WASHOE COUNTY

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STAFF REPORT
BOARD MEETING DATE: November 12, 2019

DATE: Tuesday, November 05, 2019

TO: Board of County Commissioners

FROM: Christopher J. Hicks, District Attorney
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SUBJECT: Recommendation to consider authorizing an appeal to the Nevada Supreme Court of the District Court's granting of a petition for judicial review in Village League to Save Incline Assets, Inc., *et.al*. vs. State of Nevada, *et.al.*, Case No. CV03-06922, a case involving the State Board of Equalization's November 30, 2017 equalization decision regarding residential property valuations in the Incline Village/Crystal Bay area of Washoe County; and authorize the Washoe County District Attorney to engage special outside counsel for the appeal. (All Commission Districts)

SUMMARY

Authorization of an appeal to the Nevada Supreme Court of lower court decision regarding residential property valuations in the Incline Village/Crystal Bay area of Washoe County

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.

BACKGROUND

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 it 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. The Board of County Commissioners is being asked to consider whether to appeal this order of the District Court.

The District Attorney's Office will not place into this publicly-available staff report its assessment of the legal issues that arise from the District Court's October 21, 2019. However, due to the Nevada Supreme Court's decision in Commission on Ethics vs. Hansen, 133 Nev. Adv. Opn 39 (2017), it is necessary that if the Board of County Commissioners wants to file an appeal, it must do so in a duly-noticed public meeting.

Due to the potentially significant financial impact of the District Court's decision (explained briefly below), The Washoe County District Attorney wants to offer the Board of County Commissioners the opportunity to engage outside legal counsel. This agenda item would authorize the District Attorney to engage such counsel.

FISCAL IMPACT

There are potentially severe financial consequences to the District Court's decision—potentially tens of millions of dollars for Washoe County and other taxing entities.

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 State of Nevada, the Washoe County School District, the North Lake Tahoe Fire Protection District and the Incline Village General Improvement District. The Court's order potentially applies to thousands of residential parcels at Lake Tahoe. If the Court's order is followed, it would cut off some of the most significant growth in property values and the corresponding tax assessments over many years. The Court's order would reset the property tax value to a year that preceded much of that growth. In the past, the calculations of those values plus interest has taken the Washoe County Treasurer years to complete. It must be done by hand for each parcel. The Treasurer estimates the refunds could total tens of millions of dollars. The Treasurer must also determine what proportion of the refunds would come from the other taxing entities.

The fiscal impact of engaging outside legal counsel could exceed $100,000.

RECOMMENDATION

It is recommended the Board of County Commissioners consider authorizing an appeal to the Nevada Supreme Court of the District Court's granting of a petition for judicial review in Village League to Save Incline Assets, Inc., *et.al*. vs. State of Nevada, *et.al.*, Case No. CV03-06922, a case involving the State Board of Equalization's November 30, 2017 equalization decision regarding residential property valuations in the Incline Village/Crystal Bay area of Washoe County; and authorize the Washoe County District Attorney to engage special outside counsel for the appeal.

POSSIBLE MOTION

I move that the Board of County Commissioners authorize an appeal to the Nevada Supreme Court of the District Court's granting of a petition for judicial review in Village League to Save Incline Assets, Inc., *et.al*. vs. State of Nevada, *et.al.*, Case No. CV03-06922, a case involving the State Board of Equalization's November 30, 2017 equalization decision regarding residential property valuations in the Incline Village/Crystal Bay area of Washoe County; and authorize the Washoe County District Attorney to engage special outside counsel for the appeal.