

10-0306  
LOCALLY ASSESSED PROPERTY  
TAX YEAR: 2009  
SIGNED: 12-30-2010

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  vs.  BOARD OF EQUALIZATION FOR RURAL COUNTY, STATE OF UTAH,  Respondent.</p>	<p><b>INITIAL HEARING ORDER</b>  Appeal No. 10-0306  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, *Pro Se*  
For Respondent: RESONDENT 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 29, 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 the value of the parcel be reduced to \$\$\$\$\$. The RURAL COUNTY Assessor's Office assessed Parcel No. #####-2 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 the value of the parcel be reduced to \$\$\$\$.

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 at ADDRESS 1 in CITY 1. It is a 0.18-acre parcel improved with a seven year old rambler. The home has 1,828 square feet above grade, and a 1,828 square foot basement. Parcel no. #####-2 is located on STREET 1 in CITY 1. It is a 0.09-acre parcel that is buildable.

The Taxpayer questioned how the County could increase the value of the subject when the economy has been in decline. He stated that he could not sell parcel no. #####-1 for the assessed value, and objected to the inclusion of the value of a water share. With regard to parcel no. #####-2, the Taxpayer stated that he owns two other similar lots that were valued at only \$\$\$\$\$.

The County’s representative explained that CITY 1 had not been reappraised in more than ten years. He stated that though the County tries to reappraise in a five-year cycle, there was not sufficient data available in CITY 1. The County provided photographs of the improved parcel, a sketch showing the square footage of the home, a determination of value using the cost approach, and a plat map showing the location of the parcels at issue. 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. He stated that unlike Taxpayer’s other parcels, the unimproved parcel is located on STREET 1, has access, and is buildable.

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.

The Taxpayer has requested a reduction in the value of parcel no. #####-1 to \$\$\$\$ and parcel no. #####-2 to \$\$\$\$\$. In support of this, the Taxpayer objected to the inclusion of a water share in the value of parcel no. #####-1, and stated that he had two other parcels similar to parcel no. #####-2 that were valued at only \$\$\$\$\$. 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 improved parcel because it is affiliated with, and used with the improvements.

Based on the information provided by the County, an CITY 1 water share has a value of between \$\$\$\$\$ and \$\$\$\$\$. The Taxpayer offered no evidence to the contrary. 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 the water share should not be included in the land. The value of

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<sup>1</sup> Tax Commission Appeal No. 97-0544. *See also* Appeal No. 04-727.

parcel no. #####-1 should be reduced to \$\$\$\$\$. Parcel no. #####-2 is valued at \$\$\$\$\$. It is located on STREET 1, and if a water share were available, it could be built upon. The \$\$\$\$\$ value is supported by the 2004 sale of a similar parcel that did not include a water share. The Taxpayer has not sustained his burden of proof to support a reduction in value to \$\$\$\$\$ for parcel no. #####-2.

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Jan Marshall  
Administrative Law Judge

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. 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