board of Equalization is unjust
8 and inequitable." *Id.*

9 A property owner who is protesting the amount of taxes due on a property is free
10 to do so as long as the property owner protests in writing and continues to pay the stated
11 amount due. NRS 361.420(1). If the State Board of Equalization has denied relief to the
12 property owner's protest, the property owner "may commence a suit in any court of
13 competent jurisdiction in the State of Nevada against the State and county in which the
14 taxes were paid." NRS 361.420(2). In such a suit, and in appropriate cases, "both the
15 Nevada Tax Commission and the Department may be joined as a defendant for a recovery
16 of the difference between the amount of taxes paid and the amount which the owner
17 claims justly due." *Id.* Subsection 4 of NRS 361.420 allows for seven grounds upon
18 which a property owner can complain upon, including "that there was fraud in the
19 assessment or that the assessment is out of proportion to and above the taxable cash value
20 of the property assessed," "that the assessment is out of proportion to and above the
21 valuation fixed by the Nevada Tax Commission for the year in which the taxes were
22 levied and the property assessed," and "that the assessment complained of is
23 discriminatory in that it is not in accordance with a uniform and equal rate of
24 assessment and taxation, but is at a higher rate of the taxable value of the property so
25 assessed than that at which the other property in the State is assessed." NRS
26 361.420(4)(e), (f), (g). However, if the protested ground is either (e), (f), or (g) of
27 subsection 4, the "court shall conduct the trial without a jury and confine its review to the
28 record before the State Board of Equalization." NRS 361.420(5). When there is a

1 complaint based upon any ground of subsection 4, "the entire assessment must not be
2 declared void but is void only as to the excess in valuation." NRS 360.420(6). If there is
3 a judgment recovered by the taxpayer under this section, the "court may provide for
4 interest thereon not to exceed 6 percent per annum from and after the date of payment of
5 the tax complained of." NRS 360.420(7).

6 In any action brought under NRS 360.420, the Plaintiffs have the burden of proof
7 of showing "by clear and satisfactory evidence that any valuation established by the
8 Nevada Tax Commission or the county assessor or equalized by the county board of
9 equalization or the State Board of Equalization is unjust and inequitable." NRS 360.430.

10 Nevada regulations conduct the process by which taxpayer complaints are
11 resolved. When a properly brought complaint is before a county board of equalization,
12 that board of equalization shall hear the complaint "and make an independent
13 determination of the valuation of the property assessed." NAC 361.627. The State Board
14 will then "remand to a county board any complaint which was denied because it was too
15 complex or based upon a method of appraisal required by law or for which evidence of
16 taxable value was not reviewed." *Id.*

17 Judicial review of a final decision of an agency requires that the review take place
18 in front of the judge and confined to the record, unless irregularities in procedure are
19 alleged and not part of the record, then the court may receive evidence as to these alleged
20 irregularities. NRS 233B.135(1). The court may set aside a final decision in whole or
21 part "if substantial rights of the petitioner have been prejudiced because the final decision
22 of the agency is: (a) in violation of constitutional or statutory provisions; (b) in excess of
23 the statutory authority of the agency; (c) made upon unlawful procedure; ... or (f) arbitrary
24 or capricious or characterized by abuse of discretion." NRS 233B.135(3).

25 DISCUSSION

26 A. General Provisions for the Assessment of Property by the County Assessor.

27 The State Board of Equalization, the Washoe County Assessor, the Nevada Tax
28 Commission, and the Nevada Department of Taxation are all agencies governed by NRS

1 233B, as they fit the definition of an agency of NRS 233B.031 and none of the above
2 listed are expressly exempt from the provisions of NRS 233B, pursuant to NRS
3 233B.039.

4 The process by which property is assessed for taxation purposes is considered a
5 regulation under NRS 233B.040, as a rule or regulation for appraisers are generally
6 applicable to determine monetary interests owed to the State by property owners.

7 As such, all above entities shall obey the rule-making procedures and disclosure
8 procedures enumerated in NRS 233B, as analyzed below.

9 **B. Regulation and Rule Codification Requirements for Agencies.**

10 NRS 233B was enacted to establish minimal procedural requirements for the
11 regulation-making and adjudication process for agencies that are not expressly exempt
12 from these provisions. Furthermore, this chapter is not intended to confer additional
13 regulation-making authority upon an agency.

14 Public comment is required when adopting any proposed regulation. Substantive
15 regulations require oral hearings. Prior to any permanent or temporary regulation taking
16 effect, the Legislative Counsel must file an original draft of the regulation to the Secretary
17 of State's office.

18 The public had commented on the use of some of the disputed methodologies
19 utilized by the Assessor during the reappraisal of Incline Village and Crystal Bay.
20 However, to the Court's knowledge, no draft of any such rule or regulation has been filed
21 with the Secretary of State's office. Without properly following the regulation-making
22 process as detailed in NRS 233B, the regulation is not properly promulgated, and thus
23 does not have the full effect and force of the law to enforce the regulation.

24 The formal rule making process, as opposed to a case by case analysis in the courts
25 which by analogy applies to the individual appraisers devising their own appraisal
26 methodologies, places a check on the great scope of authority vested in regulation-making
27 or regulation-enforcing agencies. The formal process also lessens and/or accommodates
28 the impact of these regulations on Nevada citizens. Furthermore, this formal process

1 gives the agency the benefit of all the opposing viewpoints to get as much information as
2 possible before enacting a regulation of general applicability that may very well be
3 detrimental rather than beneficial.

4 The Defendant entities have conceded that they have not followed this formal
5 process. The Court cannot emphasize enough the importance of public comment and
6 awareness of generally applicable rules and regulations that affect monetary interests of
7 the citizens as a whole.

8 A voice that is not heard, is a voice that has not spoken. The individualistic
9 approach of the appraisers has led to taxes that are not uniform and equal, as required by
10 the Nevada Constitution. This individualistic approach has also bypassed the opportunity
11 for the public to voice their concerns. Providing these tax methodologies in a properly
12 promulgated regulation would allow citizens to voice their concerns. Therefore, the tax
13 methodologies used by the Assessor, as well as the individual appraisers within the
14 Assessor's office, must be codified and promulgated through the regulation-making
15 process of NRS 233B to have the full force and effect of the law.

16 Failure to follow the formal regulation-making process detailed in NRS 233B
17 amounts to ad hoc rule making. Such rule making is prohibited by agencies that make
18 regulations, and are thus void. Since the Assessor did not follow this formal regulation-
19 making process, the four disputed methodologies utilized in the 2002 reappraisal of
20 Incline Village and Crystal Bay are void as to the excess assessed taxable value.

21 C. Accepted Assessment Methodologies

22 Pursuant to the Nevada Constitution, any regulation or rule for the assessment of
23 taxes requires that the law provides for uniform and equal rates.

24 The individual implementation of these four disputed methodologies by individual
25 appraisers that are not promulgated through the formal process of NRS 233B do not
26 provide for a uniform and equal rate of assessment. There are seventeen appraisers in the
27 Assessor's Office. Without standards regulating and maintaining the appraisers as a
28 collective group, each is free to apply, and evidence has shown do apply, whatever

1 method whenever they desire. As a result, any one property has seventeen potential
2 assessed values. Furthermore, the lake-front rock and view classifications have no
3 standards defined, or if the standards are defined, the application of these standards has
4 been inconsistent. This again by definition does not provide for equal and uniform
5 assessments.

6 Both the Nevada Revised Statutes and the Nevada Administrative Code outline
7 several methods in which to assess property for taxation purposes. However, none of the
8 disputed methodologies are listed in either the statutes or codes. Despite not being
9 codified, the Assessor still used them in the reappraisal of Incline Village and Crystal Bay
10 in 2002.

11 The State Board is allowed to assess property by any method of appraisal approved
12 by law. This rule requires that the assessment methods be codified in a law and
13 promulgated through regulations, codes, or statutes. By utilizing methods that are not
14 part of the law, the methods are therefore not approved by law.

15 While the county assessors must establish standards for appraising land pursuant to
16 the Nevada Revised Statutes, it is the Nevada Tax Commission that shall adopt formulas
17 and incorporate them in its records, providing the methods used in establishing the
18 taxable value of all real property assessed by it. Since the Nevada Tax Commission shall
19 adopt these formulas, in furtherance of assessing property uniformly and equally, it does
20 not logically fit that each individual appraiser in the Assessor's office is free to determine
21 their own methodology. Furthermore, the individual adoption by the appraisers does not
22 comply with the procedures enumerated in the Nevada Revised Statutes for making
23 regulations.

24 Due to the lack of equal and uniform application of these disputed methodologies,
25 the reappraisal of Incline Village and Crystal Bay are not enforceable as to the excess in
26 valuation. The tear-down methodology was applied inconsistently to amount to an
27 assessment that was not uniform and not equal. There is no regulatory or statutory
28 authority referencing the lakefront rock classifications, as well as no other standardized

1 method to apply these classifications uniformly and equally. The view classifications
2 doubled the previously accepted six classifications and were not applied in a competent
3 manner since the individual appraisers did not gain entry to the inside of the residence to
4 determine the view. The time adjustment methodology is not codified and there is
5 reliable evidence that shows that this particular methodology, paired-sales analysis, is not
6 recommended for mass appraisals.

7 Based on the foregoing, the Plaintiffs' have shown by clear and satisfactory
8 evidence that the named Defendants have not followed the approved appraisal methods
9 within the state of Nevada. Therefore, the reappraisal of Incline Village and Crystal Bay
10 is void as to the excess in valuation.

11 **D. Challenging Taxpayer Provisions**

12 Challenging taxpayers must exhaust the administrative remedies available to them
13 prior to bringing an action to the courts. Here, the taxpayers have done this by appealing
14 to the State Board of Equalization.

15 Furthermore, the challenging taxpayers must prove by clear and satisfactory
16 evidence that the valuation determinations were unjust and inequitable. Again, the
17 taxpayers have done so. First, the formal process for promulgating regulations and rules
18 has not been adhered to because the Assessor's appraisers made up their own valuation
19 formulas. These formulas did not have a standardized implementation plan, as each
20 individual appraiser could implement the valuation methodologies at any time and at any
21 property. Secondly, these disputed methodologies were not enumerated in any rule,
22 regulation, code or statute, which is in direct contravention to existing laws applicable to
23 taxing authorities. Thirdly, the inconsistent application of these four disputed
24 methodologies illustrates the high probability that the taxes were not assessed on an equal
25 and uniform basis, as required by the Nevada Constitution.

26 For the foregoing reasons, most of the Plaintiffs' requested relief in their Opening
27 Briefs is GRANTED. Therefore, good cause appearing;

28 / / / /

1 **JUDGMENT**

2 IT IS HEREBY ORDERED that standards do not apply to determinations of
3 taxable value by appraisers from county assessors' offices for property tax purposes until
4 such standards are adopted by the Commission, pursuant to the regulation-making process
5 set forth in NRS 233B.

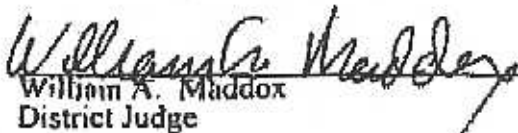
6 IT IS FURTHER ORDERED that the assessment and levy of the taxes upon
7 Plaintiffs for the 2003-2004 tax year be declared null and void, and the taxable value be
8 set at the previous year's value, and that any who have paid any or all of the property
9 taxes for 2003-2004 receive a refund of those taxes paid that are in excess of the property
10 calculated taxes based upon last year's taxable values.

11 IT IS FURTHER ORDERED that all taxes paid by each Plaintiff that are in excess
12 of the just amount of taxes due based upon a fair and equitable determination of taxable
13 value of the subject properties be refunded to Plaintiffs, together with interest at the rate
14 of six percent (6%) per annum.

15 IT IS FURTHER ORDERED that Respondents' Renewed Motion to Dismiss is
16 DENIED.

17 IT IS FURTHER ORDERED that Petitioners' Motion to Remand with Instructions
18 is DENIED, as it is rendered moot by this Order.

19 DATED this 13th day of January, 2006.

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21 
22 William A. Maddox
23 District Judge
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