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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, and David Checketts and Mount Clyde  
Enterprises L.C. v. Utah State Tax Commision :  
Brief of Appellee

Utah Court of Appeals

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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,  
AND DAVID CHECKETTS AND  
MOUNT CLYDE ENTERPRISES L.C.,

Petitioners/Appellants,

vs.

UTAH STATE TAX COMMISSION,

Respondent.

Appellate Case No. 20080304-CA

**BRIEF OF APPELLEE AND  
CROSS-APPELLANT,  
WASATCH COUNTY**

Utah State Tax Commission  
Consolidated Appeal Nos. 06-1504,  
06-1505, 06-1506, 06-1507, 06-1508, 06-  
1509, and 06-1510

**BRIEF OF CROSS-PETITIONER WASATCH COUNTY**

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## STATEMENT OF JURISDICTION

The Utah Supreme Court had appellate jurisdiction over this case pursuant to Utah Code Section 59-1-602 for two reasons. First, under section 59-1-602(1)(a), the Petitioners are aggrieved parties that appeared before the Utah State Tax Commission and now appeal the Commission's decision. The Commission's Decision is included as Exhibit 1.

And second, under section 59-1-602(1)(b), Wasatch County, Cross-Petitioner, has had its tax revenues affected by the Commission's decision and is a "party in interest in the proceeding before the court." The Utah Supreme Court also has jurisdiction over this case pursuant to Utah Code Section 63G-4-403(1) because this is a review of the Commission's "final action resulting from [its] formal adjudicative proceedings." The Supreme Court poured this appeal over to this Court pursuant to Rule 42(a) of the Utah Rules of Appellate Procedure. This Court now has jurisdiction over the appeal pursuant to Utah Code Section 78A-4-103(2)(j).

## STATEMENT OF THE ISSUES

### A. Issues:

1. Whether Petitioners' appeal constitutes a challenge to the Utah State Tax Commission's findings of fact and should therefore be barred for the failure to marshal the evidence supporting the Commission's findings?
2. Whether the Utah State Tax Commission ("the Commission") properly rejected Petitioners' request to allocate value to Petitioners' one-acre

home sites using the indiscriminate, *pro rata* methodology in favor of applying an allocation methodology that recognizes the true value of the one-acre home sites?

3. Whether the Commission's application of 65% of the value of the Petitioners' entire 160-acre lots<sup>1</sup> to the ten-acre building envelopes within those lots—instead of to the one-acre home sites within those ten-acre building envelopes as recommended by Wasatch County's expert Mr. Blaine Hales—is supported by substantial evidence?

B. Evidence that the Issues were Preserved in the Formal Agency Adjudication:

In relation to the abovementioned issues of factual finding, Wasatch County responds to the Petitioner's appeal, and presents its own cross-appeal, by citing to the following formal adjudicative determinations:

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. . . . 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.

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<sup>1</sup> Of the seven properties owned by Petitioners, six are 160-acres in size; one—that of Michael Sullivan—is 184 acres. *Record* at 55-56; Exhibit 1 pp. 2-3. For ease of reference throughout this brief, the lots will be referred to as 160-acre lots.



*Record* at 064, Exhibit 1, p. 11.

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.

*Record* at 069; Exhibit 1, p. 16

Although the Commission disagrees with the limitation of the analysis to the one-acre [home sites], because the entire 10 acres is developable with the possibility of a second home, garages, barns, . . . and so forth, . . . 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 [ten-acre] buildable envelope for these properties.

*Record* at 070; Exhibit 1, p. 17.

## STANDARD OF REVIEW

### A Issue #1

The first issue presents an issue of law. Whether an issue is one of fact or one of law is, itself, an issue of law. In *Alta Pacific v. Utah State Tax Comm'n*, 931 P.2d 103 (Utah 1997), the Utah Supreme Court engaged in a lengthy discussion, among multiple opinions, regarding whether a particular aspect of a valuation methodology constituted an issue of fact or of law. The Court ended up holding—the concurrences outnumbering the lead opinion on this point—that the valuation methodology presented an issue of law. *Id.* at 120 (concurrence of

McIff, District Judge); *see also Id.* at 117 (concurrence of C.J. Zimmerman). If this Court finds that the method of allocation involves a question of fact, the Court may decline to reach the arguments in Petitioners’ appeal for failing to marshal the evidence. *Schmidt v. Utah State Tax Comm’n*, 1999 UT 48, ¶ 7, 980 P.2d 690, 692 (internal quotations omitted) (“a party challenging the Commission’s factual findings bears the burden of marshaling all evidence supporting the findings and showing that the evidence is insufficient”).

B. Issue #2

As argued in the body of this brief addressing Issue #1, the standard of review for the second issue—the rejection of Petitioners’ proposed *pro rata* methodology—is an issue of fact. The choice of valuation methodology usually presents an issue of fact. *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344, 355 (Utah 1996) (“the choice of valuation methodology used in fixing the value of a property is a question of fact”). When reviewing questions of fact, this Court “shall grant the commission deference concerning its written findings of fact, applying a substantial evidence standard on review.” § 59-1-610(1)(a); Exhibit 2, p. 1.

Petitioners, of course, assert that the issue is solely one of law. There is some precedent for the assertion that an appraisal methodology can sometimes present an issue of law. In *Alta Pacific Associates*, a divided court held that issues involving valuation methodologies are issues of law only when examining the “outer limits” that circumscribe the Commission’s “permissible area of judgment

and discretion.” 931 P.2d at 120 (controlling concurrence of McIff, District Judge). If this Court concludes that Petitioners’ appeal presents an “outer limits” analysis—i.e., that it attempts to show that the Commission’s choice of methodology was beyond the outer limits of the Commission’s discretion—then it will accept Petitioners’ characterization of their argument as an issue of law, and it will review the issue for correctness, without granting the commission deference. § 59-1-610 (1)(b); Exhibit 2, p. 1.

The Commission, below, has somewhat expressed its own opinion regarding the nature of Petitioners’ arguments advanced below. It concluded that the question of *value* of the one-acre home sites in this case presents “*both* legal and factual issues.” *Record* at 69; Exhibit 1, p. 16 (emphasis added). Notably, however, the Commission did not conclude that the question of *methodology* was a mixed question of fact and law. To the contrary, it found facts to exist that render Petitioners’ proposed *pro rata* allocation method inapposite.<sup>2</sup> The context of the Commission’s foregoing statement indicates that the only legal issue it found to be mixed with the factual ones was whether Utah Code Section 59-2-301.2 prohibits the County from complying with Utah Code Section 59-2-507. *Record* at 69; Exhibit 1, p. 16. This issue—advanced at the formal hearing by

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<sup>2</sup> These facts, as discussed in the body of the brief, include the finding that “there is a clearly identifiable difference between” the individual acres within the 160-acre lots due to non-uniform application of a conservation easement. *Record* at 64; Exhibit 1, p. 11. This identifiable difference in the acreage creates a “disparity in value” among those acres which Petitioners’ indiscriminate *pro rata* allocation methodology failed to address. *Id.*

Petitioners' legal expert, Professor David Thomas—appears to have been abandoned by Petitioners on appeal, so it is not addressed further in this brief. Being thus abandoned by Petitioners, the only legal issue that the Commission found to be mixed with the factual ones is no longer involved in this case, and this Court can concur with the County's argument that Petitioners present an issue that is exclusively one of fact.

Nevertheless, if this Court concludes, for other reasons, that Petitioners' issue mixes questions of law and fact, it will apply an "intermediate level of review, which analyzes the decision for reasonableness and rationality."

*Department of Transportation v. Personnel Review Board*, 798 P.2d 761, 764 (Utah App. 1990). "When agency expertise and special knowledge aid in the application of statutory terms to factual situations, the decision is reviewed under a reasonableness standard." *Id.* "Thus, agency interpretation of statutes it is empowered to administer is often inseparable from its application of the rules of law to basic facts." *Id.* at 764-65 (internal quotations omitted). However, it has also been observed, rather unhelpfully, that "[t]he characterization of an issue as a mixed question of law and fact sometimes begins, rather than ends, the inquiry as to how closely the appellate court will scrutinize what the initial forum has done." *Alta Pacific*, 931 P.2d at 117 (concurrence of Chief Justice Zimmerman).

### C. Issue #3

The third issue is a question of fact. The standard of review for questions of fact is set forth in Utah Code Section 59-1-610(1)(a), which provides that this

Court “shall grant the commission deference concerning its written findings of fact, applying a substantial evidence standard on review.” Exhibit 2, p. 1. The Utah Supreme Court has held that the “[s]ubstantial evidence standard is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.” *Schmidt v. Utah State Tax Comm’n*, 1999 UT 48, ¶ 7, 980 P.2d 690, 692 (internal quotations omitted). “In addition, a party challenging the Commission’s factual findings bears the burden of marshaling all evidence supporting the findings and showing that the evidence is insufficient.” *Id.* (citing *Kennecott Corp. v. Utah State Tax Comm’n*, 858 P.2d 1381, 1385 (Utah 1993)).

#### DETERMINATIVE CONSTITUTIONAL PROVISION

A. Utah Constitution, Article XIII, Section 6(4):

Notwithstanding the powers granted to the State Tax Commission in this Constitution, the Legislature may by statute authorize any court established under Article VIII to adjudicate, review, reconsider, or redetermine any matter decided by the State Tax Commission relating to revenue and taxation.

#### DETERMINATIVE STATUTES

A. Utah Code Section 59-1-610 (Standard of review of appellate court).

Attached as Exhibit 2.

B. Utah Code Section 59-2-102(12) (Definition of “fair market value”).

Attached as Exhibit 3.

- C. Utah Code Section 59-2-507 (Land included as agricultural – Site of farmhouse excluded – Taxation of Structures and site of farmhouse).  
Attached as Exhibit 4.

## STATEMENT OF THE CASE

### A. Nature of the Case

This appeal is from the final decision of the Utah State Tax Commission, Jane Phan, Administrative Law Judge presiding, issued April 1, 2008. Judge Phan's Findings of Fact, Conclusions of Law, and Final Decision are attached as Exhibit 1.

### B. Course of the Proceedings

This case originated at the Utah State Tax Commission ("the Commission"), where a formal hearing was held on December 18 and 19, 2007. The Commission issued its written Findings of Fact, Conclusions of Law, and Final Decision on April 1, 2008. *Record* at 54-78; Exhibit 1. Petitioners petitioned the Utah Supreme Court for review on April 10, 2008, pursuant to Utah Code Sections 59-1-602 and 63G-4-403. Wasatch County filed a cross-petition in the Utah Supreme Court on April 24, 2008. The Supreme Court exercised its discretion, as authorized by Rule 42(a) of the Utah Rules of Appellate Procedure, to delegate this case to the Utah Court of Appeals.

### C. Disposition at Agency

The Commission heard sharply divergent evidence regarding the appropriate allocation of value to Petitioners' one-acre home sites at issue in this

case. Petitioners submitted evidence that the one-acre home sites should be valued at  $1/160^{\text{th}}$  of the value of the 160-acre lots in which these home sites are located because the home sites, which cannot be sold separately, have no fair market value. The County submitted evidence that the one-acre home sites should be valued at 65% of the value of the 160-acre lots in which the home sites are located because this percentage reflects the value of the legal right to build a home on these lots.

The Commission observed, “[a]lthough 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.” *Record* at 69; Exhibit 1, p. 16. It agreed with both parties that the appropriate method to arrive at that fair market value was through “allocating” a portion of the fair market value of the entire 160-acre lot to the one-acre home site. *Record* at 064; Exhibit, p. 11 (“the County must allocate a fair market value to the one-acre based on the express language of the [Farmland Assessment Act]”). However, the Commission found that the Petitioners’ proposed method of allocation—a *pro rata* method of applying an equal value to any given acre within the lot—failed to address the “disparity in value” that should be reflected by an appropriate allocation. *Id.* Consequently, the Commission adopted the County’s evidence and then applied its own modification to it.

The Commission concluded that the County’s proposed 65% allocation should be attributed to “the developable portion of the land” instead of merely to the one-acre home site. *Id.* Observing that the “developable portion” of each 160-

acre lot is spread over a ten-acre building envelope, within which each one-acre home site must be located, the Commission applied the 65% allocation to this ten-acre building envelope. Then, to find the value of the one-acre home site within that envelope, the Commission divided by ten. *Record* at 65; Exhibit 1, p. 12. This resulted in each home site being allocated 6.5% of the value of its 160-acre lot—one order of magnitude greater than suggested by Petitioners and one order of magnitude less than suggested by the County. Effectively, this reduced the County’s proposed valuation of the one-acre home sites by 90%.<sup>3</sup>

### RELEVANT FACTS

Petitioners’ properties at issue in this appeal are located in the prestigious Wolf Creek Ranches subdivision in Wasatch County. This is a platted subdivision divided into lots of 160-acres, or larger, in size. *Record* at 56; Exhibit 1, p. 3. “Although each parcel is 160 acres or larger, it can be developed as only one, single family home site.” *Id.* Each owner may designate a ten-acre building envelope within the lot in which a single primary residence as well as one caretaker dwelling, barns, corrals, and other agricultural improvements may be constructed. *Record* at 57; Exhibit 1, p. 4. The remaining 150-acres, or more, of each lot remains subject to a conservation easement in perpetuity, on which no improvements may ever be installed and no mining can ever be conducted. *Id.*

Petitioners’ property is located in Wasatch County’s “Preservation-160

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<sup>3</sup> Petitioners initiated the present appeal because the Commission did not go even further and reduce the assessed value of the one-acre home sites by 99%.



zone” which allows “one residence per 160 acres.” *Id.*

Each of Petitioners’ lots, prior to 2006, was assessed under the Farmland Assessment Act (“the FAA”), found in Title 59, Chapter 2, Part 5 of the Utah Code. *Record* at 58; Exhibit 1, p. 5. This act requires county assessors to ignore fair market value and “consider only those indicia of value that the land has for agricultural use.” Utah Code Annotated § 59-2-505(1). By January 1, 2006, however, each Petitioner had built, or begun to build, a dwelling on a one-acre home site within their respective lots. Section 59-2-507(2) of the FAA requires assessors to value “the land on which the farmhouse is located, and land used in connection with the farmhouse . . . using the same standards, methods, and procedures that apply to other taxable structures and other land in the county.” Exhibit 4, p. 1. In other words, the home site was no longer valued only for its “agricultural use,” but for its “fair market value.”

Using fair market value analysis and evaluations of comparable properties, the Wasatch County Assessor (“the Assessor”) had initially determined each one-acre home site to contain 60% of the value of its respective lot. Consequently, as each home site was taken out of the FAA, the Assessor assessed and valued the one-acre home sites at 60% of the fair market value of the entirety of each lot. The remaining acreage of each lot (159-acres or more) remained in the FAA and received the nominal “greenbelt” tax assessment provided under the Act.

At the formal hearing below, the County presented evidence of its allocation methodology and the need for the method to comply with the FAA.

The County's expert, Blaine Hales, testified that 65% of the value of each 160-acre lot should be allocated to its one-acre home site. *Record* at 1432 (lines 4-16). The Petitioners, on the other hand, presented evidence that the one-acre home sites had no independent fair market value at all (*Record* at 69; Exhibit 1, p. 16) and proposed that the Commission therefore allocate a *pro rata* value of 1/160<sup>th</sup> (or about 0.6%) of the value of the 160-acre lot to the one-acre home site. *Record* at 60; Exhibit 1, p. 7.

The Commission found, as a finding of fact, that the Petitioners' proposed methodology was unresponsive to the mandates of the FAA and did not "reflect[] the reality that the building site is worth more than the undevelopable property subject to the conservation easement." *Record* at 064; Exhibit 1, p. 11. In addition the Commission held, as a conclusion of law, that "in the absence of testimony and evidence [from the Petitioners] to the contrary, [the County's] . . . analysis adequately supports that 65% of the value is attributable to the building envelope for these properties." *Record* at 070; Exhibit 1, p. 17. The Commission declined, however, to adopt Mr. Hales' recommendation that the 65% allocation should be limited only to the one-acre home site.

#### SUMMARY OF THE ARGUMENT

The Petitioners should be barred from challenging the Commission's findings of fact. Utah law requires any party challenging the Commission's findings of fact to marshal all the facts supporting the finding. Petitioners, having characterized the issue they raise as strictly one of law, have declined to marshal

the evidence. Therefore, this Court should accept all of the facts, which have not been appropriately challenged, as true.

All the parties agree that “allocation of value” to the one-acre home sites is a necessary methodology to apply in this case because the one-acre home sites cannot be sold separately from the 160-acre lots in which they are located. However, Petitioners suggest that an indiscriminate *pro rata* allocation is the only legally permissible allocation methodology that can be used. The only legal basis alleged to support this assertion on appeal is the statutory definition of “fair market value.” Fortunately, the definition of “fair market value” does not lead to this conclusion. Therefore, the Tax Commission appropriately considered the reality that each acre within the 160-acre lots is not identical. An accurate allocation of fair market value must take into account the property rights and potential use that inure to the acre being assessed and valued as required by the FAA.

The Commission found that the County’s expert, Blaine Hales, was the only witness who attempted to allocate a fair market value to the one-acre home sites in a manner that reflected reality. However, the Commission nevertheless modified Mr. Hales’ recommendations and applied the 65% allocation of value—which he had intended only for the one-acre home sites—to the ten-acre building envelopes in which the one-acre home sites are located. This modification has the practical effect of diluting the value of the home sites by 90%. After marshaling the evidence in support of the Commission’s finding, the County believes that it

becomes apparent that the Commission misconstrued Mr. Hales' short-handed references to the "right to build"—inferring that by this term Mr. Hales was referring to the right to build *anything*. However, taken in context, and taking the entirety of Mr. Hales' testimony into account, it becomes clear that Mr. Hales' analysis only addressed the one-acre home sites and the right to build a single home thereon. He neither attempted nor intended a valuation of the rights to build a caretaker dwelling, barns, corrals, or other outbuildings. Thus his 65% allocation of value should have been limited to the one-acre home sites as he intended.

## DETAIL OF THE ARGUMENT

### I. THE PETITIONERS ARE BARRED FROM CHALLENGING THE COMMISSION'S FINDINGS OF FACT BECAUSE THEY DECLINED TO MARSHAL THE EVIDENCE.

Utah Code Section 63G-4-403(4)(g) requires a party seeking relief from an “agency action [that] is based upon a determination of fact . . . [to show that the agency’s determination] is not supported by substantial evidence when viewed in light of the whole record before the court.” This Court has interpreted section 63G-4-403(4)(g) to mean that “[a] party seeking to overturn the Commission’s factual findings must ‘marshal[] all of the evidence supporting the findings and show that despite the supporting facts, and in light of the conflicting or contradictory evidence, the findings are not supported by substantial evidence.’” *Whitear v. Labor Comm’n*, 973 P.2d 982, 984 (Utah App. 1998) (quoting, in part, *Grace Drilling Co. v. Board of Review of Indus. Comm’n*, 776 P.2d 63, 68 (Utah App. 1989)). In addition, if a party does not marshal the evidence as explained above, this Court “assume[s] the record supports the Commission’s findings.” *Whitear*, 973 P.2d at 985 (citing *Intermountain Health Care v. Industrial Comm’n*, 839 P.2d 841, 844 (Utah App. 1992)).

In the present case, the Petitioners claim they are not challenging the factual findings of the Commission. Brief of Petitioners at 9 (“Petitioners do not appeal the Tax Commission’s Final Decision Findings of Fact.”). However, the Petitioners do attempt to promulgate arguments that challenge the very core of the Commission’s findings of fact.

First, the Petitioners challenge the method of land valuation, a classic factual determination. *See Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344, 355 (Utah 1996) (holding “the choice of valuation methodology used in fixing the value of a property [to be] a question of fact”).

At the Commission’s formal hearing, Wasatch County presented testimony supporting the allocation of 65% of the value of the entire 160-acre lot to the one-acre home sites. The Petitioners argued that the value of the entire lot was spread equally, or *pro rata*, among each acre of the lot. Ultimately, the Commission agreed, generally, with the County’s methodology and rejected the Petitioners’ view of the facts. In fact, the Commission found that the County’s expert was the only witness who attempted to allocate based on “the reality that the building site is worth more than the undevelopable property subject to the conservation easement.” *Record* at 064; Exhibit 1, p. 11.

Now, on appeal, the Petitioners again argue that the only way to value the property is to “establish[] the ‘fair market value’ of each indivisible part of the lot at an equal value to every other indivisible part of the lot.” Brief of Petitioners at 9. Although the Petitioners have not identified the name of the method and have changed the language of their description of the method in various places, it is the same *pro rata* method promoted at the formal hearing and which the Commission rejected as part of its factual findings. The Commission specifically found that the facts do not support a *pro rata* valuation; instead, it found that the “building site is

worth more than the undevelopable” portions of each lot. *Record* at 064; Exhibit 1, p. 11.

If the Petitioners intended to challenge the Commission’s rejection of the *pro rata* method, section 63G-4-403(4)(g) requires them to have marshaled the evidence in support of the Commission’s decision to reject it and then, only after they have done so, state the arguments in favor of the *pro rata* method. Here, however, the Petitioners have declined to marshal the evidence or to even accurately recognize the factual nature of their argument. Having declined to address the factual underpinnings of the Commission’s rejection of their proposed methodology, the Petitioners’ cannot now attack the rejection. Instead, this Court may accept as true the Commission’s unchallenged factual finding that the *pro rata* methodology ineffectively captures the value of the one-acre home sites at issue here.

Second, the Petitioners specifically dispute the facts found by the Commission. They assert that inappropriate “comparables” were used to establish value and that the County’s appraisal of the subject property was unsound because it “was premised on the false assumption that land possessing building rights is always more valuable than land which does not.” Brief of Petitioners at 21-22. They even cite the appraisal testimony of Phillip Cook, their fact expert at the formal hearing, to again urge a *pro rata* methodology for allocating value to the one-acre home sites. *Id.* at 16-17. However, the suitability of comparables and the value of building rights are, of course, quintessential issues of fact. Moreover,

they are inherent to the question of valuation methodology—a recognized factual issue. *Beaver County*, 919 P.2d at 554-55. And the Commission found that Petitioners’ evidence entirely failed to address the “allocat[ion of] a fair market value to the one-acre” home sites “in a manner that reflects the reality that the building site is worth more than the undevelopable property.” *Record* at 64; Exhibit 1, p. 11.

As mentioned above, the Commission found that the Petitioners did not present any evidence that sufficiently addressed the fact that each acre in these 160-acre lots is *not* equal in value to every other acre. *Record* at 064; Exhibit 1, p. 11. The Petitioners have not marshaled the facts that support this finding. On appeal, however, the Petitioners argue that the allocation of value utilized by the County, and essentially adopted by the Commission, is “entirely arbitrary . . . [and a] violation of basic appraisal principles.” Brief of Petitioners at 17 (quoting the formal hearing testimony of fact expert, J. Phillip Cook). Although the County somewhat responds to the substance of this argument in Section II of this brief, this Court should not entertain the Petitioners’ argument because it neither properly identifies the argument as a factual challenge nor marshals the evidence supporting the Commission’s findings.

Moreover, because the Petitioners have not marshaled the evidence, this Court should accept as true—at least as far as the Petitioners’ arguments are concerned—all of the facts found to be true by the Commission, including the “disparity in value” among the acres in the 160-acre lots. *Record* at 64; Exhibit 1,



p. 11. This is an appropriate result because, by not challenging any factual findings, the Petitioners have effectively accepted and endorsed all of the Commission's factual findings *themselves*, even where those findings conflict with the arguments and conclusions advocated in their appeal.

After accepting the Commission's factual findings as true, the Petitioners' arguments for a *pro rata* allocation are factually barred. For example, in explaining the "disparity in value" among the acres in the 160-acre lots, the Commission found that "once the 10-acre building envelope has been designated, the value is no longer equally contributed on a per acre basis" within the 160-acre lots. *Record* at 064; Exhibit 1, p. 11. And it added, "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." *Id.* Having not challenged these factual findings, Petitioners' following argument urging a *pro rata* allocation is eviscerated:

the 'fair market value' of any single acre of an indivisible plat of land withdrawn from 'greenbelt' must be assessed for 'rollback' tax purposes, at a value that is and can be no higher than the value assessed for any other acre. Each of the 160 acres has equal value.

Brief of Petitioners at 12.

In sum, the Petitioners would have this Court accept all of the facts found by the Commission to be true. *See* Brief of Petitioners at 3 (stating the petition for

review “does not raise an issue of fact”). Nevertheless, they request this Court to disregard some of the most important facts found to exist by the Commission by promoting arguments inconsistent with those facts. For these reasons, the County asks this Court to reject Petitioners’ request for relief as inconsistent with the unchallenged facts found to be true by the Commission.

## II. UTAH LAW DOES NOT ESTABLISH THE *PRO RATA* METHOD OF ALLOCATION AS THE ONLY LAWFUL METHOD OF ALLOCATING VALUE WITHIN A PARCEL OF PROPERTY.

While Petitioners do not cite *Alta Pacific v. Utah State Tax Comm’n*, 931 P.2d 103, 120 (Utah 1997) (McIff, District Judge, concurring), the County recognizes that in rare circumstances the issue of valuation methodology can be a question of law when it deals with the “outer limits” that “circumscribe the permissible area of judgment and discretion” of the Commission. This precedent does not diminish the validity of the County’s arguments in section I of this brief, however, because the factual finding of “disparity in value” among the acres within the 160-acre lots remains an unchallenged finding of fact. This factual finding, being unchallenged, eviscerates the applicability of the *pro rata* method of allocation to this case. Nevertheless, the County will briefly show that Utah law does not require that a *pro rata* allocation be the only method of allocation used in situations like the present.

Petitioners’ support their argument for a *pro rata* allocation with only two bases—one a matter of fact and one a matter of law. The first basis—the one of fact—is that the one-acre home sites cannot be sold separately. The second

basis—the one of law—is that the foregoing fact cannot be ignored under Utah’s definition of “fair market value.” The County agrees with the fact that the one-acre home sites cannot be sold separately. However, neither the definition of “fair market value” nor any other Utah law establishes that the *pro rata* method of allocation is the only method that accurately captures the value of indivisible acres of land.

Utah Code Section 59-2-102(12) defines “fair market value” as follows:

‘Fair market value’ means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, ‘fair market value’ shall be determined using the current zoning law applicable to the property in question. . . .

Exhibit 3, p. 1.

From this definition, it is clear that “fair market value” contemplates a hypothetical transaction between a “willing buyer” and a “willing seller.” It further requires that currently applicable zoning laws be taken into account. Before Petitioners’ application of this statute to the facts of this case is addressed, we will next address the statutes in the FAA that require these one-acre home sites to be assessed for their fair market value in the first place.

Utah Code Section 59-2-507(2) explains that the land on which a “farmhouse” is located is to be valued differently from the rest of the farm;

namely, while the farm is valued only for its agricultural use, the land connected with the farmhouse is valued for its fair market value:

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.”

Exhibit 4, p. 1.

And finally, Utah Code Section 59-2-510, entitled “Separation of land,” further explains how portions of otherwise agricultural land must be valued and assessed differently if they are not being put to agricultural use:

Separation of a part of the land which is being valued, assessed, and taxed under this part . . . for a use other than agricultural, subjects the land which is separated to liability for the applicable rollback tax, but does not impair the continuance of agricultural use valuation, assessment, and taxation for the remaining land if it continues to meet the requirements of this part.

In this case, the Petitioners begin their analysis by conceding that Utah Code Section 59-2-510 requires any acre withdrawn from agricultural greenbelt status to be subject to the rollback tax described in section 59-2-506. Brief of Petitioners at 11. In addition, the Petitioners correctly state that at the time of the hearing, “[n]one of the remaining 159 . . . acres ha[d] ceased its agricultural use,

and hence remain[ed] subject to agricultural assessment [meaning the greenbelt tax break].” *Id.* However, the Petitioners then cite to the definition of “fair market value” to argue that because each 160-acre lot is indivisible, any acre withdrawn from greenbelt status must have the same value as any other acre in that lot. Brief of Petitioners at 12. But this argument contains a *non sequitur* which was acknowledged by Petitioners’ expert at the formal hearing below.

Petitioners’ expert, Professor David Thomas, testified that Utah’s definition of “fair market value” leads to a result very different from the one the Petitioners now advocate. He stated that a literal application of the definition of “fair market value” requires that “***no*** fair market value may be assigned to ***any*** portion of the lots, only to the entire lot” because only the entire lot can be sold. *Record* at 1306 (lines 18-20) (emphasis added); *see also Record* at 1306 (lines 10-11). In response to a clarifying question, Professor Thomas stated as follows:

Mr. Low:     Okay. So your position is there is ***no*** fair market value for the one acre home site upon which the—these petitioners’ built their homes?

Mr. Thomas: For the land, correct.

*Record* at 1306 (lines 21-24) (emphasis added). Thus, far from supporting a *pro rata* allocation, Petitioners’ reading of the definition of “fair market value” leads to the legal conclusion that the one-acre home sites have *no fair market value at all*: they are completely valueless because they are not independently marketable.

Another absurd consequence of Petitioners’ legal theory is that the surrounding land still being put to agricultural use would actually continue to be

taxed while the one-acre home sites would not. For example, the one-acre home site—which must be assessed by its fair market value—would have *no* fair market value, so its tax would be zero. Meanwhile, the surrounding land still being put to agricultural use would be taxed not for its “fair market value,” but for its “indicia of value that the land has for agricultural use.” U.C.A. § 59-2-505(1)(a). Thus the agricultural land’s indivisibility and unmarketability wouldn’t matter; it would still have a value and it would still be taxed at something higher than zero dollars. This scenario incongruously rewards landowners with a *reduction* in their property taxes for *removing* land from greenbelt.

The Utah Supreme Court has stated,

[W]hen interpreting a statute, this court looks first to the statute's plain language to determine the Legislature's intent and purpose. We read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters. We follow the ‘cardinal rule that the general purpose, intent and purport of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious to its manifest object.’

*Miller v. Weaver*, 2003 UT 12, ¶ 17, 66 P.3d 592 (citations omitted); *see also Zissi v. State Tax Comm’n of Utah*, 842 P.2d 848, 854 (Utah 1992) (“A general rule of statutory construction is that a statute should be construed as a comprehensive whole.”).

In addition,

statutes are considered to be in *pari materia* and thus must be construed together when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object. If it is natural or reasonable to think that the understanding of the legislature or of persons affected by the statute would be influenced by another statute, then those statutes should be construed to be in *pari materia*, construed with reference to one another and harmonized if possible.

*Utah County v. Orem City*, 699 P.2d 707, 709 (Utah 1985) (footnotes omitted).

Here, sections 59-2-102(12) (definition of “fair market value”) and 59-2-507 (taxation of farmhouse site) are related and must be read together, giving each its intended meaning. Section 59-2-507 tells the County *what* land to remove from agricultural use, or colloquially, greenbelt; namely, the County must value the land associated with the farmhouse as residential land separate from the surrounding agricultural land. Exhibit 4, p. 1. This mandate applies whether the land associated with the farmhouse can be sold separately or not. Section 59-2-102(12), on the other hand, by defining “fair market value,” tells the County *how* to value the land not eligible for agricultural use. Exhibit 3, p. 1. Namely, instead of valuing it only for its agricultural value under section 59-2-505, the County must recognize the fair market value of the land connected with the farmhouse.

The conflict between these two statutes, exploited by Petitioners, arises in the not uncommon situation where the agricultural land is located in a zone in which it cannot be subdivided. Here, for example, none of the 160-acre lots can be subdivided any further because they are located in the P-160 zone; nevertheless, the County is required to deduce the fair market value of only one of the acres within each lot. Where the acre to be valued cannot be sold separately, the question then arises as to how to value that indivisible, unmarketable acre.

The County is the first to admit that no easy answers exist for resolving the difficulties of assessing and valuing an acre which cannot be sold separately. The County Assessor testified at the formal hearing how he sought and obtained guidance from the state and others regarding how to properly value the one-acre home sites at issue here. *Record* at 1369-71. The County's assessor thoughtfully employed a method of allocating fair market value that is logical, responsive to all governing law, and fair. The Commission accepted, in large part, this method of allocation and observed that it was the only method that "reflect[ed] the reality" of the facts on the ground, including the fact that "the building site is worth more than the undevelopable property." *Record* at 064.

Allocation is, obviously, the only valuation methodology that can be used to value an indivisible, unmarketable acre. Even Petitioners' concede this point: their proposed *pro rata* valuation is itself, an allocation; it is merely an indiscriminate allocation. Where the acre to be valued cannot be sold separately, its value must be deduced by allocating to it a share of the overall fair market



value of the entire lot. In the present case, the fair market values of the lots are not in dispute—only of the one-acre home sites within those lots. However, while all parties agree that allocation is a necessary methodology, differences arise among the allocation methods used. Each party’s method of allocation is different, and each method results in wildly different values—varying by orders of magnitude.

The County’s expert, Blaine Hales, testified that 65% of the value of the entire lot should be allocated to the home site. The basis for this testimony is articulated in the next section of this brief. The Petitioners, on the other hand, proposed and continue to propose, allocation on a *pro rata* method. Simply put, *pro rata* is a method of allocation which takes the total value of the entire 160-acre lot and indiscriminately divides—or allocates—that value equally among all acres in the lot, regardless of the features of the land or the limitations imposed on it.

Under the *pro rata* method, an acre containing a rocky cliff or a sinkhole is as valuable as a wooded acre with a spectacular view, and an acre burdened with perpetual restrictions against development is as valuable as an acre suitable for a primary residence. Recognizing the obtuseness of the *pro rata* method of allocation, the Commission found that it did not “address[] the disparity in value” between the developable and undevelopable portions of the individual lots. *Id.*

Neither at the formal hearing nor now, on appeal, do the Petitioners explain the significance of treating every acre equally. Certainly, the definition of “fair market value” does not lead to Petitioners’ proposed method of allocation.

Instead, as already shown, if anything, Petitioners’ view of this definition sets fair

market value at zero because the one-acre home sites—alone—can never “change hands between a willing buyer and a willing seller.” § 59-2-102(12); *see also* Brief of Petitioners at 18 (emphasizing that the definition of “fair market value” requires the property to be able to change hands). Apparently uncomfortable with the extreme result of their legal theory, the Petitioners back off of it a half-step and argue that the one-acre home sites are only *almost* worthless. But Petitioners’ proposed *pro rata* value is itself not a fair market value but an *allocation* of fair market value. It is merely an allocation that ignores the true value of the one-acre home site.

Factually, the *pro rata* method also ignores the reality on the ground, which the Commission attempted to address. In rejecting the *pro rata* method of allocation, for example, the Commission reasoned that “once the 10-acre building envelope has been designated, the value is no longer equally contributed on a per acre basis.” *Record* at 064. Moreover, the Commission observed that under the mandates of the Farmland Assessment Act, “[r]egardless 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.” *Record* at 064 (emphasis added).

In sum, the definition of “fair market value” must be read in light of the FAA because sections 59-2-507(2) (“Taxation of structures and site of farmhouse”) and 59-2-510 (“Separation of land”) of the FAA require the County to assess and tax, separately from the agricultural acreage, those acres no longer

being put to agricultural use. The method of allocation used to accomplish this requirement must reflect the value of the home site *as a home site*, and not as an indiscriminate acre within the whole. The Commission acted within its expertise in concluding that the *pro rata* method neither reflected reality nor the requirements of the FAA. The County asks that this Court likewise recognize the shortcomings of the *pro rata* approach and affirm the Commission's rejection of it.

III. THE COMMISSION SHOULD HAVE APPLIED THE ONLY RELIABLE EVIDENCE IT WAS GIVEN AND ALLOCATED 65% OF THE LOT VALUES TO THE ONE-ACRE HOME SITES.

Utah Code Section 59-1-610(1)(a) states:

When reviewing formal adjudicative proceedings commenced before the commission, the Court of Appeals . . . shall[] grant the commission deference concerning its written findings of fact, applying a substantial evidence standard on review. . . .

Exhibit 2, p. 1.

In referencing section 59-1-610(1)(a), the Supreme Court of Utah concluded:

Under such a standard, we must uphold the Commission's findings of fact if the findings 'are supported by substantial evidence based upon the record as a whole.'

*Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344, 354 (Utah 1996) (quoting, in part, *Zissi v. State Tax Comm'n of Utah*, 842 P.2d 848, 852 (Utah 1992)).

According to Utah Code Section 63G-4-403(4)(g), this Court will grant a party's requested relief if that party has been "substantially prejudiced" by an agency action that is "based upon a determination of fact, made or implied by the agency . . . when viewed in light of the whole record before the court." To the Court this to means that "[a] party seeking to overturn the Commission's factual findings must 'marshal[] all of the evidence supporting the findings and show that despite the supporting facts, and in light of the conflicting or contradictory evidence, the findings are not supported by substantial evidence.'" *Whitear v. Labor Comm'n*, 973 P.2d 982, 984 (Utah App. 1998) (quoting, in part, *Grace Drilling Co. v. Board of Review of Indus. Comm'n*, 776 P.2d 63, 68 (Utah App. 1989)).

In this case, the Respondent's expert, Blaine Hales, testified that an allocation of 65% of the fair market value of the entire 160-acre lot to *the one-acre home site* was consistent with the commonly accepted standards of appraisal practice. *Record* at 1431-33. The Commission found, as a finding of fact, that the Petitioners did not present any evidence "reflect[ing] the reality that the building site is worth more than the undevelopable property subject to the conservation easement." *Id.* at 064; Exhibit 1, p. 11. This left Mr. Hales' testimony as the only reliable testimony on the appropriate allocation to be made to the one-acre home

sites. Nevertheless, the Commission made the factual finding that, “[f]rom 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.” *Record* at 64; Exhibit 1, p. 11.

The County’s contention on appeal is that in the absence of reliable evidence to the contrary, the Commission had no basis on which to modify the conclusions asserted in Mr. Hales’ testimony. While Mr. Hales’ testimony supported an allocation of 65% of the lot’s value to the one-acre home site, the Commission modified Mr. Hales’ conclusions and allocated 65% of each lot’s value to the ten-acre building envelopes within which each one-acre home site is located. The County asserts that the Commission erred in modifying Mr. Hales’ uncontested testimony. The evidence supporting the Commission’s finding, as well as that which supports the County’s position on this issue are marshaled below.

A. Evidence that Supports the Allocation of 65% of the Value of the Lot to the Ten-Acre Building Envelope.

According to the Commission, the evidence that supports the allocation of 65% of the value of the lot to the ten-acre building envelope, and not the one-acre home site, comes from Mr. Hales’ appraisal and formal hearing testimony, as well

as other undisputed testimony describing the building potential of the ten-acre envelope. *Record* at 064; Exhibit 1, p. 11.

1. *Mr. Hales' Appraisal and Testimony*

The Commission's finding most likely stems from Mr. Hales' explanation of the building rights associated with each lot in Wolf Creek Ranches. In referring to his land valuation methodology, Mr. Hales wrote "we must provide an allocation of value between the one-acre building site (*with all rights to build*) versus 159-acres of land with rights to graze, hunt, and recreate." *Record* at 513-14 (emphasis added); Exhibit 5, p. 1-2. In addition, at the formal hearing, Mr. Hales testified that he arrived at the value of the one-acre home sites in two different ways. He valued "one acre of land," and he also valued "the right to build." *Record* at 1420 (line 5). At times such as this during his testimony, Mr. Hales did not clearly specify that he was valuing *only the right to build a primary residence*. Therefore, the Commission may have concluded that his 65% allocation included the value of the right to build *anything*, which right, concededly, applies to the entire ten-acre building envelope and not just the one-acre home site.

Another example of the blurring that the Commission may have perceived to occur between the right to build anything and the right to build a primary residence occurred in Mr. Hales' testimony in which he addressed the value of the right to build a home:

Mr. Low: Um—and one more point on that. As you are valuing that home site and you're attributing to it the right to build and you[re] valuing the right to build, there's already a home on that site. True?

Mr. Hales: Yes.

Mr. Low: And so to ignore that fact and to value it as if there were 1/160<sup>th</sup> of a home on that site wouldn't make a whole lot of sense, would it?

Mr. Hales: Well—you *have to have the whole building right to build a house*. There is—in my mind—it's attached to the home site and that's how they've been doing it in the past. And if I went out and did the direct comparable sales analysis, I would be using *the full right to build* as my—as part of my comparisons.

Mr. Low: Is—is the building or residence under your understanding of the Farmland Assessment Act, an agricultural use?

Mr. Hales: No.

Mr. Low: And so to say that that 159/160<sup>ths</sup> of that *right to build* is being used in the agricultural land around it, does that somehow measure to your understanding of the Farmland Assessment Act?

Mr. Hales: Well, and again, I don't like to divide it into percentages, but I just think that that's where the right goes – with the house.

*Record* at 1423 (starting line 10) to 1424 (ending line 9) (emphases added).

Mr. Hales also determined the value of the remaining 159-acres by finding sales of comparable properties on which the “right to build” was restricted. Again, he referred to this right in general terms that were apparently construed by the Commission as the right to build *anything*. He testified as follows:

Mr. Low: And then the remainder of the 159 acres, what you were valuing there is the area, 159 acres –

Mr. Hales: Yes.

Mr. Low: And the right to graze and hunting[, ] recreation.

Mr. Hales: And—and I write that down just as a clarification point, but it’s actually all—all the rights that exist in the property *less the right to build*.

*Record* at 1421 (lines 7-14) (emphasis added).

He further testified that his goal was to find comparables of “land without the right to build” to “try to come up with the value for that—that 159 acres.”

*Record* at 1425 (lines 8 and 16-17). From this and the previous testimony, the Commission concluded that Mr. Hales erroneously lumped the nine other acres within the ten-acre building envelope—which enjoyed some measure of building rights—together with the 150-acres for which *all* building rights are prohibited by the conservation easement. If Mr. Hales was allocating *all* the rights to build *anything* to the one-acre home sites, then the Commission’s expansion of his



allocation to the entire ten-acre building envelope in which improvements can lawfully occur would have been appropriate.<sup>4</sup>

After appraising the value of unbuildable land, the second appraisal methodology employed by Mr. Hales was “to look at what people were paying for the right to build.” *Record* at 1426 (lines 1-2). He found this value by looking at the purchase price of conservation easements that had the effect of “purchas[ing] the rights to build or to strip the land of any right to continue to develop—or build cabins or home sites.” *Record* at 1426 (lines 5-7). In discussing this second methodology, even counsel for the County, in the questioning, at one point inadvertently lumped the nine other developable acres in the ten-acre building envelope together with the 150-acres that are restricted by a conservation easement. *Record* at 1429 (lines 14-18).

Mr. Hales found that the purchase price of a conservation easement that restricted all development rights on the burdened land cost between 60% and 70% of the total value of the land. *Record* at 1431 (lines 8-9). Mr. Hales averaged these to arrive at a cost of 65% of the total value of the land. *Id.* He observed that some comparable conservation easements allowed some limited building rights,

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<sup>4</sup> However, one of the errors of the Commission’s ruling is that it only valued what it perceived to be “the right to build.” It neglected to value the land itself. Mr. Hales’ 65% figure, however, valued both “one acre of land” *and* the “right to build” on it. *Record* at 1420 (line 5). By expanding the right to build to all ten acres in the building envelope, but without including a value of the other nine acres of land, the Commission only took into account one part of Mr. Hales’ two-part calculus.

such as the right to build a future cabin, and so he placed less reliance on these comparables. *Id.* (lines 1-6).

In combining these two approaches—the value of “unbuildable” land and the value of “the right to build”—Mr. Hales testified that, for example, of Petitioner Osborn’s 160-acre lot worth \$1.8 million, \$1.2 million was attributable to “that legal right [to build] plus an acre of land.” *Record* at 1433 (lines 1-5).

The foregoing testimony can be construed to support the inference that Mr. Hales’ appraisal models depended on the assumption that all rights to build *anything* were restricted to the one-acre building site of each lot, and that that single acre, therefore, should be allocated all of the value to build anything. It could also support the conclusion that he inadequately accounted for the remaining nine “buildable” acres within the ten-acre building envelope. If the Commission was correct that Mr. Hales’ allocation rested on this assumption, then it properly expanded Mr. Hales’ 65% allocation to include all ten acres within the approved building envelopes, in which Petitioners do in fact enjoy some rights to build improvements.

## *2. Testimony Describing the Building Potential of the Ten-acre Envelope*

As part of its factual findings, the Commission stated that part of the reason for allocating 65% of the value of each lot to the ten-acre building envelope was because of the “potential” of the envelope, as described by some of the witnesses at the hearing. *Record* at 064; Exhibit 1, p. 11. The formal hearing testimony was

unanimous in acknowledging that the ten-acre building envelope, of which the one-acre home site is part, is the only portion of the 160-acre lots that can be developed and improved. The Commission correctly observed that the right to build and improve, which is restricted entirely to the ten-acre building envelope, makes that acreage the most valuable part of the lot. Moreover, once the ten-acre building envelope is designated, there is no restriction as to which acre may contain the primary residence; it can be built anywhere within the envelope.

*Record* at 1462 (lines 3-5) (testimony of Douglas Anderson).

Robert Crawford, Ph.D, testified that the highest and best use of each lot was as a 160-acre residential lot. *Id.* at 1337. Mr. Douglas Anderson, the developer of Wolf Creek Ranches, added that the purpose of the Ranch was to preserve as much land as possible while limiting development to a primary residence and a few other improvements within a ten-acre building envelope. *Id.* at 1461-62. Furthermore, Mr. Glen Burgener, Wasatch County Assessor, testified that extensive consultation with the State Tax Commission's Property Tax Division resulted in several conclusions, including that the "bulk of the value should be in that area that can be disturbed," meaning the "10 acre area of disturbance." *Id.* at 1371 (lines 13-15).

Reading the testimony of Dr. Crawford, Mr. Anderson, and Mr. Burgener together most likely led the Commission to reason that since development and improvement may take place on ten acres, and not just one, the ten-acre building envelope is what Mr. Hales was referring to when he discussed the value of the

“right to build.” Therefore, under this view of Mr. Hales’ testimony, his 65% allocation should have been spread over the ten-acre building envelope and not the one-acre home site.

B. Evidence that Supports the Allocation of 65% of the Value of the Lot to the One-Acre Home Site.

The Commission was correct in finding the ten-acre building envelope to be the most valuable land within the 160-acre lots, because the only improvements permitted on the lot must exist within the confines of these building envelopes. However, the Commission erred in finding the ten-acre building envelope to be 65% of the fair market value of the entire lot because there was no substantial evidence to support such a finding. Instead, the only appraisal testimony found to be reliable by the Commission—that of Blaine Hales—was directed at the right to build a primary residence on one-acre of land, and not the right to build a caretaker’s dwelling, barn, corral or other structure within the other nine acres of the ten-acre building envelope. While this distinction could have been made more clearly, the evidence taken as a whole indicates that this is what was meant.

First, at the formal hearing, Mr. Hales plainly testified that his appraisal was directed at arriving at the value of the one-acre home sites, and not the value of the as yet undeveloped nine acres within the ten-acre building envelope:

Mr. Low:      What was the purpose of the preparation of your report?

Mr. Hales: Um—when I was—when I was contacted, I was asked to help estimate the value—or allocate the value of the—*the home site* of a property for greenbelt purposes.

*Record at 1413 (lines 16-21) (emphasis added).*

This understanding was repeated later:

Mr. Low: Okay. As you followed through with your assignment, I guess, which was to appraise the one acre home site—the home sites here—

Mr. Hales: Mm-hmm.

*Record at 1415 (starting line 24) to 1416 (ending line 2).*

In light of this understanding, Mr. Hales testified that the one-acre home site, and not the ten-acre building envelope, should be allocated 65% of the fair market value of the entire lot. He stated:

Mr. Hales: Right. And I used . . . data that was measured in percentages and that it would be reasonable for the county assessor because each lot up there—you know—has a different value. *And the value of the—what they're buying is a home site*—and so that percentage would cross over well as we appraise other properties or as the assessor appraises other properties. If he has a percentage, he can be more consistent in his evaluation.

Mr. Low: Okay. And what is that percentage?

Mr. Hales: That percentage is 65% [of the value of the lot].

*Record* at 1432 (lines 6-16) (emphasis added).

The home site, and not the building envelope, was the focus of Mr. Hales' testimony because Utah Code Section 59-2-507(2) only requires the "site of the farmhouse," or "the land on which the farmhouse is located" to be valued for its residential use. Neither the County, nor the Commission for that matter, was ever required to value the other nine acres in the ten-acre building envelope in this case because none of those other nine acres had been removed from agricultural use.

It is evident from the language used throughout the CC&Rs of Wolf Creek Ranches, and especially in Section 7.3 of that document, that the home site is that parcel of land on which the primary single family dwelling is constructed. *Record* at 125; Exhibit 6, p. 1. Section 7.3 also makes a plain distinction between the site on which the primary dwelling is located and the rest of the developable area, including the site of the caretaker dwelling and the sites of the allowable nonresidential improvements. *Record* at 125; Exhibit 6, p. 1.

Mr. Hales and other witnesses distinguished between the one-acre on which the home is located and the larger ten-acre building envelope, of which the home site is a part.

Mr. Low: . . . And you indicate that the building site which you are allocating to that, and which you are valuing, was one-acre of land in terms of space and area, is that right?

Mr. Hales: Yes.

Mr. Low: And that's consistent with the area that Mr. Burgener [Wasatch County Assessor] said that he applies countywide—the home site in agricultural land is one-acre.

Mr. Hales: Right.

*Record* at 1420 (lines 14-22).

Given that Mr. Hales' testimony plainly articulated the value of the one-acre home site to be 65% of the value of the lot, and given that the meaning of the term "home site" was understood by the parties and the Commission, the Commission can only have inferred that Mr. Hales' short-hand references during a part of his testimony to the "right to build" included the right to build *anything*, and not just the right to build a primary residence on the one-acre home site. This inference would have led the Commission to allocate Mr. Hales' 65% value of the "right to build" to the ten-acre building envelope instead of to the one-acre home site as he had recommended.

That the Commission's application of Mr. Hales' testimony to the ten-acre building envelope is mistaken should be clear from the context of his testimony. For example, at one point Mr. Hales stated that what he was "valuing here is one acre of land and the right to build." *Record* at 1420 (lines 4-5). Taken in isolation, this shorthand reference to "the right to build" could be inferred to mean the right to build *anything* in the ten-acre building envelope. However, just a few lines later the meaning was clarified as the "right to build a residence." *Record* at

1420 (lines 23-25) through 1421 (lines 1-6); *see also Record* at 1420 (lines 19-22) (narrowing the right to build to the “home site”).

Mr. Hales’ testimony only supports the conclusion that 65% of the value of the lot should be allocated to the one-acre home site.

Mr. Low: . . . [W]hy did you feel that that was the way to go about this [meaning, to value the home site via allocation]? You valued the one-acre home sites, you value the land at one-acre, plus that one stick of the right to build. Could you explain that to me?

Mr. Hales: . . . . The point is there is *one* building right and the question is should that value be included with the home site or should it be included with the agricultural land and kept from being taxed as most homeowners are taxed. And the way that they’ve been doing [assessments] in the past is the right to build . . . is valued in that one-acre home site because they used comparable sales of *one-acre lots that are improved with homes*.

. . . .

Mr. Hales: . . . . [I]f you go and look at the property [in Wolf Creek Ranches] and look at all of the amenities that a property owner would enjoy for having a one-acre home site in that subdivision, that would be a very valuable site. And no, a one-acre lot is not w[or]th as much as a 160 acre lot, but it is still very, very valuable.

*Record* at 1421 (starting line 21) through 1423 (ending line 9).



Thus Mr. Hales' 65% allocation represents two figures: "one acre of land" plus "that one stick" of legal rights; namely, the right to build a home on that acre. At no point in Mr. Hales' testimony did he ever discuss or attempt to value the right to build a caretaker's dwelling, a barn, a corral, or any other such outbuilding. Neither did he attempt to value the nine acres of land remaining in the ten-acre building envelopes. The complete lack of any evidence regarding these values should have given the Commission pause before expanding Mr. Hales' 65% figure to the ten-acre building envelope.

One reason why the value of the right to build a barn, corral, or other outbuilding was not attempted is that it might not be possible to do so. In discussing the value of land that lacks the "right to build," Mr. Hales addressed one of his comparables that also lacked the "right to build." It was an 80-acre parcel adjacent to Wolf Creek Ranches. *Record at 1427* (lines 18-24). An issue had previously developed in the testimony of Petitioners' appraisal expert, Philip Cook, as to whether this particular comparable was an appropriate one because it was purchased by the owner of adjacent land and, when combined with the adjacent land, gave that purchaser at least 160-total acres—the minimum size to qualify for a building permit. This purchaser, prior to purchasing the 80-acre parcel, apparently lacked sufficient acreage to obtain a building permit. In discussing the "right to build" that sprang into existence as a result of this purchase, the right was repeatedly referred to as the ability to acquire a "building permit." *Record at 1428* (lines 1-2, lines 6-7, line 14); *Record at 1429* (line 2).

The equating of the “right to build” with a “building permit” is instructive regarding the intent of Mr. Hales’ testimony. Utah law does not require a building permit for “a structure used solely in conjunction with agriculture use, and not for human occupancy.” Utah Code Section 58-56-4(5)(a). Thus, even though the Petitioners’ lots are located in the P-160 zone, this zone only limits the ability to obtain permits to build a home, and not the ability to build a barn, a corral, or other outbuildings. Valuing the right to build a barn, therefore, is impractical. In fact, even when Mr. Hales valued the conservation easement itself, he only used comparables that stripped the right to build homes and cabins, not barns and corrals. *Record* at 1426 (lines 5-7). Therefore, where Mr. Hales never intended to value the right to build barns, corrals, and outbuildings, the repeated short-hand references in his testimony to the “right to build” clearly referred to the right to build *a home*. And each 160-acre lot authorized the construction of only a single primary residence. When valuing this right—the right to build a home—Mr. Hales attributed that entire right only to the one-acre home site where that right was exercised, and not to the other nine acres in the ten-acre building envelope where it was not.

The reason for allocating that entire right only to the one-acre home site is succinctly put by Mr. Hales when he said,

“Well—you have to have the whole building right to build a house. There is—in my mind—it’s attached to the home site and that’s how they’ve been doing it in the past. And if I went out and did the direct comparable sales

analysis, I would be using the full right to build as my—as part of my comparisons.”

*Record* at 1423 (lines 18-23). Thus, in Mr. Hales’ methodology, the 65% allocation attributable to the right to build *a home* should be allocated to that acre where this right was exercised, and not spread among an additional nine acres where it was not exercised.

The evidence at the formal hearing was that the P-160 zone in which Petitioners’ properties are located permitted them to build *one* single family residence. *Record* at 56; Exhibit 1, p. 3.<sup>5</sup> The conservation easement which burdened these lots mirrored the requirements of the zone: *one* home site is allowed, as well as *one* caretaker’s dwelling and as many agricultural buildings or improvements as desired. *Record* at 57; Exhibit 1, p. 4.

It is noteworthy that the Commission observed that the County did *not* provide evidence showing “which portion of the [65%] is attributable to each acre [in the ten-acre building envelope].” *Record* at 065; Exhibit 1, p. 12. The Commission is absolutely correct in this observation. The County did not present evidence of value of the other nine acres within the ten-acre building envelope because those acres were not at issue: they had not been removed from agricultural use. Consequently, these other nine acres were not the focus of the case, and the County had no reason to obtain or present evidence establishing their

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<sup>5</sup> What is less clear in the record is that the zone, at the time this development vested in its property rights, also allowed the construction of a single caretaker’s dwelling. This right is also guaranteed by the conservation easement.

value. Therefore, it is somewhat inconsistent for the Commission to apply Mr. Hales' 65% allocation figure to the entire ten-acre building envelope—when he intended it to only apply to the one-acre home site—and then fault Mr. Hales for not telling them how to do it.

Nevertheless, when examining Mr. Hales' figures, it is seen that there is room for inference on the approximate value of the remaining nine acres within the ten-acre building envelopes. He testified that 65% of the value of the 160-acre lot should be allocated to the one-acre home site. He also testified that the conservation-easement burdened land should be valued at about \$3,000 per acre. *Record* at 1432 (lines 2-3). Applying these figures to the facts at hand, of a typical 160-acre lot worth \$1.8 million, the one-acre home site, at 65%, should be valued at \$1.2 million. *Record* at 1432 (starting line 17) through 1433 (ending line 5). The 150 undevelopable acres, at \$3,000 per acre, should be valued at about \$450,000. Adding the value of the one-acre homesite (\$1.2 million) to the value of the 150 undevelopable acres (\$450,000) equals \$1.65 million. Under Mr. Hales' analysis, therefore, approximately \$150,000 of the \$1.8 million lot value remains available for allocation to the remaining nine acres within the ten-acre building envelopes.

If asked, Mr. Hales could have investigated and testified as to how to allocate this \$150,000 to the other nine acres in the ten-acre building envelope. However, as those nine acres were not at issue, any differences in allocation among them were never discussed. Therefore, while we know that about

\$150,000 should be allocated to those nine acres, we don't know whether any particular acre within those nine should be valued differently from another. Nevertheless, the Commission's decision entirely ignores, certainly inadvertently, this \$150,000 of unallocated value. When the Commission expanded Mr. Hales' 65% value—which he had intended to apply only to the one-acre homesite—to apply to the entire ten-acre building envelope, this unallocated \$150,000—intended to apply to the remaining nine acres in the envelope—escaped the Commission's attention. Under the Commission's decision as it now stands, this \$150,000 apparently must remain forever unallocated.

Not only does the Commission's decision erroneously fail to account for, or allocate, \$150,000 of the fair market value, but it also unreasonably dilutes the value of the one-acre home sites as testified to by Mr. Hales. Mr. Hales was the only witness who allocated a fair market value to the one-acre home sites "in a manner that reflects the reality that the building site is worth more than the undevelopable property." *Record* at 64; Exhibit 1, p. 11. Nevertheless, after finding his testimony to be the only helpful testimony on the issue, the Commission diluted the value he established by 90%, or by one entire order of magnitude. Thus the Commission not only arbitrarily *expanded* Mr. Hales' testimony (by applying the 65% figure to the entire ten-acre parcel), but it then also arbitrarily *contracted* it (by dividing by 10 to find the value of the one-acre home site).

In light of these facts, it is no wonder that the Commission felt itself to be “unable to further determine which portion of the [65%] value is attributable to each acre [within the ten-acre building envelope], other than using 1/10 of the 65% of the total market value.” *Record* at 065; Exhibit 1, p. 12. The Commission had not been given any guidance in carrying out this unwarranted exercise. Moreover, the Commission had overlooked that Mr. Hales’ testimony intended for the remaining, unallocated \$150,000 to be allocated to the nine remaining acres within the ten-acre building envelope. As the Commission, by its own admission, lacked substantial evidence on how to expand, and then contract, Mr. Hales’ testimony, this Court should reverse its factual findings on this point and, based on the record, recognize the value of the one-acre home sites as 65% of the value of the entire lot.

As a final matter, the County is required to establish substantial prejudice before this Court will reverse the Commission’s findings of fact. § 63G-4-403(4)(g). The Commission’s decision to allocate the one-acre home sites a value of 6.5% of the entire lot value prejudices the County and its citizens. It artificially reduces the value of the home sites by an entire order of magnitude (from an average of \$1.2 million down to an average of \$120,000), and it thereby improperly shifts the property tax burden among the population.

## CONCLUSION

For the foregoing reasons, Wasatch County asks this Court to uphold the Utah State Tax Commission's rejection of Petitioners' proposed *pro rata* allocation methodology. Further, Wasatch County asks this Court to reverse the Commission's factual finding that 65% of the value of each lot is attributable to the ten-acre building envelope. In place of the latter factual finding, the County asks this Court to allocate 65% of the value of each lot to the one-acre home sites that have been established in each lot.

DATED this 2 day of December, 2008.

A handwritten signature in black ink, appearing to read 'Thomas L. Low', with a long horizontal line extending to the right.

THOMAS L. LOW, Attorney for Wasatch County  
Appellee and Cross-appellant

## CERTIFICATE OF MAILING

I hereby certify that I mailed two copies of the foregoing brief, in its bound condition, by first class mail, postage paid, on the 2 day of December, 2008, to each of the following:

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A handwritten signature in black ink, appearing to read 'Thomas L. Low', with a long horizontal flourish extending to the right.

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Thomas L. Low, Attorney for Wasatch County  
Appellee and Cross-Appellant



ADDENDA:

- EXHIBIT 1: Utah State Tax Commission's Findings of Fact, Conclusions of Law, and Final Decision, issued April 1, 2008.
- EXHIBIT 2: Utah Code Section 59-1-610
- EXHIBIT 3: Utah Code Section 59-2-102(12)
- EXHIBIT 4: Utah Code Section 59-2-507
- EXHIBIT 5: Quoted Portion of Mr. Blaine D. Hales' Appraisal Report
- EXHIBIT 6: Quoted Section of Declaration of Covenants, Conditions, and Restrictions for Wolf Creek Ranch
- EXHIBIT 7: CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES:
- Utah Constitution, Article XIII, Section 6(4)
- Utah Code § 58-56-4(5)(a)
- Utah Code § 59-1-602
- Utah Code § 59-2-301.2
- Utah Code § 59-2-505
- Utah Code § 59-2-506
- Utah Code § 59-2-510
- Utah Code § 63G-4-403
- Utah Code § 78A-4-103(2)(j)
- Utah Rules of Appellate Procedure, Rule 42(a)

# **EXHIBIT 1**

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BEFORE THE UTAH STATE TAX COMMISSION

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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 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:

<b>Petitioners</b>	<b>Lot/Parcel No.</b>	<b>Acres</b>	<b>County's Rollback Values Appealed</b>	<b>County Board's 2006 Values Appealed</b>
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

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

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

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

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 F.A.A. 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 F.A.A.

13. The F.A.A. requires disparate treatment regarding the home site and remaining acres that are ranched or farmed. Pursuant to the F.A.A., 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 F.A.A., the amount of the tax assessed, however, was not based on the market value, but instead on the greenbelt value pursuant to the F.A.A.

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.<sup>1</sup> 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, 1/160<sup>th</sup> of the total value, as it is the entire lot and the similarity to all other lots within

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<sup>1</sup> 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 Wasatch 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

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

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).)

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  $1/160^{th}$ <sup>2</sup> 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

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<sup>2</sup> For Lot 46 which was 184 acres the rollback tax must be based on  $1/184^{th}$  of the total value

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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

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

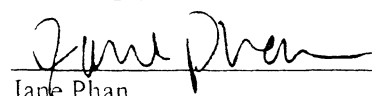
designated, as had occurred for all properties subject to this appeal by the 2006 lien date, there are two distinct and identifiable classes of property, the 10 acre building envelope and the remaining undevelopable area covered by the conservation easement. These two areas do not contribute equally 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<sup>th</sup> or 1/184<sup>th</sup>, 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.

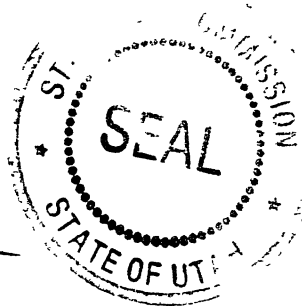
DATED this 1 day of April, 2008.

*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  
805 W 100 S  
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

*Caryn Leeper*

Utah State Tax Commission  
LSTC - 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

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

Attorney for Petitioner

**Michael Sullivan**  
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Williamsville, NY 14221

Petitioner

**Thomas Low**  
Wasatch County Attorney  
805 W 100 S  
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

Date

4/1/08

Signature

Carolyn Leeper

000073

Utah State Tax Commission  
LSTC - Appeal  
Certificate of Mailing

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

\*\*\*\* 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 000074

Utah State Tax Commission  
USTC - Appeal  
Certificate of Mailing

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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Attorney for Petitioner

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River Forest, IL 60205

Petitioner

**Thomas Low**  
Wasatch County Attorney  
805 W 100 S  
Heber, 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

Date

4/1/08

Signature

*Cynthia Leeper*

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Utah State Tax Commission  
USTC - Appeal  
Certificate of Mailing

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

**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

\*\*\* 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

4/1/08

Signature

*Carolyn Leeper*

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

**ary & Catherine Crittenden vs Wasatch County BOE**

**06-1509**

Wasatch County Assessor  
25 North Main  
Heber, UT 84032

Respondent

Wasatch County Auditor  
25 North Main  
Heber, UT 84032

Respondent

**Gary & Catherine Crittenden**  
183 Ferris Hill RD  
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Petitioner

**Maxwell Miller**  
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Salt Lake City, UT 84147

Attorney for Petitioner

**Thomas Low**  
Wasatch County Attorney  
805 W 100 S  
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

Date

4/1/08

Signature

*Carolyn Leeper*

Utah State Tax Commission  
LSTC - 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  
25 North Main  
Heber, UT 84032

Respondent

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

Attorney for Petitioner

**Mount Clyde Enterprises LC**  
David Checketts  
27 Feather Peters LN  
New Canaan, CT 06840

Petitioner

**Thomas Low**  
Wasatch County Attorney  
805 W 100 S  
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

Date

4/1/08

Signature

*Carolyn Leeper*

# **EXHIBIT 2**

**Utah Code Section 59-1-610. Standard of review of appellate court.**

(1) When reviewing formal adjudicative proceedings commenced before the commission, the Court of Appeals or Supreme Court shall:

(a) grant the commission deference concerning its written findings of fact, applying a substantial evidence standard on review; and

(b) grant the commission no deference concerning its conclusions of law, applying a correction of error standard, unless there is an explicit grant of discretion contained in a statute at issue before the appellate court.

(2) This section supercedes Section **63G-4-403** pertaining to judicial review of formal adjudicative proceedings.

# **EXHIBIT 3**

**Utah Section Code 59-2-102 (Superseded 01/01/09). Definitions.**

(12) "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.

# **EXHIBIT 4**



**Utah Code Section 59-2-507. Land included as agricultural -- Site of farmhouse excluded -- Taxation of structures and site of farmhouse.**

(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.

# **EXHIBIT 5**

this is the only logical and fair way to divide the property. Other divisions might be suggested; however, those divisions frequently would benefit one party or another by complicating the process and making it difficult, if not impossible, to estimate the value of the building site.

The following chart illustrates my division of the building site and the agricultural land. Please note that I have included a division for both the physical and legal aspects of the property.

#### DIVISION OF WOLF CREEK LOT

	Physical Division	Legal Division
Building Site	1 Acre	Right to build residence
Greenbelt Land	159 Acres	Right to graze, hunt, and recreate

In theory, any division of the property should create two separate parcels whose combined value would equal the value of the larger parcel before the division. In my opinion, the best method to estimate the value of the two parcels is to estimate the value of the overall property (160-acre lot) and then allocate the value between the one-acre building site and the rest of the land. Using this method of allocation would ensure that the property owner was not overtaxed or undertaxed. This method of valuation is a common procedure used by assessors all over the state. For example, an assessor estimating the value of a motel will frequently rely exclusively on the income approach. However, the income approach estimates the overall value of the property. Most appraisers will allocate the value between three major components that give value to the hotel. Those three components include personal property (or FFE), land, and the building. The assessor will frequently estimate the value of the personal property or take that information from the declarations by the property owner. Finally, the appraiser will estimate the value of the site. The balance of the value will be allocated to the building. This method of allocation is frequently used to break out the difference values of the component parts of the property. In my opinion, this is the method which should be used to estimate the value of the one-acre building site on the subject property.

The overall value of the subject property has already been estimated in the previous section. At this point in the appraisal, we must provide an allocation of value between the one-acre building

site (with all rights to build) versus 159 acres of land with rights to graze, hunt, and recreate. There are several methods that can be used to help estimate this allocation. The first method would be to estimate the value of a highly desirable building site with excellent amenities and very high desirability. This approach could be pursued by accumulating sales of desirable one-acre recreational lots and using them as comparables to estimate a reasonable value for the subject site. This method is not perfect. There are no one-acre building sites available for sale in the Wolf Creek project. However, if a buyer could purchase a single one-acre building site in the subject's exclusive neighborhood, it is likely that it would sell for a very high price. Since there are no sales in the subdivision, the appraiser would have to extend his search into other exclusive neighborhoods which have desirable amenities. These neighborhoods would likely include some of the more exclusive neighborhoods in Heber, Midway, and the Park City area. Making adjustments to lots in different exclusive neighborhoods can be very difficult.

A second possible method would be to estimate the value of the range land with recreational desirability but without the rights or potential for residential development. The 159 acres could be valued using large acreage comparables, and the difference between this value and the subject's overall value would be allocated to the building site. Once again, this method is reasonable but it has some drawbacks. It is very difficult to find recreational land in the subject neighborhood that has no potential for construction of even a single homesite. Fortunately, I was able to find a sale that fits these parameters.

Finally, a third method that can help the appraiser to allocate value is an analysis of conservation easements. Conservation easements are purchased by people, associations, and government entities. These easements most frequently strip the land of its development rights and only leave the agricultural and recreational rights to the property owner. The cost of this type of easement (or the cost of buying the development rights off the property) can give a good indication of the value that the building site contributes to the subject property. Making direct comparisons would be almost impossible because of the differences in location and desirability. However, by considering percentages of value, we can make a reasonable estimate of value for the building rights and the remaining land.

# **EXHIBIT 6**

Number and Location of Dwellings

placed, erected, altered, or permitted to remain on any Parcel other than one (1) primary single-family Dwelling, one (1) caretaker dwelling and one (1) garage together with related nonresidential Improvements which have been approved by the Architectural/Technical Committee. At the time of construction of the primary single family Dwelling on any Parcel, said Parcel must also be improved with a garage with at least a two (2) car capacity. Whenever possible, the garage doors will not face towards the main access road or the main view corridor from other Owner's homesites. A garage must be provided for each owned vehicle. One (1) caretaker dwelling may be constructed on each Parcel, provided that the size and location and all aspects of such caretaker dwelling are approved by the Architectural/Technical Committee and, provided further, that the applicable zoning and building ordinances of any governmental entity having authority with respect to the Property permits the construction of a caretaker dwelling. In no event shall the caretaker dwelling on any Parcel have a Floor Area in excess of 2,000 square feet. The caretaker dwelling shall use the same driveway access used by the primary single-family Dwelling on such Parcel. The distance between the caretaker dwelling and the primary single-family Dwelling on each Parcel shall be no greater than 300 feet.

# **EXHIBIT 7**

**Utah Constitution – Article XIII, Section 6. [State Tax Commission.]**

(1) There shall be a State Tax Commission consisting of four members, not more than two of whom may belong to the same political party.

(2) With the consent of the Senate, the Governor shall appoint the members of the State Tax Commission for such terms as may be provided by statute.

(3) The State Tax Commission shall:

(a) administer and supervise the State's tax laws;

(b) assess mines and public utilities and have such other powers of original assessment as the Legislature may provide by statute;

(c) adjust and equalize the valuation and assessment of property among the counties;

(d) as the Legislature provides by statute, review proposed bond issues, revise local tax levies, and equalize the assessment and valuation of property within the counties; and

(e) have other powers as may be provided by statute.

(4) Notwithstanding the powers granted to the State Tax Commission in this Constitution, the Legislature may by statute authorize any court established under Article VIII to adjudicate, review, reconsider, or redetermine any matter decided by the State Tax Commission relating to revenue and taxation.



**Utah Code Section 58-56-4. Definitions -- Adoption of building codes -- Amendments -- Approval of other codes -- Exemptions.**

(1) As used in this section:

(a) "agricultural use" means a use that relates to the tilling of soil and raising of crops, or keeping or raising domestic animals;

(b) "not for human occupancy" means use of a structure for purposes other than protection or comfort of human beings, but allows people to enter the structure for:

(i) maintenance and repair; and

(ii) the care of livestock, crops, or equipment intended for agricultural use which are kept there; and

(c) "residential area" means land that is not used for an agricultural use and is:

(i) (A) within the boundaries of a city or town; and

(B) less than five contiguous acres;

(ii) (A) within a subdivision for which the county has approved a subdivision plat under Title 17, Chapter 27a, Part 6, Subdivisions; and

(B) less than two contiguous acres; or

(iii) not located in whole or in part in an agricultural protection area created under Title 17, Chapter 41, Agriculture Protection Area.

(2) (a) Subject to the provisions of Subsections (4) and (5), the following codes, each of which must be promulgated by a nationally recognized code authority, shall be adopted, in the manner described in Subsection (2)(b), as the construction codes which the state and each political subdivision of the state shall follow in the circumstances described in Subsection (3):

(i) a building code;

(ii) the National Electrical Code promulgated by the National Fire Protection Association;

(iii) a residential one and two family dwelling code;

(iv) a plumbing code;

(v) a mechanical code;

(vi) a fuel gas code;

(vii) an energy conservation code; and

(viii) a manufactured housing installation standard code.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division, in collaboration with the commission, shall adopt by rule specific editions of the codes described in Subsection (2)(a), and may adopt by rule successor editions of any adopted code.

(c) The division, in collaboration with the commission, may, in accordance with Section **58-56-7**, adopt amendments to the codes adopted under Subsection (2)(a), to be applicable to the entire state or within one or more political subdivisions.

(3) Subject to the provisions of Subsections (4) and (5), the codes and amendments adopted under Subsection (2) shall be followed when:

(a) new construction is involved;

(b) the owner of an existing building, or the owner's agent, is voluntarily engaged in:

(i) the repair, renovation, remodeling, alteration, enlargement, rehabilitation, conservation, or reconstruction of the building; or

(ii) changing the character or use of the building in a manner which increases the occupancy loads, other demands, or safety risks of the building.

(4) (a) The division, in collaboration with the commission, has discretion to approve, without adopting, certain codes in addition to those described in Subsection (2)(a), including specific editions of the codes, for use by a compliance agency.

(b) If the applicable code is one which the division has approved under Subsection (4)(a), a compliance agency has the discretion to:

(i) adopt an ordinance requiring removal, demolition, or repair of a building, according to a code;

(ii) adopt, by ordinance or rule, a dangerous building code; or

(iii) adopt, by ordinance or rule, a building rehabilitation code.

(5) (a) Except in a residential area, a structure used solely in conjunction with agriculture use, and not for human occupancy, is exempted from the permit requirements of any code adopted by the division.

(b) Notwithstanding Subsection (5)(a), unless otherwise exempted, plumbing, electrical, and mechanical permits may be required when that work is included in the structure.

**Utah Code Section 59-1-602. Right to appeal -- Venue -- County as party in interest.**

(1) (a) Any aggrieved party appearing before the commission or county whose tax revenues are affected by the decision may at that party's option petition for judicial review in the district court pursuant to this section, or in the Supreme Court or the Court of Appeals pursuant to Section **59-1-610**.

(b) Judicial review of formal or informal adjudicative proceedings in the district is in the district court located in the county of residence or principal place of business of the affected taxpayer or, in the case of a taxpayer whose taxes are assessed on a statewide basis, to the Third Judicial District Court in and for Salt Lake County.

(c) Notwithstanding Section **63G-4-402**, a petition for review made to the district court under this section shall conform to the Utah Rules of Appellate Procedure.

(2) A county whose tax revenues are affected by the decision being reviewed shall be allowed to be a party in interest in the proceeding before the court.

**Utah Code Section 59-2-301.2. Definitions -- Assessment of property subject to a minimum parcel size -- Other factors affecting fair market value.**

(1) "Minimum parcel size" means the minimum size that a parcel of property may be divided into under a zoning ordinance adopted by a:

(a) county in accordance with Title 17, Chapter 27a, Part 5, Land Use Ordinances; or

(b) city or town in accordance with Title 10, Chapter 9a, Part 5, Land Use Ordinances.

(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 Section 59-2-505. Indicia of value for agricultural use assessment -- Inclusion of fair market value on certain property tax notices.**

(1) (a) The county assessor shall consider only those indicia of value that the land has for agricultural use as determined by the commission when assessing land:

(i) that meets the requirements of Section **59-2-503** to be assessed under this part; and

(ii) for which the owner has:

(A) made a timely application in accordance with Section **59-2-508** for assessment under this part for the tax year for which the land is being assessed; and

(B) obtained approval of the application described in Subsection (1)(a)(ii)(A) from the county assessor.

(b) If land that becomes subject to a conservation easement created in accordance with Title 57, Chapter 18, Land Conservation Easement Act, meets the requirements of Subsection (1)(a) for assessment under this part, the county assessor shall consider only those indicia of value that the land has for agricultural use in accordance with Subsection (1)(a) when assessing the land.

(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) Section **59-2-919.1**; 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 Section 59-2-506. Rollback tax -- Penalty -- Computation of tax -- Procedure -- Lien -- Interest -- Notice -- Collection -- Distribution -- Appeal to county board of equalization.**

(1) 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 rollback tax imposed in accordance with this section.

(2) (a) An owner shall notify the county assessor that land is withdrawn from this part within 120 days after the day on which the land is withdrawn from this part.

(b) An owner that fails to notify the county assessor under Subsection (2)(a) that land is withdrawn from this part is subject to a penalty equal to the greater of:

(i) \$10; or

(ii) 2% of the rollback tax due for the last year of the rollback period.

(3) (a) 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.

(b) For purposes of this section, the rollback period is a time period that:

(i) begins on the later of:

(A) the date the land is first assessed under this part; or

(B) five years preceding the day on which the county assessor mails the notice required by Subsection (5); and

(ii) ends the day on which the county assessor mails the notice required by Subsection (5).

(4) (a) The county treasurer shall:

(i) collect the rollback tax; and

(ii) after the rollback tax is paid, certify to the county recorder that the rollback tax lien on the property has been satisfied by:

(A) preparing a document that certifies that the rollback tax lien on the property has been satisfied; and

(B) providing the document described in Subsection (4)(a)(ii)(A) to the county recorder for recordation.

(b) The rollback tax collected under this section shall:

(i) be paid into the county treasury; and

(ii) be paid by the county treasurer to the various taxing entities pro rata in accordance with the property tax levies for the current year.

(5) (a) The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that:

(i) the land is withdrawn from this part;

(ii) the land is subject to a rollback tax under this section; and

(iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice.

(b) (i) The rollback tax is due and payable on the day the county assessor mails the notice required by Subsection (5)(a).

(ii) Subject to Subsection (7), the rollback tax is delinquent if an owner of the

land that is withdrawn from this part does not pay the rollback tax within 30 days after the day on which the county assessor mails the notice required by Subsection (5)(a).

(6) (a) Subject to Subsection (6)(b), the following are a lien on the land assessed under this part:

- (i) the rollback tax; and
- (ii) interest imposed in accordance with Subsection (7).

(b) The lien described in Subsection (6)(a) shall:

- (i) arise upon the imposition of the rollback tax under this section;
- (ii) end on the day on which the rollback tax and interest imposed in accordance with Subsection (7) are paid in full; and
- (iii) relate back to the first day of the rollback period described in Subsection (3)(b).

(7) (a) A delinquent rollback tax under this section shall accrue interest:

- (i) from the date of delinquency until paid; and
- (ii) at the interest rate established under Section **59-2-1331** and in effect on January 1 of the year in which the delinquency occurs.

(b) A rollback tax that is delinquent on September 1 of any year shall be included on the notice required by Section **59-2-1317**, along with interest calculated on that delinquent amount through November 30 of the year in which the notice under Section **59-2-1317** is mailed.

(8) (a) Land that becomes ineligible for assessment under this part only as a result of an amendment to this part is not subject to the rollback tax if the owner of the land notifies the county assessor that the land is withdrawn from this part in accordance with Subsection (2).

(b) Land described in Subsection (8)(a) that is withdrawn from this part as a result of an event other than an amendment to this part, whether voluntary or involuntary, is subject to the rollback tax.

(9) Except as provided in Section **59-2-511**, land that becomes exempt from taxation under Utah Constitution Article XIII, Section 3, is not subject to the rollback tax if the land meets the requirements of Section **59-2-503** to be assessed under this part.

(10) (a) Subject to Subsection (10)(b), an owner of land may appeal to the county board of equalization:

- (i) a decision by a county assessor to withdraw land from assessment under this part; or
- (ii) the imposition of a rollback tax under this section.

(b) An owner shall file an appeal under Subsection (10)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).

**Utah Code Section 59-2-510. Separation of land.**

Separation of a part of the land which is being valued, assessed, and taxed under this part, either by conveyance or other action of the owner of the land, for a use other than agricultural, subjects the land which is separated to liability for the applicable rollback tax, but does not impair the continuance of agricultural use valuation, assessment, and taxation for the remaining land if it continues to meet the requirements of this part.

**Utah Code Section 63G-4-403. Judicial review -- Formal adjudicative proceedings.**

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

(i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(ii) according to any other provision of law.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

(b) the agency has acted beyond the jurisdiction conferred by any statute;

(c) the agency has not decided all of the issues requiring resolution;

(d) the agency has erroneously interpreted or applied the law;

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

(h) the agency action is:

(i) an abuse of the discretion delegated to the agency by statute;

(ii) contrary to a rule of the agency;

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

(iv) otherwise arbitrary or capricious.

### **Utah Code Section 78A-4-103. Court of Appeals jurisdiction.**

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section **63G-3-602**;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.



**Utah Rules of Appellate Procedure. Rule 42. Transfer of case from supreme court to court of appeals.**

- (a) Discretion of Supreme Court to transfer. At any time before a case is set for oral argument before the Supreme Court, the Court may transfer to the Court of Appeals any case except those cases within the Supreme Court's exclusive jurisdiction. The order of transfer shall be issued without opinion, written or oral, as to the merits of the appeal or the reasons for the transfer.
- (b) Notice of order of transfer. Upon entry of the order of transfer the Clerk of the Supreme Court shall give notice of entry of the order of transfer by mail to each party to the proceeding and to the clerk of the trial court. Upon entry of the order of transfer, the Clerk of the Supreme Court shall transfer the original of the order and the case, including the record and file of the case from the trial court, all papers filed in the Supreme Court, and a written statement of all docket entries in the case up to and including the order of transfer, to the Clerk of the Court of Appeals.
- (c) Receipt of order of transfer by Court of Appeals. Upon receipt of the original order of transfer from the Clerk of the Supreme Court, the Clerk of the Court of Appeals shall enter the appeal upon the Court of Appeals docket. The Clerk of the Court of Appeals shall immediately give notice to each party to the proceeding and to the clerk of the trial court that the appeal has been docketed and that all further filings will be made with the Clerk of the Court of Appeals. The notice shall state the docket number assigned to the case in the Court of Appeals.
- (d) Filing or transfer of appeal record. If the record on appeal has not been filed with the Clerk of the Supreme Court as of the date of the order of transfer, the Clerk of the Supreme Court shall notify the clerk of the trial court that upon completion of the conditions for filing the record by that court, the clerk shall transmit the record on appeal to the Clerk of the Court of Appeals. If, however, the record on appeal has already been transmitted to and filed with the Clerk of the Supreme Court as of the date of the entry of the order of transfer, the Clerk of the Supreme Court shall transmit the record on appeal to the Clerk of the Court of Appeals within five days of the date of the entry of the order of transfer.
- (e) Subsequent proceedings before Court of Appeals. Upon receipt by the Clerk of the Court of Appeals of the order of transfer and the entry thereof upon the docket of the Court of Appeals, the case shall proceed before the Court of Appeals to final decision and disposition as in other appellate cases pursuant to these rules.
- (f) Finality of order of transfer. An order of transfer, when entered by the Clerk of the Supreme Court, is final and shall be subject to reconsideration only in the Supreme Court and only on jurisdictional grounds.

**ADVISORY COMMITTEE NOTE**

Former Rules 4A and 4B have been renumbered as Rules 42 and 43 respectively and included in a new title governing the certification and transfer of cases between courts. The amendments make uniform the practices followed by the two appellate courts in transferring cases.