

10-0292  
LOCALLY ASSESSED PROPERTY  
TAX YEAR: 2009  
SIGNED:

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER 1 &amp; PETITIONER 2,  Petitioner,  vs.  BOARD OF EQUALIZATION FOR RURAL COUNTY, STATE OF UTAH,  Respondent.</p>	<p><b>INITIAL HEARING ORDER</b>  Appeal No. 10-0292  Parcel No. #####-1 and #####-2  Tax Type: Property Tax/Locally Assessed Tax Year: 2009  Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1, *Pro Se*  
For Respondent: RESPONDENT REP. 1, Appraisal Supervisor for RURAL COUNTY  
RESPONDENT REP. 2, RURAL COUNTY Assessor  
RESPONDENT REP. 3, RURAL COUNTY Assessor's Office

STATEMENT OF THE CASE

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 April 27, 2010. The RURAL COUNTY Assessor's Office assessed Parcel no. #####-1 at \$\$\$\$ as of the January 1, 2009 lien date, which the Board of Equalization sustained. The County is asking the Commission to sustain the Board of Equalization value. The Taxpayer is requesting a reduction in the value of parcel no. #####, but did not give an opinion of value. The RURAL COUNTY Assessor's Office assessed Parcel No. #####-2 at \$\$\$\$ as of the January 1, 2009 lien date. The Board of Equalization reduced the value to \$\$\$\$\$. At the hearing, the Taxpayer stated that he agreed with the Board of Equalization value for parcel no. #####-2.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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 provided by law.

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“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.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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.

Any 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).

#### DISCUSSION

Parcel no. #####-1 is located on STREET 1 in CITY 1. It is a 0.28-acre parcel improved with a 750 square foot home built sometime in the early 1900s, and two outbuildings. The home is not livable. The roof is falling in, there are no doors or windows, a dirt floor, and no kitchen. The outbuildings are in a similar state of disrepair. Taxpayer also owns one share of CITY 1 water.

The Taxpayer testified that he has owned the subject property for a number of years, and he would have built on the property, but he did not have water. He testified as to the condition of the improvements. He argued that he should not be taxed on his water share. He stated that he paid \$\$\$\$\$ for the water share, and that is owned separately from the subject property. Taxpayer argued that owning a water share is a “luxury” unless he builds a home on the property.

The County’s representative provided photographs of the improvements, and stated that the County has a salvage value of \$\$\$\$\$ for all improvements. The County’s representative stated that the value of the improved parcel does include the water share because the share is affiliated with the improvements on the parcel.

The County’s representative provided copies of a report entitled “CITY 1 2008 Detailed Review”, which sets the land value guides for CITY 1. He also provided copies of the Board of Equalization hearing officer’s decisions for both properties, and asked the Commission to consider the analysis regarding the value of water shares for the properties.

The “CITY 1 2008 Detailed Review” set the following land guidelines for CITY 1 City:

	<b>Buildable</b>	<b>Non-Buildable</b>
Base Size	0 to 0.5 acres	0 to 0.5 acres
Base Value	\$\$\$\$\$/square foot	\$\$\$\$\$/square foot
Overage Value	\$\$\$\$\$/square foot	\$\$\$\$\$/square foot
Water Connection	\$\$\$\$\$	\$\$\$\$\$

The detailed review indicates that the value of a water connection ranges between \$\$\$\$\$ and \$\$\$\$\$. This is based on sales of land sold both with and without a water connection, as well as information from the mayor of CITY 1, who is also the president of the water company. The land guideline values were determined based on the following sales and listings:

<b>Address</b>	<b>Lot Size</b>	<b>Improved</b>	<b>Water</b>	<b>Sales Date</b>	<b>Sales Price</b>
ADDRESS 2	0.09	Yes	Yes	4/16/99	\$\$\$\$\$
ADDRESS 3	0.09	Yes	No	6/2/04	\$\$\$\$\$
ADDRESS 4	0.81	No	Yes	9/13/05	\$\$\$\$\$
Unknown	0.71	No	Yes	5/17/02	\$\$\$\$\$
ADDRESS 5	0.09	Yes	Yes	4/12/06	\$\$\$\$\$*
				6/24/08	\$\$\$\$\$*
ADDRESS 6	0.25	Yes	Yes	2/20/03	\$\$\$\$\$*
ADDRESS 7	0.29	Yes	Yes	6/17/09	\$\$\$\$\$*
Lots 6,7,8, 9 (partial)	0.27	No	Yes	9/8/09	\$\$\$\$\$**

\* Listings, \*\* Appraisal

Based on the recommendation of the Board of Equalization hearing officer, the County made changes to the land values in CITY 1. The County’s representative submitted additional information on the changes made to the land values. The County’s revised land values were based on the following recommendation from the Board of Equalization hearing officer:

	<b>Vacant</b>	<b>Improved</b>	<b>Assemblage</b>	<b>Non-Buildable</b>
Base Size	0.09 acres	0.09 acres		
Base Value	\$\$\$\$	\$\$\$\$	\$\$\$\$/square foot	\$\$\$\$
Overage Value	\$\$\$\$/square foot	\$\$\$\$/square foot	\$\$\$\$/square foot	
Water Connection		\$\$\$\$		

In addition to the above guidelines, the county valued assemblage parcels where there were improvements that straddle multiple parcels at \$\$\$\$/\$square foot, and non-buildable lots with limited utility at \$\$\$\$/\$square foot.

In seeking a value other than that established by the board of equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “market value” as the amount for which property would exchange hands between a willing buyer and seller.

Taxpayer objected to the inclusion of a water share in the value of parcel no. #####. The County’s representative provided information on the determination of land values for CITY 1, and argued that the water share should be included in the value of the parcel.

Based on the information provided by the County, a CITY 1 water share has a value of between \$\$\$\$ and \$\$\$\$\$. The Taxpayer testified that he paid \$\$\$\$ for the water share. The Commission has previously held that a share of water that is freely transferable separately from the property and from which no water is being used for any property, cabin, or other improvement, is an intangible, and its value should not be included in the value of real property.<sup>1</sup> The testimony provided indicates that ownership of the water share is separate from the land. No one has provided evidence showing to what extent, if at all, ownership of a water share enhances the value of the land. The value of Taxpayer’s water share should not be included in the overall value of the property. Thus, the value of parcel no. #####-1 should be reduced to \$\$\$\$\$. The Board of Equalization value for parcel no. #####-2 should be sustained.

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Jan Marshall  
Administrative Law Judge

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<sup>1</sup> Tax Commission Appeal No. 97-0544. *See also* Appeal No. 04-0727.

DECISION AND ORDER

On the basis of the foregoing, the Commission finds the value of parcel no. #####-1 to be \$\$\$\$ and parcel no. #####-2 to be \$\$\$\$ as of the January 1, 2009 lien date, and sustains the Board of Equalization. The County Auditor is hereby ordered to adjust its 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

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