

2008

# William Marsh v. Board of Equalization of Box Elder County, State of Utah: Brief of Petitioner

Utah Court of Appeals

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William Marsh; pro se.

Timothy A. Bodily, John C. McCarrey; assistant attorneys general; Mark L. Shurtleff; attorney general; attorneys for respondent.

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# IN THE UTAH COURT OF APPEALS

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WILLIAM MARSH	)	
	(	BRIEF OF PETITIONER
Petitioner,	(	
	)	
v.	)	
BOARD OF EQUALIZATION	(	Appeal No. 20080291
OF BOX ELDER COUNTY,		
STATE OF UTAH	)	Agency Decision No. 06-1467
	(	
Respondent,	(	

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## BRIEF OF PETITIONER

---

PETITION FOR REVIEW OF THE UTAH STATE TAX COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION DENYING PETITIONER'S REQUEST FOR ADJUSTMENT OF BOX ELDER COUNTY'S PROPERTY TAX ASSESSMENTS OF PORTIONS OF THE 160 YEAR OLD MARSH FARM NEAR WILLARD UTAH.

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Petitioner

FILED  
UTAH APPELLATE COURTS  
OCT 08 2008

# IN THE UTAH COURT OF APPEALS

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WILLIAM MARSH

)

BRIEF OF PETITIONER

Petitioner,

(

v.

)

BOARD OF EQUALIZATION  
OF BOX ELDER COUNTY,  
STATE OF UTAH

(

Appeal No. 20080291

)

Agency Decision No. 06-1467

Respondent,

(

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## BRIEF OF PETITIONER

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ELDER COUNTY'S PROPERTY TAX ASSESSMENTS OF PORTIONS OF  
THE 160 YEAR OLD MARSH FARM NEAR WILLARD UTAH.

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## LIST OF PARTIES

To the best of Petitioner's knowledge, the names of all interested parties appear in the caption of the Brief.

## JURISDICTION

This appeal is from a FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION of the Utah State Tax Commission entered March 12 , 2008.

As provided by statute, the Supreme Court has appellate jurisdiction to review all final orders and decrees originating with the State Tax Commission. Utah Code Ann. §78A-3-102(3). The Supreme Court may transfer to the Court of Appeals any matter over which the Supreme Court has original appellate jurisdiction §78A-3-102(4). The Court of Appeals has appellate jurisdiction over cases transferred to the Court of Appeals from the Supreme Court . Utah Code Ann. §78A-4-103(2)(j).

## STANDARD OF REVIEW

The Utah Code prescribes the appropriate standard for reviewing a decision of the Tax Commission. The Commission's legal conclusions are reviewed under a correction of error standard. *See Utah Code Ann. §59-1-610(1)(b)(1996).*

The Commission's written Findings of Fact are reviewed under a substantial evidence *standard*. See *Utah Code Ann. 59-1-610(1)(a)*.

The standard of review in this case is governed by the Utah Administrative Procedures Act, Utah Code Ann §63G-4-403(4)(d)&(g)--- formerly §63-46b-16(4)(d)&(g). Under this standard this Court may grant relief in this case only if, on the basis of the Commission's record, the Court determines that a person seeking judicial review has been substantially prejudiced by the Commission's erroneous interpretation or application of Utah Code Ann. § 59-2-503 or that the Commission's action is based upon a determination of fact, made or implied by the Commission, that is not supported by substantial evidence when viewed in light of the whole record before the court. See, generally *Morton Int'l v. Utah State Tax Commission*, 814 P.2d 581 (1991)

#### STATEMENT OF ISSUES FOR REVIEW

The Utah State Tax Commission erroneously interpreted and applied Utah Code Ann §59-2-502(1) and §59-2-503 so as to substantially prejudice Petitioner by depriving a major portion of petitioner's farm of assessment under the FARMLAND ASSESSMENT ACT on the basis of its agricultural value.

The issues are framed and preserved in the Commission's Findings Of Fact, Conclusions of Law, And Final Decision, Paragraph # 15, which states as follows:

*“ Petitioner argued that the east side property should be combined with the west side property as a single farm. Petitioner's position is that the entire acreage is known as the Marsh Farm and that , since the west side property has enough production to satisfy agricultural production requirements for the entire farm, he should receive agricultural use assessment under Utah Code Ann. § 59-2-503 for the entire farm.”*

*“ The Commission disagrees and finds that even though Petitioner owns the property on both the east and west sides of Highway 89, the east side property did not meaningfully contribute to farm production. There is no evidence that it provided storage, staging, or actual production to support agricultural production on the farm as a whole. Accordingly, the east side property is a separate unit that must satisfy its own agricultural production requirements..” (Emphasis added)*

The disputed issues regarding the east side property's eligibility for greenbelt status for 2006 are:

- (a) should the east side acreage be assessed as a *separate unit* ? and
- (b) was the east side property “*actively devoted to agricultural use*” as defined under Utah Code Ann. § 59-2-502 and §59-2-503(b)?

#### A STATEMENT OF MATERIAL FACTS OF RECORD

This action challenges the Box Elder County property tax assessments of Parcel Nos. 02-055-0018 and 02-055-0071. These parcels are part of the



Marsh Farm located at South Willard, Utah.

The land was homesteaded by George and Jane Marsh and has been owned and operated by their descendants for approximately 160 years. The subject land is undeveloped hillside located on the East side of Highway 89 in South Willard, Utah. The terrain is steep and rocky and the land is classified as GRAZE III under the Farmland Assessment Act. In the early 1940s Highway 89 divided the property leaving acreage on each side of the highway.

The Tax Commission's Findings of Fact ¶11 finds:

“The subject property of approximately 118 acres on the east side of Highway 89 is directly across the street from approximately 21 acres on the west side of Highway 89. Petitioner owns both the subject property on the east side of Highway 89 and the additional property on the west side of Highway 89 in the same name.”

The land west of Highway 89 is flatter and blessed with considerable water. This west side property is classified as GRAZE II under the Farmland Assessment Act. The west side property has far more agricultural production than is necessary to qualify the entire farm for assessment under the Farmland Assessment Act here-in-after referred to as “Greenbelt”.

The Tax Commission's Findings of Fact ¶13 states , “The west side property was in active agriculture use as of January 1, 2006 and had been in agricultural use for many years.” The west side property is currently taxed as

Greenbelt.

In 2005, in the midst of a frenzied real estate boom in the Willard area, the Box Elder County Assessor abruptly increased the assessed value of the east side property from \$50 per acre (R. p .21, line 12) up to \$25,000.00 per acre (R.p. 25, lines 23-25) based on the sale of some orchard properties and real estate developments miles distant. Thus, the tax assessed to Tax ID #02-055-0018 alone, ( not counting Tax ID # 02-055-0071) was increased from \$18.14 in 2004 to an incredible \$7,129.60 in 2005—an increase of 393%.

Petitioner had applied for Greenbelt status for the entire farm in the early 1970's and assumed the land was in Greenbelt. The Box Elder County Assessor asserted that no part of the Marsh Farm had ever been in “Greenbelt” since the county’s records were computerized in 1999 (R. p. 25). The assessor asserted the County had no records prior to 1999. He said the \$50.00 per acre value placed on the land was based on its “low value,” not Greenbelt. He denied petitioner’s request to place the east side property under Greenbelt contending it must stand alone to qualify as “Actively devoted to agricultural use” for assessment under Utah Code Ann.§59-2-503.

The east and west side properties have common ownership and management. The land is used exclusively for agriculture and no part is

being held for residential, commercial or industrial development. The east side property has not been platted nor sub-divided for residential use.

(Findings Of Fact ¶13) Much of the land is zoned MU-40 requiring 40 acres for a building permit.

The land east of the highway is not less than five (5) contiguous acres (117.98 acres). The two tracts in question have always been part of a unit farm. They have not been bootstrapped to an agricultural core to secure preferential tax assessment. Petitioner is engaged primarily in farming, and is not a real estate developer.

For many years past, the west side property, currently in Greenbelt, has demonstrated annual production far in excess of the AUMs needed to qualify the entire MARSH FARM for GREENBELT status.

In recent years, the "ineligible" east side property was used in conjunction with the eligible west side property as a residence, and for camping, horseback riding, ATV riding, hiking, and mining of gravel. (R. p.23, lines 14-22).

Petitioner has operated the MARSH FARM since 1970. During the 1970's through 2002 Petitioner raised and marketed several hundred thousand Rainbow Trout in addition to grazing horses, cattle, sheep, goats,

and hogs on the farm.

### PRODUCTION STANDARD

#### GRAZING ELIGIBILITY GUIDELINE (ALL COUNTIES)

Petitioner's Hearing Brief, ("Plaintiff's" Exhibit 7) included Greenbelt eligibility calculations for the MARSH FARM following consultation with Bruce Godfrey of Utah State University.

The Farmland Advisory Committee has published production guidelines for Graze lands. These guidelines establish four categories of graze lands and provide production capacities for each category. The guidelines measure production capacity in terms of Animal Unit Months (AUMs). Essentially, an AUM is the forage required to maintain 1 adult horse, cow, sheep or goat "in thrifty condition for an average month of the year."

The statewide Grazing Eligibility Guideline for GRAZE II and GRAZE III property approved by the Farmland Advisory Committee is as follows:

- a. GRAZE II = .63 AUMs / Acre
- b. GRAZE III = .31 AUMs / Acre

The MARSH FARM includes 118 Acres of GRAZE III property - (Tax IDs 02-055-0071 and 02-055-0018). This means the east side property has a production capacity .31 AUMs per acre. To determine the overall

a production capacity .31 AUMs per acre. To determine the overall production capacity of the east side acreage one must simply multiply the AUM capacity of the land (.31 AUM per acre) by the total number of acres (118). Therefore, the production capacity of the east side property is 118 acres @ .31 AUMs per Acre , a total of 36.58 AUMs.

Utah Code Ann §59-2-502(1) states, “Actively devoted to agricultural use” means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre. Accordingly the production requirement for “Actively devoted to agricultural use” for the east side property is any amount in excess of 50% of 36.58 AUMs --- ( 18.25 AUMs).

The MARSH FARM also includes 21 acres (the west side property) of GRAZE II property. Accordingly, the west side **property** has a production capacity of .63 AUM per acre X 21 acres—for an overall annual production capacity of 13.23 AUMs. Therefore, the statutory **production requirement for** “actively devoted to agricultural use” for the west side property is any amount in excess of 50% of 13.23 AUMs --- (6.62 AUMs).

Current annual grazing eligibility standards to qualify the entire MARSH FARM as “Actively devoted to agricultural use” to qualify for GREENBELT assessment merely require production in excess of 24.87 AUMs (18.25 +

GRAZE II property produced 400 AUMs in 2003; 341 AUMs in 2004; 237.5 AUMs in 2005; and 255 AUMs in 2006.

Petitioner's Hearing Brief ("Plaintiff's Exhibit 7") provided the Commission with the following production information for the years 2003 through 2006. See, "Plaintiff's Exhibit 7."

- 2003-

In 2003 8 horses, and 50 cattle were grazed on the Marsh Farm. Petitioner also raised several thousand Steelhead and Rainbow Trout and operated a catch-and-release fishing pond on the MARSH FARM.

For 2003 Petitioner claims AUM's of grazing eligibility as follows:

8 horses for 10 months @ 1.25 AUM's	=	100 AUM's
50 cattle 6 months @ 1.00 AUM's	=	<u>300</u>
2003 Total		400 AUM's

-2004-

In 2004 9 horses and 40 cattle were grazed on the Marsh Farm. Petitioner also operated a catch-and-release fishing pond on the MARSH FARM.

For 2004 Petitioner claims AUM's of grazing eligibility as follows:

9 horses for 9 months @ 1.25 AUM's	=	101.25
40 cattle for 6 months @ 1.00 AUM's	=	<u>240.00</u>
2004 Total		341.25 AUM's

-2005-

In 2005, 7 horses, 25 cattle and 1 goat were grazed on the Marsh Farm.

Petitioner also operated a catch-and-release fishing pond on the MARSH FARM. For 2005 Petitioner claims AUM's of grazing eligibility as follows:

7 horses for 10 months @ 1.25 AUM's	=	87.5
25 cattle for 6 months @ 1.00 AUM's	=	<u>150.0</u>
2005 Total		237.5 AUM's

-2006-

In 2006, 8 horses, 25 cattle and 107 goats were grazed on the Marsh Farm. Petitioner also operated a catch-and-release fishing pond on the MARSH FARM. For 2006, Petitioner claims AUM's of grazing eligibility as follows:

7 horses for 12 months @ 1.25 AUM's	=	105
25 cattle for 6 months @ 1.00 AUM's	=	150
* 100 goats for 1 month @ .20 AUM's	=	<u>20</u>
2006 Total		275 AUM's

\* THE GOATS WERE GRAZED EXCLUSIVELY ON THE PORTION OF THE MARSH FARM LOCATED EAST OF U.S. HIGHWAY 89 - 118 ACRES OF GRAZE III PROPERTY Tax IDs 02-055-0021 and 02-055-0022, IN DECEMBER OF 2006.

## ARGUMENT

THE TAX COMMISSION ERRED IN ITS CONCLUSION THAT “THE EAST SIDE PROPERTY IS A SEPARATE UNIT THAT MUST SATISFY ITS OWN AGRICULTURAL PRODUCTION REQUIREMENTS.”

To properly apply a property tax statute like the Farmland Assessment Act (FAA), one must first determine the unit of property to be assessed.

Petitioner contends that the Marsh Farm should be assessed as a whole, not parcel by parcel, as the Commission has done. The statutes and case precedent fully support Petitioner’s position.

The subject property has been a unit farm for more than 160 years. All portions of the farm are in common ownership. No portion of the farm has been subdivided or is being held for residential development. The steep and rocky east side property has been used in conjunction with the agricultural core property for uses including, a residence, hiking, camping, horseback riding, ATV riding, and mining of gravel.

The Tax Commission determined that the west side agricultural core of petitioner’s farm “was in active agriculture use as of January 1, 2006 and had been in agricultural use for many years.” Furthermore, the Commission’s Findings Of Fact ¶15 does not dispute, and in fact confirms, petitioner’s evidence and claim that the west side property has enough production to



satisfy agricultural production requirements for the entire farm.

In addition to this evidence Petitioner's position appears to be supported by both case precedent and statute. When confronted with the question of whether to assess twelve (12) residential lots of land as a separate unit or as part of an adjoining twenty-nine acre farm for FAA , the Utah Supreme Court decided that the lots should be considered part of the farm because they had been "farmed as a single unit from 1987 to 1989." See, County Bd of Equal. v. Utah State Tax Commission EX REL. JUDD, 846 P.2d at 1296. See also, County Bd of Equal. v. Stichting Mayflower, 6 P.3d 559, 563 ¶14 (Utah 2000) reaffirming the principles articulated in *JUDD*.

Furthermore, the Farmland Assessment Act, FAA , appears to indicate a preference for treating contiguous parcels under the same ownership as one unit rather than as separate parcels. Utah Code Ann. § 59-2-512 (1996) states:

"Where contiguous land in agricultural use in one ownership is located in more than one county, compliance with the requirements of this part shall be determined on the basis of the total area and income of the land."

The Supreme Court in *STICHTING MAYFLOWER* at page 563 ¶ 14, in reference to §59-2-12, states:

"Although this section applies specifically to parcels located in different counties, the underlying principle would seem to apply equally to contiguous parcels located entirely within one county."

The Commission's finding of Fact Paragraph 15 asserting that the east side property did not meaningfully contribute to farm production as "there is no evidence that it provided storage, staging or actual production to support agricultural production on the farm as a whole " is misleading and does not reflect the actual situation nor constitute a proper test for greenbelt eligibility.

The east side property did meaningfully contribute to farm production. The steep and rocky east side property was used in conjunction with the agricultural core property for uses including, a residence, hiking, camping, horseback riding, ATV riding, and mining of gravel. Doesn't a residency contribute to farm production? Aren't recreational needs part of farm life? The Commission's Findings of Fact constitute a legal conclusion which should be reviewed under a correction of error standard.

### CONCLUSION

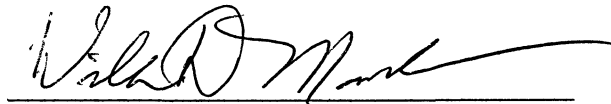
Whether land qualifies for Greenbelt assessment is a matter of statutory construction . The Court owes no deference to the Commission's ruling on this issue and the Court should interpret taxation statutes and case precedent liberally in favor of the taxpayer. County Bd of Equal. v. Stichting Mayflower. 6 P.3d 559 (Utah 2000).

The facts of this case, supported by case law and statute, dictate that the Marsh Farm should be assessed as a single unit under the Farmland Assessment Act.

RELIEF REQUESTED

Petitioner respectfully requests that the Marsh Farm be assessed and taxed as a single unit under the Farmland Assessment Act as provided under Utah Code Ann. §59-2-503.

Respectfully submitted this 8th day of October, 2008.

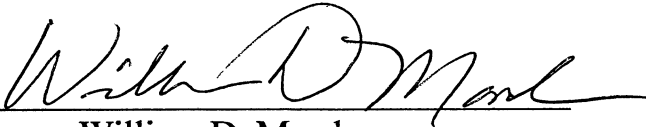
A handwritten signature in black ink, appearing to read 'William D. Marsh', is written over a horizontal line.

William D. Marsh, pro se  
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2008, I caused two true and correct copies of Petitioner's Brief to be served upon Timothy A. Bodily, Assistant Attorney General, and Mark L. Shurtleff, Attorney General, Attorneys for Property Tax Division, Utah State Tax Commission, by mailing two copies to them, by first class mail with sufficient postage prepaid and addressed as follows:

TIMOTHY A. BODILY #6496  
Assistant Attorney General  
MARK L. SHURTLEFF #4666  
Attorney General  
Attorneys for Property Tax Division  
Utah State Tax Commission  
160 East 300 South, Fifth Floor  
P.O. BOX 140874  
Salt Lake City, UT 84114-0874

  
\_\_\_\_\_  
William D. Marsh

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BEFORE THE UTAH STATE TAX COMMISSION

---

WILLIAM MARSH,

Petitioner,

vs.

BOARD OF EQUALIZATION OF BOX ELDER  
COUNTY, UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND FINAL DECISION**

Appeal No. 06-1467

Parcel Nos. 02-055-0018 and 02-055-0071

Tax Type: Property Tax/Locally Assessed

Tax Year: 2006

Judge: Jensen

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

**Presiding:**

R. Bruce Johnson, Commissioner  
Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: William Marsh  
For Respondent: Monte Munns  
Rodney Bennett  
Kory Wilde

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 10, 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 determinations of the Box Elder County Board of Equalization regarding assessment of the subject property for the lien date January 1, 2006.

Appeal No. 06-1467

zoning. The county thus recommended lowering the value of the ground with the MU-40 zoning to \$1,000 per acre as of January 1, 2006. The parties agreed that the ground with the MU-40 zoning would be 29.2 acres (rounded) and that the market value of this ground would thus be \$29,200.

6. For the remaining four acres of the 33.18-acre parcel with R-1/2 zoning, the county recommended no change from the value of \$25,000 per acre as determined by the board of equalization. Neither party presented any evidence of the sales of comparable properties with R-1/2 zoning. Four acres at \$25,000 per acre plus 29.2 acres at \$1,000 per acre would make the county's recommended value a total of \$129,200 for the 33.18-acre parcel.

7. Petitioner argued for a value of \$16,500 for the 33.18-acre parcel. This would be less than \$500 per acre. Petitioner presented no evidence of any property selling in the range of \$500 per acre.

8. The board of equalization set the value for the 84.84-acre parcel at \$738,800. The 84.84-acre parcel is located south of the boundary for Willard City and is thus unaffected by Willard City zoning. Neither party presented evidence regarding the zoning or development potential of the 84.84-acre parcel. Petitioner requested that the Commission lower the value to \$42,500 but provided no evidence to show error in the \$738,800 value or to suggest a different value. The county requested that the Commission sustain the value as determined by the board of equalization.

Equalization

9. Petitioner argued that the 33.18-acre parcel should be equalized with an adjoining 38.08-acre parcel with MU-40 zoning. As previously discussed under valuation, the 33.18-acre parcel has approximately 29.18 acres with MU-40 zoning and approximately four acres of R-1/2 zoning. The MU-40 zoning makes development difficult if not impossible and the R-1/2 zoning allows for subdivision into half-acre residential lots.

10. The county had assessed the neighboring parcel of 38.08 acres with MU-40 zoning at \$68,600

Appeal No. 06-1467

as a single farm. Petitioner's position is that the entire acreage is known as the Marsh Farm and that, since the west side property has enough production to satisfy agricultural production requirements for the entire farm, he should receive agricultural use assessment under Utah Code Ann. § 59-2-503 for the entire farm. The Commission disagrees and finds that even though Petitioner owns the property on both the east and west sides of Highway 89, the east side property did not meaningfully contribute to farm production. There is no evidence that it provided storage, staging, or actual production to support agricultural production on the farm as a whole. Accordingly, the east side property is a separate unit that must satisfy its own agricultural production requirements.

#### 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 provided 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. 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 No. 06-1467

3. Petitioner provided no legal basis to lower the valuation of the 84.84-acre parcel of the subject property for either valuation or equalization.

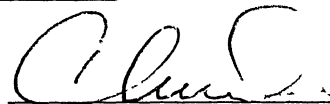
4. Petitioner's evidence included the assessed value of only one comparable property and thus did not meet the legal requirement to adjust the value of the 33.18-acre parcel of the subject to equalize it to other properties under Utah Code Ann. § 59-2-1006.

5. The subject property, located on the east side of Highway 89, does not meet the qualifications for agricultural use assessment under Utah Code Ann. § 59-2-503.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that, as of January 1, 2006, the market value of the 33.18-acre parcel (parcel number 02-055-0018) portion of the subject property is \$129,200 and that the market value of the 84.84-acre parcel (parcel number 02-055-0071) the subject property is \$738,800. There is no basis for agricultural use assessment of the subject property under Utah Code Ann. § 59-2-503 as of January 1, 2006. It is so ordered.

DATED this 12 day of March, 2008.



Clinton Jensen  
Administrative Law Judge



Utah State Tax Commission  
USTC - Appeal  
**Certificate of Mailing**

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**William Marsh vs Box Elder County BOE**

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**06-1467**

Box Elder County Assessor  
1 South Main  
Brigham City, UT 84302

Respondent

Box Elder County Auditor  
1 South Main  
Brigham City, UT 84302

Respondent

**William Marsh**  
P O Box 189  
Willard, UT 84340

Petitioner

---

\*\*\*\**CERTIFICATION*\*\*\*\*

I hereby certify that I mailed a copy of the foregoing document addressed to each of the above named parties.

3-12-08  
Date

Susan Waters  
Signature