06-1504,05,06,07,08,09,10
Locally Assessed Property
Signed 04/01/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 AND PETITIONER 2, PETITIONER 3, PETITIONER 4 AND PETITIONER 5, PETITIONER 6, PETITIONER 7 AND PETITIONER 8, PETITIONER 9 AND PETITIONER 10, PETITIONER 11, Petitioner, vs. BOARD OF EQUALIZATION OF WASATCH COUNTY, UTAH, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal Nos. 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1509, 06-1510 Tax Type: Property Tax/Locally Assessed Tax Year: 2006 & Roll Back Period 2001-05 Judge: Phan

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 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 order, specifying the commercial information that the taxpayer wants protected.

Presiding:
Pam Hendrickson, Commission Chair
Marc Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE 1, Attorney at Law
PETITIONER REPRESENTATIVE 2, Attorney at Law
PETITIONER 6, Owner
PETITIONER REPRESENTATIVE 3, Developer
For Respondent: RESPONDENT REPRESENTATIVE 1, Wasatch County Attorney
RESPONDENT REPRESENTATIVE 2, Wasatch County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 18-19, 2007. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners are appealing the assessed values as set by the Wasatch County Board of Equalization for the land on the subject lots, for the 2006 tax year. In addition to the 2006 assessed value, Petitioners PETITIONER 3, PETITIONER 4 AND 5, PETITIONER 9 AND 10, PETITIONER 6 and PETITIONER 7 AND 8 are appealing the rollback tax assessment against each of their properties subject to this appeal.

2. As of the lien date at issue the properties had residences or buildings either constructed or in partial states of construction. The value of the buildings was not at issue in this appeal.

3. The subject properties are all located in the SUBDIVISION in Wasatch County. The owner, parcel number, size and valuations as assessed by Respondent, which are the subject of this appeal, are as follows:

Petitioners	**Lot/Parcel No.**	**Acres**	**County's Rollback Values Appealed**	**County Board's 2006 Values Appealed**
PETITIONER 1 & PETITIONER 2	#####-1	160	No Rollback Appeal	Land-GreenBelt $$$$$ Land-Homesite $$$$$
PETITIONER 3	#####-2	184	2001-2005 $$$$$ per year	Land-Greenbelt $$$$$ Land-Homesite $$$$$
PETITIONER 4 & PETITIONER 5	#####-3	160	2002-2006 $$$$$ per year	Land-Greenbelt $$$$$
PETITIONER 9 & PETITIONER 10	#####-4	160	2001-2005 $$$$$ per year	Land-Greenbelt $$$$$ Land-Homesite $$$$$
PETITIONER 6	#####-5	160	2001-2005 $$$$$ per year	Land-Greenbelt $$$$$ Land-Homesite $$$$$
PETITIONER 7 & PETITIONER 8	#####-6	160	2001-2005 $$$$$ per year	Land-Greenbelt $$$$$ Land-Homesite $$$$$

PETITIONER 11	#####-7	160	No Rollback Appeal	Land-Greenbelt $$$$$ Land-Homesite $$$$$

4. The SUBDIVISION ("SUBDIVISION") is an exclusive, approved and platted subdivision. It covers approximately 14,000 acres and has 84 single-family home site parcels. With the exception of a few parcels, all home site parcels in the subdivision are at least 160 acres. All parcels subject to this appeal are 160 acres or larger. Access to the subdivision is from a main gate at ADDRESS in CITY 1 and a secondary gate located off of STREET in CITY 2. Access to the subject lots is provided year round by paved interior roadways, which are maintained by the subdivision.

5. The land uses surrounding the SUBDIVISION are primarily recreational and agricultural in nature. The SUBDIVISION shares approximately seven miles of common boarder with the (X) on the east, which is accessible from the SUBDIVISION. (X) is ten miles west and (X) 20 miles north. CITY 3 with its (X) is located approximately 22 miles northwest.

6. The subdivision amenities at the SUBDIVISION include a 26-acre common area with an (X), a 2,800 square foot guesthouse and two large (X). There is another 23-acre common area with (X) and approximately one-mile of frontage along the (X). There are several (X) at the property that can be accessed by the residents. There is approximately fifty miles of equestrian trails through the SUBDIVISION and the entire property is protected by private security.

7. Although each subject parcel is 160 acres or larger, it can be developed as only one, single-family home site.

8. The limitations on development are both from zoning and a conservation easement. The property is zoned P-160 under the jurisdiction of Wasatch County. P-160 is a preservation zoning where

development may be limited do to remoteness of services, topography and other sensitive environmental issues. Residential development is allowed in the zoning with basically one residence per 160 acres. Conditional uses include groupings of residential lots provided that density is not increased, water storage, fishing activities and sand and gravel quarrying.

9. The principal developer of the SUBDIVISION, PETITIONER REPRESENTATIVE 3, testified that the area had been ranched for over one hundred years and it was the intent in developing the SUBDIVISION to preserve large amounts of open space and continue the ranching tradition. As there was the possibly that zoning could be changed and higher density allowed at some point in the future by the County or other governmental jurisdiction, to insure the restrictions remained permanently, they placed conservation easements on the property as it was subdivided. The conservation easements were granted to the Utah Open Lands Conservation Association, Inc. As such the subject lots are permanently encumbered by the conservation easements. The conservation easements allow for one-home site with the improvements specifically limited to the 10-acre building envelope. Within the 10-acre building envelope the property owner may construct both a primary single-family residence and a caretaker residence. A garage and other barns and outbuildings may be constructed. All the buildings must be located within the ten-acre envelope as well as any roadways, utility lines; water wells water storage tanks, waterlines and septic tanks. The 10-acre building area may not be located in wildlife birthing areas, goshawk nesting habitats or riparian areas. The conservation easement would permanently prohibit buildings or other improvements on the acres outside of the 10-acre building envelope. Further, there could be no quarrying or mining on the property.

10. Subject to some restrictions, that included specified habits and riparian areas or the County building requirements regarding slope and setbacks, the purchaser chooses which ten contiguous acres to use for the building envelope, and then chooses the home site within those acres. PETITIONER 6, an owner of

one of the subject lots, and PETITIONER REPRESENTATIVE 3 both testified that not only could the homeowners choose the site of the building envelope it was possible to move the building envelope at least until construction commenced, and even then there was some possibility of adjustment as long as it encompassed the buildings. PETITIONER REPRESENTATIVE 3 testified that typically the location of the building envelope was limited only by County building restrictions. During the period now subject to the rollback, the 10-acre building envelopes had not yet been designated. Based on these factors the Commission finds that during the rollback period there was no specific one-acre of the property designated as the home site or ten acres designated as the building envelope.

11. PETITIONER 6, an owner of one of the subject lots testified that he purchased the lot because of size and restrictions on development. He indicated he chose the property over other subdivisions because he liked that all 14,000 acres would be preserved with the same restrictions and remain as a wilderness setting. He also felt he was doing something good by preserving open space. Another owner, PETITIONER 3 testified that they purchased the property because they wanted the large acreage and a place to ride their horses. It was his understanding that the restrictions on the property made it so that each lot could not be subdivided.

12. As the property had been ranched for many years it had been assessed under the Farmland Assessment Act ("FAA") for property tax purposes, based on its agricultural use, rather than its market value. Agricultural use continues over most of the SUBDIVISION property as of the date of the hearing as the Homeowners Association leases the SUBDIVISION property out to a sheep operation. A property owner may fence their 10-acre building envelope to keep the sheep out of that portion of the property, but must allow sheep to graze on the remaining acreage. As of the lien date, none of the Petitioners had chosen to fence their 10-acre building envelopes and have allowed the sheep to graze throughout their properties. The County had assessed these properties with the entire parcel valued as greenbelt property under the FAA even after the

subdivision was platted, up until the time a building permit was issued. Once a building permit was taken out on a particular parcel the County removed the one-acre home site from valuation under the FAA and that one-acre became subject to the roll back tax. However, the County considered the other 159-acres or more on each parcel to remain as greenbelt and the County continues to assess the remaining acres under the FAA.

13. The FAA requires disparate treatment regarding the home site and remaining acres that are ranched or farmed. Pursuant to the FAA, the farmhouse and land used in connection with the farmhouse is not taxed under the act, but is instead assessed based on fair market value. For greenbelt properties located outside of city limits, Wasatch County applies a standard of one as the land used in connection with the farmhouse, or home site.

14. As there had been sales of lots in the SUBDIVISION, there was market information to determine a fair market value for each parcel at issue. The reason the matter came before the Commission for the Formal Hearing was that the parties were in disagreement on how much of the total value of the 160-acre parcels should be attributed to the one-acre home sites. A determination of the value for the one-acre is relevant for the purposes of determining the amount of the rollback, as well as for the assessment for the 2006-year.

15. When the County issued the Tax Notices for the years that are now subject to the rollback, the notices did not list out or allocate a portion of the total market value to either the home site acre or the building envelope. Instead, the notices listed a single, total market value for the entire parcels. Because the property was taxed as greenbelt under the FAA, the amount of the tax assessed, however, was not based on the market value, but instead on the greenbelt value pursuant to the FAA.

16. Petitioners submitted an appraisal for each of the properties at issue, which had been prepared by APPRAISER 1, MAI, and CRE. APPRAISER 1's appraisal was limited to a market valuation of the land

only. It was APPRAISER 1's appraisal conclusion that there was some variation in values between the lots, due to factors like view, slope and forestation. It was his appraisal conclusion that the total market value of the land for each of the parcels at issue, as of January 1, 2006, was as follows:

#####-7	$$$$$
#####-5	$$$$$
#####-2	$$$$$
#####-6	$$$$$
#####-3	$$$$$
#####-1	$$$$$
#####-4	$$$$$

17. APPRAISER 1's market values for each subject parcel were not substantially disputed by Respondent. APPRAISER 1's market value conclusions for the land were based on eleven lot sales, all located within the SUBDIVISION. The sales had occurred from October 2004 through May 2006. The lots had sold for prices ranging from $$$$$ to $$$$$.

18. In his appraisal APPRAISER 1 also gave his opinion of how the total value should be allocated to the various components of the lot, including the one-acre home site. It was his position that allocations to the functional areas of each lot must reflect the market value and he indicated there were circumstances when a separate value for a home site consisting as part of a larger parcel could be determined. However, it was his conclusion that in this matter, any allocation of the total purchase price of the lot to the home site was simply not market supported. He reached this conclusion because the 160 acres could not be subdivided and with the restrictions from zoning and conservation easements the highest and best use of the subject lots were as large 160-acre single family lots. He pointed to the Uniform Standards of Professional Appraisal Practice and indicates that they specifically warn against allocating value without market support.[1] It was his opinion that the County had apportioned the values to the various components of the lots arbitrarily. It

1 APPRAISER 1 cites to Uniform Standards of Professional Appraisal Practice and Advisory Opinions, 2006 Edition, Appraisal Standards Board, The Appraisal Foundation, Standards Rule 1-4(e) Comment.

was APPRAISER 1's conclusion that if it is necessary to allocate or apportion part of the total lot value to the home site acre, it could only be done pro rata, 1/160th of the total value, as it is the entire lot and the similarity to all other lots within the development that create the value.

19. WITNESS 1, Professor of Law, testified that the zoning and conservation easement had to be taken into account in determining the value. It was his opinion that it was not legal to buy or sell any portion of the lot smaller than the total 160 acres. This was a point that was supported by all evidence and not disputed. It was WITNESS 1's conclusion that because one acre could not be sold separately, there was no fair market value for the one-acre home site, only a value for the property as a whole. WITNESS 1 also pointed out that additional value will be taxed in the improvements.

20. WITNESS 2, PhD, testified that the conservation easement actually enhanced the value of the property. He also testified that the highest and best use of the property was not for agriculture, it was instead as a 160-acre residential building lot. As part of the whole he concluded that each acre of the 160-acre property had the same value as all the other acres. He stated that a fair market value for the one-acre home site could be determined but only on the basis of 1/160 of the total value as indicated by APPRAISER 1. It was WITNESS 2's conclusion that recognizing an allocated valuation method to all the acres is economically valid as it the way of expressing the enhanced value of the whole. The right to build a residence somewhere on the property presumably increase the value of the 160 acre lot. That will be reflected in the price per acre. He did not find an extracted market value using lots similar in size that have sold to be a valid valuation technique.

21. RESPONDENT REPRESENTATIVE 2, the Wasatch County Assessor, testified that under the FAA, the County is required to allocate a portion of the total value to the home site acre, which is subject to tax on a fair market value basis, while the remainder of the property was taxable under greenbelt. He testified that he had been applying the FAA to properties for seventeen years in Wastatch County. The County had

farms with home sites on numerous properties of varying zones where the County is required to allocate a portion of the total value to the home site. In addition to farms in the P-160 zone, there were farms with home sites on properties in the following zones: A-20 allowing only 1 residence per 20 acres ; R-A-5 allowing only one residence per 5 acres; R-A-1 allowing only one residence per 1-acre. To establish a value for the home site, the County would consider values of buildable lots in the area. It was the County's position that the right to build a residence is part of the home site value.

22. In 1999, when the subject lots were platted and because of the conservation easement, RESPONDENT REPRESENTATIVE 2 sought advise from representatives of the State Tax Commission's Property Tax Division on how to allocate the total values of the property. At this time, the County made the determination that the total value, which was based on the sales, would be allocated 60% to the primary residential buildable site, 22% to the secondary or caretaker's buildable site, $$$$$ per acre to the rest of the acres in the building envelope and whatever was left of the market value to the remaining acres. It was the County's position that a substantial portion of the value of the remaining 150-acres shifted to the 10 acres building envelope due to the conservation easement. However, this valuation break out was not conveyed to the property owners on the annual Tax Notices issued for the years that are now subject to the rollback.

23. APPRAISER 2, Certified General Appraiser, prepared an appraisal for the Respondent for purposes of estimating the value of the one-acre home site on the property. The appraisal was prepared for one lot, #####-4, which was the PETITIONER 9 AND 10 property. It was the County's intent that the same methodology for determining the value for the home site be applied to the other properties. It was APPRAISER 2 conclusion that the total value of #####-4 was $$$$$, of which $$$$$ was for the one-acre home site and $$$$$ for the reaming 159 acres.

24. In his appraisal, APPRAISER 2 determined the value of the one-acre site by estimating the

overall value of the entire parcel and using additional data to allocate or estimate the value contributed by the one-acre home site to the overall parcel. It was his conclusion that he could determine a fair allocation of the market value, despite that the one acre could not be legally sold separately.

25. Like APPRAISER 1, APPRAISER 2's estimate of the total market value came from sales within the SUBDIVISION, all located very near #####-4. He also considered the purchase price of #####-4, which was $$$$$ on October 29, 2004. It was his conclusion that the fair market value of the land only on #####-4, as of the January 1, 2006 lien date, was $$$$$. As a comparison, APPRAISER 1 had valued this lot at $$$$$.

26. To determine a value for the one acre home site, it was APPRAISER 2 position that the building site, when reduced to one acre, must also include the legal right to construct a home because the appraiser must be careful to divide both the physical and legal components of the property. He attributed the right to build to the one acre while the remaining 159 acres he considered to have only the limited agricultural and recreational uses.

27. To estimate the allocation to the one acre, APPRAISER 2 relied on two methods: 1) determining the value of the unbuildable portion of the property; and 2) determining the value of the right to build by considering sales of conservation easements. To determine the value of the unbuildable land, APPRAISER 2 found six comparables of rangeland with recreational desirability, but without the right for potential residential development. He concluded that these sales indicated a value for the unbuildable portion of the property to be $$$$$. In this analysis, APPRAISER 2 indicated that he considered 159 acres as unbuildable and only the one-acre, used by the County as the home site, as buildable. From the analysis of conservation easements he relied on six sales and concluded that the right to build on the subject along with the one-acre home site would represent approximately 65% of the subject's value while the remainder should be

allocated to the unbuildable agricultural and recreational land. In his reconciliation of the two approaches he concluded that 65% of the total value should be allocated to the buildable home site and the remainder to the agricultural land.

28. Upon review of all the evidence in this matter, the Commission concludes that prior to designation of the 10-acre building envelope, as evidenced by the issuance of a building permit, there would be no distinction in value from one acre to the next for the 160 acre parcels, as the right to build was attached to the value of the entire lot as a whole and each acre up to the 160 acres contributed equally to the value.

29. However, once the 10-acre building envelope has been designated, the value is no longer equally contributed on a per acre basis. All development and improvement must be limited to the ten acres. The right to build attaches to the building envelope. Furthermore, the restrictions of the conservation easement are then attached to the now identifiable 150 acres. The owner may no longer build fences, roadways, corrals, swimming pools, manmade ponds or gardens on the 150 acres. Once the building envelope has been established there is a clearly identifiable difference between the 10-acre building envelope and the remainder of the property, a difference that does impact how these two portions of property contribute to the value.

30. Regardless of the fact that a one-acre home site may not legally be sold separately from the 159 acres of the lot, the County must allocate a fair market value to the one-acre based on the express language of the FAA. APPRAISER 2 was the only party who attempted to do this in a manner that reflects the reality that the building site is worth more than the undevelopable property subject to the conservation easement. Absent evidence from Petitioner's experts that addressed the disparity in value, the Commission accepts APPRAISER 2 conclusion that 65% of the value of the total lot is attributable to the developable portion of the land. However, the Commission finds that the building site is not one-acre, it is ten-acres. From a review of APPRAISER 2's appraisal, his testimony at the hearing regarding the 10-acre building site and that of the other

witnesses describing the potential for the 10-acre envelope, the Commission concludes that the 65% for the buildable portion applies to the 10 buildable acres and is not appropriately limited to a one-acre home site. Nine of the ten buildable acres as of the lien date were still being used for agricultural purposes and one acre must be valued as the home site according to statute. As far as allocating a portion of the 65% to the one-acre, the Commission is unable to further determine which portion of the value is attributable to each acre, other than using 1/10 of the 65% of the total market value.

31. APPRAISER 1 has appraised each individual lot at issue in this appeal to determine a total value as of the January 1, 2006 lien date. The County's assessments for 2006 were not always consistent with APPRAISER 1's conclusions. The County did not substantially refute APPRAISER 1's total values for each lot, and the County did not submit an appraisal of each lot. For tax year 2006, the Commission accepts APPRAISER 1's total lot value for the land portion of each of the subject properties. The Commission finds the value of the 10- acre building envelope to be 65% of the total lot value, and the one-acre home site value to be 1/10 of the 65% attributed to the building envelope.

APPLICABLE LAW

1. All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provide by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Sec. 59-2-103.)

2. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined

using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value. (Utah Code Sec. 59-2-102(12).)

3. For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land: (a) is not less than five contiguous acres in area. . . and (b) except as provided in Subsection)5): (i) is actively devoted to agricultural use; and (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part. (Utah Code Sec. 59-2-503(1).)

4. All structures which are located on land in agricultural use, the farmhouse and the land on which the farmhouse is located, and land used in connection with the farmhouse, shall be valued, assessed, and taxed using the same standards, methods, and procedures that apply to other taxable structures and other land in the county. (Utah Code Sec. 59-2-507(2).)

5. (2) In addition to the value determined in accordance with Subsection (1), the fair market value assessment shall be included on the notices described in (a) Subsection 59-2-919(4); and (b) Section 59-2-1317. (3)The county board of equalization shall review the agricultural use value and fair market value assessments each year as provided under Section 59-2-1001. (Utah Code Sec. 59-2-505 (2)&(3).)

6. Except as provided in this section, Section 59-2-506.5 or Section 59-2-511, if land is withdrawn from this part, the land is subject to a roll back tax imposed in accordance with this section. (Utah Code Sec. 59-2-506(1).)

7. The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between: (i) the tax paid wile the land was

assessed under this part; and (ii) the tax that would have been paid had the property not been assessed under this part. (Utah Code Sec. 59-2-506(3).)

8. 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 commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. (Utah Code Sec. 59-2-1006(1).)

9. (2) In assessing the fair market value of a parcel of property that is subject to a minimum parcel size of one acre or more, a county assessor shall include as part of the assessment: (a) that the parcel of property may not be subdivided into parcels of property smaller than the minimum parcel size; and (b) any effects Subsection (2)(a) may have on the fair market value of the parcel of property. (3) This section does not prohibit a county assessor from including as part of an assessment of the fair market value of a parcel of property any other factor affecting the fair market value of the parcel of property. (Utah Code Sec. 59-2-301.2(2) & (3).)

CONCLUSIONS OF LAW

1. Petitioner has raised two separate but related issues. The first is whether the value of a home site contained within a larger and unsubdividable property may be retroactively established at the time of assessment of a rollback tax. The second is the fair market value of the existing home site for purposes of determining the current year's property tax assessment. To begin, a determination of the rollback tax presents issues of both fact and law to the Commission. Pursuant to Utah Code Sec. 59-2-506 the amount of the rollback tax is computed by taking the difference between the tax paid during the roll back period based on its agricultural use under the FAA and the tax that would have been paid annually based on an a fair market value

assessment. For each year of the rollback period, the County on an annual basis had already determined the fair market value for the subject property. Furthermore, the County was required to list the fair market value on the Tax Valuation Notices as they were issued each year. If Petitioners were in disagreement with the market value set by the County, Petitioners' recourse was to appeal the market value each year as provided in Sec. 59-2-1001. Therefore, the total fair market value for each property at issue for the rollback years was already established by the County pursuant to the annual notices they issued that were not appealed and may not now be challenged by either party based on the circumstances in this matter.

2. Respondent's witnesses acknowledged, and it was supported by the exhibits and testimony of Petitioners' witnesses, that when the County listed the fair market value on the annual notices mailed out for the years subject to the rollback, it listed only a total value for the entire 160-acre parcel without any breakout for home site land. Petitioners did not file annual appeals regarding the total market value indicated on the notices for each of the rollback years. Petitioners were not given the opportunity to challenge the County's allocation of the total market value to the home site acre, because they were never given notice of what that amount was. Had Petitioners been notified of the allocation to the home site acre, and that it was an amount different from a 1/160 allocation of the total value, Petitioners may have appealed the value on annual basis as is provided in the statute at Utah Code Section 59-2-505 and 59-2-1001.

3. Furthermore, the Commission notes that for rollback purposes, valuation is based on the property, as it existed during the rollback period. Valuation is not based on the condition of the property that results after a portion has been withdrawn from greenbelt. The Commission finds that if the County valued the home site at a higher rate during the rollback years, the County should have indicated so annually on its valuation notices as they were issued for each of those years, so that the home site value could have been appealed annually pursuant to Utah Code Section 59-2-505 and 59-2-1001. Failure to do so alone is sufficient

for the Commission to find that rollback tax is limited to 1/160th [2] of the total value listed by the County each year in its valuation notices issued to Petitioners. Additionally, this legal basis is supported by the Commission's factual conclusion that during the rollback period, there were no designated building envelopes or home sites and, therefore, each one of the 160 acres was as valuable as the rest. Prior to the issuance of the building permit there would have been no basis for the County to determine the one-acre home site upon which the residence would be located.

4. With respect to the second issue, the question of the current home site value, it is the Commission's conclusion that the issue of determining the market value of the one-acre home site for the 2006 lien date presents both legal and factual issues. Petitioners' witness, WITNESS 1, argued that a market value could not be determined for the one acre as it could not be legally separated. Petitioners also argue that Utah Code Sec. 59-2-301.2 regarding minimum parcel size supports their contention. Although the one-acre home site may not legally be sold separately, Utah Code Sec. 59-2-507 requires that the County assess it at fair market value and is the specific and controlling statute on the taxation of a home site used in connection with greenbelt property. Subsection 507(2) provides that the farmhouse and land used in connection with the farmhouse shall be valued, assessed, and taxed using the same standards, methods and procedures that apply to other taxable land and structures in the County. However, the subsection does not provide specific guidance on how to make that determination when the home site is part of an unsubdividable lot. Utah Code Sec. 59-2-301.2 does prohibit the County from valuing the 160-acre subject parcels as if they were subdividable into numerous single-family residential lots. The County has not valued this property as if higher density was allowed. Furthermore, subsection 59-2-301.2 (3) expressly provides that the County Assessor may include as part of the assessment other factors affecting the fair market value of the parcel of property. Finally, the fact

2 For #####-2 which was 184 acres the rollback tax must be based on 1/184th of the total value.

that APPRAISER 1's valuations differ based on specific property characteristics, in addition to size, implicitly demonstrates that the value of any given unit of land may vary from another within each lot.

5. The Commission finds that each acre of the 160- acre parcel contributes to value. Prior to the designation of the building envelope this was on an equal basis. However, once the buildable envelope was designated, as had occurred for all properties subject to this appeal by the 2006 lien date, there are two distinct and identifiable classes of property, the 10 acre building envelope and the remaining undevelopable area covered by the conservation easement. These two areas do not contribute equally to the value. Respondent has offered an appraisal that makes a distinction. Although the Commission disagrees with the limitation of the analysis to the one acre, because the entire 10 acres is developable with the possibility of a second home, garages, barns, outbuildings, yard features and so forth, which all contribute to the value of the building site, the Commission finds that in the absence of testimony and evidence to the contrary, APPRAISER 2's analysis adequately supports that 65% of the value is attributable to the buildable envelope for these properties.

6. As of the lien date, only one acre of the ten-acre buildable envelope had been withdrawn from greenbelt for each of these properties. As additional improvements are made in the buildable envelope, additional acreage may be withdrawn and rollback assessed.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the County is to calculate the rollback taxes for each of the properties for each rollback year based on the market value for the home site acre being 1/160th or 1/184^{th,} depending on the size of the lot, of the total value indicated for that year on the tax notices issued by the County. The County is to calculate the fair market value of the home site acre for the 2006 tax year for each parcel at issue on the basis of 65% of the total value of the lot as determined in the APPRAISER 1's appraisal divided by 10. It is so ordered. The County Auditor is ordered to adjust the

assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2008.

_____
Jane Phan
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 _____, 2008.

EXCUSED

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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