

BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,      Petitioner,  vs.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,      Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 08-0796</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2007</p> <p>Judge:     Phan</p>
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**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER  
For Respondent:   RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 15, 2008. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1.     Petitioner is appealing the assessed value of the subject properties for the lien date January 1, 2007.
2.     The property at issue is Parcel No. #####, located at ADDRESS, CITY, Utah.
3.     For the January 1, 2007 lien date, the County Assessor had valued the property at \$\$\$\$\$ and the County Board of Equalization (the "County") had sustained the value. Petitioner (the "Property Owner") requests that the value be lowered to \$\$\$\$\$. The County asks that the value set by the County Board be sustained.
4.     The property consists of 2.03 acre of land improved with single family, A-frame style residence. The residence has 1,593 square feet above grade and a partial finished basement of 636 square feet.

The residence has a two-car garage and large deck. The residence is slightly irregular in shape and unusual in design as the master bedroom is a sleeping loft over the kitchen and dining room areas that is open to the living room. There is one additional bedroom in this property that is in the basement. The kitchen of the residence has been updated. There is no family room or den. The residence was about 35 years old.

5. The property is not on a public water supply system. The Property Owner shares one water right with a neighboring property and the water comes from an underground spring. They collect the water in storage tanks. There is a 2,800-gallon tank on the property to store the water from the spring while it is running. However, the spring dries up and stops running by the end of September and then generally does not start again until March or April. The water from the storage tank provides very limited water use. Although it might be difficult and costly, another source of water could be obtained for the property.

6. There are access problems with the subject property. Although the property has legal access to ROAD due to 19.61 feet of frontage, and a second legal access over a public right-of-way referred to as TRAIL, neither of these provide practical access to where the residence is located on this property. Where the property's 19.61 feet fronts onto ROAD, there is a very small flat area where a car could be parked, but then the slope immediately becomes so steep from there to the area where the residence is located that the only way to get to the house from the road would be to build an extensive steel stairway. The Property Owner testified and the photographs support that for all practical purposes a person could not currently get to the residence from the roadway frontage. A second way to access the residence would be using the TRAIL. The Property Owner could hike up 152 feet from the roadway on the trail. However, this would be difficult because, despite the name, it is merely a public right of way that for the most part has not been improved into an actual trail. The terrain in this right of way is steep and wooded except for a small portion of the trail that the county has allowed the Property Owner to pave.

7. The Property Owner, who lives full time at the property, accesses his residence over the driveway of a neighboring property and then over the portion of the TRAIL that he paved. The neighboring property owners, the ( X ), granted legal access to the Property Owner to cross their property in a written agreement, but the agreement specifies certain conditions. The Agreement, dated September 25, 2001, between the Property Owner and the ( X ) grants the right of access for the Property Owner to use for the single family dwelling, but specifically states that the right of access is extinguished when the Property Owner no longer owns the subject property, if the Property Owner sells the property, divorces or fails to maintain the

right of way for the ( X ).

8. The Property Owner submitted a bid for a stairway to another property. He argued that this would be similar to how a stairway could be built from the road to the residence on the subject property. The bid for the stairs for the other property was just under \$\$\$\$\$.

9. The Property Owner also presented information on the County's value for parcels of undeveloped land that were located near the subject and argued that the County's value for the land was too high. The County countered this with the information that the Property Owner was comparing non-buildable lots to the subject, which was a developed lot.

10. The Property Owner submitted an appraisal as of October 18, 2006, prepared at his request for refinancing purposes. It was the appraiser's conclusion that the value of the subject property was \$\$\$\$\$ as of that date. This value is significantly higher than the value requested by the Property Owner, higher than the value established by the County Board of Equalization and in a close range with the appraisal value submitted by the County. The appraisal submitted by the Property Owner considered three comparable sales all located on the same street as the subject and all reasonably comparable. These three properties had sold for \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. No issues regarding access problems or water were noted in the appraisal. After making adjustments for the differences noted in the appraisal, like size of lot, condition of residence and size of residence it was the appraiser's conclusion that the indicated range of values from these sales for the subject property was \$\$\$\$\$ to \$\$\$\$\$ and the appraisal conclusion was \$\$\$\$\$.

11. It was the Petitioner's position that the appraisal he had submitted overvalued the property. Petitioner stated that the appraiser was not aware of the negative factors regarding access and water.

12. The County submitted an appraisal in this matter prepared by RESPONDENT REPRESENTATIVE. In the appraisal, RESPONDENT REPRESENTATIVE concluded that the value of the subject property on January 1, 2007 was \$\$\$\$\$. He also considered three comparables, one of which was the same as in the appraisal the Property Owner submitted. RESPONDENT REPRESENTATIVES comparables had sold for \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. He made adjustments for size of building and quality of construction. He made small adjustments for lot size. It was his opinion that the value was in the fact that you could build on the lot and additional acreage did not add significant value. In addition to these adjustments, RESPONDENT REPRESENTATIVE made an adjustment for date of sale based on market appreciation. RESPONDENT REPRESENTATIVE also made a 10% adjustment for functional utility to take into account the problem with

the water. RESPONDENT REPRESENTATIVE did not consider access to be an issue. He held all previous owners of the subject property as far back as 1920 had enjoyed unchallenged access to the subject property by crossing the property that now belongs to the ( X ).

13. Upon review of the evidence submitted in this matter, the Commission concludes that both appraisals indicate a value higher than that set by the County Board of Equalization. The appraisal submitted by the Property Owner indicated a value of \$\$\$\$\$. There is no discussion in the appraisal regarding water or access issues. This may be because the appraiser was unaware of these problems, or perhaps he was aware to some extent but did not find that they affected the value. The County appraiser did make an adjustment regarding the water and the County's appraisal value was still considerably higher than the value sustained by the County Board of Equalization. The subject property is not land locked. Without the access across the neighboring property the Property Owner could still reach his residence, although on foot or by constructing a steel stairway. There is also the likelihood of obtaining deeded title to the access across the ( X ) property through some type of legal action. Either of these options would be of some cost to an owner of the subject property, but not a reduction in the amount that the Property Owner argues for this property. The Commission finds that both the access and water are negative factors. However, given that the County's value request is lower than the appraisal values, this negative factor has been taken into consideration.

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 Ann. 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 Ann. 59-2-102(12).)

3. (1) 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. . . (4) In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

CONCLUSIONS OF LAW

1. To prevail in a real property tax dispute, 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).

2. In this matter Petitioner has not provided sufficient evidence of a lower value. The two appraisals submitted more than support the County Board of Equalization's value. In spite of the negative factors of water and access, the weight of the evidence indicates that the value set by the County Board of Equalization is reasonable for this property.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2007, is \$\$\$\$\$. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Jane Phan  
Administrative Law Judge

Appeal No. 08-0796

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 \_\_\_\_\_, 2009.

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. 63G-4-302. 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 63G-4-401 et seq.

*JKP/08-0796.fof*