

09-3427  
LOCALLY ASSESSED PROPERTY  
TAX YEAR: 2009  
SIGNED: 01-13-2011

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,  Petitioner,  vs.  BOARD OF EQUALIZATION OF DAVIS COUNTY,  Respondent.	<b>ORDER DENYING MOTION TO DISMISS</b>  Appeal No.    09-3427  Parcel No.    ##### Tax Type:    Locally Assessed Property Tax Tax Year:    2009  Judge:        Jensen
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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER 1, Taxpayer, appearing by telephone  
For Respondent:    RESPONDENT REP. 1, for Davis County  
                    RESPONDENT REP. 2, for Davis County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 9, 2010 for a Hearing on a Motion to Dismiss filed by the Board of Equalization of Davis County (the "County"). The County filed its Motion to Dismiss on the basis that the above-named Petitioner (the "Taxpayer") had failed to provide evidence to support a claim for a change in value within the time provided under Utah law.

APPLICABLE LAW

To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

- a) the name and address of the property owner;
- b) the identification number, location, and description of the property;
- c) the value placed on the property by the assessor;
- d) the taxpayer's estimate of the fair market value of the property; and
- e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

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Utah Admin. Rule R861-1A-9(C)(8).

If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief. Utah Admin. Rule R861-1A-9(C)(9).

If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief. Utah Admin. Rule R861-1A-9(C)(10).

If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case. Utah Admin. Rule R861-1A-9(C)(11).

#### DISCUSSION

On July 24, 2009, the County mailed its notice of property valuation to the Taxpayer for the subject property, parcel no. #####. That notice included language giving the Taxpayer until September 15, 2009 to file an appeal of the valuation. On September 11, 2009, the Taxpayer timely filed a request to review market value. The Taxpayer claimed a factual error in the assessor's data, indicating "this cannot have raised \$\$\$\$ in value in 1 yr. The property is land-locked and not available to be sold as subdivision even if we wanted to. The property is ( WORDS REMOVED )." On September 11, 2009, the same day it received the request to review market value, the County sent a notice to the Taxpayer. That notice indicated that the request to review market value did "not contain sufficient information to warrant an adjustment in property value." The County's notice provided the Taxpayer 20 calendar days to provide "[s]ufficient documentation that supports your basis for appeal."

On October 5, 2010, the Taxpayer mailed documentation in the form of an October 5, 2010 letter from a city planner indicating that the subject property had "very limited" development potential on its own and that if the property was ever to develop in the future, it "should be accomplished with neighboring properties." The County indicates that it received the Taxpayer's documentation on October 6 or 7, 2009, but that the documentation was not matched to the Taxpayer's file as of October 13, 2009. On October 13, 2009, the County dismissed the Taxpayer's appeal and sent notice of dismissal to the Taxpayer. The County maintains that its dismissal was proper because the Taxpayer did not timely respond with evidence as required under Utah law. The Taxpayer's position is that the dismissal was improper because the County had required evidence well before dismissal date.

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Utah law provides that a valid appeal to a county board of equalization must include “a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.” Utah Admin. Rule R861-1A-9(C)(8). If a taxpayer files an appeal without a signed statement, a county board of equalization is to provide ten days for the Taxpayer to provide the signed statement. Utah Admin. Rule R861-1A-9(C)(9). If a taxpayer provides a signed statement but no evidence or documentation, a county board of equalization is to give written notice and provide “at least 20 calendar days to supply the evidence or documentation.” Utah Admin. Rule R861-1A-9(C)(10). If a taxpayer does not provide the evidence or documentation, the county board of equalization has the right to “dismiss the matter for lack of evidence to support a claim for relief.” Utah Admin. Rule R861-1A-9(C)(10). If a taxpayer provides the evidence or documentation, Utah law requires that the county board of equalization “render a decision on the merits of the case.” Utah Admin. Rule R861-1A-9(C)(11).

Applying Utah law to the facts of this case, the parties agree that the Taxpayer timely filed an appeal with the County that met requirements of subsections a), b), c), and d) of Utah Admin. Rule R861-1A-9(C)(8). As to subsection e), the County agreed that the Taxpayer submitted a signed statement. The only area of dispute is whether the Taxpayer provided “evidence or documentation” as required by the second half of subsection e) of Utah Admin. Rule R861-1A-9(C)(8).

Evidence, as used in Utah Admin. Rule R861-1A-9(C)(8)(e), would include documentation. But Utah Admin. Rule R861-1A-9(C)(8)(e) can be satisfied by other than documents. It specifically provides that a taxpayer is able to provide “evidence or documentation.” In this case, the Taxpayer’s appeal included a statement that “this cannot have raised \$\$\$\$ in value in 1 yr. The property is land-locked and not available to be sold as subdivision even if we wanted to. The property is ( WORDS REMOVED ).” Although this testimony is not documentation, it is evidence. On that basis, the Taxpayer satisfied Utah Admin. Rule R861-1A-9(C)(8)(e) and is entitled to a hearing before the board of equalization. Because the Taxpayer satisfied the minimum requirements of Utah Admin. Rule R861-1A-9(C)(8)(e), there is no basis to grant the County’s motion to dismiss.

Clinton Jensen  
Administrative Law Judge

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ORDER

The Commission denies the County's Motion to Dismiss and remands the matter to the Davis County Board of Equalization for a hearing as provided under Utah law. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

**Notice and Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission pursuant to Utah Code Sec. 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 Sec. 59-1-601 et seq. and 63G-4-401 et seq.

*CDJ.odm*