

03-1174, 04-1174, & 05-0132  
Locally Assessed Property Tax  
Signed 12/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal Nos.	03-1174, 04-1219 & 05-0132
v.	)		
	)	Parcel No.	#####
BOARD OF EQUALIZATION	)	Tax Type:	Property Tax/Locally Assessed
OF SALT LAKE COUNTY,	)	Tax Year:	2002, 2003 & 2004
STATE OF UTAH,	)		
	)	Judge:	Chapman
Respondent.	)		

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**This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.**

**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER  
                    PETITIONER REPRESENTATIVE, MAI  
For Respondent:  RESPONDENT REPRESENTATIVE 1, Deputy Salt Lake County District  
                    Attorney  
                    RESPONDENT REPRESENTATIVE 2, from the Salt Lake County Assessor's  
                    Office  
                    RESPONDENT REPRESENTATIVE 3, from the Salt Lake County Assessor's  
                    Office  
                    RESPONDENT REPRESENTATIVE 4, from the Salt Lake County Planner's  
                    Office

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. 59-1-502.5, on August 9, 2005.

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At issue is the fair market value of the subject property for each of three consecutive property tax years, 2002, 2003, and 2004. The subject property is located at ADDRESS at CITY, Utah. The property consists of a 0.47-acre lot and a two-story seasonal cabin that is approximately 80 years old and has 1,152 total square feet. A creek meanders through the center of the property and, because of wetlands issues, the lot is subject to certain use restrictions. In addition, the property is zoned as Foothills and Canyons Overlay Zone (“FCOZ”) property.

The cabin has not been remodeled, nor has its electrical wiring been updated. Although the property has a downstairs basin and an upstairs sink, it has no other plumbing fixtures. A wood stove located in the living room provides the only heat to the cabin, and its exterior walls are plank siding with no insulation or interior finished wall. The subject property is not currently connected to a sewer system. Instead, an outhouse with a small holding tank is located outdoors. The Petitioner proffers evidence showing that significant obstructions exist for her to connect the cabin to the CANYON sewer system or to utilize a private sewage system.

Furthermore, an issue concerning the availability of water exists. Until April 30, 2002, the Petitioner owned one (1) share of the capital stock of COMPANY A (“COMPANY A”), a Utah corporation, with entitled the Petitioner to have the subject property connected to and receive water from COMPANY A. On April 30, 2002, the Petitioner gifted the COMPANY A water share to COMPANY B (“COMPANY B”), an LLC owned in equal parts by her children. For federal gift tax purposes, she reported the value of her gift at \$\$\$\$\$. Although the Petitioner leased this water share from COMPANY B during 2002, neither the Petitioner nor any other party has leased the share since September 2002 and, as a result, the subject property has not been connected to COMPANY A water or any other water source since then.

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For the 2002 tax year, Salt Lake County (“County”) assessed the subject property at \$\$\$\$ (\$\$\$\$ for the land and \$\$\$\$ for the improvements). The County Board of Equalization (“County BOE”) reduced the value to \$\$\$\$ (reflecting a reduction in the value of the improvements to \$\$\$\$).

For the 2003 tax year, the County assessed the property at \$\$\$\$ (\$\$\$\$ for land and \$\$\$\$ for improvements). The County Council, acting as the County BOE, conducted the county hearing itself and reduced the value of the property to \$\$\$\$\$. The County Council concluded that the improvement, the cabin, should have a salvage value of \$\$\$\$\$, based on an appraisal submitted by the Petitioner at that hearing, and that the land should be reduced 15% to \$\$\$\$\$ to reflect the deduction the County allowed other nearby property owners who leased, but did not own, COMPANY A water shares.

For the 2004 tax year, the County assessed the property at \$\$\$\$ (\$\$\$\$ for land and \$\$\$\$ for improvements). All parties stipulated to forego the county hearing process for 2004 and proceed directly to the Tax Commission to have the matter consolidated, for hearing purposes, with the 2002 and 2003 appeals.

Accordingly, the County BOE is defending and asking the Commission to sustain a value for the subject property of \$\$\$\$ for 2002, \$\$\$\$ for 2003, and \$\$\$\$ for 2004. However, the County Assessor’s Office is asking that the County BOE decision for the 2003 tax year be abandoned and the value for that year raised. The County proffers a limited restricted appraisal report, prepared by RESPONDENT REPRESENTATIVE 3, in which he estimates the value of the subject property to be \$\$\$\$ as of January 1, 2002. For this reason, the County Assessor’s Office requests the Commission to sustain the County BOE values for 2002 and 2004, but increase the 2003 value to \$\$\$\$.

The Petitioner proffers a complete appraisal / summary report for each of the three tax years at issue, all prepared by PETITIONER REPRESENTATIVE, MAI. As of January 1, 2002, PETITIONER REPRESENTATIVE estimates the value of the subject property at \$\$\$\$ (which includes the value of the

COMPANY A water share that had not yet been transferred by the Petitioner). For the 2003 and 2004 tax years, after the Petitioner no longer owned or leased a COMPANY A water share, the Petitioner estimates two values for the property, one with the water share and the other without the share. As of January 1, 2003, PETITIONER REPRESENTATIVE estimates the value with the water share to be \$\$\$\$ and the value without the water share to be \$\$\$\$\$. As of January 1, 2004, PETITIONER REPRESENTATIVE estimates the value with the water share to be \$\$\$\$ and the value without the water share to be \$\$\$\$.

APPLICABLE LAW

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. §59-1-210(7).
2. Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the Tax Commission. In reviewing the county board's decision, the Commission may admit additional evidence, issue orders that it considers to be just and proper, and make any correction or change in the assessment or order of the county board of equalization. Utah Code Ann. §59-2-1006(3)(c).
3. Petitioner has the burden to establish that the market value of the subject property is other than the value determined by Respondent.
4. To prevail, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

At issue is the fair market value of the subject property for three consecutive tax years, 2002, 2003, and 2004. The subject property is located in CITY and is comprised of a 0.47-acre lot and an old cabin. In 2002, the Petitioner transferred ownership of her COMPANY A water share, which had entitled her to connect the property to the COMPANY A water company. For this reason and because of the manner in which the parties appraised the property and proffer their evidence, the Commission will first determine a fair market value for the subject property for each tax year as though the Petitioner still retained the water share. After determining these values, the Commission will determine what effect, if any, the transference of the water share has upon the respective values.

**Subject's Value with Petitioner Owning Water Share.** The testimony and evidence proffered at the Initial Hearing show that, for the years at issue, the cabin on the subject property was in poor condition and could only be used for a portion of the year. In addition, the property appears to be subject to certain restrictions resulting from its FCOZ zoning and the wetlands issues that arise from CREEK dissecting the lot. Nevertheless, the presence of the existing structure "grandfathers," thus shielding, the property from many of the restrictions to which it would otherwise be subject. The property has access to water, should the Petitioner decide to lease a COMPANY A water share either from COMPANY B or another water share owner.

Furthermore, the evidence and testimony proffered at the hearing suggest that sufficient planning and construction costs would be incurred to connect the property to a sewer system. Apparently, there are two ways that the Petitioner could connect the subject property to a sewer system: one, by running the connection under CREEK to the main sewer line, which would operate through gravity; or two, by running the

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connection over a hill, which would require a pump to be installed. The testimony proffered indicates that the installation of a septic tank and drain field is not permitted due to its location to CREEK.

While there may be other properties with all of these characteristics, none in the subject's immediate vicinity were proffered as comparable sales. All comparables in the immediate vicinity are at least marginally superior and, in many cases, greatly superior. For these reasons, a range of values of "inferior" properties does not exist in the immediate areas so that the lower limit of value for a property such as the subject can be easily shown. As a result, the Commission must consider the testimony and evidence proffered at the Initial Hearing and to determine which appraiser best considered the unique features of the subject property in comparison to those of the comparables and made adequate and appropriate adjustments in determining an estimate of value for the subject.

PETITIONER REPRESENTATIVE'S Appraisals. In his three appraisals, PETITIONER REPRESENTATIVE primarily used comparables in the AREA 1 (three or four miles down the road) and the AREA 2 area (five or six miles down the road) . Only in the 2002 year appraisal did he use comparables in the immediate CITY area. For the two comparables in CITY, he adjusted them to estimate a value of \$\$\$\$\$ and \$\$\$\$\$, respectively, for the subject. Because AREA 2 is an inferior location to the subject, he adjusted the subject's water right at \$\$\$\$\$ and AREA 2's at \$\$\$\$\$. PETITIONER REPRESENTATIVE states that properties with "ski in – ski out" access are more desirable than the subject, which he does not consider to be conveniently accessible by ski. For this reason, he considers the subject property's location to have similar utility and value as that for a lot in the AREA 1.

The County believes PETITIONER REPRESENTATIVE'S comparables are too far away to actually be comparable to the subject lot and that PETITIONER REPRESENTATIVE made other improper adjustments, as well. For example, RESPONDENT REPRESENTATIVE 3 believes a lot in AREA 2 is worth

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approximately \$\$\$\$ less than a lot at CITY because of its distance from a ski resort and because of the scarcity of water rights for AREA 2 properties. The County proffered an MLS listing of a AREA 2 lot for sale at \$\$\$\$ as evidence. Furthermore, the County proffered a 2001 AREA 2 sale at \$\$\$\$\$, a 2003 AREA 1 sale at \$\$\$\$\$, and three CITY sales at \$\$\$\$\$ in 2001 (which was across from the ( X ) and parking lot and had access to public water and sewer), \$\$\$\$\$ in 2003 (sold with permit issuance and ready to build), and \$\$\$\$\$ in 2005. RESPONDENT REPRESENTATIVE 3 states that if he were to make adjustments to PETITIONER REPRESENTATIVE'S comparables, the adjusted values would support his \$\$\$\$ estimate of value for the subject and, in some instances, more.

RESPONDENT REPRESENTATIVE 4, from the County planning office, explains that the existence of the current structure on the property will negate many of the issues arising from FCOZ zoning. This testimony appears to be in harmony with the Petitioner's appraisals, in which PETITIONER REPRESENTATIVE states that he prepared the appraisals by taking a positive attitude that variances would be available as needed for improvements due to the current existence of a cabin.

RESPONDENT REPRESENTATIVE 3 Appraisal. RESPONDENT REPRESENTATIVE 3 estimates the property to have a value of \$\$\$\$ as of January 1, 2002. He does not believe that any property at CITY should be considered other than as "ski in – ski out" properties and that the subject's relative distance from the ski resort is not a disadvantage in comparison to properties he used in his appraisal and to discredit PETITIONER REPRESENTATIVE'S appraisals, which are closer to the resort. In preparing his appraisal, RESPONDENT REPRESENTATIVE 3 used three comparables sales located at CITY, two of which sold in 2000 and one in 2002. All three comparables are closer to the CITY ( X ) than the subject property and, with them all being connected to sewer systems, have between 0.75 and 1.75 baths indoors. The improvement on RESPONDENT REPRESENTATIVE 3's comparable #2, which sold for \$\$\$\$\$, is most like the improvement

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on the subject property. Like the subject's cabin, this comparable includes a seasonal cabin with antiquated wiring and no insulation. Although this property's structure appears to be similar in age and condition to the subject, it does have several superior features, including a 3/4 functioning indoor bathroom, connection to a sewer system, no wetlands issues with which to contend, and much closer proximity to the ski resort. It would be reasonable to assume that this superior comparable would have a value considerably more than the subject property. However, RESPONDENT REPRESENTATIVE 3 has estimated the subject to have a value that is only \$\$\$\$ less than this superior property.

RESPONDENT REPRESENTATIVE 3 concluded that the subject property's sewer and water issues made little difference to the value of the property, because the subject property is "stubbed" for a water connection, it currently has a small holding tank for its outhouse, and because a nearby home without a water share sold for \$\$\$\$\$, which he concludes to mean that homes without a water share do not seem to sell much differently than homes with a water share. RESPONDENT REPRESENTATIVE 3 further argues that because a cabin already exists on the property, it has a "grandfathered" right to have a cabin of similar size on the property, regardless of zoning and wetlands issues. For these reasons, he believes that the negative adjustments due to the subject property's lack of a water share, its issues with zoning and wetlands, and its lack of a sewer hook-up only affect the value of the subject by \$\$\$\$.

On the other hand, PETITIONER REPRESENTATIVE believes that the subject property has several complex issues that RESPONDENT REPRESENTATIVE 3 has failed to adequately address in his limited restricted appraisal report. RESPONDENT REPRESENTATIVE 3 admits that he is not completely familiar with the restrictions associated with FCOZ zoning, the wetlands issue, and what is required to obtain a connection to a sewer system. Nevertheless, he states that he felt no need to consider these issues in depth in



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his report because the subject property currently has a structure, which he assumes would largely negate these issues.

RESPONDENT REPRESENTATIVE 3's three comparables are all superior to the subject and it is difficult to know what the "lower" end of values in the CITY area would be given these three comparables alone. Furthermore, the Commission is not convinced that the comparables closer to CITY ( X ) have a similar value to the subject, which is farther away. In addition, the Petitioner has pointed out several minor inaccuracies concerning RESPONDENT REPRESENTATIVE 3's comparables, which if corrected, could suggest a lower value. For these reasons and because of the issues involving a sewer hook-up and PETITIONER REPRESENTATIVE'S obviously more in-depth study of the subject property, the Commission finds that PETITIONER REPRESENTATIVE'S appraisals more reasonably reflect the value of the subject property than RESPONDENT REPRESENTATIVE 3's appraisal. Accordingly, prior to addressing the water share issue, the Commission finds the fair market value of the subject property, based on the information proffered at the Initial Hearing, to be \$\$\$\$\$ for the 2002 and 2003 tax years and \$\$\$\$\$ for the 2004 tax year.

**Subject's Value due to Petitioner's Transference of Water Share.** The Petitioner transferred her COMPANY A water share to COMPANY B in 2002 in accordance with UCA §73-1-10(2). The Petitioner asserts that she has not contracted with COMPANY B to receive the right to have water connected to the subject property for the 2003 and 2004 tax years. Nor has COMPANY B leased the water share to another property owner. COMPANY A confirms in a July 2, 2002 letter that the Petitioner no longer owns a COMPANY A water share. Furthermore, COMPANY A has informed the Petitioner in a letter dated April 30, 2004 that because of her transference of the water share, she is not allowed to connect the subject property to the COMPANY A water system until such times that she can demonstrate ownership or lease rights to a share of COMPANY A stock.

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The Petitioner also proffers evidence that COMPANY A sold two new water shares to cabin owners either in 2004 or 2005 for \$\$\$\$ per share. The Petitioner also proffers that she is aware of a COMPANY A water share sold on the secondary market (i.e., the sale was by a private owner and not COMPANY A) for \$\$\$\$\$. The Petitioner's appraiser, PETITIONER REPRESENTATIVE, has deducted \$\$\$\$ from the value of the property due to the lack of the Petitioner owning a COMPANY A water share. He stated that he believed the fair market value of the water share is higher than \$\$\$\$\$, but deducted the price at which COMPANY A sold its newly authorized shares to property owners who had been leasing shares. Furthermore, the Petitioner asserts that the value of the water share should not be assessed to her property because UCA §73-1-11(4) provides that "[t]he right to the use of water evidenced by shares of stock in a corporation shall not be deemed appurtenant to land."

In addition, the Petitioner has proffered an equalization argument, proffering evidence that the County has reduced the value of other lots in CITY at various times and in various amounts where the owner of the land leases, but does not own, a COMPANY A water share. As evidence, the Petitioner proffers County assessment records of two nearby properties whose owners leased, but did not own, COMPANY A water shares. The records show that the values of these lots were adjusted downward by the County to reflect their respective owner's need to lease a water share. For the 2002 tax year, each property had its land value reduced 50%. For the 2003 and 2004 tax years, the land values were reduced 15%.

The County argues that the transfer of the COMPANY A water share from the Petitioner to COMPANY B was not an arm's-length transaction. As a result, the County believes the property should be assessed as though the Petitioner still owned the water share. In addition, the County argues that the Commission found, in *Olsen v. Salt Lake Co. BOE*, USTC Appeal No. 92-0391 & 93-0373, that a water share is attributable to the underlying property for property tax purposes. However, in *Baer v. Salt Lake Co. BOE*,

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USTC Appeal No. 97-0544, the Commission “determined that a share of stock in a water company, which is freely transferable separately from the property and from which no water is being used for any property, cabin, or other improvement, is intangible and its value should not be included in the value of the real property.”

Although the Petitioner’s transference of her COMPANY A water share may not have been an arm’s length transaction, it appears, nevertheless, to be a legal transaction and one that places ownership of the share in an entity other than one controlled by the Petitioner. Furthermore, the water share has not been used for any property, including the subject property, since September 2002. Since these circumstances did not exist as of January 1, 2002, the \$\$\$\$ value determined earlier for the 2002 tax year needs no further consideration. However, under the circumstances that exist on the 2003 and 2004 lien dates and in accordance with the *Baer* case, the subject’s value should be adjusted, as shown by the evidence, to reflect any reduction in the subject property’s value that is due to the Petitioner’s lack of ownership of a water share.

A COMPANY A water share sells for at least \$\$\$\$\$. The Petitioner asserts that the subject property’s value, without the water share, is diminished by the full market value of the water share. If a property owner in the subject’s immediate area could only obtain water by purchasing a COMPANY A water share, perhaps PETITIONER REPRESENTATIVE’S \$\$\$\$ adjustment could not be questioned. However, the testimony indicates that water shares may be leased in the CITY area, which leads the Commission to suspect that the subject property’s value may be diminished by an amount different from the purchase price of a water share. However, the County’s argument that a water share has no effect on value because a home without such water share sold for \$\$\$\$ is not convincing because the County did not show whether the home would have sold for the same price had it been sold with a water share.

Nor does either party proffer evidence or testimony of the market price at which a water share leases on an annual basis. Were such information available and the lease amount capitalized, perhaps a value

could be estimated to show what effect the lack of a water share actually has on a property, such as the subject, that has an alternative water source (i.e., the option to lease, instead of purchase, a water share). However, without such information, the Commission must determine the value of the property without a water share, and the most convincing evidence proffered at the Initial Hearing is that the subject's value would be \$\$\$\$ less without a water share. Accordingly, the Commission finds that the \$\$\$\$ value determined earlier for the 2003 tax year should be reduced to \$\$\$\$ to reflect the lack of a water share as of the 2003 lien date. Similarly, the Commission finds that the \$\$\$\$ value determined earlier for the 2004 tax year should be reduced to \$\$\$\$ to reflect the lack of a water share as of the 2004 lien date.

Equalization. The Petitioner also proffers an equalization argument concerning the subject's assessment for the 2003 and 2004 tax years when the property no longer had a water share. The Petitioner contends that the County Assessor has historically reduced a CITY property's land value if the property owner had to lease, but did not own, a water share. The Petitioner proffers evidence of two nearby properties whose land values were adjusted 15% to account for their respective owners leasing, but not owning, a COMPANY A water share. Because the Petitioner is in this same position as these taxpayers for the 2003 and 2004 tax years, the Commission, like the County Council in the 2003 county hearing, finds that it would be inequitable to deny the Petitioner a similar 15% adjustment.

For both the 2003 and 2004 tax years, the County Assessor assessed the subject property's land at \$\$\$\$\$. 15% of \$\$\$\$\$ is approximately \$\$\$\$\$. Accordingly, the Commission finds that based on an equalization argument, the subject property's land value for 2003 and 2004 should be reduced by \$\$\$\$\$. Were \$\$\$\$\$ deducted from the \$\$\$\$\$ and \$\$\$\$\$ respective values with the water share, as determined earlier for tax years 2003 and 2004, the subject's 2003 value would be reduced to \$\$\$\$\$ and its 2004 value reduced to \$\$\$\$\$. However, because these "equalized" values are higher than the final fair market values of \$\$\$\$\$ for

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the 2003 tax year and \$\$\$\$ for the 2004 tax year, the equalization determination has no effect on the final outcome.

Summary. The Commission finds that, based on the evidence and testimony proffered at the Initial Hearing, the value of the subject property for tax years 2002, 2003, and 2004 should be as follows. For the 2002 tax year, the Commission finds that the subject property's fair market value should be reduced from \$\$\$\$ to \$\$\$\$\$. For the 2003 tax year, the Commission finds that the subject property's fair market value should be reduced from \$\$\$\$ to \$\$\$\$\$. For the 2004 tax year, the Commission finds that the subject property's fair market value should be reduced from \$\$\$\$ to \$\$\$\$\$.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property for the 2002 tax year should be reduced from \$\$\$\$ to \$\$\$\$\$; for the 2003 tax year should be reduced from \$\$\$\$ to \$\$\$\$\$; and for the 2004 tax year should be reduced from \$\$\$\$ to \$\$\$\$\$. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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Kerry R. Chapman  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

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