IN THE SUPREME COURT OF THE STATE OF NEVADA

COUNTY OF CLARK, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA AND CLARK COUNTY ASSESSOR,
Appellants/Cross-Respondents,
vs.
SUN CITY SUMMERLIN COMMUNITY ASSOCIATION, INC. RICHARD POST; AND MASAKO POST,
Respondents/Cross-Appellants,
and
THE STATE OF NEVADA, BOARD OF EQUALIZATION,
Respondent.

No. 60776

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court decision upholding a Nevada State Board of Equalization decision assigning a nominal value to improvements on community properties in the Sun City Summerlin Community Association. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Appellant/Cross-Respondent Clark County Assessor valued improvements on five properties in the Sun City Summerlin Community Association at a taxable value of $19.5 million. On appeal, respondent State Board of Equalization determined this amount was in excess of the full cash value and reduced the taxable value to a nominal value of $2500. The questions on appeal are whether the State Board's decision was clearly erroneous and whether *Mineral County v. State, Board of*

Equalization, 121 Nev. 533, 119 P.3d 706 (2005) (3-1-3) should be overruled. The State Board repudiated the valuation methods set forth by the statute and therefore erred in reducing the taxable value to a nominal value. However, the doctrine of stare decisis protects this court's holding in *Mineral County*.

I.

Respondent/Cross-Appellant Sun City Summerlin Community Association, Inc. owns properties within the planned community that are designated for community use. Five such parcels are at issue here. These parcels are improved properties that include clubhouses, recreational centers, parking lots, and a maintenance facility. It is undisputed that the taxable value of the land itself was $0 for the 2010-11 tax year; the only issue is the taxable value of the improvements on that land. The County Board, homeowners, and Assessor appealed respondent State Board's reduction in taxable value.

Because the parties are familiar with the arguments and details of the hearings and decisions, we repeat only the portions key to our decision. The State Board reduced the taxable value because it determined the use restrictions on the property limited if not negated the market value of the improvements and that the Assessor's valuation therefore exceeded the full cash value in violation of NRS 361.227(5).[1] It set a nominal value of $500 per parcel because the chair asserted that

[1]While this appeal was pending, the Legislature amended NRS 361.227. Those amendments do not affect the statutory language relevant to this case. *See* 2013 Nev. Stat., ch. 495, § 4, at 3116-18; NRS 361.227(2), (6), as amended in 2013.

amount is a standard nominal value. However, other Board members admitted they had no knowledge of the value's correctness, and also admitted to simply making up other nominal values presented for consideration. Additionally, one member asserted the smallest possible value should be adopted because the improvements' value was already reflected by the home values in the development and should not be taxed at all.

II.

Appellants/Cross-Respondents argue that the State Board's decision was clearly erroneous because the State Board "simply pull[ed] a value out of thin air without any statutory or factual basis[.]" They further argue that NRS 361.227 and NAC 361.631 limit value determinations to certain specified criteria. Because the State Board reduced the value based solely on the restrictions on the land, rather than basing value on the criteria set forth in the statute and regulation, appellants/cross-respondents argue the decision was in violation of NRS 361.227 and NAC 361.631.

A Board's determinations are presumed valid, and receive deference where supported by substantial evidence. *City of Las Vegas v. Lawson*, 126 Nev. ___, ___, 245 P.3d 1175, 1178 (2010); *Imperial Palace, Inc. v. State ex rel. Dep't of Taxation*, 108 Nev. 1060, 1066, 843 P.2d 813, 817 (1992). Only if the agency's decision is clearly erroneous, arbitrary, or capricious may a court reverse the agency's decision. NRS 233B.135(3)(e).

Chapter 361 and the corresponding regulations set forth a scheme by which the property must be assessed. First, NAC 361.128 requires the Assessor to value the cost of improvements by the Marshall and Swift method. And NRS 361.227(1)(b) requires the value of the improvements be appraised "by subtracting from the cost of replacement

of the improvements all applicable depreciation and obsolescence." However, after value is determined, NRS 361.227(5) mandates that it be reduced, if necessary, so that it not exceed the "full cash value" of the property.

NRS 361.025 defines "full cash value" as "the most probable price which property would bring in a competitive and open market under all conditions requisite to a fair sale." As evidence of market value, however, the county board[2] may consider capitalization income, cash value plus the depreciated replacement costs of improvements, and comparable market prices. NAC 361.631. To determine whether the taxable value exceeds the full cash value or whether obsolescence is a factor, the board may consider comparative sales, the "estimated full cash value of the land and contributory value of the improvements," and the "[c]apitalization of the fair economic income expectancy[.]" NRS 361.227(5). Both provisions use the permissive "may," suggesting the boards are not limited solely to these methods. *See, e.g., Imperial Palace*, 108 Nev. at 1067, 843 P.2d at 818 (holding that where no express language requires a certain valuation method, the agency is not limited solely to the enumerated methods so long as the method used conforms to the language of the statute). However, where the statutes or regulations give workable methods of

---

[2]We note that the regulation appears to only apply to the county board when it determines market value—not necessarily to the person determining if the taxable value exceeds full cash value. Thus, the State Board was arguably not required to consider these valuation methods. However, as neither party notes this language or argues accordingly, we do not address this issue.

valuation for the particular situation, the boards should consider those methods.

When determining value, there is a distinction between the value of the land itself and the value of improvements on the land. Although the assessor must consider legal restrictions in appraising improved land and those restrictions might render land valueless for tax purposes, improvements on that land may still have substantial value even if neither the land nor the improvements would have value on the open market. *Sun City Summerlin Cmty. Ass'n v. State ex rel. Dep't. of Taxation*, 113 Nev. 835, 842, 844, 944 P.2d 234, 239-40 (1997); *Recreation Ctrs. of Sun City, Inc. v. Maricopa Cnty.*, 782 P.2d 1174, 1182 (Ariz. 1989).

In *Recreation Centers*, which we cited favorably in *Sun City Summerlin*, the Arizona Supreme Court recognized the inherent problem in relying only on market price to determine taxable value, as taxes are based on the full cash value and market price does not necessarily equate to that full cash value. *Recreation Centers*, 782 P.2d at 1182. Similar to Nevada, Arizona's statutes list options for determining value, including a cost approach. *Id.* This inclusion of several methods of valuation suggests that our Legislature contemplated a scenario where property may not be valuable on the open market yet would still be valuable to the owner and have significant taxable value. *See id.* In particular, NRS 361.227(5) allows for the "contributory value of the improvements" to increase full cash value, and NAC 361.631 allows full cash value plus depreciated replacement costs to constitute market value. Importantly, neither statute nor regulation limits the full cash value to the market price nor lists a flat nominal value as one of the suggested valuation methods. Thus, where there is no usable evidence of the price the property would

fetch on the open market, the Board should consider the other methods listed, including cost and depreciation, to determine the "market value" and "full cash value" of the property.

Here, appellants/cross-respondents argue that under NRS 361.227(5) the full cash value of the land must be determined by comparative sales, capitalization of income, or cash value of the land and the improvements. They assert that where the only evidence of value in this case was the cash value of the improvements, the assessor correctly calculated full cash value under NAC 361.631 as the land value plus depreciated replacement cost of the improvements. Specifically, they argue that this method was the only workable basis for valuation under the statutory scheme, and yet the State Board did not even consider the replacement cost of the improvements.

In determining the "full cash value" the State Board focused on the marketable value of the improvements given the restrictions on the land, and did not discuss the other approaches to valuation. Finding there was no marketable value, it assigned a nominal value without considering whether the replacement cost, given depreciation and obsolescence of the improvements, still had value. In doing so, it failed to recognize that the improvements may still have significant taxable value even if the land does not, and also failed to give due consideration to the statute's and regulation's methods of finding taxable value. The State Board clearly erred by ignoring the other workable valuation methods and instead simply assigning a nominal value to the improvements based on the presence of restrictions on the land. While the improvements may or may not be worth the $19.5 million the assessor assigned, under the statute

and regulation neither are they reduced to a nominal value solely by the presence of restrictions on the land.[3]

III.

Respondents/Cross-Appellants cross-appeal and argue that our decision in *Mineral County v. State, Board of Equalization*, 121 Nev. 533, 119 P.3d 706 (2005), conflicts with NRS 361.420 and other Nevada law, and should be overturned. Were we to adopt respondents'/cross-appellants' arguments, the county would have no ability to appeal the State Board's decision. In *Mineral County*, this court held that where NRS 361.420 is silent as to the county's ability to petition for judicial review, and where NRS 233B.130(1) would otherwise allow such action, the county was not precluded from seeking judicial review. 121 Nev. at 535-37, 119 P.3d at 707-08. Respondents'/Cross-Appellants' arguments in this appeal track the dissent in *Mineral County*.

However, under the doctrine of stare decisis, "[l]egal precedents of this Court should be respected until they are shown to be unsound in principle," *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 653, 173 P.3d 734, 743 (2007) (alteration in original) (quotations omitted), "'unworkable or . . . badly reasoned.'" *Egan v. Chambers*, 129 Nev. ___, ___, 299 P.3d 364, 367, (2013) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). In other words, this court must have compelling reasons to

---

[3]Moreover, from comments made at the hearing it appears that the State Board's decision was colored by the erroneous belief that the value of the improvements is absorbed by property taxes on individual homes within the community. *See Sun City Summerlin*, 113 Nev. at 843, 944 P.2d at 239 (expressly rejecting that proposition).

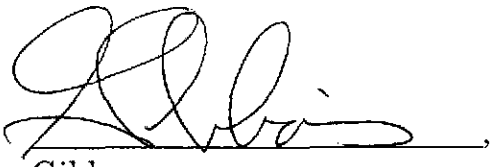
overrule precedent; mere disagreement is not sufficient. *Adam v. State*, 127 Nev. ___, ___, 261 P.3d 1063, 1065 (2011).

Moreover, where the Legislature has the power to alter the statute, yet has not, the court should not unnecessarily alter a prior interpretation of the statute. *Hohn v. United States*, 524 U.S. 236, 251 (1998); *Neal v. United States*, 516 U.S. 284, 295 (1996). Leaving the law intact promotes and protects the development of the law and reliance on judicial decisions. *Hohn*, 524 U.S. at 251; *State v. Harte*, 124 Nev. 969, 977-78, 194 P.3d 1263, 1268 (2008) (Hardesty, J., concurring).

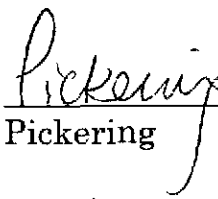
Here, the Legislature has made no changes to the law since *Mineral County* was decided in 2005, despite having had multiple opportunities to do so. Respondents/Cross-Appellants argue that this court's interpretation is incorrect and gives non-taxpayer appellants an unfair advantage because they do not have to comply with the statutory prerequisites to judicial review. But, respondents fail to demonstrate how the interpretation has actually proved unworkable. Respondents' disagreement with the holding in *Mineral County* is not enough to compel this court to overrule that decision. Thus, although respondents'/cross-appellants' interpretation of the statute may have been fair had this court not already set forth the opposite interpretation, they have not met their burden to show that the decision should be overturned, and it remains in force.

Therefore, we

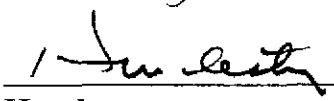
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



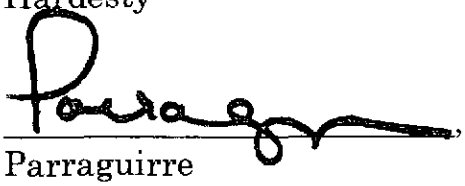
_____, C.J.
Gibbons



_____, J.
Pickering

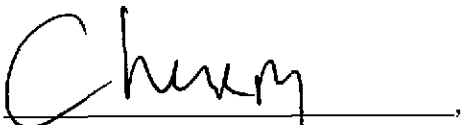


_____, J.
Hardesty

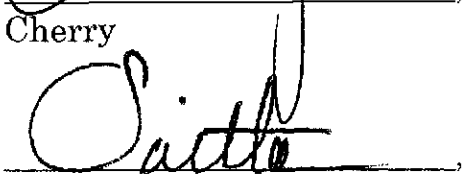


_____, J.
Parraguirre

_____, J.
Douglas



_____, J.
Cherry



_____, J.
Saitta

cc: Hon. Joanna Kishner, District Judge
Clark County District Attorney/Civil Division
Attorney General/Carson City
Snell & Wilmer, LLP/Las Vegas
Eighth District Court Clerk