

09-0445  
LOCALLY ASSESSED PROPERTY  
TAX YEAR: 2008  
SIGNED: 01-06-2011

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION FOR  
RURAL COUNTY, UTAH,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 09-0445

Parcel No's. #####-1; #####-2;  
#####-3; #####-4;  
#####-5; #####-6;  
#####-7

Tax Type: Property Tax/Locally Assessed  
Tax Year: 2008

Presiding: M. Johnson

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**Presiding:**

Marc B. Johnson, Commissioner

**Appearances:**

For Petitioner: PETITIONER REP 1 & 2, representatives  
For Respondent: RESPONDENT REP. 1, RURAL County Assessor  
RESPONDENT REP. 2, RURAL County Commissioner  
RESPONDENT REP. 3, RURAL County Appraiser  
RESPONDENT REP. 4, Wildlife Technician with the Utah Division of  
Wildlife Resources (appeared by phone)

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the RURAL County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on June 30, 2009. The original assessments by the RURAL County Assessor as of the January 1, 2008 lien date, the Board of Equalization decisions, and the Taxpayer's requested values are as follows:

<u>Parcel No.</u>	<u>Acres</u>	<u>Assessed Values</u>	<u>BOE Values</u>	<u>Taxpayer's Requested Values</u>
#####-1	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-2	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-3	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-4	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-5	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-6	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-7	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

The County is requesting the Commission sustain the Board of Equalization values.

One issue in this proceeding is the same as that in Appeal 09-0444 as well as Appeal 09-0435,<sup>1</sup> which is the presence of prairie dogs on the land. The parties were informed that the Commission would base its decision in this appeal on evidence and testimony from the related hearings. The Commission incorporates its decision in Appeal No. 09-0444 into this Order for the four parcels involving prairie dogs. These parcels, #####-1, #####-2, #####-3, and #####-4 were heard at the same time as Appeal No. 09-0444.<sup>2</sup> The parcel in Appeal 09-0444 is #####-14. All five parcels are owned by related parties; the issues, facts, and circumstances in both appeals are identical. Accordingly, except for the determination of final value, the four parcels in this appeal will not be addressed herein. A copy of the Initial Hearing Order is attached and included as part of this record.

#### APPLICABLE LAW

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. (Utah Code Ann. Sec. 59-2-103 (1).)

“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. (Utah Code Ann. 59-2-102(12).)

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 Ann. Sec. 59-2-1006(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).

#### DISCUSSION

The three parcels remaining at issue for this (the “ROAD Lots”) are located on ROAD, in or near CITY, Utah and vary in size as follows:

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<sup>1</sup> There are differences in between the properties; in Appeal 09-0435 the property is a commercially zoned property with little development in the immediate vicinity, while the others, including the subject lots are platted as residential subdivision lots.

<sup>2</sup> In Appeal 09-0444 the date of hearing was incorrectly identified as July 7, 2009. That date was the scheduled date of the hearing, but the Taxpayer requested that all five parcels be heard together on the date scheduled for this proceeding.

<u>Parcel No.</u>	<u>Acres</u>
#####-5 ("#####-5")	#####
#####-6 ("#####-6")	#####
#####-7 ("#####-7")	#####

The subject properties are contiguous, with #####-6 situated between the other two parcels.

The County presented the following five comparable sales:

<u>Sale No.</u>	<u>Parcel No.</u>	<u>Sale Amount</u>	<u>Sale Date</u>	<u>Acres</u>	<u>\$/Acre</u>	<u>Zoning</u>
1	#####-8	\$\$\$\$\$	DATE	#####	\$\$\$\$\$	I & M
2	#####-9	\$\$\$\$\$	DATE	#####	\$\$\$\$\$	A-1
3	#####-10	\$\$\$\$\$	DATE	#####	\$\$\$\$\$	I & M
4	#####-11 & #####-12	\$\$\$\$\$	DATE	#####	\$\$\$\$\$	A-1
5	#####-13	\$\$\$\$\$	DATE	#####	\$\$\$\$\$	I & M

\$\$\$\$\$ average \$/acre

\$\$\$\$\$ median \$/acre

#####-7

Taxpayer explained that #####-7 is located across from an area that is zoned A-20, and has no water or utilities. He stated that it has frontage road access. He requested that C-590 be valued at \$\$\$\$\$, which is approximately \$\$\$\$\$ per acre. He stated that he has listed #####-7 for 5 years at \$\$\$\$\$ per acre and the property has not sold. He provided that other landowners are listing properties with A-20 zoning for \$\$\$\$\$ per acre, also.

He argued against the County's comparable sales stating that they were different from #####-7 because they were located on the other side of ROAD and were closer to the ( X ). Consequently the owners of those properties receive offers to purchase from the ( X ), increasing the value. He argued specifically against the County's comparable sale #4 stating that it was sold because of an option to extend the ( X ). Additionally, he stated the County's comparable sale #5 is different from #####-7 because it is zoned I & M (Industrial/Manufacturing). Also, he contends that the County's comparable sale #2 is different because it is zoned A-1. He also stated that there were no comparable sales in the area that had an A-20 zoning.

The County did not dispute the A-20 zoning, and agreed that there were no A-20 sales in the area. County records also corroborate the Taxpayers testimony that there is no direct access to utilities. The County testified that the best comparable is #4, which has A-1 zoning and was relied on by the Assessor.

The County also stated that #3 is similar because it is within the CITY limits, while parcel #####-7 is contiguous to the city. The County requested that the Commission sustain the BOE.

For parcel #####-7, although the lack of immediate access to utilities, as well as the A-20 zoning, may have a negative effect in value, the Taxpayer has not provided sufficient evidence to determine a specific value. There is certainly no evidence to establish that \$\$\$\$ per acre is a better estimate of value than \$\$\$\$ per acre. Furthermore, while the comparable sales provided by the assessor were not adjusted, on their face they were adequate to support the assessment at \$\$\$\$ per acre.

**#####-5 and #####-6**

The Taxpayer explained that #####-5 and #####-6 have issues similar to those of #####-7 but are within the limits of CITY, while #####-7 is outside. Additionally, the County provided that #####-5 and #####-6 are zoned A-1, while #####-7 is zoned A-20.

In addition to the arguments PETITIONER 1 provided for #####-7, he also argued that the County's comparable sale #2 was not good. He stated that the ground of the subject property is sagebrush, but did not explain the differences and how they impacted value. He contended that the County's comparable sale #3 is not realistic because of its closer proximity to the ( X ). PETITIONER 1 contends that the subject properties do not have water, power, and sewer.

The County asserted that the closest comparable for #####-5 and #####-6 was comparable #3, which had the same A-1 zoning and that the next most comparable would be #2. The County explained that the other three comparable sales are zoned I & M, but were otherwise the same type of property, the only difference being the zoning. The County acknowledged that the subject properties may require a pump station for sewer services. The County also explained that comparable sale #5 was based on information only from a Trust Deed conveyance, not an actual sale, and was transacted after the lien date. That transaction, according to the County, was provided for reference only. The County asserts that the sales information supports the \$\$\$\$ per acre valuation.

For parcels #####-5 and #####-6 we have the same concerns as with parcel #####-7. The Taxpayer's argument is essentially that because the County's comparable sales are not directly comparable, the subject properties should be assessed at \$\$\$\$ per acre instead of \$\$\$\$\$. However, the Taxpayer provided no market analysis or other market data. On the other hand, while there was no market analysis, the County's comparable sales #2 and #4 sold for \$\$\$\$ and \$\$\$\$ per acre, respectively. In spite of the differences alleged by the Taxpayer, this evidence is sufficient to support the assessments.

**DECISION AND ORDER**

On the basis of the foregoing, the Tax Commission adjusts the values of parcels #####-1, #####-2, #####-3, and #####-4 according to the method set forth in Appeal 09-0444. The Commission sustains the values established by the Board of Equalization for parcels #####-5, #####-6, and #####-7.

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The values of the subject property as of the lien date of January 1, 2008 are as follows:

<u>Parcel</u>	<u>Value</u>
#####-1	\$\$\$\$\$
#####-2	\$\$\$\$\$
#####-3	\$\$\$\$\$
#####-4	\$\$\$\$\$
#####-5	\$\$\$\$\$
#####-6	\$\$\$\$\$
#####-7	\$\$\$\$\$

The County Auditor is directed to adjust the assessment records accordingly. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

*MBJ/09-0445.int*