

2008

Wasatch County v. Utah State Tax Commissio, Warren and Tricia Osborn, et al. : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WASATCH COUNTY,

Petitioner/Appellant,

vs.

UTAH STATE TAX COMMISSION,

Respondent/Appellee,

WARREN AND TRICIA OSBORN, et al

Appellees.

BRIEF OF APPELLANT

Case No. 20080732 CA

Tax Commission Appeals Nos.: 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1509, 06-1510

APPEAL FROM THE THIRD DISTRICT COURT, SALT LAKE COUNTY
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STATEMENT OF JURISDICTION

The Utah Supreme court had appellate jurisdiction over this case pursuant to Utah Code Section 78A-3-102(3) (j), because this appeal is from an order “over which the Court of Appeals does not have original appellate jurisdiction.” Namely, this is an appeal of the District Court’s dismissal of Wasatch County’s petition for *de novo* review of a formal hearing held before the State Tax Commission. The Tax Commission’s decision is included as Exhibit 1. The District Court’s decision is included as Exhibit 2. 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 ISSUE

Whether the District Court properly found that Wasatch County’s protective filing of a cross-petition for review in the Supreme Court deprived the District Court of subject matter jurisdiction to hear the County’s petition for review filed in District Court pursuant to Utah Code Sections 59-1-601 and 59-1-602?

STANDARD OF REVIEW

This Court has stated, “A challenge to subject matter jurisdiction presents a question of law, which we review for correctness.” *Ameritemps, Inc. v. Labor Comm’n*, 2005 UT App 491, ¶ 7, 128 P.3d 31.

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 AND RULES

- A. Utah Code Section 59-1-601 (District court jurisdiction over appeals from Tax Commission). Attached as Exhibit 3.
- B. Utah Code Section 59-1-602 (Right to appeal – Venue – County as party in interest). Attached as Exhibit 3.
- C. Rule 1(c) of the Utah Rules of Appellate Procedure:
- “If a procedure is provided by state statute as to the appeal or review of an order of an administrative agency, commission, board, or officer of the state which is inconsistent with one or more of these rules, the statute shall govern. In other respects, these rules shall apply to such appeals or reviews.”
- D. Rule 14 of the Utah Rules of Appellate Procedure. Attached as Exhibit 4.

STATEMENT OF THE CASE

A. Nature of the Case

This appeal is from the final decision of the Third District Court, Judge John Paul Kennedy presiding, issued August 1, 2008, dismissing Wasatch County's Petition for Review on jurisdictional grounds. This Order is attached as Exhibit 2.

B. Course of Proceedings

This case originated at the Utah State Tax Commission, where a formal hearing was held on December 18th and 19th, 2007. The commission issued its written Findings of Fact, Conclusions of Law, and Final Decision on April 1, 2008. This decision is attached as Exhibit 1. Wasatch County appealed this decision to the District Court for a *de novo* review, pursuant to Utah Code Sections 59-1-601 and 59-1-602, on April 25, 2008.

C. Disposition at Trial Court and Agency

The District Court dismissed the County's request for a *de novo* review, concluding that it lacked subject matter jurisdiction to consider it.

RELEVANT FACTS

This case originated in the Utah State Tax Commission. The tax appeals of the owners of seven parcels of property within Wasatch County were consolidated by the commission and a formal hearing was held on the consolidated case on December 18th and 19th, 2007. The commission issued its written Findings of Fact, Conclusions of Law, and Final Decision on April 1, 2008. *Record* at 9 to 33; Exhibit 1.

First Appeal—Supreme Court

On April 10, 2008, the property owners filed a Petition for Review in the Utah Supreme Court under case number 20080304. This case was subsequently poured over to the Court of Appeals and is being briefed simultaneous with the present case. A copy of the Petition for Review in case number 20080304 was not provided at the time of filing to Wasatch County. Nevertheless, the Supreme Court, by letter, notified Wasatch County of the property owners' petition, and counsel subsequently provided a courtesy copy of the same. Thereafter, in order to preserve its rights to affirmatively participate in the property owners' supreme court appeal, Wasatch County filed a Cross-Petition for Review with the Utah Supreme Court on April 24, 2008.

Second Appeal—District Court

The next day, on April 25, 2008, Wasatch County filed a Petition for Judicial Review by trial *de novo*, with the Fourth District Court, in and for Wasatch County, pursuant to Utah Code Sections 59-1-601 and 602. *Record* at 1 to 7. The case was initially assigned the case number 080500192. *Id.* On May 5, 2008, the Tax Commission, through counsel, requested assignment of the case to a tax judge pursuant to Rule 6-103 of the Utah Rules of Judicial Administration. *Record* at 37. The case was then transferred to the Third District Court, where it was assigned to Judge John Paul Kennedy and given the new case number of 080907392.

The owners of one of the parcels of property, Warren and Tricia Osborn (“the Osborns”), moved to intervene in the district court appeal and also moved to dismiss the

district court appeal for failure to join them as parties to the appeal. *Record* at 2 and 7.¹ Wasatch County and the Tax Commission agreed that, under the Rules of Appellate Procedure, the Osborns had no need either to intervene or to be “joined” in order to participate in the County’s district court appeal because they were already parties to the case below. *Record* at 85-102 and 153-157. The district court agreed and allowed the Osborns to participate in the case without an intervention or joinder. *Record* at 204.

At oral arguments on the Osborns’ above-mentioned motions, counsel for the Osborns mentioned for the first time that there was “an issue” as to whether the county was entitled to exercise its right to district court review because the county had also elected to simultaneously participate in the Osborns’ supreme court appeal arising from the same Tax Commission decision. *Record* at 187 (an unofficial transcript of the hearing prepared by Osborns’ counsel). The court asked the parties to brief that issue and scheduled another hearing to address it. *Record* at 138.

At the scheduled hearing, the district court, without hearing argument, dismissed the County’s appeal on the basis that it lacked subject matter jurisdiction and “referred [the matter] back to the Appellate Court.” *Record* at 202. In so ruling, the district court felt that *Salt Lake County v. Tax Comm’n*, 596 P.2d 641 (Utah 1979) was dispositive. Exhibit 2 at 3-4; *Record* at 205-06. The Osborns’ counsel subsequently prepared an Order for the court and mailed it to counsel on or about July 29, 2008. *Record* at 207. Apparently, the Order was simultaneously submitted to the district court, which executed

¹ The Record starts over at page 1 after the first 39 pages of it. Therefore, the page numbers 1 through 39 are used twice in the Record. This citation is to the second page numbers 2 and 7.

the Order without the benefit of counsel's review on August 1, 2008. The Order, as prepared by counsel and signed by the court, bases the dismissal on the fact that the county had cross-petitioned in the Osborns' supreme court appeal and thereby foreclosed its opportunity to appeal to the district court.

The present appeal constitutes the county's appeal from this Order.

SUMMARY OF THE ARGUMENT

Utah law accords all parties to a Tax Commission decision the right to choose whether to seek a record-review by the Utah Supreme Court or a *de novo* review by a district court. It does not, however, provide guidance for handling a disagreement among the parties as to which appellate path to take. Nevertheless, no statute allows one party's selection of one option to preempt another party's selection of another. Nor does a statute prohibit a party from both protecting its standing in one appeal filed in the supreme court by an opposing party and also seeking *de novo* review in a district court. Instead, the only requirement under the law is that all petitions for review, in whatever court, be filed within 30 days of the commission's decision. Wasatch County followed these rules precisely in initiating its district court review.

The right to obtain district court review is an important one. It was preserved through the cooperative efforts of the people and their legislators through a constitutional amendment and the reenactment of judicially invalidated legislation. It discourages a competitive and secretive race to the courthouse. It promotes the efficient use of judicial resources by ensuring that factual issues are fully developed, to the satisfaction of the parties, before the appellate courts conduct their review. And it also allows the appellate

courts the benefit of a district court's review of the legal issues involved in a tax commission decision. For all of these reasons, even if there were any ambiguities in the statute authorizing district court review, such ambiguities should be construed with an eye towards preserving the right to district court review, and not eviscerating it.

DETAIL OF THE ARGUMENT

I. *ALL PARTIES TO A TAX COMMISSION DECISION ARE GIVEN THE OPTION OF APPEALING TO THE COURT OF THEIR CHOICE; AND NO PARTY'S EXERCISE OF THAT OPTION CAN EXTINGUISH ANOTHER'S.*

Utah Code Section 59-1-602 (emphasis added) provides as follows:

(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.

Subsection (1)(a) of this statute authorizes *all* parties to a Tax Commission decision to choose the venue of their appeal therefrom—either the district court or the supreme court. However, while this statute is generous in its delegation of discretion to the parties to choose the venue for their appeal, it is somewhat parsimonious in its guidance on how to sort through the conflicts that can arise from the parties’ competing exercise of that discretion. For example, it does not provide instructions on how to proceed when different parties exercise different options. Neither does it resolve the issue of priority—i.e., which appeal should proceed first. Nor does it instruct on how to exercise one’s right to appeal to one venue while also protecting one’s standing in another party’s appeal in a another venue. All it does is give every party an equal right to appeal to the court of its choice.

While the statute may not provide guidance on how the courts should accommodate the exercise of competing appellate options, it certainly does not do what the appellees want it to do either. Namely, it does not provide a methodology for any party to extinguish another’s right to exercise the appellate option of that party’s choice. Under the present facts, the lower court found that because the county protected its standing in the appellees’ supreme court appeal one day before it exercised its option to seek district court review, the county somehow forfeited its option to obtain that district court review. Of course, had the county protected its standing in the appellees’ supreme court appeal one day *after* it exercised its option to seek district court review, appellees

would certainly have argued that the county had somehow mooted, abandoned, or otherwise extinguished its district court review. Perhaps the appellees would submit that the county's only valid method of exercising its option to obtain district court review without losing its inherent rights to assert appellate issues in the appellees' supreme court appeal (which could potentially occur without the benefit of intermediate district court review) would be by filing in both courts at precisely the same moment. Or perhaps they would argue that it is simply impossible for the county—regardless of the timing of its filings—to participate in both fora simultaneously: if the county ever desired to assert appellate issues in the appellees' supreme court appeal then there was simply no way it could ever initiate its own district court appeal. Fortunately the statute, which is one that grants all parties equal but competing rights of appeal, does not mandate such an unforgiving procedure.

Our supreme court has stated, “It is well settled in this court that our goal when interpreting a statute is to give effect to the legislative intent, as evidenced by the statute’s plain language, in light of the purpose the statute was meant to achieve.” *Summit Water Distribution Co. v. Summit County*, 2005 UT 73, ¶ 17, 123 P.3d 437 (internal quotations omitted). Here, section 59-1-602(1)(a) is a right-granting statute, not a right-restricting one. It openly grants adverse parties a competing right to appeal to different courts. Therefore, it clearly contemplates that the exercise of those rights may not always be in harmony with each other: appeals from the same commission decision may be simultaneously filed, and heard, in different courts. It would be contrary to the purpose of this statute to construe it to prohibit parties from participating in their opponents’

appeals. In fact, beyond being contrary to the statute's purpose, as will be shown next, such an interpretation would also unreasonably require parties to forfeit appellate issues.

Once an appeal from an administrative order is filed in any court, all parties below are *automatically* parties to the case on appeal, whether they want to be or not.

Viktron/Lika Utah v. Labor Comm'n, 2001 UT App 8, ¶ 3, 18 P.3d 519. And if any of these unwilling parties fails to file a timely cross-petition in their opponent's appeal, that opportunity is forever forfeited. *Id.* at ¶ 7; *see also Union Pacific Railroad v. State Tax Comm'n*, 2000 UT 40, 999 P.2d 17 (untimely petition from Tax Commission deprives court of jurisdiction); *see also* URAP 14(a) (requiring petitions for review to be filed within 30 days of the commission's order and to designate the part of the order to be reviewed). Thus, while the county would have preferred that the appellees *not* file their appeal in the supreme court (now pending in case number 20080304), once the appellees did so, the county was forced to either raise its appellate issues in that appeal or forever forfeit them, notwithstanding its preferred option of seeking district court review first.

The Utah Supreme Court has stated, “[W]e have said that where a statute is subject to more than one construction, we can interpret it to make sense, and sustain it.” *Park and Recreation Comm'n v. Dept. of Finance*, 388 P.2d 233, 234 (Utah 1964). The lower court interpreted section 59-1-602(1)(a) to prohibit the county's filing in district court even though the county had not initiated the supreme court appeal. Not only does this interpretation of the statute ignore its accommodation of competing appeals from the same commission decision, but it turns that accommodation on its head: instead of allowing parties to choose for themselves where an appeal will be heard, it allows

opposing parties to co-opt that choice by racing to the courthouse.² Once any party has selected a particular court for their appeal, under the lower court's interpretation, all other parties must either ignore their opponents' appeal—thereby forfeiting their appellate issues that must be raised only in their opponents' forum—or or they can preserve their appellate issues that must be raised in their opponents' forum and forever forfeit their own right to appeal to the court of their choice; they can never do both. Among the possible interpretations of the statute, this one would make the least sense.

Where 59-1-602(1)(a) generously allows parties to disagree on the optimal appellate path to take from a commission decision, it would be contrary to this legislative intent to create a rule that artificially limits that discretion. The full absurdity of such a rule becomes apparent when one considers that many cases before the commission involve far more than two parties. In fact, even the present appeal involves seven property owners, the county, and the commission. Were the seven property owners not represented by the same law firm, it is conceivable that some of them would have opted to exercise their right to *de novo* district court review while others could have chosen to file directly with the supreme court. In such a circumstance, applying the lower court's reasoning, the county would have had the Hobson's choice of picking only one of the competing appeals in which to raise its own appellate issues.

² In the present case, appellees filed their petition for review (in case number 20080304) in the supreme court nine days after the commission issued its decision and failed to notify or otherwise serve the county until a courtesy copy was provided attached to a letter several days later. This was probably a simple oversight. However, it betrays, somewhat, the possibility that there was just such a race to the courthouse in the present case.

This is an especially troublesome result where the nature of the appeals are different—i.e., one being a review of the record and the other being a trial *de novo*. Issues that are appropriate in a record review are, of course, different from those that are appropriate in a *de novo* review: the former has the potential to change the *law* of the case, and the latter has the potential to change the *facts*. Being forced to raise appellate issues in only one pending appeal to the exclusion of another can, colloquially speaking, leave a party winning one battle only to lose the war.

To apply the statute fairly, this Court should do its part to give full meaning and benefit of the statute to *all* parties in a way that extinguishes *no* party's option. Here, the parties obviously disagree on the most appropriate forum for appeal from the Tax Commission decision. Appellees prefer to be in this Court; the county prefers to be in the district court. To fulfill the purpose of the statute by accommodating all parties' options in the present case, and extinguish none's, this Court should reinstate the county's district court appeal. Doing so does not detract from the appellees' right to appellate review by this Court; but it does preserve the county's right to *de novo* review by the district court. However, by declining to reinstate the county's district court appeal, this Court would sacrifice the county's right to obtain district court review merely to preserve the appellees' right to continue in their current appeal before this Court (in case number 20080304), which right the appellees do not stand to lose anyway.

For the foregoing reasons, if a rule is to be established that nullifies the right to appeal a Tax Commission decision to district court, then such a rule should be established in advance and by statute. It should not be created after the fact, by creative statutory

interpretation, and in a way that conflicts with the language and intent of the statute that confers that right.

II. WASATCH COUNTY PROPERLY INVOKED THE JURISDICTION OF THE DISTRICT COURT.

As stated above, section 59-1-602(1)(a) gives every party to a commission decision the right to appeal to the venue of its choice. Section 59-1-602(1)(c) describes how the choice to seek district court review is expressed. This subsection requires petitions for review “made to the district court under this section [to] conform to the Utah Rules of Appellate Procedure.” Rule 14 describes how to initiate such a review. *See also* URAP 1(c) (“If a procedure is provided by state statute as to the appeal or review of an order of an administrative agency, commission, board, or officer of the state which is inconsistent with one or more of these rules, the statute shall govern. In other respects, these rules shall apply to such appeals or reviews.”). It requires a “petition for review [to] be filed with the clerk of the appellate court,” in this case the district court, “within the time prescribed by statute, or if there is no time prescribed, then within 30 days after the date of the written decision or order.” URAP 14(a). The petition “shall designate . . . the order or decision, or part thereof to be reviewed.” *Id.* Additional requirements are that the petition name the commission as the respondent, and that the petition be served upon the commission, “upon all other parties to the proceeding before the agency, and upon the Attorney General of Utah.” URAP 14(a) and (c).

Wasatch County faithfully followed the requirements of section 59-1-602(1)(c) and Rule 14 to invoke the jurisdiction of the district court. Upon receiving a decision

from the commission, the county, in reliance upon Utah law, exercised its right to petition the district court for review by following the plain language of the relevant statute and rule. No other requirements exist to invoke district court jurisdiction. Importantly, there is not even a requirement that no previous, protective cross-appeal have been filed in the supreme court. Therefore, where the county has complied with all of the procedures required to invoke the jurisdiction of the district court, the district court enjoyed, and should have exercised, its jurisdiction over the county's petition.

By properly following the procedures outlined in Rule 14 to invoke the district court's jurisdiction, the county has clearly and unequivocally expressed its "option" to have the district court conduct a *de novo* review. Indeed, there exists no confusion about the county's expression: it is not ambivalent, vague, or unclear. Instead, in order to dismiss the county's petition, the district court was required to deny the County's request *despite* its clarity, not because the court was confused about it.

III. THE RIGHT TO A *DE NOVO* DISTRICT COURT REVIEW IS IMPORTANT, AND THE LEGISLATURE AND THE PEOPLE OF UTAH INTENDED TO PRESERVE ITS VIABILITY.

Our supreme court has observed, "This court's primary responsibility in construing legislative enactments is to give effect to the legislature's underlying intent." *Savage Industries, Inc. v. Utah State Tax Comm'n*, 811 P.2d 664, 671 (Utah 1991). "In determining the legislative intent of a statute, the statute should be considered in the light of the purpose it was designed to serve and so applied as to carry out that purpose if it can be done consistent with its language." *Id.* (internal quotations omitted).

The people of Utah and their legislature have found the importance of a *de novo*

district court review sufficiently important that they preserved it through a constitutional amendment. In 1997, the Utah Supreme Court held Utah Code Section 59-1-601 unconstitutional because it authorized district courts to conduct a *de novo* review of Tax Commission decisions in violation of the Utah Constitution as it then existed. *Evans & Sutherland v. Tax Commission*, 953 P.2d 435 (Utah 1997). Responding to *Evans & Sutherland*, the people of Utah amended the Utah Constitution in 1998 to authorize *de novo* review in district court. That authorization has survived subsequent amendments to the Utah Constitution and is currently found in Article XIII, Section 6(4). The Utah legislature simultaneously (in 1998) re-adopted section 59-1-601. The Court can conclude, from this history, that the people of Utah and their legislature consider the right to *de novo* district court review to be an important one, and that they intended to preserve that right through constitutional amendment and legislative processes.

Ironically, the case found and cited by the district court in dismissing the county's *de novo* review also supports the historical importance of the *de novo* district court review. In *Salt Lake County v. Tax Commission*, 596 P.2d 641 (Utah 1979), Salt Lake County appealed a commission decision directly to the Utah Supreme Court. The law at the time allowed parties “aggrieved by a decision of the commission . . . to choose to waive the right of review by the tax division of the district court and apply for a writ of certiorari to the Supreme Court in which event such party must state in the application for the writ that the party is waiving the right of review and trial *de novo* in the tax division of the district court.” 596 P.2d 644-45 (concurrence of Croft, District Judge). The court noted that the county had failed, in its pleadings before the supreme court, to expressly

waive its right to *de novo* district court review. 596 P.2d at 644. Nevertheless, the court treated that failure as a “pleading deficiency of the kind to which the pleader’s adversary must make timely objection or the right to object is waived.” *Id.*

Far from supporting the dismissal of the County’s district court review, *Salt Lake County* shows that, historically, the *de novo* district court review was, if anything, legislatively preferred over a direct supreme court review. This same legislative preference for the availability of a *de novo* review pervades the current statutory framework, which, as shown above, was preserved by constitutional amendment. Consequently, narrowly construing the statute, which intends to preserve this option, in a manner that effectively eviscerates the option would appear to be inappropriate.

Perhaps one reason that a *de novo* district court review has been so important in Utah is because it preserves a constitutional check and balance on tax policy. While commissioners have the background to hear tax cases and interpret tax laws, they also supervise and administer Utah’s tax system and report to the legislature as to legislative issues. U.C.A. § 59-1-210(22). These dual roles can create an inherent conflict of interest. A *de novo* review provides an impartial check and balance by the judicial branch on the legislative branch of government in Utah. Nullifying the effectiveness of appeals from a commission decision to district court would eliminate this important check.

Current statutory procedures, adopted pursuant to constitutional amendment, allow *both* the supreme court (or this Court) *and* the district court to exercise simultaneous jurisdiction over separate appeals from the same commission decision. This is not only

what the literal words of the statute say, but it is also what they intend to say. Failing to reinstate the county's district court petition would vitiate the county's constitutionally preserved and legislatively bestowed option to obtain this district court review.

IV. ALLOWING THE COUNTY TO ENJOY ITS DISTRICT COURT REVIEW IS AN EFFICIENT USE OF JUDICIAL RESOURCES.

If possible, statutes should be construed in a manner consistent with good public policy. *Brixen & Christopher Architects, P.C. v. State*, 2001 UT App 210, ¶ 17, 29 P.3d 650 (“we look with an eye toward the construction that will achieve the best results in practical application, will avoid unacceptable consequences, and will be consistent with sound public policy”); *Summit Water Distribution Co. v. Summit County*, 2005 UT 73, ¶ 29, 123 P.3d 437 (“antitrust laws must be interpreted in light of the strong public policy disfavoring anticompetitive practices”). Public policy favors an efficient use of judicial resources. *Mann v. Fredrickson*, 2006 UT App 475, ¶ 7, 153 P.3d 768 (the practice of automatically transferring cases among judges whenever there are judicial reassignments is observed to be an inefficient use of limited judicial resources); *Buckner v. Kennard*, 2004 UT 78, ¶ 17, 99 P.3d 842 (recognizing the “strong public policy favoring arbitration as an approved, practical, and inexpensive means of settling disputes and easing court congestion”). Allowing the county to avail itself of district court review creates efficiencies and benefits that public policy supports.

Section 59-1-601 states,

(1) In addition to the jurisdiction granted in Section 63G-4-402, beginning July 1, 1994, the district court shall have jurisdiction to review

by trial de novo all decisions issued by the commission after that date resulting from formal adjudicative proceedings.

(2) As used in this section, “trial de novo” means an original, independent proceeding, and does not mean a trial de novo on the record.

(3) (a) In any appeal to the district court pursuant to this section taken after January 1, 1997, the commission shall certify a record of its proceedings to the district court.

(b) This Subsection (3) supersedes Section 63G-4-403 pertaining to judicial review of formal adjudicative proceedings.

This statute grants district courts the jurisdiction to review, by trial *de novo*, all Tax Commission decisions. Nevertheless, even though it is a *de novo* review, subsection (3) requires the commission to certify a record of its proceedings to the district court. This allows the parties, and the district court, to rely on the record to the extent desired and yet to also supplement the record by as much of a *de novo* presentation of evidence as wished. Thus, trials *de novo* in district court may be, if desired by the parties, fairly refined reviews, focusing only on the narrow issues that, in one or another party’s view, were unsatisfactorily resolved by the commission. This is an efficient and effective way to fully distill factual and legal issues before they are decided, on a statewide application, by the appellate courts. This brief will first address the benefits of distilling the factual issues. Then it will briefly address the benefits of a district court review of legal issues.

A. This Court Will Benefit From a Full Distillation of the Facts at Issue.

The central issue on appeal in this case is the correct valuation methodology to apply when taxing a homesite under the Farmland Assessment Act, found in Utah Code Title 59, Chapter 2, Part 5 (the “FAA”). “The choice of valuation methodology in assessing property is a question of fact[, and t]he resulting determination of fair market value is also a question of fact.” *Salt Lake City S.R.R. Co. v. State Tax Comm’n*, 1999 UT 90, ¶ 13, 987 P.2d 594, 598. On direct appeal to an appellate court, the commission’s findings of fact are reviewed under a “substantial evidence” standard. § 59-1-610(1)(a). This standard defers to the facts previously found by the commission, whereas a trial *de novo*—“an original, independent proceeding, and [not] a trial *de novo on the record*”—allows a district court to re-examine those facts afresh. § 59-1-601(2) (emphasis added). By affording parties to a Tax Commission formal proceeding the right to independent judicial review of that proceeding, and the concomitant right to adduce additional evidence before the issues are reviewed by the appellate courts, Utah law gives our courts the optimal ability to fully hear and consider the relevant facts before issues are decided on the appellate level, where the decision will have statewide effect. In the present case, these facts are complex, vastly at variance, and particularly susceptible to district court review.

This case involves the application of the Farmland Assessment Act to a prestigious recreational subdivision in Wasatch County. The central factual issue at trial related to the value of the one-acre homesites that were removed from the FAA by the construction of a primary residence thereon. The evidence at the formal hearing showed that each

homesite must be located within a ten-acre building envelope designated by the property owner, with some oversight by the homeowners' association. The county submitted evidence that 65% of the value of the entire lot is attributable to the one-acre homesite. The property owners argued that the value of each homesite was equal to approximately 0.6% of the value of the entire lot—a difference of two orders of magnitude from the county's valuation.

The commission arrived at a sort of compromise position by concluding that 65% of the value of the entire lot is attributable to the ten-acre building envelope in which the homesites must be located, and not just the one-acre homesites themselves. It then concluded that it had insufficient information to further allocate value within those ten acres. Specifically, the commission stated, "As far as allocating a portion of the 65% to the one acre [homesite], 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." Exhibit 1, at 12, ¶ 30. Therefore, concluding that it lacked evidence to allocate value within each ten-acre building envelope, the commission simply divided 65% by 10 to arrive at the value of any given acre within that envelope, including the homesite. Thus, the commission concluded that the value of each one-acre homesite was 6.5% of the value of the entire lot—one order of magnitude less than suggested by the county and one order of magnitude greater than suggested by the property owners.

To the extent that the commission lacked sufficient evidence to accurately allocate value to the one-acre homesites within the ten-acre building envelopes, Wasatch County has the right to provide that evidence through a *de novo* review in district court. Where

such an enormous difference exists between the parties' evidence—two orders of magnitude—and where the commission itself felt that its valuation methodology was based on an incomplete understanding of the circumstances, leading it to precisely compromise the party's positions, it is consistent with public policy to conserve judicial resources by allowing the parties to develop the record as completely as possible before this Court settles the question for statewide application. Otherwise, if this Court's ruling in the companion case (number 20080304) is perceived to be based on incomplete facts, it is unfortunately very likely that the parties will be asking this Court to re-examine the issue again after the next tax year is litigated.³

By authorizing *de novo* district court review in Article XIII, Section 6, of the Utah Constitution, and by affirmatively creating that right in Utah Code Section 59-1-601, the people of Utah and their legislature have granted two opportunities to build a record to ensure an effective and efficient appeal to the supreme court (or this Court). This Court should not ignore this intent by foreclosing the second opportunity.

B. This Court Will Benefit From an Intermediate Review of the Legal Issues in Dispute.

The legal issues involved in this case also merit examination by the district court before this Court resolves them on a state-wide basis. An important issue in the valuation of the one-acre homesites involved in this appeal is the appropriate application of the relevant statutes in valuing the one-acre homesites under the FAA.

³ Tax appeals for the year 2007 from the same subdivision, filed by the same attorneys, are already pending but stayed at the Tax Commission, awaiting this Court's resolution of the issues in this case and the companion case (number 20080304).

The appellees have argued in their appeal (case number 20080304) that the only legally valid application of the pertinent statutes requires valuing the one-acre homesites by dividing the total lot value by the number of acres in the lot. This is supported by Utah Code Section 59-2-102(12), which defines “fair market value” as “the amount at which property would change hands between a willing buyer and a willing seller.” Thus, the argument goes, since the one-acre homesites cannot be sold separately from the 160-acre lots of which they form an indivisible part, they have no fair market value at all.

Wasatch County argued, and still argues, that applicable statutes do not require every acre in the large lots to be valued equally, and that the acre on which the property owners’ homes sit can be recognized as the most valuable of them all. This argument is supported by Utah Code Section 59-2-507(2), of the Farmland Assessment Act, which requires “the farmhouse and the land on which the farmhouse is located” to be “valued, assessed, and taxed using the same standards, methods, and procedures that apply to *other* taxable structures and other land in the county.” (Emphasis added.) Thus, the argument goes, the county’s assessor is required to compare the one-acre homesites to similar one-acre homesites and derive a value from that hypothetical comparable.

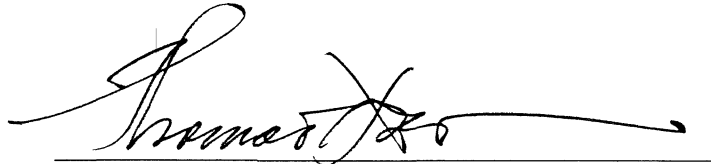
The commission, of course, adopted a compromise position not only factually, as shown in section IV of this brief, but legally as well. It held that the majority of the value of the lot is neither spread equally throughout the lot—as argued by the appellees—nor concentrated as entirely within the one-acre homesite as argued by the county. Instead, it concluded that the value *could* be accurately allocated to the ten-acre building envelope but *could not* be accurately allocated within that envelope, at least with the evidence they

possessed at the time. This Court can only benefit from a district court's examination of this novel issue for which no case precedent currently exists.

CONCLUSION

For the foregoing reasons, Wasatch County asks this Court to reverse the district court's dismissal of the county's *de novo* review and to reinstate that review.

DATED this 7 day of November, 2008.

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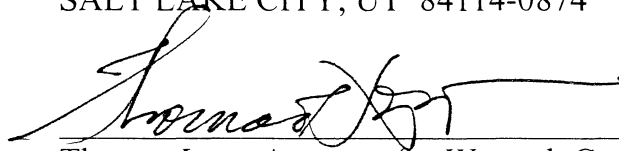
THOMAS L. LOW
ATTORNEY FOR PETITIONERS/
APPELLANTS, WASATCH COUNTY

CERTIFICATE OF MAILING

I hereby certify that I mailed two copies of the foregoing brief, in its bound condition, by first class mail, postage prepaid, on the 7 day of November, 2008, to each of the following:

MAXWELL MILLER
RANDY GRIMSHAW
201 SOUTH MAIN STREET, SUITE 1800
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TIMOTHY BODILY
UTAH ATTORNEY GENERAL'S OFFICE
160 EAST 300 SOUTH, FIFTH FLOOR
SALT LAKE CITY, UT 84114-0874

A handwritten signature in black ink, appearing to read "Thomas Low", is written over a horizontal line.

Thomas Low, Attorney for Wasatch County
Petitioners and Appellants

ADDENDA:

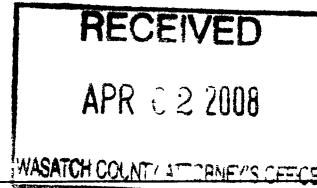
EXHIBIT 1: Utah State Tax Commission's Findings of Fact, Conclusions of Law, and Final Decision, issued April 1, 2008.

EXHIBIT 2: Third District Court's Order Granting Warren and Tricia Osborns' Motion to Dismiss, issued August 4, 2008.

EXHIBIT 3: Utah Code Sections 59-1-601 and 59-1-602

EXHIBIT 4: Rule 14, Utah Rules of Appellate Procedure

EXHIBIT 1



BEFORE THE UTAH STATE TAX COMMISSION

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

Petitioner,

vs.

BOARD OF EQUALIZATION OF WASATCH
COUNTY, UTAH,

Respondent.

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

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

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

Judge: Phan

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

Presiding:

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

Appearances:

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

STATEMENT OF THE CASE

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

FINDINGS OF FACT

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

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

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

Petitioners	Lot/Parcel No.	Acres	County's Rollback Values Appealed	County Board's 2006 Values Appealed
Warren & Tricia Osborn	61/OWR-4B61	160	No Rollback Appeal	Land-GreenBelt \$ 201,800 Land-Homesite \$ 550,000
Michael Sullivan	46/OWR-3A46	184	2001-2005 \$360,000 per year	Land-Greenbelt \$1,040,288 Land-Homesite \$ 360,000
David & Cynthia Mirsky	53/OWR-4A53	160	2002-2006 \$698,200 per year	Land-Greenbelt \$1,150,000
Gary & Catherine Crittenden	75/OWR-5B75	160	2001-2005 \$360,000 per year	Land-Greenbelt \$ 562.100 Land-Homesite \$1,080.000
Norman Provan	25/OWR-2A25	160	2001-2005 \$773,200 per year	Land-Greenbelt \$ 476.800 Land-Homesite \$ 773,200
Jeffrey & Nancy Trumper	50/OWR-3A50	160	2001-2005 \$360,000 per year	Land-Greenbelt \$1,040,000 Land-Homesite \$ 360,000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the development that create the value.

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

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

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

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 advice 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 remaining 159 acres.

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

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

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

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

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

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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

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

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 wile 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

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

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

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

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 $1/160^{th}$ of the total value listed by the County each year in its valuation notices issued to Petitioners. Additionally, this legal basis is supported by the Commission's factual conclusion that during the rollback period, there were no designated building envelopes

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

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

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

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

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

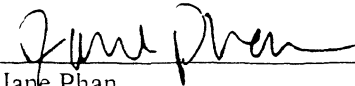
designated, as had occurred for all properties subject to this appeal by the 2006 lien date, there are two distinct and identifiable classes of property, the 10 acre building envelope and the remaining undevelopable area covered by the conservation easement. These two areas do not contribute equally 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 1/160th or 1/184th 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.

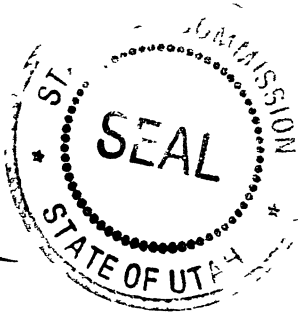
DATED this 1 day of April, 2008

Pam Hendrickson

Pam Hendrickson
Commission Chair

Marc B. Johnson

Marc B. Johnson
Commissioner



EXCUSED

R. Bruce Johnson
Commissioner

D'Arcy Dixon

D'Arcy Dixon Pignarelli
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
USTC - Appeal
Certificate of Mailing

Michael Sullivan vs Wasatch County BOE

06-1505

Wasatch County Assessor
25 North Main
Heber, UT 84032

Respondent

Wasatch County Auditor
25 North Main
Heber, UT 84032

Respondent

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

Attorney for Petitioner

Michael Sullivan
88 Turnberry DR
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

Utah State Tax Commission
USTC - 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
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

**** CERTIFICATION ****

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

Date

4/1/08

Signature

Carolyn Leeper

Utah State Tax Commission
USTC - Appeal
Certificate of Mailing

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

Attorney for Petitioner

Norman Provan Jr.
919 Bonnie Brae Place
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

Carolyn Leeper

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
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Heber City, UT 84032

Attorney for Respondent

**** CERTIFICATION ****

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

Date

4/11/08

Signature

Carolyn Leeper

Certificate of Mailing

Gary & Catherine Crittenden vs Wasatch County BOE

06-1509

Wasatch County Assessor
25 North Main
Heber, UT 84032

Respondent

Wasatch County Auditor
25 North Main
Heber, UT 84032

Respondent

Gary & Catherine Crittenden
183 Ferris Hill RD
New Canan, CT 06840

Petitioner

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Salt Lake City, UT 84147

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Thomas Low
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Attorney for Respondent

**** CERTIFICATION ****

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

Date

4/1/08

Signature

Carolyn Leeper

Utah State Tax Commission
USTC - Appeal
Certificate of Mailing

Mount Clyde Enterprises LC vs Wasatch County BOE

06-1510

Wasatch County Assessor
25 North Main
Heber, UT 84032

Respondent

Wasatch County Auditor
25 North Main
Heber, UT 84032

Respondent

Maxwell Miller
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Attorney for Petitioner

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David Checketts
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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

RANDY M. GRIMSHAW (1259)
MAXWELL A. MILLER (2264)
MATTHEW D. COOK (10751)
Parsons Behle & Latimer
Attorneys for the Warren and Tricia Osborn
One Utah Center
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Salt Lake City, UT 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

FILED DISTRICT COURT
Third Judicial District

AUG 04 2008

SALT LAKE COUNTY

By _____
Deputy Clerk

**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

WASATCH COUNTY,

Petitioner,

vs.

UTAH STATE TAX COMMISSION,

Respondent.

**ORDER GRANTING WARREN AND
TRICIA OSBORNS' MOTION TO
DISMISS**

Case No. 080907392

Judge John Paul Kennedy

Tax Commission Appeals Nos.: 06-1504,
06-1505, 06-1506, 06-1507, 06-1508, 06-
1509, 06-1510

This matter came before the Court for oral argument on: (1) Warren and Tricia Osborns' Motion to Intervene ("Motion to Intervene") and (2) Warren and Tricia Osborns' Motion to Dismiss for Failure to Include Multiple Indispensable Parties ("Motion to Dismiss") on July 14, 2008, the Honorable John Paul Kennedy presiding. Appearing on behalf of Petitioner Wasatch County was Wasatch County Attorney Thomas L. Lowe. Appearing on behalf on the Utah State Tax Commission was Assistant Utah Attorney General Timothy A. Bodily. Appearing on behalf

of the Osborns were Maxwell A. Miller and Matthew D. Cook of Parsons Behle & Latimer. Neither Wasatch County nor the Utah State Tax Commission objected to the Osborns' participation in the proceeding.

At the end of the July 14, 2008 argument, the Court granted Wasatch County and the Utah State Tax Commission the opportunity to file supplemental briefs addressing the argument asserted by Warren and Tricia Osborn (the "Osborns") that once an aggrieved party has exercised its statutory option to appeal a decision of the Tax Commission pursuant to Utah Code Ann. § 59-1-602(1)(a) by invoking the jurisdiction of the court of its choice, the court wherein a subsequent attempt to invoke jurisdiction is made lacks jurisdiction to adjudicate the matter. The parties, respectively, each filed supplemental briefs on the issue of the election of remedies. Oral argument on the supplemental pleadings was held before the Court on July 28, 2008.

Upon consideration of the record, memoranda, arguments made, and being fully advised in the premises, the Court enters the following Order granting the Osborns' Motion to Dismiss as follows:

1. The Osborns have standing to file a Motion to Dismiss.
2. The Osborns and other property owners who were parties in the Tax Commission proceeding, *Warren and Tricia Osborn et al v. Board of Equalization of Salt Lake County, Utah*, Appeal Nos. 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1510, filed a Petition for Review of the Tax Commission's Findings of Fact, Conclusions of Law, and Final Decision dated April 1, 2008 (the "Final Decision"), with the Utah Supreme Court on April 10, 2008, as Case No. 2008034 SC.

3. On April 24, 2008, Wasatch County filed its Cross-Petition for Review of the Utah State Tax Commission's Final Decision with the Utah Supreme Court in the same case, Case No. 20080304 SC. Subsequently, on April 25, 2008, Wasatch County filed its Petition for Review of the Decision in this Court, as Case No. 080907392

4. Utah Code Ann. § 59-1-602 provides that "any aggrieved party appearing before the commission or county whose tax revenues are affected by the decision," including Wasatch County, has the "option" of filing a petition for review in the district court "or" in the Supreme Court. Wasatch County exercised its statutory option pursuant to Utah Code Ann. § 59-1-602(a)(1) by invoking the jurisdiction of the court of its choice, the Utah Supreme Court, by filing its Cross-Petition for Review with the Utah Supreme Court on April 24, 2008. Consequently, Wasatch County's subsequent attempt to invoke the jurisdiction of this Court by filing its Petition for Review on April 25, 2008 failed to invoke this Court's jurisdiction and was in violation of Utah Code Ann. § 59-1-602(a)(1). Because this Court lacks jurisdiction to adjudicate Wasatch County's subsequently filed appeal with this Court, it retains jurisdiction only to dismiss Wasatch County's Petition for Review. For the reasons stated above, the Osborns' Motion to Dismiss is hereby granted and Wasatch County's Petition for Review filed in this Court on April 25, 2008 is hereby dismissed.

5. The Court further cites to *Salt Lake County v. Tax Commission*, which provides:

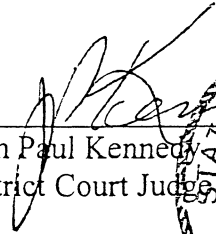
Salt Lake County did not expressly waive (as our statute contemplates that it should) its right of access to the Third Judicial District Court for the relief it seeks here. We treat the omission as a pleading deficiency of the kind to which the pleader's adversary must make timely objection or the right to object is waived. (fn6) In this connection, it is significant that the County's power to tax is

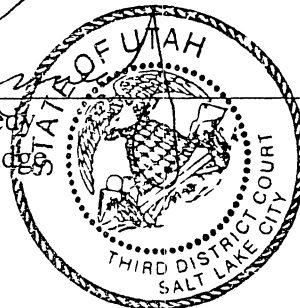
not dependent on the above cited statute; the statute merely regulates the exercise of that power. The statute does not undertake to remove the review of Commission decisions from the jurisdiction of this Court, it merely states a condition which an applicant for review is obligated to satisfy

Salt Lake County v Tax Commission, 596 P.2d 641, 644 (Utah 1979).

The Court finds, pursuant to the above cited case, that Osborns have timely objected to Wasatch County's filing of duplicative appeals; therefore their right to object has not been waived.

So ordered this 1 day of August, 2008.


John Paul Kennedy
District Court Judge



Approved as to form:

Timothy A. Bodily, Utah Assistant Attorney General

Thomas L. Lowe, Wasatch County Attorney

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2008, I mailed a true and correct copy of the foregoing
**ORDER GRANTING WARREN AND TRICIA OSBORNS' MOTION TO INTERVENE
AND MOTION TO DISMISS** to the following parties:

Timothy Bodily, Assistant Attorney General
Counsel for Utah State Tax Commission
160 East 300 South, Suite 500
Salt Lake City, UT 84114

Thomas Low, Wasatch County Attorney
Counsel for Wasatch County
805 West 100 South
Heber City, UT 84032




EXHIBIT 3

59-1-601. District court jurisdiction.

(1) In addition to the jurisdiction granted in Section **63G-4-402**, beginning July 1, 1994, the district court shall have jurisdiction to review by trial de novo all decisions issued by the commission after that date resulting from formal adjudicative proceedings.

(2) As used in this section, "trial de novo" means an original, independent proceeding, and does not mean a trial de novo on the record.

(3) (a) In any appeal to the district court pursuant to this section taken after January 1, 1997, the commission shall certify a record of its proceedings to the district court.

(b) This Subsection (3) supercedes Section **63G-4-403** pertaining to judicial review of formal adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

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Last revised: Wednesday, October 08, 2008

Utah Code Section 59-1-602

http://le.utah.gov/~code/TITLE59.htm#59_01_060200.htm

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.

Amended by Chapter 382, 2008 General Session

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Last revised Wednesday, October 08, 2008

EXHIBIT 4

Utah Rules of Appellate Procedure

Rule 14. Review of administrative orders: how obtained; intervention.

(a) Petition for review of order; joint petition. When judicial review by the Supreme Court or the Court of Appeals is provided by statute of an order or decision of an administrative agency, board, commission, committee, or officer (hereinafter the term "agency" shall include agency, board, commission, committee, or officer), a petition for review shall be filed with the clerk of the appellate court within the time prescribed by statute, or if there is no time prescribed, then within 30 days after the date of the written decision or order. The petition shall specify the parties seeking review and shall designate the respondent(s) and the order or decision, or part thereof, to be reviewed. In each case, the agency shall be named respondent. The State of Utah shall be deemed a respondent if so required by statute, even though not so designated in the petition. If two or more persons are entitled to petition for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

(b) Filing fees. At the time of filing any petition for review, the party obtaining the review shall pay to the clerk of the appellate court the filing fee established by law. The clerk shall not accept a petition for review unless the filing fee is paid.

(c) Service of petition. A copy of the petition for review shall be served by the petitioner on the named respondent(s), upon all other parties to the proceeding before the agency, and upon the Attorney General of Utah, if the state is a party, in the manner prescribed by Rule 3(e). The petitioner, at the time of filing the petition for review, shall also file with the clerk of the appellate court a certificate reflecting service upon all parties to the agency proceeding who have been served.

(d) Intervention. Any person who seeks to intervene in a proceeding under this rule shall serve upon all parties to the proceeding and upon all parties who participated before the agency, and file with the clerk of the appellate court a motion for leave to intervene. The motion shall contain a concise statement of the interest of the moving party and the grounds upon which intervention is sought. A motion for leave to intervene shall be filed within 40 days of the date on which the petition for review is filed.