

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF IRON
COUNTY, STATE OF UTAH,

Respondent.

**INITIAL HEARING ORDER and
PARTIAL ORDER OF APPROVAL**

Appeal No. 09-0452

Parcel Nos. #####-1
#####-2

Tax Type: Property Tax/Locally Assessed

Tax Year: 2008

Judge: M. Johnson

Presiding:

Marc B. Johnson, Commissioner

Appearances:

For Petitioner: Mr. PETITIONER REP., CPA, representative

For Respondent: Mr. RESPONDENT REP. 1, Iron County Assessor

Mr. RESPONDENT REP. 2, Iron County Deputy Assessor

STATEMENT OF THE CASE

This matter was heard in an Initial Hearing on July 1, 2009. For Parcel No. #####-1, the Taxpayer and the Board of Equalization stipulated on June 22, 2009 to the market value, as listed below, for the lien date.

	Prior Market Value		Stipulated Market Value	
	Primary	Secondary	Primary	Secondary
Improvements (12F)		\$ \$\$\$\$\$		\$ \$\$\$\$\$
Improved Acreage (02A)		\$\$\$\$\$		\$\$\$\$\$
FAA Land (05Q)		\$\$\$\$\$ ¹		\$\$\$\$\$
TOTAL		<u>\$ \$\$\$\$\$</u>		<u>\$ \$\$\$\$\$</u>

The Iron County Assessor's Office assessed Parcel No. #####-2l ("subject property") at \$\$\$\$\$ as of the January 1, 2008 lien date. The Board of Equalization ("BOE") sustained this value. The BOE,

¹ The \$\$\$\$\$ listed on the Stipulation appears to contain a typographical error; therefore, we used the \$\$\$\$\$ amount listed on the 2008 Notice of Determination.

represented by the Assessor’s Office (“County”) is requesting that the Commission sustain this value. The Taxpayer asserts that the value is \$\$\$\$\$ in his Request for Redetermination.

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

A party requesting a value different from the value established by the county board of equalization has the burden to establish that the market value of the subject property is other than the value determined by the county board of equalization. To prevail, a party must: 1) demonstrate that the value established by the county board of equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the county board of equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm’n*, 5 P.3d 652 (Utah 2000).

Utah Code Ann. § 59-2-507(2) provides that “[a]ll 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.”

DISCUSSION

The subject property is an irregular, triangular shaped parcel, which fronts on HIGHWAY and is located at STREET 1 in Iron County. It includes 26.51 acres of land, of which the County classified 25.51 acres as FAA Land and 1.00 acre as Primary Improved Property. The property has electricity, but no water. It also includes a 962 sq. ft. residence in poor to fair condition, which was built in 1920. The County assessed the subject property as follows:

<u>Property</u>	<u>Value</u>
Improvements (“residence”)	\$\$\$\$\$
Land - 1 Acre (“homesite”)	\$\$\$\$\$
Land – 25.51 Acres (“FAA land” or “farmland”)	<u>\$\$\$\$\$</u>
Total	<u>\$\$\$\$\$</u>

Appeal No. 09-0452

At issue in the Taxpayer's petition is the value of the homesite and the residence. The FAA land value was not challenged.

Taxpayer

The Taxpayer’s Representative (“Representative”), testifying on behalf of the Taxpayer, explained that he spoke with a real estate agent working out of CITY 1, who said that he would list the subject property for \$\$\$\$\$ with water, and \$\$\$\$\$ to \$\$\$\$\$ without; and that he would expect to sell the property for \$\$\$\$\$. Of that total, the Representative stated that that \$\$\$\$\$ would be the value for the residence. The Representative asserts that the land value including the homesite would be \$\$\$\$\$ per acre.² A letter submitted as part of the appeal acknowledged that the approximately \$\$\$\$\$ per acre assessed on the 25 acres of farmland “is a reasonable value.”

The Representative argued that the homesite was not worth \$\$\$\$\$. He explained that although the County did not change the assessed value of the FAA and for 2008, it did increase the improved portion, which includes the residence and homesite, by approximately 3% to \$\$\$\$\$. The Representative claims that \$\$\$\$\$ is for the 1-acre homesite is discretionary. He said that typical cabin lots were selling for \$\$\$\$\$, but that they are better than the homesite because they are fully improved. He further clarified that the highest and best use of the subject land was pasture land. Also, the Representative testified that the \$\$\$\$\$ assessment for the homesite was “discretionary.” Furthermore, he claimed that on the open market, the 1-acre homesite was not worth more than the remaining 25.51 acres. He asserted that each single acre of the subject property was worth the same amount - \$\$\$\$\$ per acre, and that that the homesite should also be assessed at \$\$\$\$\$.

County

At the hearing, the County presented a spreadsheet listing eight comparable sales:

<u>No.</u>	<u>Sales Price</u>	<u>Date</u>	<u>Size</u>	<u>Comparability</u>
1	\$\$\$\$\$	5/11/07	20 acres	trees, dirt road access, no utilities
2	\$\$\$\$\$	5/05/07	5 acres	trees, dirt road access, no utilities
3	\$\$\$\$\$	4/26/07	5.33 acres	trees, dirt road access, no utilities
4	\$\$\$\$\$	6/29/07	20.32 acres	trees, dirt road access, no utilities
5	\$\$\$\$\$	2/20/07	20.34 acres	trees, dirt road access, no utilities
6	\$\$\$\$\$	2/09/07	20.32 acres	trees, dirt road access, no utilities
7	\$\$\$\$\$	8/21/06	5.01 acres	trees, dirt road access, no utilities
8	\$\$\$\$\$	9/11/08	25.7 acres	768 sq. ft. residence, utilities available

The first seven sales were for vacant land; sale #8 is improved with a 768 square-foot residence built in 1992. The County said that it was unknown whether water rights were included with the land sales.

² The Representative testified to a value of \$\$\$\$\$ per acre. It is not clear whether he believed the land was worth that amount, or whether he made a misstatement. The FAA land is assessed at fair market value for \$\$\$\$\$ per acre; the total fair market value is assessed at \$\$\$\$\$ per acre.

The County acknowledged that the sale # 8 occurred after the lien date, and explained that it was included only for support of the assessment. The County asserted that the total value of \$\$\$\$\$ is supported by for the land sales alone. Additionally, the County explained that it was not able to enter the subject residence. The County made an adjustment of \$\$\$\$\$ to derive an adjusted sales price of \$\$\$\$\$, providing an unsigned appraisal report that compared the subject to comparable #8.

The representative challenged the adjustments, and provided a grid to show the differences between the subject property characteristics and those of the comparable residence. This grid re-created the basis for the County’s adjustments. The County adjusted \$\$\$\$\$ per year for the 72-year difference between the comparable residences. The total adjustment for the age was a negative \$\$\$\$\$. Furthermore, the Representative challenged the County’s characterization of the residence as “fair;” he asserts that the residence is in disrepair and is a “tear-down.” He explained that there is a friend or tenant who lives in it for free. The County’s adjustments for condition and quality were, respectively a negative \$\$\$\$\$ and a negative \$\$\$\$\$. There was a positive \$\$\$\$\$ size adjustment for a 107 square foot difference. The Representative asserted that the County failed to adjust for several other differences, which were listed in his analysis of the County’s adjustments. These features, available to the comparable sale but not the subject property, include air conditioning, double pane windows, and forced air heating. Finally, the Representative stated that the subject property is triangular in shape and located along the highway, has no trees, and has no water rights; while the comparable sale is rectangular and located 1/4 mile off the highway, is located among trees, and has water rights. The Representative argued that the County made no adjustments for these critical features, and that the subject property and the comparable sale were not similar.

The County did not refute these assertions.

The County also provided an analysis for the 1-acre primary residential exemption for the homesite, based on two comparable sales of unimproved parcels, as follows:

<u>Parcel</u>	<u>Acres</u>	<u>Sales Price</u>	<u>Sale Date</u>	<u>Location</u>
#####-3	1.20	\$\$\$\$\$	4/27/2007	DEVELOPMENT 1
#####-4	1.25	\$\$\$\$\$	9/26/2007	DEVELOPMENT 2

The County adjusted these two sales by a range of \$\$\$\$\$ to \$\$\$\$\$ for the costs of water, septic, and connection to power:

	<u>Low</u>	<u>High</u>
Water	\$\$\$\$\$	\$\$\$\$\$
Septic	\$\$\$\$\$	\$\$\$\$\$
Power	\$\$\$\$\$	\$\$\$\$\$
Total	<u>\$\$\$\$\$</u>	<u>\$\$\$\$\$</u>

Based on this information, the County calculated adjusted sales prices for DEVELOPMENT 1 of \$\$\$\$\$ to \$\$\$\$\$ and for DEVELOPMENT 2 Acres of \$\$\$\$\$ to \$\$\$\$\$.

The Representative challenged the two sales, asserting they were cabin lots and, therefore, not truly comparable. The costs of the on-site improvements were not addressed by the Representative.

Conclusions

The Taxpayer has the burden of proof in this matter and must demonstrate not only an error in valuation set by the BOE, but also provide an evidentiary basis to support a new value. In this case, the Taxpayer has not provided substantive evidence of the value of the subject property as of the January 1, 2008 lien date. There was no evidence to corroborate the Representative's estimate of value, nor was there enough detail to explain the specifics or details of the indicated listing price. Furthermore, while the Taxpayer challenges the County's comparable sales and analysis, he has not provided comparable sales or proposed adjustment values of his own. Nonetheless, the Commission must consider all of the evidence.

Land Value

The County provided comparable sales to support its assessed land value for the 25.51 acres of farmland and the 1-acre homesite. Of the comparable land sales, #'s 2, 3, and 7 are all about five acres in size, and ranged in value from \$\$\$\$\$ to \$\$\$\$\$ per acre. The remaining sales were all around twenty acres in size and sold for between \$\$\$\$\$ and \$\$\$\$\$. These sales, ranged from approximately \$\$\$\$\$ to \$\$\$\$\$ per acre. The Commission does not consider the 5-acre sales relevant to the valuation of a parcel over 25 acres in size. Although the gross selling prices are similar, the average prices are \$\$\$\$\$ for the 20-acre parcels, and \$\$\$\$\$ for 5-acre parcels, we note that the 5-acre parcels, as identified on a map provided by the County were relatively close to each other in a specific location that was distinguishable from the larger parcels. We also find that there is no evidence to suggest that a 26.51-acre parcel would sell for anything different than the range of sales prices provided by the County.

In summary, all of the four relevant comparable land sales support the the \$\$\$\$\$ total land assessment, including any site improvements for the homesite. Recognizing that the comparable land sales differ in characteristics from the subject land, they are located in the trees and accessed by a dirt road while the subject property is pasture land; those sales are still comparable to the 25.51 acres of FAA land assessed at \$\$\$\$\$. While the County made no analysis or adjustments for size or other characteristics, there is nothing to show that the assessment for the FAA land should be reduced. Although the County did not argue to increase the value of the farmland, it is clear from the evidence that the total land – all 26.51 acres - may be underassessed.

We note further that, based on the lowest land sale, comparable, # 4 at \$\$\$\$\$, then adding the lowest cost estimate for on-site utilities, totaling \$\$\$\$\$, results in a value of \$\$\$\$\$. That figure is only around \$\$\$\$\$ less than the total valuation, including the residence, of \$\$\$\$\$.

Comparable Sale

We give no weight to the adjusted sales price for comparable # 8. In this case, it appears that the County adjusted for the differences in property characteristics between the subject and the comparable sale. Even if it had occurred before the lien date, the structure is not comparable to the subject property; the residences have a 72-year age difference, and differ in condition and other characteristics as well. The County did not refute the analysis and re-creation of the adjustments as represented by the Representative's grid. If the Representative's analysis is correct, we believe the adjustments were not adequate for a sales comparison analysis. Without going into detail, comparing a 1920 "run down" structure with a 1992 "good" quality structure is not viable. Along with this, we do not find a \$\$\$\$\$ adjustment for a 72-year age difference to be credible. Equally important is the failure to adjust for lack of water rights. There is no reason to believe that the \$\$\$\$\$ of adjustments adequately reflect the differences in value. However, although there is no basis to support the County's estimated sales price of \$\$\$\$\$; neither are the Taxpayer's criticisms alone sufficient to show that the value of the subject property is less than the \$\$\$\$\$ assessment.

Value of the Residence

The County has not provided supporting evidence for the \$\$\$\$\$ value. And, although there is no substantive supporting market information, the Taxpayer has called the separate value of the residence into question. There is no evidence in the record to show that the County considered the overall condition of the structure. Although the Representative's estimate of \$\$\$\$\$ for the value of the residence was speculation, there was no cost or market analysis; there was nothing on the County's part to address the condition of the property as alleged by the Representative. The County, in short, provided no justification for the assessment of the residence, and did not provide a new estimate. Based on the lack of evidence from both parties, it is possible that the value of the residential structure is less than the assessment, but the Taxpayer has provided nothing substantive to support a \$\$\$\$\$ value.

Value of the Homesite

Regarding the assessment for the homesite, the County's two 1-acre sales do not support the County's \$\$\$\$\$ assessed value for the homesite. It is unclear how the two sales compare in location to the subject property. The County did not establish that they were not cabin lots as argued by the Taxpayer. Also, the two sales differ greatly in price, one selling for \$\$\$\$\$ or \$\$\$\$\$ per acre, and the other for \$\$\$\$\$ or \$\$\$\$\$ - almost twice as much as the first. The Commission believes that the appropriate method for determining homesite values for purposes of the Farmland Assessment Act are to

first, find comparable vacant site sales, which include site improvements, in the vicinity of the subject property. Such comparables should consider zoning and use, as well as other characteristics. For example a sale of a residential site, whether a single acre or part of a larger agricultural parcel would be superior to a residential subdivision lot sale. In the absence of sales of residential sites in the vicinity, the homesite should be valued according to the best land comparables, then adjusting for the cost of any improvements to the underlying raw land.

In this case, the County did not identify any sales of homesites in the general vicinity. There is no evidence to prove that the comparable sales were in an area similar to the subject property, or that they had similar uses. Accordingly, we give little or no weight to these sales. At the same time, the Taxpayer failed to rebut cost of the site improvements. The total estimated cost of the site improvements is \$\$\$\$\$ to \$\$\$\$\$. The minimum value of the homesite is \$\$\$\$\$ for one acre, based on the assessment of the farmland, plus \$\$\$\$\$ for site improvements, for a total of \$\$\$\$\$. The maximum value is \$\$\$\$\$, based on the price per acre for comparable land sale #7, plus \$\$\$\$\$ for site improvements for a total of \$\$\$\$\$.

After considering the totality of the evidence, we find that although the evidence calls into question the County's assessed value of \$\$\$\$\$ for the homesite, the Taxpayer has not provided a better estimate of value.

The Commission rejects the Taxpayer's argument to assess the 1-acre homesite at the same value per acre as the remaining 25.51 acres of FAA land. Section 59-2-507(2) does provide that the homesite and the FAA land are to be valued separately, but not necessarily differently. Because the Utah law provides that the homesite and the FAA Land are to be valued separately, the land values of these two different pieces cannot simply be equivalent. The Commission, in Appeal No. 06-1524, stated, "Presumably, however, under a mass appraisal system, the rationale for adding a homesite value to agricultural land is that residential use adds value to otherwise vacant land." We further clarify here that any difference in value between raw land and a site is that a vacant site includes off-site improvements, on-site improvements, and other improvements to the land.³ At the very least, the cost of site improvements would need to be added to the underlying value of the raw land. Furthermore, the Taxpayer did not provide any market sales to show that a homesite in the general vicinity is worth less than \$\$\$\$\$. However, the Commission is not persuaded that the assessed homesite value is correct.

Total Value

Based on market data alone, the Commission finds that conservative assumptions can be made to establish the minimum estimate of fair market value. First, we could consider the residence to be valued at \$\$\$\$\$ as estimated by the Representative. Second, the homesite should be adjusted for the average price of the site improvements, with the underlying land value set on the same basis as the farmland.

³ See The Appraisal of Real Estate, 13th ed., p 360.

Finally the total land value, including the homesite land, is the average selling price of the four 20-acre pa comparables provided by the assessor. Accordingly, conservative, reasonable estimate of fair market value is as follows:

<u>Property</u>	<u>Value</u>
Residence	\$\$\$\$\$
Homesite, site improvements only	\$\$\$\$\$
Total Land, 26.51 acres	\$\$\$\$\$
Total	\$\$\$\$\$

This value exceeds the assessed value. Using the assessed value of the homesite back would increase this figure to \$\$\$\$\$.

Although the totality of the evidence raises questions regarding the accuracy of the residence and homesite values, there is nothing substantial to establish a value other than the \$\$\$\$\$ assessment. At a minimum, the lowest estimate on-site improvements would increase the Taxpayer's value estimate of \$\$\$\$\$ to \$\$\$\$\$. Given the market information on land value, even this figure would still be less than the apparent market value of the subject property. Thus we find, that although the County did not request an increase in the land value, the \$\$\$\$\$ assessment is reasonable.

We note that in some situations, an adjustment to individual components of an assessment might be warranted, regardless of the total assessment. This would be especially true where evidence of value for other components of an assessment is inconclusive. In this specific case, however, the Taxpayer's estimate for the residence is so speculative, and the evidence of the market value of the land appears to be so much higher than the assessment, that a reduction to the residence would be inappropriate.

DECISION AND ORDER

Based on the Stipulation received June 25, 2009, the Tax Commission makes its Partial Order of Approval and finds that the value of Parcel No. #####-1 as of January 1, 2008 to be \$\$\$\$\$. This Partial Order of Approval, approving a stipulated agreement, constitutes final agency action on this matter. An action to enforce the agreement may be brought pursuant to Utah Code Sec. 63G-4-501.

Additionally, the Tax Commission makes its Initial Hearing Order, finding the value of Parcel No. #####-2 as of January 1, 2008 to be \$\$\$\$\$. This Decision does not limit a party's right to a Formal Hearing on this Initial Hearing Order. 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:

Appeal No. 09-0452

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

The County Auditor is hereby ordered to adjust its records for Parcel #####-1 in accordance with the stipulated value. The appeal for Parcel #####-2 is denied. It is so ordered.

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

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