

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF SALT LAKE
COUNTY, UTAH,

Respondent.

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

Appeal No. 06-0906

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2005

Judge: Robinson

Presiding:

Commissioner Pam Hendrickson

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *pro se*

For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 14, 2007. Based upon the evidence and testimony presented at the hearing, and information contained in public records, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the assessed value of the subject property for the lien date January 1, 2005.
2. The property at issue is Parcel No. #####, located at ADDRESS, CITY, CANYON, Salt Lake County, Utah.
3. For the January 1, 2005 lien date the County Assessor had valued the property at \$\$\$\$\$. The County Board of Equalization adjusted the value to \$\$\$\$\$.

4. The subject property consists of .39 acres of land improved with a forty-one-year-old two-story cabin with 2,346 square feet of above grade living space. It has no basement. It is located near the (X).

5. PETITIONER said he was not contesting the value assigned to the cabin. Rather, he took issue with the value assigned to the land.

6. The cabin on the subject property is a non-conforming use. The cabin is within 100 feet of a creek that is on the property. Current regulations would have to be waived if someone wanted to build for the first time within 100 feet of the creek.

7. PETITIONER argues if the cabin were destroyed, he could not rebuild. PETITIONER said that because the property is in a flood plain, FEMA will not allow him to rebuild. He said he went to FEMA and explained the situation. He said he was told he could repair partial destruction, but would not be allowed to rebuild if the cabin were totally destroyed. He said this reduces the value of his land should he attempt to sell.

8. PETITIONER did not cite anything in the United States Code or the Code of Federal Regulations supporting his position. He did not call as a witness the person who told him he could not rebuild.

9. Salt Lake County Ordinance 19.88.110 allows rebuilding of a nonconforming building or structure damaged or destroyed by fire, flood, wind, earthquake, or other calamity or act of God or the public enemy, if restoration is begun within one year and diligently prosecuted to completion.

10. RESPONDENT REPRESENTATIVE said if the current cabin were destroyed in a manner outlined in 19.88.110, and PETITIONER rebuilt on the footprint of the current structure, Salt Lake County would allow him to rebuild.

11. While PETITIONER argued that the comparables used in RESPONDENT REPRESENTATIVE'S appraisal were not an appropriate measure of value, he introduced no evidence of comparable properties to support his requested value.

APPLICABLE LAW

1. All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provide by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value. (Utah Code Ann. 59-2-102(12).)

3. (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. . .

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(3) In reviewing the county board's decision, the commission may:

(a) admit additional evidence;

(b) issue orders that it considers to be just and proper; and

(c) make any correction or change in the assessment or order of the county board of equalization.

(Utah Code Ann. Sec. 59-2-1006(1)&(3).)

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 76-8-502, 76-8-503, 63-46b-8.

A. Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

B. Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

1. The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

2. The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

CONCLUSIONS OF LAW

1. To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

2. In this matter Petitioner's evidence is not sufficient to show the County's original assessment contained an error. Additionally, Petitioner did not provide a sound evidentiary basis upon which the Commission could reduce the valuation to the amount proposed by Petitioner.

DISCUSSION

Petitioner offered no evidence of value. He questioned RESPONDENT REPRESENTATIVE on the comparables used in the Respondent's appraisal. Assuming PETITIONER'S questioning of RESPONDENT REPRESENTATIVE established sufficient doubt as to the validity of the manner in which the County derived the value contained in the assessment, PETITIONER offered no evidence of his own as to what the value ought to be, save his assertion that he cannot rebuild on his property if his cabin were to be destroyed.

Petitioner's assertion that FEMA would prevent him from rebuilding is based entirely on hearsay. PETITIONER did not cite any controlling legal authority supporting his assertion. He did not call as a witness the person at FEMA with whom he spoke. Absent a residuum of competent evidence, R861-1A-28 (2) prevents the Commission from finding FEMA prevents rebuilding on the subject property. To the contrary, 19.88.110 permits rebuilding.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2005, is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2007.

R. Spencer Robinson
Administrative Law Judge

Appeal No. 06-0906

BY ORDER OF THE UTAH STATE TAX COMMISSION:

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

DATED this _____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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

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