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* ALSO ADMITTED IN CALIFORNIA

OF COUNSEL
MICHAEL W. DYER

Hand Delivered

April 16, 2018

LATE MATERIAL

Item #: 26a

Meeting Date: 4-19-18

Carson City Board of Supervisors
201 North Carson Street, Suite 1
Carson City, Nevada 89701

Re: JVRS Enterprises LLC, Richard Sheldrew ("JVRS") - Taxpayer

Dear Mayor Crowell:

I. INTRODUCTION

I represent JVRS in its request for a refund of property taxes overpaid because of a factual error caused by the Carson City Assessor ("CC Assessor"). The CC Assessor incorrectly concluded that the parcel located at 1365 Medical Parkway was a vacant commercial parcel and not a residential improved parcel.

The matter before the Board of Supervisors is administratively required pursuant to NRS 361.768 even though the Carson City Board of Equalization ("CCBOE") found and concluded that the parcel located at 1365 Medical Parkway had, for all relevant periods of time, been used as an improved residential parcel of land and not a vacant commercial parcel as found by the CC Assessor. Even though the CCBOE has rendered a final decision finding that 1365 Medical Parkway had been "used" for relevant periods of time as residential improved parcel and not a vacant commercial parcel, it appears from reading the staff report (submitted by the CC Assessor for the Board of Supervisors' consideration) that the CC Assessor wishes to revisit the issue once again. As such, this letter is submitted for the Board of Supervisors' consideration.

II. RELEVANT LEGAL AUTHORITIES

A. Valuation of Land for Property Tax Purposes

In Nevada, for property tax purposes, improved land and vacant land are valued differently.

NRS 361.227(a)(1) and (2) provides as follows:

1. Any person determining the taxable value of real property shall appraise:
 - (a) The full cash value of:
 - (1) Vacant land by considering the uses to which it may lawfully

be put, any legal or physical restrictions upon those uses, the character of the terrain, and the uses of other land in the vicinity.

(2) Improved land consistently with the use to which the improvements are being put.

Based on the foregoing, if a parcel of land is improved [has taxable improvements on it] then the land must be valued “consistently with the use to which the improvements are being put.” Conversely, if a parcel of land is vacant [no improvements] then the land is valued consistently with the uses to which the land may be used.

The legal standard set forth above for valuing land for property tax purposes has been in place since 1981. The CC Assessor, being aware of the legal standard for valuing Nevada property, designated 1365 Medical Parkway as a vacant parcel so he could raise the subject property’s taxable value by approximately 900%. The CC Assessor offered a variety of justifications for the 900% increase. For example, in the packet submitted by the CC Assessor for consideration by the Carson City Board of Supervisors, a letter dated November 7, 2016 from the CC Assessor to Richard Sheldrew was enclosed for your consideration. The CC Assessor incorrectly provided in that letter “vacant property must be valued based on the highest and best use of that property.” See Exhibit 1: CC Assessor’s letter to Taxpayer dated November 7, 2016. A review of NRS 361.227(1)(a)(1) shows that statement to the Taxpayer by the CC Assessor is, as a matter of law, erroneous. In Nevada, the CC Assessor is not permitted to value vacant land at its highest and best use.

B. Taxpayer is Entitled to a Three-Year Refund of Property Taxes Paid as a Result of a Factual Error

As discussed below, the CCBOE found that as a matter of fact, the CC Assessor had made a factual error when the CC Assessor claimed that 1365 Medical Parkway was a vacant commercial parcel as opposed to an improved residential parcel. When a factual error occurs, the Taxpayer is entitled to a refund of overpaid taxes for a period of three years.

Specifically, NRS 361.768 provides as follows:

1. If an over assessment of real or personal property appears upon the secured tax roll of any county because of a factual error concerning its existence, size, quantity, age, **use** or zoning or legal or physical restrictions on its use within 3 years after the end of the fiscal year for which the assessment was made, the county assessor shall make a report thereof to the board of county commissioners of the county.
2. The board of county commissioners shall examine the error so reported, together with any evidence presented and, if satisfied that the error is factual, shall:
 - (a) By an order entered in the minutes of the board, direct the county treasurer to correct the error; and
 - (b) Deliver a copy of the order to the county treasurer, who shall make the necessary adjustments to the tax bill and correct the secured tax roll. The adjustment may be a full refund or a credit against taxes due which may be

allocated over a period no longer than 3 years.

3. Partial or complete destruction of a real property improvement or of personal property may be adjusted pro rata if the destruction occurred on or after the lien date and the property was rendered unusable or uninhabitable for a period of not less than 90 consecutive days. The adjustments may be made in the form of a credit on taxes due or a refund if taxes have been paid for the period. The county assessor shall notify the county treasurer of each adjustment. The county assessor shall report recommended adjustments to the board of county commissioners no later than June 30 of each fiscal year.

[Emphasis Added.]

As such, based on the April 9, 2018 Decision of the CCBOE, JVRS Enterprises is entitled to a refund of taxes overpaid because of the CC Assessor's factual error that 1365 Medical Parkway was a vacant commercial parcel and **not** an improved residential parcel.

III. FACTS

The facts of this matter are simple and straightforward. The Taxpayer and his predecessors in interest [family members] have owned two contiguous parcels, namely 1365 Medical Parkway and 1393 Medical Parkway, for almost 70 years. See Exhibit 2: Parcel Map.

The CC Assessor correctly valued both 1365 Medical Parkway and 1393 Medical Parkway as improved residential parcels until 2015. In 2015, after a zoning change was made for both parcels, the CC Assessor changed the use and improved/unimproved status of 1365 Medical Parkway from improved residential to vacant commercial leaving 1393 Medical Parkway as improved residential. Because of this change by the CC Assessor based on an incorrect factual conclusion as to use, the taxes attributable to 1365 Medical Parkway skyrocketed from \$858.80 in 2016/2017 to \$9,064.20 and from purportedly, \$858.80 for 2017/2018 to \$9,299.00.

In Nevada, Assessors cannot lawfully determine improved land values based on a zoning change. In 1981, when the Nevada Legislature was discussing NRS 361.227(1)(a)(1) and (2), the **evils** of valuing improved land based on zoning was discussed. Specifically, in 1981 when the taxable value system was being addressed, the Minutes from the Hearing of the Assembly Committee on Taxation (May 18, 1981) provided as follows:

“[W]hen a piece of property is assessed on the basis of zoning and not usage the price paid not only includes the true value but a fee for the privilege of using it for a different purpose. Assessing based on zoning is actually a procedure that can be used to force those on a fixed income, and this takes in the majority of the elderly to give up their property.”

As such, for improved property, its zoning/land use designation is not a lawful consideration for valuing the land for property tax purposes. The only appropriate consideration when valuing improved land is the subject property's usage, e.g. residential, agricultural, etc.

There is no factual dispute that 1365 Medical Parkway and 1393 Medical Parkway have always been improved residential parcels from the 1950's through 2017 when 1365 Medical Parkway was sold to an unrelated third party to be developed as a commercial [medical] facility.

Specifically, the CCBOE provided as follows in its April 9, 2018 Decision:

“I think that in light of the land survey that was performed between last year’s meeting and today, I think it is undeniable that the abandoned septic, well, the now abandoned septic has been on that parcel, 1365 [Medical Parkway], I think we should recommend to the Assessor to take this to the Board of Supervisors because I think that because the septic tank was there, the two parcels were operating as one and that 1365 should be changed, its usage should be changed for the past three fiscal years to reflect that it was being used as a residential parcel.”

CCBOE Member Wilson. *See Exhibit 3:*
CCBOE Decision dated April 19, 2018.

IV. ARGUMENT

In 2015, the CC Assessor discovered that the zoning had changed for the Taxpayer’s two parcels of land. In 2015, the CC Assessor correctly acknowledged that 1393 Medical Parkway was being used as an improved residential parcel but incorrectly found (over the objections of Taxpayer) that 1365 Medical Parkway was a vacant parcel even though the parcel had the entire septic system for one of the homes situate on 1393 Medical Parkway. This incorrect factual conclusion by the CC Assessor allowed him to raise the Taxpayer’s property taxes [value] by **956%** in one year, even though the historic use of 1365 Medical Parkway never changed until late 2017 when the property was sold to an unrelated third party. Furthermore, the current and past CC Assessor had always valued 1365 Medical Parkway as improved residential property from the 1950's to 2015.

The CC Assessor claims to never having any knowledge of the location of the improvements on 1365 Medical Parkway (septic system), until the first quarter of 2018. This statement is simply belied by the record and facts in this matter.

In Nevada, Taxpayers are only required to produce the “minimum documentation” necessary to prove their case. *See NRS 360.291*. In this matter, the Taxpayer testified under oath before the CCBOE in the 2016/2017 tax year as to the location of the septic system. The CC Assessor chose to disregard this testimony in violation of NRS 360.291(1).

At the request of the CC Assessor, a surveyor was retained by the Taxpayer to prove what the Taxpayer had previously told the CC Assessor as to the location of the septic system. During the CCBOE hearing after the sale of 1365 Medical Parkway, the Taxpayer also produced photographs of 1365 Medical Parkway showing the exact location of the septic system as confirmed by the survey. **THERE IS NO DISPUTE** that 1365 Medical Parkway was always an improved residential parcel while it was owned by

Taxpayer. The CC Assessor's factual findings and conclusions as to the use and improved nature of 1365 Medical Parkway was wrong. The CCBOE found and concluded the same.

The CC Assessor, in an attempt to support his actions which are incorrect as a matter of fact and law, offered additional **new** authorities all of which are inapplicable or inadmissible hearsay. First, the CC Assessor offers reliance upon NAC 361.61048 as justification for his change in the use of 1365 Medical Parkway. This regulation of the Nevada Tax Commission ("NTC") applies to the **tax cap** and **not** the determination of a property's taxable land value. NAC 361.61048 in no way changes the express requirements of NRS 361.227(1)(a)(1)(2).

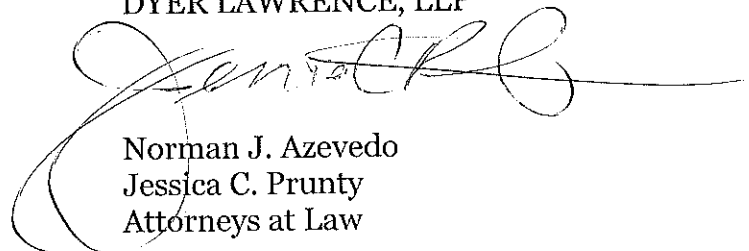
Further, the CC Assessor offered for the Carson City Board of Supervisors' consideration that other assessors, the Nevada Department of Taxation (NDOT), and the State Board of Equalization ("SBOE") indicate that he acted correctly when he valued improved residential property as vacant commercial property. The CC Assessor provided **no** writings from other assessors nor the NDOT supporting his actions. There can be no writings produced that would support CC Assessor's actions as they are in violation of NRS 361.227 and the true facts of this matter. Finally, the CC Assessor offers the non-final SBOE decision as support for his actions. This SBOE decision is of no probative or evidentiary value as that SBOE decision presumed that **no residential** improvements are located on 1365 Medical Parkway and the CCBOE correctly acknowledges in the current tax year that 1365 Medical Parkway was always an improved residential parcel.

V. CONCLUSION

Based on the above-stated points and authorities, a refund of property taxes overpaid for 2015/2016 tax year and the 2016/2017 tax year in the approximate amount of \$16,675 (plus interest at the statutory rate) is due and payable to the Taxpayer. See NRS 360.2933.

Sincerely,

DYER LAWRENCE, LLP



Norman J. Azevedo
Jessica C. Prunty
Attorneys at Law

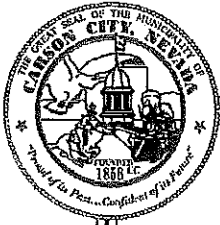
NJA/ra

Enclosures as stated

cc: Client

EXHIBIT "1"

EXHIBIT "1"



CARSON CITY, NEVADA
CONSOLIDATED MUNICIPALITY AND STATE CAPITAL

November 7, 2016

Mr. Richard Sheldrew,
P O Box 313
Minden, NV 89423

RE: Letter dated September 24, 2016

Dear Mr. Sheldrew,

I am in receipt of your letter regarding the taxation of your two parcels in Carson City.

Your understanding of the increase of the assessment is correct. Improved parcels must be valued as to the use of the property and vacant property must be valued based on the highest and best use of that property. The highest and best use of parcel number 007-531-05, 1365 Medical Pkwy is commercial. The previous parcel number for this parcel was 008-055-02.

In your letter, you stated that there is a septic on 007-531-05 which is being used by the neighboring parcel 007-531-06 (previous parcel number 008-055-01), therefore, the parcels should both be taxed as residential. In researching this through the Planning Department, Health Department and the Building Department, I found a copy of the building record that shows a "septic" was placed on 007-531-06 in 1981 (attachment 1). I was unable to find any evidence of a septic system on 007-531-05. If in fact the system is on this parcel, and is a functioning system, then possibly a dye test could be performed by a septic pumping company to confirm.

In addition, after speaking with the Nevada Department of Taxation, we do not believe that NRS 361.227 (1) (a) is appropriate. If there is a septic system on this parcel, the Department doesn't believe that the improvement is significant enough to justify the same valuation as the adjacent improved parcel. The locations of sewer lines located on both the northern boundary and the southern boundary of the parcel does not cause the two parcels to function as a single parcel. The Department also stated that the owner should appeal any valuation issues with the County Board of Equalization.

Due to the fact that the septic permit was issued for 007-531-06 and the locations of the city sewer lines, we will be valuing parcel 007-531-05 at the highest and best use, which is commercial.

DAVID A. DAWLEY – CARSON CITY ASSESSOR
201 North Carson Street, Suite 6 • 89701 • (775) 887-2130 • (775) 887-2139
Hearing Impaired use: 711

The Assessor's Office will be sending out the required assessment notices the week of November 21, 2016. If you do not agree with this determination or the value that was placed on this parcel, your next step would be to appeal this to the County Board of Equalization. We will have the forms available after November 21st. The deadline to file the appeal form is January 16th, 2017.

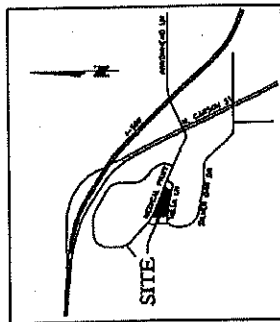
Sincerely,



Dave Dawley
Carson City Assessor

EXHIBIT "2"

EXHIBIT "2"



VICINITY MAP
N.T.S.

OWNER'S CERTIFICATE

1. WE HAVE EXAMINED THIS PLAN AND APPROVE AND AFFIRMANCE AS ACCURATE.
2. WE HAVE EXAMINED THE REQUIRED DOCUMENTS AND CONFIRM THAT THE INFORMATION IS CORRECT.
3. WE AGREE TO EXEMPT THE REQUIRED DOCUMENTS AND CONFIRM THAT THE INFORMATION IS CORRECT.
4. ALL PROPERTY LINES ON THE MAP ARE THE PROPERTY OF THE STATE OF CALIFORNIA.
5. ALL LOTS ARE THE PROPERTY OF THE STATE OF CALIFORNIA.
6. THE PROPERTY LINES ON THE MAP ARE THE PROPERTY OF THE STATE OF CALIFORNIA.

NOTARY PUBLIC ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF SAN JOSE
I, David L. Smith, Notary Public for the State of California, do hereby certify that the foregoing is a true and correct copy of the original as the same appears to me.

WITNESS MY HAND AND SEAL OF OFFICE ON the 17th day of August, 2017.

DAVID L. SMITH
Notary Public for the State of California

My Comm. Exp. 08/17/2020

My Comm. No. 123456

My Comm. Fee \$100.00

My Comm. Fee \$100.00

My Comm. Fee \$100.00

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RECORDOR'S CERTIFICATE

FILE NO. 171561 FEE \$2100
PAID FOR RECORD AT THE OFFICE OF THE COUNTY CLERK
ON THIS 10th DAY OF AUGUST, 2017, AT 10:00 AM
PAST 2 O'CLOCK OF THE DAY.
CITY, RECORD, BOOK NO. 171561, PAGE 1

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EXHIBIT "3"

EXHIBIT "3"

In the Matter of the)
Petition for Review of Assessed Valuation)

JVRS Enterprises LLC)
1393 Medical Parkway)
Carson City, Nevada APN)
007-531-44)
_____)

NOTICE OF DECISION

Appearances:

Assessor Dave Dawley and Chief Deputy Assessor Kimberly Adams appeared on behalf of the Assessor's Office.

Petitioner Richard Sheldrew and Attorney Judy Sheldrew appeared with their attorney Norman Azevedo on behalf of JVRS Enterprises LLC.

Summary:

The Petition for Review of Assessed Valuation on the above-referenced property was heard by the Carson City Board of Equalization on February 27, 2017, after proper notice of the hearing was provided to the Petitioner.

The subject property, located at 1393 Medical Parkway (APN 007-531-44) ("subject property"), is a 2.33-acre parcel zoned retail commercial that is currently being used as multi-residential. The adjacent property, 1365 Medical Parkway (APN 007-531-45), is a 1.484-acre commercial parcel that was also owned by Petitioner but was recently sold on the open market in an arms-length transaction on August 31, 2017. Current zoning of APN 007-531-44 and APN 007-531-45 is retail commercial.

The Assessor's Office established the subject property's 2018/19 taxable land value at \$177,100, and the improvements at \$117,960, for a total taxable value of \$295,060.

Having considered all of the evidence presented, including documents and testimony pertinent to the Petition and submitted at the hearing, and in accordance with NRS 361.227, the Carson City Board of Equalization hereby makes the following Findings of Fact, Conclusions of Law and enters its Decision.

FINDINGS OF FACT

- 1) The Carson City Board of Equalization is an administrative body created by NRS 361.340.
- 2) The Carson City Board of Equalization is mandated to hear all appeals of property tax assessments, pursuant to NRS 361.345.

- 3) The Petitioner and the Assessor were given adequate, proper, and legal notice of the time and place of the hearing before the Carson City Board of Equalization. The hearing was properly noticed pursuant to the Nevada Open Meeting Law, NRS 241.020(2) and (3).
- 4) The Petition for Review of Assessed Valuation asserts that "APN 007-531-44 is over-assessed due to lot line adjustment and factual errors in the Assessor's public records." At the hearing, in accordance with NRS 361.768, Petitioner requested the Board instruct the Assessor's Office to take before the Carson City Board of Supervisors the fact that an error existed surrounding the location of the septic system that was always located on 1365 Medical Parkway (APN 007-531-45) and that had been assessed as an improvement to the subject property (1393 Medical Parkway, APN 007-531-44). NRS 361.768 allows the Assessor to bring a reported factual error causing an overassessment to the Board of Supervisors for its examination and if satisfied that the error is factual, the Board of Supervisors may direct the Carson City treasurer to correct the error.
- 5) Neither Petitioner nor his authorized agent provided an opinion of value.
- 6) On August 10, 2017, a record of survey map was recorded to support a lot line adjustment to APNs 007-531-05, 1365 Medical Parkway, and 007-531-06, 1393 Medical Parkway. This lot line adjustment subsequently changed APN 007-531-05 to APN 007-531-45, and APN 007-531-06 to APN 007-531-44. The Assessor's Office adjusted the parcels in accordance with NAC 361.61014 and as indicated on the recorded lot line adjustments, parcel splits, parcel maps, subdivision maps, and lot line deletions.
- 7) NRS 361.227 governs determination of taxable value of real property.
- 8) The current use of APN 007-531-44 is residential and the Assessor's Office valued the parcel using a price per acre amount. The lot line adjustment coincided with the Assessor's Office annual revaluation of all land in Carson City. The 2018/19 taxable land value took into account the new acreage, as reflected by the lot line adjustment, together with market trends.
- 9) The Carson City Assessor's Office values all land in Carson City on an annual basis. The Assessor's Office estimated the subject property land value using market sales of vacant property or other recognized appraisal methods when vacant land sales are limited or nonexistent. The comparable sales selected are the only sales that were used within the allowable time frame, pursuant to NAC 361.1182(3)(b). Paired sales were analyzed and adjustments made.
- 10) Vacant land sales of one-acre to three-acre parcels indicated an average of \$113,282 per acre. Improved sales indicate an average price per square foot of \$163. Additionally, current vacant land listings indicate an average price per acre of \$155,535. The subject property is currently listed and marketed as retail commercial for \$2,029,896.
- 11) The subject property land value was determined by sales and market analysis and improvement cost determined by Marshall & Swift Valuation Service.

12) Based on a land survey, a functioning residential septic system existed on 1365 Medical Parkway (APN 007-531-45) that served the residence on 1393 Medical Parkway (APN 007-531-44) until February 2018, when the new owner of 1365 Medical Parkway abandoned the septic system. 1365 Medical Parkway, is a 1.484-acre vacant commercial parcel which was recently sold on the open market in an arms-length transaction on August 31, 2017 for 969,685; \$15 per square foot. The septic system had always been assessed as part of 1393 Medical Parkway (APN 007-531-44).

13) On February 7, 2018, the contractor for the new owner of 1365 Medical Parkway (APN 007-531-45) made a request to the Carson City Health and Human Services Disease Control and Prevention Manager requesting to abandon the septic tank located on that property. On February 22, 2018, the Assessor's Office confirmed that the septic tank had been disconnected and filled.

14) The Assessor's Office may remove the septic system from the improvements of the subject property thus reducing the improvement taxable value by \$1,071. Additionally, some "curable functional obsolescence" may be applied to the subject property for the cost to connect to city utilities as a result of the septic system abandonment. The Assessor's Office recommended applying an eight percent (8%) curable functional obsolescence to the second residence located on 1393 Medical Parkway (APN 007-531-44) and built in 1972 which is no longer connected to the septic system.

CONCLUSIONS OF LAW

- 1) The Carson City Board of Equalization is an administrative body created by NRS 361.340.
- 2) The Carson City Board of Equalization is mandated to hear all appeals of property tax assessments, pursuant to NRS 361.345.
- 3) The Petition for Review of Assessed Valuation was properly agendized and the Carson City Board of Equalization has jurisdiction to determine this matter.

DECISION

1) Based on the testimony and evidence presented at the time of the hearing, the Carson City Board of Equalization took action and directed the Assessor to take to the Carson City Board of Supervisors for a determination, pursuant to NRS 361.768, the matter of the reported factual error concerning the use of 1365 Medical Parkway (APN 007-531-45) and the septic system assessed against 1393 Medical Parkway (APN 007-531-44) but located on 1365 Medical Parkway (APN 007-531-45). Specifically, on February 27, 2018, the Carson City Board of Equalization (CBOE Member Wilson) provided as follows:

I think that in light of the land survey that was performed between last year's meeting and today, I think its undeniable that the abandoned septic, well, the now abandoned septic has always been on that parcel, 1365 [Medical Parkway]. I

think that we should recommend to the Assessor to take this to the Board of Supervisors because I think that because the septic tank was there, the two parcels and were operating as one, and that 1365 should be changed, its usage should be changed for the past three fiscal years to reflect that it was being used as a residential parcel.

2) Based on the testimony and evidence presented at the time of the hearing, the Carson City Board of Equalization took action on 1393 Medical Parkway (APN 007-531-44) and approved the following:

- a. Removal of the septic system that has been abandoned for taxable year 2018/19;
- b. Application of the eight percent (8%) curable functional obsolescence for the cost to connect to city utilities as a result of the septic system abandonment for the taxable year 2018/19;
- c. Application of functional obsolescence for, and removal of, the chain link fence for taxable year 2018/19 fiscal year;
- d. Approval for change in year built from 1972 to 1950 for the concrete flatwork for three taxable years;
- e. Approval for change in year built from 1972 to 1950 for the existing septic system for three taxable years;
- f. Approval of effective age of 1,224 square foot house from 1970 to 1972 for three taxable years;

DATED this 9th day of April, 2018.



JED BLOCK, Chair

Carson City Board of Equalization

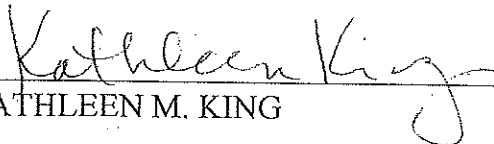
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Carson City Clerk's Office and that on this 7th day of April, 2018, I served the foregoing Notice of Decision by placing a true and correct copy of the same in the United States mail, postage fully prepaid thereon, and properly addressed to:

Richard Sheldrew
JVRS Enterprises LLC
Post Office Box 313
Minden, Nevada 89423

and via interoffice mail to:

Dave Dawley
Carson City Assessor
201 North Carson Street, Suite 6
Carson City, Nevada 89701


KATHLEEN M. KING