

11-168
TAX TYPE: PROPERTY
TAX YEAR: 2010
DATE SIGNED: 11-9-2012
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER Petitioner, vs. BOARD OF EQUALIZATION OF (X) COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 11-168 Parcel No. ##### Tax Type: Property Tax Tax Year: 2010 Judge: Marshall
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Presiding:

Michael J. Cragun, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*
For Respondent: RESPONDENT REPRESENTATIVE-1, Appraiser for (X) County
RESPONDENT REPRESENTATIVE-2, Tax Administrator for (X) County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 31, 2012, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Taxpayer is appealing the assessed value of the subject property located in (X) County, Utah.
2. The (X) County Assessor's Office assessed the property at \$\$\$\$\$. The Board of Equalization reduced the value to \$\$\$\$\$. The County is asking the Commission to sustain the Board of Equalization value, while the Taxpayer maintains the property has no value.
3. The subject property is parcel no. #####, located at ADDRESS in CITY-1. It is a #####-acre parcel improved with a ##### year old rambler with a brick and siding exterior. The home has

square feet above grade and a ##### square foot basement, with ##### square feet finished. It has ##### bedrooms, ##### bathroom, and a ##### car garage.

4. The Taxpayer would agree with the Board of Equalization value, if he had a clean title to the property. The Taxpayer argued that he does not own the property he is being taxed on, that the property does not have clear title, and that without clear title a value could not be established for the subject property.
5. The Taxpayer submitted an aerial photograph of the subject on which he had labeled several sections of the property. (Exhibit P-1). There is a black line that encompasses what appears to be the subject property. The section labeled “A” the Taxpayer stated is not in the property description of the subject, and he has never claimed to own that portion of the property. It was apparently annexed by the city to expand STREET, but as of the hearing appeared to be used as part of the Taxpayer’s front yard. The section labeled “C” the Taxpayer maintains was granted to an adjoining property owner in a 1969 decision issued by the District Court of (X) County. The section labeled “D” is what the Taxpayer believes he owns, based on the 1969 court decision.
6. The Taxpayer purchased the property in 1975, when it was a vacant lot. He testified that he was able to obtain a loan from his credit union, and was not required to have title insurance. In 1983 a building permit for the home was issued.
7. In support of the Board of Equalization value, the County’s representative submitted a retrospective appraisal report that determined a value of \$\$\$\$ as of the January 1, 2010 lien date. (Exhibit R-1). Following are the comparable sales used in the County’s appraisal:

	Address	Lot Size	Year Built	GLA	BSMT	Sales Date	Sales Price	Adjusted Price
Subject	ADDRESS	#####	1981	#####	#####			
Comp #1	ADDRESS-1	#####	1953	#####	#####	12/11/09	\$\$\$\$	\$\$\$\$
Comp #2	ADDRESS-2	#####	1953	#####	#####	7/7/09	\$\$\$\$	\$\$\$\$
Comp #3	ADDRESS-3	#####	1954	#####	#####	8/18/09	\$\$\$\$	\$\$\$\$
Comp #4	ADDRESS-4	#####	1973	#####	#####	7/31/09	\$\$\$\$	\$\$\$\$

8. The County’s appraiser did not take into consideration the clouded title issue in his determination of value. It is the County’s position that the title issues to the property could be fixed with a quiet title or adverse possession action.
9. The County’s representative provided a map showing the extension of the CITY-1 limits that expanded STREET. (Exhibit R-2). The County’s representative stated that they have honored the legal description of the subject and it does not include that portion annexed by CITY-1. The County’s representative noted that to date, there has been no attempt by CITY-1 to claim the

property annexed.

10. The County's representative provided a copy of the 1969 decision issued by the District Court of (X) County. (Exhibit R-3). The County's representative stated that the Taxpayer was able to build on the property after the issuance of the 1969 decision because the decision had not been recorded with the County Recorder's Office.
11. The County's representative provided a plat map with colored lines indicating that portion of the subject included in the legal description, the portion annexed by CITY-1, and that portion included in the 1969 judgment. (Exhibit R-4). The lines appear to correspond with those in Exhibit P-1.
12. The (X) County Board of Equalization determined that a reduction in the amount of \$\$\$\$ was appropriate to account for the "encroachments involving this property".

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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 provided by law.

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(12), as follows:

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

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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.

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the value established by the County contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by

the party. The Commission relies in part on *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

CONCLUSIONS OF LAW

In seeking a value lower than that established by the board of equalization, the Taxpayer has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must also provide an evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “market value” as the amount for which property would exchange hands between a willing buyer and seller.

The subject property has value despite there being an apparent cloud on the title. The Taxpayer has argued that the subject property has no value because there is a cloud on the title. However, he has not provided an evidentiary basis to support this contention. He continues to live in the property, and has been using that area of the subject property under dispute as a part of his yard for a number of years. The Taxpayer agrees that the Board of Equalization value would be reasonable, if he had a clean title.

The County submitted an appraisal report that determined a value of \$\$\$\$\$. This value does not take into consideration the clouded title issues. The County Board of Equalization made an adjustment of \$\$\$\$\$ to account for the “encroachments involving this property”. Absent any evidence from either party as to what impact the clouded title would have on value, the \$\$\$\$\$ does not seem unreasonable. If the appraisal value were reduced by this amount, it results in a value of \$\$\$\$\$ for the subject property as of the January 1, 2010 lien date.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$ as of the January 1, 2010 lien date. The (X) County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

Appeal No. 11-168

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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. §63G-4-302. 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 Ann. §59-1-601 et seq. and §63G-4-401 et seq.