

1 Code No. 3975
2 Suellen Fulstone
3 Nevada State Bar #1615
4 MORRIS PETERSON
5 6100 Neil Road, Suite 555
6 Reno, NV 89511
7 (775) 829-6009
8 Attorneys for Petitioners

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Charles Otto, Trustee of the Otto Family) Case No. CV09-02534
Trust; Todd Lowe, Trustee of the Lowe)
Family Trust; V Park LLC, a Nevada limited) Dept. No. 6
liability company, for themselves and on behalf)
of similarly situated residential property owners)
and taxpayers at Incline Village/Crystal Bay,)
Washoe County, Nevada,)
Petitioners)
v.)
Bill Berrum, Washoe County)
Treasurer,)
Respondent.)

PETITIONERS' STATUS CONFERENCE STATEMENT

A status conference has been set in this matter for February 24, 2011. Petitioners, Charles Otto, Todd Lowe, and V Park LLC, respectfully submit this Status Conference Statement demonstrating the Treasurer's failure to comply in a timely manner with this Court's order mandating the return to Incline Village/Crystal Bay homeowners of excess property taxes collected. Petitioners ask the Court to enter an order establishing deadlines for the return of excess taxes to homeowners and assuring that the repayment process is expeditiously concluded. Petitioners further ask the Court to direct the Treasurer to allow homeowners to take credits for

1 excess taxes previously paid against current taxes due and owing.

2 The history of this matter is as follows:

3 October 23, **2009**: This Court mandated the Treasurer to return to Incline Village/Crystal
4 Bay homeowners excess property taxes collected from the 2006-2007
5 tax year forward.

6 July 7, **2011**: The Supreme Court denied the Treasurer's appeal and affirmed this
7 Court's mandate for the repayment to homeowners of excess taxes
8 collected. Berrum v. Otto, 127 Nev. Adv. Op. 30, 255 P.3d 1269 (2011).

9 August 16, **2011**: The Treasurer filed a "Report of Compliance" with this Court indicating
10 that the process of returning excess taxes to homeowners would
11 begin when the funds were authorized by the County Commission.

12 August 23, **2011**: The Washoe County Commission authorized the funding for
13 repayment. The Commission adopted a resolution finding that
14 homeowners were owed the repayment of excess property tax amounts
15 collected and directing the Treasurer to repay the amounts owed.
16 See Exhibit 1.

17 January 11, **2012**: The Treasurer made her monthly report to the County Commission
18 reflecting that, between August 23, 2011, and December 31, 2011, her
19 Office had processed repayments to homeowners for a total of 475 of
20 8763¹ properties at Incline Village/Crystal Bay, approximately 5.42%
21 of the total number of properties as to which repayments are due. See
22 Exhibit 2. In the first three months, a total of 230 properties were
23 processed; in December alone, 245 properties were processed.

24 **A. The Length Of The Repayment Process**

25 On August 23, 2011, the County Commission funded the repayment process and
26 directed the Treasurer to repay amounts owed to Incline Village/Crystal Bay homeowners.
27 Allowing the Treasurer's Office three months for training and working the glitches out, by
28 December the repayment system should have been up and running. Still, the Treasurer processed
only 245 properties for repayment in December. There remain approximately 8300 properties for
which excess taxes collected must be calculated and repaid. At 245 properties a month, the
repayment process would not be completed for another 34 months, or almost three years, until

¹ The Treasurer has posted a list of Incline Village/Crystal Bay parcels affected by the refund order which includes 8763 properties identified by APN number.

1 November of 2014. The excess tax collections which are the subject of this case began in 2006.
2 Homeowners who are not repaid until the end of 2014 will have their funds wrongfully withheld
3 by the County for more than eight (8) years.
4

5 In her "Report of Compliance" to this Court, the Treasurer represented that each
6 repayment required, on average, one and a half (1½) hours to "adjust, calculate and manually
7 validate" and that she was hoping to obtain additional staff. The County Commission authorized
8 the additional staff early on and the Treasurer has a team of eight employees dedicated to the task
9 of processing these repayments. Using the Treasurer's 1½ hour average, each of those employees
10 should process five (5) repayments in an 8-hour day, with a half hour to spare. Collectively, eight
11 employees should process 40 repayments a day. Using a 5-day week and a 4-week month, they
12 should process a minimum of 200 repayments a week for a total of 800 each month. At 800
13 properties a month, the remaining 8288 properties can be completed in a little more than 10
14 months, which would be before the end of the year, still a full eighteen months **after** the Supreme
15 Court decision affirming this Court's mandamus ruling.
16
17

18 The Treasurer has offered no explanation why her office, even with the additional
19 staffing she requested, is processing homeowner repayments at far less than even half the rate she
20 told this Court could be achieved. This failure should concern not just Incline Village/Crystal Bay
21 homeowners who are made to wait even longer for the return of amounts owed, but all Washoe
22 County taxpayers. Every day added to the repayment process accrues interest at 6% per annum on
23 the unpaid amounts. The initial estimate for the repayment amounts was in excess of \$40 million.
24 Substantially more than \$30 million remains unpaid but, rounding down for argument purposes,
25 interest accrues on \$30 million at the rate of approximately \$5000 a day. The prime rate, which is
26 applicable to short-term loans, is 3.25%. Lower interest rates can be found on longer term loans.
27
28 A private debtor would be scrambling to pay off the higher cost debt and replace it with less

1 expensive debt. But, because the County is a public entity and the taxpayers bear the cost, the
2 Treasurer is apparently not bothered by extending the repayment process over a couple of years.

3
4 On her website, the Treasurer states that it is the goal of her office "to process the
5 refunds as quickly as possible, in order to minimize the wait time, and the interest cost." Answer
6 to Question 7, Treasurer's Incline Village/Crystal Bay Property Tax Refund FAQ's at [www.co.
7 washoe.nv.us/treas/Inclinevillage/crystalbaytaxrefundinformation.htm](http://www.co.washoe.nv.us/treas/Inclinevillage/crystalbaytaxrefundinformation.htm) (Refund FAQs). Based on
8 the last four months' experience, the Treasurer's statements are nothing more than lip service.

9
10 Furthermore, and adding insult to injury, while the repayment process is
11 inexplicably drawn out, the Treasurer continues to collect excess property taxes on at least some
12 Incline Village properties. In 2006, the Washoe County Board of Equalization reduced the
13 valuation on all residential properties at Incline Village and Crystal Bay. The Treasurer
14 disregarded the County Board decision and billed and collected taxes at the Assessor's higher
15 valuations. This Court ordered the Treasurer to comply with the County Board decision and to
16 return the excess taxes collected to homeowners.

17
18 The 2006 County Board decision, however, did not just impact a single year.
19 Because of the "tax cap" enacted by the Nevada Legislature in 2005, the reduced values and
20 consequently reduced taxes assessed for 2006-2007 also result in reduced values and reduced
21 taxes for subsequent years. The "tax cap" imposes a 3% maximum on the increase in residential
22 property taxes from one year to the next. For example, if the tax assessed and collected on a
23 primary residence in Year One was \$1000, the tax cannot exceed \$1030 in Year Two, \$1060.90 in
24 Year Three, \$1092.72 in Year Four and so on, without regard to actual increases or decreases in
25 valuation.
26

27
28 If the valuation in Year One is reduced and the tax on that valuation reduced
accordingly, the 3% cap is applied to that adjusted and reduced tax amount going forward,

1 reducing the amount of collectible taxes in subsequent years. Using the above example, if the
 2 property value in Year One is lowered such that the tax is \$800 instead of \$1000, then the tax in
 3 Year Two cannot exceed \$824, the tax in Year Three cannot exceed \$848.72, and the tax in Year
 4 Four cannot exceed \$874.18. The homeowner is entitled to repayment of the difference between
 5 the taxes paid under the unlawful cap and the taxes owed under the adjusted cap, not just in Year
 6 One but in every subsequent year.
 7

8 This simplified example is illustrated in the chart below:

	Year One	Year Two	Year Three	Year Four
9 Tax on initial valuation 10 as capped	\$1000.00	\$1030.00	\$1060.90	\$1092.72
11 Tax on adjusted valuation 12 as capped	\$ 800.00	\$ 824.00	\$ 848.72	\$ 874.18
13 Excess taxes owed	\$ 200.00	\$ 206.00	\$ 212.18	\$ 218.54

14
 15
 16 The illustration is drawn over four years. The tax cap statute, however, contains no
 17 year limitation; and, in the case of many properties at Incline Village/Crystal Bay, Washoe County
 18 continues to impose and property taxes at unlawful levels through 2011-2012 and 2012-2013,
 19 while the repayment process is ongoing.² The Treasurer acknowledges this "roll forward" effect
 20 of the 2006-2007 value change. Refund FAQs, Answer to Question 17.
 21

22 It is one thing to collect taxes at unconstitutional levels while a tax issue is being
 23 litigated. It is another thing entirely to **continue** to impose and collect taxes at unconstitutional
 24 levels after the issue has been conclusively determined. But, rather than make any attempt to
 25 identify those Incline Village/Crystal Bay homeowners whose taxes continue at unconstitutional
 26

27
 28 ² The "tax cap" impact does not continue for all six years for all Incline Village/Crystal Bay homeowners because the general economic decline has led the Assessor to reduce values for residential property at Incline Village/Crystal Bay.

1 levels into 2011-2012 and 2012-2013 so that constitutional adjustments could be a priority, rather
2 than suspend the tax obligation while amounts due to homeowners are calculated and repaid, the
3 Treasurer cavalierly advises Incline Village taxpayers that, even though their current year's taxes
4 may be at unconstitutional levels, they should "continue to pay their full tax payment in a timely
5 manner" or risk the imposition of "penalty and interest." The County is thumbing its nose at the
6 Court's ruling while it continues to intentionally and knowingly impose and collect taxes at
7 unconstitutional levels.
8

9 The Treasurer's initial estimate was 18 months to calculate amounts owed and
10 repay Incline Village/Crystal Bay homeowners. The configuration of 5 employees completing
11 500 refunds per month was the basis for that estimate. It appears now, however, that, even though
12 the Treasurer has 8 employees assigned to the process, it will take much longer. The Treasurer
13 will undoubtedly have a plethora of excuses. The bottom line, however, is that the County's
14 grudging compliance with this Court's order fails to meet the standard of reasonable diligence and
15 good faith and the longer time frame for paying refunds is not only depriving Incline
16 Village/Crystal Bay homeowners of moneys owed to them but also is costing all Washoe County
17 taxpayers the expense of additional employees and the additional accrual of above market interest
18 over a longer period of time.
19
20

21 **B. Availability Of Credits Against Current Property Tax Obligations**

22 In her website FAQs, the Treasurer states that "a refund may be applied to current
23 taxes owing upon written request of the person entitled to the refund." Refund FAQ's, Answer to
24 Question 14. The practice of the Treasurer's Office, however, is otherwise. When homeowners
25 have inquired about the availability of credits to be applied to their current 2011-2012 tax
26 obligations, they are told that no credits are available. See email from Susan O'Brien to Maryanne
27 Ingemanson attached as Exhibit 3. The Treasurer has not explained why her office could not take
28

1 the hour and a half required to calculate the amount owed to the homeowner and apply that
2 amount as a credit to taxes due. The Treasurer is giving a classic demonstration of government at
3 its most bureaucratic and least efficient.
4

5 When the County collects property taxes at unlawful levels, it is making the
6 homeowners into its "lenders" for the amount of the excess. There is one critical distinction
7 between homeowner "lenders" and the County's other lenders, however. The homeowners are
8 unwilling lenders held hostage to the County's attitude of "we have your money and we'll pay you
9 back on our own time schedule." The County can argue that homeowners cannot complain
10 because they are being repaid with above market interest. That argument simply avoids the issue.
11 Homeowners, particularly in these difficult economic times, may not be in a position to loan
12 money or "invest" in the County. They may need their funds simply to pay existing debts. The
13 County, however, won't even let homeowners pay their current tax obligations with the excess
14 taxes previously collected, forcing them to remain "hostage" lenders while the County continues
15 to incur and impose upon all County taxpayers the avoidable costs of above market interest.
16
17

18 **C. Outsourcing The Repayment Process**

19 This Court ordered the Washoe County Treasurer to "calculat[e] the amount of
20 excess taxes paid by the owners of all Incline Village and Crystal Bay residential property for the
21 tax year 2006-2007 and subsequent years and refund. . . to taxpayers the amount of those excess
22 taxes with interest calculated pursuant to NRS §361.486 at the rate of 0.5 percent per month. . . ."
23 Order and Issuance of Writ of Mandate (October 23, 2009), p. 4. Under Rule 70 of the Nevada
24 Rules of Civil Procedure, if the Court "directs a party . . . to perform any other specific act" and
25 the party fails to comply "within the time specified," the Court "may direct the act to be done at
26 the cost of the disobedient party by some other person appointed by the court." In this instance,
27 the Court's Order did not specify a time certain. That Order, however, clearly did not contemplate
28

1 that the Treasurer could drag out compliance over a period of years. If the Treasurer's staff is not
2 adequate or the other demands of the Office are too great, then the Court should consider
3 exercising its authority under NRCP 70 to outsource the repayment process so that repayments
4 may be calculated and paid in a timely manner for the benefit of all Washoe County taxpayers.
5

6 REQUEST FOR RELIEF

7 Petitioners respectfully request that the Court, upon review of this matter,

8 (1) Establish deadlines for the completion of the repayment process, including
9 requiring the Treasurer's Office to calculate and pay amounts owed to homeowners on no fewer
10 than 800 properties per month.
11


12 (2) Require the Treasurer's Office to process credits for homeowners against taxes
13 currently owed when homeowners so request.

14 Alternatively, if the Treasurer's Office cannot manage the repayment process in a timely
15 manner, petitioners request that the Court appoint a third party to complete the process at the
16 expense of the County.
17

18 The undersigned does hereby affirm that this document does not contain the social security
19 number of any person.

20 Dated this 1st day of February, 2012.

21 MORRIS PETERSON

22
23 By 

24 Suellen Fulstone
25 Attorneys for Petitioners
26
27
28

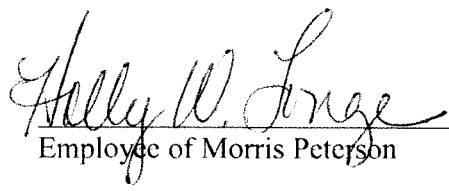
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Morris Peterson; that I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the foregoing document to be deposited with the U.S. Postal Service at Reno, Nevada, in a sealed envelope, with first class postage prepaid, on this date and to the addressees) shown below:

David Creekman
Civil Division
Washoe County District Attorney's Office
P.O. Box 30083
Reno, NV 89520

DATED this 1st day of February, 2012.


Employee of Morris Peterson

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX TO EXHIBITS

Exhibit No.	Document Title	Pages
1	County Commission Resolution (August 23, 2011)	3
2	Status Report through December 31, 2011	1
3	Email December 9, 2011 from Susan O'Brien	1

EXHIBIT 1

FILED
Electronically
02-01-2012:10:26:07 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 2735087

EXHIBIT 1

RESOLUTION

A resolution finding that refunds of certain property tax payments are due, directing the treasurer to make such refunds, directing that subsequent apportionments of revenues from property tax to the other taxing units in the county which levied a tax represented in the combined tax rate be withheld, directing the treasurer to keep a list of refunds and other matters properly related thereto

WHEREAS, NRS 354.220 and NRS 354.240 provide that if a board of county commissioners determines by competent evidence that money has been paid into the treasury of the county and there is just cause for granting of a refund and it would be equitable to make a refund of such money, the board of county commissioners by its unanimous resolution is authorized to direct the county treasurer to refund to the amount of money paid into the county treasury in excess of the amount legally payable;

11784

WHEREAS, The Nevada Supreme Court opinion of July 7, 2011 in Case No. 54947 (127 Nev. Adv. Opn. 30) decided that a writ of mandamus was properly issued by the Second Judicial District Court to the county treasurer to comply with a Washoe County Board of Equalization decision to roll back 2006-2007 taxable values for ^{APPROXIMATELY} 8,700 properties located in the Lake Tahoe area of Washoe County to 2002-2003 levels and to refund excess property taxes paid by those certain property tax payers;

WHEREAS, the board of county commissioners held a public

discussion during its duly-noticed meeting of July 26, 2011 during which it received evidence on the record concerning the need for the payment of tax refunds; and

WHEREAS, the board of county commissioners has previously been supplied with copies of the court's decision and has been informed by through advice of the district attorney that the court's order is binding;

NOW THEREFORE, be it resolved by the Board of Commissioners of Washoe County as follows:

1. That in accordance with the provisions of NRS 354.220 and NRS 354.240 and the above-referenced decision of the Nevada Supreme Court the board of county commissioners hereby finds that the certain referenced taxpayers are entitled to refunds.
2. The county treasurer is directed to make the refunds.
3. The necessary elected and appointed officials are authorized to withhold amounts refunded pursuant to this resolution from the subsequent apportionments of revenues from property tax to the other taxing units in the county which levied a tax represented in the combined tax rate.
4. The board of county commissioners shall, separately from this resolution, decide whether to include court-ordered interest in the amounts withheld from the subsequent apportionments of revenues from property tax to the other taxing

11-784

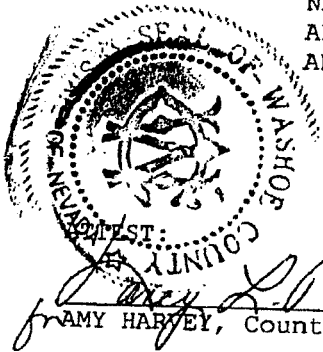
units in the county which levied a tax represented in the combined tax rate.

5. The county treasurer is ordered to keep and make available to the board of county commissioners and the public a list of all refunds made by the county treasurer during each month. The list must contain the name of each taxpayer or other person to whom a refund was made and the amount of the refund.

[Business Impact Note: The Board of County Commissioners hereby finds that this resolution does not impose a direct and significant economic burden upon a business, nor does it directly restrict the formation, operation or expansion of a business.]

ADOPTED this 23rd day of August, 2011,
by the following vote:

AYES: Breternitz, Deber, Humke, Young, Larkin
NAYS: 0
ABSENT: 0
ABSTAIN: 0



[Signature]
JOHN BRETERNITZ, Chairman

[Signature]
FRAMY HABEY, County Clerk

11-784

FILED
Electronically
02-01-2012:10:26:07 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 2735087

EXHIBIT 2

EXHIBIT 2

Status Report for Incline Village/Crystal Bay Property Tax Refunds
 Week of January 10, 2012

Status Provided for Time Period:	December 2011	
Last update provided on :	13-Dec-11	
		% Complete
Number of Parcels Adjusted To Date:	475	5.42%
Number of Parcels Adjusted Since Last Update:	245	
Number of Refunds Processed to Date:	459	
Number of Refunds Processed Since Last Update:	231	
Total Tax Dollars Refunded to Date:	\$ 7,318,636	
Total Tax Dollars Refunded Since Last Update:	\$ 3,072,657	
Total Interest Expense to Date:	\$ 830,835	
Total Interest Expense Since Last Update:	\$ 410,794	
Number of owners requesting credit rather than Refund	0	
Total dollars given as credit rather than Refund	\$ -	
Number of owners donating refund back to County:	0	
Total dollar amount donated:	\$ -	

1/10/2012

Agenda Item #

EXHIBIT 3

FILED
Electronically
02-01-2012:10:26:07 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 2735087

EXHIBIT 3

From: susan o'brien [<mailto:susanob1@sbcglobal.net>]

Sent: Friday, December 09, 2011 10:56 AM

To: Maryanne Ingemanson

Subject: got my response

Hi Maryanne, well I wrote the letter and they responded to it with a phone call. They will not issue any credits only refunds. They told me that it could take up to 18 months for me to see anything. I said would it not benefit both parties to credit back the property owners who request the credit, this would in turn, save them additional interest and help some of us who are struggling right now. Nope! they do not care. I was nice but feel very frustrated as I am sure you feel as well. Thanks though for your response to my email and if anyone else asks you about this you have an answer.

*Happy Holidays,
Susan*

Susan O'Brien

Phone: 775 831-2094

Cell: 775 771-5468

Fax: 775 831-0539

susanob1@sbcglobal.net