



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: August 4, 2020

DATE: Thursday, July 30, 2020

TO: Board of County Commissioners

FROM: Christopher J. Hicks, District Attorney
chicks@da.washoecounty.us

David L. Watts-Vial, Assistant District Attorney
dwatts@da.washoecounty.us

Herbert Kaplan, Deputy District Attorney
Hkaplan@da.washoecounty.us

SUBJECT: Presentation, discussion, and possible action to approve a proposed settlement agreement between Washoe County and the League to Save Village Assets, Inc., the terms of which will result in dismissal by Washoe County of the appeal of the District Court's decision in Village League to Save Incline Assets, Inc., et.al. vs. State of Nevada, et.al., Case No. CV03-06922, Supreme Court case no 80092, and other associated cases described in the agreement; payment by Washoe County of refunds to Incline Village/Crystal Bay residential property owners/taxpayers for the 2003-04, 2004-05, and 2005-06 tax years in the total estimated amount of \$56 million, the County's portion of which is \$23.8 million and the remaining portion of which is attributable to the Washoe County School District, North Lake Tahoe Fire Protection District, Incline Village Improvement District, State of Nevada, with refund payments beginning July 1, 2021 and made pursuant to claims processes and timelines described in the agreement; an interest holiday during which time no interest will accrue from July 1, 2021 to June 30, 2023; and other terms as described in the settlement agreement; if the settlement agreement is not approved, discussion and possible action by the Board to authorize staff to present alternative terms of a proposed settlement to the Incline Village/Crystal Bay residential property owners/taxpayers through their counsel. Manager's Office. (All Commission Districts.) FOR POSSIBLE ACTION.

SUMMARY

Before the Board is an action for a presentation, discussion, and possible action to approve a proposed settlement agreement between Washoe County and the League to Save Village Assets, Inc., the terms of which will result in dismissal by Washoe County of the appeal of the District Court's decision in Village League to Save Incline Assets,

AGENDA ITEM # _____

Inc., et.al. vs. State of Nevada, et.al., Case No. CV03-06922, Supreme Court case no 80092, and other associated cases described in the agreement; payment by Washoe County of refunds to Incline Village/Crystal Bay residential property owners/taxpayers for the 2003-04, 2004-05, and 2005-06 tax years in the total estimated amount of \$56 million, the County's portion of which is \$23.8 million and the remaining portion of which is attributable to the Washoe County School District, North Lake Tahoe Fire Protection District, Incline Village Improvement District, State of Nevada, with refund payments beginning July 1, 2021 and made pursuant to claims processes and timelines described in the agreement; an interest holiday during which time no interest will accrue from July 1, 2021 to June 30, 2023; and other terms as described in the settlement agreement; if the settlement agreement is not approved, discussion and possible action by the Board to authorize staff to present alternative terms of a proposed settlement to the Incline Village/Crystal Bay residential property owners/taxpayers through their counsel.

WASHOE COUNTY STRATEGIC OBJECTIVE SUPPORTED BY THIS ITEM:

Safe, Secure and Healthy Communities

PREVIOUS ACTION

A series of legal challenges to property tax assessments for properties in the Incline Village/Crystal Bay area of Washoe County began in 2003. The litigations were initiated by various groups of taxpayers and involved the decisions of the Washoe County Board of Equalization, the Nevada State Board of Equalizations. Some are described below.

The most recent action occurred on November 12, 2019 when the Board of County Commissioners authorized the filing of an appeal of the District Court order which was duly filed and the Parties were referred to Supreme Court's Settlement Program.

BACKGROUND

HISTORY OF LITIGATION

Various legal challenges to property tax assessments of residential properties in the Incline Village/Crystal Bay area of Washoe County have been filed by individuals and groups of taxpayers dating back to 2003. Market value of real property increased dramatically at Lake Tahoe and elsewhere in the early 2000's and the corresponding increase in property tax bills focused attention on property tax assessments.

The case entitled Village League to Save Incline Village Assets vs. State Board of Equalization (Case No. CV03-06922) began as a challenge to the constitutionality of property tax assessments in the Tahoe area of Washoe County by virtue of the use of methodologies, such as the view of Lake Tahoe, and also of the alleged differences between the assessed valuation of Tahoe properties in Washoe County and Tahoe properties in other counties. The case was dismissed by the District Court and appealed by the taxpayers in 2004. The Nevada Supreme Court's first substantive decision on the issues in the appeal came nearly five years later. In its March 19, 2009 order, the Supreme Court upheld the dismissal of the taxpayers claims except for the county-by-county "equalization claim." (Case No. 43441). That portion of the 2003 case was returned to the District Court.

After a series of procedural arguments involving the power of the District Court to order the State Board of Equalization to act, the District Court again dismissed the taxpayer's complaint/petition. (Order, April 13, 2010). The taxpayers appealed. The Nevada Supreme Court agreed with the District Court that the proper forum for a taxpayer to request or discuss the need for the adjustment of property valuations is before the State Board of Equalization, but also found that the State Board had not demonstrated that it held a proper public hearing with regard to statewide equalization for the tax years at issue, to wit: 2003-04, 04-05, and 05-06. The case was remanded to the District Court. (Order, February 24, 2012, Case No. 56030). In obedience to the Supreme Court's order, the District Court issued a writ of mandamus to the State Board of Equalization "regarding the failure, or lack, of equalization of real property valuations throughout the State of Nevada ... and to raise, lower or leave unchanged the taxable value of any property for the purpose of equalization." (Order, August 21, 2012, Case No. CV03-06922).

Pursuant to the District Court's writ, the State Board of Equalization held several meetings in 2012. Without making a final decision on statewide equalization, the Board expressed its concern with the assessments of Tahoe properties and ordered the Washoe County Assessor to "reappraise all residential properties located in Incline Village and Crystal Bay to which an unconstitutional methodology was applied to derive taxable value." (SBOE decision, February 8, 2013). The taxpayers filed a legal challenge effectively seeking to block the State Board from obtaining information to determine whether the taxes that were assessed were ever in excess of the taxable value. (Petition for Judicial Review, Case No. CV13-00522). The District Court consolidated that new challenge with the existing Village League case and dismissed the taxpayers' challenge of the reappraisal order. The taxpayers appealed. (July 3, 2013, Sup Ct Case No. 63581).

After 3 1/2 years, the Nevada Supreme Court issued its decision to the challenge of the reappraisal order. The Court found the State Board had no statutory authority to order reappraisals while performing its equalization function. The Court ordered the 2013 State Board equalization order to be vacated and directed the District Court to conduct further proceedings to satisfy the requirements of NRS 361.395. (Opinion, January 26, 2017, Case No. 63581).

Back in the District Court and after some skirmishes about what the Supreme Court's order meant, the Court once again remanded the case to the State Board to "conduct further proceedings pursuant to its statutory authority under NRS 361.395" (Order, July 17, 2017). The taxpayers appealed. (Sup Ct Case No. 73835). The Supreme Court's response to the taxpayer's 4th appeal to the Nevada Supreme Court was that the District Court had properly ordered the State Board to determine the petitioners' equalization grievances. The appeal was dismissed. (November 19, 2018).

While the taxpayers' 4th appeal was pending and because no court-ordered stay was in place, the State Board was finally able to meet to make an equalization decision. The meeting, held met on August 29, 2017, came more than 8 years after the Nevada Supreme Court decided a such a hearing was due and almost 14 years after the Village League filed its initial lawsuit challenging property tax assessments. Among other things, the State Board found:

- the taxpayers did not follow the required statutory process to challenge the land value portion of their tax assessments for tax years 2003-04, 2004-05 and 2005-06;
- appreciation of land values during those tax years were significant statewide;
- it was clear that assessments for those years were low and that equalization would likely involve increasing taxable values;

- no evidence was presented that taxable value exceeded market value; and
- reducing land values for Tahoe properties would exacerbate the existing discrepancy between Tahoe properties and the rest of Washoe County.

(State Board Order, October 30, 2017.)

The State Board concluded that “there is not an equalization problem in the Incline Village/Crystal Bay area of Washoe County for the tax years 2003-04, 2004-05, 2005-06 and further that providing the relief requested by Village League would create an equalization problem for Washoe County and statewide.”

The taxpayers filed a petition for judicial review of the State Board’s decision in the First Judicial District Court (Carson City.) The Carson City judge transferred the new case challenging the State Board’s decision to the Second Judicial District Court (Washoe County) and it ended up being filed into the original 2003 Village League tax case. However, Judge Patrick Flanagan, who had presided over the Village League case since 2006 sadly died shortly before the State Board’s decision was released. After preemptory challenges of Judge Flanagan’s successor and another judge, the District Court’s case assignment process gave the case to Judge Kathleen Drakulich.

Judge Drakulich decided the Village League’s challenge of the State Board’s equalization order on October 21, 2019. The Court’s decision vacated the State Board’s equalization decision, ordered the replacement of the 2003-04, 2004-05 and 2005-06 taxable land values for residential parcels in Incline Village and Crystal Bay with 2002-03 taxable land values, and ordered the payment of property tax refunds to the taxpayers within one year.

On November 12, 2019 the Board of County Commissioners authorized the filing of an appeal of the District Court order. The appeal was filed and the Parties were referred to Supreme Court’s Settlement Program.

SETTLEMENT NEGOTIATIONS

In February the negotiating teams for the parties met in Carson City with Settlement Judge David Wasick and agreed to the outline of a settlement agreement that was to be further fleshed-out and presented to the BCC at the appropriate time for possible approval.

The League proposed an initial draft to which the County’s negotiating team provided comment and counter-language. While negotiations were underway the COVID -19 pandemic hit creating delays and concern over the County’s current and future financial condition and its ability to meet the strictures of the proposed agreement.

The parties negotiated new timelines for the key components of the settlement by agreeing the County could make the first refunds to taxpayers in July 2021, and allowing the County an interest holiday from July 1, 2021 extending to July 1, 2023, during which time interest will not accrue and the refunds will be made, and after which time interest would again accrue.

At the last regular meeting of the BCC, a proposed settlement agreement from the League was set for discussion and possible action to approve, along with a version from County staff with proposed changes. Immediately prior to the meeting the League presented another

proposed settlement which addressed many of the concerns presented by the Washoe County Treasurer and staff and the item was pulled from the agenda to allow time for Commissioners and staff to review. That proposed agreement is now before the Board for approval or rejection.

FISCAL IMPACT

The estimated cost of the settlement to Washoe County is \$23.8 million. The Washoe County Treasurer collects property taxes for Washoe County and other taxing entities with overlapping jurisdiction in the Lake Tahoe area. Those include the Washoe County School District, North Lake Tahoe Fire Protection District, Incline Village Improvement District, State of Nevada all of whom will see reduced distributions of property taxes in the estimated combined total of \$32.2 million.

The Board has not taken action to allocate funding for Washoe County's portion of the settlement. Staff recommends the following options for consideration and will return to the Board with items for action as necessary:

- If FY20 financial results are better than anticipated, that amount should be transferred into a restricted fund for the settlement payments
- For FY21, additional budget adjustments as necessary, which could include:
 - Mid-year budget reductions, including interfund transfers and workforce reductions
 - Any better than anticipated fiscal year results should be transferred into a restricted fund for the settlement payments
- FY22 adjustments, as necessary, could include:
 - Additional budget reductions
 - Continuing and/or additional CIP deferrals
 - Other measures

RECOMMENDATION

It is recommended the Board accept the presentation, discuss, and possibly take action to approve a proposed settlement agreement between Washoe County and the League to Save Village Assets, Inc., the terms of which will result in dismissal by Washoe County of the appeal of the District Court's decision in Village League to Save Incline Assets, Inc., et.al. vs. State of Nevada, et.al., Case No. CV03-06922, Supreme Court case no 80092, and other associated cases described in the agreement; payment by Washoe County of refunds to Incline Village/Crystal Bay residential property owners/taxpayers for the 2003-04, 2004-05, and 2005-06 tax years in the total estimated amount of \$56 million, the County's portion of which is \$23.8 million and the remaining portion of which is attributable to the Washoe County School District, North Lake Tahoe Fire Protection District, Incline Village Improvement District, State of Nevada, with refund payments beginning July 1, 2021 and made pursuant to claims processes and timelines described in the agreement; an interest holiday during which time no interest will accrue from July 1, 2021 to June 30, 2023; and other terms as described in the settlement agreement; if the settlement agreement is not approved, discussion and possible action by

the Board to authorize staff to present alternative terms of a proposed settlement to the Incline Village/Crystal Bay residential property owners/taxpayers through their counsel.

POSSIBLE MOTION

If the Board seeks to accept the settlement agreement a possible motion would be:

I move to approve the proposed settlement agreement between Washoe County and the League to Save Village Assets, Inc., the terms of which will result in dismissal by Washoe County of the appeal of the District Court's decision in Village League to Save Incline Assets, Inc., et.al. vs. State of Nevada, et.al., Case No. CV03-06922 and other associated cases described in the agreement; payment by Washoe County of refunds to Incline Village/Crystal Bay residential property owners/taxpayers for the 2003-04, 2004-05, and 2005-06 tax years in the total estimated amount of \$56 million, the County's portion of which is \$23.8 million and the remaining portion of which is attributable to the Washoe County School District, North Lake Tahoe Fire Protection District, Incline Village Improvement District, State of Nevada, with refund payments beginning July 1, 2021 and made pursuant to claims processes and timelines described in the agreement; an interest holiday during which time no interest will accrue from July 1, 2021 to June 30, 2023; and other terms as described in the settlement agreement.