

IN THE UTAH COURT OF APPEALS

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William Marsh,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20080291-CA
v.)	
)	
<u>Tax Commission</u> and Board of)	F I L E D
Equalization of Box Elder)	(February 20, 2009)
County,)	
)	2009 UT App 44
Respondents.)	

Original Proceeding in this Court

Attorneys: William Marsh, Willard, Petitioner Pro Se
Mark L. Shurtleff, Timothy A. Bodily, and John C.
McCarrey, Salt Lake City, for Respondents

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

William Marsh appeals the Utah State Tax Commission's (the Commission) order regarding the market value of his property. We affirm.

Marsh asserts that his property on both the east and west side of Highway 89 should be construed as a single farm, rather than separate parcels. He further asserts that the land located east of the highway (east side property) should be subject to an agricultural use assessment. Utah Code section 59-1-610(1) provides that this court shall grant the Commission deference to its written findings of fact, while applying a substantial evidence standard of review. See Utah Code Ann. § 59-1-610(1)(a) (2008).

In assessing a property tax, the unit of property must first be determined. See County Bd. of Equalization v. Stichting Mayflower Recreational Fonds, 2000 UT 57, ¶ 11, 6 P.3d 559. The size of the property to be assessed is a factual determination. See id. ¶ 12. Under a substantial evidence standard of review, we will uphold the Commission's factual determinations so long as there is sufficient evidence to support its findings. See id.

¶ 15. For conclusions of law, we apply a correction of error standard, unless there is an explicit grant of discretion contained in the statute before the court. See Utah Code Ann. § 59-1-610(1)(b) (2008).

The Commission determined that the east side property should be assessed separately from the parcels on the west side of the highway (west side property), which qualify for an agricultural use assessment under Utah Code section 59-2-503. The Commission found that the east side property did not meaningfully contribute to the west side property's farm production as there was no evidence that the east side property provided storage, staging, or actual production to support the west side property's farming operation.

In response, Marsh asserts that a residence located on the east side property contributes to the west side property's agricultural production. Inasmuch as Marsh characterizes the residence as a "farmhouse," Utah Code section 59-2-507(1) provides that the land under a farmhouse, "and land used in connection with the farmhouse," is excluded from the determination as to the total area of land actively devoted to agricultural use. Utah Code Ann. § 59-2-507(1) (2006). Thus, we need not reach the issue of whether the "farmhouse" meaningfully contributes to the west side property's farm production. Section 59-2-507(1) expressly provides that the east side property's residence, and the land associated with it, cannot be subject to an agricultural use assessment. See id.

The record supports the Commission's determination that the east side property did not significantly contribute to the west side property's farming operations as the east side property was used for recreational and residential purposes. This, coupled with the Commission's factual determination that the east side property did not significantly contribute to the staging, storage, and actual production of the west side property's farming operations, supports the Commission's determination that the east side property must satisfy its own agricultural production requirements.

Section 59-2-503 provides that in order for land to qualify for an agricultural use assessment, the land must first be devoted to agricultural use, and second, that the land has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed. See Utah Code Ann. § 59-2-503.

The record contains sufficient evidence supporting the Commission's factual determination that the east side property was not devoted to agricultural use for the relevant time period.

The record establishes that, during the relevant time period, the east side property was devoted to residential, hiking, horseback riding, ATV riding, and similar recreational purposes.

Marsh also asserts that gravel was mined on the east side property. However, gravel mining is governed by Utah Code section 59-2-201(1)(e) and any mining activity is to be assessed at one-hundred-percent of the property's fair market value. See Utah Code Ann. § 59-2-201(1)(e). Additionally, gravel mining would not provide sufficient evidence of "land in agricultural use." Id. § 59-2-502(4). Thus, this evidence would not establish that the east side property should be subject to an agricultural use assessment.

Accordingly, the Commission's order is affirmed.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge