

1996

Eugene B. Lynch, Trustee, Harold Perkins v. Utah State Tax Commission : Brief of Appellant

Utah Court of Appeals

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Alpha Security Trust; Eugene B. Lynch, Trustee; Harold Perkins; In Pro Per.

Bill Thomas Peters; Parson, Davies, Kinghorn & Peters; Attorey for Respondents.

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IN THE UTAH SUPREME COURT

EUGENE B. LYNCH, TRUSTEE,
HAROLD PERKINS

Petitioners,

vs.

UTAH STATE TAX COMMISSION,

Respondent,.

PETITIONER'S OPENING BRIEF

960363 CA

Appeal No: 95-0488

94-2231

94-1680

Serial No: 41-33-28-077

37-190-1085

PRIORITY 15

PETITIONER'S BRIEF

PETITION FOR REVIEW OF AN ORDER OF THE UTAH STATE TAX COMMISSION

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UTAH

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) Priority 15

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16 Petitioner's petition for review of an Order of the Utah State Tax Commission.
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TABLE OF CONTENTS

1
2
3 TABLE OF AUTHORITIESv
4 CITATION TO THE RECORD1
5 JURISDICTION1
6 ISSUES PRESENTED FOR REVIEW AND STANDARD OF REVIEW1
7 STATEMENT OF THE CASE2
8 STATEMENT OF FACTS3
9 SUMMARY OF ARGUMENTS6
10 ARGUMENT12
11 POINT I THE TAX COMMISSION'S ASSUMPTION/CONCLUSION THAT
12 THE ASSESSORS MASS APPRAISAL RELATIVE TO LAKE FRONT
13 PROPERTIES IS ACCURATE AND WITHIN INDUSTRY AND
14 FEDERAL STANDARDS IS ERRONEOUS AND FALSE12
15 A. Unreasonable Assumption By The Tax Commission Denies
16 The Petitioners Their Right To Equal And Uniform Taxation 12
17 B. The Assessor/Board Did Not Verify Their Comparable
18 Sales Resulting In The Inclusion Of Substantial Personal
19 Property In The Reported Sales Prices And The Use Of Non
20 Arms Length Transactions 14
21 POINT II THE TAX COMMISSION'S CONCLUSION THAT THE
22 PETITIONER'S APPRAISAL DID NOT RELIABLY FIX THE
23 MARKET VALUE OF THE SUBJECT PROPERTY AND ITS
24 REMAND FOR ADDITIONAL EVIDENCE WERE BEYOND THE
25 LIMITS OF REASON AND RATIONALITY AND, THEREFORE, AN
26 ABUSE OF DISCRETION OR, IN THE ALTERNATIVE,
27 ARBITRARY AND CAPRICIOUS18
28 A. Unreasonable Action by Commission18
B. Arbitrary and Capricious Commission Decision 30
POINT III THE TAX COMMISSION'S FINDING THAT PETITIONER'S
APPRAISAL DID NOT RELIABLY FIX THE MARKET VALUE
OF THE SUBJECT PROPERTY WAS BASED ON DETERMINATIONS
OF FACT NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.31
A. The Tax Commissions Conclusion Is Not Supported By Substantial
evidence; the Boards Appraisals Significantly Overstate The Value
Of The Petitioners Property In The Aggregate32
B. The Boards Appraisals Are Barred By State Statue32

1
2
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4
5
6
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9
10
11
12
13
14
15
16
17
18
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C. Petitioner's Appraisal Relies On The Same Comparable Sales, Adjusted For Market Conditions At The Time Of Sale, Personal Property Included In the Sale Price, And The Date Of Assessment Vs. Date Of Appraisal, To Fix The Property's Fair Market Value.33

D. The Tax Commission's Determination That Petitioner's Appraisal As Reliable As The Assessor's Is Preposterous. They Are Identical Except For The Omissions By The Board34

POINT IV THE TAX COMMISSION FAILED TO FOLLOW PRESCRIBED PROCEDURES IN THE ADJUDICATORY PROCEEDINGS 35

POINT V THE TAX COMMISSION'S FAILURE TO CORRECT THE BOARD'S VALUATION AND ASSESSMENT AND REMAND FOR FURTHER EVIDENCE DENIES PETITIONER DUE PROCESS, IS CONFISCATORY, IS A UNCONSTITUTIONAL AS APPLIED TO THE SUBJECT PROPERTY 35

A. The Remand Is A Denial Of Due Process36

B. The Proposed Valuation Is Confiscatory 37

C. The Proposed Valuation is Arbitrary And Not Based On Fair Market Value37

CONCLUSION39

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
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Boston First National v. Salt Lake County Board.
776 p.2d 1163, 1165 (Utah 1990) 31

Brushaber v. Union Pacific RR Co., 240 U.S.I.
24-25, 36 S.Ct. 236, 60 L.Ed. 493 (1915). 37

Carlson v. State of Utah, Department of Social Services.
772 P.2d 775 (Utah 1986)

Cunningham V. Thomas, 16 Utah 86, 50 P. 615 (1897). 37

Grace Drilling Co. v. Board of Review.
776 p.2d 63,68 (Utah App. 1989). 31

Harmer v. State tax Commisison,
22 Utah 2d 324, 452 P.2d 876 (1969) 38

Johnson v. Utah State Retirement Office.
621 p. 2d 1234, (Utah 1980) 30

Kennecott Copper v. Salt Lake County,
799 P. 2d 1156 (Utah 1990). 37

Kiesling v. Basamakis, 539 P.2d 1043 (Utah 1975) 35

Morton v. International, Inc. V. Utah State Tax Commission.
163 Utah Adv. Rep. 34 (Utah 1991) 34

Motor Vehicle Mfrs. Assoc. Of the United States v. State Farm Mutual
Automobile Ins. Co., 463 U.S. 29, 43 103 S.Ct 2856, 2866, 77 L.Ed.2d
443 (1983)30

Neilson v. Jacobsen, 669 P.2d 1207, 1213 (Utah 1983) 36

Rupp v. Grantsville City.
610 P.2d 338,341 (Utah 1980) 36

Savage Industries, Inc. V. Utah State Tax Commission.
160 Utah Adv. Rep. 5 (Utah 1991) 35

United States v. Alpine land and Reservoir Co.,
887 F2d 207, 213 (9th Cir. 1989)30

TABLE OF SECONDARY AUTHORITIES

1		
2		
3	Utah State Constitution, Article XIII, Section 2	13
4	Utah Code Ann. S 59-2-102 (2)	29
5	Utah Code Ann. S 59-1-210(7).	37
6	Utah Code Ann. S 59-2-113	16
7	Utah Code Ann. S 59-12-104 (16).	29
8	Utah Code Ann. S 63-46b-16 (4).	31
9	Utah Code Ann. S 63-46b-16 (e).	34
10	Utah Code Ann. S 78-2-2(3)(e)(ii)	1
11	Utah Code S 59-2-1325	32
12	Utah Rules of Appellate Procedure 14	1
13	USPAP Title XI of FIRREA 12 CFR part 34 subpart C	12
14	Standard Rule 1-1 (b)	26
15	Standard Rule 2-2 (e)	27
16	Standard Rule 6-1 (a,b,c)	12
17	Standard Rule 6-1 (b) (c)	14
18	Standard Rule 6-2 (e) (f subpart I)	15
19	Standard Rule 6-3	16
20	Standard Rule 6-4 (a).	14
21	Standard Rule 6-6b	13
22	Standard Rule 6-7 (a) (b) (c)	17
23	Utah Administrative Code R861-1-7G (1989)	34
24	Utah Administrative Code R861-1-7H (1989)	34
25	Utah Administrative Code R861-1-70 (1989)	34
26	Utah Administrative Code R861-1-9A (1989)	36
27		
28		

1 CITATION TO THE RECORD

2
3 The Utah State Tax Commission ("Tax Commission") heard evidence by Petitioner and
4 Respondents regarding a determination of the Rich County Board of Equalization ("Board").
5 Citations to the record will be abbreviated as follows:

6 Record on appeal: R.

7 Uniform Standards of Appraisal Practices: USPAP

8 Standard Rule: SR

9 The Addendum includes relevant portions of the record, and shall be cited to as "A. "
10 with the appropriate page number.

11 JURISDICTION

12 This matter is before the Utah Supreme Court pursuant to Utah Code Ann. S78-2-2(3)
13 (e)(ii), and Rule 14, Utah Rules of Appellate Procedure.

14 ISSUE PRESENTED FOR REVIEW AND STANDARD OF REVIEW

15 At issue is:

16 1. The Tax Commission's assumption that the assessors role is accurate and that the
17 values contained within the assessment role have been tested for accuracy and are within
18 industry standards. The question before the Courts is: are the petitioners entitled to equal
19 taxation and uniformity in taxation and does the County have to provide accurate
20 assessments of properties within the County?

21 2. The Tax Commission's rejection of Petitioner's appraisal of the market value of the
22 subject property was based on determinations of fact not supported by substantial evidence
23 and contradictory to the evidence presented at the hearing especially when viewed in light of
24 the whole record before the Court. The question before the Court is: Is it within the discretion
25 Tax Commission to ignore Federal Statues of minimum appraisal standards, State statues,
26 industry standards; and rely on historical out dated information in violation of USPAP?

27 3. The Tax Commission failed to follow its own prescribed procedures. The question
28 before the Court is: Can the Tax Commission change the Board of Equalizations policies and

1 procedures to aid the Board in its presentations? Can the Tax Commission selectively choose
2 which issues it decides?

3 4. The Board's valuation of the property subjects Petitioner to potentially confiscatory
4 taxes and the Tax Commission's failure to correct the over assessment and over taxation is
5 a violation of Petitioner's constitutional rights. The question before the Court is: Can the Tax
6 Court violate the Petitioners constitutional rights resulting in the over taxation of the
7 Petitioners?

8 The standard of appellate review of each of these issues is set forth in the appropriate
9 section.

10 STATEMENT OF THE CASE

11 This case is a review of an order of the Tax Commission rejecting Petitioner's evidence
12 of fair market value and ignoring the Petitioners uncontested evidence that the Rich County
13 Assessors tax roll is not in compliance with minimum Federal, State, and industry standards,
14 and is therefore fatally defective. Petitioner challenges the accuracy of the Tax Commission's
15 conclusion that Petitioner's exaggerated both the magnitude and accuracy of personal
16 property contributed within the comparables sales used by the respondent. In addition, to
17 ignoring substantial personal property within each and every comparable sale, the Board did
18 not use arms length transactions to establish values in the assessor tax roll; the
19 Board/Assessor did not consider market conditions at the time of sale market conditions on
20 the effective date of the appraisal; the Board did not use supportable or even reasonable
21 land value per front foot adjustments and Respondents set the value of Petitioner Perkins on
22 April 20, 1995 and July 14 1994 for Petitioner Lynch in violation of state statue.

23 Petitioner further claims that the valuation of the property is confiscatory and,
24 therefore, unconstitutional. Petitioner claims that the Tax Commission remand in giving the
25 Respondent's additionally time to verify their sales is futile, an abuse of discretion, and
26 arbitrary and capricious.

27 This case is a review of the Findings of Fact, conclusions of law, and final decision of
28

1 the Utah State Tax Commission dated October 13, 1995. This matter came before the Utah
2 Tax Commission for a formal hearing on July 7, 1995. Chairman W.Val Oveson presided.
3 Petitioner Gene Lynch was represented by Marvin Zulauf, Petitioner Harold Perkins
4 represented himself. The appeal of Harold Perkins and Alpha Security Trust (Gene Lynch)
5 were joined upon the motion from the Petitioners. Respondent was represented by Craig
6 Jolley, Appraiser with the Property Tax Division, acting as a consultant to the Rich County
7 Assessor, and Pete Mower, Rich County Assessor. The assessment roll in question was
8 prepared by Barbara Peart, the previous Rich County Assessor.

9 A Settlement Conference was held on May 2, 1995 in Randolph, Utah. The Settlement
10 Conference was converted to a Prehearing Conference at the recommendation of Chairman
11 Oveson and agreed to by Petitioners and Respondent. All parties then waived their right to
12 Settlement Conference and a Formal Hearing was set for July 7, 1995 in Salt Lake City.

13
14 STATEMENT OF THE FACTS

15 The property at issue in this case is Lake Front Property at Bear Lake of Rich County.

16 The petitioner petitioned for a writ of review of the order which rejected Petitioner's
17 evidence of fair market value of the property and which remanded the matter for further
18 proceedings. The Petitions have been consolidated for further proceedings in this matter.

19 1. The property tax period in question is 1994.

20 2. Petitioner Perkins property is located at 1465 North Cisco Road, Laketown, Utah.

21 The subject property consists of .45 of an acre of land with a 1,082 square foot home
22 and a 600 square foot garage. The Rich County Assessor initially valued the property
23 at \$96,945.85. The Rich County Board of Equalization subsequently reduced the value
24 to \$95,348. Petitioner is seeking a value of \$64,000.

25 3. Petitioner Lynch's property is located at 1932 Bear Lake Blvd., Pickleville, Utah.

26 The subject property consists of .61 of an acre of land with a 2,160 square foot home
27 and a 1,008 square foot garage. The Rich County Assessor initially valued this
28 property at \$108,290.80. The Rich County Board of equalization subsequently

1 reduced this value to \$97,000. Petitioner is seeking a value of \$65,000.

2 4. Marvin Zulauf, Petitioner Lynch's son -in-law is not licence in the State of Utah, but
3 has been actively engaged as an appraiser in California since 1971, and in the Real
4 Estate construction Industry for over 30 years. Mr. Zulauf presented sales information
5 relative to lake front property in the form of Exhibit I (A1) indicating the assessors tax
6 roll was at best only 55% accurate and far below industry standards. The Exhibit (A1)_
7 was unopposed, by the Respondents. The only comment by Respondents was that the
8 properties around Bear Lake were being reappraised next year.

9
10 Mr. Zulauf presented the Respondents appraisal and indicted that Petitioner Lynch
11 was using the Respondents "Bishoff Appraisal" (A2) as their appraisal and Petitioner Perkins
12 was using the state appraisal by Steve Farrell as his appraisal with the following exceptions:

13 1. The Respondents appraisal(s) did not properly adjust for market conditions at the
14 time of sale (Time Adjustments) Marvin Zulauf indicated this adjustment could reflect
15 an adjustment of between 5 and 15% of the sales price depending on the date the
16 comparable sold and the effective date of the appraisal.

17 2. That lake front homes are typically second homes and sell with a significant amount
18 of personal property; and include eating utensils, linens, furniture, appliances and in
19 some instances boats, tractors, trailers, wave runners, lawn mowers, etc. Mr. Zulauf
20 indicated that personal property adjustments for secondary lake front homes could be
21 5 to 15% of the sales price. Additionally Mr. Zulauf indicated some of the sales used
22 by the Respondents were not arms length transactions.

23 3. Mr. Zulauf indicated that the Respondent's used \$600 per front foot as an
24 adjustment for differences in beach front lots when \$400 per front foot was clearly
25 supported by a paired sales analysis.

26 4. Mr. Zulauf indicated that the omission of these two adjustments was part of the
27 reason the assessor's tax roll was and is only 55% accurate and thus fatally defective.

28 5. Mr. Zulauf pointed out the date of value in the respondents appraisal was July 14,

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1994, seven months after the date of assessment.

6. Petitioner, Harold Perkins pointed out his property was appraised by Steve Farrell—who used the same sales as the Bishoff appraisal, with a date of value of April 20, 1995 (sixteen months after the assessment date) and numerous other errors. (A3)

7. Petitioner presented Exhibit 2 (A4) a brokers survey of appreciation of lake front properties as support for time adjustments for the comparable sales. Additionally petitioner Perkins and Lynch testified they verified all of the sales used in the Bishoff/Farrell appraisal with brokers and principles in the transactions.

8. Respondents responded by asking Petitioners who the Petitioners verified their sales with and how Petitioners knew the amount of personal property in each sale.

9. Respondent's further responded by stating that Marvin Zulauf was Petitioners Lynch's son-in-law and not a certified appraiser in the State of Utah and was in violation of state law in appearing for Petitioner Lynch and Petitioner Perkins. Instead of defending their data or questioning the Petitioners data the Respondents launched a personal attack on the Petitioners and Marvin Zulauf.

10. Instead of ruling on the information before the Tax Commission; the Tax Commission remanded the decision for 10 days to allow Respondents time to verify the information presented by the Petitioners. - To verify the sales Bishoff (A2) had used one year earlier, July 14, 1994 and Farrell (A3) used 3 months earlier, April 20, 1995.

11. Although Petitioners were not told by the court that they had 10 days to reverify the data that they had presented at the hearing on July 12, 1995, Petitioners afforded themselves of the opportunity to do so. Additionally, Petitioners reverified each sale and asked each realtor and principle 1) if the sale was arms length, 2) if the sale contained personal property, and a description of the personal property, 3) the value of the personal property, and 4) whether or not any appraiser or anyone from the assessor's office verified the sale with them. Additionally, the Petitioner reverified the information in Exhibit 2 relative to appreciation beginning in 1994 through July of 1995.

1 SUMMARY OF ARGUMENTS

2 Petitioners have been substantially prejudiced by unequal assessment, a fatally
3 defective tax roll and made subject to potentially confiscatory taxes based on the unsupported
4 market value of the property as set by the Board and the Tax Commission. The Commission's
5 determination of fair market value is to be reversed if unreasonable. Where all the evidence
6 required to fix market value by generally accepted appraisal practice was presented in the
7 formal adjudicative proceedings, and no other substantive evidence is available, the
8 Commission's refusal to accept Petitioner's appraised fair market value and remand for
9 additional time to verify the sales used by the Respondents was unreasonable and an abuse
10 of its discretion. Furthermore, the Commission's decision is arbitrary and capricious because
11 it is not based upon the relevant facts set forth in the testimony and documents submitted as
12 evidence. Additionally, the remand was and is a violation of USPAP and violation of
13 Petitioners constitutional rights. The Respondents had the same opportunity to verify the
14 comparable sales used in their reports as the Petitioners. In fact not verifying comparables
15 before the appraisal(s) are completed is a violation of USPAP and industry standards. The
16 remand gave Respondents the opportunity to submit "new" information to the Tax Commission
17 but, did not allow the Petitioners to cross examine the collectors for the data or test the data.
18 The Tax Commission merely assumed the "new" data was the best data and therefore pivotal
19 in the Tax Commission decision. Never mind a level playing field. The Petitioners were not
20 even on the field when the tax Commission made its decision.

21 When viewed in light of the whole record before the Court, the Commission's factual
22 findings are not based on substantial evidence. Petitioner's evidence was presented by two
23 experts in Lake Front properties. Petitioners Lynch and Perkins have petitioned for a property
24 tax adjustment for the last 12-15 years. They have walked the lake front of each of the 400+/-
25 lake front properties and talked with almost all of the lake front property owners. They have
26 verified most, if not all, of the lake front transactions over the past 12 to 15 years with at least
27 one principle of the transaction(s). The Tax Commission ignored the fact of Zulauf's assertion
28 that the assessor's tax roll was so inaccurate that it was fatally defective. Based on all of the

1 lake front sales that took place at Bear Lake between 1992 and 1993 and comparing the sales
2 to the assessed values the assessor has a 55% accuracy ratio. Based on this uncontested
3 accuracy rating the Petitioners property is being grossly over taxed. This is illustrated below:

4 The Petitioners are being taxed in excess of their market value. However, to use the
5 present assessment as an illustration of the petitioners tax burdens:(Please note thee original
6 1994 tax assessment is being used because the Board has lowered the Petitioners assessed
7 values but not their taxes.)

8	Assessor MV	X Tax Rate	= Annual Taxes
9	Petitioner Lynch \$108,290.80	X.08490	= \$919.37
10	Petitioner Perkins \$96,945.85	X 1.1865	= \$1,150.26

11 At 55% of market value the petitioner property Taxes would be as follows:

12	Assessor MV	X Tax Rate	= Annual Taxes
13	Petitioner Lynch \$59,559.94	X .08490	= \$505.66
14	Petitioner Perkins \$53,320.22	X 1.1865	= \$632.65

15 The illustration above indicates only one thing and that is the Petitioners are paying a
16 much higher and disportionate share of the county property taxes than most (87%) of the other
17 lake front tax payers.

18 The Board's evidence was presented by a county employee, not qualified as an expert
19 at the hearing, and an appraisal by J. Douglas Bishoff, who admitted under cross examination
20 has only appraised one property at Bear Lake in his life time; and (Bishoff) testified at the
21 hearing that he never talks to real estate brokers because they are "optimistic and unreliable".
22 Petitioner's appraisals (A5 Lynch) (A6 Perkins) (Respondents appraisal adjustment for market
23 conditions at the time of sale, market conditions on the effective date of the appraisal,
24 difference in lake frontage-site value, and personal property relied on the "the same"
25 comparables as the Respondents to fix the property's fair market value. The Petitioners had
26 only minor disagreements with the Respondents appraisal except where the Respondents
27 appraisal deviated from minimum appraisal standards established by Federal Statue, USPAP.
28 Regarding the individual appraisals by Bishoff and Farrell the only areas of contention before

1 the Tax Commission were personal property in the sales price of the comparables, the
2 unsupported front foot adjustments applied by the Respondents, the inclusion of market
3 conditions at the time of sale; market conditions as of the effective date of the appraisal, the
4 estimate of fair market value. The Tax Commissions determination that the evidence
5 presented by Respondent in the post hearing memoranda demonstrated that Petitioners were
6 exaggerating both the magnitude and occurrence of the personal property included in the
7 sales of comparable properties is unreasonable, arbitrary, capricious and not supported by
8 applying the "substantial evidence" test. The Tax Commissions assertion that the
9 "Respondents memoranda also demonstrated that the assertions of Petitioners of less than
10 arms-length transactions was also overstated," is also lacking in view of the "substantial
11 evidence" test and in light of the whole record before the Court. The evidence has been
12 marshaled for the Court's review, and the substantial evidence which is required to support
13 an agency action based on determinations of fact is wholly lacking. Petitioner's appraised fair
14 market value should be accepted by the Commission as the fair market value of the property.

15 The Tax Commission was required to interpret the statutory term "fair market value" and
16 to apply the statutory term to the facts of this case. The agency's interpretation of the law is
17 reviewed for error. "Fair market value" is determined by estimation of the sales price of the
18 property by generally recognized appraisal methods. The Commission's refusal to accept
19 Petitioner's appraisal estimating the property's fair market value by generally accepted
20 appraisal methods constituted an erroneous interpretation of the statutory term "fair market
21 value" which this Court may reverse merely because it disagrees with the agency's
22 interpretation.

23 The Commission is required to accept uncontradicted evidence, unless inherently
24 improbable or only within the possession of one party, as being true. At the hearing there was
25 no contradictory evidence relative to the inaccuracy of the assessors tax roll, the use of arms
26 length transactions, the per front foot adjustment of land value, the adjustment for the personal
27 property. In fact, the respondents wanted to know who Petitioners verified our sales with. The
28 Tax Commission never inquired as to who the Respondents verified their sales with. Because

1 it was obvious from the questions, they had not verified their sales before turning in the
2 completed appraisal reports. Additionally, Bishoff/Pia's letter to Pete Mower dated July 12,
3 1995, indicated that this was the first time they have verified the sales used in their reports.
4 The Respondents appraisers verified the information 13 months after their appraisal
5 and 2 to 3 years after the date of sale. No wonder the information was slightly different
6 than the Petitioners presented. The petitioner verified the sales within a few months of
7 the sale and were familiar with each comparable sales used by the Respondent's. In
8 some instances the Petitioners knew the sellers and had visited their second homes and were
9 familiar with the personal property contents. The fact that the Tax Commission let the
10 Respondent verify their sales 13 months after the Lynch/Bishoff appraisal and 3 months after
11 the Perkins appraisal, and 2 to 3 years after the sales took place is an insult to the tax payer,
12 Petitioners, appraisal profession in general and justice system itself, Then—the Tax
13 Commission took the insult one step further by relying on this old, outdated, historically,
14 inaccurate information. The Commission's refusal to accept Petitioner's uncontradicted
15 evidence presented at the hearing of July 7, 1995, is reviewed for error. The decision that
16 Petitioner had not met its burden of proving documentary evidence of market value is
17 preposterous. The facts are that the Board/Assessor/State did not meet its burden of proving
18 documentary evidence of market value. The Board/Assessor/State appraisal were lacking not
19 not the Petitioners. The Tax Commission gave the Respondents appraisers more time to
20 verify their own work product—it was the Board/Assessor/State that was not prepared. The
21 Petitioners presented their verified information at the hearing on July 12, 1995. Instead the Tax
22 Commission relied on the Bishoff appraisal dated July 14, 1994 and Farrell's Appraisal dated
23 April 20, 1995. These appraisals were performed significantly after the assessed date of
24 January 1, 1994 and during a time period when all of the brokers surveyed, and all of the
25 expert witnesses agreed that market conditions were superior and values had been increasing
26 at between 10 to 20% per year. In the Tax Commission's view, the respondent's date(s) of
27 value of July 14, 1994 and April 20, 1995 were acceptable, although there was no adjustment
28 for time of sale or the any of the comparable sales, or the effective date of valuation. The Tax

1 Commission refused to acknowledge that the Petitioner's evidence presented at the hearing
2 of July 7, 1995 was accurate. Even though there was no contradictory evidence on the date
3 of the hearing July 12, 1995. The Tax Commissions remand required the taxpayer to engage
4 in the futile exercise of once again reverifying the transactions within the relevant vicinity of
5 the subject property is an unreasonable requirement which constitutes an abuse of discretion
6 from which the taxpayers are entitled to relief. The petitioner reverified the information
7 present at the hearing of July 7, 1995. At the same time they reverified the information, they
8 inquired from each principle as to whether anyone else, State, County or independent
9 appraiser had contacted them relative to the terms and condition of the sale. The answers
10 in and every case was NO. No one except the petitioners had contacted them to verify the
11 terms of the sales. The only exception was on July 11, 1995 while reverifying the market
12 adjustments for market time of sales, at Bear Lake Reality; Bill Peterson received a phone call
13 from Pete Mower asking him if the values had increased from January 1994 at about 10% a
14 year. Bill Peterson answered, "that seems about right". The Respondents interviews
15 consisted of a 30 second phone call, over one year after the Bischoff appraisal was completed
16 and 3 months after the Farrell Appraisal was completed.

17 Petitioner's appraisal was and is fair market value. The remand for additional
18 evidence was unreasonable and an abuse of its discretion. Furthermore, the Commission's
19 decision is arbitrary and capricious because it is not based upon the relevant factors set forth
20 in the testimony and documents submitted as evidence. Remand would serve no useful
21 purpose, and the Commission should be ordered by this Court to correct the overassessment
22 of the property.

23 When viewed in light of the whole record before the Court, the Commission's factual
24 findings are not based on substantial evidence. Petitioner's evidence was presented by two
25 experts in lake front properties. The Board's evidence was presented by a State employee,
26 not qualified as an expert at the hearing, and an appraisal by Bishoff—who admitted he has
27 only appraised one single family residence at Bear Lake during his life time and state
28 appraiser who is obviously not familiar with the industry single family form. The evidence

1 shows that Petitioner's assessed values are high based on the Bishoff appraisal and their
2 taxes are astronomical compared to the low assessed values of other lake front properties.
3 Petitioner's appraisal relied on the same comparable sales as the Respondents properly
4 adjusted for time of sale, personal property, land value differences and date of valuation to
5 fix the property's fair market value. The evidence has been marshaled for Petitioner's
6 appraised fair market value should be accepted by the Commission as the fair market value
7 of the property.

8 The Commission is required to accept uncontradicted evidence, unless inherently
9 improbable or only within the possession of one party, as being true. The Commission's
10 refusal to accept Petitioner's uncontradicted evidence is reviewed for error. The decision that
11 Petitioners had not met its burden of proving the Board's valuation is incorrect was based on
12 the Commission's failure to follow prescribed procedures, appraisal standards set by Federal
13 Statutes (USPAP) generally accepted appraisal practice and State statute, for which Petitioner
14 is entitled to relief.

15 The Board's unsupported and incorrect valuation and assessment of the subject
16 property and the Commission's failure to correct the overassessment results in an
17 unconstitutional taking of Petitioner's property in violation of State and Federal constitutions.
18 The remand denies Petitioner due process because it is contrary to Federal Minimum
19 Appraisal Standards, relying on sale verifications 2 to 3 years after the sales took place and
20 rewards to the Respondent for ignoring minimum appraisal standards set by the Federal
21 government and sets an impossibly high threshold for proof necessary to rebut the Board's
22 valuation. The proposed taxation is confiscatory in that failure to pay excessive property
23 taxes on the part of the petitioners results in their property being confiscated. The Board's
24 valuation is not based on an assessment of fair market value, but is simply an adoption of the
25 Assessor's arbitrary valuation of the subject properties and unsupported by credible evidence.
26 Assessment at that valuation effectively confiscates Petitioner's property. The proposed
27 valuation is arbitrary and not based on fair market value in contradiction of SS2 and 3, Article
28 XIII of Utah Constitution, which requires that valuations be reasonably uniform and designed

1 to achieve a fair cash value. The Board's arbitrary valuation(s), are based on a fatally
2 defective method of valuation, provides no uniformity or consistency, and fails to achieve fair
3 cash value in violation of the Utah Constitutional provisions.

4 **ARGUMENT**

5 **POINT I**

6
7 **THE TAX COMMISSION'S ASSUMPTION/CONCLUSION THAT THE ASSESSORS**
8 **MASS APPRAISAL RELATIVE TO LAKE FRONT PROPERTIES IS ACCURATE AND**
9 **WITHIN INDUSTRY AND FEDERAL STANDARDS IS ERRONEOUS AND FALSE**

10 **A. Unreasonable assumption by the Tax Commission denies the Petitioner their**
11 **right to equal and uniform taxation.**

12
13 **USPAP codified as Title XI of FIRREA issued as 12 CFR part 34 subpart C appraisals**
14 **sets the minimum standards for Mass Appraisals(A7). And of course due to the fiduciary**
15 **relationship between the assessor and taxpayers and the assumption that the assessors value**
16 **is correct thereby shifting the burden of proof to the tax payer; the County should be held not**
17 **only to this minimal standard but yet a higher standard. Standard Rule 6-1 (a, b, c) states in**
18 **pertinent part:**

19 **In developing a mass appraisal, an appraiser must:**

20 **a) be aware of, understand, and correctly employ those generally accepted methods and**
21 **techniques necessary to produce a credible appraisal;**

22 **Comment: Departure from this binding requirement is not permitted.**

23 **b) Not commit a substantial error of omission or commission that significantly affects a mass**
24 **appraisal;**

25 **comment: Departure from this binding requirement is not permitted. Standards Rule 6-1**
26 **(b) is identical in purpose to Standards Rule 1-1 (b)**

27 **c) not render a mass appraisal in a careless or negligent manner;**

28 **comment: Departure from this binding requirement is not permitted. Standards Rule 6-1**
(c) is identical in purpose to Standards Rule 1-1 (c)

1 At the hearing of July 7, 1995, the petitioners produced evidence that the Boards
2 assessment relative to lake front properties is so fraught with errors and omissions that the
3 assessment roll is fatally defective. The industry standard for accuracy, of single family
4 homes, is for the estimated market value to be within 10% of the sales price. This means that
5 in the instance of a sales price of \$100,000 any estimate of fair market value between
6 \$90,000 and \$110,000 would meet this industry standard. Exhibit A (A1), is a simple
7 assessed value/sales analysis that accurately test the Boards assessment roll. This Exhibit
8 contains all of the lake front sales that took place from May of 1992 thru April of 1995. This
9 appraisal technique, appraisal-to-sale ratio, is one of the acceptable methods for test a mass
10 appraisal model for accuracy as outlined in SR6-6b (A7). In the opinion of the petitioners this
11 the most accurate test available. After all, what could be a more accurate test than matching
12 the assessors assessed value (estimate of fair market value) with the actual sales price in
13 the year of assessment. The table indicates that the average margin of error is 55%. Using
14 the example above of \$100,000 would indicate a value range of \$55,000 to \$155,000 far in
15 excess of the industry standard. Furthermore out of the eight properties that sold in the
16 assessment year(s) only one (1) sale 6 of Exhibit 1 (A1), {Sale 4 of the Bishoff Appraisal on
17 Lynches property; Sale 2 of the Farrell appraisal on the Perkins property} fell with in the
18 acceptable range set by industry standards. The other 7 sales ranged between 26% and
19 150% of industry standards. This would indicate an over all accuracy rate of (one/eight) of
20 13%. Stated more clearly this means that 13 lake front property values out of 100 are within
21 industry standards, 87 or 87% of the assessed values are outside the industry standard range.
22 The accuracy of this Exhibit (A1) was not contested at the hearing of July 7, 1995. The
23 Commission is required to accept uncontradicted evidence, unless inherently improbable or
24 only within the possession of one party, as being true. Obviously all of these sales and
25 assessed values were in the possession of the Board. The Commissions refusal to accept
26 Petitioner's uncontradicted evidence is reviewed for error. When only 13 assessed values
27 out of 100 are within industry standards there cannot be equal and uniform taxation as
28 provided by Article XIII, section 2(I) of the Utah Constitution. Article XIII, section 2(1) of the

1 Utah Constitution states in pertinent part:

2 All tangible property in the state, not exempt under the laws of the United States, or under this
3 Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be
ascertained as provided by law.

4 Section 3 of the same article provides in part:

5 The Legislature shall provide by law a uniform and equal rate of assessment on all tangible
6 property in the state according to its value in money...The Legislature shall prescribe by law such
7 provisions as shall secure a just valuation for taxation of such property, so that every person and
corporation shall pay a tax in proportion to the value of his, her, or its tangible property.

8 An illustration of how this fatally defective tax roll effects the petitioners property tax
9 is illustrated by sale 4 of Exhibit 1 (A1) (Comparable sale #3 of the Farrell/Perkins appraisal.
10 This parcel sold for \$187,500 in the same year it was assessed for \$94,591. The owner was
11 paying 50% of their share of the Counties property tax. The petitioners are paying in excess
12 of 100% of their share of the Counties tax burden. Where is the fairness, equality and
13 uniformity in a County where 87% of the lake front properties are assessed at an average of
14 55% of their value and 13% of the properties are assessed at over 100% of their fair share
the County tax burden?

15 B. The Assessor/Aboard Did Not Verify Their Comparable Sales Resulting In The Inclusion
16 Of Substantial Personal Property In The Reported Sales Prices And The use Of Non
17 Arms Length Transactions.

18 At the hearing of July 7, 1995 the petitioners presented some (not all) of the reasons
19 the Boards assessment roll is fatally defective. SR6-4(a) states in pertinent part:

20 In developing a mass appraisal, an appraiser must observe the following specific appraisal
21 guidelines when applicable:

22
23 a) collect, verify, analyze, and reconcile such data as are necessary and appropriate to:

24
25 (iii) estimate value by sales of comparable properties;

26
27 The key word here is *verify*; the state appraisers as well as the independent appraisers
28 employed by the Board do not or least have not in the past verified their comparable sales

1 with one or more principles in the transaction. As far as mass appraisals are concerned not
2 verifying sales information is a violation of Sr 6-1 (b) and (c) (A7). SR 6-1 (b),(c) (A7) states
3 in pertinent part:

4 In Developing a mass appraisal, an appraiser must:

5 (b) not commit a substantial error of omission or commission that significantly affects a mass
6 appraisal;

7 Comment: Departure from this binding requirement is not permitted. Standards Rule 6-1 (b) is
8 identical in purpose to Standards Rule 1-1 (b).

9 (c) not render a mass appraisal in a careless or negligent manner;

10 Comment: Departure from this binding requirement is not permitted. Standards Rule 6-1 (b) is
11 identical in purpose to Standards Rule 1-1 (c).

12 *Standard Rules 1 and 2 of course apply to individual appraisals like the Bishoff/Farrell
13 (Respondents) appraisals.

14 The reason USPAP requires sales to be verified in developing an appraisal is so the
15 appraiser can determine if the sale is an arms length transaction, if the sale contained
16 personal property, the market conditions at the time of sale, etc. Another good reason to
17 verify the sales in developing, not after submitting, an appraisal in compliance with SR 6-4 (a)
18 is so that the appraiser(s) do not violate yet another USPAP minimum appraisal standard, SR
19 6-2 (e)(f subpart I) which states in pertinent part:

20 In developing a mass appraisal, an appraiser must observe the following specific appraisal
21 guidelines:

22 (e) identify the real estate and personal property, as applicable;

23 (f) in appraising real property:

24 (I) identify and consider any personal property, trade fixtures, or intangible items that are
25 not real property but are included in the appraisal;

26 Comment: This guideline requires the appraiser to recognize the inclusion of items that are not
27 real property in the overall value estimate. Expertise in personal property (see Standard 7) or
28 business (see Standard 9) appraisal may be required to allocate each overall value to its various
components. Separate valuation of such items is required when they are significant to the
overall value.

Sale 4 Exhibit 1 (A1) (Comparable sale #3 of the Farrell/Perkins appraisal) is
illustrative of this point. The reported sales price is \$187,500. Petitioner Perkins has been

1 inside this comparable sale and interviewed the buyer and seller shortly after the sale in
2 September of 1993. Both Lynch and Zulauf re-verified the sale with the buyer, Kalbach, on
3 July 11, 1995. The buyers interview yielded the same results-the sales price included all of
4 the previous owners linens, eating utensils, furniture, appliances, a tractor, and a trailer.
5 Perkins thinks the value of the personal property was in excess of \$40,000. The buyer thinks
6 between \$30,000 to \$40,000. The buyer indicated the seller sold the property while out of
7 state and never returned to pick up even their personal belongings like clothes etc.
8 Additionally, the buyer indicated he bought the home so he could use it to demonstrate
9 amphibious equipment for clients of his sporting goods store in Logan. So in this instance,
10 if we use the low estimate of \$30,000, the personal property represents ($\$30,000/\$187,500$)
11 16% of the sales price. Using \$40,000 as a value for the personal property the personal
12 property represents ($\$40,000/\$187,500$) 21% of the sales price. *[Incidentally, if the petitioners*
13 *are correct and most of the lake front property sales prices include between 5 and 20 % (say*
14 *15%) personal property the petitioners have discovered a large portion of the average 45%*
15 *(100% accuracy -55% accuracy = 45% inaccuracy) error in the assessment roll. The margin*
16 *of error could be narrowing from 45 to say (45%-15%) 30%-we are getting closer to the elusive*
17 *industry standard of 10%].* Just in case the Court thinks we got lucky with sale 4, lets do the
18 same analysis for sale 3 of Exhibit 1 (A) (Additional comp#2 Improved Aprn 41-34-00-007
19 presented by the State in the Lynch petition. This sale was reported to have sold for
20 \$210,000. According to Otto Mattson the listing and selling agent the buyers and sellers
21 agreed that the personal property involved in the sale was worth \$30,000. Additionally, the
22 escrow instructions indicated the real property was values at \$180,000 and the personal
23 property at \$30,000 totaling a sales price of \$210,000. Again the personal property involved
24 in this sale was ($\$30,000/\$210,000$) 14% of the sales price.

25 In addition to Federal Statutes the Utah Tax code exempts household furnishings from
26 taxation. 59-2-113 of the Utah code states in pertinent part:

27 Household furnishings, furniture, and equipment used exclusively by the owner at the owner's
28 place of abode in maintaining a home for the owner and the owner's family are exempt from
property taxation.

1 It follows then that personal property should not be included in the comparables used
2 in the Boards mass appraisal model unless an adjustment is applied for personal property And
3 of course, if the Board/Assessor/State does not verify their sales then how would they know
4 personal property was included in the sales price?

5 Standards Rule 6-3 (A7) states in pertinent part:

6 In developing a mass appraisal, an appraiser must:

7 (a) Identify and consider the appropriate procedures and market information required to perform
8 the appraisal, including all physical, functional, and external market factors as they may affect
9 the appraisal;

9 (b) employ generally accepted techniques for specifying property valuation models; and

10 (c) employ generally accepted techniques for calibrating mass appraisal models.

11 Standards Rule 6-6 states in pertinent part:

12 In reconciling a mass appraisal an appraiser must:

13 (a) consider and reconcile the quality and quantity of data available and analyzed within the
14 approaches used and the applicability or suitability of the approaches used; and

15 (b) employ generally accepted mass appraisal testing procedures and techniques to ensure that
16 standards of accuracy are maintained.

16 Following these rules/Statutes leads to accuracy. Ignoring these rules/Statutes leads
17 to accuracy rates below industry standards. Where sales are not verified and appraisers do
18 not rely on real estate professionals such as brokers, the appraisal model becomes fatally
19 defective because the appraiser has no way of knowing what external market factors to
20 consider and has no reliable sales to calibrate or test the appraisal model. The assessment
21 roll becomes reactive instead of proactive.

22
23 Standards Rule 6-7 a,b,c (A7) states in pertinent part:

24 A written summary report of a mass appraisal for ad valorem taxation or a written report of a
25 mass appraisal for any other purpose should clearly communicate the elements, results,
26 opinions, and value conclusions of the appraisal.

26 Documentation for a mass appraisal for ad valorem taxation maybe in the form of (1) property
27 records (2) reports, (3) manuals, (4) regulations, (5) statutes, and (6) other acceptable forms.

28 Each written report of a mass appraisal for any purpose other than ad valorem taxation must:

- 1 (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
- 2 (b) contain sufficient information to enable the person(s) who receive or rely on the report to
- 3 *understand it property*;
- 4 (c) clearly and accurately disclose any extra ordinary assumptions or limiting condition that
- 5 directly affects the appraisal and indicate its impact on value.

6 Apparently, based on answers to Petitioners interrogatories the Board/State/Assessor
7 did not disclose the fact that they did not verify their sales, did not adjust for personal property,
8 and relied on only non arms-length transactions in their 1994 assessments.

9 When the Petitioners mentioned USPAP to the Board they did not even know it existed
10 so it is difficult to believe that they are in compliance.

11
12 **ARGUMENT**
13 **POINT II**

14 THE TAX COMMISSION'S CONCLUSION THAT THE PETITIONER'S
15 APPRAISAL DID NOT RELIABLY FIX THE MARKET VALUE OF THE
16 SUBJECT PROPERTY AND ITS REMAND FOR ADDITIONAL EVIDENCE
17 WERE BEYOND THE LIMITS OF REASON AND RATIONALITY AND,
18 THEREFORE, AN ABUSE OF DISCRETION OR, IN THE ALTERNATIVE,
19 ARBITRARY AND CAPRICIOUS.

20 A. **Unreasonable Action by Commission.**

- 21 With regard to unreasonable actions of an agency, S 63-46b-16 (4) states:
- 22 (4) The Appellate Court shall grant relief only if, on the basis of the agency's record, it
 - 23 determines that a person seeking judicial review has been substantially prejudiced by any
 - 24 of the following:
 - 25
26 (h) The agency action is:
 - 27 (i) an abuse of the discretion delegated to the agency by statute;
 - 28
29 (iv) otherwise arbitrary or capricious.

30 In this case, Petitioner has been substantially prejudiced by the Commission's
31 conclusion that Petitioner's verification of the sales and survey of brokers was lacking and
32 less reliable than the Respondent's and that Petitioner's did not reliably establish market
33 value. The letter from Bishoff/Pia appears to be pivotal in the Tax Commission decision (A8)
34 Please note the date of Bishoff/Pia letter-July 12, 1995; over 1 year after the appraisal on

1 Petitioner Lynch's property was completed (July 14,1994) 3 months after the Ferrell/Perkins
2 appraisal (April 20, 1995)-(None of Ferrell's sales were verified), 9 months after sale 1 took
3 place, sales 2 and 3 were never verified, sale 4 was verified 19 months after it sold, sale 5
4 was verified 31 months after it sold, and sale 6 was verified 30 months after it sold.
5 Additionally, the additional sales presented by the state at the hearing were conspicuously
6 absent of verification. The additional sales presented by the state at the hearing of July 12,
7 1995, as well as sales 2 and 3 of the Bishoff appraisals were not discussed in this letter
8 because they supported the information presented by the petitioners. Comparing the
9 Pia/Bishoff July 12, 1995 letter (A 8) to the Petitioners reply (A9; p3) indicates the level of
10 detail in the two verifications, at best this sale should not be used because sale 1 is not an
11 arms-length transaction. Not verifying sales leads to erroneous conclusions, verifying sales
12 after the appraisal is written, and not while the appraisal is being develop, places the
13 *Respondent's appraiser(s) in the vicarious position in saving face with his client and selecting*
14 *data that already supports their already pre-concluded value. It puts the appraiser in the*
15 *position of having to defend their value or loose future business from the client. One of the*
16 *primary purposes in originating USPAP was to prevent appraisers from gathering data to*
17 *support a pre concluded value—a value determined before the data is collected and verified.*
18 *The intent of USPAP is to have the data that has been collected and verified determine the*
19 *value. The theory behind the Federal Statues is that the appraiser lets the data determine the*
20 *value not a preconceived idea of the property value.*

21 Sale 2 of the Bishoff/Lynch appraisal was not verified by Respondents and verified by
22 the Petitioner to included at least 5% of the sales price as personal property (A9 page 3).

23 Sale 3 of the Bishoff/Lynch appraisal was not verified by Respondents. Petitioner
24 verified the sale to included 10% of the sale price as personal property (A9 page4).

25 Sale 4 of the Bishoff/Lynch appraisal was verified to included personal property that
26 had no value by the buyer by the Respondent's appraiser. However, this verification took
27 place over 1 year after the appraisal was completed and 19 months after the sale had taken
28 place. The Petitioner's verified this transaction at the time of sale to included 10 to 15%

1 personal property.(A9 page 4).

2 Sale 5 of the Pia/Bishoff letter was conspicuously absent of the inclusion of personal
3 property within the sales price. Again, the appraisers appear to be trying to save face and
4 their clients relationship. As verified by the Petitioners (A 9 page 5) Sale 5 included 2 boats,
5 2 wave runners, furniture, appliances etc. valued at 11% of the sales price or (\$155,000 X
6 .11) \$17,050. The Petitioners verified this sale while in escrow and verified it with two
7 principles of the transaction.

8 Sale 6 was verified by the Respondents appraiser(s) on July 11, 1995, one year after
9 their appraisal was completed and approximately 3 years after the sales took place. Even the
10 Respondent's reported \$5,000 of personal property inclusive in the sales price, supports the
11 Petitioners verification. The Petitioners verified this sale shortly after it took place with Merl
12 Spence, the listing/selling agent. Merl verified the value of the personal property to be 10%
13 of the sales price or \$10,000 (A9 page 5).

14 With respect to the Ferrell/Respondent Perkins appraisal (A3); this appraisal also
15 includes personal property. Sale 1 of the Ferrel Appraisal is the same as sale 1 of the Bishoff
16 Appraisal (A2) and has already been discussed. Sale 2 of the Ferrell Appraisal is the same
17 as of Sale 4 of the Bishoff Appraisal and has already been discussed. Sale 3 of the Ferrell
18 Appraisal is the same as of Sale 4 Exhibit 1 (A1) discussed previously and the sales price
19 included 16 to 21% personal property, \$30,000 to \$40,000. The amount of the personal
20 property and the fact that this sale was never verified by Respondents was uncontested. Sale
21 4 of the Ferrell Appraisal is the same as Sale 3 of the Bishoff Appraisal this sale was not
22 verified by either of the Respondents appraisers and verified by the Petitioners at the time of
23 sale to included \$12,500 in personal property or 10% of the sales price.

24 **It is unreasonable and a violation of Federal Minimum Appraisal Standards for the**
25 **tax Commission to allow the Respondents to verify their sales after the report has been**
26 **completed and delivered to the client. It is unreasonable for the Tax Commission to**
27 **prejudice the Petitioners case and allow the Respondents to verify their sales 1, 10 or**
28 **100 days after the hearing. And finally, it is unreasonable, and an obstruction of justice**

1 to rely on the verification of sales 1 year after the appraisal has been completed and up
2 to 31 months after the sales took place. The Petitioners verified the sales at or near the
3 time each sale took place. The Petitioners verification consisted of interviews with the
4 principals as well as follow up phone calls. In most cases the Petitioners verified their sales
5 with one or more principals of the transaction. The Respondents did not verify any of their
6 sales with any of the principals prior to the hearing July 12, 1995, and when given additional
7 time by the Tax Commission, Respondent only verify sales that appeared to support their
8 value and only reported the items favorable that supported their value and did not verify the
9 sales or report the items that were unfavorable to their analysis. It would seem that due to the
10 board/assessor fiduciary relationship with the tax payer that they would be held to a higher
11 standard, and be required to report any/all information favorable or unfavorable to the tax
12 payers valuation. In the instant case the respondent not only ignored the law, Federal
13 Minimum Appraisal Standards, but the Tax Commission has encouraged them to do so. By
14 the Tax Commissions decision the Tax Commission has sent a clear message to the Board
15 of Equalization, Appraisers, and Assessors, that no matter how far you deviate from minimum
16 appraisal standards set by federal government (USPAP), State Statues, and industry
17 standards the Tax Commission will uphold the boards decision; even if it is contrary to the
18 evidence, Federal and State Statues and industry standards.

19 The Tax Commissions conclusion that the Respondents verification of adjustments for
20 market conditions at the time of sale and market conditions on the "effective day" of the
21 appraiser is also under review. The questions asked by the Respondents appraisers
22 obviously different than those asked by the Petitioners. On page 2; paragraph 4 and 5 of
23 the Pia/ Bishoff letter (A8), the appraisers are discussing the overall real estate market in
24 Rich County. Their questions were obviously the how is the real estate market verified? It
25 is difficult to get an accurate picture if you ask the wrong questions. The point is what is
26 happening to lake front property values? The Petitioners survey was for lake front properties
27 and lake front property values, not the County as a whole which includes a wide variety of
28 property types. Of course, for the Tax Commission to know what questions were asked in the

1 survey the Petitioners would have had to have a level playing field and opportunity to cross
2 examine and the data. When doing a survey the appraiser must compare apples to apples
3 and not apples to oranges; or in this case lake front properties and non lake front properties.
4 The brokers surveyed by the Petitioners also talked to the Petitioners about the over all real-
5 estate market peaking in 1982 and decreasing through the 1980s. Merl Spence told the
6 Petitioners that lake front properties had been relatively stable from 1991 until 1994. Otto
7 Matson reported similar results, stating values were fairly flat until the beginning of 1994.
8 However, the best evidence was and still is presented by the Petitioners. The Petitioners
9 verifications were based on face to face interviews (more than one) with Merl Spence, Otto
10 Mattson, Bill Peterson, and Paul Webb. The interviews were conducted by the Petitioners that
11 have owned properties on the lake for over 15 years. The petitioners know each of the
12 Realtors by sight, are on a first name bases, and freely exchange information with each other.
13 These brokers/ realators are some of the principals the petitioners verified the personal
14 property included in each of the Respondent's sales. The petitioners verify sales and market
15 conditions with these Realtors every year. The Petitioner's asked the right questions. They
16 surveyed lake front properties not property values (all types ..cabins, non lake front etc.) in
17 general. The Respondents appraisers on the other hand have spent one day at Bear Lake in
18 1994. The day they tried to appraise Petitioner Lynches property. Neither of the appraisers
19 own property at Bear Lake, they live and work in Park City, 100 miles from Bear Lake. Under
20 cross examination the Appraisers testified that Petitioner Lynches property was the only single
21 family residence he had ever appraised at Bear Lake. Bishoff testified that he does not
22 contact brokers because they are "optimistic and unreliable." The petitioners on the other
23 hand recognize the brokers surveyed are licensed by the State, earn a living listing and
24 selling properties at Bear Lake and live at Bear Lake. It is unreasonable to assume the
25 Respondents appraisers with one day of experience and a one to three minute single phone
26 call can gather better and more reliable information than the Petitioners can in two 15 to 30
27 minute person to person interviews and follow up phone calls. It is also unreasonable to
28 assume realtors/brokers would divulge more accurate details of sales, to an unidentified

1 appraiser on the phone, than they would to someone they have know for years. This is further
2 illustrated by page 3 paragraph 1 of the Pia/Bishoff letter of July 11, 1995. Notice the
3 paragraph states Mr. Bill Peterson *reported*; this is because Pia/Bishoff never talked with Bill
4 Peterson. Petitioner Lynch and his Son-in Law were sitting in Bill Petersons office on July 12,
5 1995 when Bill received the call verifying the information in Exhibit 2 (A 2) presented to the
6 Tax Commission by the Petitioners on July 7, 1995. The call was from Pete Mower and lasted
7 about 30 seconds. The only thing Bill Peterson said during the entire phone conversation was
8 "that sounds about right; I would have to analyze son sales to be more accurate". Bill hung
9 up the phone, laughed, and said, " that was Pete Mower verifying the information I gave you
10 last week. You must be making progress this is the first time any one from the assessor has
11 called me." {Remember my saving face argument earlier} From that 30 second phone call
12 which confirmed the information presented by the Petitioners to the Tax Commission on July
13 7, 1995 we have paragraph one page 3 of the Pia/Bishoff letter (A8). The letter states in
14 pertinent part:

15 On Tuesday, July 11, 1995, Mr. Bill Peterson, broker (801) 946-3226, reported he
16 thinks there has been a steady increase from 1991 through 1995 of roughly 30%. He
17 has not seen any dramatic turn-a-round, but did have plenty of listings available in
18 1994, and not much available now. He thinks things have tightened considerably in
19 1995. He thinks the increase has been pretty steady, with some acceleration in
20 summer 1994 and into this year, 1995.

21 The reported facts appear to be misleading. The Tax Commission was in error in
22 remanding the decision until the Respondent could effect damage control and save face. The
23 Tax Commission then exacerbated the problem by relying on the additional data submitted
24 by the Respondents. **The information relied upon without the benefit of cross**
25 **examination. This act is not only unreasonable, arbitrary and capricious but a violation**
26 **of the Petitions constitutional rights to equal protection under the law. The Tax**
27 **Commission relied on "new information" without allowing the Petitioners to cross**
28 **examination this pivotal information. That is why minimum Federal Statues SR require**

1 sales to be verified while developing an appraisal not after it is completed and submitted to
2 the client, and certainly not after the hearing. At the hearing both sides should be allowed the
3 opportunity of challenging the information presented by the other party. The Petitioners
4 verified the sales and surveyed local realtors and brokers relative to market conditions at the
5 time of each sale as well as the effective date of the appraisal. The Respondents were afford
6 the same opportunity before trial but chose not to do so. In effect Petitioners are not only
7 being prejudiced but punished for being prepared before trial and compiling with USPAP.
8 Again, the Tax Commission decision is to be reviewed by this Court. The Tax Commissions
9 instructions to the Respondents was that they could verify the "Petitioners data". The Tax
10 Commission did not instruct the Respondents to reconstruct a new survey or modify the
11 survey only verify . The tax Commission did not follow its on ruling. The Tax Commission
12 obviously erred by unreasonably relying on misleading evidence, when the preponderance
13 of evidence favored the Petitioners.

14 Accordingly, Petitioners are subject to unequal assessment and potentially confiscatory
15 taxes based on the unsupported market value of the property adopted by the Tax Commission
16 and incorporated by the Rich County Board of Equalization. Consequently, this Court may
17 grant Petitioner relief if the agency's action is an abuse of the discretion delegated to the
18 agency by statue.

19 According to this Court's decision in Morton v. International, Inc. V. Utah State Tax
20 Commission, 163 Utah Adv. Rep. 34, 36 (Utah 1991), "an agency has abused its discretion
21 when the agency's action, viewed in the context of the language and purpose of the governing
22 statute, is unreasonable." Morton also holds that an agency action based upon facts not
23 supported by substantial evidence constitutes an abuse of discretion. 163 Utah Adv. Rep. At
24 42, fn. 7. Furthermore, relief may be granted when the agency has abused a grant of
25 discretion contained in the agency's governing statute.

26 The legislature, in many instances, has explicitly granted agencies discretion in dealing
27 with specific statutory terms. Apart from such explicit grants of authority, courts have
28 also recognized that grants of discretion may be implied from the statutory language.

However, it is clear from the wording of S63-46b-16 that an agency's statutory

1 construction should only be given deference when there is a grant of discretion to the
2 agency concerning the language in question, either expressly made in the statute or
implied from the statutory language.

3 Morton International, 163 Utah Adv.Rep.at 37. It is necessary to determine whether the
4 Commission has been granted discretion to construe the statutory term, "fair market value."
5 Absent a grant of discretion, the Commission's construction will not be given deference and
6 will be reviewed for correctness. Morton International, 163 Utah Adv. Rep. At 43, fn. 38.

7
8 The Tax Commission assumption that the Respondents land adjustments of \$600 per front
9 foot are also under review. The \$600 per front foot adjustment was applied used without the
10 support of one single verified sale that occurred before the appraisal was completed.
11 Petitioner Perkins presented three land sales, two in his subdivision, and one 4 miles north
12 in a superior subdivision that sold for between \$430 and \$450 per front foot. The sales took
13 place between 8/93 and 4/94 thus eliminating adjustments for market conditions at the time
14 of sale. All of these sales were and are superior the Petitioner Perkins lot. Two of the water
15 front land sales are located in the same subdivision as the Perkins property, the Siddoway
16 subdivision. When the Siddoway subdivision originally opened all of the lots were sold for the
17 same price. It has long been held in appraisal theory and practice that if two parcels of land
18 are essentially the same and listed at the same price the best located property will sell first.
19 Both of the land sales in the Siddoway subdivision originally sold before Petitioner Perkins
20 property. Additionally, Petitioner Perkins testified that both of these parcels were superior to
21 his and he would trade his for either one of the others. Both of these parcels sold for \$450
22 per front foot. The third land sale used to support the Petitioners land value adjustments
23 is located in the Edge of Eden Subdivision 4 miles north of the subject. This comparable
24 water front land sale is 100 feet wide and over 600 feet deep compared to Petitioner Perkins
25 lot that has 100 feet of width and only 194 feet in depth. At trial Petitioner Perkins testified
26 he would obviously rather have the 600 deep lot than his. The point is that Petitioner Perkins
27 adjustment of \$400 per front foot is supported by a paired sales analysis. Both Perkins and
28 Lynches properties are valued at \$700 per front foot by the Assessor/Board/State. The

1 Assessor/Board/State has no support for the adjustment of \$600 per front foot adjustment.
 2 The Petitioners adjustment of \$400 per front foot was not contested by the Respondents. The
 3 Respondent did not have any relative verified land sales to support their adjustment of \$600
 4 per front foot. **Because there are none.** It is unreasonable for the Tax Commission to
 5 arbitrarily and conspicuously decide the Respondents adjustment is correct when the
 6 evidence is contrary to the Tax Commissions findings. In the instant case, sale 2 of the
 7 Bishoff Appraisal the adjustment of \$600 per front foot applied to the difference in front feet
 8 (100' - 56') 44 feet = \$26,400. At \$400 per front foot the adjustment is \$17,600. For this
 9 adjustment alone (excluding personal property included in sale price and market conditions
 10 at the time of sale, market conditions on the effective date of appraisal) The adjusted value
 11 for comparable sale 2 is (\$83,600 - \$17,600) or \$66,000. The error in adjustment in \$600 per
 12 front foot to \$400 per front foot is \$200 per front foot or 33%. Five of the six sales in the
 13 Bishoff Appraisal required site-land value adjustments. All of the adjustments were positive
 14 and therefore overstating the overall net adjusted value of each the 5 adjusted comparable
 15 sales. The net results of this adjustment is outlined below:

	Sale 1	Sale 2	Sale 4	Sale 5	Sale 6
17 Total Adjustment	\$26,860	\$15,600	\$ 5,750	\$52,050	\$18,525
18 Site Adjustment	<u>18,600</u>	<u>26,400</u>	<u>3,600</u>	<u>19,200</u>	<u>6,000</u>
19 Ratio of Land Sale	<u>69%</u>	<u>169%</u>	<u>63%</u>	<u>37%</u>	<u>32%</u>
20 Adjustment to Total Adjustment					

* Sale 3 was not included above because it did not require an adjustment.

21 The land value-site adjustment has a serious impact on the final value, fair market
 22 value, conclusion. Based on the analysis above the site adjustment is 169% of comparable
 23 2's net overall adjustment. The average ratio of adjustment is (69% + 169% + 0% + 63% +
 24 37% + 32% / 6) 61.67 or 62%. Assuming a land sale adjustment of \$400 per front foot in leu
 25 of \$600 per front foot adjustment yields a (62% X 33%) 20% overstated value in the final fair
 26 market value conclusion. *{Oh by the way, remember that illusive 10% industry standard for
 27 the assessors mass appraisal model; we may have accounted for another 20% of the 45%*
 28

1 *error in the assessor's tax roll. Lets see – 45% -10% for personal property included in the*
2 *sales price equals 35%; minus 20% for overstated land value = 15%; only 15% left and we are*
3 *100% accurate}.*

4 The application of adjustments for market conditions at the time of sale and the effective date
5 of appraisal are also under review. The Respondents position is simple, they did not apply
6 adjustments because they assumed they were not warranted. The Petitioner contends time
7 adjustments are warranted and required by USPAP, Federal Statute. SR1-1(b) (A7) states in
8 pertinent part:

9 In developing a real property appraisal, an appraiser must:

10 b) not commit a substantial error of omission or commission that significantly affects an
11 appraisal;

12 Comment: departure is not permitted.

13 Relative to market conditions at the time of sale or on the effective date of the appraisal
14 all of the real estate brokers surveyed and all the real estate experts agreed that lake front
15 property values increased in 1994 and 1995. The Respondents and Petitioners could argue
16 all night and all day as to the amount of increase per year but, the direction of the adjustment
17 has not been contradicted. Based on Exhibit 2 (A4) the appreciation survey of Bear Lake
18 Real Estate Brokers submitted to the Tax Commission on July 7, 1995, the range of value
19 increase on a annual bases ranged from 10 to 20% per year. This equates to a conservative
20 value estimate of 10% per year or .83 (10%/12 mos), per month. SR2-2 e, states in pertinent
21 part:

22 Each written real property appraisal report must:

23 e) set forth the effective date of the appraisal and the date of the report;

24 Comment on (c), (d), and (e): These three requirements call for clear disclosure to the reader
25 of a report the “why, what and when” surrounding the appraisal. The purpose of the appraisal
26 is used to be estimated requires both an appropriately referenced definition and any comments
27 needed to clearly indicate to the reader how the definition is being applied [See Standards Rule
28 1-2(b)]. The effective date of the appraisal establishes the context for the value estimate, while
the date of the report indicates whether the perspective of the appraiser on the market conditions
as of the effective date of the appraisal was prospective, current, or retrospective. Reiteration
of the date of the report and the effective date of the appraisal at various stages of the report in
tandem is important for the clear understanding of the reader whenever market conditions on

1 the date of the report are different from market conditions on the effective date of the appraisal.
2
3 The Bishoff appraisal clearly states on page 2 of form 70 (A 2) that the effective date of the
4 appraisal is July 14, 1994. The Farrell appraisal clearly states on page 2 of form 70 (A3) that
5 the effective date of value is April 20, 1995. The assessment date/Lein date is January 1,
6 1994. Applying a 10% per year (.83/month) adjustment yields the following adjustment to the
7 Bishoff/Farrell appraisals. For Bishoff/Lynch (\$97,000 X 5.81) or \$5,636, for
8 Farrell/Perkins(\$95,348 X 13.28) \$12,662. Since the effective date of value was during a
9 period when market conditions were superior to the effective date of the appraisal these
10 adjustments would be subtracted from the concluded fair market value. In the case of
11 Petitioner Lynch (\$5,636/\$97,000) 7% rounded of the "fair market" value and in the case of
12 Petitioner Perkins (\$12,662/\$95,348) 13% rounded of "fair market value".

13 SR1-1(b) states in pertinent part:

14 In developing a real property appraisal, an appraiser must:

15 c) not render appraisal services in a careless or negligent manner, such as a series of errors
16 that, considered individually, may not significantly affect the results of an appraisal, but which,
17 when considered in the aggregate, would be misleading.

18 Comment: departure is not permitted.

19 Based on the issues under review it appears that the Board/Tax
20 Commission/Respondent has made both substantial errors and errors that considered in the
21 aggregate are misleading. In the instant case the Petitioners have demonstrated the Boards
22 Appraisal(s) appear to over stated the sales price of all of the comparables due to the
23 inclusion of personal property and or non-arms length transactions. A conservative estimate
24 of the impact on the "fair market value" is 10% of the sales prices. Additionally, it appears that
25 the use of an unsupported, unreasonable, site adjustment of \$600 per front foot in leu of a
26 supported \$400 per front foot site adjustment, serves to further overstate the fair market value
27 of the petitioners properties by another 20%. Finally, the market conditions on the effective
28 date of the appraisal also overstates the fair market value of the Petitioners property by an
average of (7% plus 13%/2) 10%. Applying these market driven adjustments to the

1 Respondents "fair market value" for each of the petitioners results in the following values:

2

3	Item requiring adjustment via USPAP	Petitioner Lynch	Petitioner Perkins
4			
5	Inclusion of Personal Property & non-arms length transactions	(-10%)	(-10%)
6	Overstatement of site/land value adjustment	(-20%)	(-20%)
7			
8	Adjustment for market condition at effective date of Appraisal	<u>(-7%)</u>	<u>(-13%)</u>
9	Total overstated value	(27%)	(43%)

10 The effect or affect of the errors/ omissions/commissions upon the petitioners fair
11 market value can be calculated as follows:

12	Bishoff fair market value :	\$97,000
13	Less aggregated over stated value (\$97,000 X .27%)	<u>(26,190)</u>
14	Estimated Fair Market Value	\$70,810
15	Farrell fair market value:	\$95,348
16		
17	Less aggregated over stated value (\$95,348 X .43%)	<u>(41,000)</u>
18	Estimated Fair Market Value	\$54,348

19 The Utah Legislature did not explicitly grant to the Tax Commission discretion
20 regarding issues of what constitutes "fair market value" under S59-2-102(2). This Court made
21 a similar inquiry regarding the Commission's discretion to construe the statutory term,
22 "equipment", in Morton International. In that case, taxpayer Morton sought review of the Tax
23 Commission's determination that the shells of Morton's production facilities were not so
24 specialized as to constitute "equipment" under Utah Code Ann. S59-12-104(16) and therefore
25 be exempted from sales and use taxes. The Court determined that such a classification by
26 the agency could not be made using traditional methods of statutory construction and that it
27 was routinely the kind of determination performed by the Commission. On that basis, this
28 Court held that the Commission's decision was entitled to deference. Nevertheless, the

1 decision of the Commission would be overturned if its decision was unreasonable. In the
2 instant case the Tax Commissions decision appears to be unreasonable.

3
4 B. Arbitrary and Capricious Commission Decision.

5 The Commission's Decision is also arbitrary and capricious Federal administrative law
6 cases frequently address the issue of what constitutes arbitrary and capricious conduct by an
7 agency . The Ninth Circuit describes the inquiry as "deciding whether there has been a clear
8 error of judgment and whether the agency action was based upon consideration of relevant
9 factors." United States v. Alpine Land and Reservoir Co., 887 F, 2d 207, 213 (9th Cir. 1989),
10 quoting Motor Vehicle Mfrs. Assoc. Of the United States v. State Farm Mutual Automobile Ins.
11 Co., 463 U.S. 29, 43 103 S.Ct. 2856, 2866, 77 L.Ed.2d 443 (1983). In the present case, the
12 Tax Commission's Decision could not have been based upon the relevant factors because the
13 evidence before the Commission clearly preponderated in Petitioner's favor.

14 The Decision is a result of a clear error of judgment by the Tax Commission. Rather
15 than basing the Decision on the relevant factors set forth in the testimony and documents
16 admitted as evidence, the Commission simply remanded for additional time (10 days); to give
17 Respondents an opportunity to do what they should have done before their appraisals were
18 submitted—verify the sales. The minimum standard is to verify sales in developing an
19 appraisal not over 1 year after it is written. The Tax Commission must base its decision upon
20 the relevant factors or be found to be arbitrary and capricious. See Carlsen v. State of Utah,
21 Department of Social Services, 722 p.2d 775 (Utah 1986).

22 In addition, the remand for additional time was futile and supported the evidence
23 presented at the hearing of July 12, 1995. This Court has stated that exhaustion of
24 administrative remedies may not be necessary when it would serve no useful purpose.
25 Johnson v. Utah State Retirement Office, 621 P.2d 1234, 1237 (Utah 1980). This is such a
26 case. The remand ordered by the Tax Commission prejudices Petitioner by delay, and by
27 allowing the respondent a face saving time period. When sales are verified two to three years
28 after the sale took place, the Petitioners case is prejudiced by lack of detail and recall on the

1 part of the principles, buyers remorse and the feeling that they paid too much for the property,
2 especially when prices are declining or static, as they were in 1992 and 1993.

3 The Tax Commissions assumption that the Respondents land value adjustments were
4 correct is also arbitrary and capricious because the preponderance of evidence favors the
5 Petitioners land value adjustment of \$400 per front foot. The Petitioners adjustment are based
6 on current verified sales used as matched pair analysis. The Respondents have no sales
7 that support their adjustment. **Because there are none.**

8 The Tax Commissions asserted that the Petitioners overstated the value of personal
9 property, effect of market conditions on the effective date of the appraisal, and amount of site
10 adjustment (\$400 per front foot in lue of \$600 per front foot) are unreasonable, arbitrary and
11 capricious in light of SR1-1 (b) considering all of the errors favor over stating the value in the
12 aggregate. The Tax Commission has the authority to correct the valuation of property which
13 has been over assessed pursuant to R861-1(A. Utah Administrative Code, and should be
14 directed by this Court to do so.

15 POINT III

16 THE TAX COMMISSION'S FINDING THAT PETITIONER'S
17 APPRAISAL DID NOT RELIABLY FIX THE MARKET VALUE
18 OF THE SUBJECT PROPERTY WAS BASED ON DETERMINATIONS
19 OF FACT NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

20 The Administrative Procedures Act of 1988 at Section 63-46b-16(4)(g) states:

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

24
25 (g) the agency action is based upon a determination of fact, made or
26 implied by the agency, that is not supported by substantial evidence when
27 viewed in light of the whole record before the court
28

29 An appellate court applying the "substantial evidence" test must consider both the
30 evidence that supports the Tax Commission's factual findings and the evidence that detracts
31 from the findings. Grace Drilling Co. V. Board of Review, 776 P.2d 63, 68 (Utah App. 1989).
32 The Tax Commission's factual findings are not supported by substantial evidence. Instead,
33 the evidence detracts from its findings.

1 "Substantial evidence" is that quantum and quality of relevant evidence that is
2 adequate to convince a reasonable mind to support a conclusion. Boston First National v.
3 Salt Lake County Board, 799 P.2d 1163, 1165 (Utah 1990). Federal cases are in accord with
4 the standard of "Substantial evidence" which the Utah Administrative Procedures Act
5 requires to support an agency decision. Federal Statutes, USPAP, (A7) were enacted in 1990
6 to aide the Tax Commission in determining good appraisal practices. The tax Commission is
7 either not familiar with these Federal Statutes or chose to ignore them.

8 A. The Tax Commissions conclusion is not supported by substantial evidence: the Boards
9 Appraisals significantly overstate the value of the Petitioners property in the aggregate.

10 Based on the evidence before it, the Tax Commission could not reasonably and
11 rationally conclude that the fair market value of the Petitioner's property(s) presented by the
12 Assessor/Board was "fair market value." The Assessor's/Board's appraisal did not adjust for
13 personal property included the comparable sales price thus overstating the value by 10 to
14 20% of the fair market value, the Boards Appraisals(s) (A2)(A3) used an unreasonably high
15 price per front foot to adjust for differences in site-land value thus overstating the value of the
16 Petitioners property by approximately 20%, and market conditions on the effective date of the
17 appraisal were ignored altogether, thus overstating the value of the petitioners fair market
18 value by a aggregate of 10%.

19 B. The Boards Appraisals are barred by State Statue.

20 **The "effective date" of the Boards Appraisals (A2)(A3) in the strict interpretation**
21 **of the law bars the use of the Boards Appraisals altogether. S59-2-1325 (A10)of the**
22 **Property Tax Act-Nature and extent of lein - Time of Attachment states in pertinent part:**

23 A tax upon real property is a lein against the property assessed. These leins attach as of January 1 of
24 each year.

25 Appraisals with "effective dates" after the assessment/lein date of January 1, 1994
26 cannot be used for the 1994 assessment year. The effective date of the Bishoff Appraisal in
27 July 14, 1994 which would not be barred from the 1995 assessment but is clearly barred from
28 the 1994 assessment. The Farrell Appraisal is even more illustrative of this point. The Farrell

1 Appraisal has an effective date of April 20, 1995. Therefore, the Farrell Appraisal would not
2 only be barred from the 1994 assessment but the 1995 assessment as well. Compared to the
3 1994 lein date of January 1, 1994 both of the Boards Appraisals are future appraisals and
4 project future values. The Board/Tax Commission cannot have it both ways. Either the
5 appraisals (A2) (A3) are barred because they have an effective date after the lein date of
6 January 1, 1994 or they must be adjusted to reflect the market conditions on the effective date
7 of the appraisal.

8 C. Petitioner's appraisal relies on the same comparable sales, adjusted for market
9 conditions at the time of sale, personal property included in the sale price, and the date
10 of assessment vs. Date of appraisal, to fix the property's fair market value.

11 In accordance with Federal Law (USPAP) and acceptable appraisal practices of the
12 industry, the Petitioner's used the same exact sales as the assessor. The Petitioner used the
13 same adjustments as the Board/Assessor, except where the assessor departed from Federal
14 Law and acceptable appraisal practices of the industry. Petitioner's appraisal set the fair
15 market value by the comparable sales method as required by Federal Law. As far as the
16 Petitions can ascertain neither Federal of State statues define substantial error. The industry
17 standard of 10% of the appraised value should be of great benefit to the Court. Certainly, any
18 omission or commission that impacts the market value by 5% or more would be suspect.
19 Using 5% as a benchmark each of the adjustments outlined above have an impact on fair
20 market value not only considered in the aggregate but individually. Some times errors and
21 omissions with in appraisals are compensating, they wash each other out. This is not true in
22 the instance case. Each and every omission favors the Board so the aggregate becomes
23 very significant. Each of the features(the inclusion of personal property in the sales price,
24 overstating the site-land value adjustment, ignoring market conditions on the effective date
25 of the appraisal) outlined above could render the Boards Appraisal unacceptable by industry
standards.

1 D. The Tax Commission's Determination That Petitioner's Appraisal As Reliable as The
2 Assessor's Is Preposterous. They Are Identical Except For The Omissions by the
3 Board.

4 The Tax Commission's Decision observes that "the Commissioner believes that
5 Respondent's analysis of the comparable sales is more reflective of market value." With all
6 due respect the Commissioner is not an appraiser and does not appear to be familiar with
7 Federal Minimum Appraisal Standards. What the Commissioner "believes" is contrary to what
8 the market data indicates as the fair market value for the petitioners properties. Page 5
9 paragraph 1 of the Findings of Fact (A11) states in pertinent part:

10 "The assertion of Petitioners that Respondent failed to properly verify the comparable sales could have
11 been determinative in favor of the Petitioners had Respondent not presented evidence that the assertions
12 lacked merit"

13 This issue appears to have been pivotal in the Tax Commissions decision. The Tax
14 Commission is under review by this Court. The preponderance of the evidence and facts are
15 contradictory to this issue. The boards comparable sales were not verified before the hearing.
16 The Petitioners "assertions" did not lack "merit."

17 The Pia/Bishoff letter (A8) supports the Petitioners assertion that the sales were not
18 verified until after the hearing. The Pia letter supports the Petitioners survey and testimony
19 that all of the sales used in the Boards Appraisals contained personal property and sales that
20 were not arms length transactions. The preponderance of evidence is in favor of the
21 Petitioners. The preponderance of the evidence is that the Pia Letter has tried to effect
22 damage control and understated the impact of the omissions contained in the Appraisal(s)
23 (A2) (A3).letter The Tax Commission accepted the Respondents information on its face with
24 out letting the Petitioners cross examine the collectors of the data or test the data. At the
25 hearing of July 7, 1995 the Respondents were afforded the opportunity of cross examining the
26 Petitioners as well as test the data presented by the Petitioners. The Tax Commission was
27 in error in accepting the "evidence" in the Pia letter on its face.
28

1 permits this Court to grant relief if Petitioner has been substantially prejudiced by an agency
2 action which is unconstitutional. Interpretations of state and federal constitutions by an
3 agency are to be reviewed under a correction of error standard, giving no deference to the
4 agency's decision. See Savage Industries v. Utah State Tax Commission, 160 Utah Adv. Rep.
5 5,6 (Utah 1991).

6 The Tax Commission heard credible evidence of the subject property's fair market
7 value but refused to correct the Board's overassessment. The Commission's assessment of
8 the property was based on the authority granted by the legislature in Utah Code Ann. S 59-1-
9 210(7):

10 The powers and duties of the Commission are as follows:

11
12 (7) to exercise general supervision over assessors and county boards of equalization, and over
13 other county officers in the performance of their duties relating to the assessment of property and
14 collection of taxes, so that all assessments of property are just and equal, according to fair
15 market value, and that the tax burden is distributed without favor or discrimination;
16

17 The Tax Commission has promulgated rules of procedure which designate it the State
18 Board of Equalization and permit it to correct the valuation of property by County Boards.
19 R861-1-9A, Utah Administrative Code (1989). Petitioner contends that the Board's
20 unsupported and incorrect valuation and assessment and the Commission's failure to correct
21 it results in an unconstitutional taking of petitioner's property without due process, in violation
22 of state and federal constitutional provisions.

23 A. The Remand Is a Denial of Due Process.

24 The demands of due process arise from a concept of basic fairness of procedure.
25 "Due process" is not a technical concept that can be reduced to a formula with a fixed content
26 unrelated to time, place, and circumstances. Rather, "the demands of due process rest On the
27 concept of basic fairness of procedure and demand a procedure appropriate to the case and just
28 to the parties involved."

29 Nelson v. Jacobsen, 669 P.2d 1207, 1213 (Utah 1983) quoting Rupp v. Grantsville City, 610
30 P.2d 338, 341 (Utah 1980). In the case at bar, Petitioner is denied due process by the Tax
31 Commission's remand for further evidence in that the remand sets an impossibly high
32 threshold for proof necessary to rebut the Board's valuation. The Commission relied on

1 evidence which, denied the Petitioners their right of cross examination and the opportunity to
2 test the truthfulness of the data.

3 By settling an arbitrary and unreasonably high standard of proof, the Tax Commission
4 ensures that Petitioners will be unable to test the evidence and to persuade the Tax
5 Commission of the fair market value of the property. Remand is, therefore, futile. The Tax
6 Commission's act deprives the Petitioners of their property in violation of the protections of
7 the Fourteenth Amendment of the Federal Constitution and article I, section 7 of the State
8 Constitution.

9 **B. The Proposed Valuation Is Confiscatory.**

10 The Commission's refusal to correct the overassessment of the property is also
11 unconstitutional. As a result, of a fatally defective tax roll the Petitioners are being grossly
12 over taxed. Even if the Petitioners assessments are reduced to fair market value they will
13 remain 13% of the lake front property owners being over taxed while the remaining 87% of
14 lake front property owners are under taxed.

15 Also in dispute is the difference between the tax claimed due by the Board and the tax
16 which would be assessed if the property were assessed according to Petitioner's appraised
17 value. The effective dates of the appraisals barr them from use for the 1994 tax assessment.
18 That valuation does not satisfy the fundamental principle that assessments reflect fair market
19 value so that each property is assessed in proportion to the value of all property. Utah Code
20 Ann. S59-1-210 (7).

21 Assessment at the Boards valuation effectively confiscates the petitioners property.
22 The United States Supreme Court has held that the only limitation on Congress' power of
23 taxation is where its exercise has been so arbitrary as to not constitute a tax but, rather, a
24 confiscation of property in violation of the Fifth Amendment. Brushaber v. Union Pacific RR
25 Co., 240 U.S.I, 24-25, 36 S.Ct. 236, 60 L.Ed. 493 (1915). Surely states may not confiscate
26 property by arbitrary taxation.

27 **C. The Proposed Valuation Is Arbitrary And Not Based On Fair Market Value.**

28 Article XIII, section 2 of the Utah Constitution provides that "all tangible property in the

1 state...be taxed in proportion to its value, to be ascertained as provided by law.”

2 Article XIII, section 3 provides:

3 The Legislature shall provide by law a uniform and equal rate of assessment and taxation on all
4 tangible property in the state, according to its value in money, and shall prescribe by law such
5 regulations as shall secure a just valuation for taxation of such property, so that every person
6 and corporation shall pay a tax in proportion to the value of his, her or its tangible property....

6 Section 2 and 3 of Article XIII of the Utah Constitution establish the basic state policy
7 that all taxable property bear a just proportion of the burden of taxation. Cunningham v.
8 Thomas, 16 Utah 86, 90, 50 P. 615, 616 (1897). To achieve that objective, the market or cash
9 value of all property must be ascertained and used as the common denominator for all
10 assessments. Kennecott Copper v. Salt Lake County, 799 P.2d 1156, 1159 (Utah 1990).
11 These approximations of market value must present reasonable uniformity. “While absolute
12 equality and uniformity in the assessment of property is not practicable, a requirement of
13 reasonable uniformity and equality is essential.” Harmer v. State Tax Commission, 22 Utah
14 2d 324, 328, 452 P.2d 876, 879 (1969).

15 In Kennecott Copper, the county sought a declaration of this Court that the statutory
16 provision for assessment of Petitioner’s mining property by the “net proceeds formula” resulted
17 in a non-uniform and unequal rate of taxation not based on the common denominator of fair
18 cash value, violating Article XIII, sections 2 and 3 of the Utah Constitution. This Court held
19 that sections 2 and 3 of Article XIII applied to the valuation of mining property under section
20 4, stating that any valuation formula must be reasonably designed to achieve valuation for
21 assessment and taxation, “as near as reasonably practicable equal to the cash price for which
22 the property valued would sell in the open market...” Kennecott Copper, 799 P.2d at 1160,
23 quoting Cunningham v. Thomas, 16 Utah at 90, 50 P. At 615-616.

24 Petitioner in this case seeks an order to the Tax Commission requiring it to correct the
25 assessment procedure which allows the Board to adopt the state’s unsupported valuation of
26 Petitioners properties and correct their fatally defective tax roll.

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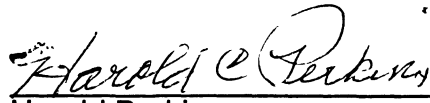
CONCLUSION

The Tax Commission decision was a clear error of discretion. For the reasons set forth above, Petitioners asks this Court to direct the Tax Commission to correct the valuation of Petitioners property for assessment and taxation purposes.

Respectfully submitted this 29th day of March, 1995.



EuGene B. Lynch
In Pro Per



Harold Perkins
In Pro Per

Tab 1

EXHIBIT # 1

APN	LAND	BUILDING	MARKET VALUE	OWNER	SALES PRICE	SALES DATE	MARGIN OF ERROR
1) 41-21-40-140	\$56,271.70	66,325	\$122,596.70	CLARK	\$155,000	7/94	<u>36%</u>
	PERCENT OF ACC.						
		\$155,000 -	\$122,596.70 =	\$32,403.30 ÷	\$122,596.70 =		36%
2) 41-28-00-096	\$24,000		\$24,000	SARGENTAKIS	\$40,000	11/93	<u>150%</u>
	PERCENT OF ACC.	\$60,000 -	24,000 =	\$36,000 ÷	\$24,000 =		150%
3) 41-34-00-207	\$88,000	9,500	\$155,685.03	SHELLEDY	\$210,000	4/95	<u>35%</u>
	PERCENT OF ACC.	\$210,000 -	\$155,685.03 =	\$54,314.97 ÷	\$155,685.03 =		35%
4) 37-19-01-096	\$50,400	44,190	\$94,590.65	KALBACH	\$187,500	7/93	<u>98%</u>
	PERCENT OF ACC.	\$187,500 -	94,590.65 =	\$92,910 ÷	\$94,590 =		98%
5) 41-05-24-17			\$49,944.20		\$68,000	7/94	<u>36%</u>
	PERCENT OF ACC.	\$68,000 -	49,944.20 =	\$18,056 ÷	\$49,944 =		36%
6) 37-19-01-098			\$81,288	LANCY	\$85,000	9/93	<u>5%</u>
	PERCENT OF ACC.	\$85,000 -	\$81,288 =	\$3,712 ÷	\$81,288 =		5%
7) 41-21-40-136			\$101,670	KAUFMAN	\$155,000	5/92	<u>53%</u>
	PERCENT OF ACC.	\$155,000 -	\$101,670 =	\$53,330 ÷	\$101,670 =		53%
8) 41-34-00-011			\$76,426	MARLER/ JENSEN	\$105,000	7/92	<u>37%</u>
	PERCENT OF ACC.	\$105,000 -	\$76,426 =	\$28,574 ÷	\$76,426 =		37%
						440%/8 =	55% Ave.

BEFORE THE UTAH STATE TAX COMMISSION

HAROLD PERKINS,)	
ALPHA SECURITY TRUST,	:	
	)	FINDINGS OF FACT,
Petitioners,	:	CONCLUSIONS OF LAW,
	)	AND FINAL DECISION
v.	:	
	)	Appeal Nos. 94-1680
COUNTY BOARD OF EQUALIZATION	:	94-2231
OF RICH COUNTY,	)	Serial Nos. 37-190-1085
STATE OF UTAH,	:	41-33-28-077
)	
Respondents.	:	Tax Type: Property Tax

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 7, 1995. Chairman W. Val Oveson presided. Also present was Commissioner Alice Shearer. Petitioners were represented by Marvin Zulauf, also present were Harold Perkins and Eugene B. Lynch. The appeal of Harold Perkins and Alpha Security Trust (Eugene B. Lynch) were joined upon motion from Petitioners. Respondent was represented by Craig Jolley, Appraiser with the Property Tax Division, acting as a consultant to the Rich County Assessor, and Pete Mower, Rich County Assessor.

A Settlement Conference was held on May 2, 1995 in Randolph, Utah. The Settlement Conference was converted to a Prehearing Conference at the recommendation of Chairman Oveson and agreed to by Petitioners and Respondent. All parties then waived their right

Appeal Numbers 94-2231 and 94-1680

to a Settlement Conference and a Formal Hearing was set for July 7, 1995 in Salt Lake City.

FINDINGS OF FACT

1. The tax in question is property tax.
2. The period in question is 1994.
3. Petitioner Perkins' property is located at 1465 North Cisco Road, Laketown, Utah. The subject property consists of .45 of an acre of land with a 1,082 square foot home and a 600 square foot garage. The Rich County Assessor initially valued the property at \$96,945.85. The Rich County Board of Equalization subsequently reduced the value to \$95,348. Petitioner is seeking a value of \$64,000.
4. Petitioner Alpha Security Trusts' (Eugene B. Lynch) property is located at 1932 Bear Lake Blvd., Pickleville, Utah. The subject property consists of .61 of an acre of land with a 2,160 square foot home and a 1,008 square foot garage. The Rich County Assessor initially valued this property at \$108,290.80. The Rich County Board of Equalization subsequently reduced this value to \$97,000. Petitioner is seeking a value of \$65,000.
5. Petitioners submitted an analysis of several comparable sales of properties prepared by Marvin Zulauf, with adjustments to

Appeal Numbers 94-2231 and 94-1680

the subject property. Mr. Zulauf has a beneficial interest in the "Perkins" property and is assisting Mr. Lynch on an unpaid basis.

6. Petitioners assert that Respondent failed to examine current sales data and assert that Respondent's valuations are out of line with other properties in the area.

7. Petitioners contend that lake conditions are now unfavorable, thereby devaluing the property.

8. Respondent submitted an appraisal of the Perkins' property, prepared by Steve Farrell of the Property Tax Division of the State Tax Commission acting as a consultant to the Rich County Assessor and an appraisal of the Lynch property prepared by J. Douglas Bischoff. These appraisals included several comparable sales adjusted to the subject property. The Farrell appraisal valued the Perkins property at between \$88,000 and \$110,000. The Bischoff appraisal valued the Lynch property at \$97,000.

9. Petitioners alleged that several of the comparable sales used by Respondent included personal property that was not adjusted for in Respondent's appraisal. As provided for at the conclusion of the hearing, a post-hearing briefing schedule was provided. Both Petitioners and Respondent availed themselves of the opportunity and submitted post-hearing memoranda dealing with point

Appeal Numbers 94-2231 and 94-1680

counter point on the issues of the proper adjustments to both sets of comparable sales. Respondent verified several of their comparable sales subsequent to the hearing and verified the market conditions in the Bear Lake area between 1992 and 1994. Petitioners again analyzed the comparable sales of Respondent and alleged various errors and omissions of Respondent. Respondent also alleged various errors and omissions of Petitioners.

CONCLUSIONS OF LAW

The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. (Utah Code Annotated §59-1-210(7).)

The Petitioners have the burden of proof to establish that the market value of the subject property is other than that determined by the Respondent.

ANALYSIS

The main issue in this case is the quality of the adjustments to the comparable sales. Both parties have stipulated to the relevant comparable sales, there being relatively few sales of residential recreational property during the period at issue.

Appeal Numbers 94-2231 and 94-1680

The assertion of Petitioners that Respondent failed to properly verify the comparable sales could have been determinative in favor of Petitioners had Respondent not presented evidence that the assertions lacked merit. The evidence presented by Respondent in the post hearing memoranda demonstrated that Petitioners were exaggerating both the magnitude and occurrence of the personal property included in the sales of comparable properties. The evidence also demonstrated that the assertions of Petitioners of less than arms-length transactions was also overstated.

Petitioners asserted in the hearing that market values were decreasing during 1993 in the Bear Lake area and that values started increasing in 1994 immediately after the lien date. Respondent presented evidence, from the same brokers cited by Petitioners, that the market was either relatively stable during the 1992 to June of 1994 period or, in the case of one broker, that the values were on a gradual increase over that same period. All agree that the market has picked up considerably in the last half of 1994 and 1995 which is beyond consideration in this case. It appears that Petitioners could have made a positive adjustment to the comparable sales that took place prior to the lien date for time adjustments given that the market in 1992 and 1993 was

Appeal Numbers 94-2231 and 94-1680

increasing according to one broker. A negative time adjustment to Petitioners' comparable sales, made after the lien date, may have been appropriate but the number would have been small and would have made little difference to Respondent's correlated estimate of values.

The Commission believes that Respondents' analysis of the comparable sales is more reflective of market value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that Petitioners' evidence did not meet the burden of proof to show that the market value of the subject property was something other than that determined by the County Board of Equalization. The Tax Commission finds in favor of Respondent. The most accurate

Appeal Numbers 94-2231 and 94-1680

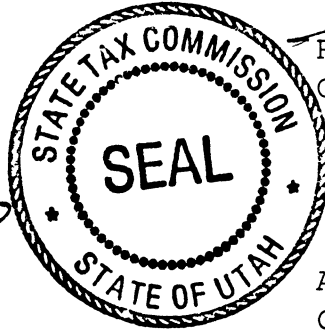
estimate of market value of the subject property as of January 1, 1994 is \$95,348 for the "Perkins" property and \$97,000 for the "Lynch" property. It is so ordered.

Dated this 13th day of October, 1995.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

W. Val Oveson
W. Val Oveson
Chairman

Roger O. Tew
Roger O. Tew
Commissioner



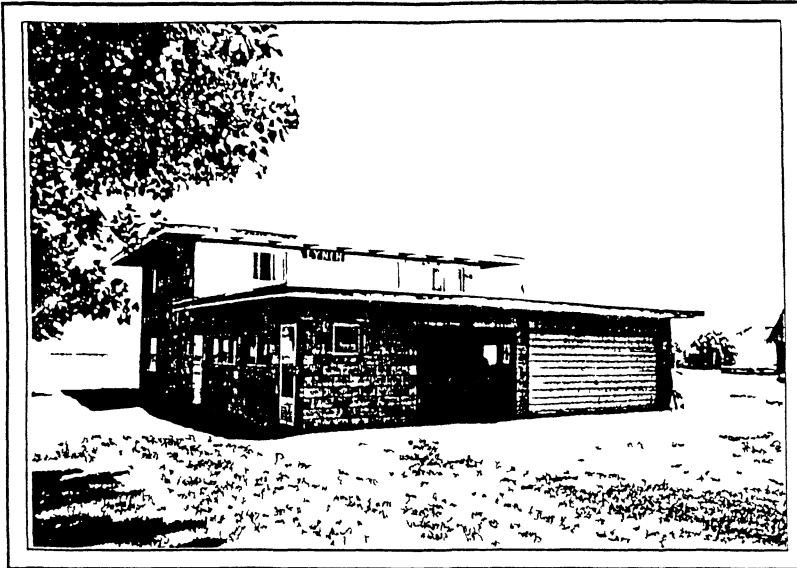
Joe B. Pacheco
Joe B. Pacheco
Commissioner

Alice Shearer
Alice Shearer
Commissioner

NOTICE: You have twenty (20) days after the date of a final order to file a Request for Reconsideration with the Commission. If you do not file a Request for Reconsideration with the Commission, you have thirty (30) days after the date of a final order to file a.) a Petition for Judicial Review in the Supreme Court, or b.) a Petition for Judicial Review by trial de novo in district court. (Utah Administrative Rule R861-1A-5(P) and Utah Code Ann. §§59-1-601(1), 63-46b-13 et. seq.)

WVO/sl 94-1680 ord

Tab 2



Appraisal Group, Inc.

PROPERTY LOCATED AT:

1932 Bear Lake Boulevard
Pickelville, Utah 84028

FOR:

Rich County Assessor
20 South Main, Randolph, Utah 84064

AS OF:

July 14, 1994

BY:

J Douglas Bischoff

UNIFORM RESIDENTIAL APPRAISAL REPORT

File No. LYNCH

Property Address 1932 Bear Lake Boulevard City Pickelville State Utah Zip Code 84028
Legal Description Lots 4, 5, 52, 53, 61, & 62 Hodges Beach Subdivision County Rich
Assessor's Parcel No. 41-33-28-077 Tax Year 1993 R.E. Taxes \$ 906.81 Special Assessments \$None

Location Urban Suburban Rural
Built up Over 75% 25-75% Under 25%
Growth rate Rapid Stable Slow
Property values Increasing Stable Declining
Demand/Supply Shortage In balance Over supply
Marketing time Under 3 mos. 3-6 mos. Over 6 mos.

Note: Race and the racial composition of the neighborhood are not appraisal factors.
Neighborhood boundaries and characteristics: Pickelville is a seasonal resort town bounded easterly by Bear Lake, northerly by Garden City, westerly and southerly by agriculture

The primary factor in this area is Bear Lake. People buy property here primarily as second/summer/recreational home sites to use in conjunction with water recreation. Properties with lake frontage have significantly higher values than those without.

Market conditions in the subject neighborhood (including support for the above conclusions related to the trend of property values, demand/supply, and marketing time - such as data on competitive properties for sale in the neighborhood, description of the prevalence of sales and financing concessions, etc.):
Currently the local market is appreciating, mostly because it is following the rest of the Utah market.

Project Information for PUDs (if applicable) - is the developer/builder in control of the Home Owners' Association (HOA)? Yes No
Approximate total number of units in the subject project 79 lots. Approximate total number of units for sale in the subject project
Describe common elements and recreational facilities: None

Dimensions 100' x 278.6' x 101.76' x 254.7'
Site area 26,665 SF
Specific zoning classification and description Residential
Zoning compliance Legal Legal nonconforming (Grandfathered use) Illegal No zoning
Highest & best use as improved Present use Other use (explain)
Utilities Public Other Off-site Improvements Type Public Private

Comments (apparent adverse easements, encroachments, special assessments, slide areas, illegal or legal nonconforming zoning use, etc.): 100' of Bear Lake frontage. The meander line is beyond the property line but for valuation purposes only the actual lot size is used - see Addendum.

Table with columns: GENERAL DESCRIPTION, EXTERIOR DESCRIPTION, FOUNDATION, BASEMENT, INSULATION. Rows include No. of Units, No. of Stories, Type, Design (Style), Existing/Proposed, Age (Yrs.), Effective Age (Yrs.).

Table with columns: ROOMS, Foyer, Living, Dining, Kitchen, Den, Family Rm., Rec. Rm., Bedrooms, # Baths, Laundry, Other, Area Sq. Ft. Rows include Basement, Level 1, Level 2.

Finished area above grade contains: 7 Rooms; 5 Bedrooms(s); .75+.75 Bath(s); 2,160 Square Feet of Gross Living Area
INTERIOR Materials/Condition HEATING Type Fuel Condition KITCHEN EQUIP. ATTIC AMENITIES CAR STORAGE

Additional features (special energy efficient items, etc.): No additional features.
Condition of the improvements, depreciation (physical, functional, and external), repairs needed, quality of construction, remodeling/additions, etc.: Improvements are functional, simply and rather poorly built. Physical depreciation is excessive. No external depreciation is supported in this market, and given the wide variety of home types along the lake, no functional either. See add. Adverse environmental conditions (such as, but not limited to, hazardous wastes, toxic substances, etc.) present in the improvements, on the site, or in the immediate vicinity of the subject property: Lake level fluctuates and is currently low, expanding the beach, however this affects all properties uniformly - see Addendum

ESTIMATED SITE VALUE		= \$ 67,000	Comments on Cost Approach (such as, source of cost estimate, site value, square foot calculation and, for HUD, VA and FmHA, the estimated remaining economic life of the property): <u>Site value is reasonably well supported by local land sales. Valuing the improvements by this method is fraught with uncertainty due to excessive age, associated depreciation, unusual and potentially dysfunctional construction, and lack of accurate similar cost data - see Addendum.</u>	
ESTIMATED REPRODUCTION COST-NEW OF IMPROVEMENTS:				
Dwelling	2,160 Sq. Ft. @ \$ 30	= \$ 64,800		
	0 Sq. Ft. @ \$	= 0		
Garage/Carport	1,008 Sq. Ft. @ \$ 12	= 12,096		
Total Estimated Cost-New		= \$ 76,896		
Less	Physical	Functional		External
Depreciation	46,138	= \$ 46,138		
Depreciated Value of Improvements		= \$ 30,758		
As-is Value of Site Improvements		= \$ 1,000		
INDICATED VALUE BY COST APPROACH Actual		= \$ 98,758		

ITEM	SUBJECT	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	1932 Bear Lake Boul Pickelville, Ut	931 E. Cisco Road Laketown, Ut	Lakota Subdivision Garden City, Ut	1162 S. Bear Lake Bl Garden City, Ut
Proximity to Subject		4 miles South	3 miles North	1 mile North
Sales Price	\$ N/A	\$ 80,000	\$ 68,000	\$ 125,000
Price/Gross Liv. Area	\$ <input checked="" type="checkbox"/> 91.32 <input checked="" type="checkbox"/>	\$ 87.18 <input checked="" type="checkbox"/>	\$ 106.29 <input checked="" type="checkbox"/>	
Data and/or Verification Sources	Owner Owner	Rich County records Buyer - Survey	Rich County records Bill Petersen, Agent	Rich County Records Buyer - Survey
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION +(-) Adjustment	DESCRIPTION +(-) Adjustment	DESCRIPTION +(-) Adjustment
Sales or Financing Concessions		None - Conv	None - Conv	None-Conv
Date of Sale/Time		Oct 93	July 94	Sept 92
Location	Good	Excellent -10,000	Good	Good
Leasehold/Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Site	100 FF	69 FF +18,600	56 FF +26,400	100 FF
View	Excellent	Excellent	Excellent	Excellent
Design and Appeal	2 sty cblck	Cabin	2 sty sdng -8,000	A-frame -15,000
Quality of Construction	Poor	Poor	Average -6,000	Average -6,000
Age	35 yrs	40 yrs est +2,500	20 yrs est -7,500	15 yrs est -10,000
Condition	Fair	Fair	Good -10,000	Good -10,000
Above Grade Room Count	Total Bdrms Baths 7 5 2.75	Total Bdrms Baths 5 2 3.5 -7,500	Total Bdrms Baths 5 2 1.5	Total Bdrms Baths 5 3 1
Gross Living Area	2,160 Sq. Ft.	876 Sq. Ft. +19,260	780 Sq. Ft. +20,700	1,176 Sq Ft +14,760
Basement & Finished Rooms Below Grade	0	0	0	0
Functional Utility	Fair	Fair	Good -4,000	Good -4,000
Heating/Cooling	Fplc stv/No	2 oil stove	Wood stove	elec basebr -2,000
Energy Efficient Items	Fair	Fair	Fair	Good
Garage/Carport	1008-Garage	Carport +4,000	Carport +4,000	2 car - det +500
Porch, Patio, Deck, Fireplaces, etc.	Porch wood-Firepl	Porch oil-2 stvs	small wood stove	small patio 1 fplc
Fence, Pool, etc.	None	None	None	None
Net. Adj. (total)		X + - \$ 26,860	X + - \$ 15,600	+ X - \$ -31,740
Adjusted Sales Price of Comparable		\$ 106,860	\$ 83,600	\$ 93,260

Comments on Sales Comparison (including the subject property's compatibility to the neighborhood, etc.) See Attached Addendum.

ITEM	SUBJECT	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Date, Price and Data Source for prior sales within year of appraisal	None	None known	None known	None known

Analysis of any current agreement of sale, option, or listing of the subject property and analysis of any prior sales of subject and comparables within one year of the date of appraisal:
No activity involving the subject is known currently or within the past year.

INDICATED VALUE BY SALES COMPARISON APPROACH \$ 97,000
INDICATED VALUE BY INCOME APPROACH (If Applicable) Estimated Market Rent \$ See Add. /Mo x Gross Rent Multiplier = \$ 0

The appraisal is made "as is" subject to the repairs, alterations, inspections, or conditions listed below subject to completion per plans and specifications.
Conditions of Appraisal: The property is appraised 'as is' as of the date of inspection, which was July 14, 1994.
Final Reconciliation: See Addendum.

The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report, based on the above conditions and the certification, contingent and limiting conditions, and market value definition that are stated in the attached Freddie Mac Form 439/Fannie Mae Form 1004B (Revised _____).
I (WE) ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS REPORT, AS OF July 14, 1994
(WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE \$ 97,000

APPRaiser: [Signature] SUPERVISORY APPRAISER (ONLY IF REQUIRED):
Signature: [Signature] Did Did Not Inspect Property
Name: J. Douglas Bischoff Name: LeRoy J. Pia, MAI
Date Report Signed: July 18, 1994 Date Report Signed: July 18, 1994
State Certification #: _____ State: Ut State Certification #: CGA00037451 State: Ut
Or State License #: RA00041424 Or State License #: _____

RECONCILIATION

COST APPROACH

SALES COMPARISON ANALYSIS

CO.  ARABLE SALES PHOTO ADDENDUM

Borrower/Client N/A

Address 1932 Bear Lake Boulevard

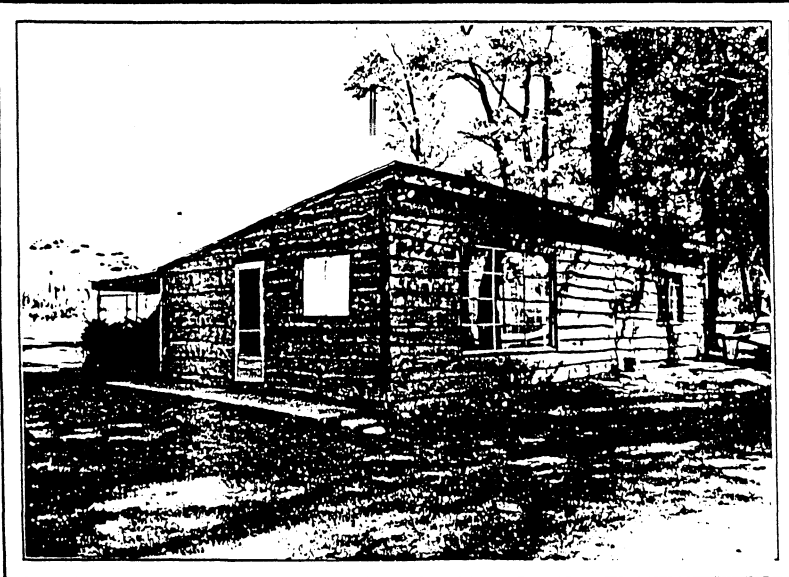
City Pickelville

County Rich

State Utah

Zip Code 84028

Lender/Client Rich County Assessor



COMPARABLE SALE #1

931 E. Cisco Road
Laketown, Ut

Sale Date: Oct 93

Sale Price: \$80,000

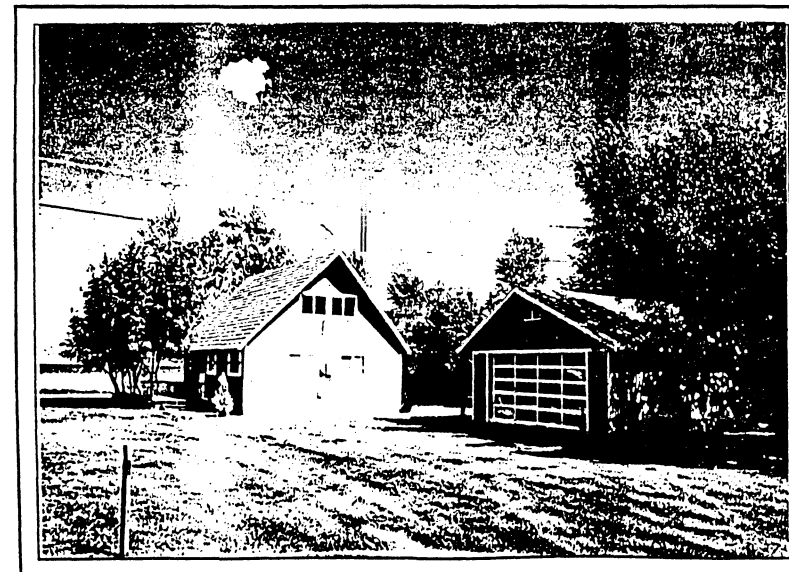


COMPARABLE SALE #2

Lakota Subdivision
Garden City, Ut

Sale Date: July 94

Sale Price: \$68,000



COMPARABLE SALE #3

1162 S. Bear Lake Bl
Garden City, Ut

Sale Date: Sept 92

Sale Price: \$125,000

COMPARABLE SALES PHOTO ADDENDUM

Borrower/Client N/A

Address 1932 Bear Lake Boulevard

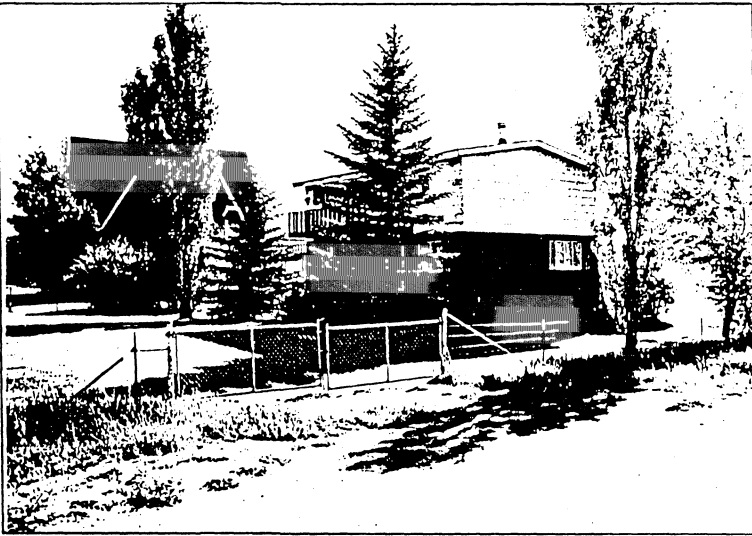
City Pickelville

County Rich

State Utah

Zip Code 84028

Lender/Client Rich County Assessor



COMPARABLE SALE #4

1623 E. Cisco Road
Laketown, Ut

Sale Date: Sept. 93

Sale Price: \$85,000



COMPARABLE SALE #5

85 E. 200 N.
Garden City, Ut

Sale Date: May, 92

Sale Price: \$155,000



COMPARABLE SALE #6

759 East Gus Rich Ln
Garden City, Ut

Sale Date: July, 92

Sale Price: \$105,000

1932 Bear Lake Boulevard Addendum

Eugene Lynch Summer Home

These additional comments are necessary to fully explain the reasoning behind the concluded value.

Parcel Size

The county plat shows the subject property extending to the Bear Lake meander line at 5,920 MSL. Most older properties are deeded to the meander line, and most longstanding property owners consider their ownership to extend that far. Recently the State of Utah has extended its claim over the lake to the actual parcel lines which generally end at the high water mark. This can be seen on the plats, as some parcels extend with dotted lines, others do not. The State now claims sovereignty to the high water mark on most properties. However, we believe older properties like the subject still have title or a use easement extending to the meander line and for the State to claim this property, it must likely compensate such owners.

When the lake is at high water no such problems arise, but when the lake recedes, as at present, the general public has access and use of what otherwise would be private beaches. The issue is fairly minor as it makes public property begin a few feet closer or further from the lot. It is also likely that receiving such compensation would require a lengthy process with the State of Utah.

For this appraisal the size of the parcel without the additional area to the meander line is used.

Physical Condition

The home is strictly for summer use, and has been quite poorly constructed. Physical depreciation is excessive as walls are cracking, windows are unframed and poorly installed, garage floor is gravel, and the roof shows signs of winter damage. The very style of construction may contribute to functional obsolescence, and certainly would in a major town, however, many properties along Bear Lake are of equally unusual and unconventional design. Indeed, in this very particular market, construction quality varies quite widely and seems significant only in differentiating between very good quality, and everything else.

Environmental Factors

There is only one environmental factor of any consequence here, and that is Bear Lake. When the lake recedes values may trend downward somewhat, though this is very difficult to prove and the market seems well aware of such fluctuations, i. e. buyers understand this as an inevitable part of owning lakefront property and adjustments for lower lake levels are within market prices. However, extended periods of low lake levels may have a more significant effect on values.

High lake level is much less seldom a problem, the lake cannot in fact, exceed its high water line as it is drained above that level. However, at high water the lake does damage shoreline properties. The beach at the subject location shows signs of wave action and ice damage to some concrete improvements. The subject is specifically affected in that there is a small depression just southeast of the home, which is below the high water level, and fills in spite of the small dike, if the water level is that high. This pond does not affect the home, but may slightly adversely affect the property.

of sales used (in fact) in 10/93 thru 01/10/94

11 sales in 10/93 thru 01/94

Cost Approach Commentary

Land Valuation

The site value is based on comparison with the following vacant land sales.

Sale #	Date	Parcel #	Location	Price	Size	SF Price	FF Price	Parties
1	Nov, 93	41-28-00-096	Approx. 900 S. BL Blvd. Garden City, Utah	\$60,000	24,400 100 FF x 244'	\$2.46	\$600	Keith H. Bates Joseph Sargetakis
2	Spt, 92	41-16-00-023	US Highway 89 Garden City, Utah	140,000	102,630 311 FF x 330'	1.36	450	Don A & Doran J Baker Norman D. Mecham
3	Oct, 93	41-16-00-081	US Highway 89 Garden City, Utah	55,000	22,000 100 FF x 220'	2.51	550	Norman D. Mecham Wilford Diedrich
4	Oct, 92	41-05-24-029 & 030	Lot 29 & 30 Lakota Est. Garden City, Utah	65,000	16,200 108 FF x 150'	4.01	602	Patricia Sandberg Boyd & Deon Lyon
5	Dec, 91	36-25-00-026	Pine meadows Lot #15 Near Rndzvs Beach, Utah	140,000	67,930 200 FF x 340'	2.06	700	First Federal Savings Jonathon Bullen
6	Spt, 92	41-21-40-092	Approx. 75 N. 200 E. Garden City, Utah	37,800	27,192 88 FF x 309'	1.39	430	FDIC Jerry & Hazel Rackman
7	Jan, 92	41-28-00-064	Approx. 901 S. BL Blvd. Garden City, Utah	75,000	47,718 198 FF x 241'	1.57	379	Delilah Hodges Robert L. Dunkley
8	Aug, 92	41-34-00-026	Ideal Beach Resort Garden City, Utah	40,000	18,520 40 FF x 463'	2.16	1000	Geraldine Lindquist Ideal Beach Master Assoc.
9	Spt, 92	37-19-01-090	Siddoway Subdivision Laketown, Utah	50,000	11,700 90 FF x 130	4.27	555	Hadley Crowther Investment
10	Spt, 93	42-32-01-009	Lot 9, Edge of Eden Eastside BL, Utah	43,000	51,005 101 FF x 505'	0.84	426	Val Neuenswander Max & Teri Savage
SUBJECT		41-33-28-077	1932 S. BL Blvd Garden City, Utah	68,000	26,665 100 FF x 267'	2.25	680	Eugene Lynch

Sale No. 1 is approximately one mile north of the subject and is currently being developed with a very nice home. The transaction was arms-length, with no unusual financing, and is a good comparable. This sale has access from US 89 which is paved and open year-round whereas the subject does not enjoy winter access. This would speak to the idea that this sale is superior however we found that so few people stay year round, or even wish to stay year round, that this is not a very significant variable. The winter temperatures keep most people away whether their property is accessible or not.

This sale also has good tree coverage, but it comes with undergrowth. The subject beach is superior for recreational use, which is the primary use. In comparison the subject will be worth more.

Sale No. 2 is an older sale dating nearly two years ago, and it is much larger. This sale is included because it shows a clear indication of size and time adjustments when compared with sale No. 3, which is a smaller portion of the same parcel. This parcel is boggy, and may include wetlands, though this is unknown. It has good tree coverage, but a highly overgrown beach area. It is accessed from US 89, but again this is not a significant factor. In fact, insofar as privacy and ease of ingress and egress are concerned, the subject may be superior to properties directly along US 89. We apply no adjustments for this. The subject beach is superior to this.

Sale No. 3 is a smaller piece of No. 2. Norm Mecham has subdivided his purchase into five lots, three of which have lake frontage. He has kept the middle lot, and this is the one to the left of it. We were unable to find sales data for the one on the right, though the plat indicates Mr. Mecham has sold it to Mr. Evans. The \$550 per FF price is \$100 over the price Mr. Mecham paid one year earlier. This shows an increase of 22%, all of which cannot be pure market conditions. The market has not improved that much that quickly. This adjustment includes a size factor as well, since price per unit, be it square feet, or front feet, generally goes up as the total number of units purchased goes down. In comparison the subject has a superior location, between Garden City and Laketown, and a superior beach. The subject will be worth more. (Less)

< not so >

Sale No. 4 is in Lakota Estates. This is superior to the subject in that the community is private and therefore more secluded. The Lyons bought two adjacent lots, and the FF price can vary depending upon the inclusion or exclusion of both. The rear lot has no lake frontage and such lots are rather uniformly valued at \$10,000. Subtracting this results in a FF price of \$509.26, while keeping it in results in a FF price of \$601.85. Based on size, the higher value is most similar to the subject. It also clearly shows that the value is in the frontage, and not vacant land without frontage. The subject beach is superior in that it is sandier and less vegetated, which offsets with Lakota's seclusion. This sale supports sale No. 1 in concluding a value above \$600.00 per FF for the subject site.

Sale No. 5 is near Rendezvous beach between Pickleville and Laketown. The beach is comparable, but the location may be somewhat superior. This is an older sale so upward adjustment may be warranted, but it is not applied as the evidence is insufficient. Overall this

brackets this subject between \$600 and \$700 per FF, with the subject nearer the upper end as it is superior to the other sales.

Thus, we conclude \$680 per FF for the subject land, which, with 100 FF equates to \$68,000 for the subject parcel.

Additionally we point out the following sales which we do not consider readily comparable to the subject for the reasons mentioned.

Sale No. 6 involved the FDIC as a seller, such transactions are typically at much less than market, and for the beach in question, in comparison with other sales, this was clearly a very good deal for the buyer.

Sale No. 7 is an older sale. Values have risen appreciably since then. This sale is currently being built on and is very near Sale No. 1 which sold much higher. This plot reportedly had wetlands designated on it, though we found little evidence of such. Such designation can reduce value in excess of 90% in some cases, however a portion of the site was still buildable. The beach is good, but heavily vegetated and inferior to the subject in that regard. In comparison to Sale No. 1, it is clear that a size adjustment, and time adjustment would be necessary to compare this sale. Both adjustments would be considerable, and it remains clear that the buyer here simply got a good deal.

Sale No. 8 is a smaller piece at 40 FF, which appears to be a non-market transaction since Geraldine Lindquist is related to Charles Lindquist, who was very heavily involved in Sweetwater and is now somehow involved in Ideal Beach. The sale is high in comparison to everything else and is discarded.

Sale No. 9 is in the Siddoway subdivision, is older and not readily comparable to the subject, though in a similar value range.

Sale No. 10 is on the east side of the lake which is grossly inferior to the subject and again not readily comparable. Even after adjustment it would present a minimum value for properties in the subject neighborhood.

Sales Comparison Approach Commentary

We searched Rich County for recent sales of similar properties. Properties with lake frontage command much higher prices than properties without so all sales without lake frontage were excluded. Recent sales were scarce so we widened our search to include 1993, and eventually some 1992 sales. A summary of all sales found is presented below:

IMPROVED SALES							
Sale #	Date	Parcel #	Location	Price	FF/ GLA	SF Price	Parties
1	Oct, 93	37-19-01-140	931 E. Cisco Road Laketown, Utah	80,000	876	\$91.32	Rosalind Sjostrom David J. Mclean
2	Jul, 94		Lakota #17 Garden City, Utah	68,000	780 56 FF.	87.18	Under Contract
3	Sep, 92	41-28-00-037	1162 S. Bear Lake Blvd. Garden City, Utah	125,000	1,176 100 FF	106.29	Oberg Robert Kaufman
4	Sep, 93	37-19-01-098	1623 Cisco Road Laketown, Utah	85,000	1,250 94 FF	68.01	Bray David F. Lancy
5	May, 92	41-21-40-136	85 East 200 North Garden City, Utah	155,000	1,410 68 FF	109.92	Warnell & Leslie Van Otten Dale Kaufman
6	Jul, 92	41-34-00-011	759 E. Gus Rich Lane Garden City, Utah	105,000	1,595 90 FF	65.83	Dale H. & Inez Marler Mark A. & Joan Jensen
7	Jul, 93	37-19-01-096	1621 E. Cisco Road Laketown, Utah	187,500	2,170 94 FF	86.41	Christensen Kalbach
8	Dec, 93	41-05-24-014	Lakota #19 Garden City, Utah	105,000	952 Strmfnt	110.29	Leo Thomas Syphus Robert E Nacey
9	Jul, 92	41-21-37-025 & 026	Azure Cove 25 & 26 Garden City, Utah	92,000	1,332 Shared	69.07	Stephenson Sorenson
10	Oct, 93	41-21-40-119	65 N. Bear Lake Blvd. Garden City, Utah	49,000	No frontage	Not pursued	Dora T. Mecham Renee LaBeau
11	Aug, 93	41-21-30-110	260 S. Bear Lake Blvd. Garden City, Utah	39,500	No frontage	Not pursued	Harold Thornberg Joel Parrish
12	Jan, 93	41-08-00-034	1615 N. Bear Lake Blvd. Garden City, Utah	36,000	Not pursued	Not pursued	IRS Craig Miller
13	Jun, 93	N/A	732 US 89 Fish Haven, Idaho	140,000	2,000 135 FF	70.01	Watson Mecham

Mr. Lynch sold 50 FF adjacent to his ownership to Mr. Wade in 1982 for \$1,000 per FF. This was at or very near the all time height of the Bear Lake market, and conditions have changed so significantly since then it cannot be considered applicable now.

A 50 FF lot four lots north of the subject is currently listed for \$50,000, or \$1,000 per FF. A cash offer of \$45,000 was made last year and accepted, but fell through as financing was not obtained. Listings do not represent complete market transactions, though if this lot sells it will give a very clear indication of value for this area. However, the subject would be less as it has double the frontage.

Improvements Valuation

The unique non-professional construction of the subject, along with its age, precludes accurately applying cost manuals or reference guides to accurately estimate its value. We consulted Glen Beckstead, a local building cost estimator, who indicated \$30.00 per SF, turnkey costs, as achievable for a building of this type. However, he indicated a lower cost likely when we discussed the building's quality in detail. He doubts it could be rebuilt at all as building code's would likely not allow this calibre of construction. We concluded \$30.00 per SF for the living space, and \$12.00 for the garage. These numbers are impossible to verify with current costs as no contractors would build such a structure. This, coupled with the large amount of depreciation accrued make the cost approach a very poor estimate of overall value.

The first six sales are judged the most comparable to the subject, though the properties' dissimilarities necessitate unusually large adjustments. These six are presented in greater detail on the form.

Sale No. 1 appears to be the single most comparable, though it is much smaller, and on a superior beach. These factors offset somewhat, but overall the subject should be more than \$80,000.

Sale No. 2 is the most recent sale, and is due to close next week. Like most of the sales it is grossly superior in design, and condition. The subject's poor design and construction, coupled with its age and condition make adjustments subjective at best, and render the approach less reliable, as in the cost approach. The subject is larger, however, and on a slightly superior beach. Overall the subject would be worth more.

Sale No. 3 is a much higher quality structure with wider market appeal. Though smaller, the quality here outweighs size, and the subject should be considerably less.

Sale No. 4 is much smaller, but of better quality construction and in better condition. These factors do not offset completely and overall the subject should command a higher price than this sale's \$85,000.

Sale No. 5 is a well built structure in very good condition located in the middle of Garden City. Numerous adjustments show this is very superior to the subject and must be reduced considerably.

Sale No. 6 is the closest in size so far, and is on a very similar beach. As with all the other comparables, the subject is inferior in construction design, quality, and in overall condition. The subject will be less than the \$105,000 paid for this building.

Sale No. 7 is a larger home adjacent to Sale No. 4. It is in much better condition, and of much higher quality construction. The applicability of the comparables decreases as we progress and we considered this sale too superior to apply.

Sale No. 8 technically has no frontage. It sits on Swan creek and has lake frontage only at high water, which hasn't been for several years.

Sale No. 9 shares its beach frontage with others in this private development. Again this makes comparison very difficult. Age, quality and condition have been difficulties that could not be avoided, but this can be, so it is.

Sale No. 10 has no frontage whatsoever, and the much lower price seems to show a large adjustment though further information regarding this transaction was not pursued.

Sale No. 11 is similar to No. 10.

Sale No 12 was sold under duress from the IRS, and is high on a hill over the lake lacking frontage similar to the subject.

Sale No. 13 is fairly recent, but built much more like a year round primary residence than a summer home. It is further away in Idaho, though the beach is somewhat similar, and it is grossly superior.

Another property currently under contract is a small home at 222 North Bear Lake Boulevard. This 865 SF home with 99 FF on Bear Lake is on a lot 677 feet deep. This unique factor would be very difficult to adjust for as it clearly exceeds the optimal depth and places the home a considerable distance further from the beach than most.

Overall the comparables show a wide range of value, but after examination indicate clearly that value is between \$85,000 and \$105,000. The average of the six considered best is \$95,650. After the adjustments on the form the average is \$97, 233. As shown, we conclude market value by this approach at \$97,000 which assumes a willing purchaser would use the existing improvements and greatly improve them. Some buyers may buy for land only and tear down the house, though we believe buyers who would get use from the existing improvements could be found, as evidenced by Sale No. 1.

Income Approach Commentary

Single family residences are not typically valued using the income approach. Four Seasons Realty recently opened in Garden City and they hope to rent out homes along the lake and in the area. So far they only have one lakefront home in their pool and have no rental history for the

property. They are the only firm known to do this, and condominium rents are not applicable. Thus the income approach cannot be used as there is insufficient market data to make a reasonable value estimate.

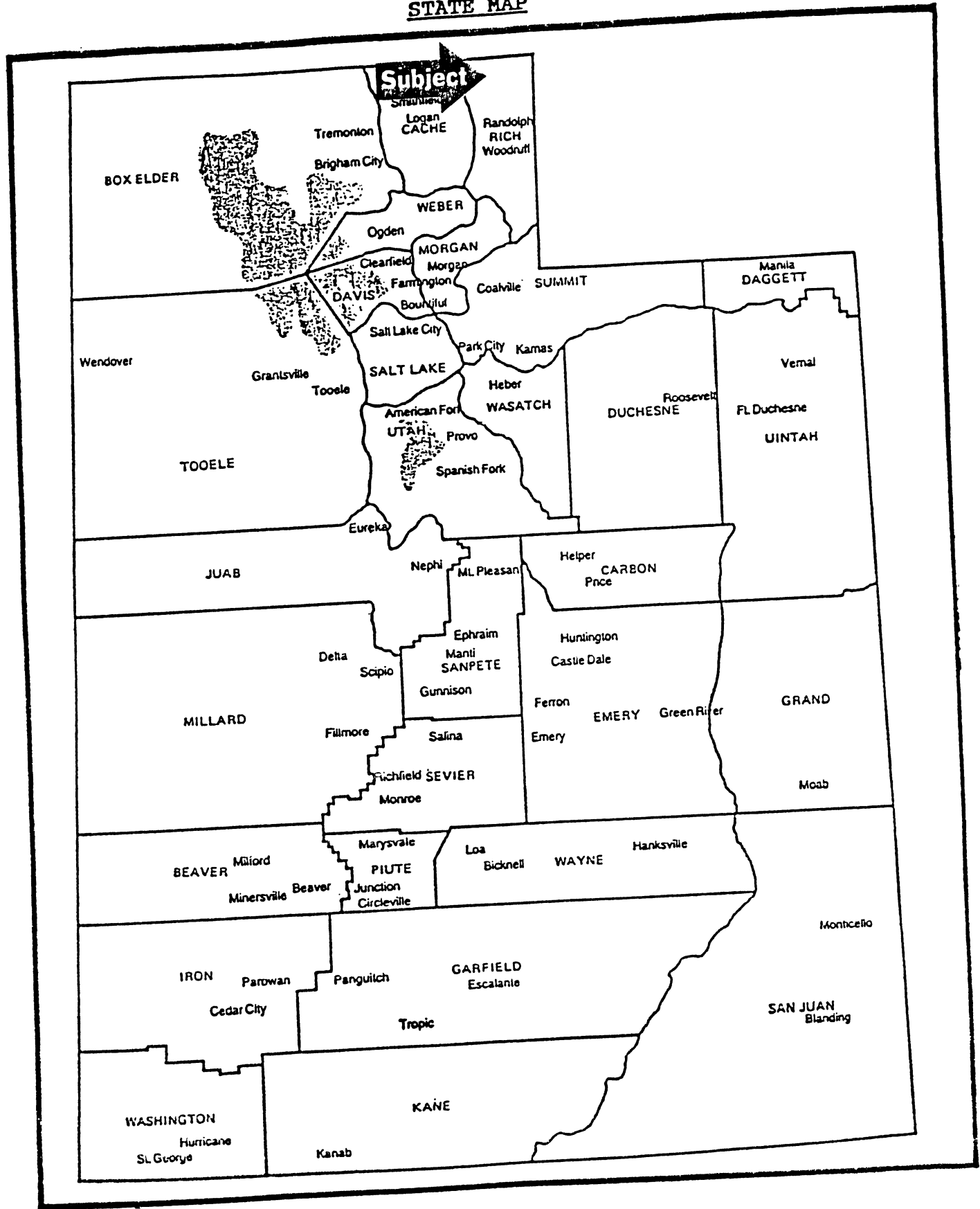
Final Reconciliation

The cost approach includes a land valuation which is reasonably well supported. The approach loses most of its applicability in that the improvements are shoddy, unique, old, and highly depreciated. Each of these factors is separable from the others, but combined they render the estimate suspect.

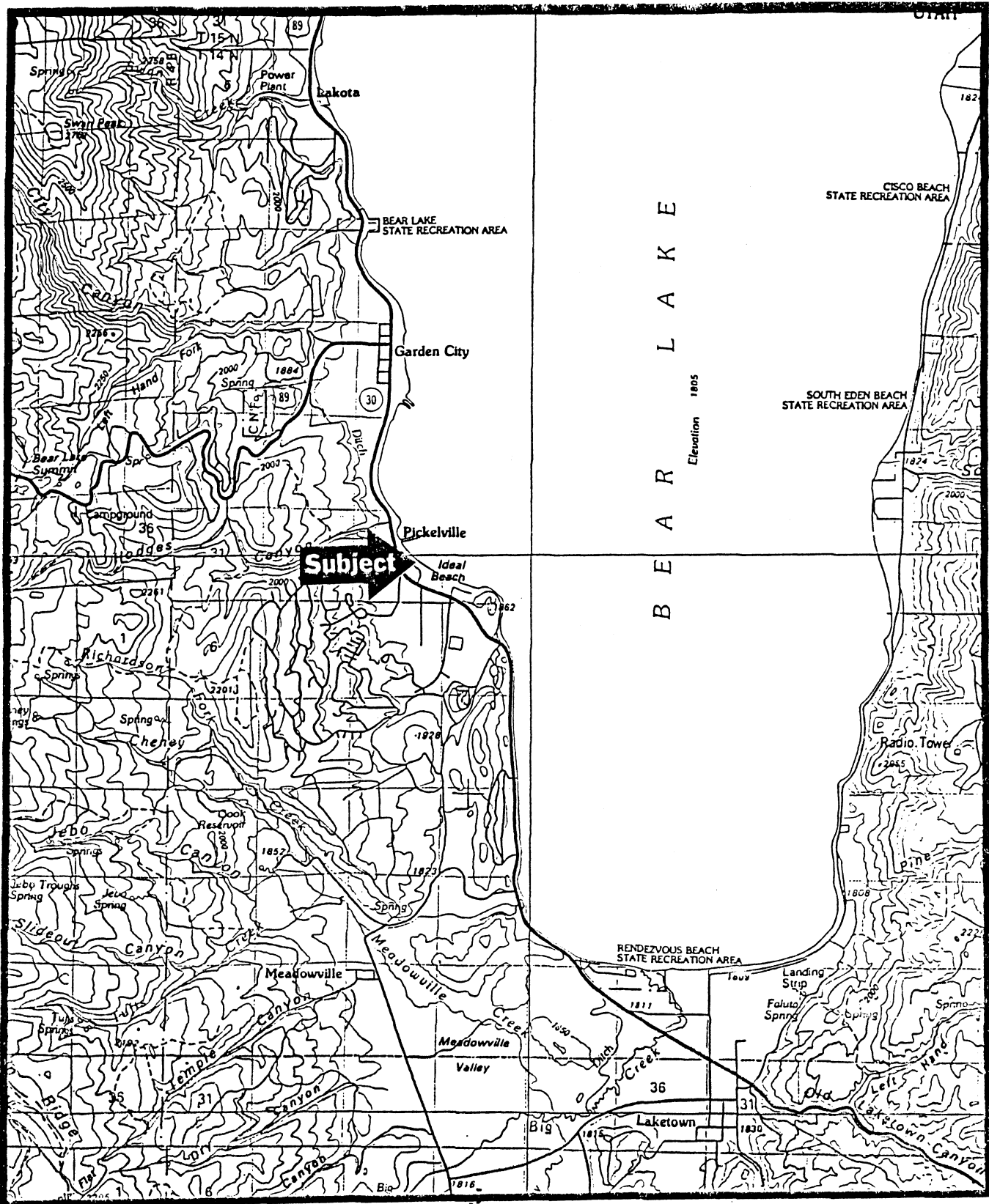
The sales comparison approach relied on highly dissimilar sales but they are the best available. It appears this market does not make refined adjustments between grossly disparate properties, but on a more pure living space vs. living space basis. This approach is by far the best estimate and it is heavily weighted.

The income approach was inapplicable and overall a value of \$97,000 is concluded based primarily on the sales comparison approach. Given the concluded land value of \$68,000, this results in \$29,000 for the improvements.

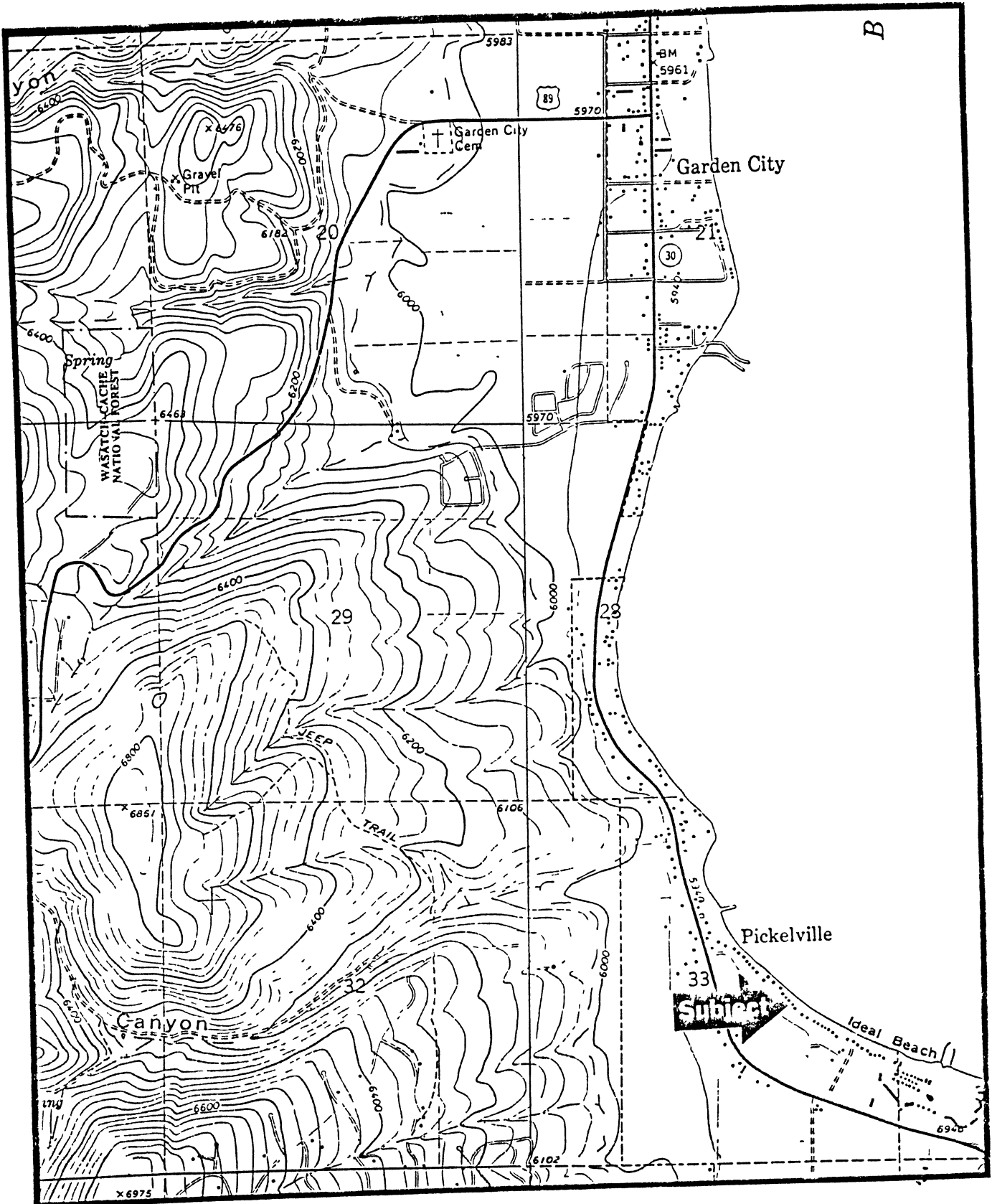
STATE MAP



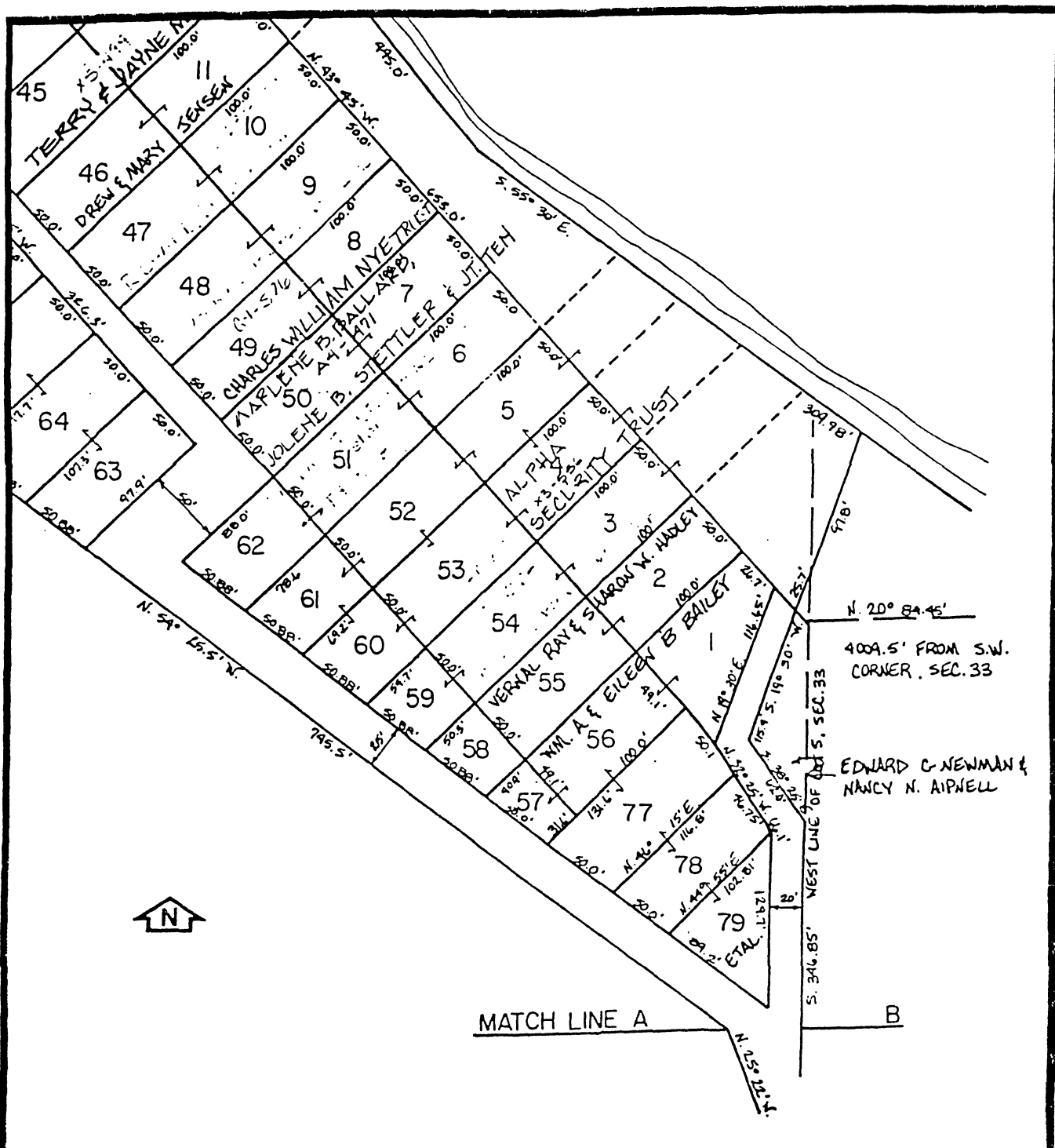
AREA MAP




LOCATION MAP



COUNTY PLAT

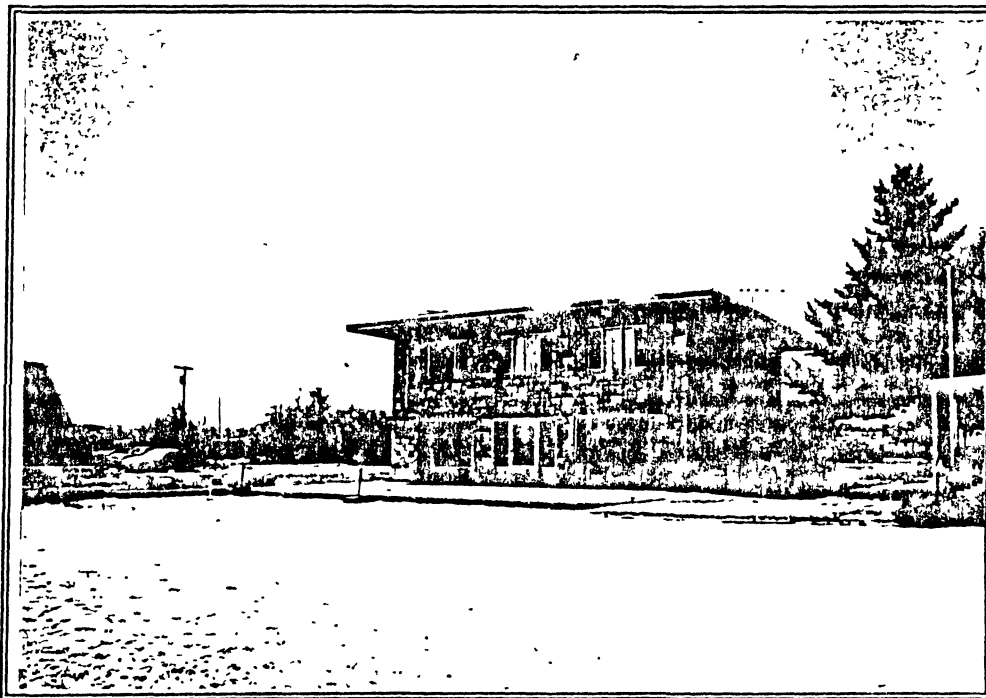


	HODGES BEACH		Section <u>33</u> T. <u>14N.</u> R. <u>5E.</u>	book page
	drawn by L.M.	date NOV. 78	scale 1" = 100'	

SUBJECT PHOTOGRAPHS

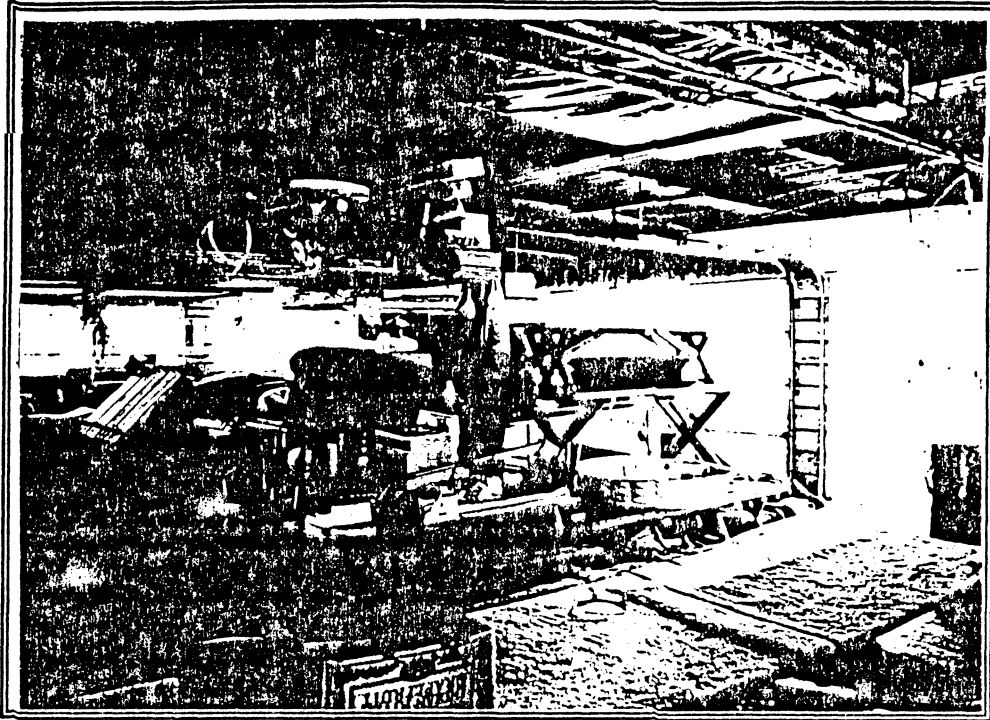


Northeasterly view of subject

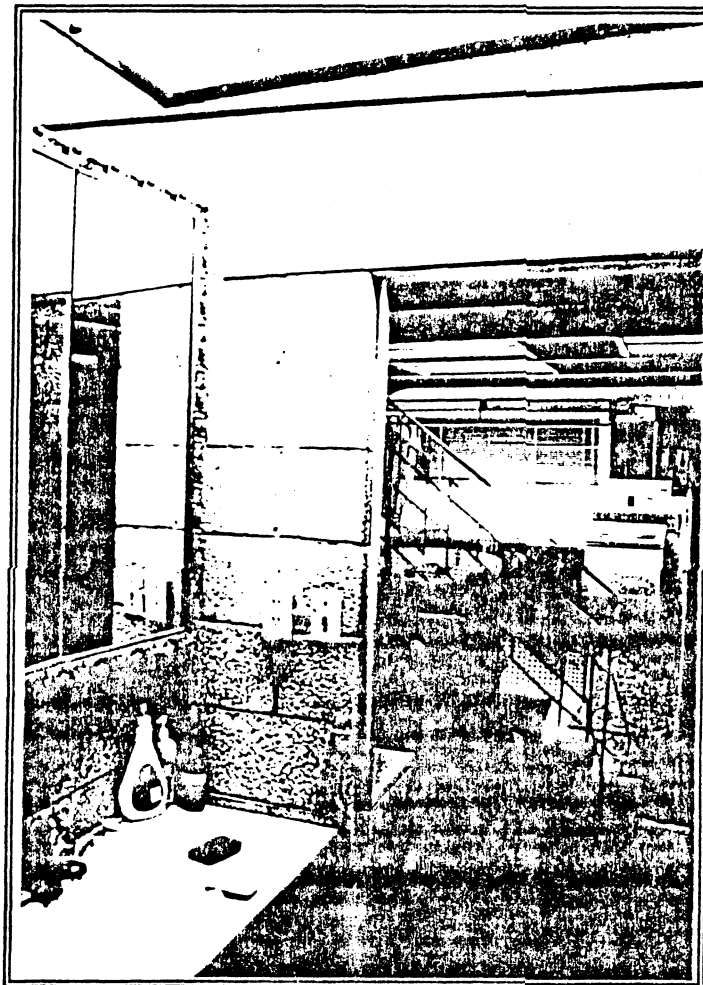


Southwesterly view of subject from beach

SUBJECT PHOTOGRAPHS, Continued

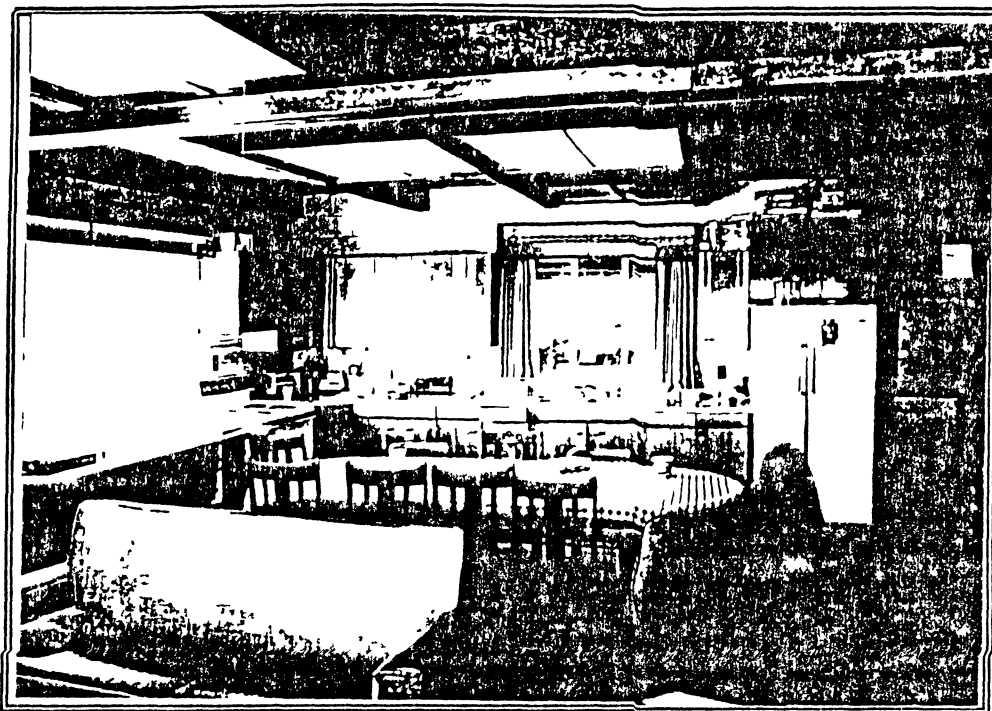


Garage

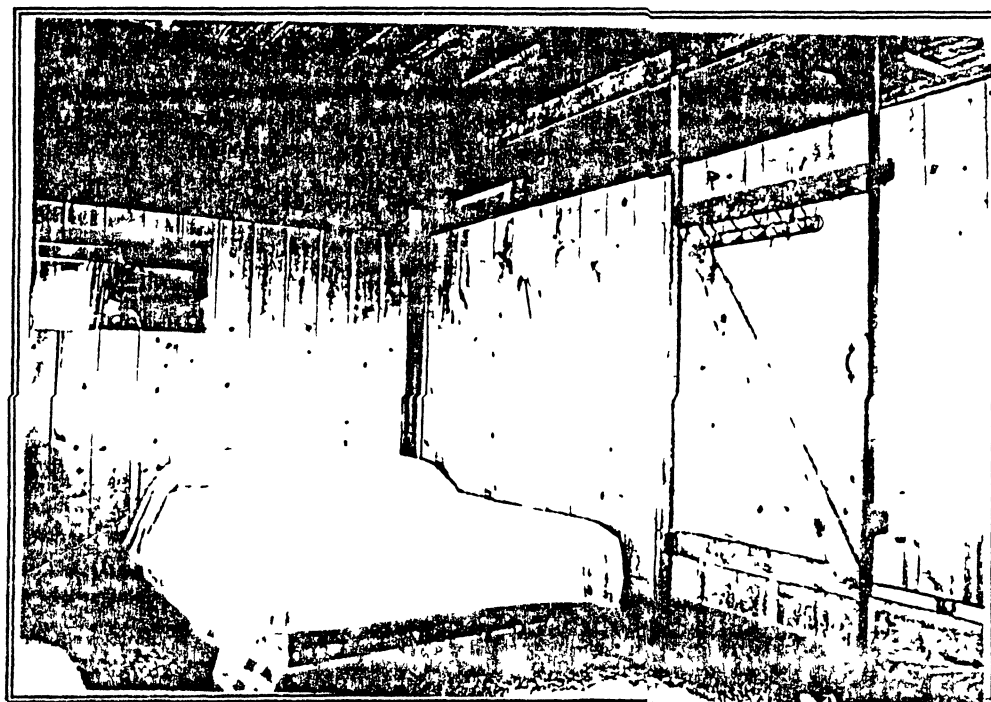


Bathroom

SUBJECT PHOTOGRAPHS, Continued



Kitchen



Bedroom

ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal has been based on the following limiting conditions:

1. For purposes of this appraisal, any marketing program for the sale of the property would assume cash or its equivalent.
2. No soil studies covering the subject property were made available for this appraisal. It is therefore assumed that soil conditions are adequate to support standard construction consistent with highest and best use.
3. The date of value to which the conclusions and opinions expressed in this report apply, is set forth in the letter of transmittal. Further, the dollar amount of any value opinion rendered in this report is based upon the purchasing power of the American dollar existing on that date.
4. The appraisers assume no responsibility for economic or physical factors which may affect the opinions in this report which occur after the date of the letter transmitting the report.
5. The appraisers reserve the right to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.
6. No opinion as to title is rendered. Data relating to ownership and legal description was obtained from county records or the client and is considered reliable. Title is assumed to be marketable and free and clear of all liens, encumbrances, easements and restrictions except those specifically discussed in the report. The property is appraised assuming it to be under responsible ownership and competent management, and available for its highest and best use.
7. No title policy was made available to the appraisers. No responsibility is assumed for such items of record not disclosed by their customary investigation.
8. The appraisers assume no responsibility for hidden or unapparent conditions of the property, subsoil, or structure that render it more or less valuable. No responsibility is assumed for arranging for engineering studies that may be required to discover them.
9. The property is appraised assuming it to be in full compliance with all applicable federal, state, and local environmental regulations and laws.
10. The property is appraised assuming that all applicable zoning and use regulations and restrictions have been complied with.
11. No engineering survey has been made by the appraisers. Data relative to size and area was taken from sources considered reliable and no encroachment of real property improvements is considered to exist.
12. No opinion is expressed as to the value of subsurface oil, gas or mineral rights or whether the property is subject to surface entry for the exploration or removal of such materials.

ASSUMPTIONS AND LIMITING CONDITIONS, Continued

13. Maps, plats and exhibits included in this report are for illustration only as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose, nor should they be removed from, reproduced, or used apart from the report.
14. Possession of this report, or copy of it, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraisers, and in any event only with proper written qualification and only in its entirety.
15. Testimony or attendance in court or at any other hearing is not required by reason of rendering this appraisal, unless such arrangements are made a reasonable time in advance.
16. The appraisers have personally inspected the subject property. Some evidence of structural deficiencies is evident, however, no responsibility for hidden defects or conformity to specific governmental requirements, such as fire, building and safety, earthquake or occupancy codes can be assumed without provision of specific professional or government inspections.
17. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible non-compliance with the requirements of ADA in estimating the value of the property. Generally ADA is not applied to residential properties.
18. Information obtained for use in this appraisal is believed to be true and correct to the best of my ability; however, no responsibility is assumed for errors or omissions, or for information not disclosed which might otherwise affect the valuation estimate.
19. The appraisers have no knowledge concerning the presence or absence of toxic materials in the improvements and/or hazardous waste on the land. No responsibility is assumed for any such conditions or for any expertise or engineering to discover them.
20. Disclosure of the contents of this appraisal report is governed by the Bylaws and Regulations of the Appraisal Institute.

~~Neither I nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which he is connected, or any reference to the Appraisal Institute or to the MAI or RAI designations) shall be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication without the prior written consent and approval of the appraiser.~~

CERTIFICATION

We certify that to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions and conclusions are limited only to the reported assumptions and limiting conditions, and are our personal, unbiased professional analyses, opinions and conclusions.
3. We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved.
4. Our compensation is not contingent on an action or event resulting from the analyses, opinion or conclusions in, or the use of, this report.
5. Our analyses, opinions and conclusions were developed and this report has been prepared in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.
6. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
7. As of the date of this report, LeRoy J. Pia has completed the requirements under the continuing education program of the Appraisal Institute.
8. The appraisers have made a personal inspection of the property that is the subject of this report.
9. No one provided significant professional assistance to the persons signing this report.

10. In estimating market value, the appraisers are essentially acting as a well-informed buyer or seller, not as an expert trained to determine the existence of environmental hazards and implications of such value-influencing factors on market value. The appraisers are not qualified to determine the existence of environmental hazards, and an expert in the field ought to be retained if there is some suspicion that such hazards might exist.

Date Signed

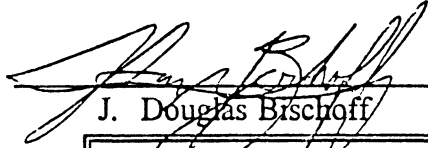
Appraiser's Signature

August 8, 1994

LeRoy J. Pia, MAI

Utah Certified General Appraiser
Certificate CG37451 Expires 6-30-95
Nevada Certified General Appraiser
Certificate #00551 Expires 1-31-96

August 8, 1994



J. Douglas Bischoff

Utah Registered Appraiser
Certificate RA41424 Expire 11-30-94

QUALIFICATIONS, LEROY J PIA

EDUCATION:

Graduated from University of Utah in Business Finance, 1974.

Specialized courses, seminars and exams sponsored by the Appraisal Institute:

Residential Properties, Course 8	9/79
Real Estate Appraisal Principles, Exam 201	6/80
Basic Valuation Procedures, Exam 1A-2	9/80
Capitalization Theory & Tech. Part I, Exam 1B-1	6/81
Capitalization Theory & Tech. Part A, Exam 1B-A	3/84
Valuation Analysis & Report Writing, Exam 202	6/84
Capitalization Theory & Tech. Part B, Exam 1B-B	6/84
Standards of Professional Practice	9/84
Case Studies in Real Estate Valuation	6/89
Standards of Professional Practice	11/91

Completed courses and examinations as prepared and sponsored by the Certified Commercial Investment Council of the Realtors Marketing Institute;

Introductory Course	1979
Real Estate Investment and Taxation Course	1980

Completed six seminars prepared and sponsored by International Council of Shopping Centers-University of Shopping Centers. 2/87

Completed Skills of Expert Testimony course prepared and sponsored by the International Right of Way Association 4/89

Highest & Best Use with emphasis on multiple use, interim use, and transitional use properties sponsored by American Society of Farm Managers and Rural Appraisers 11/93

MEMBERSHIPS & AFFILIATIONS:

- Member of the Appraisal Institute, MAI #7428.
- Utah Certified General Appraiser #CG37451
- Nevada Certified General Appraiser #00551
- Member of the Regional Professional Standards Panel of the Appraisal Institute.
- Associate Member of the International Council of Shopping Centers.
- Affiliate Member of the Park City Board of Realtors
- Park City Board of Realtors Affiliate of the Year Award 1992
- President of the Summit Land Trust Board
- Governor Appointee - Utah Appraisal Registration/Certification Board
- Committee Member Ad hoc Steering Committee, 30,000 acres of School Trust Land south of St. George

QUALIFICATIONS OF LEROY J. PIA, Continued

PROFESSIONAL HISTORY:

- 1973, Shott Realty Company, Inc. Commercial and industrial leases sales.
- 1975, Alpha Financial Corp. Site locating for commercial and residential development.
- 1977, Self-employed. Real estate investments in residential properties.
- 1979, Harvard Inc. Realtors, appraisals, sales.
- 1979, Appraisal Associates. Appraisals and real estate investments.
- 1984, Appraisal Associates incorporated. Became an equal one quarter owner with three other MAI's.
- 1993, Appraisal Group, Inc. organized, president and equal 50% owner. One of the largest appraisal offices in Utah.

APPRAISAL CLIENTELE: (Partial List)

Bank One
CrossLand Savings
Daggett County
Deseret Mutual Benefit Association
First Interstate Bank of Utah
First Interstate Bank of Nevada
First Security Bank of Utah
First Security Corporation
First Western Mortgage
Hecla Mining Company
Juab County
Key Bank
LDS Church
Millard County
Moore Financial Corporation
Multi County Appraisal Trust
Park City Consolidated Mines
Park City Municipal Corporation
Prudential Coleman Land and Investment Company
Quadriga Development
Resolution Trust Corp. (RTC)
Richards-Woodbury Mortgage
Royal Street Land Company (ski area)
Salt Lake City Corporation
Security Pacific Financial
Sevier County
Summit County
United Savings and Loan & Western Mortgage
University of Utah
U.S. Army Corps of Engineers
Utah Department of Transportation
Utah State Land Board
Utah State University
Virginia Beach Federal
Wallace Associates
West One Bank
Zions First National Bank

QUALIFICATIONS OF LEROY J. PIA, Continued

Property Types

Appraised: All types of commercial, recreational and residential properties.

Mass Appraisal

Assignments:

Directed mass appraisal valuations of all commercial properties within five counties of the State of Utah. Each assignment included a comprehensive economic obsolescence study for all types of commercial properties within these counties. Analyses also included land valuations for all improved commercial properties throughout each county.

Directed mass appraisal (land value guide) of all large acreage parcels throughout western Summit County.

QUALIFICATIONS OF J. DOUGLAS BISCHOFF

EDUCATION

Master of Science, Economics, Utah State University, June 1992 (ABT)

Bachelor of Arts, Economics, Brigham Young University, June 1989, Minors: German and Military Service

SPECIALIZED COURSES

Real Estate Appraisal Principles 8/92

Real Estate Appraisal Procedures 8/92

Standards of Professional Appraisal Practice 10/92

Utah State Law 10/92

Standards of Professional Appraisal Practice II 10/92

Advanced Capitalization Theory and Practice 11/92

Advanced Rural Appraisal (A-30) 7/93

APPRAISAL EXPERIENCE

October 1992 to October 1993 - full time real estate appraiser/consultant with Appraisal Associates, Inc., Salt Lake City, Utah.

November 1, 1993 to present - Appraisal Group, Inc., Salt Lake City, Utah.

ASSIGNMENTS

Include agricultural and rural properties, undeveloped land, industrial properties, mini-warehouses, commercial properties, office buildings, and condemnations. Assignments entail on-site inspections, market research, data analysis, valuation, and narrative reports.

MEMBERSHIPS AND AFFILIATIONS

State Registered Appraiser #RA41424, Expires 11-30-94

Member of National Association of Business Economist

Member of Wasatch Front Economic Forum

MAI Candidate, The Appraisal Institute

Tab 3

UNIFORM RESIDENTIAL APPRAISAL REPORT

Perkins

File No PERKINS

City Address 1465 No. Cisco Road City Laketown State Utah Zip Code 84038

Legal Description Lot 60 Blk 4, Siddoway Subdivision County Rich

Assessor's Parcel No 37-190-1085 Tax Year 1994 RE Taxes \$ 1,150 Special Assessments \$

Borrower N/A Current Owner Harold & Ruth Perkins Occupant [X] Owner [] Tenant [] Vacant

Property rights appraised [X] Fee Simple [] Leasehold [] Project Type [] PUD [] Condominium (HUD/VA only) HOA \$ /Mo

Neighborhood or Project Name Siddoway Subdivision Map Reference Census Tract

Sales Price \$N/A Date of Sale N/A Description and \$ amount of loan charges/concessions to be paid by seller

Lender/Client Rich County Assessor Address 20 South Main, Randolph, Utah 84064

Appraiser Steve Farrell Address 210 North 1950 West, Salt Lake City, Ut 84134

Location: Urban [], Suburban [], Rural [X]
Predominant occupancy: [X] Owner 100, [] Tenant, [] Vacant (0-5%), [] Vacant (Over 5%)
Single family housing: PRICE \$1000 50 Low New, AGE (yrs) 50
Present land use %: One family 10, 2-4 family, Multi-family, Commercial, (Recrea) 90
Land use change: [X] Not likely, [] Likely, [] In process, [] To

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood boundaries and characteristics Recreational properties fronting and in the immediate area of Bear Lake.

Factors that affect the marketability of the properties in the neighborhood (proximity to employment and amenities, employment stability, appeal to market, etc.)

The primary marketing factor in the area is Bear Lake. People buy property here for second/summer/recreational home sites to use in conjunction with water recreation on Bear Lake. Properties with lake frontage have a higher market appeal than those without.

Market conditions in the subject neighborhood (including support for the above conclusions related to the trend of property values, demand/supply, and marketing time - such as data on competitive properties for sale in the neighborhood, description of the prevalence of sales and financing concessions, etc.)

Market value on lake front properties are stable with a slight increase. Value in the area fluctuated in the '70s, peaking in the early '80s, and declined in the early '90s. The market has shown a slight increase from 1992 to date.

Subject Information for PUDs (if applicable) - Is the developer/builder in control of the Home Owners' Association (HOA)? [] Yes [X] No

Approximate total number of units in the subject project Approximate total number of units for sale in the subject project

Describe common elements and recreational facilities

Dimensions 100'x194'

Area 45ac. Corner Lot [] Yes [X] No

Zoning classification and description Residential/Recreation

Building compliance [X] Legal [] Legal nonconforming (Grandfathered use) [] Illegal [] No zoning

Best & best use as improved [X] Present use [] Other use (explain)

Utilities: Public [X], Other []

Off-site Improvements: Street [X], Curb/Gutter [], Sidewalk [], Street Lights [], Alley []

Water: Private Well [], Septic Tank []

Topography Level, Size Typical, Shape Rectangular, Drainage Appears adequate, View Panoramic, Landscaping Typical, Driveway Surface Gravel, Apparent Easements None, FEMA Special Flood Hazard Area [] Yes [X] No, FEMA Zone None, Map Date N/A, FEMA Map No Not issued-min. haz

Encumbrances (apparent adverse easements, encroachments, special assessments, slide areas, illegal or legal nonconforming zoning use, etc.) There appears to be no apparent easements, encroachments or other adverse conditions affecting the subject site.

FOUNDATION: Slab Yes, Crawl Space, Basement, Sump Pump, Dampness, Settlement, Infestation
BASEMENT: Area Sq. Ft. None, % Finished, Ceiling, Walls, Floor, Outside Entry
INSULATION: Roof [X], Ceiling, Walls, Floor, None, Unknown, Limited

Table with 5 columns: EXTERIOR DESCRIPTION, EXTERIOR DESCRIPTION, FOUNDATION, BASEMENT, INSULATION. Rows include Units, Stories, Det./Att., Style, Proposed, Yrs., and Age.

Table with 13 columns: MS, Foyer, Living, Dining, Kitchen, Den, Family Rm, Rec Rm, Bedrooms, # Baths, Laundry, Other, Area Sq. Ft. Rows 1 and 2.

Table with 6 columns: FINISH, MATERIALS, COOKING, DISHWASHER, MICROWAVE, WASHER/DRYER. Rows include materials like Vinyl, Wood, and appliances like Dishwasher, Microwave.

Additional features (special energy efficient items, etc.): No additional features.

Condition of the improvements, depreciation (physical, functional, and external), repairs needed, quality of construction, remodeling/additions, etc. Property stands in a fair state of repair displaying normal wear and tear depreciation, plus a degree of obsolescence due to deferred maintenance as is evidence by the excess weathering of the exterior siding and deck.

Environmental conditions (such as, but not limited to, hazardous wastes, toxic substances, etc.) present in the improvements, on the site, or in the immediate vicinity of the subject property: There are no known adverse environmental

UNIFORM RESIDENTIAL APPRAISAL REPORT

Perkins
File No PERKINS

ESTIMATED SITE VALUE = \$ 70,000

ESTIMATED REPRODUCTION COST NEW OF IMPROVEMENTS

Dwelling 1,082 Sq Ft @ \$ 35.0 = \$ 37,870

Sq Ft @ \$ =

Deck/Porch/Fireplace/Fence = 3,000

Garage Carport 960 Sq Ft @ \$ 10.0 = 9,600

Total Estimated Cost New = \$ 50,470

Less Physical Functional External

Depreciation 17,665 6,000 = \$ 23,665

Depreciated Value of Improvements - \$ 26,805

"As is" Value of Site Improvements - \$ 1,000

INDICATED VALUE BY COST APPROACH - \$ 97,805

Comments on Cost Approach (such as source of cost estimate, site value, square foot calculation and for HUD VA and FmHA the estimated remaining economic life of the property): The Cost approach information was taken from the Marshall & Swift Residential Cost Service and adjusted to reflect local market conditions. The physical depreciation is typical for the age and condition of the home. There was no functional or external obsolescence noted.

ITEM	SUBJECT	COMPARABLE NO 1	COMPARABLE NO 2	COMPARABLE NO 3
Address	1465 No. Cisco Road Lakewood, Ut	931 E. Cisco Road Lakewood, Ut	1623 E. Cisco Road Lakewood, Ut	Lot 69 Sidesway Sub Lakewood, Ut
Proximity to Subject		East Side of Lake	East Side of Lake	East Side of Lake
Sales Price	\$ N/A	\$ 80,000	\$ 85,000	\$ 187,500
Price/Gross Liv Area	\$.00	\$ 91.32	\$ 68.00	\$ 85.23
Data and/or Verification Sources		County Sales File Buyer - Survey	County Sales File Buyer - Survey	County Sales File Buyer - Survey
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION +/- Adjustment	DESCRIPTION +/- Adjustment	DESCRIPTION +/- Adjustment
Sales or Financing Concessions		Conv	Conv	Conv
Date of Sale/Time		10/93	09/93	09/93
Location	Lake Front	Lake Front	Lake Front	Lake Front
Leasehold/Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Site	100FFx194	69FFx240 ? 19,500	94FFx260 ? 1,350	94FFx250 ? 1,350
View	Panoramic	Panoramic	Panoramic	Panoramic
Design and Appeal	1.5 Story	1 Story	2 Story	2.5 Story
Quality of Construction	Fair	Fair	Fair	Good/Brick
Age	24 yrs	40 yrs 14,800	24 yrs ? 0	24 yrs 19,200 0
Condition	Fair	Fair	Fair 5 long newer	Good
Above Grade	Total Bdrms Baths	Total Bdrms Baths	Total Bdrms Baths	Total Bdrms Baths
Room Count	5 | 3 | 1	5 | 2 | 3.5	6 | 3 | 1	11 | 5 | 4
Gross Living Area	1,082 Sq Ft	876 Sq Ft	1,250 Sq Ft	2,200 Sq Ft
Basement & Finished Rooms Below Grade	None	None	None	None
Functional Utility	Fair	Fair	Fair	Good
Heating/Cooling	Stove	Stove	Stove	Central He
Energy Efficient Items	Fair	Fair	Fair	Good
Garage/Carport	1-Garage	Carport ?	None	1-Garage
Porch/Patio Deck	Patio/Deck	None	None	Patio/Deck
Fireplace(s) etc	Fireplace	None	None	2 Fireplace
Fence Pool etc	None	None	None	None
Net Adj (Total)		X + - \$ 30,600	X + - \$ 3,850	+ X - - \$ -93,450
Adjusted Sales Price of Comparable		\$ 110,600	\$ 88,850	\$ 94,050

Comments on Sales Comparison (including the subject property's compatibility to the neighborhood etc.): Comparables are improved lake front properties, displaying similar marketing characteristics as the subject property. General adjustments are objective in nature reflecting variation in lot frontage, building size, condition and degree of finish. The adjusted sales indicate a market supported value range for the subject property of \$88,000 to \$110,000.

ITEM	SUBJECT	COMPARABLE NO 1	COMPARABLE NO 2	COMPARABLE NO 3
Date Price and Date Source to prior sales within year of appraisal		No sale of the property except as noted above	No sale of the property except as noted above	No sale of the property except as noted above

Analysis of any current encumbrance of the subject property and analysis of any prior sales of subject and comparable within one year of the date of appraisal

INDICATED VALUE BY SALES COMPARISON APPROACH \$ 88-110 Range

INDICATED VALUE BY INCOME APPROACH (If Applicable) Estimated Market Rent \$ N/A /Mo x Gross Rent Multiplier N/A - \$ N/A

The appraisal is made as is subject to the repairs alterations inspections or conditions listed below subject to completion per plans and specifications

Conditions of Appraisal: Restricted Appraisal Report to be used for market analysis for AD VALOREM tax assessment purposes. (Improvements exterior inspection only)

Final Reconciliation: The market approach is given more weight since it reflects more accurately what is taking place in the market. The cost approach supports the market estimate.

The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report based on the above conditions and the certification on contingent and limiting conditions and market value definition that are stated in the attached Freddie Mac Form 439/Fannie Mae Form 1004B (Revised)

(I/WE) ESTIMATE THE MARKET VALUE AS DEFINED OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS REPORT AS OF 04/20/95 (WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE \$ 88-110 Range

APPRaiser: Steve Farrell
Signature: Steve Farrell
Date Report Signed: 4/20/95

SUPERVISORY APPRAISER (ONLY IF REQUIRED)
Signature: []
Name: []
Date Report Signed: []

Did Did Not Inspect Property

Tab 4

Tab 5

UNIFORM RESIDENTIAL APPRAISAL REPORT

Form No.

COST APPROACH	ESTIMATED SITE VALUE = \$		Comments on Cost Approach (such as source of cost estimates, site value, square foot calculation and for HUD, VA, and FmHA, the estimated remaining economic life of the property):							
	ESTIMATED REPRODUCTION COST-NEW OF IMPROVEMENTS:									
	Dwelling _____ Sq. Ft. @ \$ _____ = \$	_____ Sq. Ft. @ \$ _____ = \$								
	Garage/Carport _____ Sq. Ft. @ \$ _____ = \$	_____ Sq. Ft. @ \$ _____ = \$								
	Total Estimated Cost New = \$									
	Less									
	Depreciation _____ = \$	_____ = \$								
	Depreciated Value of Improvements = \$									
	"As-is" Value of Site Improvements = \$									
	INDICATED VALUE BY COST APPROACH = \$									
SALES COMPARISON ANALYSIS	ITEM	SUBJECT	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3					
	Address	1432 BEAR LAKE BLVD. PICKLEVILLE, UT	931 E. CEDAR ROAD LAKEVIEW, UT	LAKEVIEW SUBDIVISION GARDEN CITY, UT	1162 S. BEAR LAKE BLVD. GARDEN CITY, UT					
	Proximity to Subject		4 MILES SOUTH	2 MILES WEST	1 MILE NORTH					
	Sales Price	N/A	90,000	61,000	135,000					
	Price/Gross Liv. Area		91.33	59.5	106.29					
	Date and/or Verification Source	OWNER	RICH COUNTY RECORDS POWER-COURT	RICH COUNTY RECORDS REAL ESTATE AGENT	RICH COUNTY RECORDS BOYER-COURNEY					
	VALUE ADJUSTMENTS	DESCRIPTION	ADJUSTMENT	DESCRIPTION	ADJUSTMENT	DESCRIPTION	ADJUSTMENT			
	Sales or Financing Concessions		NONE	NONE	NONE					
	Date of Sale/Time		10/93	4/94	4/92					
	Location	GOOD	EXCELLENT -10,000	GOOD	SUBJECT -15,000					
	Leasehold/Ten Simple	1/16 SIMPLE	1/16 SIMPLE	1/16 SIMPLE	1/16 SIMPLE					
	Site	100 FT	100 FT	100 FT	100 FT					
	View	EXCELLENT	EXCELLENT	EXCELLENT	EXCELLENT					
	Design and Appeal	25YR CABIN	CABIN	25YR CABIN -8,000	A-FRAME -15,000					
	Quality of Construction	POOR	FAIR	AVERAGE -6,000	AVERAGE -6,000					
	Age	35 YRS	40 YRS -1,000	35 YRS -1,500	15 YRS FCV -10,000					
	Condition	FAIR	FAIR	GOOD -10,000	GOOD -10,000					
	Above Grade	Total	Bdrms	Baths	Total	Bdrms	Baths	Total	Bdrms	Baths
	Room Count	7	3	2	5	3	3	5	3	1
	Gross Living Area	3,160 Sq. Ft.	910 Sq. Ft.	19,260	770 Sq. Ft.	1,776 Sq. Ft.	14,760			
	Basement & Finished Rooms Below Grade	NONE	NONE	NONE	NONE	NONE				
	Functional Utility	FAIR	FAIR	GOOD -4,000	GOOD -4,000					
	Heating/Cooling	F.P.L.C. DIV/NO	2 OIL STOVE	HEATING	HEATING	FLEC. PACE FAN -2,000				
	Energy Efficient Items	FAIR	FAIR	FAIR	FAIR					
	Garage/Carport	NO GAR	CARPORT +4,000	CARPORT +4,000	2 CAR DR +500					
Porch, Patio, Deck, Freestanding, etc.	PORCH	PORCH	PORCH	PATIO						
Fence, Pool, etc.	NONE	NONE	NONE	NONE						
FFLE		SOLD BY FUTURE -10,000								
Net Adj. Total		11,560	800	-10,760						
Adjusted Sales Price of Comparable		87,560	65,800	61,260						
Comments on Sales Comparison (including the subject property's comparability to the neighborhood, etc.):										
ITEM	SUBJECT	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3						
Date, Price and Date Source for prior sales within year of appraisal	NONE	NONE KNOWN	NONE KNOWN	NONE KNOWN						
Analysis of any current agreement of sale, option, or listing of the subject property and analysis of any prior sales of subject and comparables within one year of the date of appraisal: NO ACTIVELY INVALUING THE SUBJECT PROPERTY OCCURRED OR WITHIN THE LAST YEAR.										
INDICATED VALUE BY SALES COMPARISON APPROACH = \$ 65,000										
INDICATED VALUE BY INCOME APPROACH (if Applicable) Estimated Market Rent \$ _____ Mo. x Gross Rent Multiplier = \$ _____										
The appraisal is made <input checked="" type="checkbox"/> "as is" <input type="checkbox"/> subject to the repairs, alterations, inspections or conditions listed below <input type="checkbox"/> subject to completion per plans and specifications.										
Conditions of Appraisal:										
Final Reconciliation:										
The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report, based on the above conditions and the certification, contingent and listing conditions, and market value definition that are stated in the attached Freddie Mac Form 438/Fannie Mae Form 1004B (Revised _____).										
I (WE) ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS REPORT, AS OF 1/1/94 (WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE \$ _____										
APPRAISER:			SUPERVISORY APPRAISER (ONLY IF REQUIRED)							
Signature _____			Signature _____ <input type="checkbox"/> Did <input type="checkbox"/> Did Not							
Name _____			Name _____ <input type="checkbox"/> Inspect Property							
Date Report Signed _____			Date Report Signed _____							
State Certification # _____ State _____			State Certification # _____ State _____							
Or State License # _____ State _____			Or State License # _____ State _____							

UNIFORM RESIDENTIAL APPRAISAL REPORT

File No.

COST APPROACH

ESTIMATED SITE VALUE = \$ 4,500

ESTIMATED REPRODUCTION COST-NEW OF IMPROVEMENTS:

Dwelling 2100 Sq. Ft. @ \$ 30 = \$ 64,800

Garage/Carport 1,008 Sq. Ft. @ \$ 12 = 12,096

Total Estimated Cost New = \$ 76,896

Less

Depreciation 46,138 | 8,258 | 0 = \$

Depreciated Value of Improvements = \$ 72,500

"As-is" Value of Site Improvements = \$ 2,500

INDICATED VALUE BY COST APPROACH = \$ 79,000

Comments on Cost Approach (such as source of cost estimate, site value, square foot calculation and for HUD, VA, and FmHA, the estimated remaining economic life of the property):

SALES COMPARISON ANALYSIS

ITEM	SUBJECT	COMPARABLE NO. 14			COMPARABLE NO. 15			COMPARABLE NO. 3		
		1623 E CROCO ROAD LAKETOWN UT	159 EAST 605 RICH LN GARDEN CITY UT	652 Bear Lake Blvd Garden City, Utah						
Address										
Property to Subject										
Sales Price	N/A	85,000		105,000		75,000				
Pr. Co./Gross Liv. Area		6800		6683						
Date and/or	OWNER	RICH COUNTY RECORDS		RICH COUNTY RECORDS		RICH COUNTY RECORDS				
Verification Sources	OWNER	BUYER-SURVEY		BUYER-SURVEY		OWNER & SON				
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	(L) Adjustment	DESCRIPTION	(L) Adjustment	DESCRIPTION	(L) Adjustment			
Sales or Financing Concessions	NONE	CONVENTIONAL		CONVENTIONAL		CONVENTIONAL				
Date of Sale/Term	9/93	-3200		7/92	-22,300	4/94	-3800			
Location	GOOD	AVERAGE	+8,000	GOOD		GOOD				
Leasability/Eas. Simple	FFF SIMPLE	FFF SIMPLE		FFF SIMPLE		FFF SIMPLE				
Site	100 FF	94 FF	+7,400	90 FF	+4,000	100 FF				
View	EXCELLENT	EXCELLENT		EXCELLENT		EXCELLENT				
Design and Appeal	2 STY C BLOC	2 STY S/DNG	-8,000	WOOD SID	-15,000	Superior	-17,000			
Quality of Construction	POOR	AVERAGE	-10,000	GOOD	-8,000	Good	-8,000			
Age	25 YRS	24 YRS EST	-5,500	40 YRS EST	+2,500	40 YRS EST	+2,500			
Condition	FAIR	GOOD	-10,000	AVERAGE	-5,000	FAIR				
Above Grade	Total	Bdrms	Baths	Total	Bdrms	Baths	Total	Bdrms	Baths	
Room Count	7	5	2	6	3	1	5	3	2	
Gross Liv. Area	2100 Sq. Ft.	1,850 Sq. Ft.	+13,650	1,595 Sq. Ft.	+8,475	2700 Sq. Ft.	-8100			
Basement & Finished	NONE	NONE		NONE		NONE				
Moore Below Grade	NONE	NONE		NONE		NONE				
Functional Utility	FAIR	FAIR		GOOD	-5,000	Good	-5,000			
Heating/Cooling	F PLR STV/ND	WOOD STOVE		FIRE PLACE		FIRE PLACE				
Eng. or Elec. Items	FAIR	FAIR		FAIR		FAIR				
Garage/Carport	1008-3 CAR	NONE	+6,000	2 CAR DET	7500	SIMILAR				
Porch, Pave, Deck, Fences, etc.	PORCH	SMALL PORCH		DECK		DECK				
Fence, Pool, etc	WOOD FIRE PL	WOOD TOVE		E. PLACE		SOA WALL	-10,000			
FF&E	NONE	NONE		NONE		NONE				
Net Adj. Total		M+	M-	21,650	M+	M-	-42,875	M+	M-	45,400
Adjusted Sales Price of Comparables			13,350				62,175			

Comments on Sales Comparison (including the subject property's compatibility to the neighborhood, etc.):

INDICATED VALUE BY SALES COMPARISON APPROACH = \$ 65,000

INDICATED VALUE BY INCOME APPROACH (If Applicable) Estimated Market Rent \$ Mo x Gross Rent Multiplier = \$ N/A

The appraiser is made as a subject to the repairs, alterations, inspections or conditions listed below subject to completion per plans and specifications

Conditions of Appraisal

Final Reconciliation

The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report, based on the above conditions and the certification, curriculum and listing conditions, and market value definition that are stated in the attached Freddie Mac Form 429/Fannie Mae Form 1004 (Revised _____)

RECONCILIATION

I (WE) ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS REPORT, AS OF 1/1/94 (WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE \$ 65,000

APPRAISER SIGNATURE _____ SUPERVISORY APPRAISER (ONLY IF REQUIRED) SIGNATURE _____ Did Did Not Inspect Property

Name _____ Name _____

Date Report Signed _____ Date Report Signed _____

State Certification # _____ State _____ State Certification # _____ State _____

Or State License # _____ State _____ Or State License # _____ State _____

Tab 6



UNIFORM RESIDENTIAL APPRAISAL REPORT - JRT File No. _____

Property Description & Analysis		Census Tract		LENDER DISCRETIONARY USE	
Property Address <u>1465 No. Crisp Rd</u>		City <u>Lakeview</u> County <u>Fitch</u> State <u>WI</u> Zip Code <u>54038</u>		Sale Price	\$ _____
Legal Description <u>Lot 60 Suddoway Sub Division</u>		Map Reference <u>37 190 10 85</u>		Date	_____
Owner/Occupant <u>H.C. Perkins Family Trust</u>		PROPERTY RIGHTS APPRAISED		Mortgage Amount	\$ _____
Sale Price \$ <u>N/A</u> Date of Sale <u>N/A</u>		<input checked="" type="checkbox"/> Fee Simple		Mortgage Type	_____
Loan charges/concessions to be paid by seller \$ <u>N/A</u>		<input type="checkbox"/> Leasehold		Discount Points and Other Concessions	_____
RE Taxes \$ _____ Tax Year _____ HOA \$/Mo _____		<input type="checkbox"/> Condominium (HUD/VA)		Paid by Seller	\$ _____
Lender/Client _____		<input type="checkbox"/> De Minimis PUD		Source	_____

LOCATION		NEIGHBORHOOD ANALYSIS	
<input type="checkbox"/> Urban	<input type="checkbox"/> Suburban	<input checked="" type="checkbox"/> Rural	Good Avg Fair Poor
<input checked="" type="checkbox"/> Over 75%	<input type="checkbox"/> 25-75%	<input type="checkbox"/> Under 25%	Employment Stability
<input type="checkbox"/> Rapid	<input type="checkbox"/> Stable	<input checked="" type="checkbox"/> Slow	Convenience to Employment
<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input checked="" type="checkbox"/> Declining	Convenience to Shopping
<input type="checkbox"/> Shortage	<input type="checkbox"/> In Balance	<input checked="" type="checkbox"/> Over Supply	Convenience to Schools
<input type="checkbox"/> Under 3 Mos	<input type="checkbox"/> 3-6 Mos	<input checked="" type="checkbox"/> Over 6 Mos	Adequacy of Public Transportation
PRESENT LAND USE %	LAND USE CHANGE	PREDOMINANT OCCUPANCY	SINGLE FAMILY HOUSING PRICE AGE (YRS)
Single Family <u>100</u>	Not Likely <input checked="" type="checkbox"/>	Owner <input checked="" type="checkbox"/>	<u>40</u> Low <u>New</u>
2-4 Family _____	Likely <input type="checkbox"/>	Tenant <input type="checkbox"/>	<u>200</u> High <u>50</u>
Multi-family _____	In process <input type="checkbox"/>	Vacant (0-5%) <input type="checkbox"/>	Predominant <u>60 - 20</u>
Commercial _____	To _____	Vacant (over 5%) <input checked="" type="checkbox"/>	
Industrial _____		Vacant over 50 _____	

Note: Race or the racial composition of the neighborhood are not considered reliable appraisal factors

COMMENTS The primary factor in this area is Bear Lake - People buy as secondary recreational/summer home sites - Most activity is seasonal

Dimensions <u>100' x 194'</u>		Topography <u>5' below rd. slope to lake</u>	
Site Area <u>19400 SF</u>		Size <u>Typical</u>	
Zoning Classification <u>Residential</u>		Shape <u>Rectangular</u>	
HIGHEST & BEST USE <u>Present Use</u>		Drainage <u>west to lake</u>	
UTILITIES		View <u>Excellent</u>	
Electricity <input checked="" type="checkbox"/> <u>Utah Power</u>	SITE IMPROVEMENTS	Landscaping <u>Average</u>	
Gas <input type="checkbox"/> <u>None</u>	Street <u>Surfaced</u>	Driveway <u>Gravel</u>	
Water <input checked="" type="checkbox"/> <u>Personal Well</u>	Curb/Gutter <u>No</u>	Apparent Easements <u>Utility</u>	
Sanitary Sewer <input type="checkbox"/> <u>None</u>	Sidewalk <u>No</u>	FEMA Flood Hazard Yes <input type="checkbox"/> No <input type="checkbox"/>	
Storm Sewer <input type="checkbox"/> <u>None</u>	Street Lights <u>No</u>	FEMA Map/Zone <u>Unknown</u>	
Alley <u>No</u>		COMMENTS (Apparent adverse easements, encroachments, special assessments, slide areas, etc.) <u>Subject to flooding underflow during high runoff</u>	

GENERAL DESCRIPTION		EXTERIOR DESCRIPTION		FOUNDATION		BASEMENT		INSULATION	
Units <u>2</u>	Foundation <u>Cement Block</u>	Slab <input type="checkbox"/>	Area Sq Ft _____	Roof <input type="checkbox"/>	Stories <u>2</u>	Exterior Walls <u>Wood</u>	Crawl Space <u>Yes</u>	% Finished _____	Ceiling <input type="checkbox"/>
Type (Det/Att) <u>Det</u>	Roof Surface <u>Asph. Shingle</u>	Basement <u>No</u>	Ceiling _____	Walls <input type="checkbox"/>	Design (Style) <u>Chapel</u>	Gutters & Dwnspnts <u>None</u>	Sump Pump <u>No</u>	Walls <input type="checkbox"/>	Floor <input type="checkbox"/>
Existing <u>Exist</u>	Window Type <u>Slid Alum Frame</u>	Dampness <u>Yes</u>	Floor _____	None <input checked="" type="checkbox"/>	Proposed _____	Storm Sash <u>None</u>	Settlement <u>Slight</u>	Floor <input type="checkbox"/>	None <input checked="" type="checkbox"/>
Under Construction _____	Screens <u>Yes</u>	Infestation <u>No</u>	Outside Entry _____	Adequacy <input type="checkbox"/>	Age (Yrs) <u>23</u>	Manufactured House <u>No</u>	Energy Efficient Items <u>Summer use</u>	Energy Efficient Items _____	Summer use <input type="checkbox"/>
Effective Age (Yrs) <u>24</u>									

ROOMS	Foyer	Living	Dining	Kitchen	Den	Family Rm	Rec Rm	Bedrooms	# Baths	Laundry	Other	Area Sq Ft
Basement												
Level 1		1		X				1	1			832
Level 2								2				256

Finished area above grade contains 6 Rooms 3 Bedroom(s) 1 Bath(s) 1088 Square Feet of Gross Living Area

SURFACES		HEATING		KITCHEN EQUIP		ATTIC		IMPROVEMENT ANALYSIS	
Floors <u>Coppert Laminant</u>	Type <u>Store</u>	Refrigerator <input checked="" type="checkbox"/>	None <input type="checkbox"/>	Quality of Construction	Good Avg Fair Poor	Walls <u>Wood/Good</u>	Fuel <u>Wood</u>	Condition of Improvements	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>
Trim/Finish <u>Minimal/Good</u>	Condition <u>Average</u>	Range/Oven <input checked="" type="checkbox"/>	Stairs <input checked="" type="checkbox"/>	Room Sizes/Layout	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	Bath Floor <u>Linoleum/Good</u>	Disposal <input type="checkbox"/>	Closets and Storage	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>
Bath Wainscot <u>Sheetrock painted</u>	Adequacy <u>Adequate</u>	Fan/Hood <input type="checkbox"/>	Scuttle <input type="checkbox"/>	Energy Efficiency	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	Doors <u>Wood Hollow Core Lnd/Good</u>	Other <u>None</u>	Plumbing-Adequacy & Condition	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Fireplace(s) <u>1</u>	Condition _____	Washer/Dryer <input type="checkbox"/>	Heated <input type="checkbox"/>	Electrical-Adequacy & Condition	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		Other _____	Kitchen Cabinets-Adequacy & Cond	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
CAR STORAGE	Adequacy _____	Microwave <input type="checkbox"/>	Finished <input checked="" type="checkbox"/>	Compatibility to Neighborhood	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			Appeal & Marketability	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
No Cars <input type="checkbox"/>	Attached <input checked="" type="checkbox"/>	Intercom <input type="checkbox"/>		Estimated Remaining Economic Life	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			Estimated Remaining Physical Life	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Condition <u>None</u>	Detached <input checked="" type="checkbox"/>	Electric Door <input type="checkbox"/>			<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Additional features _____

Depreciation (Physical, functional and external inadequacies, repairs needed, modernization, etc) Exterior Need repair or replacement within next few years - deterioration is readily apparent

General market conditions and prevalence and impact in subject/market area regarding loan discounts, interest buydowns and concessions lake is extremely low over 1500 \$ to lake water making lake use difficult at best

Final Report

No adjustments have been considered for furnishings left
 such as furniture, linens, tractor and etc. Comp 2 was completely furnished
 comp 1 partially furnished.

UNIFORM RESIDENTIAL APPRAISAL REPORT File No. _____

COST APPROACH ESTIMATED SITE VALUE = \$ 42,000 ESTIMATED REPRODUCTION COST-NEW OF IMPROVEMENTS: Dwelling 1082 Sq. Ft. @ \$ 30. = \$ 32,460 Fire place / Porch / Fence = 3,000 Garage/Carport 600 Sq. Ft. @ \$ 10. = 6,000 Total Estimated Cost New = \$ 41,460 Less Depreciation 14718 6000 = 20,718 Depreciated Value of Improvements = \$ 20,742 "As-is" Value of Site Improvements = 1,000 INDICATED VALUE BY COST APPROACH <i>Round</i> = \$ 64,000	Comments on Cost Approach (such as source of cost estimate, site value, square foot calculation and for HUD, VA, and FmHA, the estimated remaining economic life of the property):
---	--

ITEM		COMPARABLE NO 1			COMPARABLE NO 2			COMPARABLE NO 3		
Address		1425 N. ...			Lot 67 ...			1162 So ...		
Sales Price		\$ 85,000			\$ 117,500			\$ 125,000		
Date and/or Verification Sources		County Sales File Buyer-Survey			County Sales File Buyer-Survey			County Sales File Buyer-Survey		
VALUE ADJUSTMENTS		DESCRIPTION			DESCRIPTION			DESCRIPTION		
Date of Sale/Term		9/93 = 4300			9/92 = 9400			9/92 = 26500		
Location		Lakeside			Lakeside			Lakeside		
Site		100 x 194			94 x 150			100 x 140		
Condition		Fair			Excellent			Good		
Room Count		3 3 1			1 1 4			5 3 1		
Gross Living Area		1082 Sq. Ft.			2600 Sq. Ft.			1176 Sq. Ft.		
Basement & Finished Rooms Below Grade		None			None			None		
Functional Utility		Fair			Good			Good		
Energy Efficient Items		None			Good			Fair		
Porch, Patio, Deck, Fireplaces, etc.		500			-5000			-5000		
Net Adj. (Total)		+ 19,400			+ 22,500			+ 6,200		
Adjusted Sales Price of Comparable		65,200			63,000			63,200		

Comments on Sales Comparison (including the subject property's comparability to the neighborhood, etc.):

ITEM	SUBJECT	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Date, Price and Date Source for prior sales within year of appraisal		Sale of Property as Noted	Sale of Property as Noted	Sale of Property as Noted
Analysis of any current agreement of sale, option, or listing of the subject property and analysis of any prior sales of subject and comparables within one year of the date of appraisal.				

INDICATED VALUE BY SALES COMPARISON APPROACH = \$ 63,650
 INDICATED VALUE BY INCOME APPROACH (If Applicable) Estimated Market Rent \$ N/A Mo x Gross Rent Multiplier N/A = \$ N/A

The appraisal is made "as is" subject to the repairs, alterations, inspections or conditions listed below subject to completion per plans and specifications.

Conditions of Appraisal: *Restricted Appraisal Report to be used for market analysis for AD VALORE tax assessment purposes. (Improvement exterior inspection only)*

Final Reconciliation: *The market approach is given more weight since it reflects more accurately what is taking place in the market. The cost approach supports the market estimate.*

The purpose of the appraisal is to estimate the market value of the real property that is the subject of the report, based on the above conditions and the certification, contingent and listing conditions, and market value definition that are stated in the attached Freddie Mac Form 429/Finance Mac Form 1004B (Revised _____).

RECONCILIATION

I (WE) ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS REPORT, AS OF _____ (WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE \$ 64,000

APPRAISER Signature _____ Name _____ Date Report Signed _____ State Certification # _____ State _____ Or State License # _____ Title _____	SUPERVISORY APPRAISER (ONLY IF REQUIRED) Signature _____ <input checked="" type="checkbox"/> Did <input type="checkbox"/> Did Not Inspect Property Name _____ Date Report Signed _____ State Certification # _____ State _____ Or State License # _____ Title _____
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Tab 7

STANDARD 1

In developing a real property appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

Comment: Standard 1 is directed toward the substantive aspects of developing a competent appraisal. The requirements set forth in Standards Rule 1-1, the appraisal guidelines set forth in Standards Rule 1-2, 1-3, 1-4, and the requirements set forth in Standards Rule 1-5 mirror the appraisal process in the order of topics addressed and can be used by appraisers and the users of appraisal services as a convenient checklist.

Standards Rule 1-1

In developing a real property appraisal, an appraiser must:

- (a) **be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;**

Comment: Departure from this binding requirement is not permitted. This rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Important changes in the cost and manner of constructing and marketing commercial, industrial, and residential real estate and changes in the legal framework in which real property rights and interests are created, conveyed, and mortgaged have resulted in corresponding changes in appraisal theory and practice. Social change has also had an effect on appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.

- (b) **not commit a substantial error of omission or commission that significantly affects an appraisal;**

Comment: Departure from this binding requirement is not permitted. In performing appraisal services an appraiser must be certain that the gathering of factual information is conducted in a manner that is sufficiently diligent to ensure that the data that would have a material or significant effect on the resulting opinions or conclusions are considered. Further, an appraiser must use sufficient care in analyzing such data to avoid errors that would significantly affect his or her opinions and conclusions.

- (c) **not render appraisal services in a careless or negligent manner, such as a series of errors that, considered individually, may not significantly affect the results of an appraisal, but which, when considered in the aggregate, would be misleading.**

Comment: Departure from this binding requirement is not permitted. Perfection is impossible to attain and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This rule requires an appraiser to use due diligence and due care. The fact that the carelessness or negligence of an appraiser has not caused an error that significantly affects his or her opinions or conclusions and thereby seriously harms a client or a third party does not excuse such carelessness or negligence.

STANDARD 1 (continued)

Standards Rule 1-2

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines:

- (a) **adequately identify the real estate¹, identify the real property interest, consider the purpose and intended use of the appraisal, consider the extent of the data collection process, identify any special limiting conditions, and identify the effective date of the appraisal;²**
- (b) **define the value being considered; if the value to be estimated is market value, the appraisal must clearly indicate whether the estimate is the most probable price:**
 - (i) **in terms of cash; or**
 - (ii) **in terms of financial arrangements equivalent to cash; or**
 - (iii) **in such other terms as may be precisely defined; if an estimate of value is based on submarket financing or financing with unusual conditions or incentives, the terms of such financing must be clearly set forth, their contributions to or negative influence on value must be described and estimated, and the market data supporting the valuation estimate must be described and explained;**

Comment: For certain types of appraisal assignments in which a legal definition of market value has been established and takes precedence, the Jurisdictional Exception may apply to this guideline.

When estimating market value, the appraiser should be specific as to the estimate of exposure time linked to the value estimate.³

- (c) **consider easements, restrictions, encumbrances, leases, reservations, covenants, contract declarations, special assessments, ordinances, or other items of a similar nature;**
- (d) **consider whether an appraised fractional interest, physical segment, or partial holding contributes pro rata to the value of the whole;**

Comment: This guideline does not require an appraiser to value the whole when the subject of the appraisal is a fractional interest, a physical segment, or a partial holding. However, if the value of the whole is not considered, the appraisal must clearly reflect that the value of the property being appraised cannot be used to estimate the value of the whole by mathematical extension.

- (e) **identify and consider the effect on value of any personal property, trade fixtures or intangible items that are not real property but are included in the appraisal.**

Comment: This guideline requires the appraiser to recognize the inclusion of items that are not real property in an overall value estimate. Additional expertise in personal property (See Standard 7) or business (See Standard 9) appraisal may be required to allocate the overall value to its various components. Separate valuation of such items is required when they are significant to the overall value.

¹ See Advisory Opinion G-2 on page 71.

² See Statements on Appraisal Standards Number 3 on page 57 and Number 4 on page 59.

³ See Statement on Appraisal Standards Number 6 on page 63 and related Advisory Opinions G-7 and G-8 on pages 83 and 85.

STANDARD 1 (continued)

Standards Rule 1-3

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines:

- (a) consider the effect on use and value of the following factors: existing land use regulations, reasonably probable modifications of such land use regulations, economic demand, the physical adaptability of the real estate, neighborhood trends, and the highest and best use of the real estate;

Comment: This guideline sets forth a list of factors that affect use and value. In considering neighborhood trends, an appraiser must avoid stereotyped or biased assumptions relating to race, age, color, religion, gender, or national origin or an assumption that racial, ethnic, or religious homogeneity is necessary to maximize value in a neighborhood. Further, an appraiser must avoid making an unsupported assumption or premise about neighborhood decline, effective age, and remaining life. In considering highest and best use, an appraiser should develop the concept to the extent that is required for a proper solution of the appraisal problem being considered.

- (b) recognize that land is appraised as though vacant and available for development to its highest and best use and that the appraisal of improvements is based on their actual contribution to the site.

Comment: This guideline may be modified to reflect the fact that, in various legal and practical situations, a site may have a contributory value that differs from the value as if vacant.

Standards Rule 1-4

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines, when applicable:

- (a) value the site by an appropriate appraisal method or technique;
- (b) collect, verify, analyze, and reconcile:
 - (i) such comparable cost data as are available to estimate the cost new of the improvements (if any);
 - (ii) such comparable data as are available to estimate the difference between cost new and the present worth of the improvements (accrued depreciation);
 - (iii) such comparable sales data, adequately identified and described, as are available to indicate a value conclusion;
 - (iv) such comparable rental data as are available to estimate the market rental of the property being appraised;
 - (v) such comparable operating expense data as are available to estimate the operating expenses of the property being appraised;
 - (vi) such comparable data as are available to estimate rates of capitalization and/or rates of discount.

Comment: This rule covers the three approaches to value. See Standards Rule 2-2(j) for corresponding reporting requirements.

STANDARD 1 (continued)

Standards Rule 1-4 (continued)

- (c) **base projections of future rent and expenses on reasonably clear and appropriate evidence;¹**

Comment: This guideline requires an appraiser, in developing income and expense statements and cash flow projections, to weigh historical information and trends, current market factors affecting such trends, and anticipated events such as competition from developments under construction.

- (d) **when estimating the value of a leased fee estate or a leasehold estate, consider and analyze the effect on value, if any, of the terms and conditions of the lease(s);**

- (e) **consider and analyze the effect on value, if any, of the assemblage of the various estates or component parts of a property and refrain from estimating the value of the whole solely by adding together the individual values of the various estates or component parts;**

Comment: Although the value of the whole may be equal to the sum of the separate estates or parts, it also may be greater than or less than the sum of such estates or parts. Therefore, the value of the whole must be tested by reference to appropriate market data and supported by an appropriate analysis of such data.

A similar procedure must be followed when the value of the whole has been established and the appraiser seeks to estimate the value of a part. The value of any such part must be tested by reference to appropriate market data and supported by an appropriate analysis of such data.

- (f) **consider and analyze the effect on value, if any, of anticipated public or private improvements located on or off the site, to the extent that market actions reflect such anticipated improvements as of the effective appraisal date;**

Comment: In condemnation valuation assignments in certain jurisdictions, the Jurisdictional Exception may apply to this guidelines.

- (g) **identify and consider the appropriate procedures and market information required to perform the appraisal, including all physical, functional, and external market factors as they may affect the appraisal;**

Comment: The appraisal may require a complete market analysis (See Standards Rule 4-4).

- (h) **appraise proposed improvements only after examining and having available for future examination:**

- (i) **plans, specifications, or other documentation sufficient to identify the scope and character of the proposed improvements;**
- (ii) **evidence indicating the probable time of completion of the proposed improvements; and**
- (iii) **reasonably clear and appropriate evidence supporting development costs, anticipated earnings, occupancy projections, and the anticipated competition at the time of completion.**

Comment: The evidence required to be examined and maintained under this guideline may include such items as contractor's estimates relating to cost and the time required to complete construction, market, and feasibility studies; operating cost data; and the history of recently completed similar developments. The appraisal may require a complete feasibility analysis (See Standard Rule 4-6).

¹ See Statement on Appraisal Standards Number 2 on page 55.

STANDARD 1 (continued)

Standards Rule 1-4 (continued)

- (i) **All pertinent information in items (a) through (h) above shall be used in the development of an appraisal.**

Comment: See Standards Rule 2-2(k) for corresponding reporting requirements.

Standards Rule 1-5

In developing a real property appraisal, an appraiser must:

- (a) **consider and analyze any current Agreement of Sale, option, or listing of the property being appraised, if such information is available to the appraiser in the normal course of business;**
- (b) **consider and analyze any prior sales of the property being appraised that occurred within the following time periods:¹**
- (i) **one year for one-to-four family residential property; and**
 - (ii) **three years for all other property types;**

Comment: The intent of this requirement is to encourage the research and analysis of prior sales of the subject; the time frames cited are minimums.

- (c) **consider and reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used.**

Comment: Departure from binding requirements (a) through (c) is not permitted. See Standards Rule 2-2(k) Comment for corresponding reporting requirements.

¹ See Advisory Opinions G-1 on page 67 and G-4 on page 75.

STANDARD 2

In reporting the results of a real property appraisal an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

Comment: Standard 2 governs the form and content of the report that communicates the results of an appraisal to a client and third parties.

Standards Rule 2-1

Each written or oral real property appraisal report must:

- (a) **clearly and accurately set forth the appraisal in a manner that will not be misleading;**

Comment: Departure from this binding requirement is not permitted. Since most reports are used and relied upon by third parties, communications considered adequate by the appraiser's client may not be sufficient. An appraiser must take extreme care to make certain that his or her reports will not be misleading in the marketplace or to the public.

- (b) **contain sufficient information to enable the person(s) who receive or rely on the report to understand it properly;**

Comment: Departure from this binding requirement is not permitted. A failure to observe this rule could cause a client or other users of the report to make a serious error even though each analysis, opinion, and conclusion in the report is clearly and accurately stated. To avoid this problem and the dangers it presents to clients and other users of reports, 2-1(b) requires an appraiser to include in each report sufficient information to enable the reader to understand it properly. All reports, both written and oral, must clearly and accurately present the analyses, opinions, and conclusions of the appraiser in sufficient depth and detail to address adequately the significance of the specific appraisal problem.

- (c) **clearly and accurately disclose any extraordinary assumption or limiting condition that directly affects the appraisal and indicate its impact on value.**

Comment: Departure from this binding requirement is not permitted. Examples of extraordinary assumptions or conditions might include items such as the execution of a pending lease agreement, atypical financing, or completion of onsite or offsite improvements. In a written report the disclosure would be required in conjunction with statements of each opinion or conclusion that is affected.

Standards Rule 2-2

Each written real property appraisal report must:

- (a) **identify and describe the real estate being appraised;¹**
(b) **identify the real property interest being appraised;**

Comment on (a) and (b): These two requirements are essential elements in any report. Identifying the real estate can be accomplished by any combination of a legal description, address, map reference, copy of a survey or map, property sketch and/or photographs. A property sketch and photographs also provide some description of the real estate in addition to written comments about the physical attributes of the real estate. Identifying the real property rights being appraised requires a direct statement substantiated as needed by copies or summaries of legal descriptions or other documents setting forth any encumbrances.

¹ See Advisory Opinion G-2 on page 71.

STANDARD 2 (continued)

Standards Rule 2-2 (continued)

- (c) **state the purpose of the appraisal;**
- (d) **define the value to be estimated;**
- (e) **set forth the effective date of the appraisal and the date of the report;¹**

Comment on (c), (d) and (e): These three requirements call for clear disclosure to the reader of a report the “why, what and when” surrounding the appraisal. The purpose of the appraisal is used generically to include both the task involved and rationale for the appraisal. Defining the value to be estimated requires both an appropriately referenced definition and any comments needed to clearly indicate to the reader how the definition is being applied [See Standards Rule 1-2(b)].² The effective date of the appraisal establishes the context for the value estimate, while the date of the report indicates whether the perspective of the appraiser on the market conditions as of the effective date of the appraisal was prospective, current, or retrospective. Reiteration of the date of the report and the effective date of the appraisal at various stages of the report in tandem is important for the clear understanding of the reader whenever market conditions on the date of the report are different from market conditions on the effective date of the appraisal.

- (f) **describe the extent of the process of collecting, confirming, and reporting data;**

Comment: This requirement is designed to protect third parties whose reliance on an appraisal report may be affected by the extent of the appraiser’s investigation; i.e., the process of collecting, confirming and reporting data.

- (g) **set forth all assumptions and limiting conditions that affect the analyses, opinions, and conclusions;**

Comment: It is suggested that assumptions and limiting conditions be grouped together in an identified section of the report.

- (h) **set forth the information considered, the appraisal procedures followed, and the reasons that supports the analyses, opinions, and conclusions;**

Comment: This requirement calls for the appraiser to summarize the data considered and the procedures that were followed. Each item must be addressed in the depth and detail required by its significance to the appraisal. The appraiser must be certain that sufficient information is provided so that the client, the users of the report, and the public will understand it and will not be misled or confused. The substantive content of the report, not its size, determines its compliance with this specific reporting guideline.

- (i) **set forth the appraiser’s opinion of the highest and best use of the real estate, when such opinion is necessary and appropriate;**

Comment: This requirement calls for a written report to contain a statement of the appraiser’s opinion as to the highest and best use of the real estate, unless an opinion as to highest and best use is unnecessary, e.g. insurance valuation or value in use appraisals. If an opinion as to highest and best use is required, the reasoning in support of the opinion must also be included.

- (j) **explain and support the exclusion of any of the usual valuation approaches;**

¹ See Statements on Appraisal Standards Number 3 on page 57 and Number 4 on page 59.

² See Statement on Appraisal Standards Number 6 on page 63 and related Advisory Opinions G-7 and G-8 on pages 83 and 85.

STANDARD 2 (continued)

Standards Rule 2-4 (continued)

Comment: In addition to complying with the requirements of Standards Rule 2-1, an appraiser making an oral report must use his or her best efforts to address each of the substantive matters in Standards Rule 2-2.

Testimony of an appraiser concerning his or her analyses, opinions, and conclusions is an oral report in which the appraiser must comply with the requirements of this Standards Rule.

See Record Keeping under the ETHICS PROVISION for corresponding requirements.

Standards Rule 2-5

An appraiser who signs a real property appraisal report prepared by another, even under the label of “review appraiser”, must accept full responsibility for the contents of the report.¹

Comment: Departure from this binding requirement is not permitted.

This requirement is directed to the employer or supervisor signing the report of an employee or subcontractor. The employer or supervisor signing the report is as responsible as the individual preparing the appraisal for the content and conclusions of the appraisal and the report. Using a conditional label next to the signature of the employer or supervisor or signing a form report on the line over the words “review appraiser” does not exempt that individual from adherence to these standards.

This requirement does not address the responsibilities of a review appraiser, the subject of Standard 3.

¹ See Advisory Opinion G-5 on page 77.

STANDARD 6

In developing a mass appraisal, an appraiser must be aware of, understand, and correctly employ those generally accepted methods and techniques necessary to produce and communicate credible appraisals.

Comment: Standard 6 is directed toward the substantive aspects of developing and communicating competent analyses, opinions, and conclusions in the appraisal of a universe of properties. Mass appraisals are used primarily for purposes of ad valorem taxation. But depending upon the purpose of the appraisal and the availability of statistical data, mass appraisal procedures may also be appropriate for the valuation of any universe of properties, but only when written reports are made and the results of statistical testing are fully disclosed and explained. The reporting and jurisdictional exceptions applicable to public mass appraisals prepared for purposes of ad valorem taxation do not apply to mass appraisals prepared for other purposes.

Mass appraisals can be prepared with or without computer assistance and are often developed by teams of people. The validity of mass appraisal conclusions is frequently tested or contested by single-property appraisals. Single-property appraisals should conform to Standards 1 and 2 for real property and Standards 7 and 8 for personal property. In the context of Standard 6, the terms appraisal and mass appraisal both refer to the appraisal of a universe of properties, whether real property, personal property, or both.

The Jurisdictional Exception on Page 6 may apply to several sections of Standard 6 because ad valorem tax administration is subject to various state, county, and municipal laws.

* Standards Rule 6-1

In developing a mass appraisal, an appraiser must:

- (a) * **be aware of, understand, and correctly employ those generally accepted methods and techniques necessary to produce a credible appraisal;**

Comment: Departure from this binding requirement is not permitted. Mass appraisal uses:

1. Division of tasks,
2. Standardized data collection and analysis,
3. Properly specified and calibrated valuation models, and
4. Standards and measurements of the accuracy of the data collected and values produced.

This rule recognizes that the principle of change continues to affect the manner in which appraisers perform mass appraisals. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Revisions in appraisal theory and practice result from:

changes in the cost and manner of constructing and marketing commercial, industrial, residential, and other types of real estate;
changes in the legal framework in which real property rights and interests are created, conveyed, mortgaged, and taxed;
corresponding changes in appraisal theory and practice; and,
social and economic changes.

To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Mass appraisers must continuously improve their skills to remain proficient.

STANDARD 6 (continued)

Standards Rule 6-1 (continued)

- (b)✕ **not commit a substantial error of omission or commission that significantly affects a mass appraisal;**

Comment: Departure from this binding requirement is not permitted. Standards Rule 6-1 (b) is identical in purpose to Standards Rule 1-1 (b).

- (c)✕ **not render a mass appraisal in a careless or negligent manner;**

Comment: Departure from this binding requirement is not permitted. Standards Rule 6-1 (c) is identical in purpose to Standards Rule 1-1 (c).

Standards Rule 6-2

In developing a mass appraisal, an appraiser must observe the following specific appraisal guidelines:

- (a)✕ **consider the purpose and intended use of the appraisal;**

- (b)→ **identify any special limiting conditions;**

Comment: Although appraisers in ad valorem taxation should not be held accountable for limitations beyond their control, they are required by this guideline to identify cost constraints and to take appropriate steps to secure sufficient funding to produce appraisals that comply with these standards.

Expenditure levels for assessment administration are a function of a number of factors. Fiscal constraints may impact data completeness and accuracy, valuation methods, and valuation accuracy. While appraisers should seek adequate funding and disclose the impact of fiscal constraints on the mass appraisal process, they are not responsible for constraints beyond their control.

- (c)→ **identify the effective date of the appraisal;**

- (d) **define the value being considered; if the value to be estimated is market value, the appraisal must clearly indicate whether the estimate is the most probable price:**

- (i) **in terms of cash; or**
- (ii) **in terms of financial arrangements equivalent to cash; or**
- (iii) **in such other terms as may be precisely defined; if an estimate of value is based on below-market financing or financing with unusual conditions or incentives, the terms of such financing must be clearly set forth, their contributions to or negative influence on value must be described and estimated, and the market data supporting the valuation estimate must be described and explained;**

Comment: For certain types of appraisal assignments in which a legal definition of market value has been established and takes precedence, the Jurisdictional Exception may apply.

- (e) **identify the real estate and personal property, as applicable;**

Comment: The universe of properties should be identified in general terms and each individual property in the universe should be identified with the information on its identity stored or referenced in its property record.

STANDARD 6 (continued)

Standards Rule 6-2 (continued)

(f) in appraising real property:

- (i) identify and consider any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal;

Comment: This guideline requires the appraiser to recognize the inclusion of items that are not real property in the overall value estimate. Expertise in personal property (see Standard 7) or business (see Standard 9) appraisal may be required to allocate each overall value to its various components. Separate valuation of such items is required when they are significant to the overall value.

- (ii) consider whether an appraised physical segment contributes pro rata to the value of the whole;

Comment: This guideline does not require the appraiser to value the whole when the subject of the appraisal is a physical segment. However, if the value of the whole is not considered, the appraisal must clearly recognize that the value of the property being appraised cannot be used to estimate the value of the whole by mathematical extension.

(g) identify the property interest(s);

- (i) consider known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of similar nature;
- (ii) consider whether an appraised fractional interest or partial holding contributes pro rata to the value of the whole;

Comment: This guideline does not require the appraiser to value the whole when the subject of the appraisal is a fractional interest or a partial holding. However, if the value of the whole is not considered, the appraisal must clearly reflect that the value of the property being appraised cannot be used to estimate the value of the whole by mathematical extension.

- (h) ✕ in appraising real property, consider the effect on use and value of the following factors: existing land-use regulations, reasonably probable modifications of such regulations, economic supply and demand, the physical adaptability of the property, neighborhood trends, and the highest and best use of the property; and

Comment: This guideline sets forth a list of factors that affect use and value. In considering neighborhood trends, an appraiser must avoid stereotyped or biased assumptions relating to race, age, color, gender, or national origin or an assumption that race, ethnic, or religious homogeneity is necessary to maximize value in a neighborhood. Further, an appraiser must avoid making an unsupported assumption or premise about neighborhood decline, effective age, and remaining life. In considering highest and best use, an appraiser should develop the concept to the extent required for a proper solution of the appraisal problem.

- (i) ✕ recognize that land is appraised as though vacant and available for development to its highest and best use and that the appraisal of improvements is based on their actual contribution to the site.

Comment: This guideline may be modified to reflect the fact that, in various market situations, a site may have a contributory value that differs from the value as if vacant.

STANDARD 6 (continued)

Standards Rule 6-3

✧ In developing a mass appraisal, an appraiser must:

- ✧(a) **identify and consider the appropriate procedures and market information required to perform the appraisal, including all physical, functional, and external market factors as they may affect the appraisal;**

Comment: Such efforts customarily include the development of standardized data collection forms, procedures, and training materials which are used uniformly on the universe of properties under consideration.

- ✧ (b) **employ generally accepted techniques for specifying property valuation models; and**

Comment: The formal development of a model in a statement or equation is called model specification. Mass appraisers must develop mathematical models that, with reasonable accuracy, represent the relationship between property value and supply and demand factors, as represented by quantitative and qualitative property characteristics. The models may be specified using the cost, sales comparison, or income approaches to value. The specification format may be tabular, mathematical, linear, non-linear, or any other structure suitable for representing the relationship between market value and observable property characteristics. The appropriate approaches should be used in appraising a class of properties. The concepts of accepted techniques apply to both real and personal property valuation models.

- ✧ (c) **employ generally accepted techniques for calibrating mass appraisal models.**

Comment: Departure from binding requirements (a) through (c) is not permitted. Calibration refers to the process of analyzing sets of property and market data to determine the specific parameters of a model. The table entries in a cost manual are examples of calibrated parameters, as well as the coefficients in a linear or non-linear model. Models should be calibrated using generally accepted techniques, including, but not limited to, multiple linear regression, non-linear regression, and adaptive estimation.

✧ Standards Rule 6-4

In developing a mass appraisal, an appraiser must observe the following specific appraisal guidelines when applicable:

- ✧ (a) **collect, verify, analyze, and reconcile such data as are necessary and appropriate to:**
- (i) **estimate cost new of the improvements;**
 - (ii) **estimate accrued depreciation;**
 - (iii) **estimate value by sales of comparable properties;**
 - (iv) **estimate value by capitalization of income. i.e. rentals, expenses, interest rates, capitalization rates and vacancy data.**

STANDARD 6 (continued)

Standards Rule 6-4 (continued)

Comment: This rule requires appraisers engaged in mass appraisal to take reasonable steps to ensure that the quantity and quality of the factual data that are collected are sufficient to produce credible appraisals. For real property, systems for routinely collecting and maintaining ownership, geographic, sales, income and expense, cost, and property characteristics data should be established. Geographic data should be contained in a complete set of cadastral maps compiled according to current standards of detail and accuracy. Sales data should be collected, confirmed, screened, adjusted, and filed according to current standards of practice. The sales file should contain, for each sale, property characteristics data that are contemporaneous with the date of sale. Property characteristics data should be appropriate to the mass appraisal models being used. The property characteristics data file should contain data contemporaneous with the date of appraisal. It may contain historical data on sales. The data collection program should incorporate a quality control program, including checks and audits of the data to ensure current and consistent records.

- (b) **base projections of future rental rates, expenses, interest rates, capitalization rates, and vacancy rates on reasonable and appropriate evidence.**

Comment: This guideline requires an appraiser, in developing income and expense statements and cash flow projections, to weigh historical information and trends, current market factors affecting such trends, and reasonably anticipated events, such as competition from developments either planned or under construction.

- (c) **consider and analyze terms and conditions of any available leases.**
- (d) **consider the need for and extent of any physical inspection.**

Standards Rule 6-5

In applying a calibrated mass appraisal model an appraiser must:

- (a) **value improved parcels by accepted methods or techniques based on the cost approach, the sales comparison approach, and income approach, as applicable;**
- (b) **value sites by generally accepted methods or techniques; such techniques include but are not limited to the sales comparison approach, allocation method, abstraction method, capitalization of ground rent, and land residual technique;**
- (c) **when estimating the value of a leased fee estate or a leasehold estate, consider and analyze the effect on value, if any, of the terms and conditions of the lease;**

Comment: In ad valorem taxation the appraiser may be required by rules or law to appraise the property as if in fee simple, as though unencumbered by existing leases. In such cases, market rent would be used in the appraisal, ignoring the effect of the individual, actual contract rents.

- (d) **consider and analyze the effect on value, if any, of the assemblage of the various parcels, divided interests, or component parts of a property; the value of the whole should not be estimated by adding together the individual values of the various parcels, divided interests, or component parts; and**

Comment: When the value of the whole has been established and the appraiser seeks to estimate the value of a part, the value of any such part must be tested by reference to appropriate market data and supported by an appropriate analysis of such data.

STANDARD 6 (continued)

Standards Rule 6-5 (continued)

- (e)* consider and analyze the effect on value, if any, of anticipated public or private improvements located on or off the site, to the extent that market actions reflect such anticipated improvements as of the effective appraisal date; appraise proposed improvements only after examining and having available for future examination;
- (i) plans, specifications, or other documentation sufficient to identify the scope and character of the proposed improvements;
 - (ii) evidence indicating the probable time of completion of the proposed improvements; and
 - (iii) reasonably clear and appropriate evidence supporting development costs, anticipated earnings, occupancy projections, and the anticipated competition at the time of completion.

Comment: Ordinarily, proposed improvements are not appraised for ad valorem tax purposes. Appraisers, however, are sometimes asked to provide estimates of value of proposed improvements so that developers can estimate future property tax burdens. Sometimes condominiums and units in planned unit developments are sold with an interest in unbuilt community property, the pro rata value of which, if any, should be considered in the analysis of sales data.

* Standards Rule 6-6

In reconciling a mass appraisal an appraiser must:

- * (a) consider and reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used; and
- * (b) employ generally accepted mass appraisal testing procedures and techniques to ensure that standards of accuracy are maintained.

Comment: Departure from binding requirements (a) and (b) is not permitted. It is implicit in mass appraisal that, even when properly specified and calibrated mass appraisal models are used, some individual value estimates will not meet standards of reasonableness, consistency, and accuracy. However, appraisers engaged in mass appraisal have a professional responsibility to ensure that, on an overall basis, models produce value estimates that meet attainable standards of accuracy. This responsibility requires appraisers to evaluate the performance of models, using techniques including, but not limited to, goodness-of-fit statistics, hold-out samples, analysis of residuals, and appraisal-to-sale ratio data. They also should review individual value estimates before they are used.

* Standards Rule 6-7

A written summary report of a mass appraisal for ad valorem taxation or a written report of a mass appraisal for any other purpose should clearly communicate the elements, results, opinions, and value conclusions of the appraisal.

Documentation for a mass appraisal for ad valorem taxation may be in the form of (1) property records, (2) reports, (3) manuals, (4) regulations, (5) statutes, and (6) other acceptable forms.

Each written report of a mass appraisal for any purpose other than ad valorem taxation must:

- * (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
- * (b) contain sufficient information to enable the person(s) who receive or rely on the report to understand it properly;

STANDARD 6 (continued)

Standards Rule 6-7 (continued)

- X(c) clearly and accurately disclose any extra ordinary assumptions or limiting condition that directly affects the appraisal and indicate its impact on value.**

Each written report of a mass appraisal for any purpose other than for ad valorem taxation, and, when provided, a written summary report of a mass appraisal for ad valorem taxation must:

- (a) state the purpose and intended use of the appraisal;**
- (b) disclose any assumptions or limiting conditions that result in deviation from generally accepted methods and techniques or that affect analyses, opinions, and conclusions;**

Comment: One limiting condition that must be disclosed is whether or not any physical inspection was made.

- (c) set forth the effective date of the appraisal;**

Comment: In ad valorem taxation the effective date of the appraisal may be prescribed by law. If no effective date is prescribed by law, the effective date of the appraisal, if not stated, is presumed to be contemporaneous with the data and appraisal conclusions.

- (d) define the value to be estimated;**

- (e) identify the properties appraised including the property rights;**

Comment: The report should document the sources for locating, describing, and listing the property. When applicable, include references to legal descriptions, addresses, parcel identifiers, photos, and building sketches. In mass appraisal this information is often included in property records. When the property rights to be appraised are specified in a statute or court ruling, the law should be referenced.

- (f) describe and justify the model specification(s) considered, data requirements, and the models chosen;**

Comment: The user and affected parties must have confidence that the process and procedures used conform to accepted methods and result in credible value estimates. In the case of mass appraisal for ad valorem taxation, stability and accuracy are important to the credibility of value estimates. The summary report should include a discussion of the rationale for each model, the calibration techniques to be used, and the performance measures to be used.

- (g) describe the procedure for collecting, validating, and reporting data;**

Comment: The summary report should describe the sources of data and the data collection and validation processes. Reference to detailed data collection manuals should be made, including where they may be found for inspection.

- (h) describe calibration methods considered and chosen, including the mathematical form of the final model(s); describe how value estimates were reviewed; and, if necessary, describe the availability of individual value estimates;**

STANDARD 6 (continued)

Standards Rule 6-7 (continued)

- (i) in the case of real property, discuss how highest and best use was determined;

Comment: The mass appraisal summary report should reference case law, statute or public policy that describes highest and best use requirements. When actual use is the requirement, the report should discuss how use-values were estimated.

- (j) identify the appraisal performance tests used and set forth the performance measures attained;

- (k) provide any additional information necessary to more fully explain the appraisal including departures permitted by the Departure Provision; and

- (l) contain a signed certification by the appraiser in a manner consistent with applicable laws, rules or regulations and generally accepted appraisal practices for mass appraisals prepared for ad valorem taxation; and for mass appraisals prepared for other purposes, contain a signed certification in accordance with Standards Rule 6-8.

Comment: Departure from binding requirements (a) through (l) is not permitted.

Standards Rule 6-8

Each written mass appraisal for purposes other than ad valorem taxation must contain a signed certification that is similar in content to the following form:

I certify that, to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report, and I have no (or the specified) personal interest or bias with respect to the parties involved.
- my compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)¹
- no one provided significant professional assistance to the person signing this report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

Comment: Departure from this binding requirement is not permitted.

¹ See Advisory Opinion G-2 on page 71.

Tab 8

Appraisal Group, Inc.

LeRoy J. Pia, MAI
Paul W. Thronsdan, MAI
Travis B. Kettner
Bryan L. Ooddard
J. Douglas Bischoff

1111 Brickyard Road, Suite 210
Salt Lake City, Utah 84106
(801) 486-8200 Fax (801) 486-8299
Park City (801) 649-8449

July 12, 1995

Mr. Pete Mower
Rich County Assessor
20 South Main
Randolph, Utah 84064

RE: Appraisal of 1932 Bear Lake Boulevard - summer home owned by Alpha Security Trust
(Eugene Lynch, Principal).

Dear Mr. Mower:

Following the hearing last Friday, July 7, 1995, Chairman Oveson stated that we could verify, adjust, and submit any data or conclusions in the above-referenced appraisal on the basis of new information presented at the hearing, or that we might otherwise discover. We conducted some further research into the data used in our July 14, 1994 appraisal of 1932 Bear Lake Boulevard in view of the criticisms rendered by Mr. Zulauf.

Sale Comparable No. 1, 931 East Cisco Road, was purchased by David J. McLean from his cousin Rosalind Sjostrom. We spoke with Mr. McLean on Monday, July 10, 1995. He indicated the home appraised for \$84,000 and he purchased it for \$80,000. He reports it was a market transaction as both parties felt it was a fair market price, and no concessions were granted on the basis of kinship. He further reports a refrigerator and stove were included in the sale, as were other attached fixtures, but that he brought in beds, a sofa and most other furnishings. He admitted a few odds and ends such as a nightstand, and some pictures, were left behind by the seller. We included no personal property value in our appraisal, and thus wish to adjust for this more accurate information. At most a used refrigerator and various other items could be worth \$1,000. This would lower the value indicated by this comparable from \$106,860 to \$105,860 or \$104,860. This supports the concluded subject value better than our earlier number.



LEROY J. PIA, MAI
REAL ESTATE APPRAISER & CONSULTANT

Page 2

Mr. Pete Mower

Sale Comparable No. 4, 1623 East Cisco Road, was an arms-length transaction involving David F. Lancy, a professor of Anthropology at USU. He purchased the property from Bray Investments, Inc. We spoke with him on Monday, July 10, 1995. He indicated the sale did include some personal property all of which he had to truck out at his own expense and throw away. He indicated it was infested with mice, exceptionally worn down and of utterly no value. The refrigerator broke and was replaced very soon after the purchase. He was quite amused by the idea that anyone would think the furnishings added any value to the sale. He noted that he should have been paid to remove them.

Sale Comparable No. 5 is located at 85 East 200 North, Garden City. We spoke with Bob Kaufman (801)272-0102, while his brother Dale Kaufman was on the other line, on Monday, July 10, 1995. Dale Kaufman purchased the property from Warnell Van Otten. Bob Kaufman indicated it was an arms-length transaction, and that he thinks good beach front property is worth \$1,100 per front foot. He purchased a property just after his brother did, for a total of \$160,000 after including the \$25,000 he invested in repairs.

Sale Comparable No. 6, 759 East Gus Rich Lane was purchased by Mark and Joan Jensen from Dale and Inez Marler in an arms-length transaction. Mr. Milt Jensen, Mark's brother, confirmed this on Tuesday, July 11, 1995 from Veyo, Utah (801)574-2749. He also mentioned the purchase price included all furnishings down to knives, forks and spoons in the cabin at the time. He reported estimated value of such furnishings at \$5,000. Making this adjustment would change this comparable's value indication from \$86,475 to \$81,475. This widens the value range from \$83,600 at the lowest (Sale No. 2) to \$81,475. While this changes the range, the previously concluded value remains supported within the range.

We spoke with Merl Spence, broker (801)946-8600 on Monday, July 10, 1995. She said it is very hard to say there has been any clear value trend the last few years. She reports a turn-around in 1994 in cabins on the hills, but no real movement of beach front properties. She thinks values were relatively stable along the beach from 1991 through 1994. She thinks it is turning up now, in 1995, but was improving only for cabins without lake front property in 1994. She admits it is hard to precisely know given the lack of sales along the beach. She says the 1995 market is tight and anything that comes up for sale moves rapidly.

Mr. Otto Mattson, broker (801)946-3305 agreed the market peaked in 1982, then plummeted badly through the 1980s, when we spoke with him on Tuesday, July 11, 1995. He says roughly a 17% decrease in values over 1991 and 1992 occurred. He reports 1993 and 1994 were very slow for marketing time, but values just sat, moving neither up or down. He says he has seen a 23% increase in value in the last nine months and reports the market has really tightened with nothing available on the lake front to speak of. He points to a listing from April 1994 at \$145,000 which was taken off the market, then put back on in June, 1995, and sold in one week at \$165,000.

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Page 3
Mr. Pete Mower

On Tuesday, July 11, 1995, Mr. Bill Peterson, broker (801)946-3226, reported he thinks there has been a steady increase from 1991 through 1995 of roughly 30%. He has not seen any dramatic turn-a-round, but did have plenty of listings available in 1994, and not much available now. He thinks things have tightened considerably in 1995. He thinks the increase has been pretty steady, with some acceleration in summer 1994 and into this year, 1995.

This anecdotal evidence appears to us to remain insufficient to support significant adjustments to sales ranging from May 1992 to July 1994, for a valuation date of January 1, 1994. The first two brokers' comments seem to support no adjustments for a rather slow but neither falling nor increasing market in that time, while the third, Mr. Peterson, supports some steady increase over that time. The point of agreement among the brokers is from the summer of 1994 onward when all three point to a tight and increasing market. This period however, is not applicable to the subject valuation.

The Bear Lake market has numerous difficult characteristics for accurate appraising. First, the dearth of sales makes selection of comparables less than ideal. Second, this market lacks strong linkages to larger, more predictable markets. Third, this is a distinctly rural market, where value trends, if they exist, are generally slower moving and harder to track than in more active suburban or urban areas. Fourth, this is a specific recreational sub-market. Recreational markets can be very unusual, and when in a clearly rural area they follow their own rules even more. Fifth, the rising and falling level of Bear Lake may affect lake front values, although this is difficult to measure, and likely has more effect on marketing time, than price. Sixth, and last, Utah is a non-disclosure state, one of up to 14 remaining in the country. This makes appraising here distinctly different than in a disclosure state and may preclude appraisers unfamiliar with local markets from doing accurate work.

We should also point out that while we inspected the subject on July 14, 1994, the correct valuation date is January 1, 1994, for assessment purposes. The phrasing of this on the original form is misleading, but since we applied no adjustments for changing market conditions over time it does not affect the value conclusion. Since the inspection was on July 14, 1994, the physical conditions of the property on that date have to be hypothetically projected back to January 1, 1994.

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Sermich
LNC*

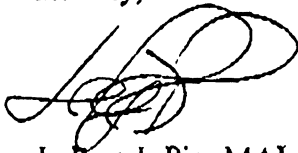
Overall this research points out that the comparables used were all acceptable on the basis of conditions of sale, being arms-length, a valuable point, perhaps overlooked in the previous work, is the contributory value of personal property in some of the sales. After adjusting for this however, the value range remains sufficiently similar to leave the final value conclusion unchanged. Adjustment for market conditions changing over time during the period in question is, in our judgement, still insufficiently supported, and no such adjustments are applied. The previous value conclusion remains sound.

Page 4
Mr. Pete Mower

We have chosen not to address in detail Mr. Zulauf's work, though in our opinion it is laced with bias and fraught with unfounded adjustments. If it is an appraisal it is a poor representation and is in fact misleading. If you feel it important to do so, we will address Mr. Zulauf's report.

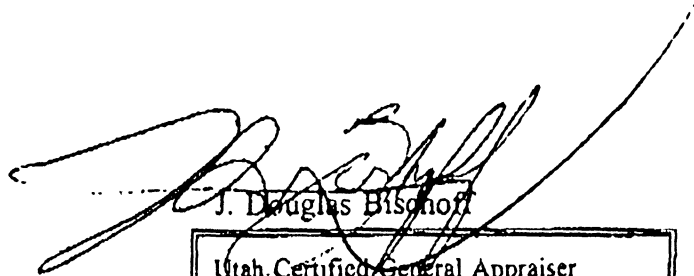
We hope this additional information is of assistance. Please do not hesitate to call with any questions or comments. We are intent on arriving at the most accurate value conclusions possible.

Sincerely,



LeRoy J. Pia, MAI

Utah Certified General Appraiser
Certificate CG37451 Expires 6-30-97



J. Douglas Bischoff

Utah Certified General Appraiser
Certificate CG41424 Expires 11-30-96

LJP/dac

Tab 9

ALPHA SECURITY TRUST
EUGENE B. LYNCH
1105 Patterson
Ogden, Utah 84403
(801) 393-4791

HAROLD PERKINS
902 E. Mutton Hollow Road
Kaysville, Utah 84037
(801) 544-3024

BEFORE THE UTAH STATE TAX COMMISSION

ALPHA SECURITY TRUST,	) RESPONSE TO MR. PIA'S
	) LETTER TO MR. MOWER
Petitioner,	) DATED JULY 12, 1995
)
Vs.)
	) Appeal No: 94-2231 and
COUNTY BOARD OF EQUALIZATION OF	) Appeal No: 94-1680
RICH COUNTY, STATE OF UTAH	) Serial No: 41-33-28-077 and
	) Serial No: 37-190-1085
Respondent.	) Tax Type: Property Tax
_____)	

We have read the letter from Mr. Pia to Mr. Mower, dated July 12, 1995, please find within our reply. We are not buying off with the assumption that the market has

remained static and no time adjustments are needed. The Realtor's surveyed, support the position that prices have increased significantly over the past 2 years.

Let's take this argument to it's logical end of conclusion. If properties are always stagnate-never changing, then why aren't all the appraisals at their original cost. In the 1954, Gene Lynch spent approximately \$700 for his lot and \$10,000 for improvements to the lot. In 1954, Gene Lynch's property was valued at \$20,000-so why don't we leave it the same.

By the same token, regarding the date of appraisal, if the date doesn't make a difference-why even date appraisals? Why not do the appraisal and never put a date on it?

Finally regarding personal property, every sale that the appraiser used contained personal property valued at 5% to 20% of the sales price. The appraisers verified the sale and personal property after the hearing date, approximately one year later. As with the date of appraisal, the appraiser is now saying although we overstated all the sales prices (including the 6 that haven't yet been verified) the exclusion of personal property doesn't matter.

Please note, that the appraisers are just now verifying their sales that they presented to the assessor in 1994 and the sales they presented in court in July of 1995. Furthermore, please note that they have only verified ⁴2 of the 6 sales that they used in their report. When they get around to verifying the other ²4 improved sales they used in their report, dated July of 1994 and the additional improved sales submitted by

Mr. Jolly, they will find that these sales contained significant personal property.

In Sale Comparable No. 1, 931 East Cisco Road, Rosalind Sjostrom owned the property and gave it to her son, Richard Sjostrom and his sister. Richard Sjostrom borrowed money from his uncle, the father of David J. McLean, Richard Sjostrom's cousin. The father, Mr. McLean agreed that Richard Sjostrom's debt would be off set for his part of the property; and purchased Richard's sister's part. Therefore, Richard sold the house to David J McLean. The lot at the time of sale was 69' wide with a house and 69' wide unimproved, the unimproved portion was kept by the father. The "appraisal" (referred to by Mr. Pia) was done by the bank president, a relative of David's wife. The appraisal came in at \$84,000 but we don't know if the appraisal is for the house with 69' front footage or 138 feet front footage (69 x 2 = 138). Additionally, the appraisal was done by a loan officer and not a licensed appraiser. This is what the appraiser, Mr. Pia calls an arms length transaction. If the court wishes to verify this information, Richard Sjostrom's phone number is (801) 582-5528.

This appears to be bias, even the sales they verified with Professor David Lancy indicates bias. For example, if Mr. Lancy, paid for the personal property and had to haul it off. Whether he had to haul it off himself, or paid someone to haul it off, indicates there should have been an adjustment to the sales price for personal property or trash removal.

The issue is not that Mr. Lancy hauled the personal property off himself and it

Tab 10

cost no out of pocket expense, but the question is, what would it cost him to have the personal property hauled off and disposed of? An adjustment that should be included in the sales price.

It appears that reading Mr. Pia's letter, is an attempt to justify overlooking adjusting for market conditions at time of sale and personal property that should of been made by appraisers.

If any appraisal indicates bias, it is that of Mr. Pia's, paragraph 3 of page 3 of the Pia letter, indicates that appraising property at Bear Lake is difficult for appraisers unfamiliar with that market place. We agree! Harold Perkins and Gene Lynch have tracked all the properties around the lake for the last 15 to 20 years. We know all the sellers and purchasers and in most cases, the Realtors involved in the transactions.

As pointed out in court, Mr. Pia and Mr. Bishop have appraised only one property at Bear Lake in the last 12 months. We do not think appraising one property at Bear Lake qualifies them as experts on lake front properties. Especially, when they don't verify their sales with the buyer, seller or broker and when they are unwilling to survey Brokers of what's happening in the area.

Dated: August 10, 1995

Respectfully Submitted,

Gene Lynch and Harold Perkins

COLLATERAL REFERENCES

C.J.S. — 85 C J S Taxation § 806.

Key Numbers. — Taxation ⇐ 631.

59-2-1324. Taxes to be paid before distribution of estate of a deceased person.

The district court shall require every administrator or executor to pay out of the funds of the estate all taxes due from the estate. No order or decree for the distribution of any property of any decedent among the heirs or devisees may be made until all taxes against the estate are paid.

History: C. 1953, 59-2-1324, enacted by L. 1988, ch. 3, § 181.

Repeals and Reenactments. — Laws 1988, ch. 3, § 181 repeals former § 59-2-1324, as amended by L. 1987, ch. 4, § 202, relating to the notice of findings and declaration, hearings, and proceedings in the district court, and enacts the present provision, effective February 9, 1988

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act has retrospective operation to January 1, 1988.

Cross-References. — Apportionment of estate taxes, § 75-3-916

Assessment of decedent's property generally, § 59-2-308.

NOTES TO DECISIONS

ANALYSIS

Duty of personal representative
Purchaser of land

Duty of personal representative.

Fact that property of decedent was assessed to estate and not to executor or beneficiary under will was immaterial where executor had notice of assessment against property and had duty of paying all taxes due from estate. In re Thourot's Estate, 52 Utah 106, 172 P. 697 (1918)

It is the duty of the administrator to pay all taxes legally levied against real estate. In re Hansen's Estate, 55 Utah 23, 184 P. 197 (1919)

Purchaser of land.

This section does not excuse one who purchased land under warranty deed from deceased vendor from necessity of presenting claim against estate for delinquent taxes on property. Clayton v. Dimwoodey, 33 Utah 251, 93 P. 723, 14 Ann. Cas. 926 (1908).

COLLATERAL REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d State and Local Taxation §§ 750 to 752

C.J.S. — 34 C J S Executors and Administrators § 380

Key Numbers. — Executors and Administrators ⇐ 212.

A10

59-2-1325. Nature and extent of lien — Time of attachment.

A tax upon real property is a lien against the property assessed. A tax due upon improvements upon real property assessed to a person other than the owner of the real property is a lien upon the property and improvements. These liens attach as of January 1 of each year.

History: C. 1953, 59-2-1325, enacted by L. 1988, ch. 3, § 182.

Repeals and Reenactments. — Laws 1988,

ch. 3, § 182 repeals former § 59-2-1325, as amended by L. 1987, ch. 90, § 2, relating to the date taxes are delinquent, the penalty and in-

Tab 11

Appeal Numbers 94-2231 and 94-1680

The assertion of Petitioners that Respondent failed to properly verify the comparable sales could have been determinative in favor of Petitioners had Respondent not presented evidence that the assertions lacked merit. The evidence presented by Respondent in the post hearing memoranda demonstrated that Petitioners were exaggerating both the magnitude and occurrence of the personal property included in the sales of comparable properties. The evidence also demonstrated that the assertions of Petitioners of less than arms-length transactions was also overstated.

Petitioners asserted in the hearing that market values were decreasing during 1993 in the Bear Lake area and that values started increasing in 1994 immediately after the lien date. Respondent presented evidence, from the same brokers cited by Petitioners, that the market was either relatively stable during the 1992 to June of 1994 period or, in the case of one broker, that the values were on a gradual increase over that same period. All agree that the market has picked up considerably in the last half of 1994 and 1995 which is beyond consideration in this case. It appears that Petitioners could have made a positive adjustment to the comparable sales that took place prior to the lien date for time adjustments given that the market in 1992 and 1993 was