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WARREN AND TRICIA OSBORN, MICHAEL
F. SULLIVAN, DAVID AND CYNTHIA
MIRSKY, NORMAN PROVAN, JEFFREY AND
NANCY TRUMPER, GARY AND
CATHERINE CRITTENDEN, DAVID
CHECKETTS AND MOUNT CLYDE
ENTERPRISE LC, v. Utah State Tax Commision :
Brief of Respondent

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IN THE UTAH COURT OF APPEALS

WARREN AND TRICIA OSBORN,
MICHAEL F. SULLIVAN, DAVID AND
CYNTHIA MIRSKY, NORMAN PROVAN,
JEFFREY AND NANCY TRUMPER,
GARY AND CATHERINE CRITTENDEN,
DAVID CHECKETTS AND MOUNT
CLYDE ENTERPRISE LC,

Petitioners,

WASATCH COUNTY,

Cross-Petitioner,

vs.

UTAH STATE TAX COMMISSION,

Respondent.

Case No. 20080304-CA

BRIEF OF RESPONDENT UTAH STATE TAX COMMISSION

PETITION ON REVIEW FROM THE UTAH STATE TAX COMMISSION

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UTAH APPELLATE COURT

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STATEMENT OF JURISDICTION

The Utah Supreme Court had jurisdiction pursuant to Utah Code Ann. § 59-1-602 (West 2008) and Utah Code Ann. § 63G-4-403 (West 2008). The appeal has been assigned to the Utah Court of Appeals pursuant to Utah Code Ann. § 78A-4-103(2)(j) (West 2008).

ISSUE 1

Is the Commission's method proper to value a one-acre home site that is exempt from assessment as agricultural property under the Farmland Assessment Act?

Standard of Review:

"The choice of valuation methodology in assessing property is a question of fact." Salt Lake City Southern Railroad Co. v. State Tax Comm'n, 1999 UT 90, ¶ 13, 987 P.2d 594, (citations omitted). Findings of fact by the Commission are subject to review under a substantial evidence standard. Utah Code Ann. § 59-1-610(1)(a) (West 2008).

ISSUE 2

Is the Commission's application of its valuation method supported by substantial evidence?

Standard of Review:

"The choice of valuation methodology is a question of fact' and '[t]he resulting determination of market value is

a question of fact.'" Beaver County v. Wiltel, Inc., 2000 UT 29, ¶ 25, 995 P.2d 602, quoting Salt Lake City Southern Railroad Co. v. State Tax Comm'n, 1999 UT 90, ¶ 13, 987 P.2d 594. Findings of fact by the Commission are subject to review under a substantial evidence standard. Utah Code Ann. § 59-1-610(1)(a) (West 2008).

DETERMINATIVE STATUTES

Utah Code Ann. § 59-2-507(1) and (2) (West 2008):

(1) Land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams and irrigation ditches and like facilities is included in determining the total area of land actively devoted to agricultural use. Land which is under the farmhouse and land used in connection with the farmhouse is excluded from that determination.

(2) All 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.

STATEMENT OF THE CASE/STATEMENT OF FACTS

The Ranch

This appeal involves the property tax valuations of seven parcels located within the Wolf Creek Ranch subdivision (the "Ranch") in Wasatch County. The "parcels" at issue are all 160 acres or larger. (Pet. Ex. 11, R. 890-917.) Only one residence is permitted upon each parcel by

covenant. (Res. Ex. B, R. 99.) The Ranch is presently subject to P-160 zoning limiting one residence per 160 acres. (R. 1424, ln. 10-11.) The parcels qualify for valuation under the Farmland Assessment Act "FAA" or the "Act" as agricultural property, except for the portion of the parcels used as a residence. Utah Code Ann. § 59-2-501 through 515 (West 2008). (Pet. Ex. 11, R. 890-97.) The FAA requires the land used in connection with the residence to be excluded from valuation under the FAA. Utah Code Ann. § 59-2-507 (West 2008). As of the lien date and for each parcel, the Cross-Petitioner/Cross-Appellant, Wasatch County (the "County") excluded from assessment under the FAA one acre representing land used for residence (the "one-acre home site"). (R. 1386, ln. 11-13; Pet. Ex. 11, R. 891-917.)

The Ranch is an exclusive upscale subdivision containing 84 single-family parcels of the type described above. (Pet. Ex. 6, R. 701.) The Ranch amenities include a 26-acre common area with an equestrian center and stables, a 2,800 square foot guesthouse and two large trout-stocked ponds. (Pet. Ex. 6, R. 703.) Other common areas include campgrounds, fire pits, corrals and 1 mile of frontage along the Provo River. (Id.)

The FAA.

The parcels have historically qualified for valuation under the Farmland Assessment Act "FAA." (Tr. 1398-1400; Pet. Ex. 10, R. 885-888.) None of the owners assert that they personally farm the parcels, but their parcels are leased by the homeowners association to a rancher. (R. 1125, 1126, 1199, ln. 13-20.) The rancher grazes sheep on the parcels for approximately 14 days a year. (R. 1199, ln. 13-20.)

The Conservation Easement.

The parcels are subject to a conservation easement. (Pet. Ex. 5, R. 684-699.) The conservation easement conveys to the Utah Open Lands Conservation Association, Inc. an easement to all but ten acres of each parcel to "protect the natural, ecological, riparian, historic, watershed, habitat, open space, scenic and passive recreational values present on the Property." Id. (R. 685.) The easement precludes the owners from using the property inconsistent with the above purposes. (Id.) Building, development, fencing, drilling or commercial use is prohibited on the portion of the parcel subject to the easement. (Id. at 688.)

The easement permits building on each parcel only on a 10-acre building envelope designated by the owner ("10-acre

building envelope"). (Pet. Ex. 5, R. 684-699.) The one-acre home site is within the 10-acre building envelope located on each parcel. The 10-acre building envelope can consist of one single family dwelling, garage, caretaker dwelling and barns and outbuildings. (Pet. Ex. 5, R. 684-699.) The 10-acre building envelope may be fenced and used for residential, recreational, ranching, grazing and equestrian purposes (Id.)

Arguments Made Below

No party disputes the fair market value of the parcels. Each parcel has a fair market value between \$1,350,000 to \$1,850,000. (Pet. Ex. 7, R. 708.) The issues before the Commission were: (i) the value of the parcels for rollback tax purposes under the FAA and (ii) the value of the portions of the parcels containing the one-acre home sites. Only issue (ii) is raised in this appeal.

Because the one-acre home site cannot be sold separately, all parties agreed that the fair market value of the parcels must be allocated to the one-acre home site. The Petitioners/Appellants, Osborns *et al.* (the "Owners") argued before the Commission that the value of the one-acre home site should be determined by dividing the fair market value of each parcel by the total acreage of each parcel, resulting in taxable values for each acre, including the

one-acre home sites, ranging between \$8,438 and \$11,563.

(Pet. Ex. 7, R. 708.) For example, if the fair market value of a 160-acre parcel was \$1.6 million, the Owners would argue that the value of the one-acre home site should be \$1.6 million/160 acres, or \$10,000.

The County argued that the proper method to allocate fair market value of a parcel to the one-acre home site should consider the known characteristics of the one-acre home site. (R.478-545). The County claimed that most of the value of a parcel pertained to building rights, which it asserted belong to the one-acre home site. (R. 478-545.) The County contended that most of the fair market value for each parcel, 65%, pertained to the one-acre home sites. This results in values for the home sites ranging from \$877,500 to \$1,202,500.

The Commission rejected the Owners' and County's conclusions. The Commission agreed with the County that the proper method to allocate the fair market value should consider the known characteristics of the one-acre home site. However, in contrast to the County's conclusion, the Commission found that the fair market value of the parcels should be allocated 35% to the portion of the parcel subject to the conservation easement restricting its use and 65% to the 10-acre building envelope of the parcel that could be

developed and that is not subject to the conservation. (See Appendix A, Commission's Decision, ¶ 29.)

The Commission found that insufficient evidence was submitted to differentiate the value of the one-acre home site and the remaining 9 acres of the 10-acre building envelope. (See Addendum A, Commission's Decision, p. 17.) Absent specific evidence to differentiate between the acres within the 10-acre building envelope, the Commission allocated to the one-acre home sites 1/10 of 65% of the fair market value of each parcel. (Id.) This results in values for the home sites from \$87,750 and \$120,250.

The Valuation Evidence

The Owners' experts argued that the one-acre home sites could not be sold separately from the larger parcel which they pertain to and, therefore, have no fair market value. (Pet. Ex. 7, R. 705; Pet Ex. 8, r. 860; Pet Ex. 9, r. 876.) As such, the Owners argued that the fair market value of the parcels must be allocated pro rata to the one-acre home sites. (Id.)

The County's appraiser, Blaine Hales, concluded that 65% of the fair market value of each parcel pertains to the one-acre home site. (R. 478-545.) He reached this conclusion by appraising one parcel consisting of 160 acres. He assumed that the building rights related exclusively to

the one-acre home site whereas the remaining 159 acres could only be used for agricultural or recreational purposes. (R. 523.)

Mr. Hales considered sales data for six properties that effectively could only be used for recreational or agricultural purposes. (R. 475-545.) He concluded that these sales suggest a value of \$3,000 per acre for the 159 acres of the subject property resulting in \$477,000, (\$500,000 rounded). (R. 478-545.) The balance of the fair market value, \$1.3 million (\$1,800,000 - \$500,000) was allocated to the one acre building site. (R. 478-545.)

Mr. Hales also considered data from transactions involving conservation easements. These easements, which represent the right to build upon the property, have values that average 65% of the total fee value of the properties to which they pertain. (R. 478-545.)

Based on this analysis, Mr. Hales concluded that 65% of the fair market value of each parcel (representing the building rights) should be allocated to the one-acre home site.

However, when questioned by the Commission, Mr. Hales testified that he "probably would've gone with 10 acres [instead of] one, but the county told [him] that their standard was one acre." (R. 1446, ln. 12-13; see Addendum

B.) Further, Mr. Hales testified that if his assignment had not been restricted, he would have simply valued the building rights and the portion of the parcel without building rights. (R. 1447, ln. 10-25; see Addendum B.) These admissions support the Commission's findings that allocate 65% of the fair market value of each parcel to the 10-acre building envelope.

SUMMARY OF THE ARGUMENT

The issue is the proper method and application of that method to allocate the fair market value of the entire parcel to the portion of the parcel representing the one-acre home site excluded from agricultural valuation by the FAA. Utah Code Ann. §§ 59-2-501-515 (West 2008). The Owners argue that the value of the one-acre home site must be determined, as a matter of law, by dividing the fair market value of the entire parcel by the parcel's acreage. This mechanical method results in shockingly low values ranging between \$8,438 and \$11,563 for the one-acre home sites. The Commission contends that such a method is not required by law nor is it justified by the facts. Based upon the evidence, the Commission concluded that the appropriate method is to allocate the fair market value to portions of the parcel based upon the individual characteristics of such portions.

The proper method to value the one-acre home site is a question of fact. The Owners do not question the Commission's method as a fact issue, instead, they argue that it is an issue of law.

The law does not prescribe a method. Absent application of the FAA, property must be assessed at its fair market value. Utah Code Ann. § 59-2-103(1) (West 2008). There is no dispute here as to the fair market values of the parcels in question. Instead, the Owners request that their parcels be valued below fair market value as agricultural property under the FAA. Because of that request, the value of the Owners' property is determined under the unique provisions of the FAA.

The FAA excludes from preferential agricultural valuation "land which is under the farmhouse and land used in connection with the farmhouse. . . ." Utah Code Ann. § 59-2-507(1) (West 2008). Such land is referred to here as the one-acre home site, and Utah Code Ann. § 59-2-507(2) (West 2008) requires that it be valued in the same manner as other land in the county. This requires a separate valuation of the home site that, absent the application of the FAA, would not be necessary. Because no method is prescribed by statute, the choice of method is a question of fact.

The Commission, like the County, allocated the fair market value of each parcel to portions of the parcel based upon each portions known characteristics. However, the Commission's application of that method differs from the County's, but it is supported by substantial evidence.

ARGUMENT

I. THE COMMISSION PROPERLY CHOSE A METHOD TO VALUE THE HOME SITE.

The law does not prescribe the specific method to value the home site. The Commission allocated the fair market value of the parcel to the home site based upon the known characteristics of the home site. Since the law does not prescribe a method, the method chosen by the Commission is within its discretion as a finding of fact.

"The choice of valuation methodology in assessing property is a question of fact." Salt Lake City Southern Railroad Co. v. State Tax Comm'n, 1999 UT 90, ¶ 13, 987 P.2d 594, citations omitted. Findings of fact by the Commission are subject to review under a substantial evidence standard. Utah Code Ann. § 59-1-610(1)(a) (West 2008).

A. The Owners Do Not Contest the Commission's Method on a Factual Basis.

The Owners have not contested the Commission's valuation method on a factual basis and, therefore, have not

fulfilled the marshaling requirement of Rule 24(a) of the Utah Rules of Procedure. The Court, therefore, must accept the Commission's findings as it relates to the method.

United Park City Mines Co v. Stichting Mayflower Mountain Fonds, 2006 UT 35, ¶ 27, 124 P.3d 235.

B. The One-acre Home Site Within the Parcel must Be Separately Valued under the FAA.

Contrary to the Owners' argument, the law does not prescribe the valuation method. Taxable property must be valued at its fair market value unless it is exempt from taxation or subject to valuation as agricultural property under the FAA. Utah Code Ann § 59-2-103(1) (West 2008). Fair market value must consider the effects of conservation easements and the minimum parcel size imposed by zoning ordinances. Utah Code Ann. §§ 59-2-301.1 and 59-2-301.2 (West 2008). These considerations do not "prohibit the county assessor from including as part of the assessment of the fair market value of a parcel of property any other factor affecting the fair market value of the parcel of property." Utah Code Ann. § 59-2-301.2(3) (West 2008).

The fair market value of the parcels under these provisions is not disputed by the parties.

The Owners do not ask that their parcels be valued at fair market value. Instead, the Owners seek to have their

property valued preferentially as agricultural property under the FAA. Their right to make that choice is not an issue. However, by making that choice, the Owners' property is subject to the FAA and the unique valuation issues that develop in applying it.

Only land "actively devoted to agricultural use" is entitled to agricultural valuation under the FAA. Utah Code Ann. § 59-2-503 (West 2008). Further, Utah Code Ann. § 59-2-507(1) (West 2008) provides that the "land which is under the farmhouse and land used in connection with the farm house . . ." are not actively devoted to agricultural uses. Such land is to be "valued, assessed, and taxed using the same standards, methods, and procedures that apply to other taxable structures and land in the County." Utah Code Ann. § 59-2-507(2) (West 2008). In this case, all parties agree that the one-acre home site represents the land under or around the "farm house." The question is the appropriate method to value the one acre home site.

Since the home site is only a small portion of the parcel, its value must be separately identified, which is a result that is only necessary because of the application of the FAA. The Owners argue that the value of such property, as a matter of law, must be determined from a mechanical per acre pro rata allocation of the fair market value for the

parcel. The Commission is unaware of a statute that requires such a method. Instead, the Commission allocated the fair market value to the identifiable portions of each parcel, including the home site, based upon the known characteristics of each portion. This is a finding of fact. The portion of the parcel subject to the easement was allocated only 35% of the fair market value. The portion of the parcel not subject to the easement, the 10-acre building envelope, was allocated 65% of the fair market value. Since insufficient evidence was presented to distinguish between the 9-acres and one-acre homesite within the 10-acre building envelope, the Commission allocated 1/10th of 65% to the one-acre homesite.

The Owners' argument that a home site cannot be legally separated and sold does not preclude the Commission's findings. Administration of property tax laws often requires hypothetical assumptions. Board of Equalization Salt Lake County v. Benchmark, 864 P.2d 882 (Utah 1993). In Benchmark, the Court rejected the taxpayer's argument that it would be impossible to sell all the lots in a subdivision within one year. The Court concluded:

[f]or tax purposes, it is irrelevant that a "willing buyer" for each lot does not in fact exist. Section 59-2-103(1) contemplates nothing more than a hypothetical sale to a hypothetical willing buyer during the tax year. The sale is a

statutory fiction indulged in by appraisers to arrive at fair market value.

Id. at 888. Similarly, the application of the FAA here requires the Commission to make the hypothetical assumption that the home site is separate from the remainder of the parcel subject to the FAA.

C. The Valuation of the Home Site Based upon its Known Characteristics Is Consistent with the Framework of the FAA.

Because any portion of a parcel may be subject to the FAA or may lose its preferential status under the FAA, the framework of the FAA requires all land be valued based upon its own characteristics. This is true regardless of whether such portions may or may not be capable of separate ownership.

Only "land" "actively devoted to agricultural use" is entitled to agricultural valuation under the act. Utah Code Ann. § 59-2-503(1)(b) (West 2008). Further, any land which has previously qualified under the FAA, but no longer meets the agricultural use, is subject to "roll back" taxes for five years equal to the difference between "(i) the tax paid while the land was assessed under this part; and (ii) the tax that would have been paid had the property not been assessed under this part." Utah Code Ann. § 59-2-506(3)(a) (West 2008). In this case, it is possible that

only a portion of a parcel may lose its "agricultural use" and be subject to the roll back tax. A value for that portion must be established for roll back tax purposes. See Utah Code Ann. § 59-2-510(West 2008) (recognizing that separation of a part of the land not used for agricultural purposes must be made for roll back purposes).

These two provisions require the assessor to allocate the fair market value of each parcel to the various portions of the parcel based upon the portion's known characteristics. Portions of a parcel not qualifying for agricultural valuation must be separately valued. Utah Code Ann. §§ 59-2-503(1)(b), 507 (West 2008). Further, qualifying portions must be valued at fair market value for rollback purposes. Since any portion of a parcel qualifying for FAA purposes may lose its qualification in the future, the proper allocation of the fair market value to each separately identifiable portion of the parcel is necessary. Utah Code Ann. §§ 59-2-506(3)(9), 510 (West 2008). This result is only required because of the application of the FAA.

The Commission's method satisfies these requirements. The Commission has valued the portion of the parcel subject to the conservation easement. The Commission has further valued the portion of the parcel, including the home site,

not subject to the easement. If any portion of the parcel subject to the easement is withdrawn in the future from agricultural use, the roll back tax can be calculated. Similarly, if any portion of the 10-acre building envelope not subject to the conservation easement is withdrawn from agricultural use, the roll back tax can be calculated. Most importantly for purposes of this appeal, the value of the home site is established.

II. THE COMMISSION'S APPLICATION OF ITS METHOD TO VALUE THE HOME SITE IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A. The Findings of the Commission Applying its Method are Granted Deference.

The Utah Supreme Court has stated that the choice of valuation method and "the resulting determination of market value is a question fact." Beaver County v. Wiltel, Inc., 2000 UT 29, ¶ 25, 995 P.2d 602 (citations omitted).

Findings of fact by the Commission are given deference, and the reviewing Court must apply the substantial evidence standard. Utah Code Ann. § 59-1-610(1)(a) (West 2008).

"'Substantial evidence' is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." See First National Bank of Boston v. County Bd. of Equalization of Salt Lake County, 799 P.2d 1163, 1165 (Utah 1990). "Substantial evidence is

more than a mere 'scintilla' of evidence . . . though 'something less than the weight of the evidence.'" Grace Drilling v. Board of Review, 776 P.2d 63, 68 (Utah App. 1989) (citations omitted).

The Commission allocated the fair market value of the parcel based upon the known characteristics of the one-acre home site. The County does not dispute this method, but argues that the Commission applied it incorrectly.

The Commission recognized that all but ten acres of each parcel were subject to a conservation easement. The evidence showed that properties subject to a conservation easement or properties with no building rights and limited to recreational or agricultural use had lower values than properties with building rights. (R. 1426-1432; Res. Ex. R. 478-545.) Based upon expert testimony, the Commission determined that 65% of the fair market value of the parcel pertained to the 10-acre building envelope which contained the building rights. However, there was insufficient evidence presented to distinguish a value for any single acre within a 10-acre envelope. As a result, the Commission allocated equally among the 10-acres 1/10 of 65% of the fair market value.

Certainly, had the County chosen to provide market evidence regarding the value of one-acre building lots with

similar amenities, the Commission would have considered the same in making its allocation. The County did not. As a result, once the value of the portion of the parcel subject to the conservation easement was established, the only option left was for the Commission to allocate the residual value among the 10-acre building envelope, including the one-acre home site.

B. The County Has Not Shown that the Commission's Findings Are Without Substantial Evidence.

Unlike the Owners, the County contests the Commission's application of its method. The County contends that the value of the building rights on the parcel relate solely to the one-acre home site. The Commission disagrees. The Commission found that the building rights pertained to the 10-acre building envelope. The Commission further found that without additional evidence, the value of such rights should be spread evenly among the 10-acres, including the one-acre containing the building site.


This finding is supported by substantial evidence. First, the County's appraiser, Mr. Hales, testified that he allocated the value of the building rights to the home site primarily because the County's practice defined the home site as one acre. (R. 1446-1447.) However, the easement did not limit the residence to one acre, but only to the 10-

acre building envelope. (Pet. Ex 6, R. 685.) Mr. Hales conceded that he would have been comfortable allocating the building rights to the 10-acre building envelope. (R. 1446, ln. 12-13.) Second, there was insufficient evidence to differentiate values from any of the 10-acres within the building envelope. For example, the County did not provide sufficient evidence to establish why the one-acre home site should have a value different than any of the other 9 acres on which the primary residence could have been constructed. The County's appraiser did not attempt to determine the value of a one-acre building lot through a direct sales comparison approach. (R. 1416-1418.) Further, absent evidence to the contrary, the home site could have conceivably been placed anywhere on the 10-acre building site. (Pet. Ex. 5, R. 684.) This is a result similar to the Commission's finding. The Commission's application of its method is supported by substantial evidence.

CONCLUSION

The Commission's decision should be affirmed.

DATED this 30 day of January, 2009.



TIMOTHY A. BODILY
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 30 day of January, 2009, that I caused two (2) copies of the foregoing BRIEF OF RESPONDENT UTAH STATE TAX COMMISSION to be mailed, postage prepaid, to the following:

RANDY M GRIMSHAW
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HEBER CITY UT 84032-3740

A handwritten signature in dark ink, appearing to be 'TL', is written over a horizontal line.

ADDENDUM A

BEFORE THE UTAH STATE TAX COMMISSION

WARREN AND TRICIA OSBORN, MICHAEL F.
SULLIVAN, DAVID AND CYNTHIA MIRSKY,
NORMAN PROVAN, JEFFREY AND NANCY
TRUMPER, GARY AND CATHERINE
CRITTENDEN, DAVID CHECKETTS AND
MOUNT CLYDE ENTERPRISES L.C.,

Petitioner,

vs.

BOARD OF EQUALIZATION OF WASATCH
COUNTY, UTAH,

Respondent.

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

Appeal Nos. 06-1504, 06-1505, 06-1506, 06-
1507, 06-1508, 06-1509, 06-1510

Tax Type: Property Tax/Locally Assessed
Tax Year: 2006 & Roll Back Period 2001-05

Judge: Phan

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 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 order, specifying the commercial information that the taxpayer wants protected.

Presiding:

• Pam Hendrickson, Commission Chair
Marc Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: Max Miller, Attorney at Law
Randy Grimshaw, Attorney at Law
Norman Provan, Owner
Douglas Anderson, Developer
For Respondent: Thomas Low, Wasatch County Attorney
Glen Burgener, Wasatch County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 18-19, 2007. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

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FINDINGS OF FACT

1. Petitioners are appealing the assessed values as set by the Wasatch County Board of Equalization for the land on the subject lots, for the 2006 tax year. In addition to the 2006 assessed value, Petitioners Sullivan, Mirsky, Crittenden, Provan and Trumper are appealing the rollback tax assessment against each of their properties subject to this appeal.

2. As of the lien date at issue the properties had residences or buildings either constructed or in partial states of construction. The value of the buildings was not at issue in this appeal.

3. The subject properties are all located in the Wolf Creek Subdivision in Wasatch County. The owner, parcel number, size and valuations as assessed by Respondent, which are the subject of this appeal, are as follows:

Petitioners	Lot/Parcel No.	Acres	County's Rollback Values Appealed	County Board's 2006 Values Appealed
Warren & Tricia Osborn	61/OWR-4B61	160	No Rollback Appeal	Land-GreenBelt \$ 201,800 Land-Homesite \$ 550,000
Michael Sullivan	46/OWR-3A46	184	2001-2005 \$360,000 per year	Land-Greenbelt \$1,040,288 Land-Homesite \$ 360,000
David & Cynthia Mirsky	53/OWR-4A53	160	2002-2006 \$698,200 per year	Land-Greenbelt \$1,150,000
Gary & Catherine Crittenden	75/OWR-5B75	160	2001-2005 \$360,000 per year	Land-Greenbelt \$ 562,100 Land-Homesite \$1,080,000
Norman Provan	25/OWR-2A25	160	2001-2005 \$773,200 per year	Land-Greenbelt \$ 476,800 Land-Homesite \$ 773,200
Jeffrey & Nancy Trumper	50/OWR-3A50	160	2001-2005 \$360,000 per year	Land-Greenbelt \$1,040,000 Land-Homesite \$ 360,000

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David Checketts & Mount	12/OWR-2012	160	No Rollback	Land-Greenbelt \$ 201,800
Clyde Enterprises LC			Appeal	Land-Homesite \$ 845,000

4. The Wolf Creek Ranch subdivision ("Ranch") is an exclusive, approved and platted subdivision. It covers approximately 14,000 acres and has 84 single-family home site parcels. With the exception of a few parcels, all home site parcels in the subdivision are at least 160 acres. All parcels subject to this appeal are 160 acres or larger. Access to the subdivision is from a main gate at 3480 Bench Creek Road in Woodland and a secondary gate located off of Lake Creek Road in Heber City. Access to the subject lots is provided year round by paved interior roadways, which are maintained by the subdivision.

5. The land uses surrounding the Ranch are primarily recreational and agricultural in nature. The Ranch shares approximately seven miles of common boarder with the Uinta National Forest on the east, which is accessible from the Ranch. Jordanelle Reservoir is ten miles west and Rockport State Park and Reservoir 20 miles north. Park City with its ski and summer resorts is located approximately 22 miles northwest.

6. The subdivision amenities at the Ranch include a 26-acre common area with an equestrian center and stables, a 2,800 square foot guesthouse and two large trout stocked ponds. There is another 23-acre common area with tepees, fire pits, campground areas, corrals and approximately one-mile of frontage along the Upper Provo River. There are several yurts at the property that can be accessed by the residents. There is approximately fifty miles of equestrian trails through the ranch and the entire property is protected by private security.

7. Although each subject parcel is 160 acres or larger, it can be developed as only one, single-family home site.

8. The limitations on development are both from zoning and a conservation easement. The property is zoned P-160 under the jurisdiction of Wasatch County. P-160 is a preservation zoning where

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development may be limited do to remoteness of services, topography and other sensitive environmental issues.

Residential development is allowed in the zoning with basically one residence per 160 acres. Conditional uses include groupings of residential lots provided that density is not increased, water storage, fishing activities and sand and gravel quarrying.

9. The principal developer of the Ranch, Douglas Anderson, testified that the area had been ranched for over one hundred years and it was the intent in developing the Ranch to preserve large amounts of open space and continue the ranching tradition. As there was the possibly that zoning could be changed and higher density allowed at some point in the future by the County or other governmental jurisdiction, to insure the restrictions remained permanently, they placed conservation easements on the property as it was subdivided. The conservation easements were granted to the Utah Open Lands Conservation Association, Inc. As such the subject lots are permanently encumbered by the conservation easements. The conservation easements allow for one-home site with the improvements specifically limited to the 10-acre building envelope. Within the 10-acre building envelope the property owner may construct both a primary single-family residence and a caretaker residence. A garage and other barns and outbuildings may be constructed. All the buildings must be located within the ten-acre envelope as well as any roadways, utility lines; water wells water storage tanks, waterlines and septic tanks. The 10-acre building area may not be located in wildlife birthing areas, goshawk nesting habitats or riparian areas. The conservation easement would permanently prohibit buildings or other improvements on the acres outside of the 10-acre building envelope. Further, there could be no quarrying or mining on the property.

10. Subject to some restrictions, that included specified habits and riparian areas or the County building requirements regarding slope and setbacks, the purchaser chooses which ten contiguous acres to use for the building envelope, and then chooses the home site within those acres. Norman Provan, an owner of one

of the subject lots, and Mr. Anderson both testified that not only could the homeowners choose the site of the building envelope it was possible to move the building envelope at least until construction commenced, and even then there was some possibility of adjustment as long as it encompassed the buildings. Mr. Andersen testified that typically the location of the building envelope was limited only by County building restrictions. During the period now subject to the rollback, the 10-acre building envelopes had not yet been designated. Based on these factors the Commission finds that during the rollback period there was no specific one-acre of the property designated as the home site or ten acres designated as the building envelope.

11. Mr. Provan, an owner of one of the subject lots testified that he purchased the lot because of size and restrictions on development. He indicated he chose the property over other subdivisions because he liked that all 14,000 acres would be preserved with the same restrictions and remain as a wilderness setting. He also felt he was doing something good by preserving open space. Another owner, Mike Sullivan testified that they purchased the property because they wanted the large acreage and a place to ride their horses. It was his understanding that the restrictions on the property made it so that each lot could not be subdivided.

12. As the property had been ranched for many years it had been assessed under the Farmland Assessment Act ("FAA") for property tax purposes, based on its agricultural use, rather than its market value. Agricultural use continues over most of the Ranch property as of the date of the hearing as the Homeowners Association leases the Ranch property out to a sheep operation. A property owner may fence their 10-acre building envelope to keep the sheep out of that portion of the property, but must allow sheep to graze on the remaining acreage. As of the lien date, none of the Petitioners had chosen to fence their 10-acre building envelopes and have allowed the sheep to graze throughout their properties. The County had assessed these properties with the entire parcel valued as greenbelt property under the FAA even after the subdivision was platted, up until the time a building permit was issued. Once a building permit was taken out on a particular

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parcel the County removed the one-acre home site from valuation under the FAA and that one-acre became subject to the roll back tax. However, the County considered the other 159-acres or more on each parcel to remain as greenbelt and the County continues to assess the remaining acres under the FAA.

13. The FAA requires disparate treatment regarding the home site and remaining acres that are ranched or farmed. Pursuant to the FAA, the farmhouse and land used in connection with the farmhouse is not taxed under the act, but is instead assessed based on fair market value. For greenbelt properties located outside of city limits, Wasatch County applies a standard of one as the land used in connection with the farmhouse, or home site.

14. As there had been sales of lots in the Ranch, there was market information to determine a fair market value for each parcel at issue. The reason the matter came before the Commission for the Formal Hearing was that the parties were in disagreement on how much of the total value of the 160-acre parcels should be attributed to the one-acre home sites. A determination of the value for the one-acre is relevant for the purposes of determining the amount of the rollback, as well as for the assessment for the 2006-year.

15. When the County issued the Tax Notices for the years that are now subject to the rollback, the notices did not list out or allocate a portion of the total market value to either the home site acre or the building envelope. Instead, the notices listed a single, total market value for the entire parcels. Because the property was taxed as greenbelt under the FAA, the amount of the tax assessed, however, was not based on the market value, but instead on the greenbelt value pursuant to the FAA.

16. Petitioners submitted an appraisal for each of the properties at issue, which had been prepared by Philip Cook, MAI, and CRE. Mr. Cook's appraisal was limited to a market valuation of the land only. It was Mr. Cook's appraisal conclusion that there was some variation in values between the lots, due to factors like view, slope and forestation. It was his appraisal conclusion that the total market value of the land for each

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of the parcels at issue, as of January 1, 2006, was as follows:

Lot 12	\$1,350,000
Lot 25	\$1,340,000
Lot 46	\$1,410,000
Lot 50	\$1,715,000
Lot 53	\$1,285,000
Lot 61	\$1,715,000
Lot 75	\$1,850,000

17. Mr. Cook's market values for each subject parcel were not substantially disputed by Respondent. Mr. Cook's market value conclusions for the land were based on eleven lot sales, all located within the Ranch. The sales had occurred from October 2004 through May 2006. The lots had sold for prices ranging from \$1,225,000 to \$1,800,000.

18. In his appraisal Mr. Cook also gave his opinion of how the total value should be allocated to the various components of the lot, including the one-acre home site. It was his position that allocations to the functional areas of each lot must reflect the market value and he indicated there were circumstances when a separate value for a home site consisting as part of a larger parcel could be determined. However, it was his conclusion that in this matter, any allocation of the total purchase price of the lot to the home site was simply not market supported. He reached this conclusion because the 160 acres could not be subdivided and with the restrictions from zoning and conservation easements the highest and best use of the subject lots were as large 160-acre single family lots. He pointed to the Uniform Standards of Professional Appraisal Practice and indicates that they specifically warn against allocating value without market support.¹ It was his opinion that the County had apportioned the values to the various components of the lots arbitrarily. It was Mr. Cook's conclusion that if it is necessary to allocate or apportion part of the total lot value to the home site acre, it could only be done pro rata, 1/160th of the total value, as it is the entire lot and the similarity to all other lots within

1 Mr. Cook cites to Uniform Standards of Professional Appraisal Practice and Advisory Opinions, 2006 Edition, Appraisal

the development that create the value.

19. David A. Thomas, Professor of Law, testified that the zoning and conservation easement had to be taken into account in determining the value. It was his opinion that it was not legal to buy or sell any portion of the lot smaller than the total 160 acres. This was a point that was supported by all evidence and not disputed. It was Professor Thomas' conclusion that because one acre could not be sold separately, there was no fair market value for the one-acre home site, only a value for the property as a whole. Professor Thomas also pointed out that additional value will be taxed in the improvements.

20. Robert Crawford, PhD, testified that the conservation easement actually enhanced the value of the property. He also testified that the highest and best use of the property was not for agriculture, it was instead as a 160-acre residential building lot. As part of the whole he concluded that each acre of the 160-acre property had the same value as all the other acres. He stated that a fair market value for the one-acre home site could be determined but only on the basis of 1/160 of the total value as indicated by Mr. Cook. It was Dr. Crawford's conclusion that recognizing an allocated valuation method to all the acres is economically valid as it the way of expressing the enhanced value of the whole. The right to build a residence somewhere on the property presumably increase the value of the 160 acre lot. That will be reflected in the price per acre. He did not find an extracted market value using lots similar in size that have sold to be a valid valuation technique.

21. Glen Burgener, the Wasatch County Assessor, testified that under the FAA, the County is required to allocate a portion of the total value to the home site acre, which is subject to tax on a fair market value basis, while the remainder of the property was taxable under greenbelt. He testified that he had been applying the FAA to properties for seventeen years in Wastatch County. The County had farms with home sites on numerous properties of varying zones where the County is required to allocate a portion of the total

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value to the home site. In addition to farms in the P-160 zone, there were farms with home sites on properties in the following zones: A-20 allowing only 1 residence per 20 acres ; R-A-5 allowing only one residence per 5 acres; R-A-1 allowing only one residence per 1-acre. To establish a value for the home site, the County would consider values of buildable lots in the area. It was the County's position that the right to build a residence is part of the home site value.

22. In 1999, when the subject lots were platted and because of the conservation easement, Mr. Burgener sought advise from representatives of the State Tax Commission's Property Tax Division on how to allocate the total values of the property. At this time, the County made the determination that the total value, which was based on the sales, would be allocated 60% to the primary residential buildable site, 22% to the secondary or caretaker's buildable site, \$25,000 per acre to the rest of the acres in the building envelope and whatever was left of the market value to the remaining acres. It was the County's position that a substantial portion of the value of the remaining 150-acres shifted to the 10 acres building envelope due to the conservation easement. However, this valuation break out was not conveyed to the property owners on the annual Tax Notices issued for the years that are now subject to the rollback.

23. Blaine D. Hales, Certified General Appraiser, prepared an appraisal for the Respondent for purposes of estimating the value of the one-acre home site on the property. The appraisal was prepared for one lot, Lot 75, which was the Crittenden property. It was the County's intent that the same methodology for determining the value for the home site be applied to the other properties. It was Mr. Hales conclusion that the total value of Lot 75 was \$1,800,000, of which \$1,200,000 was for the one-acre home site and \$600,000 for the reaming 159 acres.

24. In his appraisal, Mr. Hales determined the value of the one-acre site by estimating the overall value of the entire parcel and using additional data to allocate or estimate the value contributed by the one-acre

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home site to the overall parcel. It was his conclusion that he could determine a fair allocation of the market value, despite that the one acre could not be legally sold separately.

25. Like Mr. Cook, Mr. Hales' estimate of the total market value came from sales within the Ranch, all located very near Lot 75. He also considered the purchase price of Lot 75, which was \$1,800,000 on October 29, 2004. It was his conclusion that the fair market value of the land only on Lot 75, as of the January 1, 2006 lien date, was \$1,800,000. As a comparison, Mr. Cook had valued this lot at \$1,850,000.

26. To determine a value for the one acre home site, it was Mr. Hales position that the building site, when reduced to one acre, must also include the legal right to construct a home because the appraiser must be careful to divide both the physical and legal components of the property. He attributed the right to build to the one acre while the remaining 159 acres he considered to have only the limited agricultural and recreational uses.

27. To estimate the allocation to the one acre, Mr. Hales relied on two methods: 1) determining the value of the unbuildable portion of the property; and 2) determining the value of the right to build by considering sales of conservation easements. To determine the value of the unbuildable land, Mr. Hales found six comparables of rangeland with recreational desirability, but without the right for potential residential development. He concluded that these sales indicated a value for the unbuildable portion of the property to be \$500,000. In this analysis, Mr. Hales indicated that he considered 159 acres as unbuildable and only the one-acre, used by the County as the home site, as buildable. From the analysis of conservation easements he relied on six sales and concluded that the right to build on the subject along with the one-acre home site would represent approximately 65% of the subject's value while the remainder should be allocated to the unbuildable agricultural and recreational land. In his reconciliation of the two approaches he concluded that 65% of the total value should be allocated to the buildable home site and the remainder to the agricultural land.

28. Upon review of all the evidence in this matter, the Commission concludes that prior to designation of the 10-acre building envelope, as evidenced by the issuance of a building permit, there would be no distinction in value from one acre to the next for the 160 acre parcels, as the right to build was attached to the value of the entire lot as a whole and each acre up to the 160 acres contributed equally to the value.

29. However, once the 10-acre building envelope has been designated, the value is no longer equally contributed on a per acre basis. All development and improvement must be limited to the ten acres. The right to build attaches to the building envelope. Furthermore, the restrictions of the conservation easement are then attached to the now identifiable 150 acres. The owner may no longer build fences, roadways, corrals, swimming pools, manmade ponds or gardens on the 150 acres. Once the building envelope has been established there is a clearly identifiable difference between the 10-acre building envelope and the remainder of the property, a difference that does impact how these two portions of property contribute to the value.

30. Regardless of the fact that a one-acre home site may not legally be sold separately from the 159 acres of the lot, the County must allocate a fair market value to the one-acre based on the express language of the FAA. Mr. Hales was the only party who attempted to do this in a manner that reflects the reality that the building site is worth more than the undevelopable property subject to the conservation easement. Absent evidence from Petitioner's experts that addressed the disparity in value, the Commission accepts Mr. Hales conclusion that 65% of the value of the total lot is attributable to the developable portion of the land. However, the Commission finds that the building site is not one-acre, it is ten-acres. From a review of Mr. Hales' appraisal, his testimony at the hearing regarding the 10-acre building site and that of the other witnesses describing the potential for the 10-acre envelope, the Commission concludes that the 65% for the buildable portion applies to the 10 buildable acres and is not appropriately limited to a one-acre home site. Nine of the ten buildable acres as of the lien date were still being used for agricultural purposes and one acre must be

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valued as the home site according to statute. As far as allocating a portion of the 65% to the one-acre, the Commission is unable to further determine which portion of the value is attributable to each acre, other than using 1/10 of the 65% of the total market value.

31. Mr. Cook has appraised each individual lot at issue in this appeal to determine a total value as of the January 1, 2006 lien date. The County's assessments for 2006 were not always consistent with Mr. Cook's conclusions. The County did not substantially refute Mr. Cook's total values for each lot, and the County did not submit an appraisal of each lot. For tax year 2006, the Commission accepts Mr. Cook's total lot value for the land portion of each of the subject properties. The Commission finds the value of the 10-acre building envelope to be 65% of the total lot value, and the one-acre home site value to be 1/10 of the 65% attributed to the building envelope.

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

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3. For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land: (a) is not less than five contiguous acres in area. . . and (b) except as provided in Subsection)5): (i) is actively devoted to agricultural use; and (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part. (Utah Code Sec. 59-2-503(1).)

4. All 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. (Utah Code Sec. 59-2-507(2).)

5. (2) In addition to the value determined in accordance with Subsection (1), the fair market value assessment shall be included on the notices described in (a) Subsection 59-2-919(4); and (b) Section 59-2-1317. (3) The county board of equalization shall review the agricultural use value and fair market value assessments each year as provided under Section 59-2-1001. (Utah Code Sec. 59-2-505 (2)&(3).)

6. Except as provided in this section, Section 59-2-506.5 or Section 59-2-511, if land is withdrawn from this part, the land is subject to a roll back tax imposed in accordance with this section. (Utah Code Sec. 59-2-506(1).)

7. The county **assessor** shall determine the amount of the **rollback** tax by computing the difference for the rollback period described in Subsection (3)(b) between: (i) the tax paid while the land was assessed under this part; and (ii) the tax that would have been paid had the property not been assessed under this part. (Utah Code Sec. 59-2-506(3).)

8. 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

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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 Sec. 59-2-1006(1).)

9. (2) In assessing the fair market value of a parcel of property that is subject to a minimum parcel size of one acre or more, a county assessor shall include as part of the assessment: (a) that the parcel of property may not be subdivided into parcels of property smaller than the minimum parcel size; and (b) any effects Subsection (2)(a) may have on the fair market value of the parcel of property. (3) This section does not prohibit a county assessor from including as part of an assessment of the fair market value of a parcel of property any other factor affecting the fair market value of the parcel of property. (Utah Code Sec. 59-2-301.2(2) & (3).)

CONCLUSIONS OF LAW

1. Petitioner has raised two separate but related issues. The first is whether the value of a home site contained within a larger and unsubdividable property may be retroactively established at the time of assessment of a rollback tax. The second is the fair market value of the existing home site for purposes of determining the current year's property tax assessment. To begin, a determination of the rollback tax presents issues of both fact and law to the Commission. Pursuant to Utah Code Sec. 59-2-506 the amount of the rollback tax is computed by taking the difference between the tax paid during the roll back period based on its agricultural use under the FAA and the tax that would have been paid annually based on an a fair market value assessment. For each year of the rollback period, the County on an annual basis had already determined the fair market value for the subject property. Furthermore, the County was required to list the fair market value on the Tax Valuation Notices as they were issued each year. If Petitioners were in disagreement with the market value set by the County, Petitioners' recourse was to appeal the market value each year as provided in

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Sec. 59-2-1001. Therefore, the total fair market value for each property at issue for the rollback years was already established by the County pursuant to the annual notices they issued that were not appealed and may not now be challenged by either party based on the circumstances in this matter.

2. Respondent's witnesses acknowledged, and it was supported by the exhibits and testimony of Petitioners' witnesses, that when the County listed the fair market value on the annual notices mailed out for the years subject to the rollback, it listed only a total value for the entire 160-acre parcel without any breakout for home site land. Petitioners did not file annual appeals regarding the total market value indicated on the notices for each of the rollback years. Petitioners were not given the opportunity to challenge the County's allocation of the total market value to the home site acre, because they were never given notice of what that amount was. Had Petitioners been notified of the allocation to the home site acre, and that it was an amount different from a 1/160 allocation of the total value, Petitioners may have appealed the value on annual basis as is provided in the statute at Utah Code Section 59-2-505 and 59-2-1001.

3. Furthermore, the Commission notes that for rollback purposes, valuation is based on the property, as it existed during the rollback period. Valuation is not based on the condition of the property that results after a portion has been withdrawn from greenbelt. The Commission finds that if the County valued the home site at a higher rate during the rollback years, the County should have indicated so annually on its valuation notices as they were issued for each of those years, so that the home site value could have been appealed annually pursuant to Utah Code Section 59-2-505 and 59-2-1001. Failure to do so alone is sufficient for the Commission to find that rollback tax is limited to 1/160th2 of the total value listed by the County each year in its valuation notices issued to Petitioners. Additionally, this legal basis is supported by the Commission's factual conclusion that during the rollback period, there were no designated building envelopes

2 For Lot 46 which was 184 acres the rollback tax must be based on 1/184th of the total value.

or home sites and, therefore, each one of the 160 acres was as valuable as the rest. Prior to the issuance of the building permit there would have been no basis for the County to determine the one-acre home site upon which the residence would be located.

4. With respect to the second issue, the question of the current home site value, it is the Commission's conclusion that the issue of determining the market value of the one-acre home site for the 2006 lien date presents both legal and factual issues. Petitioners' witness, Dr. Thomas, argued that a market value could not be determined for the one acre as it could not be legally separated. Petitioners also argue that Utah Code Sec. 59-2-301.2 regarding minimum parcel size supports their contention. Although the one-acre home site may not legally be sold separately, Utah Code Sec. 59-2-507 requires that the County assess it at fair market value and is the specific and controlling statute on the taxation of a home site used in connection with greenbelt property. Subsection 507(2) provides that the farmhouse 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 land and structures in the County. However, the subsection does not provide specific guidance on how to make that determination when the home site is part of an unsubdividable lot. Utah Code Sec. 59-2-301.2 does prohibit the County from valuing the 160-acre subject parcels as if they were subdividable into numerous single-family residential lots. The County has not valued this property as if higher density was allowed. Furthermore, subsection 59-2-301.2 (3) expressly provides that the County Assessor may include as part of the assessment other factors affecting the fair market value of the parcel of property. Finally, the fact that Mr. Cook's valuations differ based on specific property characteristics, in addition to size, implicitly demonstrates that the value of any given unit of land may vary from another within each lot.

5. The Commission finds that each acre of the 160- acre parcel contributes to value Prior to the designation of the building envelope this was on an equal basis. However, once the buildable envelope was

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designated, as had occurred for all properties subject to this appeal by the 2006 lien date, there are two distinct and identifiable classes of property, the 10 acre building envelope and the remaining undevelopable area covered by the conservation easement. These two areas do not contribute equally to the value. Respondent has offered an appraisal that makes a distinction. Although the Commission disagrees with the limitation of the analysis to the one acre, because the entire 10 acres is developable with the possibility of a second home, garages, barns, outbuildings, yard features and so forth, which all contribute to the value of the building site, the Commission finds that in the absence of testimony and evidence to the contrary, Mr. Hales' analysis adequately supports that 65% of the value is attributable to the buildable envelope for these properties.

6. As of the lien date, only one acre of the ten-acre buildable envelope had been withdrawn from greenbelt for each of these properties. As additional improvements are made in the buildable envelope, additional acreage may be withdrawn and rollback assessed.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the County is to calculate the rollback taxes for each of the properties for each rollback year based on the market value for the home site acre being $1/160^{\text{th}}$ or $1/184^{\text{th}}$ depending on the size of the lot, of the total value indicated for that year on the tax notices issued by the County. The County is to calculate the fair market value of the home site acre for the 2006 tax year for each parcel at issue on the basis of 65% of the total value of the lot as determined in the Cook appraisal divided by 10. It is so ordered. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this 1 day of April, 2008.


Jane Phan

Administrative Law Judge

Appeal Nos. 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1509 & 06-1510

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

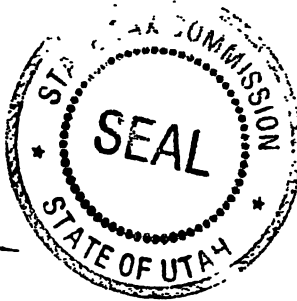
DATED this 1 day of April, 2008.

Pam Hendrickson

Pam Hendrickson
Commission Chair

Marc B. Johnson

Marc B. Johnson
Commissioner



EXCUSED

R. Bruce Johnson
Commissioner

D'Arcy Dixon

D'Arcy Dixon Pignatelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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Utah State Tax Commission
USTC - Appeal
Certificate of Mailing

Warren & Tricia Osborn vs Wasatch County BOE

06-1504

Wasatch County Assessor
25 North Main
Heber, UT 84032

Respondent

Wasatch County Auditor
25 North Main
Heber, UT 84032

Respondent

Maxwell Miller
201 South Main, Ste. 1800
P.O. Box 45898
Salt Lake City, UT 84147

Attorney for Petitioner

Thomas Low
Wasatch County Attorney
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Heber City, UT 84032

Attorney for Respondent

Warren & Tricia Osborn
4290 N Vintage Circle
Provo, UT 84604

Petitioner

**** CERTIFICATION ****

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

Date

4/1/08

Signature

Carolyn Leeper

Utah State Tax Commission
USTC - Appeal
Certificate of Mailing

Michael Sullivan vs Wasatch County BOE

06-1505

Wasatch County Assessor
25 North Main
Heber, UT 84032

Respondent

Wasatch County Auditor
25 North Main
Heber, UT 84032

Respondent

Maxwell Miller
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Salt Lake City, UT 84147

Attorney for Petitioner

Michael Sullivan
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Williamsville, NY 14221

Petitioner

Thomas Low
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Heber City, UT 84032

Attorney for Respondent

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Signature

Carolyn Leeper

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Utah State Tax Commission
USTC - Appeal
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David & Cynthia Mirsky vs Wasatch County BOE

06-1506

Wasatch County Assessor
25 North Main
Heber, UT 84032

Respondent

Wasatch County Auditor
25 North Main
Heber, UT 84032

Respondent

David & Cynthia Mirsky
25331 Derbyhill DR
Laguna Hills, CA 92653

Petitioner

Maxwell Miller
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P.O. Box 45898
Salt Lake City, UT 84147

Attorney for Petitioner

Thomas Low
Wasatch County Attorney
805 W 100 S
Heber City, UT 84032

Attorney for Respondent

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4/1/08

Signature

Cynthia Lee 000074

Utah State Tax Commission
USTC - Appeal
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Norman Provan Jr. vs Wasatch County BOE

06-1507

Wasatch County Assessor
25 North Main
Heber, UT 84032

Respondent

Wasatch County Auditor
25 North Main
Heber, UT 84032

Respondent

Maxwell Miller
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Salt Lake City, UT 84147

Attorney for Petitioner

Norman Provan Jr.
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River Forest, IL 60205

Petitioner

Thomas Low
Wasatch County Attorney
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Heber, UT 84032

Attorney for Respondent

**** CERTIFICATION ****

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4/1/08

Signature

Carolyn Leeper

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Utah State Tax Commission
USTC - Appeal
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Jeffery & Nancy Trumper vs Wasatch County BOE

06-1508

Wasatch County Assessor
25 North Main
Heber, UT 84032

Respondent

Wasatch County Auditor
25 North Main
Heber, UT 84032

Respondent

Jeffrey & Nancy Trumper
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Westmont, IL 60559

Petitioner

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Attorney for Petitioner

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Wasatch County Attorney
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Heber City, UT 84032

Attorney for Respondent

****CERTIFICATION****

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

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Date

4/11/08

Signature

Carolyn Leeper

Utah State Tax Commission
USTC - Appeal
Certificate of Mailing

Gary & Catherine Crittenden vs Wasatch County BOE

06-1509

Wasatch County Assessor
25 North Main
Heber, UT 84032

Respondent

Wasatch County Auditor
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Heber, UT 84032

Respondent

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Attorney for Respondent

****** CERTIFICATION ******

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

Date

4/1/08

Signature

Carolyn Leeper

Utah State Tax Commission
USTC - Appeal
Certificate of Mailing

Mount Clyde Enterprises LC vs Wasatch County BOE

06-1510

Wasatch County Assessor
25 North Main
Heber, UT 84032

Respondent

Wasatch County Auditor
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Heber, UT 84032

Respondent

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Attorney for Respondent

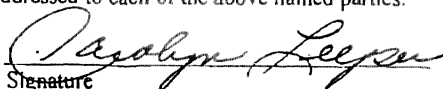
**** CERTIFICATION ****

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

Date

4/1/08

Signature



ADDENDUM B

1 haven't really done a kind of a residual method. What you
2 have done is an allocation. Would that terminology be
3 correct?

4 MR. HAILES: Yes.

5 MR. JOHNSON: That's fine.

6 MR. HAILES: From both directions.

7 MR. JOHNSON: Okay great. Now did -- as I
8 listened to your testimony and -- um -- perused your
9 appraisal, you looked at one acre and 159 acres. You didn't
10 look at all at the 10 acre envelope.

11 MR. HAILES: You know, if it would have been my
12 choice, I probably would've gone with 10 acres and said one,
13 but the county told me that their standard was one acre.
14 And so --

15 MR. JOHNSON: Okay.

16 MR. HAILES: -I wanted to be consistent with what
17 the assessor had been doing.

18 MR. JOHNSON: So -- so if I understand that
19 correctly, then if you had been asked -- a change of an
20 assignment -- and I don't know how to find that, but you
21 would -- in doing an allocation, you would have allocated
22 value to 10 acres?

23 MR. HAILES: Well, I probably would've chosen a
24 little bit larger parcel. But it's so difficult because
25 with the assessment, you know, if they put a barn on it --

1 you know -- you can't -- they only have a small envelope
2 that they can use and you have to assume that a lot of that
3 will be used for -- you know -- agricultural buildings. So
4 -- you know -- the county's decision to go with one acre was
5 fine with me.

6 MR. JOHNSON: So let me ask you, if this were just
7 an appraisal assignment and you were asked to value the
8 various components -- if there were any --

9 MR. HAILES: Yes.

10 MR. JOHNSON: Not even making that assumption,
11 would -- would you have broken it down into one acre, 10
12 acre components or would you have valued outside of the
13 greenbelt statute just the entire 160 acres.

14 MR. HAILES: If somebody had asked me to just
15 break out the components, I probably would have just looked
16 at it legally and not even worried about the physical aspect
17 of it. You know, I would've said this is what the building
18 right is worth --

19 MR. JOHNSON: Oh.

20 MR. HAILES: This is what the land without it is
21 worth. That is what I would've done.

22 MR. JOHNSON: And not associated with any specific
23 acreage.

24 MR. HAILES: Right. That's the simplest way to do
25 it.