



# THE UTAH TAXPAYER

A PUBLICATION OF THE UTAH TAXPAYERS ASSOCIATION

## Vote Against Prop 1's \$47 Million Tax Hike

After eight years as Salt Lake County Mayor, Peter Corroon is finally promising a plan to eliminate \$26 million dollars in deferred maintenance in the county's parks and recreation system. But before he presents that plan, he hopes Salt Lake County taxpayers will approve Proposition 1, a \$47 million bond for additional parks and trails. Until Salt Lake County has adopted a specific plan to eliminate the county's deferred maintenance, taxpayers should vote *against* Proposition 1.

Salt Lake County is blessed with abundant recreational opportunities. City and county parks, federal campgrounds, wilderness areas and national forests dot the landscape. However, the county's demographics have changed significantly – from north and east to south and west – since many of these facilities were created. Because these population shifts are recent, the county's park system hasn't caught up with them.

To better align the county parks system with Salt Lake County's new population constellation, Mayor Corroon hopes voters will approve a \$47 million bond. As Mayor Corroon explains his proposal, he wants to complete the Jordan River Trail and additional portions of the Parley's Trail; build a new park in the southwest part of the county and another park in Kearns; buy property for a park in Magna; and improve Wheadon Park.

Many, perhaps all of these projects are worthwhile. If they are worth doing, though, Salt Lake County should do them right. Key to doing these projects right is being able to maintain them. By the county's estimation, operating these parks will require new money to the tune of \$580,950. The source of that revenue has not been identified.

The problem is that Salt Lake County's parks and recreation budget can't maintain its existing parks and trails. Earlier this summer, Mayor Corroon estimated that Salt Lake County has at least \$26 million in deferred maintenance for its existing parks and recreation portfolio.

The Utah Taxpayers Association objected to placing this bond proposal on the ballot, precisely because the county has no plan to eliminate the deferred maintenance or to pay for the costs of operating the new facilities. After we expressed these concerns to the county council, they asked Mayor Corroon how he planned to eliminate it. He said that plan would come out as part of the county's 2013 budget.

It is presumptuous for Mayor Corroon to ask taxpayers for another \$47 million bond *before* knowing how the county plans to care for its existing portfolio. It is even more presumptuous when you consider that he won't even be county mayor when "his" plan is implemented. Now is the time for Salt Lake County taxpayers to require fiscal discipline. Demand that Salt Lake County show taxpayers how they will care for their existing parks and trails, before they add another \$47 million in debt. Vote *against* Proposition 1.

*An edited version of this article was originally published in The Salt Lake Tribune on October 25, 2012.*

### Notice of Utah Taxpayers Association's Annual Meeting

All members of the Utah Taxpayers Association are invited to attend the Association's Annual Meeting, which will be held Monday, November 19, 2012 at 2:00 p.m. The meeting will be held at the offices of Holland & Hart, 222 South Main Street, Suite 2200, Salt Lake City, Utah. Nominations for the Board of Directors will be accepted from the general membership up until five days prior to the annual meeting.

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## My Corner: Clipping the Power of State Teachers Unions



**Association President  
Howard Stephenson**

In recent years, Utah’s legislature has enacted a series of reforms that give parents a greater voice in their child’s education, including charter schools, digital learning, and online education. While 2007’s voucher legislation lost at the polls, it and most of these other reforms were only possible because Utah passed the Paycheck Protection Act.

Under Paycheck Protection, public sector unions (which in Utah chiefly means teacher unions) cannot have employers deduct political donations from an employee’s check. (The teacher unions challenged Idaho’s Paycheck Protection Act, and your Taxpayers Association helped defend it before the U.S. Supreme Court with a friend of the court brief in the *Ysursa* case.) As I’ve detailed in previous editions, that single change has transformed the UEA from the Capitol’s 800-lb gorilla to one of many interested parties. In fact, they are no longer in the top ten of political donors to legislative candidates. Unfortunately, Utah is one of just six states with a Paycheck Protection Act. (The states of Idaho, Wyoming, Washington, Ohio and Michigan are the others.)

A new report by the Fordham Foundation evaluates the political power of teacher unions in every state, and the factors that enhance or limit the power of teacher unions. As Table 1 indicates, Utah’s teacher unions’ weak points are their relatively low membership (only 64% of Utah teachers belong to a union) and thus relatively small budget.

The report notes the tremendous impact Paycheck Protection has had on the teacher unions’ political influence in Utah. Over the past 10 years, teacher unions have provided just 1.2% of donations to candidates for state office, and 0.66% of donations to political parties. As even a cursory review of disclosure filings from before Paycheck Protection passed shows, Utah’s teacher unions used to be one of, if not the largest in-state

political donor.

The recent kerfuffles in the Ogden (implementing a take-it-or-leave-it contract) and Canyons (reducing the scope of collective bargaining) school districts illustrate the union’s weakness on the collective bargaining front. While school districts don’t have to bargain with teacher unions, refusing to bargain, or even limiting the scope of bargaining, can impose tremendous political costs on a local school board.

Utah’s teacher unions have not changed Utah’s right-to-work status, but they have

established and defended the ability of teachers to receive tenure after just three years on the job. They have also succeeded in limiting the number of charter schools (by requiring that the state pay school districts for phantom students!), and in requiring teachers in charter schools to obtain the same certifications as teachers in district schools.

The last measure the Fordham study examined relied on interviews with stakeholders within Utah. Those interviews reflect my own sense of the union’s relative weakness. Within the public education lobby, the school districts and the school board exercise much more influence at the Legislature than the teacher unions. The Fordham study accurately notes, “while policies proposed by the governor during Utah’s latest legislation session were mostly *in line* with teacher union priorities, enacted policies were mostly *not in line* with those priorities.”

Voter decisions in Idaho and Washington state will further testify to the importance of Utah’s Paycheck Protection Act. Although Washington State has a Paycheck Protection Act, it remains one of just nine states with zero charter schools. This election, voters in the Evergreen State will decide on Initiative 1240, which would allow just 40 charters statewide.

As happened in 1996, 2000 and 2004, the Washington Education Association is leading a coalition of unions to oppose this extraordinarily modest proposal. Fortunately, Microsoft’s Bill Gates and Paul Allen, plus Amazon’s Jeff Bezos and other über-wealthy donors are countering the unions’ money with personal donations. At this point, polls point to Initiative 1240 passing, though it remains hotly contested.

Idaho also has a Paycheck Protection Act, and they are facing tremendous union-led opposition to common-sense education reforms. Last year Governor Butch Otter instituted merit pay, and began phasing out teacher tenure and collective bargaining. In response, the nation’s largest union, the NEA, has poured more than \$1 million into defeating these Idaho proposals at the ballot box.

If anything, the willingness and ability of the NEA to funnel tens of millions of dollars into a state, exposes one shortcoming of the Fordham report (and Utah’s Paycheck Protection Act): it ignores the way state teacher unions become conduits for national teacher union money. As the 2007 voucher fight showed, Utah’s Paycheck Protection Act didn’t protect taxpayers from the unions’ multi-million dollar campaign.

On nearly every issue, the state teacher union lobbies the legislature without the help of their national counterpart. But on the rare occasions when the NEA decides to get involved in a given state, their deep pockets almost inevitably overwhelm education reformers. Nevertheless, I’m proud of the way Paycheck Protection has paved the way for Utah to lead the nation in digital learning, and expand opportunities for teaching professionals, parents and children across Utah.

**Table 1: Rating the Power of Utah’s Teacher unions vis-à-vis the Teacher Unions in All 50 States and the District of Columbia**

	Utah
Overall	39 <sup>th</sup>
Resources & Membership	37 <sup>th</sup>
Involvement in Politics	25 <sup>th</sup>
Scope of Bargaining	28 <sup>th</sup>
State Policies	30 <sup>th</sup>
Perceived Influence	39 <sup>th</sup>

*Source: How Strong Are U.S. Teacher Unions? A State-By State Comparison, Fordham Foundation, page 325.*

## Vote for Amendment A

The following article was written by Rep. Jim Nielson and Jake Anderegg, candidate for House District 6. It appeared in the October 25, 2012 edition of *The Daily Herald*.

Most people don't know it, but Utah collects severance taxes when companies mine minerals, or extract the oil and gas from Utah's lands. The amount of severance taxes these companies pay depends on the price of these commodities. When prices are up, they drill and mine more, and pay more severance tax; when prices are down, they drill and mine less, and pay less severance tax.

Currently, severance taxes go into the state's General Fund, the main fund the Legislature uses to pay for state programs like CHIP, Medicare, and transportation. Unfortunately, severance tax resources are finite. At some point there won't be any more oil, natural gas or minerals like copper, which also means there won't be any more severance taxes. However, the programs severance taxes support will continue. This imbalance of programs expected to go on and on funded by an unpredictable level of resources that will end one day altogether is a fundamental budget problem for Utah.



**Rep. Jim Nielson**

Frankly, we thought Utah had solved this problem in 2008, when 65% of Utah voters approved an amendment to Utah's Constitution allowing the state to save a portion of severance taxes in Utah's Permanent State Trust Fund. As it turns out, we should have been more skeptical.

The 2008 amendment merely "allowed" the Legislature to deposit severance taxes into the PSTF. When faced with a tight budget in 2011, the Legislature siphoned an additional \$11 million in severance taxes before allowing anything into the trust fund. When this diversion was proposed, we ran a vigorous debate on the House floor opposing this severance tax money grab, but the Legislature still siphoned off the money.

Amendment A aims to make it harder to skim money that should go into the Trust Fund and instead spend it today. Amendment A requires the Legislature to deposit a fixed portion of severance taxes into the Permanent State Trust Fund. As the 2011 budget showed, sometimes even the Legislature of the "best managed state" can't resist the allure of spending now what they should be saving for future generations.

The Trust Fund is a very secure rainy day fund. The Legislature can only spend money in the Permanent State Trust Fund if three-fourths of both Houses of the Legislature and the Governor agree to spend that money. However, the Legislature can reinvest earnings in the trust fund, or spend them for on-going programs.

By saving severance taxes in the PSTF, Amendment A preserves the benefits of our

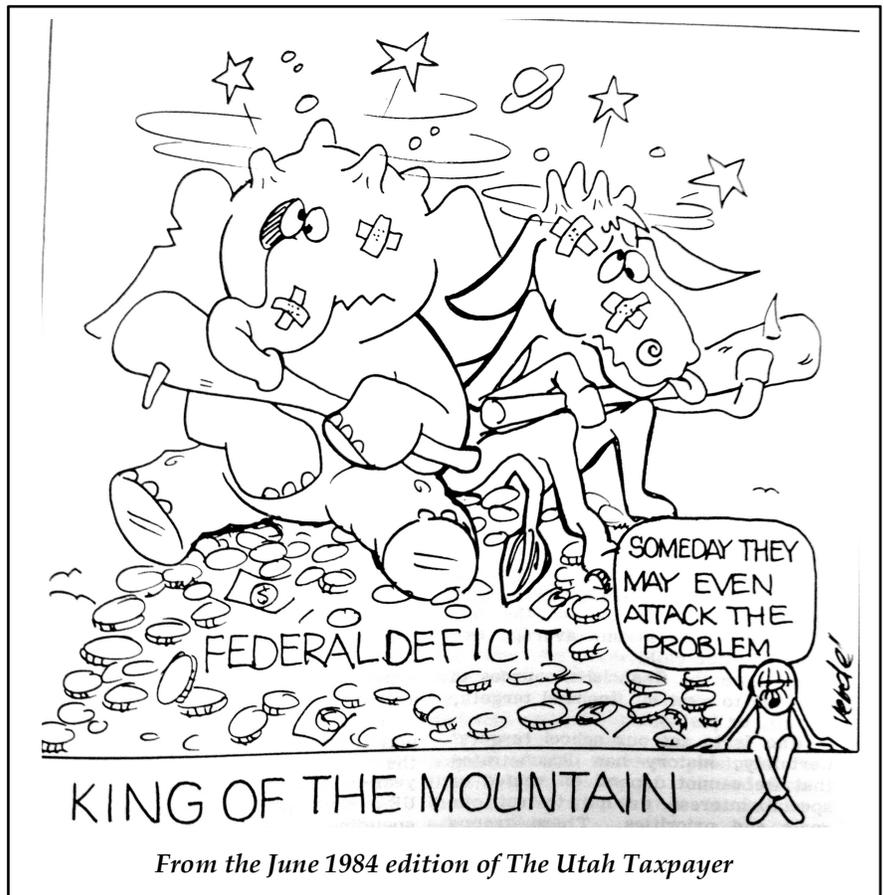
natural resources forever. Instead of spending our grandchildren's legacy, Amendment A lets us save for that real rainy day, when Utah's oil, gas and minerals are gone.

Before the public votes on any amendment to the Utah Constitution, the Legislature must first approve it. In the case of Amendment A, not a single Democrat or Republican in the Senate voted against it; on the House side, well over the required 2/3 approved it. Republicans and Democrats don't agree on many things, but support for Amendment A is wide and bi-partisan.

Amendment A is both a safety net, and our grandchildren's legacy. In the most challenging circumstances, voting for Amendment A gives the state a last safety net to protect critical programs. But because the Legislature manages the state budget so well, that scenario is unlikely. Whether or not Utah ever needs that safety net, our children's children need us to vote for Amendment A today.



**Jake Anderegg  
Candidate for  
House 6**



## Update on Taxpayer Association's Lawsuit Against Utah Counties Imposing an Unconstitutional Restaurant Tax

In 2010, the Utah Taxpayers Association sued Utah County, alleging that the "Restaurant Tax" discriminates against restaurants and thus violates constitutional "Equal Protection." Specifically, we argued that convenience and grocery stores (designated as "retail establishments" in the Restaurant Tax statute) prepare and serve the same food and beverages as restaurants, yet they are exempt from collecting the Restaurant Tax from their patrons, while restaurants are not exempt. Under relevant sections of the United States and Utah constitutions, such discriminatory tax treatment is unconstitutional.

Various procedural motions have drug our case out over several years, but in September the counties and the Taxpayers Association made final oral arguments before District Court Judge John Paul Kennedy.

The counties argued that the "Restaurant Tax" passes constitutional muster because the tax revenue derived from it comes primarily from out-of-state tourists, and counties use restaurant tax revenue for facilities like the Utah State Fair buildings.

Judge Kennedy interrupted the counties, and asked us whether the constitutionality of the tax depends on how the counties spend the money. We responded that the issue Judge Kennedy must decide was whether the discriminatory tax can be constitutional. How the counties spend the money and whether tourists or residents pay the tax is irrelevant to the constitutionality of a discriminatory tax.

Salt Lake County's attorney stepped to the lectern next, and also stressed that the tax was imposed on "out-of-staters," and claimed that the statutory distinction between "restaurants" and "retail establishments" was rational and constitutional. He relied on an Illinois Supreme Court case, which upheld a similar Illinois tax on sales of prepared food and beverages against a constitutional challenge. We distinguished the Illinois case because it applied to different and extremely limited circumstances, and did not discriminate against statewide taxpayers, as does the Utah Restaurant Tax.

Salt Lake County's attorney defined a retail establishment only as an entity whose primary business is selling gasoline (like a Chevron). He did not even acknowledge that Utah law also excludes from the Restaurant Tax grocery stores and other entities classified as a "retail establishment" that sell prepared food for off premise consumption.

Judge Kennedy asked Salt Lake County's attorney to justify why he (the Judge) should have to pay the Restaurant Tax if he buys a sandwich from an independent Subway, but not if he buys the same sandwich from a nearby Subway that is part of a gas station. Salt Lake County's attorney argued that some Subways that are part of a gas station are "retail establishments" and some are not, depending upon who owns what. In other words, he referenced current law, instead of answering Judge Kennedy's question.

When it was our turn, our attorney stressed that the case hinges on whether the Restaurant Tax can constitutionally discriminate between entities that sell the same or similar food. Under the Restaurant Tax, restaurants must collect and remit the one percent Restaurant Tax on prepared food and beverages, while competitors at convenience and grocery stores do not, even though both prepare and serve nearly identical food.

We also argued that the counties' justification on taxing out-of-staters at restaurants is not constitutionally compelling, because many out-of-staters rent cars and stop to eat at retail establishments. Similarly, not all patrons of Utah restaurants are out-of-state tourists.

Based on the questions Judge Kennedy asked, we are confident that we have the stronger argument. However, reading judicial tealeaves is a difficult task at best. Judge Kennedy has not yet issued his ruling, and we don't know when he will.

### Utah's Tax Burden Falls in Latest "How Utah Compares" Report

Your Taxpayers Association released its "How Utah Compares" report for FY2010, comparing the burden of Utah's taxes and fees to the other 49 states in the nation. Compared to the most recent report for FY2007, Utah has improved its ranking significantly in many categories.

The report analyzes different areas of taxation, including income taxes, property taxes, sales taxes, state and local revenues and federal revenues. Burden is defined as the percentage of total personal income that is paid in taxes and fees. Overall, Utah's tax and fee burden is 14.2%, a two-percentage point drop from FY2007 when Utah's tax and fee burden was 16.3%.

The results of this report show that the aggressive tax reforms enacted by the Legislature from 2004-2007 have made Utah a more attractive place for employers and employees to locate. It further solidifies the importance of the principle to lower the rate and broaden the base.

Compared to neighboring states, Utah still has a relatively high tax and fee burden. The only neighboring state with a greater burden is Wyoming (19.9%). Colorado, Idaho, Nevada and New Mexico all have lower overall tax and fee burdens.

The Tax Foundation also released its annual report that shows Utah with an average tax burden of 9.3%. The number that the Tax Foundation calculates includes a couple of estimations, including taking into account the amount of tax revenue generated from visitors to Utah, which our analysis does not. The Taxpayers Association makes no estimates; rather, we use income numbers from the Bureau of Economic Analysis and revenue numbers from the Census Bureau. In addition, our analysis includes fees that the states impose, including tuition, and fees for water, transportation, etc.

The Taxpayers Association includes fees because even if fees are "voluntary," they are still a form of taxation and government has a responsibility to keep fees low. There is a direct linkage between decreased reliance on taxes and increased reliance on fees. Governments frequently increase fees in order to avoid increasing taxes.

To view the complete report, [click here](#).



**Max Miller**  
Attorney Representing  
the Utah Taxpayers  
Association

## Public Education Employment Has Skyrocketed While Student Test Scores Remain Stagnant

Student test scores have remained flat in public schools, while the number of teachers and administrators has skyrocketed since 1992. That's what a new report from the Friedman Foundation concluded after analyzing data over the past 20 years from every state. *The School Staffing Surge: Decades of Employment Growth in America's Public Schools* shows that how money is spent is at least as important as how much money is spent.

As the calls for more funding become louder and more frequent, it is important to consider where current money is being spent.

According to the Friedman Foundation, student growth in public schools grew by 17.2 percent from FY 1992 to FY 2009. Teacher and administrative staff grew by 38.6 percent (teacher growth was 32.4 percent). That's an increase in the ratio of teachers to students of 1.9, making the student to teacher ratio 15.4 in 2009. It's also an increase in the ratio of non-teaching staff of 2.2, making the student to staff ratio 7.8 in 2009.

Despite the growth in the number of teachers and administrators, which has outpaced student growth, student achievement has not improved. The US has continued to spend more while seeing student achievement decline.

The Organisation for Economic Co-operation and Development (OECD) studied student achievement in 34 countries from 1992 to 2008. During that time, OECD found that math scores in the US remained flat (students scored on average 305 in 1992 and 305 in 2008) and reading scores in the US actually dropped, from 288 in 1992 to 284 in 2008.

According to the National Assessment of Education Progress (NAEP), Utah's scores remained stagnant as well. The average 4<sup>th</sup> grade NAEP reading score for Utah in 1992 was 220 and in 2009 it had slipped to 219. This is despite administration and teacher growth outpacing student growth. However, Utah's pupil-teacher ratio did not grow at the same pace as the national average from FY1992 to FY2009 (increasing the ratio of teachers to students by 1.3 compared to the national average of 1.9). As the tables above show, Utah's student population grew much more than the national average (22.6% to 17.2%). As a result, the ratio of staff did not grow as fast as the national average did. But when teachers are removed, non-teacher staff outpaced student growth, growing 69.4% from FY 1992 to FY 2009.

The results of this study confirm that throwing good money after bad is no way to improve our education system. It is not a coincidence that as teacher unions began to grow in the 1960's, student test scores began to decline. Education must keep up with the technological advances that every other industry has adopted. If not, we will continue to spend more money for lackluster results while leaving children behind.

## Taxpayers Association Part of Working Group on how Tax Commission Should Implement SB 27

During the 2012 legislative session, the Taxpayers Association spent considerable time making sure every taxpayer could receive a refund of erroneously paid sales taxes. The result of those efforts was Governor Herbert's signature on SB 27, Amendments to Revenue and Taxation Title.

As detailed in previous editions of The Utah Taxpayer, SB 27 guarantees that overpaid taxes can be refunded, even if the taxpayer committed the error resulting in the overpayment. To implement SB 27 and to make Utah's sales tax refund procedures more predictable and consistent, the State Tax

Commission began drafting Rule 46, laying out exactly how taxpayers could obtain their overpaid sales taxes.

While we felt that their draft Rule 46 adequately addressed many of the important issues, it ignored several others. For example, it only applied to sales tax - direct pay and use tax refunds will need to be handled on an amended return. If taxpayers want to treat all refunds the same, for efficiency's sake direct pay and use tax should likely have been included in this rule.

If the taxpayer submits insufficient documentation with their

Staffing and Student Percentage Growth FY1992 to FY2009				
	Student	Staff	Teacher	Administrative/Non-teaching
United States	17.2%	38.6%	32.4%	45.7%
Utah	22.6%	47.3%	29.2%	69.4%

Comparing the Increase in Students to the Increase in Staff FY1992 to FY2009			
	Student	Staff	Ratio of the Increase in Staff to Increase in Students
United States	17.2%	38.6%	2.2
Utah	22.6%	47.3%	2.1

Comparing the Increase in Students to the Increase in Teachers FY1992 to FY2009			
	Student	Teacher	Ratio of the Increase in Teachers to Increase in Students
United States	17.2%	32.4%	1.9
Utah	22.6%	29.2%	1.3

Comparing the Increase in Students to the Increase in Non-teacher Staff FY 1992 to FY 2009			
	Student	Non-teacher	Ratio of the Increase in Non-teachers to Increase in Students
United States	17.2%	45.7%	2.7
Utah	22.6%	69.4%	3.1

Source: *The School Staffing Surge: Decades of Employment Growth in America's Public Schools, October 2012*

claim to be repaid erroneously overpaid sales taxes, the proposed rule allowed the State Tax Commission to “dismiss”



David Crapo  
Crapo Smith

the claim. However, the taxpayer could only appeal the claim that insufficient documentation was provided; it was questionable whether the underlying facts could ever get a further hearing.

If the documentation requirements are reasonable, this dismissal requirement would have been fine. However, some of the documentation requirements of taxpayers (such as requiring proof of payment on every transaction) seem more restrictive than those required of auditors.

Similarly, the proposed rule was inflexible as it overlooked the

possibility that a taxpayer’s documentation can be destroyed in a fire or flood.



Steve Young  
Holland & Hart

Your Taxpayers Association joined a coalition led by Steve Young of Holland & Hart and David Crapo of Crapo Smith in submitting formal comments on the draft Rule 46. Because of these comments, the Tax Commission has formed a working group to redraft Rule 46 so that it addresses these and other concerns. We anticipate creating a smooth, efficient process for taxpayers to obtain their rightful refunds.

## Dramatic Changes in San Juan County Leave Many Questions

Your Taxpayers Association reviews the budgets of every county and school district in the state, plus about 40 of Utah’s 245 cities and towns. Nevertheless, we often rely on local activists and officials to alert us of possible problems. The latest concern is in San Juan county, where the county assessor has appealed 33 decisions of the county’s Board of Equalization to the State Tax Commission.

For readers who haven’t appealed the county’s valuation of their property, a brief explanation is appropriate. As part of the property tax process, each year county assessors evaluate the value of the properties in the county, and mail those estimated values to the property owners. Property owners who feel their assessor’s valuation is high can ask the Board of Equalization to adjust their valuation. (In most counties, the Board of Equalization is the County Commission or County Council.)

If the property owner doesn’t feel that the Board of Equalization accurately adjusted the property’s valuation, the owner can appeal to the State Tax Commission. Interestingly, state code also allows the county assessor to appeal the Board of Equalization’s decision too.

Appeals by the assessor of decisions by the Board of Equalization are unusual; in some sense they amount to the county suing itself. However, it is certainly not unheard of. In 2010 and 2011, San Juan County appealed a total of seven Board of Equalization decisions. Seven. For some reason, 2012 is different. The number of appeals has gone up nearly ten-fold in one year.

Table 1: Appeals by San Juan County Assessor

Year	2010	2011	2012
Number	3	4	33

Source: San Juan County Assessor’s Office

A dramatic increase in the number of appeals in just one year demands an explanation, but that is hardly the only curious datapoint in San Juan county. Assessed values of residential values in San Juan county have climbed steadily throughout the past decade, while assessed values of similar properties in neighboring counties (and statewide) peaked in 2007 or 2008, and dropped significantly thereafter.

For example, Kane County valuations increased 235%

between 2003 and 2007; Kane County’s 2011 valuations were only 85% higher than 2003. Statewide, 2008 values were 113% higher than in 2003, but by 2011 they were only 93% higher than 2003. As Figure 1 shows, Beaver, Emery and Grand counties have all gone through similar increases and decreases since 2003.

Given that property taxes correlate directly with assessed values, and given the precipitous drop in property values all of Utah (indeed all of the country!) has seen since 2007, San Juan county’s steady increase in values require explanation. Your Taxpayers Association is working with state and local officials to sort these aberrations out.

### % Change in House Values Since 2003

