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A response to Assessor Schofield

The facts are clear: He and other assessors are violating the Nevada Constitution

Steven Miller

On Dec. 13, Clark County Assessor Mark Schofield, in a letter to the editor published by the Las Vegas Review-Journal, took issue with a commentary I wrote that the R-J had published two weeks earlier.

"I am writing to clear up some of the serious misrepresentation of facts," asserted Schofield.

Unfortunately for the assessor, the allegations he was most anxious to deny — particularly the point that Nevada assessors "have no concise rules or regulations they must follow" in key areas of vital interest to property owners — have been amply documented over recent months by many observers. Eight different investigative reports by the Nevada Policy Research Institute, published at http://www.npri.org/, illuminate the situation clearly, citing not only numerous state and national experts but also key findings of Nevada courts, including two decisions of the Nevada Supreme Court.

The high court's State, Bd. of Equalization v. Bakst decision is a pertinent example. It rejected the core argument county assessors, including Schofield, have been making — that their appraisals are lawful because they have blanket authority to do as they see fit under NRS 361.260(7). In the lawsuit brought against the Washoe County assessor, the Court found that "...NRS 361.260(7) did not permit the Assessor to adopt standards or methods of valuation not approved by the Nevada Tax Commission" and that therefore "the use of the disputed methodologies was improper under the Nevada Constitution's requirement that property be taxed according to a uniform and equal rate of assessment."

The statute in question had actually been passed during the 2001 Nevada Legislature at the request of assessors. It provided that county assessors "shall establish standards for appraising and reappraising land." But, said the Supreme Court in an emphatic, underlined statement in the Bakst decision, contrary to what the State of Nevada, Washoe County and other assessors were arguing, "NRS 361.260(7) did not authorize county assessors to create their own valuation methodologies."

Continued the Court: "The legislative history shows that the Legislature passed NRS 361.260(7) for the limited purpose of allowing county assessors to adopt standards using more current sales comparables within the comparable sales methodology than was previously mandated. The Legislature did not intend that NRS 361.260(7) create a broad grant of authority in the county assessors to develop individualized valuation methodologies county by county."

The Supreme Court acknowledged that — given the negligence of the Nevada Tax Commission in failing to provide uniform regulations for the assessment of property statewide — the Washoe assessor "understandably" created his own methodologies. Nevertheless, said the Court, "Those methodologies are unconstitutional ... because they are inconsistent with the methodologies used in other parts of Washoe County and the entire state."

The situation of the Clark County assessor is similar: The Nevada Tax Commission has never approved the complex methodology Clark County developed for applying the land-valuation technique called abstraction.

The state Department of Taxation, responsible for administering Nevada's tax regulations, conceded recently that no consensus model exists for the application of abstraction. And a study begun last June to attempt to learn how abstraction is being applied by the different assessors was postponed.

In Nevada's current assessment system, land beneath buildings is supposed to be appraised at full cash value. The buildings, however, are supposed to be valued at their estimated replacement cost, less depreciation of 1.5 percent per year depending on the age of the home. Land and improvement values, added together, thus determine a property's taxable value.

However, under different abstraction methodologies available to county assessors, certain costs can be classified either as land costs or as improvement costs. And because only improvements get the depreciation tax-break, assessors can, theoretically at least, raise homeowners' property-tax assessments by selecting formulae that move costs from the improvements side to the land side.

This land-versus-improvements dynamic is, partly, why the Nevada Supreme Court ruled in Bakst that assessors must use appraisal methodologies the state Tax Commission has approved. Absent uniform methods, no assurance exists that assessors are valuing similarly situated improvements and land the same way.

In other words, the Nevada Constitution's mandate for "a uniform and equal rate of assessment and taxation" is being violated blatantly — and nothing in Assessor Schofield's letter demonstrates otherwise.

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