

04-1218  
LOCALLY ASSESSED PROPERTY  
SIGNED 11-03-06

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER GRANTING</b>
	)	<b>RULE 34(b)(1) REQUEST</b>
Petitioner,	)	
v.	)	Appeal Nos. 04-1218 & 05-0128
	)	Parcel No. #####
SALT LAKE COUNTY BOARD OF	)	Tax Years: 2003, 2004
EQUALIZATION, STATE OF UTAH	)	Tax Type: Locally Assessed Property Tax
	)	
Respondent.	)	Judge: Chapman

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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP, Deputy Salt Lake County District Attorney

STATEMENT OF THE CASE

The matter before the Commission concerns a discovery request made by the Salt Lake County Board of Equalization (“County”). The Commission heard oral arguments concerning the County’s request and the Petitioner’s opposition to it on May 3, 2005. In addition, post-hearing briefs were received from the parties in May and June 2005.

At issue is the County’s Rule 34(b)(1) Request for Discovery for “entry upon land for inspection” of the subject property, a single-family residence located in CITY and identified as Parcel No. #####. The County requests such discovery for the purpose of inspecting, measuring, and photographing the subject property and its improvements prior to the upcoming hearing on its fair market value. The County states that its request was necessary, relevant, and material to the

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underlying value issue and asks that it be permitted full and unobstructed access to the subject property to conduct its inspection. At the hearing, RESPONDENT REP requested that she and two appraisers be allowed to inspect the home for no more than three (3) hours to measure, inspect, and photograph the subject property.

The Petitioner originally objected to an inspection of her home because she had already submitted pictures of her home and because former Salt Lake Council member PERSON A had verified these pictures to be accurate. On April 13, 2005, the Petitioner submitted 17 additional pages of color photographs taken on April 2, 2005 to show the current condition of the interior and exterior of her home, as well as other attachments. The Petitioner contends that such pictures, when combined with the MAI appraisal she has obtained, should be sufficient evidence on which to proceed in this matter without requiring an inspection of her home. Furthermore, the Petitioner points out the Utah Legislature has not passed any law that requires a homeowner who wishes to appeal his or her home to allow the County to enter his or her home.

The County counters that not only has the Petitioner made the specific condition of her home an issue in this matter, but that she also did in a prior appeal for the 2001 tax year. The County argues that the Commission found in the Petitioner's favor in the 2001 appeal partially because the Petitioner's appraiser had inspected the interior of the subject property and the County's appraiser had not. The County also submits that the new photographs, if anything, reinforce why access to the subject property is necessary. The County argues that the photographs are clearly meant to show isolated areas of damage or disrepair and do not show a room in its entirety so that an overall grade or condition can be determined. The County contends that the only way to determine the

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overall condition of the subject property is by inspection, which requires access to the residence.

For these reasons, the County argues that its discovery request is appropriate. Should, however, the Commission deny the County's discovery request, the County argues that the Commission should instead issue an Order in Limine that precludes the Petitioner from making argument or presenting evidence regarding the condition of the inside of her residence. The County contends that such an order would be necessary in order to prevent prejudice to the County.

The Petitioner believes that the County's request is vindictive and targets her because she has declined the County's request for an interior inspection and because of her criticism of the County Assessor's tactics and performance in the past. As evidence, she states that the County has never before submitted a Rule 34(b)(1) request in a valuation hearing before, a claim that the County does not deny. Furthermore, she believes an Order in Limine, which the County argues for in the alternative, would disadvantage her. The Petitioner claims that the issuance of such an order would indirectly endorse the County Assessor's Office action that changed the overall grade of her home from "average" to "good" in its "SIGMA" mass appraisal system after she first declined an interior inspection in November 2001. The Petitioner claims that this single change in the County's mass appraisal "SIGMA" system increased the assessed value of her home by \$\$\$\$\$. The Petitioner submits that should the evidence she presents be insufficient to overcome the County's value, her appeal should not prevail. However, she asks that the Commission not require her to invite into her home people whom she has no reason to believe will accurately and fairly evaluate her property.

#### APPLICABLE LAW

In accordance with Utah Code Ann. §63-46b-7(1), discovery in a formal

administrative proceeding is permitted, as follows:

... the agency may, by rule, prescribe means of discovery adequate to permit the parties to obtain all relevant information necessary to support their claims or defenses. If the agency does not enact rules under this section, the parties may conduct discovery according to the Utah Rules of Civil Procedure.

As permitted by UCA §63-46b-7(1), the Utah State Tax Commission has adopted a rule concerning discovery. Utah Admin. Rule R861-1A-27(A) (“Rule 27”) provides that “[d]iscovery procedures in formal proceedings shall be established during the prehearing and scheduling conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.”

Rule 34 of the Utah Rules of Civil Procedure (“Rule 34” of the “URCP”) provides for discovery, including the entry upon land for inspection, pertinent parts as follows:

(a) Scope. Any party may serve on any other party a request

...  
(a)(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure.

(b)(1) The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

....

Rule 34(a)(2) provides that entry upon land may be permitted “within the scope of Rule 26(b)” of the URCP. General provisions concerning discovery are found in “Rule 26” of the URCP, including the scope and limits of discovery, pertinent parts as follows:

...  
(a)(6) Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: . . . production of documents or things or permission to enter upon land or other property, . . . .

(b) Discovery scope and limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(b)(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b)(2) Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (a)(6) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Subdivision (c).

....

#### DISCUSSION

Pursuant to UCA §63-46b-7, the Tax Commission may either adopt its own rules concerning discovery or allow discovery in accordance with the URCP. The Commission has adopted Rule 27, which provides that discovery in Commission proceedings shall be established in accordance with the URCP and other applicable statutory authority. The Commission is aware of no other statutory authority concerning discovery that is applicable to locally assessed property

tax appeals. Accordingly, the Commission must apply the URCP discovery provisions in this matter.<sup>1</sup>

Discovery by entry upon land for inspection is allowable under Rules 26 and 34 of the URCP in certain instances. The Commission finds that the interior condition of the subject property is relevant to the underlying issue in this appeal (i.e., the subject property's value) and that the County's request to inspect the property's interior is not unreasonable under the circumstances. However, even when such discovery is relevant to a proceeding, Rule 26(b)(2) permits a court, and in this case the Commission, to limit that discovery if, among other reasons, it determines the discovery requested to be unreasonably cumulative or duplicative or unduly burdensome, taking into account the importance of the issues at stake.

At stake in this matter is the subject property's fair market value for property tax purposes. The Commission is aware that, in the fee appraisal business, "drive-by" appraisals are commonly performed without the appraiser ever entering the appraised property. In addition, the Legislature has never enacted a law that conditions a taxpayer's right to appeal upon that taxpayer allowing the county assessor into the sanctity of his or her home.

Nevertheless, the County is correct that the Petitioner has made the interior condition of her home an issue in this matter. As a result, the County may be prejudiced if it is not allowed entry and the Petitioner is nevertheless allowed to present evidence of the interior

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<sup>1</sup> The Petitioner argues that the Commission should deny the County's request because County ordinances and rules do not provide that a taxpayer must allow an interior inspection if he or she files an appeal. Commission proceedings, however, are controlled by the statutory authority and Commission rules pertaining to this agency, not by County ordinances and rules.

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condition without the County having an opportunity to defend against that evidence. For these reasons, the Commission grants the County's Rule 34(b)(1) request, with certain restrictions as follows. The Commission finds that the Petitioner and the County should mutually agree upon a time at which RESPONDENT REP and one County appraiser may enter the subject property for no more than two hours to inspect, measure, and take photographs that are relevant to the fair market value of the property. The Commission orders that the inspection occur within 30 (thirty) days of this Order.

Failure to comply with the Order will result in the Commission not allowing the Petitioner to submit, at the upcoming valuation hearing, any testimony and evidence concerning the interior condition of the subject property or the effect on value that the interior condition has on the property. Under this circumstance, the Petitioner would still be allowed to submit evidence, such as an appraisal, that may contain evidence not only about interior condition but also other matters pertaining to the property. For such evidence, however, that portion of the evidence that pertains to the interior condition of the home will be disregarded.

#### ORDER

Based upon the Commission's review of the County's request and consideration of the parties' positions, the Commission grants the County's Rule 34(b)(1) request, subject to the conditions described above. Should the Petitioner not comply with this Order, she will not be permitted to submit testimony or evidence concerning the interior condition of the subject property, as described above. It is so ordered.

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BY ORDER OF THE COMMISSION.

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

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

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