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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
7 **THE STATE OF NEVADA IN AND FOR THE**  
8 **COUNTY OF WASHOE**

9 VILLAGE LEAGUE TO SAVE INCLINE  
10 ASSETS, INC., et al,

11 Plaintiffs/Petitioners,

Case No.: CV03-06922

12 vs.

Dept. No: 1

13 STATE OF NEVADA on relation of its  
14 STATE BOARD OF EQUALIZATION, *et*  
*al,*

15 Defendants/Respondents.  
16 \_\_\_\_\_/

17 **FINDINGS OF FACT, CONCLUSION OF LAW, DECISION AND ORDER**

18 This matter came before the Court on Petitioners' *Petition for Judicial Review* filed on December  
19 27, 2017. The matter has been fully briefed and oral argument held on May 10 and June 5, 2019, with  
20 all parties having a full opportunity to present all arguments in support of their respective positions.  
21 Based on the pleadings on file, the administrative record and oral argument, this Court makes the  
22 following Finding of Facts, Conclusions of Law and Order:

23 **FINDINGS OF FACT**

24 1. This case involves the judicial review of the final statewide equalization decision ("2017  
25 Equalization Order") of the State Board of Equalization ("State Board") issued on November 30, 2017,<sup>1</sup>  
26 involving residential property valuations in the Incline Village/Crystal Bay area of Washoe County for  
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<sup>1</sup> Dated October 30, 2017; served November 30, 2017. *See* Compl. & Pet. Exs. 1 & 2.

1 the 2003-2004, 2004-2005, and 2005-2006 tax years. *See* Equal. Ord (Cited Excerpts of Record  
2 (“CER”)<sup>2</sup> IV at 960-966).<sup>3</sup>

3 **A. Summation**

4 2. In valuing residential properties in Incline Village/Crystal Bay for the 2003-2004, 2004-  
5 2005, 2005-2006 tax years, the Washoe County Assessor (“Assessor”) created and utilized  
6 methodologies that were not used anywhere else in Washoe County or in the State of Nevada. *State ex*  
7 *rel. State Bd. of Equalization, et al v. Bakst et al*, 122 Nev. 1403, 1416, 148 P.3d 717, 726 (2006)  
8 (“*Bakst*”); *State ex rel. State Board of Equalization, et al v. Barta, et al*, 124 Nev. 616, 620-21, 628, 188  
9 P.3d 1092, 1099, 1103 (2008) (“*Barta*”).

10 3. In 2003, Taxpayers began filing individual appeals contesting the Assessor’s valuations  
11 for the years in question as being unconstitutional, arbitrary and incorrect, among other grounds, and  
12 seeking the Washoe County Board of Equalization (“County Board”) and the State Board of Equalization  
13 (“State Board”) to engage in their equalization functions. *See Bakst*, 122 Nev. at 1406, 148 P.3d at 719-  
14 20; *Barta*, 124 Nev. at 618, 627-28, 188 P.3d at 1096, 1102; *Village League to Save Incline Assets, et al*  
15 *v. State, Board of Equalization, et al*, 133 Nev. Adv. Op. 1 at 2, 388 P.3d 218, 219-220 (2017)  
16 (“*Ingemanson*”).

17 4. The County Board and State Board were on notice in 2003 that there could be systemic  
18 errors in the Assessor’s valuation and assessment of residential properties in Incline Village/Crystal Bay  
19 when the Assessor conducted his reappraisal of those properties in 2002 for the 2003-2004 tax year.

20 5. The County and State Boards denied the individual Taxpayer appeals<sup>4</sup> and did not engage  
21 in their equalization functions within the 2003-2004, 2004-2005, 2005-2006 tax years. *See Bakst*, 122  
22 Nev. at 1406, 148 P.3d at 719-20; *Barta*, 124 Nev. at 618, 627-28, 188 P.3d at 1096, 1102-03;  
23 *Ingemanson*, 133 Nev. Adv. Op. 1 at 2, 388 P.3d at 219-220.

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26 <sup>2</sup> The parties to this action jointly prepared and submitted a compilation of excerpts from the administrative record cited in  
27 the briefs of the parties.

28 <sup>3</sup> The residential properties referenced herein include all impacted residential properties and all vacant residential land in  
Incline Village/Crystal Bay.

<sup>4</sup> Some property owners did receive limited relief for factual errors, *i.e.*, incorrect square footage, wrong number of bathrooms,  
etc.

1           6.       After nine years of litigation, the State Board was judicially compelled to engage in its  
2 statewide equalization function pursuant to NRS 361.395 for tax years 2003-2004 through 2010-2011  
3 tax years. *See Village League v. State, Board of Equalization*, Nevada Supreme Court Docket No. 56030  
4 (Order Affirming in Part, Reversing in Part and Remanding, February 24, 2012) (“2012 Village  
5 League”); Order and Judgment for Issuance of Writ of Mandamus, Writ of Mandamus (August 21, 2012)  
6 (CER III at 551-555).

7           7.       Five years later, after the issuance of *Ingemanson* in 2017, the State Board was ordered to  
8 complete those equalization proceedings for the 2003-2004, 2004-2005, 2005-2006 tax years.<sup>5</sup>  
9 *Ingemanson*, 133 Nev. Adv. Op. 1 at 18, 388 P.3d at 226; Order, (July 17, 2017) (remanding to State  
10 Board to “conduct further proceedings pursuant to its statutory authority under NRS 361.395”).

11           8.       In the meantime, numerous individual taxpayers prevailed on their individual appeals for  
12 the one or more of the years in question as the result of *Bakst* and *Barta*.

13           9.       The 2006 *Bakst* Court held that “none of the four methodologies used by the Assessor in  
14 2002 to assess property values in Incline Village and Crystal Bay were constitutional.” 122 Nev. at 1416,  
15 148 P.3d at 726. The Court held that “any Taxpayers who paid taxes under the 2003-2004 assessment  
16 are entitled to a refund because they have met their burden and have shown that their 2003-2004 property  
17 tax assessments are unconstitutional as based on nonuniform valuation methods. The district court  
18 appropriately declared those valuations null and void.” *Id.* at 1416, 148 P.3d at 726. The Court held that  
19 “the district court properly ordered that their [the Taxpayers’] 2003-2004 valuations be set to the 2002-  
20 2003 level.” *Id.* at 1416, 148 P.3d at 726.

21           10.      In 2008, the *Barta* Court considered 2004-2005 taxable values in Incline Village/Crystal  
22 Bay, which the Assessor derived by adjusting the 2003-2004 values by a factor. 124 Nev. at 628, 188  
23 P.3d at 1103. The Court held that “nothing significant distinguishes these cases, factually or legally,  
24 from *Bakst*.” *Id.* The Court held that “2004-2005 values were affected by the same unconstitutional  
25 infirmities as the 2003-2004 values and, like those values, are unjust and inequitable.” *Id.* at 624, 188  
26 P.3d at 1100. The Court rejected the argument of the State Board and County that the Court “should not  
27 roll back the Taxpayers’ properties’ taxable values to the 2002-2003 values.” *Id.* at 627, 188 P.3d at  
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<sup>5</sup> “Only three years are at issue in this case because the State Board dealt with the remaining years outside of this case.” *Ingemanson*, 133 Nev. Adv. Op. 1 at 7-8, 388 P.3d at 222 n4.

1 1102. The Court held that the Taxpayers were entitled to the same relief granted in *Bakst*, and affirmed  
2 the district court order “declaring the Taxpayers’ 2004-2005 assessments void, and setting their assessed  
3 values for 2004-2005 to the 2002-2003 levels.” *Id.* at 628, 188 P.3d at 1103. The Court concluded that  
4 the “Taxpayers are entitled to refunds of all excess taxes paid and ... interest.” *Id.* at 628, 188 P.3d at  
5 1103.

6 11. By the time the State Board commenced its statewide equalization proceeding for the  
7 2003-2004, 2004-2005, 2005-2006 tax years in 2012, the Bakst Petitioners and more than a thousand  
8 other Incline Village/Crystal Bay residential property owners represented by Village League had their  
9 values adjudicated by Nevada courts for the 2003-2004, 2004-2005 and/or 2005-2006 tax years in  
10 accordance with *Bakst* and *Barta*.<sup>6</sup>

11 12. In January of 2017, the *Ingemanson* Court reiterated the holding of *Bakst* and *Barta* “that  
12 assessment methods used in 2002 to value properties at Incline Village and Crystal Bay for real estate  
13 tax purposes were unconstitutional . . . [and] as a remedy, that because property is physically reappraised  
14 once every five years and the assessment methods used in 2002 were unconstitutional, the taxable values  
15 for the unconstitutionally appraised properties were void for the tax years beginning in 2003-2004 and  
16 ending in 2007-2008.” 133 Nev. Adv. Op. 1 at 4, 388 P.3d at 220.

17 13. In its 2017 Equalization Order, the State Board did not make any finding of fact or  
18 conclusion of law recognizing that the taxable values of residential properties in Incline Village/Crystal  
19 Bay were unconstitutional as determined by *Bakst* and *Barta* and reiterated in *Ingemanson*. *See generally*  
20 Equal. Ord. (CER IV at 964-66).

21 14. The State Board did not to equalize the taxable values of the residential properties in  
22 Incline Village/Crystal Bay for the 2003-2004, 2004-2005, 2005-2006 tax years to constitutional 2002-  
23 2003 values, as factored. Equal. Ord. at 6-7 (CER IV at 965-967).

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27 <sup>6</sup> 2003-2004: 107 individual appeals (CER III at 664 (TOP 7:17 *Bakst* d.ct oral arg), CER IV 721-28 (State Board decision  
28 for 2003-2004 tax year appeals)); 2004-2005: 400+ appeals. *See* Admin Rec. 2<sup>nd</sup> Supp. Cert. 2.6.13-Master case files; 2005-  
2006: 1000+ appeals. *See* Admin Rec. 2<sup>nd</sup> Supp. Cert. 2.6.13-Master case files, Tom Hall binder 1.

1           15.     Citing to *Bakst* and *Barta*, the State Board found that “Village League members did not  
2 follow the statutory process to challenge their assessments, which procedure was followed by the Bakst  
3 and Barta petitioners.” Equal. Ord. at 6 (CER IV at 965).

4           16.     The State Board determined “providing the relief requested by Village League would  
5 create an equalization problem for Washoe County and statewide.” Equal. Ord. at 7 (CER IV at 966).

6           17.     The State Board’s finding and decision in 2017 is a reversal of its prior action taken in the  
7 2012 hearings in this equalization case, wherein it voted to extend relief to all residential taxpayers with  
8 unconstitutional values in Incline Village/Crystal Bay for the tax years in question. Amend. Not. of  
9 Filing of Cert. Copies of Trans. (“Bd. Trans.”) (Nov. 5, 2012) at 105-1-23, 113:13-24.

10          18.     In previous equalization decisions, the State Board has equalized properties to correct a  
11 systemic error brought to its attention through individual taxpayer appeals, granting relief to all impacted  
12 taxpayers, including those who did not individually challenge their property valuations. *See Washoe*  
13 *County, et al v. Ross Pendergraft Trust, et al*, Notice of Decision (Oct. 14, 2003) (Equalized values of  
14 101 parcels to correct error after appeals by owners of 24 parcels) (CER IV at 856-859); *In re:*  
15 *Equalization of Properties Located on Tiller Drive*, Equalization Order (July 12, 2004) (Equalized values  
16 of 35 parcels to correct error after appeals by owners of 3 parcels) (CER IV at 842-848); *In re:*  
17 *Consideration of Assessor’s Appeal of Equalization Decision*, Notice of Equalization Decision (Oct. 9,  
18 2009)(Equalized values of all “8700” residential properties in Incline Village/Crystal Bay to correct error  
19 (unconstitutional values for 2006-2007 tax year) after appeals by owners of 300 parcels) (CER II at 438-  
20 447).

21          19.     Upon questioning by this Court, the State Board represented that it could have granted the  
22 same equalization as it did in these prior decisions to all impacted property owners, but it exercised its  
23 “discretion” and decided not to do so in this case. TOP (May 10, 2019) at 127:15-24, 128:1-24, 129:1-  
24 24, 130:1-2.

25          20.     The State Board stated it “considered the tax rolls and the assessment ratio studies, in  
26 addition to the documents in the record, to determine how it should perform its equalization function.”  
27 Equal. Ord. at 6 (CER IV at 965).

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1           21.     There is no dispute that tax rolls for the 2003-2004, 2004-2005, and 2006-2007 are not in  
2 the record and that the State Board did not review them. Bd. Brf. at 14; Cty. Brf. at 37.

3           22.     The State Board and County represented to this Court that the taxable values of the  
4 individuals that had values adjudicated under the *Bakst* template for relief (void unconstitutional values  
5 replaced with constitutional 2002-2003 values, as factored) were never subsequently corrected on the  
6 County tax rolls for the years in question. Bd. Brf. at 14; Cty. Brf. at 37.

7           23.     The remedy dictated in *Bakst* and *Barta* necessarily required the County to correct the tax  
8 rolls to replace unconstitutional taxable values with constitutional values for any residential property  
9 owner in Incline Village/Crystal Bay whose values had been adjudicated in *Bakst* and/or *Barta*, or any  
10 other final court or agency decision applying the *Bakst* template for relief for one or more of the three  
11 years in question.

12           24.     The State Board commonly orders the County to correct tax rolls to reflect adjustments in  
13 value after discharging its equalization function. *See Ross Pendergraft Trust, et al*, Notice of Decision  
14 (CER IV at 856-859); *In re: Equalization of Properties Located on Tiller Drive*, (CER IV at 842-848);  
15 *In re: Consideration of Assessor's Appeal of Equalization Decision*, (CER II at 438-447).

16           25.     “The State Board ordered that the property tax values for Incline Village/Crystal Bay for  
17 the tax years 2003-04, 2004-05, 2005-06 are equalized based on the tax rolls, the ratio studies, and the  
18 evidence before the State Board.” Equal. Ord. at 7 (CER IV at 966).

19           26.     The tax rolls were never adjusted to reflect constitutional taxable values, thus, the State  
20 Board’s 2017 Equalization Order affirmed, and in instances of individual property owners who received  
21 judicial relief in one or more of the years in question, reinstated, the Assessor’s unconstitutional  
22 residential property tax values for the 2003-2004, 2004-2005, 2005-2006 tax years for all residential  
23 properties in Incline Village/Crystal Bay.

24           27.     The Village League and Bakst Plaintiffs/Petitioners<sup>7</sup> timely sought judicial review of the  
25 2017 Equalization Order by filing a Complaint under NRS 361.410 and a Petition for Judicial Review  
26 under NRS 233B.130 (“Petition”) on December 29, 2017.

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<sup>7</sup> Collectively referred to as “Petitioners” and separately as “Village League Petitioners” and “Bakst Petitioners.” The Village League Petitioners are the Village League to Save Incline Assets, Inc. (“Village League”), Dean R. Ingemanson, V. Park LLC, Todd A. Lowe, J. Carl Cooper, Andrew Whyman, Dan Schwartz, Charles A. Dowd, Donna Goff and Robert Goff. The Bakst

1           **B.     The Village League**

2           28.     The Village League is a nonprofit corporation organized and existing under the laws of  
3 the State of Nevada and is the recognized representative of the residential property owners and taxpayers  
4 of Incline Village/Crystal Bay.

5           29.     Individual Village League Petitioners are individuals or entities or successors in interest  
6 to individuals or entities who owned, directly or beneficially, and paid property taxes on residential real  
7 property at Incline Village, Washoe County, Nevada, during the 2003-2004, 2004-2005, and 2005-2006  
8 tax years.

9           30.     The Village League, on behalf of all similarly situated residents of Incline Village/Crystal  
10 Bay, brought the original complaint for relief in this case requesting that the State Board engage in its  
11 statewide equalization function pursuant to NRS 361.395. *See Comp. for Decl. and Related Relief,*  
12 *CV03-06922 (Nov. 13, 2003).*

13           **C.     The Bakst Petitioners**

14           31.     Individual Bakst Petitioners are individuals who owned, either directly or beneficially,  
15 and paid property taxes on residential real property at Incline Village, Washoe County, Nevada, during  
16 the 2003-2004, 2004-2005 and 2005-2006 tax years and were parties in *Bakst* and/or *Barta*.

17           32.     The Bakst Petitioners unconstitutional values for the 2003-2004, 2004-2005 and/or 2005-  
18 2006 tax years were adjudicated by *Bakst* and *Barta* and they received refunds for the years where they  
19 filed an individual appeal.

20           33.     However, not every Bakst Petitioner filed an individual appeal in each of the three years  
21 in questions.<sup>8</sup>

22           34.     The State Board's initial equalization decision in 2012 to replace unconstitutional 2003-  
23 2004, 2004-2005, 2005-2006 values with constitutional 2002-2003 values, as factored, would have  
24 encompassed and provided relief to the Bakst Petitioners to the extent that they had not been afforded  
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27 Petitioners are Ellen Bakst, Jane Barnhardt, Carol Buck, Dan Schwartz, Larry Watkins, Don Wilson, Patricia Wilson and  
Agnieszka Winkler.

28 <sup>8</sup> With the exception of Carol Buck, the Bakst Petitioners were all parties in *Bakst*; all the Bakst Petitioners, with the exception  
of Dan Schwartz, were parties in *Barta*.

1 full relief for all three years in question under their individual appeals. *See* Bd. Trans. (Nov. 5, 2012) at  
2 105-1-23, 113:13-24.

3 35. The State Board then ordered the reappraisal of all residential properties “to which an  
4 unconstitutional methodology was applied to derive taxable value during the 2003-2004, 2004-2005,  
5 2005-2006 tax years.” *See* Ord. at 9 (February 8, 2013) (“2012 Equalization Order”) (CER IV at 951).

6 36. The scope of the 2012 Equalization Order included the Bakst Petitioners’ properties  
7 whose values were adjudicated by *Bakst* and *Barta* as unconstitutional in one or more of the three years  
8 in question.

9 37. When the Village League petitioned for judicial review of the State Board’s 2012  
10 Equalization Order, the Bakst Petitioners proceeded on an independent basis, intervening to protect their  
11 final judgments received in *Bakst* and *Barta*. *Ingemanson*, 133 Nev. Adv. Op. 1 at 6-7, 388 P.3d at 221.

12 38. The Bakst Petitioners argued that preclusive effect must be given to *Bakst* and *Barta* in  
13 the statewide equalization of the taxable values of all similarly situated property owners in Incline  
14 Village/Crystal Bay for the three years in question. *Ingemanson*, 133 Nev. Adv. Op. 1 at 13-14, 388 P.3d  
15 at 224 n.8 (the Court declined to reach the preclusion arguments raised).

16 39. The State Board in 2017 refused to consider the preclusive effect of *Bakst* and *Barta* and  
17 denied relief to all taxpayers who had not proceeded with an individual appeal, including certain  
18 individual Bakst Petitioners in one or more of the tax years at issue. Equal. Ord. at 6 (CER IV at 965);  
19 Bd. Trans. (Aug. 29, 2017) at 157:12-25; 158:10-12.

20 40. The State Board affirmed that the unconstitutional values had not been corrected on the  
21 tax rolls.

22 41. The Bakst Petitioners, and similarly situated property owners in Incline Village/Crystal  
23 Bay, were aggrieved by the 2017 Equalization Order because (1) the State Board, in discharging its  
24 equalization function, refused to correct a systemic constitutional infirmity, *i.e.*, granting relief to all  
25 property owners, regardless if an individual appeal had previously been taken, and (2) the State Board  
26 reinstated unconstitutional taxable values for the years in question of any property owner whose  
27 unconstitutional taxable values had been previously adjudicated.

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1           **D.     Valuation and Assessment of Residential Property in Incline**  
2           **Village/Crystal Bay for the Years in Question**

3           42.     In Nevada, improvements and land are valued separately; this matter involves the  
4 valuation of land in Incline Village/Crystal Bay for the three years in question. *See* NRS 361.227.

5           43.     The residential land in Incline Village/Crystal Bay is in the class of all residential property  
6 in the State of the Nevada.

7                     1.   *2003-2004 Tax Year*

8           44.     The 2003-2004 tax year was the first year of a five-year appraisal cycle for Incline  
9 Village/Crystal Bay residential properties and in 2002, the “Assessor performed a mass reappraisal of the  
10 properties in that area to determine their taxable values for the 2003-2004 tax year.” *Bakst*, 122 Nev. at  
11 1405, 148 P.3d at 719.

12           45.     At that time, the Nevada Tax Commission (“NTC”) had failed to fully comply with its  
13 statutory obligations to adopt regulations proscribing uniform valuation methodologies. *Bakst*, 122 Nev.  
14 at 1414, 148 P.3d at 724.

15           46.     In the void left by the NTC, county assessors knew they had few state-sanctioned tools to  
16 appraise residential properties when comparative sales data was insufficient to establish an accurate  
17 taxable value. *Bakst*, 122 Nev. at 1415-1416, 148 P.3d at 725-26.

18           47.     The Assessor could have petitioned the Department to adopt acceptable appraisal  
19 methodologies through the regulatory process to determine taxable values of properties; he chose not to  
20 do so. *See* NRS 360.215(2).

21           48.     “Concerned that it would be difficult to determine comparable sales for land in the Incline  
22 Village/Crystal Bay area for the 2003-2004 tax year, the Assessor decided to use four methodologies to  
23 adjust comparable sales for the reappraisal period.” *Bakst*, 122 Nev. at 1406, 148 P.3d at 719.

24           49.     The Assessor “created a set of methodologies that were unique to the Incline Village and  
25 Crystal Bay areas.” *Bakst*, 122 Nev. at 1416, 148 P.3d at 726.

26           50.     “These disputed methodologies adjusted the comparable sales for (1) a parcel’s view of  
27 Lake Tahoe, using a point system to classify each parcel and increasing the values accordingly; (2) a  
28 five-step ‘rock’ classification, which raised the value of the land based on its relationship to the lakefront;  
(3) a ‘paired sales [time adjustment] analysis’ which estimated the value of a subject property based on

1 previous sales of comparable properties adjusted, however, as though those properties had sold currently;  
2 and (4) for properties with residences slated to be demolished for rebuilding, the Assessor adopted a  
3 ‘teardown’ method to determine comparable sales in which the entire value of an improved property was  
4 assigned to the land.” *Bakst*, 122 Nev. at 1406, 148 P.3d at 719.

5 51. The appraisal methodologies the Assessor created for residential properties in Incline  
6 Village/Crystal Bay were not used in the rest of the County, or the rest of the State of Nevada. *Bakst*,  
7 122 Nev. at 1412, 148 P.3d at 723-26.

8 52. The individual Village League and Bakst Petitioners, along with other similarly situated  
9 residents of Incline Village/Crystal Bay, received notices of value from the Assessor that in many  
10 instances increased the taxable value of their homes for the 2003-2004 tax year. *Bakst*, 122 Nev. at 1405,  
11 148 P.3d at 719 (“After receiving dramatically increased tax bills [for the 2003-2004 tax year], the  
12 Taxpayers questioned the methods utilized by the Assessor to value their real property.”).

13 2. *2004-2005, 2005-2006 Tax Years*

14 53. The 2004-2005 and 2005-2006 tax years, years two and three of the five-year appraisal  
15 cycle for residential properties in Incline Village/Crystal Bay, were both factor years.

16 54. In a factor year, the “Assessor was not compelled to physically reappraise each property’s  
17 value. If the Assessor did not reappraise a property, he was required by statute to determine the property’s  
18 current assessed value by multiplying the prior year’s assessed value by a factor . . . developed by the  
19 Assessor and approved by the Tax Commission.” *Barta*, 124 Nev. at 618, 188 P.3d at 1096.

20 55. The factor developed by the Assessor for 2004-2005 was 1.0 and the factor for 2005-2006  
21 was 1.08, and the Assessor established the taxable values of residential properties in Incline  
22 Village/Crystal Bay by using the 2003-2004 base value as adjusted by the factors for each year. *See Bd.*  
23 *Trans.* (Nov. 5, 2012) at 101:14-25; *Bd. Trans.* (Dec. 3, 2012) at 6 (testimony of then-Assessor Josh  
24 Wilson in both hearings); (CER I at 55, 63).

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1           **E.     Procedural History**

2           56.     Beginning in 2003, many property owners pursued their individual challenges through the  
3 administrative and/or court system for the tax years in question. *See Bakst*, 122 Nev. at 1406, 148 P.3d  
4 at 719-20; *Barta*, 124 Nev. at 618, 627-28, 188 P.3d at 1096, 1102; *Village League to Save Incline Assets*  
5 *v. State, Board of Equalization (Ingemanson)*, 133 Nev. Adv. Op. 1 at 2-3, 388 P.3d 218, 219-220 (2017).

6           57.     In 2003, the Village League brought the original complaint in this matter seeking, among  
7 other claims, to compel the State Board to perform its statewide equalization mandate under NRS 361.395  
8 for the 2003-2004 tax year to address the Assessor’s systemic errors. *Comp. for Decl. and Related Relief*,  
9 (Nov. 13, 2003).

10          58.     The Village League’s complaint was twice dismissed, twice appealed to the Nevada  
11 Supreme Court, and twice reversed as to the equalization claim and remanded to this Court. *Village*  
12 *League v. State, Dep’t of Taxation, Docket no. 43441* (Order Affirming in Part, Reversing in Part and  
13 Remanding, March 19, 2009) (“2009 Village League”); 2012 Village League.

14          59.     In 2012, when Nevada Supreme Court remanded the equalization action to this Court for  
15 the second time, the Court had found that the State Board had failed to “to conduct public hearings with  
16 regard to statewide equalization” and “no hearings have been held to equalize all property values in the  
17 state.” 2012 Village League at 5.

18          60.     This Court issued a writ of mandamus directing the State Board to engage in its  
19 equalization function for each of the tax years, 2003-2004 through 2010-2011, inclusive, and to hold  
20 hearings on the equalization grievances brought forward by taxpayers. *Order and Judgment for Issuance*  
21 *of Writ of Mandamus, Writ of Mandamus (August 21, 2012) (CER 551-555)*

22          61.     During the nine years the equalization action bounced back and forth between the district  
23 court and the Supreme Court, many Incline Village/Crystal Bay residential property owners continued to  
24 challenge their property valuations, filing appeals for the 2004-2005, 2005-2006 and/or later tax years.

25          62.     The Bakst Petitioners, and other impacted property owners, including some of the  
26 individual Village League Petitioners, were among those who contested their taxable values as  
27 determined by the Assessor for the tax years 2003-2004, 2004-2005, and/or 2005-2006 tax years.

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1           63. Taxpayers were awarded two judgments, affirmed by the Court in *Bakst* and *Barta*,  
2 holding that the respective taxable values of their residential properties for those tax years had been  
3 determined in violation of Art. 10 § 1 of the Nevada Constitution.

4                   1.       *First Nevada Supreme Court Decision – Bakst*

5           64. The Nevada Supreme Court, on December 28, 2006, rendered its decision in *Bakst* holding  
6 that the Assessor had violated the Nevada Constitution when he used non-uniform methods to value  
7 residential properties in Incline Village/Crystal Bay for the 2003-2004 tax year. 122 Nev. at 1409, 148  
8 P.3d at 719-720.

9           65. The *Bakst* Court held that Article 10 Section 1 of the Nevada Constitution guarantees a  
10 “uniform and equal rate of assessment and taxation” and under that constitutional mandate, “methods  
11 used for assessing taxes throughout the state must be ‘uniform.’” 122 Nev. at 1413, 148 P.3d at 724.

12           66. The Court held that the NTC had been derelict in its duties when it failed to adopt  
13 regulations that allowed the Assessor to perform his statutory and constitutional function. *Bakst*, 122  
14 Nev. at 1416-1417, 148 P.3d at 725-26.

15           67. The Court found that the appraisal methodologies the Assessor created for residential  
16 properties in Incline Village/Crystal Bay were not used in the rest of the County, or the rest of the State  
17 of Nevada, and concluded that “none of the four methodologies used by the Assessor in 2002 to assess  
18 property values in Incline Village and Crystal Bay were constitutional”. *Bakst*, 122 Nev. at 1416, 148  
19 P.3d at 726.

20           68. The Court, affirming the district court below, held that the unconstitutional 2003-2004  
21 valuations were “null and void.” *Bakst*, 122 Nev. at 1416, 148 P.3d at 726.

22           69. The Court ordered that the 2003-2004 valuations be replaced with constitutional 2002-  
23 2003 values.

24           70. The Court also affirmed the order of the district court that the taxpayers were entitled to  
25 refunds with interest on the excess funds collected. *Bakst*. 122 Nev. at 1417, 148 P.3d at 726.

26                   2.       *Second Nevada Supreme Court Decision – Barta*

27           71. The County and the State Board upheld the Assessor’s unconstitutional values in the next  
28 succeeding tax year, 2004-2005, claiming that because the 2004-2005 taxable values of the residential

1 properties in Incline Village/Crystal Bay had been determined utilizing a statutorily prescribed method  
2 of valuation, “factoring,” that it was a constitutional methodology. *Barta*, 124 Nev. at 616, 188 P.3d at  
3 1095.

4 72. The Court held that nothing significant distinguished the cases before it, factually or  
5 legally, from *Bakst*. *Barta*, 124 Nev. at 616, 188 P.3d at 1095.

6 73. The 2004-2005 values suffered from the same infirmity because they were based upon an  
7 adjustment of the prior tax year’s unconstitutional valuation. *Barta*, 124 Nev. at 616, 188 P.3d at 1095.

8 74. In *Barta*, the Nevada Supreme Court again rejected all of the arguments of the County and  
9 State and affirmed the district court’s order that the petitioners were entitled to a refund for the 2004-  
10 2005 tax year. 124 Nev. at 628, 188 P.3d at 1103.

11 75. The Court in *Barta* held that “Nevada’s Constitution guarantees ‘a uniform and equal rate  
12 of assessment and taxation.’ That guarantee of equality should be the boards of equalization’s  
13 predominant concern[.]” *Barta*, 124 Nev. at 627, 188 P.3d at 1102.

14 76. *Barta* recognized that the State Board “clearly has a duty to equalize property valuations  
15 throughout the state[.]” a duty separate from its duty to “hear appeals of decisions made by the county  
16 boards of equalization.” *Barta*, 124 Nev. at 627, 188 P.3d at 1102.

17 77. The Taxpayers argued “that if the State Board had performed its duty to equalize property  
18 values statewide, then it would have recognized the unequal property taxation between them and the  
19 taxpayers in the rest of the state.” *Barta*, 124 Nev. at 628, 188 P.3d at 1102-3.

20 78. The Court found that “[t]he record reflects that the State Board failed to explain how it  
21 equalized property values for the 2004-2005 tax year, if indeed it did so[.]” *Barta*, 124 Nev. at 628, 188  
22 P.3d at 1103.

#### 23 **F. Prior State Board Equalization Decisions**

24 79. It is common practice for the County and/or State Boards to equalize property valuations  
25 to correct a widespread error in the Assessor’s valuation and assessment of real property brought to their  
26 attention through an individual property owner appeal.

27 80. In such instances, the County and/or State Boards corrected errors for all impacted  
28 residential property owners, not just the individual property owner who brought the challenge:

1                   1.     *Washoe County, et al v. Ross Pendergraft Trust, et al, Notice of*  
2                                 *Decision (Oct. 14, 2003) (CER IV at 856-859)*

3             81.     This State Board decision involved one hundred and one (101) residential lakefront  
4 properties in Incline Village: twenty-four (24) individual property owners had appealed their property  
5 tax valuation to the County Board; the other seventy-seven (77) property owners did not challenge their  
6 values. Dec. at 1 (CER IV at 856).

7             82.     The County Board determined that the Incline Village lakefront properties did not  
8 appreciate during the prior tax year as determined by the Assessor and, thus, had been improperly valued.  
9 Dec. at 1 (CER at 856).

10            83.     The County Board made a ten percent (10%) downward adjustment in taxable values for  
11 all 101 properties. Dec. at 1-2 (CER IV at 856-57).

12            84.     The Assessor appealed to the State Board. Dec. at 1 (CER IV at 856).

13            85.     The State Board concluded that it had the “authority to determine and equalize the taxable  
14 values in the State.” Dec. at 3 (CER IV at 858).

15            86.     The State Board found the County Board’s decision to equalize all 101 lakefront Incline  
16 properties impacted by the Assessor’s error to be “reasonable and supported by evidence in the record.”  
17 Dec. at 2 (CER IV at 857).

18            87.     The State Board upheld the County Board decision and instructed the County Comptroller  
19 to “certify the assessment roll of the county consistent with this decision.” Dec. at 3 (CER IV at 858).

20                   2.     *In re: Equalization of Properties Located on Tiller Drive, Equalization*  
21                                 *Order (July 12, 2004) (CER IV at 842-848)*

22            88.     This matter involved the State Board discharging its equalization function to address  
23 errors in the Assessor’s valuation of properties in a certain neighborhood in the Mill Creek subdivision  
24 in Incline Village. Ord. at 1 (CER IV at 842).

25            89.     There were a total of thirty-five (35) parcels in the Tiller Drive area of the Mill Creek  
26 subdivision. Ord. at 3-4 & Ex. A (CER IV at 844-46).

27            90.     Individual taxpayers who owned three of the 35 parcels in the Tiller Drive area challenged  
28 their property valuations, asserting “their properties had been inequitably treated compared to other  
properties in the Mill Creek subdivision.” Ord. at 1 (CER IV at 842).

1 91. The other Tiller Drive area property owners did not file individual appeals. Ord. at 1-2  
2 (CER IV at 842-43).

3 92. The State Board found that “all properties in the Tiller Drive area of the Mill Creek  
4 subdivision should have a lower base lot value to be consistent with the comparable sales found  
5 throughout the Mill Creek subdivision.” Ord. at 2 (CER IV at 843).

6 93. The State Board concluded that it “has the authority to determine the taxable values in the  
7 State and to equalize property pursuant to the requirements of NRS 361.395.” Ord. at 2 (CER IV at 843).

8 94. The State Board ordered that all 35 of the Tiller Drive area “properties be equalized by  
9 reducing the base lot value. The Washoe County Comptroller is instructed to correct the assessment roll  
10 by adjusting the assessed valuation[s].” Ord. at 3 (CER IV at 844).

11 3. *In re: Consideration of Assessor’s Appeal of Equalization Decision,*  
12 *Notice of Equalization Decision (Oct. 9, 2009) (CER II at 438-47)*

13 95. In this matter, the State Board, affirmed the County Board decision, equalizing all  
14 residential property values in Incline Village/Crystal Bay for the 2006-07 tax year, the fourth year in the  
15 five-year appraisal cycle, to constitutional levels (2002-2003 tax year, as factored.) Dec. at 1 (CER II at  
16 438).

17 96. The County Board had granted relief to 300 individual taxpayers who filed appeals of the  
18 property tax valuations for the 2006-2007 tax year in accordance with *Bakst*. Dec. at 1 (CER II at 438).

19 97. When the County replaced void unconstitutional 2006-2007 taxable values with  
20 constitutional 2002-2003 values, as factored, for the three hundred individual appealing taxpayers, the  
21 County Board determined that it “had created an unequal rate of taxation for the 2006-2007 tax year.”  
22 Dec. at 1 (CER II at 438).

23 98. The County Board did not limit the scope of its equalization order to only those properties  
24 who had undisputed unconstitutional values, but to all properties in Incline Village/Crystal Bay to cure  
25 the disparity between the valuation and assessment between the 300 parcels and the remainder of the  
26 area. Dec. at 1-2, 5 (CER II at 438-39, 442); *Village League to Save Incline Assets v. State ex rel Bd. of*  
27 *Equal.*, 124 Nev. 1079, 1090, 194 P.3d 1254, 1261-62 (2008) (“2008 Village League”).

28 ///

1           99.     Discharging its equalization function, the County Board reset the taxable values for the  
2 approximately 8,700 other properties in the Incline Village and Crystal Bay areas to 2002-2003 levels.  
3 Dec. at 1, 5 (CER II at 438, 442) (quoting County Board).

4           100.    The Assessor appealed to the State Board. Dec. at 2 (CER II at 439).

5           101.    The State Board initially remanded to the County Board, which was contested by  
6 Taxpayers. In the *2008 Village League* case, the Court granted taxpayers’ writ of mandate and directed  
7 the State Board to consider the Assessor’s appeal of County Board’s equalization decision. 124 Nev. at  
8 1091, 194 P.3d at 1262.

9           102.    The *2008 Village League* Court rejected the argument of the State Board that the County  
10 Board had to make findings that all residential properties in Incline Village/Crystal Bay were  
11 unconstitutionally valued: (1) the County Board had made specific findings that the 300 properties  
12 subject to individual appeals were unconstitutionally valued and the values reset to 2002-2003 levels,  
13 and (2) the County Board reduced the values of all other properties in Incline Village to those same levels  
14 to make them equal. 124 Nev. at 1090, 194 P.3d at 1261-62.

15           103.    On remand, the State Board found that the “Assessor did not present sufficient evidence  
16 to support a value different from that established by the equalization action of the County Board. The  
17 State Board found the County Board’s decision to lower the Assessor’s value on 8,700 properties to the  
18 same level as other properties previously decided, should be upheld.” Dec. at 5 (CER II at 442).

19           104.    The State Board found that the County Board changed the values of the 300 individual  
20 property owners “because of the use of unconstitutional methods of valuation by the Assessor; equity  
21 and fairness requires all properties in the same geographic area receive the same treatment.” Dec. at 5  
22 (CER II at 442).

23           105.    The State Board concluded that the Assessor had failed to carry his burden of proof that  
24 the County’s decision reducing valuations for all Incline Village/Crystal Bay was “unjust and  
25 inequitable” because “the values for the ‘8700’ properties were inconsistent with the values for the  
26 ‘300’.” Dec. at 5 (CER II at 442).

27           106.    The State Board concluded that “[p]ursuant to the Taxpayer’s Bill of Rights [NRS  
28 361.291(1)(a)], each taxpayer has the right to be treated by officers and employees of the Department



1 with courtesy, fairness, uniformity, consistency and common sense. In the absence of regulations  
2 regarding the equalization, the State Board employed a fairness standard in determining whether the  
3 County Board’s decision should be overturned.” Dec. at 6 (CER II at 443).

4 107. The State Board denied the Assessor’s petition and ordered the County Comptroller to  
5 “certify the assessment roll of the county consistent with this decision[.]” Dec. at 6 (CER II at 443).

6 108. The 2009 Equalization Decision equalizing all 2005-2006 taxable values of Incline  
7 Village/Crystal Bay properties to constitutional 2002-2003 levels, as factored, is a final decision of the  
8 State Board.<sup>9</sup>

9 **G. Proceedings Leading to 2017 Equalization Order**

10 109. On August 21, 2012, this Court issued a writ of mandate to the State Board, compelling  
11 the State Board to “notice and hold a public hearing, or hearings as may be necessary, to hear and  
12 determine the grievances of property owner taxpayers regarding the failure, or lack, of equalization of  
13 real property valuations throughout the State of Nevada for the 2003-2004 tax year and each subsequent  
14 tax year to and including the 2010-2011 tax year and to raise, lower or leave unchanged the taxable value  
15 of any property for the purpose of equalization.” Writ. at 1 (CER III at 554).

16 110. The Court mandated the State Board to certify any change made in property valuations to  
17 the County, Assessor and Treasurer, and upon receipt, the County was mandated to “issue such additional  
18 tax statement(s) or tax refund(s) as the changed valuation may require to satisfy the statutory provisions  
19 for the collection of property taxes.” Writ. at 2 (CER III at 555).

20 *1. 2012 State Board Hearings*

21 111. Pursuant to the writ of mandate, the State Board held three hearings: September 18,  
22 November 5 and December 3, 2012. CER I at 1-4 (hearing notices).

23 a. November Hearing

24 112. At the November 5, 2012 hearing, the Assessor testified that for the 2003-2004, 2004-  
25 2005 and 2005-2006 tax years, one or more constitutional valuation methodologies identified in *Bakst*  
26  
27

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28 <sup>9</sup> The County and Assessor did petition for judicial review, but the appellants failed to name and serve all taxpayers and on that basis, the district court dismissed the petition for judicial review; the district court’s decision was affirmed by the Nevada Supreme Court. *See Washoe County v. Otto*, 128 Nev. 424, 282 P.3d. 719 (2012).

1 and *Barta* had been used to value every stand-alone single family residence in the Incline Village/Crystal  
2 Bay area as well as approximately 900 condominiums. Bd. Trans. (Nov. 5, 2012) at 94:8-21.

3 113. At the end of its November 5, 2012 hearing, the State Board took action by passing the  
4 following motion made by Member Marnell:

5 I'm going to make a motion that . . . for any taxpayer within Incline Village and Crystal  
6 Bay that was unconstitutionally assessed for the '03'04, '04-05, '05-'06 years . . .that  
7 number one, my motion would be first that the assessor confirm that the data is accurate,  
8 and those people who were unconstitutionally assessed. Part two is that we would go back  
to the last constitutional year, which I believe is the '02-'03 years.[.]

9 Bd. Trans. (Nov. 5, 2012) at 100:10-23.

10 114. The then-Assessor, Josh Wilson, and State Board Chairman Wren, both concurred (Mr.  
11 Wilson by nodding and Chairman Wren by verbal confirmation) that the 2002-2003 tax year was the last  
12 constitutionally valued and assessed year. Bd. Trans (Nov. 5, 2012) at 100:24-25.

13 115. There was additional discussion that the values for 2004-2005 and 2005-2006 would be  
14 factored, which Member Marnell incorporated into his motion. Bd. Trans. Trans. (Nov. 5, 2012) at 101:1-  
15 25.

16 116. Member Marnell made it clear that his motion applied not just to property owners who  
17 had filed appeals but also to all impacted property owners: "to be equal for all those who had an  
18 unconstitutional appraisal." Bd. Trans. (Nov. 5, 2012) at 105:17-23.

19 117. The motion passed unanimously. Bd. Trans. (Nov. 5, 2012) at 113:20-21.

20 118. The State Board's action was consistent with *Bakst* and *Barta*, which set the template for  
21 relief in discharging the State Board's equalization function: replacement of unconstitutional values with  
22 constitutional values, and payment of the resulting refund of tax collected on the difference between the  
23 two values (assuming values were lowered).

24 b. December Hearing

25 119. At the hearing on December 3, 2012, pursuant to the State Board's directive (part one of  
26 Member Marnell's motion), the Assessor provided three lists of approximately 5,500 properties at Incline  
27 Village/Crystal Bay that he determined had been valued using unconstitutional methodologies for the  
28 2003-2004, 2004-2005, and 2005-2006 tax years. Bd. Trans. (Dec.3, 2012) at 5-6; CER III 545-550 (first

1 and last pages of lists of unconstitutionally valued properties in Incline Village/Crystal Bay for three  
2 years in question).

3 120. The Assessor represented to the Board that if the unconstitutional taxable values of the  
4 identified properties on the lists were replaced with constitutional 2002-2003 values, as factored, there  
5 would be a reduction in value in each of the three years of approximately \$698 million (2003-2004), \$657  
6 million (2004-2005) and \$564 million (2005-2006). Bd. Trans. (Dec.3, 2012) at 5-6.

7 121. The State Board members were concerned with the loss of tax revenue if it implemented  
8 the motion unanimously passed at the November 5, 2012 hearing.

9 122. Member Johnson stated “we’re coming back to a solution that’s going to reduce the  
10 taxable rolls in Washoe County by 1.9 billion dollars and I struggle with that.” Bd. Trans. (Dec.3, 2012)  
11 at 73.

12 123. Member Marnell made motion to have the Assessor “reappraise all properties for those  
13 three tax years that were unconstitutionally appraised or identified as unconstitutionally appraised and to  
14 determine the new taxable value.” Bd. Trans. (Dec.3, 2012) at 77.

15 124. Member Marnell stated “I’m assuming that that’s going to cost them [the County] some  
16 money. But I’m sure it’s far better than a 1.5 billion dollar property tax drop.” Bd. Trans. (Dec.3, 2012)  
17 at 77.

18 125. No action was taken by the State Board to vacate the decision made at the November 5,  
19 2012 hearing to equalize unconstitutional values to constitutional levels for the three years in question  
20 (part two of Member Marnell’s motion). See Bd. Trans. (Dec 3, 2012) at 58-80.

21 2. *2012 Equalization Order*

22 126. In its 2012 Equalization Order after the December hearing, dated February 3, 2013, the  
23 State Board found that residential properties in Incline Village/ Crystal Bay were valued in each of the  
24 2003-2004, 2004-2005, and 2005-2006 tax years using methodologies that were unconstitutional under  
25 *Bakst* and *Barta*. 2012 Ord. at 8 (CER IV at 950).

26 127. The State Board found “no evidence to show methods found to be unconstitutional by the  
27 Nevada Supreme Court in the *Bakst* decision were used outside the Incline Village and Crystal Bay area.”  
28 2012 Ord. at 8 (CER IV at 950).

1           128. The State Board “determined that no statewide equalization was required. However, . . .  
2 the State Board determined certain regional or property type equalization [in Incline Village/Crystal Bay]  
3 was required.” 2012 Ord. at 9 (CER IV at 951).

4           129. The State Board ordered the Assessor “to reappraise all residential properties located in  
5 Incline Village and Crystal Bay to which an unconstitutional methodology was applied to derive taxable  
6 value during the tax years 2003-2004, 2004-2005, 2005-2006.” 2012 Ord. at 9 (CER IV at 951).

7                   3.       *Petition for Judicial Review of 2012 Equalization Order*

8           130. In March of 2013, the Village League Petitioners petitioned this Court for judicial review  
9 of the reappraisal portion of the 2012 Equalization Order.

10           131. The Bakst Petitioners, “whose property values had already been established, filed a  
11 motion to intervene in the district court action, arguing that the 2012 Equalization Order directing  
12 reappraisal of their properties threatened the previous final judgments. The district court granted the  
13 motion to intervene.” *Ingemanson*, 133 Nev. Adv. Op. 1 at 6-7, 388 P.3d at 221.

14           132. This Court dismissed the 2013 petition for judicial review on the basis that the 2012  
15 Equalization Order was not final. *Ingemanson*, 133 Nev. Adv. Op. 1 at 6-7, 388 P.3d at 221.

16           133. The Village League Petitioners and Bakst Petitioners appealed.

17                   4.       *Nevada Supreme Court’s Decision in Ingemanson*

18           134. On January 26, 2017, the Nevada Supreme Court issued *Ingemanson*, reversing the  
19 dismissal of the petition for judicial review. 133 Nev. Adv. Op. 1, 388 P.3d.

20           135. The *Ingemanson* Court stated:

21           [i]n *Barta and Bakst*, this court concluded, as a remedy, that because property is physically  
22 reappraised once every five years and the assessment methods used in 2002 were  
23 unconstitutional, the taxable values for the unconstitutionally appraised properties were  
24 void for the tax years beginning in 2003–04 and ending in 2007–08. As a result, property  
taxes in those years were to be based on the taxable values previously established for the  
2002–03 tax year.

25 133 Nev. Adv. Op. 1 at 4, 388 P.3d at 220 (internal citations omitted).

26           136. The Court stated that:

27           The State Board was clearly attempting to engage in its equalization function pursuant to  
28 NRS 361.395(1) when it ordered reappraisals. As such, an appeal directly to the State  
Board would be the only way for a taxpayer to challenge the reappraised taxable value. .  
. . [H]owever, only taxpayers whose valuations rise as a result of the reappraisal process

1 are entitled to a hearing. But this remedy fails to take into consideration the remedies  
2 already afforded the Bakst intervenors and the affect those remedies have on the  
equalization process for the region.

3 *Ingemanson*, 133 Nev. Adv. Op. 1 at 13, 338 P.3d at 224.

4 137. The *Ingemanson* Court found that the State Board’s jurisdiction is restricted “to equalizing  
5 the property values and hearing appeals from the county board valuations, not determining matters of law  
6 unrelated to valuation. Therefore, the Bakst intervenor . . . would not be allowed to raise their issue or  
7 claim preclusion arguments to the State Board.” 133 Nev. Adv. Op. 1 at 13-14, 338 P.3d at 224.

8 138. The State Board and County argued that the Court did not have jurisdiction to review the  
9 2012 Equalization Order on two grounds: (1) the State Board was not acting in a legislative, non-  
10 adjudicative capacity, and (2) the order was not a final order in a contested case. *Ingemanson*, 133 Nev.  
11 Adv. Op. 1 at 7, 338 P.3d at 222.

12 139. The Court rejected both arguments, concluding that: (1) when the State Board is  
13 performing its equalization function, it is acting in a quasi-judicial capacity, and (2) the 2012 Equalization  
14 Order was a ruling in a contested case and review of the final equalization decision after the reappraisal  
15 was not an adequate remedy at law for the Village League and Bakst Petitioners. *Ingemanson*, 133 Nev.  
16 Adv. Op. 1 at 8-14, 338 P.3d at 222-24.

17 140. The Court concluded that “NRS 361.395 does not provide the State Board with authority  
18 to order reappraisals and the 2010 regulation purporting to provide the State Board with such authority  
19 does not apply retroactively to the tax years at issue in this case.” *Ingemanson*, 133 Nev. Adv. Op. 1 at  
20 18, 388 P.3d at 226.

21 141. The Nevada Supreme Court reversed this Court’s dismissal of the petition for judicial  
22 review and remanded “this matter to the district court with instructions for it to grant the petition for  
23 judicial review, vacate the Equalization Order directing new appraisals, and conduct further proceedings  
24 to satisfy the requirements of NRS 361.395.” *Ingemanson*, 133 Nev. Adv. Op. 1 at 18, 388 P.3d at 226.

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1           5.       *Remand to this Court*

2           142.    Upon remand to this Court, the Village League filed a motion requesting that this Court  
3 enter an order returning Incline Village and Crystal Bay residential property values for the 2003-2004,  
4 2004-2005, and 2005-2006 years to their 2002-2003 constitutional levels and require its implementation  
5 by the County Assessor and Treasurer. Mot. for Entry of Judg., (April 25, 2017).

6           143.    The State Board and the County both opposed the motion.

7           144.    The County collaterally attacked the judgments of the Bakst Petitioners and similarly  
8 situated property owners in Incline Village/Crystal Bay with adjudicated taxable values for the 2003-  
9 2004, 2004-2005, 2005-2006 tax years, stating that “the only viable actions this Court could take is to  
10 take no action at all, or to raise the values of the *Bakst* properties.” Cty. Opp. at 22:7-8 (May 12, 2017).

11          145.    The Bakst Petitioners filed a response requesting that this Court determine the legal issues  
12 of the finality of their judgments and the preclusive effect of those judgments, issues which the State  
13 Board did not have the authority to determine per *Ingemanson*, to protect the Bakst Petitioners judgments  
14 from further collateral attack. See Bakst Resp. (May 25, 2017).

15          146.    Over the objections of taxpayers, this Court remanded the matter to the State Board to  
16 “conduct further proceedings pursuant to its statutory authority under NRS 361.395.” Order (July 17,  
17 2017).

18          147.    This Court did not address the Bakst Petitioners’ finality and preclusion issues.

19           6.       *2017 Equalization Hearing*

20          148.    The State Board scheduled, noticed and held a hearing on August 29, 2017. CER IV at  
21 967-69.

22          149.    The 2017 State Board hearing was a continuation and completion of the equalization  
23 proceeding (as corrected by the Nevada Supreme Court’s decision in *Ingemanson*) that the State Board  
24 began in 2012.

25          150.    The State Board heard no new evidence and the proceeding was limited to oral  
26 presentations by the parties, including the Village League and Bakst Petitioners. Bd. Trans (Aug. 29,  
27 2017) at 59:17-25, 60:1-25, 61:1-22.

28        ///

1           151. At the hearing, the Petitioners argued that, as confirmed by the Nevada Supreme Court in  
2 *Ingemanson, Bakst and Barta*, the Nevada Constitution guarantees a uniform and equal rate of assessment  
3 and taxation, which requires the State Board to equalize unconstitutional taxable values for the three  
4 years in question to constitutional levels. Bd. Trans. (Aug. 29, 2017) at 69:9-16; 70:1-25, 71:1-2; 75:1-  
5 12; 80:1-7.

6           152. The Bakst Petitioners, citing to the *Barta* decision, argued that the State Board’s  
7 “predominant concern” is the constitutional guarantee of equality. Bd. Trans. (Aug. 29, 2017) at 69:21-  
8 23.

9           153. The Bakst Petitioners argued that NRS 361.395 and *Ingemanson* bound the State Board,  
10 and accordingly, the State Board is required “to take certain rolls, not all rolls, not the rolls that are  
11 adjusted by the Nevada Supreme Court, but certain rolls that were adjusted by the county, and perform  
12 [its] functions contained therein.” Bd. Trans. (Aug. 29, 2017) at 68:18-25.

13           154. During the hearing, State Board Member Schiffmacher inquired of State Board counsel  
14 whether the “judicial remedy” afforded the Bakst or Barta property owners set a precedent for the State  
15 Board, and counsel responded that the State Board was not “obligated by Bakst” and “the [*Ingemanson*]  
16 Court didn’t say that you are.” See Bd. Trans. (Aug. 29, 2017) 157:12-25; 158:10-12.

17           **H. 2017 Equalization Order**

18           155. Approximately three months after the August 2017 hearing, the State Board issued and  
19 served the 2017 Equalization Order on November 30, 2017 (which was dated October 30, 2017),  
20 concluding that there was not a lack of equalization at Incline Village/Crystal Bay for the three tax years  
21 in question. Ord. at 7 (CER IV at 966).

22           156. The State Board represented that it had “considered the tax rolls and the assessment ratio  
23 studies, in addition to the documents in the record, to determine how it should perform its equalization  
24 function” and “[t]he tax rolls, ratio studies and other documents in the record do not indicate an  
25 equalization problem in Incline Village/Crystal Bay.” Ord. at 6, 7 (CER IV at 965, 966).

26           157. The tax rolls for the 2003-2004, 2004-2005, and 2005-2006 were not in the administrative  
27 record before the State Board. Bd. Brf. at 14; Cty. Brf. at 37.

28 ///

1           158. The ratio studies purportedly relied upon by the State Board did not include Incline  
2 Village/Crystal Bay for the 2003-2004, 2004-2005 tax year, and for the 2005-2006 tax year, to the extent  
3 the ratio study covered all areas of Washoe County, the sample size was so small it was not statistically  
4 significant for any particular area of the County. CER II at 448-66, III at 467-28; TOP (May 10, 2017)  
5 at 84-88.

6           159. The State Board concluded “[a]pplying a rollback as requested by petitioners would cause  
7 a large equalization problem within Washoe County, between the Lake Tahoe Basin and the balance of  
8 the County and the state as a whole as the relationship of assessment value to the true tax value would  
9 not be the same.” Ord. at 7 (CER IV at 966).

10           160. The State Board’s conclusion is contradictory to the conclusions reached by the State  
11 Board in the 2012 Equalization Order that (1) there was an equalization problem in Incline  
12 Village/Crystal Bay resulting from the use of unconstitutional methodologies, (2) those methodologies  
13 were only used in Incline Village/Crystal Bay, and (3) there was not an equalization problem in the rest  
14 of Washoe County or the State. 2012 Ord. at 8-9 (CER IV at 950-51).

15           161. The final “Order” portion of the State Board’s decision states:

16           Based on a preponderance of the evidence in the administrative record, the testimony  
17 during the proceeding . . . the State Board held, by a vote of 4-1 (Member Harper  
18 opposed), that there is not an equalization problem in the Incline Village/Crystal Bay area  
19 of Washoe County for the tax years 2003-2004, 2004-2005, 2005-2006 and further that  
20 providing the relief requested by Village League would create an equalization problem  
21 for Washoe County and statewide. The State Board ordered that the property valuations  
for Incline Village/Crystal Bay for the tax years 2003-2004, 2004-2005, 2005-2006 are  
equalized based on the tax rolls, the ratio studies, and the evidence before the State Board.

22 Equal. Ord. at 7 (CER IV at 966).

23           162. The Petitioners timely sought judicial review of the 2017 Equalization Order by filing the  
24 Petition on December 29, 2017.<sup>10</sup>

25           163. This Court finds that the majority of the above Findings of Fact are undisputed as  
26 established in Nevada Supreme Court decisions, the State Board’s orders and the admissions of the State  
27 Board and County.

28 \_\_\_\_\_  
<sup>10</sup> The Petition was filed in the First Judicial District Court, with a “protective” Notice and Petition for Review of State Board  
Action on Remand made in this Court. The First Judicial Court later entered an order transferring venue to this Court.



1 **CONCLUSIONS OF LAW**

2 **A. Jurisdiction**

3 1. The Petition brought pursuant to NRS 361.410 and NRS 233B.130 was timely filed within  
4 thirty (30) days of service of the Equalization Order in accordance with NRS 233B.130(2).

5 2. The County and State both argue that this Court does not have jurisdiction to review the  
6 2017 Equalization Order.

7 3. The County argues that the 2017 Equalization Order is not reviewable because it is not a  
8 final decision in a contested case and there is no process for an individual taxpayer to petition the State  
9 Board for equalization of their property. Cty. Brf. at 3, 13.

10 4. The State Board argues that the 2017 Equalization is not reviewable by this Court because  
11 the State Board did not increase any taxable values when it equalized properties in Incline Village/Crystal  
12 Bay. Bd. Brf. at 17:12, 17-18.

13 5. This Court concludes as a matter of law that the arguments of the County and State are  
14 without merit.

15 6. Taxpayers are not required to petition the State Board to conduct its statewide equalization  
16 function because NRS 361.395(1) mandates the State Board to discharge its equalization function on an  
17 annual basis.

18 7. During the mandamus proceeding leading to the Court’s 2012 Village League decision,  
19 the State Board admitted to the Supreme Court that it had never engaged in its statewide equalization  
20 function under NRS 361.395, resulting in the Court’s remand and district court’s issuance of the writ of  
21 mandate compelling the State Board to conduct statewide equalization proceedings. 2012 Village  
22 League, Lexis 279 at 5-6; Ord. & Writ (CER III at 551-555).

23 8. The final action an agency takes under mandate of the court is subject to review;  
24 otherwise, an agency would avoid judicial scrutiny. *See Estate of Adams v. Fallini*, 132 Nev. Adv. Op.  
25 81, 386 P.3d 621 (2016) (mandate rule requires lower courts to effectuate a high court’s ruling on  
26 remand).

27 9. *Ingemanson* held that when the State Board engages in its statewide equalization function,  
28 it is an “adjudicative quasi-judicial function” because it notices hearings, takes evidence and hears

1 testimony, and issues findings of fact and conclusions of law. 133 Nev. Adv. Op. 1 at 8-9, 388 P.3d at  
2 222-23.

3 10. *Ingemanson* noted the “adversarial nature of the State Board’s annual meetings because  
4 they are open to the public, permit individual taxpayers to challenge a property tax assessment, require  
5 public notice, and allow taxpayers to be represented by an attorney.” 133 Nev. Adv. Op. 1 at 9, 388 P.3d  
6 at 222 (*citing Marvin v. Finch*, 126 Nev. 168, 177, 232 P.3d 425, 431 (2010)).

7 1. *NRS 361.395(2) does not preclude judicial review.*

8 11. NRS 361.395(2) affords a separate administrative process for taxpayers who were not  
9 participants in an equalization proceeding and whose property values will be raised because of the  
10 equalization:

11 If the State Board of Equalization proposes to increase the valuation of any property on  
12 the assessment roll:

13 (a) Pursuant to paragraph (b) of subsection 1, it shall give 30 days’ notice to interested  
14 persons by first-class mail.

15 (b) In a proceeding to resolve an appeal or other complaint before the Board pursuant to  
16 NRS 361.360, 361.400, 361.402 or 361.403 [appeals of decisions of county boards of  
17 equalization, the Department of Taxation or NTC], it shall give 10 days’ notice to  
18 interested persons by registered or certified mail or by personal service.

19 A notice provided pursuant to this subsection must state the time when and place where  
20 the person may appear and submit proof concerning the valuation of the property. A  
21 person waives the notice requirement if he or she personally appears before the Board and  
22 is notified of the proposed increase in valuation.

23 12. NRS 361.395(2) does not speak to or foreclose judicial review of the State Board’s  
24 statewide equalization decision.

25 13. The additional administrative process set forth in NRS 361.395(2) provides due process  
26 to taxpayers whose values will be raised as a result of an Equalization Decision; taxpayers who personally  
27 appeared at the State Board hearing are not entitled to the separate due process notice.

28 14. The Petition was brought pursuant to NRS 361.410, entitled “Judicial review: Availability  
and restrictions.” Subsection (1) of NRS 361.410 provides:

1. No taxpayer may be deprived of any remedy or redress in a court of law relating to the  
payment of taxes, but all such actions must be for redress from the findings of the State  
Board of Equalization, and no action may be instituted upon the act of a county assessor

1 or of a county board of equalization or the Nevada Tax Commission until the State Board  
2 of Equalization has denied complainant relief. This subsection must not be construed to  
3 prevent a proceeding in mandamus to compel the placing of nonassessed property on the  
4 assessment roll.

5 15. The State Board was requested by the Village League, to equalize residential properties  
6 in Incline Village/Crystal Bay for the 2003-2004, 2004-2005, 2005-2006 tax years by replacing void  
7 unconstitutional values with 2002-2003 constitutional values, as factored.

8 16. The State Board denied the relief requested and “ordered that the property tax values for  
9 Incline Village/Crystal Bay for the tax years 2003-04, 2004-05, 2005-06 are equalized based on the tax  
10 rolls, the ratio studies, and the evidence before the State Board.” Equal. Ord. at 7 (CER IV at 966).

11 17. This Court has jurisdiction over this matter under NRS 361.410(1). The Petition seeks  
12 “remedy” and “redress” from this “court of law relating to the payment of taxes” and this is an action  
13 “for redress from findings of the State Board of Equalization.”

14 2. *NRS 233B*

15 18. NRS 233B.130(1) provides that:

16 Any party who is:

17 (a) Identified as a party of record by an agency in an administrative proceeding; and

18 (b) Aggrieved by a final decision in a contested case is entitled to judicial review of the  
19 decision. Where appeal is provided within an agency, only the decision at the highest level  
20 is reviewable unless a decision made at a lower level in the agency is made final by statute.  
21 Any preliminary, procedural or intermediate act or ruling by an agency in a contested case  
22 is reviewable if review of the final decision of the agency would not provide an adequate  
23 remedy.

24 19. “Contested case” means a proceeding, including but not restricted to rate making and  
25 licensing, in which the legal rights, duties or privileges of a party are required by law to be determined  
26 by an agency after an opportunity for hearing[.] NRS 233B.032.

27 20. The Court in *Ingemanson* has already determined that this matter is a contested case when  
28 it held that it had jurisdiction to review the State Board’s interim 2012 Equalization Order pursuant to  
NRS 233B.130(1)’s provisions providing for review of an interim order in a “contested case.” 133 Nev.  
Adv. Op. 1, 388 P.3d at 223.

1           21.     When *Ingemanson* considered the 2012 hearings and 2012 Equalization Order, it  
2 concluded that the State Board heard testimony, received evidence and considered the oral presentations  
3 of the parties. 133 Nev. Adv. Op. 1, 388 P.3d at 222-23. This matter involves the continuation and final  
4 decision of the equalization proceedings that began in 2012.

5           22.     At the 2017 hearing, the State Board heard testimony and oral argument by the parties,  
6 including the Village League and the Bakst Petitioner who proceeded separately from the Village League  
7 after the 2012 State Board equalization hearings.

8           23.     As a matter of law, nothing distinguishes the 2017 Equalization Order from the 2012  
9 Equalization Order, except the 2017 Equalization Order is undisputedly a final agency decision.

10          24.     This matter has a seventeen-year history, which culminated in the interim 2012  
11 Equalization Order and the final 2017 Equalization Order.

12          25.     This Court concludes that Petitioners seek judicial review of a final agency decision in a  
13 contested case.

14          26.     This Court has jurisdiction over this matter pursuant to NRS 233B.130.

15           **B.     Standard of Review**

16            1.     *NRS 361.410*

17          27.     This is a judicial review action challenging the State Board’s Decision under NRS  
18 361.410, which provides that “[n]o taxpayer may be deprived of any remedy or redress in a court of law  
19 relating to the payment of taxes, but all such actions must be for redress from the findings of the State  
20 Board of Equalization.” NRS 361.410(1).

21          28.     The burden of proof falls on the taxpayer “to show by clear and satisfactory evidence that  
22 any valuation established by the Nevada Tax Commission or the Department or equalized by the State  
23 Board of Equalization is unjust and inequitable.” NRS 361.410(2).

24          29.     The State Board and County argue that NRS 361.410 is not applicable to the judicial  
25 review of statewide equalization decisions of the State Board, and that Petitioners were required to  
26 proceed under NRS 361.420. Bd. Brf. at 10; Cty. Brf. at 16.

27          30.     NRS 361.410 provides for direct “judicial review” of actions of the State Board.

28     ///

1           31.     NRS 361.420 sets forth the exhaustion requirements, the grounds for judicial review, and  
2 the process for an individual taxpayer to contest decisions of the State Board determining appeals by  
3 individual property owners of decisions of county boards of equalization, the Department of Taxation or  
4 the NTC.

5           32.     This is the judicial review of a statewide equalization action affecting all residential  
6 properties in Incline Village/Crystal Bay, not the judicial review of a denial of individual taxpayer appeals  
7 of their taxes under NRS 361.420.

8           33.     NRS 361.420(2) contains exhaustion language similar to NRS 361.410 in that suit may  
9 only be brought after the State Board has denied the property owner relief: “property owner, . . . having  
10 been denied relief by the State Board of Equalization, may commence suit . . . against the State and  
11 county[.]” *Compare* NRS 361.420 (2) with NRS 361.410(1)(“[n]o taxpayer may be deprived of any  
12 remedy or redress in a court of law relating to the payment of taxes, but all such actions must be for  
13 redress from the findings of the State Board of Equalization.”).

14           34.     NRS 361.430 sets forth the burden of proof for suits brought under NRS 361.420: “In  
15 every action brought under the provisions of NRS 361.420, the burden of proof shall be upon the plaintiff  
16 to show by clear and satisfactory evidence that any valuation established by the Nevada Tax Commission  
17 or the county assessor or equalized by the county board of equalization or the State Board of Equalization  
18 is unjust and inequitable.”

19           35.     NRS 361.430’s burden of proof is identical to that contained in NRS 361.410(2).  
20 *Compare* NRS 361.430 with NRS 361.410(2) (“show by clear and satisfactory evidence that any  
21 valuation established by the Nevada Tax Commission or the Department or equalized by the State Board  
22 of Equalization is unjust and inequitable.”).

23           36.     When the State Board engages in equalization under NRS 361.395, it discharges its  
24 exclusive statutory equalization obligation.

25           37.     The State Board’s statewide equalization obligation is distinct and separate from its other  
26 statutory obligation, to hear individual appeals of decisions of county boards and the NTC. *See* NRS  
27 361.395; NRS 361.400, NRS 361.420; *Barta*, 124 Nev. at 628, 188 P.3d at 1103.

28 ///

1           38.     Neither NRS 361.420 nor NRS 361.430 address judicial review of decisions of the State  
2 Board of Equalization when it is discharging its statewide equalization function under NRS 361.395.

3           39.     The Legislature says what it means. *State v. Palm*, 128 Nev. 34, 272 P.3d 668 (2012)  
4 (“[W]e presume that the Legislature was aware of the commonly understood effect of the language of [a  
5 statute] when it drafted the statute, this is how it must be construed”); *Beazer Homes Nevada, Inc. v. Dist.*  
6 *Ct.*, 120 Nev. 575, 580-81, 97 P.3d 1132, 1135-36 (2004) (“When a legislature adopts language that has  
7 a particular meaning or history, rules of statutory construction . . . indicate that a court may presume that  
8 the legislature intended the language to have meaning consistent with previous interpretations of the  
9 language.”).

10          40.     The Legislature would not have enacted different statutes with duplicative language  
11 setting forth two burdens of proof and two exhaustion requirements for judicial review of a State Board  
12 decision, unless it was drawing a distinction between the types of State Board decisions to be reviewed  
13 under the two judicial review statutes.

14          41.     The Legislature recognized that judicial review of the State Board’s equalization function  
15 would need to be separately addressed.

16          42.     This Court concludes that the Petition was properly brought under NRS 361.410(1).

17          43.     This Court denies the County’s Motion to Dismiss to the extent it asserts the Petition was  
18 not proper under NRS 361.410(1).

19          44.     NRS 361.410(1) sets forth the applicable standard for review of this matter: “clear and  
20 satisfactory evidence that any valuation . . . equalized by the State Board of Equalization is unjust and  
21 inequitable.” NRS 361.410(1).

22                   2.     *NRS 233B*

23          45.     This is also an action for judicial review taken under NRS 233B.130, which authorizes  
24 any aggrieved party to a final decision of an agency to seek judicial review of that decision.

25          46.     Pursuant to NRS 233B.135(3), a court may set aside a final decision of an agency if the  
26 substantial rights of the petitioner have been prejudiced because the final decision of the agency is: (a) in  
27 violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency;  
28 (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the

1 reliable, probative and substantial evidence on the whole record; or (f) arbitrary or capricious or  
2 characterized by abuse of discretion. NRS 233B.135(3).

3 47. Courts conduct de novo review of conclusions of law made by administrative agencies on  
4 legal issues, including matters of statutory and regulatory interpretation. *See City of Reno v. Bldg &*  
5 *Constr. Trades*, 127 Nev. Adv. Op. 10, 251 P.3d 718 (2011).

6 48. This Court conducts its NRS 233B review of this matter within the bound of the specific  
7 equity-based standard of review set forth in NRS 361.410: determining whether the valuations  
8 “equalized” by the State Board are just and equitable. *See State Tax Comm’n ex rel. Dep’t of Taxation*  
9 *v. Am. Home Shield of Nev., Inc.*, 127 Nev. 382, 388, 254 P.3d 601, 605 (2011) (“A specific statute  
10 controls over a general statute.”).

11 3. *Presumption of Validity*

12 49. Generally, “[i]n reviewing orders resolving petitions for judicial review that challenge  
13 State Board decisions, the State Board’s determinations are presumed valid.” *Montage Mktg, LLC v.*  
14 *Washoe Cty Bd of Equalization*, 134 Nev. Adv. Op. 39, 419 P.3d 129, 131 (2018) (citing *Bakst*, 122 Nev.  
15 at 1408, 148 P.3d at 721).

16 50. However, “that presumption [only] remains until there is competent evidence to the  
17 contrary presented...and [then] the presumption disappears.” *Constructors, Inc. v. Cass County Bd of*  
18 *Equalization*, 606 N.W.2d 786, 871 (Neb. 2000) (Discussing “presumption that a county board of  
19 equalization has faithfully performed its official duties in making an assessment and has acted upon  
20 sufficient competent evidence to justify its action.”).

21 51. The undisputed facts of this case show the 2017 Equalization Order is not entitled to a  
22 presumption of validity. There is competent and undisputed evidence that (1) the State Board did not  
23 follow its prior decisions in equalizing taxable values for a body of taxpayers outside of those taxpayers  
24 who filed individual appeals, and (2) the State Board affirmed unconstitutional taxable values.

25 52. The State Board and the County assert that the general presumption of validity of the State  
26 Board’s decisions may only be overcome if the State Board applied a fundamentally wrong principle or  
27 refused to exercise its best judgment. Bd. Brf. at 10; Cty Brf. at 14-15.

28 ///

1           53.     This is a case involving statewide equalization. The cases cited by the County and State  
2 are distinguishable as they involved instances where the State Board was acting in an appellate capacity  
3 in reviewing decisions of a particular county board of equalization. *See Montage Mktg. LLC v. Washoe*  
4 *County Bd of Equalization*, 134 Nev. Adv. Op. 39, 419 P.3d 129 (2018) (judicial review of State Board  
5 decision deciding appeal of decision of Washoe County Board of Equalization denying taxpayer’s  
6 petition for review of their assessment); *Canyon Villas Apts. v. State*, 124 Nev. 832, 192 P.3d 746 (2008)  
7 (judicial review of State Board decision deciding appeal of decision of Clark County Board of  
8 Equalization partially denying taxpayer’s petition for review of their assessment); *Imperial Palace v.*  
9 *Department of Taxation*, 108 Nev. 1060, 843 P.2d 813 (1992) (judicial review of State Board decision  
10 deciding appeal of a decision of the Clark County Board of Equalization denying the taxpayer’s petition  
11 for review of its assessment); *Kelly v. State*, 91 Nev. 150, 532 P.2d 1029 (1975) (judicial review of State  
12 Board decision deciding appeal of a decision of Douglas County denying the taxpayer’s petition for  
13 review of its assessment).

14           54.     In this case, contrary to the cases relied upon by the State Board and the County, the State  
15 Board is not acting as the final administrative arbiter of an assessment dispute between a single taxpayer  
16 and a county deciding an appeal from a county board of equalization’s decision. It was engaging in its  
17 statewide equalization function under NRS 361.395.

18           55.     In individual contested cases, the State Board’s “appellate” decision is then subject to  
19 review under NRS 361.420 and 361.430.

20           56.     Here, the State Board is performing its own statutory function under NRS 361.395, which  
21 is subject to direct review by the Court. The only statute governing that standard of review is NRS  
22 361.410.

23           57.     The State Board’s 2017 Equalization Order is not entitled to a presumption of validity.

24           **C.     Nevada’s Constitutional Guarantee of Uniform and Equal Assessment**  
25           **and Taxation**

26           58.     Article 10, Section 1 of the Nevada Constitution provides in pertinent part:

27           The legislature shall provide by law for a uniform and equal rate of assessment and  
28           taxation, and shall prescribe such regulations as shall secure a just valuation for taxation  
          of all property, real, personal and possessory.

          . . .



1 Nev. Const. Art 10 § 1.

2 59. The Nevada Supreme Court has long required uniformity in taxation and assessment of  
3 similarly situated individuals. *See List v. Whisler*, 99 Nev. 133, 138, 660 P.2d 104, 106-107 (1983);  
4 *United States v. State ex rel. Beko*, 88 Nev. 76, 86-87, 493 P.2d 1324 (1972); *Boyne v. State ex rel.*  
5 *Dickerson*, 80 Nev. 160, 166, 390 P.2d 225 (1964); *State of Nevada v. Eastabrook*, 3 Nev. 173 (1867).

6 60. The *Bakst* Court held that:

7 By using the mandatory term “shall,” the Constitution clearly and unambiguously requires  
8 that the methods used for assessing taxes throughout the state must be “uniform.” Unless  
9 ambiguous, the language of a constitutional provision is applied in accordance with its  
10 plain meaning. Thus, county assessors must use uniform standards and methodologies for  
11 assessing property values throughout the state.

12 122 Nev. at 1413, 148 P.3d at 724; *see also County of Clark V. LB Props., Inc.*, 129 Nev. Adv. Op. 96,  
13 315 P.3d 294, 297(2013) (“‘methods used to value taxpayers’ properties play a material role in ensuring  
14 that the constitutional guarantee of a uniform and equal rate of assessment’ exist in property valuations.”  
15 quoting *Barta*, 124 Nev. at 624, 188 P.3d at 1100).

16 61. The “‘prevailing requirement [is] that similarly situated taxpayers should not be  
17 deliberately treated differently by taxing authorities.’” *Clifton v. Allegheny County*, 969 A.2d 1197, 1212  
18 (Pa. 2009) (quoting *Downingtown Area Sch Dist. v. Chester County Bd. of Assessment*, 913 A. 2d 194,  
19 201 (Pa. 2006)).

20 1. *The constitutional guarantee of uniformity and equality has primacy*

21 62. The Nevada Constitution is the “supreme law” of this State and its dictates must be  
22 enforced. *MDC Rests., LLC v. Eighth Judicial District Court*, 132 Nev. Adv. Op. 76, 383 P.3d 262, 267  
23 (2016).

24 2. *Non-uniform and unequal assessment and valuation is not excused  
because the resulting taxable value does not exceed full cash value*

25 63. The guarantee of uniformity can only be satisfied if similarly situated properties are valued  
26 and assessed uniformly and proportionately with the same standards and methodologies, even if the  
27 taxable value is less than full cash value. *Barta*, 124 Nev. at 628; 188 P.3d at 1103 (“A taxable value  
28 may be unjust and inequitable despite being less than the full cash value of the property.”).

1           3.     *While mathematical exactitude is not required, similarly situated*  
2                 *properties must be valued and assessed using the same*  
3                 *methodologies and standards*

4           64.     The Nevada Supreme Court recognized that the Supreme Court of Kansas, which is  
5 another jurisdiction with a “virtually identical” Uniform and Equal Clause, has reached a similar  
6 construction of the constitutional guarantee. *See List*, 99 Nev. at 138, 660 P.2d 106-7 (citing *State ex rel.*  
7 *Stephan v. Martin*, 608 P.2d 880, 886 (Kan. 1980); *Wheeler v. Weightman*, 149 P. 977 (Kan. 1915)).

8           65.     The Kansas Supreme Court held that:

9                 Uniformity in taxing implies equality in the burden of taxation, and this equality cannot  
10                 exist without uniformity in the basis of assessment as well as in the rate of taxation. The  
11                 duty to assess at full value is not supreme but yields to the duty to avoid discrimination.

12 *Addington v. Board of County Comm'rs*, 382 P.2d 315, 319, (Kan. 1963) (remedy portion of decision  
13 superseded by statute).

14           66.     The *Addington* Court held that while uniformity and equality in the constitutional sense  
15 do not require “mathematical exactitude” and certain errors or mistakes may not rise to a violation, at a  
16 minimum:

17                 It is apparent that uniformity is necessary in valuing property for assessment purposes so  
18                 that the burden of taxation will be equal. It makes no difference what basis of valuation is  
19                 used, that is, what percentage of full value may be adopted, provided it be applied to all  
20                 alike.

21                 . . .

22                 *Uniformity of taxation does not permit a systematic, arbitrary or intentional valuation of*  
23                 *the property of one or a few taxpayers at a substantially higher valuation than that placed*  
24                 *on other property within the same taxing district; however, this uniformity and equality*  
25                 *in a constitutional and statutory sense does not require mathematical exactitude in the*  
26                 *assessment valuation of property for taxation. In the instant case if all the property in the*  
27                 *county had been assessed at thirty per cent of its true value, plaintiff would have no cause*  
28                 *to complain. The fraud upon plaintiff's rights resulted from the arbitrary distinction made*  
                  *between his elevator property and other property in the county. Mere excessiveness of an*  
                  *assessment or errors in judgment or mistakes in making unequal assessments will not*  
                  *invalidate an assessment, but the inequality or lack of uniformity, if knowingly high or*  
                  *intentionally or fraudulently made, will entitle the taxpayer to relief.*

*Addington*, 382 P.2d at 319 (emphasis added).

///

1           67. In a later case addressing actual valuation methods (or the lack thereof), the Kansas  
2 Supreme Court addressed an assessor’s actions in valuing leased lands where the court had “determined  
3 that the haphazard fashion that was used by the appraiser to discover leased lands and to determine which  
4 of the leased lands should be subject to an increased valuation was improper [and] resulted in a  
5 nonuniform and unequal valuation of similar property.” The court in that case reiterated the admonition  
6 of *Addington*:

7           Uniformity in taxation *implies equality in the burden of taxation, and this equality cannot*  
8 *exist without uniformity in the basis of valuation.* Uniformity in taxation does not permit  
9 a systematic, arbitrary, or intentional higher valuation than that placed on other similar  
property within the same taxing district.

10 *Board of County Comm'rs v. Greenhaw*, 734 P.2d 1125, 1131(Kan. 1989)(emphasis added)(“Under the  
11 facts of this case, the assessment of Greenhaw’s land was so arbitrary and grossly discriminatory that it  
12 destroyed uniformity and equality in the manner of fixing the assessed valuation and was illegal.”).

13           68. The mandate of the Nevada Constitution’s Uniform and Equal Clause, which our Supreme  
14 Court has found to be “virtually identical” to that in the Kansas Constitution, is clear: “Uniformity in  
15 taxation implies *equality in the burden of taxation, and this equality cannot exist without uniformity in*  
16 *the basis of valuation.*” *Greenhaw*, 734 P.2d at 1131; *Addington*, 382 P.2d at 319 (emphasis added).

17           4. *The guarantee of uniformity extends to statutes, regulations and acts*  
18 *of valuation by assessors alike—an assessor cannot create non-*  
19 *uniform methods of valuing property in the same class.*

20           69. Whether it be scrutinizing a statute or “valuation by assessing officers[.]” the uniformity  
21 analysis is the same. *Cass County*, 606 N.W.2d at 873 (rules of uniformity apply to acts of the legislature  
22 and assessing officers and “[d]iscrimination in valuation, where it exists, does not necessarily result from  
23 the terms of the tax statute, but may be caused by the acts of the taxing officer or officers”).

24           70. When an assessing officer establishes “two methods of valuation of property in the same  
25 class for taxation purposes [it] results in a want of uniformity within the constitutional prohibition[.]”  
26 *Cass County*, 606 N.W.2d at 874.

27           71. The Nevada Supreme Court concluded in *Barta*:

28           when the owner of one of two nearly identical neighboring properties pays more in taxes  
than her neighbor because nonuniform methods have been used to assign differing taxable

1 values to the two properties, the owner with the greater tax burden has suffered an injury,  
2 regardless of whether her property's taxable value exceeded its full cash value. The owner  
3 with the lesser tax burden has likewise suffered an injury, in that his property was not  
4 valued uniformly with his neighbor's; however, that injurious assessment is less likely to  
5 be challenged. *Even more salient is the injury when nonuniform methods cause the*  
6 *unequal taxation of an entire assessment group.*

7 *Barta*, 124 Nev. at 626, 188 P.3d at 1101 (emphasis added).

8 72. In *Cass County*, the Nebraska Supreme Court held that an assessor's selective valuation  
9 of mineral interests violated the constitutional requirement for uniformity where it did not rest on a  
10 substantial difference of situation between the litigants whose mineral rights were assigned an assessed  
11 value and other property owners whose minerals rights were attributed to have no value for assessment.  
12 *Cass County*, 606 N.W.2d at 794.

13 73. Similar to *Barta*, the *Cass County* court stated:

14 Property of the same character must be taxed the same. Differential tax treatment can  
15 only be based on the use or nature of the property, not upon who controls the property,  
16 i.e., mining companies versus farmers. Schulte [an appraiser] testified that there were  
17 other lands with limestone interests, but he stopped attributing value to these interests  
18 beyond the Kerford Limestone property holdings. Thus, the adjacent landowners escaped  
19 the increased tax that burdened their neighbor, even though both are similarly situated as  
20 property owners with subsurface mineral interests.

21 606 N.W.2d at 794.

22 74. The *Cass County* Court could not justify a heavier burden on taxpayers who were  
23 neighbors of those who "escaped the increased tax[.]" 606 N.W.2d at 794.

24 **D. *Bakst* and *Barta* Established that the Assessor Used Unconstitutional  
25 Methodologies to Establish Taxable Values of the Residential  
26 Properties in Incline Village/Crystal Bay for the Three Years in  
27 Question**

28 75. The *Bakst* Court held that "[b]y using the mandatory term 'shall,' the Constitution clearly  
and unambiguously requires that the methods used for assessing taxes throughout the state must be  
uniform. . . . Thus, county assessors must use uniform standards and methodologies for assessing property  
values throughout the state." 122 Nev. at 1413; 148 P.3d at 724.

76. The *Bakst* Court found that the Assessor's methodologies were invalid and violated the  
Nevada Constitution because they were not consistent with methods used throughout Washoe County

1 and because they were not the same as the methods used by assessors in other counties in the State. 122  
2 Nev. at 1416; 148 P.3d at 726.

3 77. The Court, affirming the district court below, held that the 2003-2004 valuations were  
4 “null and void” and the Court held that the only remedy available was to replace void unconstitutional  
5 values with 2002-03 constitutional values and grant refunds. 122 Nev. at 1416; 148 P.3d at 726.

6 78. In *Barta*, the Court found that use of the factoring method by the Assessor to develop the  
7 2004-2005 values was not constitutional because factoring “merely adjusts the prior year’s assessed  
8 values en mass by a certain percentage.” 124 Nev. at 623-24; 188 P.3d at 1100.

9 79. The prior year’s values had already been declared null and void and therefore, could not  
10 be validly adjusted, hence, the Court held that the “2004-2005 values were affected by the same  
11 unconstitutional infirmities as the 2003-2004 values, and, like those values, are unjust and inequitable.”  
12 124 Nev. at 624; 188 P.3d at 1100. The Court affirmed the district court, declaring the Bakst Petitioners’  
13 2004-2005 assessments void and resetting the assessed values for 2004-2005 to the 2002-2003 levels.

14 80. The holdings of *Bakst* and *Barta*, interpreting the Uniform and Equal Clause of the Nevada  
15 Constitution as to the validity of the taxable values established by the Assessor in 2003-04, 2004-05, and  
16 2005-06, were not limited to the properties owned by the taxpayers who brought those cases forward.

17 81. *Bakst* and *Barta*, declared that the Assessor violated the constitution’s uniformity  
18 guarantee when he systemically employed unconstitutional methodologies in valuing residential  
19 properties in the Incline Village/Crystal Bay area of the County, but did not apply those same  
20 methodologies to any other properties in the County and no other Assessor in the State employed similar  
21 methodologies. *Bakst*, 122 Nev. at 1416, 148 P.3d at 726; *Barta*, 124 Nev. at 627, 188 P.3d at 1102.

22 82. The Court in *Ingemanson* reiterated the holdings of *Bakst* and *Barta*: “assessment methods  
23 used in 2002 to value properties at Incline Village and Crystal Bay for real estate tax purposes were  
24 unconstitutional . . . [and] as a remedy, that because property is physically reappraised once every five  
25 years and the assessment methods used in 2002 were unconstitutional, the taxable values for the  
26 unconstitutionally appraised properties were void for the tax years beginning in 2003-2004 and ending  
27 in 2007-2008.” 133 Nev. Adv. Op. 1 at 4, 388 P.3d at 220.

28 ///

1           83.     The Nevada Supreme Court has held that “[t]he Nevada Constitution is the supreme law  
2 of the state. And as a court, our role is not to create the law but simply to declare what the law is.” *MDC*  
3 *Rests., LLC*, 132 Nev. Adv. Op. 76, 383 P.3d at 267. Thus, if the Nevada Supreme Court has issued a  
4 decision “interpreting a constitutional provision, . . . [it] is necessarily retroactive [from the date of the  
5 unconstitutional act] rather than from the date of [the] decision.” *Id.* In other words, the act was always  
6 unconstitutional and thus, must be remedied.

7           84.     In this case, *Bakst* and *Barta* declared what the law has always been (Article 10 Section  
8 1’s guarantee of equal and uniform taxation and assessment) in determining whether the Assessors use  
9 of discriminatory taxable values only in Incline Village/Crystal Bay violated the Uniform and Equal  
10 Clause of the Constitution. Those declarations are applicable to the three tax years in question in this  
11 case.

12           **E.     Equalization is the Means to Ensure Assessors Uniformly Value and to**  
13           **Assess Real Property**

14           85.     The collection of property taxes under NRS Chapter 361 are the only taxes in the State  
15 that are government imposed and collected. All other taxes administered by the Department and NTC,  
16 such as sales and use taxes, room taxes and commerce taxes, are self-reported and collected by the  
17 taxpayers.

18           *I.     A system of checks and balances*

19           86.     Thus, the Legislature has created a system of checks and balances to ensure that real  
20 property in the state is assessed uniformly and equally.

21           87.     After annually determining the taxable values of real property and preparation of the  
22 secured tax rolls/assessment rolls, the county assessors must complete and file an affidavit that the  
23 properties on the rolls were assessed “equally and uniformly.” NRS 361.310(1).

24           88.     Assessors must also attest under separate affidavit that certifying the assessment of  
25 property complied with NTC regulations. NRS 360.250(3).

26           89.     Upon completion of the rolls, the county boards of equalization must “meet to equalize  
27 assessments[.]” NRS 361.340(1).

28           90.     The last check in the system is the State Board.

1                   2.       *The State Board's Equalization Obligation*

2           91.       The State Board is the administrative body in this State vested with the statutory authority  
3 to conduct statewide equalization. *Ingemanson*, 133 Nev. Adv. Op. 1 at 14-15, 388 P.3d at 225.

4           92.       As concluded in *Barta*:

5                   Under NRS 361.395(1), the State Board clearly has a duty to equalize property valuations  
6 throughout the state: "the [State Board] shall . . . [e]qualize property valuations in the  
7 State." Furthermore, NRS 361.400 establishes a requirement, separate from the  
8 equalization duty, that the State Board hear appeals from decisions made by the county  
9 boards of equalization. The two statutes create separate functions: equalizing property  
10 valuations throughout the state and hearing appeals from the county boards. The  
11 Taxpayers argue that if the State Board had performed its duty to equalize property values  
statewide, then it would have recognized the unequal property taxation between them and  
taxpayers in the rest of the state. The record reflects that the State Board failed to explain  
how it equalized property values for the 2004-2005 tax year, if indeed it did so[.]

12 124. Nev. at 627, 188 P.3d at 1102-3.

13           93.       NRS 361.395(1), the State Board's statewide equalization statute, provides:

14                   1. During the annual session of the State Board of Equalization beginning on the fourth  
15 Monday in March of each year, the State Board of Equalization shall:

16                   (a) Equalize property valuations in the State.

17                   (b) Review the tax rolls of the various counties as corrected by the county boards of  
18 equalization thereof and raise or lower, equalizing and establishing the taxable value of  
19 the property, for the purpose of the valuations therein established by all the county  
20 assessors and county boards of equalization and the Nevada Tax Commission, of any class  
21 or piece of property in whole or in part in any county, including those classes of property  
enumerated in NRS 361.320.

22 NRS 361.395(1) (emphasis added).

23           94.       "Nevada's Constitution guarantees 'a uniform and equal rate of assessment and taxation.'  
24 That guarantee of equality should be the boards of equalization's predominant concern[.]" *Barta*, 124  
25 Nev. at 627, 188 P.3d at 1102.

26           95.       Therefore, unlike other taxes, the injuries, harm, mistakes and ultimately the systemic  
27 failure of the ad valorem property tax systems falls on the State Board.

28 ///

1           96.     The “goal of equalization is to produce uniformity in taxation.” 84 C.J.S., Taxation, §  
2 700 (2010). The adjusting of values, however, must be for the sole purpose of bringing valuation to a  
3 common point of equality, and not just for raising or lowering as desired. 84 C.J.S. Taxation § 709 (*citing*  
4 *Parrott & Co. v. City and County of San Francisco*, 280 P.2d 881 (1st Dist. 1955)) (emphasis added).

5                     3.     *The State Board equalizes to taxable value*

6           97.     NRS 361.395 requires the State Board to equalize to “taxable value” which is a term  
7 defined by NRS 361.043.

8           98.     *Ingemanson* quotes to CJS’s general definition of equalization as a process involving the  
9 adjustment of values to “real value” or “true tax value.” *Ingemanson*, 133 Nev. Adv. Op. 1 at 15, 388  
10 P.3d at 225. The CJS Taxation § 701 cites were to cases in Nebraska (using “actual value”), California  
11 (“real value”) and Indiana (“true tax value”). *See* CJS Taxation § 701 (Bakst. Pet. Reply Brf. Ex. 1.

12           99.     The Court in *Ingemanson* was explaining the concept of equalization and did not  
13 supersede or declare invalid existing statutes.

14                     4.     *The State Board must consider the tax rolls in discharging its*  
15                             *statewide equalization function*

16           100.    *Ingemanson* concluded that NRS 361.395 requires the State Board to consider the tax rolls  
17 in performing its statewide equalization function. *Ingemanson*, 133 Nev. Adv. Op. 1, 388 P.3d at 225;  
18 NRS 361.395(1)(b).

19           101.    The tax rolls are not in the record and therefore the State Board could not have reviewed  
20 the tax rolls. The State Board violated NRS 361.395(1) and its action is unlawful.

21                     5.     *The State Board is not time-barred from equalizing taxable values*  
22                             *for the 2003-2004, 2004-2005, 2005-2006 tax years*

23           102.    The County asserts that the tax years in question are closed and therefore, the State Board  
24 is foreclosed from performing its statewide equalization function.

25           103.    This argument is without merit. The 2003-2004, 2004-2005, and 2005-2006, tax rolls are  
26 still open.

27           104.    These tax years have been the subject of litigation over the past 17 years and the litigation  
28 is not resolved.



1           105. The State Board has ordered the County to correct tax rolls to reflect adjustments in value  
2 after discharging its equalization function after the close of the tax year when there was an open challenge  
3 or court action. *In re: Consideration of Assessor’s Appeal of Equalization Decision*, (CER II at 438-447)  
4 (decided in 2009 for 2006-2007 tax year).

5           106. Nevada property tax statutes contemplate the adjustment of tax rolls after the close of a  
6 tax year to make necessary corrections. *See* NRS 361.765, NRS 361.768.

7           **F. The 2017 Equalization Order is Unconstitutional**

8           107. There is no dispute that the Assessor used non-uniform and unequal methodologies,  
9 resulting in unconstitutional values for Incline Village/Crystal Bay residential property owners.

10           108. This Court concludes any unconstitutional value is a void value. *Bakst*, 122 Nev. at 1416,  
11 148 P.3d at 726; *Barta*, 124 Nev. at 628, 188 P.3d at 1103; *Greenhaw*, 734 P.2d at 1127-1128 (“We agree  
12 that a valuation contrary to the principles of the Constitution is an illegal or void valuation.”)

13           109. The State Board affirmed and reinstated the unconstitutional values of Bakst Petitioners,  
14 and more than a thousand other Incline Village/Crystal Bay residential property owners represented by  
15 Village League had their values adjudicated by Nevada courts for the 2003-2004, 2004-2005 and/or  
16 2005-2006 tax years in accordance with *Bakst* and *Barta*.

17           110. The State Board’s action is a violation of the Uniform and Equal Clause of the Nevada  
18 Constitution. *See Barta*, 124. Nev. at 626, 188 P.3d at 1101 (“Even more salient is the [constitutional]  
19 injury when nonuniform methods cause the unequal taxation of an entire assessment group.”).

20           111. The State Board’s decision must be vacated under NRS 233B.135(3) as it is “in violation  
21 of constitutional . . . provisions.”

22           112. Clear and convincing evidence exists that the State Board violated the Nevada  
23 Constitution. The 2017 Equalization is unjust and inequitable and must be set aside.

24           **G. A Taxpayer is not Required to “Petition” to Enforce the Constitution’s  
25 Uniform and Equal Rate of Taxation and Assessment Guarantee**

26           113. The County and State have argued that any constitutional infirmities in the taxable values  
27 of Incline Village/Crystal Bay properties for the three years in question cannot be addressed outside the  
28 context of an individual taxpayer appeal. Bd. Br. at 14; Cty. Brf. at 18. In other words, the County and  
State are advancing an exhaustion of administrative remedies argument.

1 114. At the hearing before this Court, the State Board argued that if an unconstitutional taxable  
2 value is not “challenged, then it becomes ‘constitutional’ regardless if it was uniformly and equally  
3 established.” Transcript of Proceeding (May 10, 2019) at 121:3-4.

4 115. As a matter of law, and in accord with the reasoning of the Pennsylvania Supreme Court  
5 in *Clifton v. Allegheny County*, 969 A.2d 1197 (Pa. 2009), “when the inequity is pervasive,” the taxing  
6 authority “cannot satisfy the proportionality requirement by shifting the burden of achieving uniformity  
7 to the taxpayer” to file individual assessment appeals. 969 A.2d at 1227-28.

8 116. Similarly, as a matter of law, the appeals process alone followed by certain taxpayers in  
9 Incline Village/Crystal Bay for the years in question did not ensure that all the properties in that area  
10 were uniformly and equally assessed and valued.

11 117. The Nevada Supreme Court agrees that strict adherence to the statutory claims process is  
12 not required if doing so deprives a taxpayer of a fundamental constitutional right. *See Metropolitan Water*  
13 *District v. State, Department of Taxation* 99 Nev. 506, 665 P.2d 262 (1983).

14 118. In *Metropolitan Water*, the Court undertook a review of allegedly discriminatory actions  
15 of the Clark County Assessor taken against the taxpayer over the course of 40 years. 99 Nev. at 509, 665  
16 P.2d at 263. After disposing of the argument that the taxpayer failed to exhaust his administrative  
17 remedies as there was no way the taxpayer could have known he was singled out for discriminatory  
18 treatment, the Court held:

19 We have previously held that a county’s claims statutes should not apply where to do so  
20 would deny property owners due process rights. Similar reasoning requires that the three  
21 month limitation period specified in NRS 361.420(3) should not be held to apply where  
22 to do so would deprive the Water District of a fundamental constitutional right, that of  
equal protection under the law.

23 99 Nev. at 509, 665 P.2d at 263.

24 119. As a matter of law, this Court concludes that individual residential property owners did  
25 not have to file and pursue appeals of their property tax valuations and assessments for the years in  
26 question to ensure that the County and State abided by their constitutional obligations under Article 10  
27 Section 1 of the Nevada Constitution.

28 ///

1           120. The State Board did not fulfill its predominant duty of ensuring a uniform and equal rate  
2 of assessment and taxation in Incline Village/Crystal Bay for the years in question.

3           **H. The State Board Acted Arbitrarily and Capriciously and in Violation**  
4           **of the Law by Refusing to Grant Equalization Relief on the Basis that**  
5           **Those Property Owners had not all Filed Individual Appeals**

6           121. The State Board cannot refuse to provide equalization relief to correct an admitted  
7 systemic error in the valuation and assessment of real property in a geographic area on the basis that not  
8 every property owner in that area filed individual taxpayer appeals.

9           122. It is common practice for the County and/or State Boards to equalize property valuations  
10 to correct a widespread error in the Assessor's valuation and assessment of real property brought to their  
11 attention through an individual property owner appeal.

12           123. In such instances, the County and/or State Boards corrected errors for all impacted  
13 residential property owners, not just the individual property owner who brought the challenge. *See*  
14 *Washoe County, et al v. Ross Pendergraft Trust, et al*, Notice of Decision (Oct. 14, 2003) (Equalized  
15 values of 101 parcels to correct error after appeals by owners of 24 parcels) (CER IV at 856-859); *In re:*  
16 *Equalization of Properties Located on Tiller Drive*, Equalization Order (July 12, 2004) (Equalized values  
17 of 35 parcels to correct error after appeals by owners of 3 parcels) (CER IV at 842-848); *In re:*  
18 *Consideration of Assessor's Appeal of Equalization Decision*, Notice of Equalization Decision (Oct. 9,  
19 2009)(Equalized values of all 8700 residential properties in Incline Village/Crystal Bay to correct error  
20 (unconstitutional values for 2006-2007 tax year) after appeals by owners of 300 parcels) (CER II at 438-  
21 447).

22           124. Upon questioning by this Court, the State Board represented that it could have granted the  
23 same equalization as it did in these prior decisions to all impacted property owners, but it exercised its  
24 "discretion" not to do so. TOP (May 10, 2019) at 129:10-23.

25           125. Using the 2006-2007 decision granting relief to all 8,700 Incline Village/Crystal Bay  
26 residents, this Court asked if the reason for the exercise of discretion was the financial impact. TOP  
27 (May 10, 2019) at 130:2-22.

28 ///

1           126. The State Board represented that it was concerned about “what that would do to the rest  
2 of Washoe County if every one of these over 5,000 property owners got the remedy that a few hundred  
3 got.” TOP (May 10, 2019) at 130:2-22.

4           127. This Court concludes that the State Board was concerned with the loss of tax revenue if it  
5 implemented the previously voted-upon *Bakst* template for relief. Bd. Trans. (Dec.3, 2012) at 73, 77.

6           128. Nowhere in state law is the State Board authorized to take into account the financial  
7 impact upon the government it discharging its equalization function.

8           129. “An agency’s decision is arbitrary and capricious if the agency fails to follow its own  
9 precedent or fails to give a sufficient explanation for failing to do so.” *Zhao v. Holder*, 728 F.3d 1144,  
10 1148 (9th Cir. 2013).

11           130. There was no factual or legal basis for the State Board to not act consistent with its prior  
12 decisions and equalize the values of all properties in Incline Village/Crystal Bay to constitutional levels.

13           131. The State Board’s refusal to equalize properties in Incline Village/Crystal Bay is unjust  
14 and inequitable in violation of NRS 361.410(1).

15           132. The State Board’s action is arbitrary and contrary to Nevada law, and therefore must be  
16 vacated and set aside under NRS 233B.135(3).

17           **I. The State Board Violated the Taxpayers’ Bill of Rights**

18           133. Similar to the Nevada Constitution’s guarantee of uniformity, the Nevada Taxpayers’ Bill  
19 of Rights also requires that taxpayers be treated in a uniform and consistent manner. NRS 360.291(1).

20           134. The State Board is bound by the Taxpayers’ Bill of Rights to treat similarly situated  
21 taxpayers the same.

22           135. The State Board has previously recognized and acted in accordance with its obligations  
23 under the Taxpayers’ Bill of Rights in discharging its equalization function in a case in Incline  
24 Village/Crystal Bay for the 2006-2007 tax year (the fourth year of the appraisal cycle) that is factually  
25 and legally indistinguishable to the case at hand. *See In re: Consideration of Assessor’s Appeal of*  
26 *Equalization Decision, Notice of Equalization Decision (Oct. 9, 2009) (CER II at 438-47).*

27 ///

28 ///

1           136. The State Board concluded that “[p]ursuant to the Taxpayer’s Bill of Rights [NRS  
2 361.291(1)(a)], each taxpayer has the right to be treated by officers and employees of the Department  
3 with courtesy, fairness, uniformity, consistency and common sense.” Dec. at 6 (CER II at 443).

4           137. The State Board sustained the County Board decision to reset all residential property  
5 values in Incline Village/Crystal Bay to 2002-2003 levels after 300+ taxpayers individually appealed and  
6 had their void unconstitutional taxable values replaced with constitutional 2002-2003 taxable values (the  
7 *Bakst* template for relief) because “equity requires that all properties in the same geographic area receive  
8 the same treatment” and because to do otherwise would create an “unequal rate of taxation for the 2006-  
9 2007 tax year.” Dec. at 1, 5 (CER II at 438, 442).

10           138. As a matter of law, this Court concludes the State Board violated the Taxpayers’ Bill of  
11 Rights in by not acting consistently with its 2006-2007 decision equalizing the taxable values of all  
12 residential properties in Incline Village/Crystal Bay to constitutional levels.

13           139. As a matter of law, this Court concludes that the State Board violated the Taxpayers’ Bill  
14 of Rights when it created an “unequal rate of taxation,” a result the County and State Board deemed  
15 unlawful and unconstitutional for the 2006-2007 tax year.

16           140. Clear and convincing evidence exists that the State Board violated the Taxpayer Bill of  
17 Rights; the 2017 Equalization is unjust and inequitable and must be set aside.

18           141. The State Board’s decision must be vacated under NRS 233B.135(3) as it is “in violation  
19 of . . . statutory provisions.”

20           **J. Bakst Petitioners Have Standing**

21           142. The County and State have argued that Bakst Petitioners do not have standing because  
22 they were not parties in the equalization action and are not “aggrieved” by the 2017 Equalization Order.  
23 Cty. Brf. at 3 (integrating Mot. To Dismiss); Bd. Brf. at 16-18. The County’s and State’s arguments are  
24 without merit.

25           143. NRS 361.410 provides that “[n]o taxpayer may be deprived of any remedy or redress in a  
26 court of law relating to the payment of taxes, but all such actions must be for redress from the findings  
27 of the State Board of Equalization.” NRS 361.410(1).

28           ///

1           144. NRS 233B.130(1) provides that any party (a) identified as a party of record by an agency  
2 in an administrative proceeding, and (b) who is aggrieved by a final decision in a contested case, or by a  
3 preliminary, procedural or intermediate act or ruling by an agency in a contested case, if review of the  
4 final decision of the agency would not provide an adequate remedy, is entitled to judicial review.

5           145. Interpreting NRS 233B.130(1), the Court has held that a party is “aggrieved” where it  
6 “was affected” by the administrative agency’s decision, *Capital Indem. v. State Dep’t Bus. & Indus.*, 122  
7 Nev. 815, 820 n.26, 138 P.3d 516, 519 n.26 (2006).

8           146. Courts in states with the same statutory elements for standing to review administrative  
9 agency decisions interpreting the term “aggrieved,” have emphasized that although an aggrieved person  
10 need to have suffered a particularized injury, the determination of such must be made “in context” of the  
11 factual situation and the statutory scheme, including consideration of whether the legislature has  
12 expressed an intent that such an interest should be given judicial review. *Nelson v. Bayroot, LLC*, 953  
13 A.2d 378 (Me. 2008); *Multonomah County v. Talbot*, 641 P.2d 617 (Or. Ct. App. 1983); *Marbet v.*  
14 *Portland Gen. Elect.*, 561 P.2d 154 (Or. 1977).

15           147. In *Marbet*, an individual intervened as allowed by statute to present his views in a  
16 proceeding before the Energy Facility Siting Council, which was responsible for determining the location  
17 of nuclear power facilities. 561 P.2d at 449. He later sought judicial review of the Council’s decision.  
18 561 P.2d at 449.

19           148. The Oregon Supreme Court considered the statute authorizing the intervention of “any  
20 person . . . who appears to have an interest in the results of a hearing or who represents a public interest  
21 in such results,” stating that this statute “express[ed] the legislature’s judgment that the important  
22 decisions of public policy entrusted to the . . . Council are not to be treated as a dispute between opposing  
23 private interests.” *Marbet*, 561 P.2d at 159 (citing ORS 469.380).

24           149. In *Nelson*, the Supreme Judicial Court of Maine, in making the determination of whether  
25 the agency action operated prejudicially and directly upon the party’s property or rights, making the party  
26 “aggrieved,” stated that “[w]e examine the issue of standing *in context* to determine whether the asserted  
27 effect on the party’s rights genuinely flows from the challenged agency action.” *Id.* at 382. *Nelson*  
28 involved a land use commission’s decision to approve a developer’s application to amend a subdivision

1 plan in which a leaseholder’s developed lot was located. The amendment proposed to relocate certain  
2 undeveloped lots. To consider the full context, the court examined the terms of the lease agreement to  
3 understand the nature of the leaseholder’s interest in the undeveloped land. It determined that  
4 leaseholders entered into their agreements with the expectation that they would have particular rights to  
5 make use of the remaining lands, subject to the restrictions specified in the lease agreement, and those  
6 such rights were distinguishable from those of the general public. *Id.* at 383. The court, therefore,  
7 concluded that the leaseholders had standing. *Id.* The court came to this conclusion despite the fact that  
8 the leaseholder’s developed lot was not contiguous with the relocated lots whose terms were changed.

9 150. In *Multonomah County*, the Oregon Court of Appeals considered whether a county tax  
10 assessor had standing to challenge the date on which the state preservation officer classified certain  
11 property as historic, thus freezing its assessed value. The court stated that a basic element in determining  
12 whether a party was aggrieved was “whether the party seeking relief has ‘alleged such a personal stake  
13 in the outcome of the controversy as to assure that concrete adverseness which sharpened the presentation  
14 of issues’” exists in the proceeding. 641 P.2d at 621-22 (quoting *Flast v. Cohen*, 392 U.S. 83, 99, 88 S.  
15 Ct. 1942 (1968)).

16 1. *All taxpayers whose properties are subject to an equalization action*  
17 *have standing to petition for judicial review of the State Board’s*  
18 *decision*

19 151. The context of the State Board’s action must be considered.

20 152. This is a statewide equalization action under NRS 361.395, not an individual taxpayer  
21 appeal.

22 153. The scope of the State Board’s equalization action extends to all residential properties in  
23 the Incline Village/Crystal Bay area.

24 154. The State Board’s equalization hearings must be publicly noticed and provide for  
25 participation by the public.

26 ///

27 ///

28 ///

1           155. The statewide equalization relief requested by Village League and Bakst Petitioners, if  
2 granted by the State Board, would have reset the taxable values of all residential Incline Village/Crystal  
3 Bay to 2002-2003 levels.<sup>11</sup>

4           156. The State Board denied the relief, affirming the unconstitutional assessment and valuation  
5 of residential properties in Incline Village/Crystal Bay.

6           157. As a matter of law, this Court concludes that all Incline Village/Crystal Bay residential  
7 property owners are “affected by” and have an interest in the results of the State Board’s statewide  
8 equalization hearing.

9           158. This Court concludes that individual Incline Village/Crystal Bay taxpayers, including the  
10 Bakst Petitioners, or their successors in interest, who owned, either directly or beneficially, and paid  
11 property taxes on residential real property at Incline Village, Washoe County, Nevada, during the 2003-  
12 2004, 2004-2005 and 2005-2006 tax years have standing to bring judicial review of the 2017 Equalization  
13 Order.

14                           2.       *Bakst Petitioners did not file individual appeals in each of the three*  
15                                           *years in question*

16           159. Not every Bakst Petitioner filed an individual appeal in each of the three years in  
17 questions: (1) Bakst Petitioner Carol Buck did not file an individual appeal for the 2003-2004 tax year  
18 and was not a party to *Bakst*, (2) Bakst Petitioner Dan Schwartz did not file an individual appeal for the  
19 2004-2005 tax year and was not a party to *Barta*, and (3) Bakst Petitioners Jane Barnhardt, Dan Schwartz,  
20 Larry Watkins and Agnieszka Winkler did not file individual appeals for the 2005-2006 tax year. *See*  
21 *Bakst and Barta*.

22           160. The County and State have not asserted that any of the other residential property owners  
23 who did not file individual appeals and are collectively represented by the Village League lack standing.

24           161. Nothing distinguishes any Bakst Petitioner who did not file an individual appeal in one or  
25 more of the three tax years in question from the other residential property owners in Incline  
26 Village/Crystal Bay who did not file an individual appeal in one or more of the three tax years in question.

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27  
28 <sup>11</sup> The Bakst Petitioners participated in the 2012 (as represented by Village League) and 2017 (independently represented)  
equalization proceedings as parties.



1 162. The State Board refused to grant the relief requested.

2 163. As a matter of law, the Bakst Petitioners who did not file administrative appeals are  
3 directly (1) “affected by the action” and are aggrieved under NRS 233B.130, and (2) are taxpayers  
4 seeking redress from the findings of the State Board “relating to the payment of taxes.” This Court  
5 concludes they have standing.

6 3. *The Bakst Petitioners have final judgments for one or more of the*  
7 *three years in question*

8 a. Collateral Attack

9 164. The Nevada Supreme Court has long emphasized the importance of the finality of  
10 judgments. *Trujillo v. State*, 310 P.3d 594, 601 (Nev. 2013). “The policy supporting the finality of  
11 judgments recognizes that, in most instances, society is best served by putting an end to litigation after a  
12 case has been tried and judgment entered.” *Bonnell v. Lawrence*, 128 Nev. 394, 401, 282 P.3d 712, 716  
13 (2012)(quoting *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 653, 218 P.3d 853, 858 (2009))(internal  
14 quotations omitted).

15 165. “The bar against relitigation of already-decided issues is, in essence, an entitlement not  
16 to stand trial or face the other burdens of litigation and should be resolved at the earliest stage in  
17 litigation.” *Bonnell v. Lawrence*, 128 Nev. 394, 401, 282 P.3d 712, 716 (2012)(quoting *Butler v. Bayer*,  
18 123 Nev. 450, 458, 168 P.3d 1055, 1061 (2007))(internal quotations omitted).

19 166. Allowing collateral attacks on prior judgments fosters endless litigation and makes  
20 judgments forever subject to attack and is contrary to traditional principles of res judicata and collateral  
21 estoppel. *Markoff v. New York Life Ins. Co.*, 92 Nev. 268, 271, 549 P.2d 330, 332 (1976).

22 167. Only a void judgment is susceptible to collateral attack. *State v. Sustacha*, 108 Nev. 223,  
23 226, 826 P.2d 959, 961, n.3 (1992)(internal citation omitted). A judgment is only void and subject to  
24 collateral attack if the issuing court lacked personal or subject matter jurisdiction. *Id.*; *State ex rel. Smith*  
25 *v. Sixth Judicial Dist. Court*, 63 Nev. 249, 256, 167 P.2d 648, 651 (1946).

26 168. The judgments the Bakst Petitioners, and similarly situated Incline Village/Crystal Bay  
27 residential property owners, received in *Bakst* and *Barta* are final, are not void and not subject to collateral  
28 attack.

1           169. *Bakst* and *Barta* ordered that unconstitutional taxable values in one or more of the three  
2 years in question are null and void and must be replaced with constitutional 2002-2003 taxable values.

3           170. The County and State Board represent that the judicial mandate of *Bakst* and *Barta* was  
4 not implemented: (1) the tax rolls for the 2003-2004, 2004-2005, 2005-2006 tax years were never  
5 corrected, and (2) the unconstitutional null and void values of Bakst Petitioners and similarly situated  
6 Incline Village/Crystal Bay residential property owners for those tax years remain on the tax rolls. Bd.  
7 Brf. at 14; Cty. Brf. at 37. This Court accepts the representations of the County and State that the tax rolls  
8 from the three years in question are not in the administrative record.

9           171. As a matter of law, the failure of the County to correct the tax rolls constitutes a collateral  
10 attack and is sufficient basis to conclude the Bakst Petitioners have standing to defend their judgments.

11           172. The State Board equalized residential properties to the unconstitutional values on the tax  
12 rolls, which had not been corrected by the County after *Bakst* and *Barta*, reinstating the unconstitutional  
13 taxable values of the Bakst Petitioners, and similarly situated Incline Village/Crystal Bay residential  
14 property owners.

15           173. As a matter of law, this Court concludes that the State Board collaterally attacked the  
16 Bakst Petitioners' judgments when it equalized all property values based on the tax rolls.

17           174. The County, before admitting that the values of the Bakst Petitioners properties had not  
18 been corrected on the tax rolls, on remand from *Ingemanson*, urged this Court to raise the values of the  
19 Bakst Petitioners.

20           175. As a matter of law, the County's action constituted a collateral attack on the final  
21 judgments of the Bakst Petitioners and similarly situated residential property owners in Incline  
22 Village/Crystal Bay.

23           176. As a matter of law, the State Board order of the reappraisal of all unconstitutionally valued  
24 Incline Village/Crystal Bay residential properties in its 2012 Equalization Order, including those of the  
25 Bakst Petitioners, constituted a collateral attack.

26                           b.       Preclusive Effect

27           177. The Bakst Petitioners have argued that preclusive effect must be given to *Bakst* and *Barta*  
28 in the statewide equalization action for any Bakst Petitioner or similarly situated residential property

1 owner in Incline Village/Crystal Bay who did not file an individual appeal in one or more of the tax years  
2 in question. *Ingemanson*, 133 Nev. Adv. Op. 1 at 13-14, 388 P.3d at 224 n.8 (the Court declined to reach  
3 the preclusion arguments raised); *Bakst* Resp. (May 25, 2017); Pet. Opn. Brf. at 28-31. The *Bakst*  
4 Petitioners' legal preclusion issues have not been addressed.

5 178. The State Board in 2017 refused to consider the preclusive effect of *Bakst* and *Barta* and  
6 denied relief to all taxpayers who had not proceeded with an individual appeal, which would include  
7 certain individual *Bakst* Petitioners in one or more of the tax years at issue. Equal. Ord. at 6 (CER IV at  
8 965); Bd. Trans. (Aug. 29, 2017) at 157:12-25; 158:10-12.

9 179. As a matter of law, the *Bakst* Petitioners have standing as they were aggrieved and affected  
10 by the State Board's decision not to give preclusive effect to their final judgments for one or more of the  
11 three tax years in question.

12 180. The County's Motion to Dismiss the *Bakst* Petitioners is denied.

13 **K. The Appropriate Remedy is the Equalization of All Residential**  
14 **Properties in Incline Village/Crystal Bay to Constitutional 2002-2003**  
15 **Levels, with Refunds Issued**

16 1. *Bakst and Barta set the template for relief to cure the State Board's*  
17 *Affirmation and Reinstatement of Unconstitutional Values*

18 181. *Bakst* and *Barta* both found that the only remedy for the Assessor's constitutional  
19 violation was to declare the unconstitutional taxable values void, order them replaced with 2002-03  
20 constitutional values and order a refund of the unconstitutional taxes collected. *Bakst*, 122 Nev. at 1416,  
21 148 P.3d at 726; *Barta*, 124 Nev. at 628, 188 P.3d at 1103.

22 182. Voiding unconstitutional values and refunding taxes paid thereon is the only remedy to  
23 address such systemic constitutional errors. *Bakst*, 122 Nev. at 1416, 148 P.3d at 726; *Barta*, 124 Nev. at  
24 628, 188 P.3d at 1103; *see also Greenhaw*, 734 P.2d at 1127-1128 ("We agree that a valuation contrary  
25 to the principles of the Constitution is an illegal or void valuation.").

26 a. Preclusion

27 183. In tax cases, the legal principles of preclusion are applicable to prohibit vexatious  
28 litigation by the government adverse to taxpayers, as well as prohibiting taxpayers from re-litigating the  
same issue repeatedly. *See Commr. v. Sunnen*, 331 U.S. 591 (1948).

1           184. In *Montana v. United States*, 440 U.S. 147 (1979), a federal contractor was hired to build  
2 a federal dam. *Id.* at 151-52. Pursuant to Montana law, contractors were required to pay a 1% gross  
3 receipts tax on public projects while private contractors were exempt from any such tax. *Id.* A federal  
4 contractor in state court brought the first suit against the State of Montana, but the federal government  
5 financed and controlled the suit. *Id.* When the State of Montana won the first case, the federal government  
6 pursued a similar action in its own name in federal district court. *Id.*

7           185. The Court rejected the federal government’s attempts to distinguish the state decision on  
8 grounds that the contractual provisions at issue in the federal suit were different. The Court went on to  
9 enumerate three questions that were to be answered before issue preclusion was invoked in a tax case:  
10 (1) whether the issues in the second case were “in substance” the same as those involved in the first  
11 proceeding; (2) whether the controlling facts or legal principles had changed significantly since the first  
12 case was decided; and (3) whether any “special circumstances” warranted an exception from the normal  
13 rules of issue preclusion. *Montana*, 440 U.S. at 155, 974-75.

14           186. The Ninth Circuit in *Starker v. United States*, 603 F.2d 1341 (9th Cir. 1979), the Ninth  
15 Circuit relied on *Montana* in ruling that issue preclusion foreclosed the federal government from claiming  
16 that a taxpayer owed taxes on certain land transfers after a previous ruling in favor of the taxpayer’s  
17 family on the issue. *Id.* at 1350. The Ninth Circuit applied the doctrine of issue preclusion even though  
18 the parties and the land at issue differed in the two cases because the court found that the legal issues and  
19 facts were so similar. *Id.*

20           187. The *Barta* Court has already applied the doctrine of issue preclusion to the legal issues  
21 and facts currently before this Court: “Bakst controls the outcome of these cases” and that “[t]o the extent  
22 that the Assessor developed the Taxpayers’ properties’ 2004-2005 values by using the same methods we  
23 declared unconstitutional . . . , the Bakst analysis controls[.]”

24           188. The State Board affirmed and adopted the unconstitutional values established by the  
25 Assessor which *Bakst* and *Barta* declared void.

26           189. There is nothing, factually or legally, which distinguish the remedy issues in this case  
27 from those in *Bakst* and *Barta*: (1) the 2003-04, 2004-05, and 2005-06 taxable values established by the  
28 Assessor for residential properties in Incline Village/Crystal Bay all suffer from the same constitutional

1 infirmities, (2) the Nevada Supreme Court in *Bakst* and *Barta* held that the Assessor's values were  
2 "unconstitutional", "null and void," (3) *Bakst* and *Barta* held that because there were no uniform  
3 regulations for methods to establish taxable value, the only remedy for the constitutional violation was  
4 to replace unconstitutional values with constitutional values, as factored, and afford a refund, and (3)  
5 uniformity is not met by "merely ensuring that a property's taxable value does not exceed its full cash  
6 value." *Barta*, 124 Nev. at 626; 188 P.3d at 1102.

7 190. *Bakst* and *Barta* are decisions setting the preclusive template for relief if a taxable value  
8 is unconstitutionally derived.

9 191. The State Board was precluded from adopting unconstitutional values and refusing to  
10 grant constitutional relief as required by *Bakst* and *Barta*.

11 2. *The State Board's 2006-2007 Tax Year Equalization Decisions Sets*  
12 *the Template for Relief in Equalization*

13 192. *Ingemanson* required the State Board to consider "the remedies already afforded the *Bakst*  
14 *Intervenors* and the affect those remedies have on the equalization process for the region." 133 Nev. Adv.  
15 Op. 1 at 15-16, 338 P.3d at 224.

16 193. The State Board had previously considered the impact of the void 2006-2007  
17 unconstitutional values being replaced with constitutional 2002-2003 values for the Incline  
18 Village/Crystal Bay areas in its 2006-2007 Equalization Decision.

19 194. For the 2006-2007 tax year, the fourth year of the five-year appraisal cycle in Incline  
20 Village/Crystal Bay, the State Board, affirmed the County Board decision, equalizing all 8,700+  
21 residential properties values in Incline Village/Crystal Bay to constitutional 2002-2003 levels. Dec. at 1  
22 (CER II at 438).

23 195. The County Board had granted relief to 300 individual taxpayers who filed appeals of the  
24 property tax valuations of the 2006-2007 tax year pursuant in accordance with the dictates of *Bakst*. Dec.  
25 at 1 (CER II at 438).

26 196. When the County replaced void, unconstitutional 2006-2007 taxable values with  
27 constitutional 2002-2003 values, as factored, for the three hundred individual appealing taxpayers, the  
28 County Board determined that it "had created an unequal rate of taxation for the 2006-2007 tax year."  
Dec. at 1 (CER II at 438).

1           197. Discharging its equalization function, the County Board reset the taxable values for the  
2 approximately 8,700 other properties in the Incline Village and Crystal Bay areas to 2002-2003 levels.  
3 Dec. at 1, 5 (CER II at 438, 442) (quoting County Board).

4           198. The County Board did not limit the scope of its equalization order to only those properties  
5 who had undisputed unconstitutional values. Its scope included all properties in Incline Village/Crystal  
6 Bay to cure the disparity between the valuation and assessment between the 300 parcels and the remainder  
7 of the area. Dec. at 1-2, 5 (CER II at 438-39, 442); *Village League to Save Incline Assets v. State ex rel*  
8 *Bd. of Equal.*, 124 Nev. 1079, 1090, 194 P.3d 1254, 1261-62 (2008) (“2008 Village League”).

9           199. The 2009 Equalization Decision equalizing all 2005-2006 taxable values of Incline  
10 Village/Crystal Bay properties to constitutional 2002-2003 levels, as factored, is a final decision of the  
11 State Board.

12           200. Here, over a thousand Incline Village/Crystal Bay residential property owners have  
13 received adjudicated relief for the 2002-2003, 2003-2004 and/or 2005-2006 tax years. The State Board  
14 was required to consider those remedies in discharging its equalization function, just as it did for the  
15 2006-2007 tax year, to ensure an equal rate of taxation and assessment in Incline Village/Crystal Bay.

16           201. The State Board was obligated to apply the 2006-2007 equalization template for relief that  
17 it used to rectify the unequal and unconstitutional valuations and assessments in Incline Village/Crystal  
18 Bay to the three preceding tax years at issue in this case.

19           202. The State Board’s disregard of its 2006-2007 decision equalizing properties in Incline  
20 Village/Crystal Bay to cure the undisputed unequal rate of taxation and assessment is arbitrary and an  
21 abuse of discretion.

22           203. The State Board was required to equalize to constitutional 2002-2003 levels and afford  
23 refunds; any other result is unjust and inequitable.

24           204. NRS 361.410(1) requires this Court to determine whether the equalization decision of the  
25 State Board is just and equitable.

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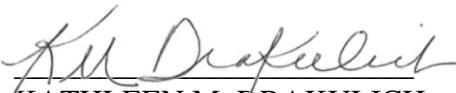


1 and modify and/or approve the proposed schedule and require the Treasurer to report monthly on its  
2 compliance with said schedule; and

3 (9) The adjudicated property values of the Bakst Plaintiffs/Petitioners along with those of all  
4 similarly situated Incline Village/Crystal Bay residential property owner/taxpayers with adjudicated land  
5 values for any and all of the three tax years 2003-2004, 2004-2005 and 2005-2006 are ratified and  
6 confirmed.

7 IT IS SO ORDERED

8 DATED this 21<sup>st</sup> day of October, 2019.

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10   
11 KATHLEEN M. DRAKULICH  
12 District Court Judge  
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**CERTIFICATE OF SERVICE**

CASE NO. CV03-06922

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 21<sup>st</sup> day of October, 2019, I electronically filed the **FINDINGS OF FACT, CONCLUSION OF LAW, DECISION AND ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**

SUELLEN FULSTONE, ESQ. for ANDREW WHYMAN, KATHY NELSON TRUST, VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., LARRY D AND MARYANNE B INGEMANSON TRUST

JESSICA PRUNTY, ESQ. for AGNIESZKA WINKLER, LARRY J. WATKINS, CAROL BUCK, DON WILSON, PATRICIA WILSON, ELLEN SUSAN BAKST, JANE A. BARNHART, DAN SCHWARTZ

NORMAN AZEVEDO, ESQ. for AGNIESZKA WINKLER, LARRY J. WATKINS, CAROL BUCK, DON WILSON, PATRICIA WILSON, ELLEN SUSAN BAKST, JANE A. BARNHART, DAN SCHWARTZ

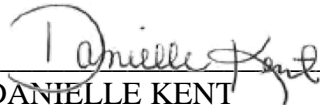
HERBERT KAPLAN, ESQ. for WASHOE COUNTY

JORDAN DAVIS, ESQ. for CITY HALL, LLC

WILLIAM MCKEAN for CITY HALL, LLC

MICHELLE BRIGGS, ESQ. for STATE BOARD OF EQUALIZATION

**Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]**

  
\_\_\_\_\_  
DANIELLE KENT  
Department 1 Judicial Assistant