

09-0835
LOCALLY ASSESSED PROPERTY
SIGNED 01-27-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioners,

v.

BOARD OF EQUALIZATION OF
IRON COUNTY, STATE OF UTAH,

Respondent.

**ORDER FOR IRON COUNTY TO
RECONVENE THE 2008 BOARD OF
EQUALIZATION TO CONSIDER
CORRECTION FOR FACTUAL ERROR**

Appeal No. 09-0835

Parcel No. #####

Tax Type: Property Tax / Locally Assessed

Tax Year: 2008

Judge: Chapman

Presiding:

Michael J. Cragun, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 2, Taxpayer
PETITIONER 1, Taxpayer
For Respondent: RESPONDENT REP 1, Deputy Iron County Attorney
RESPONDENT REP 2, Iron County Assessor

STATEMENT OF THE CASE

This matter came before the Commission on December 16, 2009 for a Hearing on Iron County's (the "County) Motion to Dismiss this appeal.

On November 17, 2008, PETITIONER 1 and PETITIONER 2 ("Petitioners" or "taxpayers") submitted a letter, in which they asked the Commission to rectify problems they believe to exist in the County's records concerning the acreage of a parcel they own in the County. The taxpayers own Parcel No. ##### ("Parcel 1") and indicate that this parcel is assessed on the County tax rolls. County documents show this parcel to be 231.92 acres in size. However, the taxpayers claim that they also own another 22.22 acres of adjacent land that is not included in the acreage shown for Parcel 1 and for which the County has not assigned

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On March 4, 2009, the taxpayers submitted a Request for Redetermination of County Board of Equalization Decision (Tax Commission Form 194) (“Form 194”), in which they asked the Commission to rectify the acreage issue described above for the 2008 tax year. Upon receiving the Form 194, Commission staff assigned the matter Appeal No. 09-0835. On May 6, 2009, the matter was scheduled for a July 7, 2009 Initial Hearing at the Commission. On June 24, 2009, the taxpayers submitted to the Commission and the County a copy of the evidence they intended to submit at the Initial Hearing.

Also on June 24, 2009, the County submitted its Motion to Dismiss the appeal. In the motion, the County argued that the taxpayers lack standing because this matter was never appealed to the 2008 County BOE. Because the 2008 County BOE has not issued a decision in this matter, the County contends that no decision exists for the Commission to review. At the Hearing on Motion, the County indicated that a County BOE hearing would be the appropriate venue for the acreage issue to be resolved. However, because no appeal was filed with the 2008 County BOE, the County asks the Commission to grant its Motion to Dismiss the appeal. The County stated that it does not believe that Utah law provides for the 2008 County BOE to be reopened under the circumstances. In addition, the County stated that the taxpayers have brought the acreage issue before district court, where their claim was dismissed with prejudice, and that the matter is currently under review by the United States Court of Appeals for the Tenth Circuit.

On June 29, 2009, the taxpayers filed an Objection to the County’s Motion to Dismiss (“First Objection”), in which they asked the Commission to deny the County’s motion. The taxpayers explained that they had spoken to Commission personnel, who instructed them to submit the Form 194 and file an appeal with the Commission.

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Upon receiving the County’s Motion to Dismiss, the Commission scheduled the December 16, 2009 Hearing on Motion. On December 4, 2009, the taxpayers submitted another Objection to the County’s Motion to Dismiss (“Second Objection). Included with the Second Objection were documents showing that the taxpayers filed an appeal with the 2009 County BOE. The taxpayers claim that when they filed the appeal with the 2009 County BOE, County personnel informed them that the County BOE considers market value issues only and does not have jurisdiction over the acreage issue the taxpayers sought to have resolved. The taxpayers also claim that at the October 2, 2009 County BOE hearing, they were informed by the hearing officer that the County BOE has no jurisdiction to hear the acreage issue and that RESPONDENT REP 2, who was present at the County BOE hearing, informed them that they would have to speak with the County attorney to find out the proper venue in which the acreage issue can be resolved. However, at the Hearing on Motion, RESPONDENT REP 2 indicated that the County BOE hearing officer should have taken information concerning the acreage issue and corrected it, if the evidence showed the County’s current acreage to be incorrect.

The taxpayers also submitted the 2009 County BOE’s Notice of Determination, in which the County BOE informed the taxpayers that for the 2009 tax year, “your property value has not been adjusted after a review of the information you provided along with available cost, income and market data.” The County BOE decision does not expressly address the acreage issue. However, the decision shows that the County BOE did not change the acreage amount that was reflected in County records prior to the hearing. Given these circumstances, the taxpayers ask the Commission to deny the County’s Motion to Dismiss and to hold a hearing to decide the correct acreage that should be assessed for the 2008 tax year.

APPLICABLE LAW

Utah Code Ann. §59-2-1006(1) provides that “[a]ny person dissatisfied with the decision of

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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”

UCA §59-2-1004 provides that a taxpayer can file an appeal with a county board of equalization, as follows in pertinent part:

- (1) (a) A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal by:
 - (i) filing the application with the county board of equalization within the time period described in Subsection (2); or
 - (ii) making an application by telephone or other electronic means within the time period described in Subsection (2) if the county legislative body passes a resolution under Subsection (5) authorizing applications to be made by telephone or other electronic means.
- (b) The contents of the application shall be prescribed by rule of the county board of equalization.
- (2) (a) Except as provided in Subsection (2)(b), for purposes of Subsection (1), a taxpayer shall make an application to appeal the valuation or the equalization of the taxpayer's real property on or before the later of:
 - (i) September 15 of the current calendar year; or
 - (ii) the last day of a 45-day period beginning on the day on which the county auditor mails the notice under Section 59-2-919.1.
- (b) Notwithstanding Subsection (2)(a), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing for circumstances under which the county board of equalization is required to accept an application to appeal that is filed after the time period prescribed in Subsection (2)(a).

. . . .

Utah Admin. Rule R884-24P-66 (“Rule 66”) provides circumstances under which a county board of equalization can be reopened, as follows in pertinent part:

- A. 1. "Factual error" means an error that is:
 - a) objectively verifiable without the exercise of discretion, opinion, or judgment, and
 - b) demonstrated by clear and convincing evidence.
- 2. Factual error includes:
 - a) a mistake in the description of the size, use, or ownership of a property;
 - b) a clerical or typographical error in reporting or entering the data used to

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establish valuation or equalization;

c) an error in the classification of a property that is eligible for a property tax exemption under:

(1) Section 59-2-103; or

(2) Title 59, Chapter 2, Part 11;

d) valuation of a property that is not in existence on the lien date; and

e) a valuation of a property assessed more than once, or by the wrong assessing authority.

B. Except as provided in D., a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

1. During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

2. During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

3. The county did not comply with the notification requirements of Section 59-2-919(4).

4. A factual error is discovered in the county records pertaining to the subject property.

5. The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

C. Appeals accepted under B.4. shall be limited to correction of the factual error and any resulting changes to the property's valuation.

D. The provisions of B. apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

...

UCA §59-2-1365(2) provides that the “the county treasurer shall . . . make a final annual settlement on March 31 with each taxing entity. . . .”

DISCUSSION

At the Hearing, the County asserted that the County BOE is an appropriate venue for an issue concerning the size of a parcel to be resolved. In fact, RESPONDENT REP 2, the County assessor, stated that

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he had initiated appeals before the County BOE in the past to rectify a parcel’s acreage. Furthermore, Rule 66(B)(4) provides that a county board of equalization may address a “factual error” that exists in the county records. Rule 66(A)(2)(a), (d) specifies that a “factual error” includes “a mistake in the description of the size . . . of a property” and “valuation of a property that is not in existence on the lien date[.]” While RESPONDENT REP’s assertion that the County BOE is an appropriate venue to address acreage issues to the extent they affect valuation is correct, the County BOE may not be the appropriate venue to address property line disputes and other similar matters.

It does not appear, however, that an appeal concerning the 2008 tax year is properly before the Commission *at this time*. The taxpayers did not file an appeal with the 2008 County BOE. Section 59-2-1006(1) provides that “[a]ny person dissatisfied with the decision of the county board of equalization . . . may appeal that decision to the commission[.]” Because the 2008 County BOE has not issued a decision in this matter, there is not yet a decision for this year to appeal to the Commission. However, as explained below, circumstances may arise where the taxpayers or the County may properly bring the matter before the Commission for the 2008 tax year at a later date.

Utah law provides for the 2008 County BOE to be reopened to hear the acreage issue and to issue a decision that can then be appealed to the Commission. Section 59-2-1004(2)(b) requires a county board of equalization to accept late-filed appeals under circumstances described in rules adopted by the Commission. Rule 66(B)(4) provides that a county board of equalization shall accept a late-filed appeal under specific circumstances, including where a “[f]actual error is discovered in the county records pertaining to the subject property.” Rule 66(D), however, limits reopening the board to a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365. Section 59-2-1365 provides that a treasurer shall make its final annual settlement on March 31.

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In this case, the county treasurer is required to make its final annual settlement for the 2008 tax year on March 31, 2009. The taxpayers approached the Commission in November 2008 to see what actions they should take to resolve the acreage issue for that year. Commission personnel instructed the taxpayers to file an appeal with the Commission using Form 194. The taxpayers filed this form with the Commission on March 4, 2009. All of these events occurred prior to the March 31, 2009 cut-off date for the County BOE to be reopened. The Commission has regularly found that a county board of equalization should be reopened if the request comes in prior to the March 31st deadline, even though the Commission’s ruling May be issued after this date.

When the taxpayers initially contacted the Commission in November 2008, they had not filed an appeal with the 2008 County BOE. Under such circumstances, the Commission should have instructed the taxpayers to file a Form 194A (Request to Reconvene the Board of Equalization), not a Form 194 to request an appeal to the Commission. From the November 2008 letters the taxpayers submitted to the Commission and from the March 4, 2009 Form 194 that they completed and submitted pursuant to Commission directions, it is clear that the taxpayers wanted to have the acreage issue resolved for the 2008 tax year. As a result, the taxpayers’ actions should be construed as a request to reopen the 2008 County BOE that occurred prior to March 31, 2009.

Under these circumstances, the 2008 County BOE should be reopened to hear the taxpayers’ acreage issue in accordance with Section 59-2-1004 and Rule 66. It is noted, however, that when the County BOE is reopened to hear a factual issue, Rule 66(C) provides that the appeal “shall be limited to correction of the factual error and any resulting changes to the property’s valuation.” Once the 2008 County BOE considers and issues a decision about the acreage issue, a party can appeal that decision to the Commission in accordance with Section 59-2-1006.

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The taxpayers asked the Commission to take original jurisdiction over the acreage issue for the 2008 tax year instead of ordering the 2008 County BOE to be reopened to first address the issue. However, the Commission generally does not take original jurisdiction over a matter that has not been heard by a county board of equalization. Although the taxpayers tried to have the 2009 County BOE address the acreage issue, it does not appear that the 2009 County BOE did so. The taxpayers indicated that the hearing officer who heard their appeal at the 2009 County BOE refused to consider the acreage issue, which appears to be supported by RESPONDENT REP 2’ testimony. Before the Commission holds a hearing concerning the acreage issue, the 2008 County BOE should hold a hearing, consider the taxpayers’ evidence and issue a decision expressly addressing the acreage issue. For these reasons, original jurisdiction will not be taken over the matter.

Given these determinations, the County’s Motion to Dismiss is moot and need not be addressed.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission orders the County to reconvene the 2008 County BOE to hear the taxpayers’ late-filed appeal concerning the acreage issue. The hearing before the County BOE is limited to correction of factual errors and any resulting valuation changes. After the County BOE issues a decision for the 2008 tax year, a party can appeal that decision to the Commission. It is so ordered.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

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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.

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