

13-426  
TAX TYPE: PROPERTY TAX - LOCALLY ASSESSED  
TAX YEAR: 2012  
DATE SIGNED: 10-11-2013  
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF DAVIS COUNTY, STATE OF UTAH, <i>ex rel.</i> TAXPAYERS,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 13-426</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2012</p> <p>Judge: Chapman</p>
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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER-1, from the Davis County Assessor's Office  
REPRESENTATIVE FOR PETITIONER-2, from the Davis County Assessor's Office

For Respondent: RESPONDENT, Representative for Davis County Board of Equalization

For ex rel. Parties: REPRESENTATIVE FOR TAXPAYERS, Representative

STATEMENT OF THE CASE

The Davis County Assessor ("Petitioner" or "Assessor") brings this appeal from the decision of the Davis County Board of Equalization ("Respondent" or "County BOE") concerning a residential property owned by TAXPAYERS ("ex rel. parties" or "taxpayers"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on October 1, 2013.

At issue is the fair market value of the subject property as of January 1, 2012. The subject is a single-family residence located at SUBJECT ADDRESS in CITY-1, Utah. The County BOE reduced the \$\$\$\$ value at which the subject was originally assessed for the 2012 tax year to \$\$\$\$.

At the Initial Hearing, the Petitioner (i.e., the Assessor) asked to withdraw its appeal, which would result in the subject's 2012 value remaining at the \$\$\$\$ value established by the County BOE. The Assessor explained that it was asking to withdraw because it had become aware that it filed its Tax Commission appeal more than 30 days after the County BOE issued its decision reducing the subject's value.

The County BOE did not object to the Assessor's request to withdraw its appeal. REPRESENTATIVE FOR TAXPAYERS, the taxpayers' representative, however, did object. He stated that he wanted to contest the \$\$\$\$ value established by the County BOE and to ask the Commission to further reduce the subject's 2012 value.

The presiding officer informed the parties that the Commission would first address whether it had jurisdiction to hear the appeal (i.e., addressing whether or not the Assessor timely filed its appeal). If the Commission decides that it does not have jurisdiction to hear the appeal, it will dismiss the matter, and the \$\$\$\$ value established by the County BOE will remain the subject's 2012 value. However, if the Commission decides that it does have jurisdiction to hear the appeal, it will then consider value and determine whether or not the current value of \$\$\$\$ should be changed.

If the Commission does not dismiss the appeal and, thus, addresses the subject's value, the Assessor asks the Commission to increase the subject's 2012 value to \$\$\$\$\$, the amount at which it was originally assessed for 2012. The County BOE asks the Commission to sustain the \$\$\$\$ value that it established at the local hearing. The taxpayers ask the Commission to reduce the subject's 2012 value to \$\$\$\$.

APPLICABLE LAW

**Law Concerning Jurisdiction.** Utah Code Ann. §59-2-1006(1) provides that “[a]ny 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.”

**Law Concerning Petitioner’s Request to Withdraw Appeal.** Utah Admin. Rule R861-1A-26 provides guidance concerning a request to withdraw a locally-assessed property tax appeal, as follows in pertinent part:

....  
(6) Motions.

....  
(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

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**Law Concerning Value.**

UCA §59-2-103(1) provides that “[a]ll 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 provided by law.”

UCA §59-2-102(12) defines “fair market value” to mean “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 a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation to the amount

proposed by the party. *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, (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).

### DISCUSSION

The Commission must first decide whether or not it has jurisdiction to hear the appeal. If the Commission does not have jurisdiction, the appeal will be dismissed, and the Commission will not address the County BOE's decision to reduce the subject's 2012 value to \$\$\$\$\$.

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 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." The Assessor is considered a "person" who can appeal a decision made by the County BOE to the Tax Commission under this statute.<sup>1</sup> Remaining at issue, however, is whether the Assessor filed a notice of appeal with the county auditor within 30 days after the final action of the county board. If the Assessor did not comply with this portion of the statute, the appeal should be dismissed.

The Assessor filed a "Request for Redetermination of County Board of Equalization Decision" form ("TC-194 Form") with the Davis County Auditor to appeal the County BOE's decision to reduce the subject's 2012 value from \$\$\$\$\$ to \$\$\$\$\$. The Assessor signed and submitted the form on February 5, 2013. The County BOE, however, took its "final action" to reduce the subject's value on December 12, 2012.<sup>2</sup> The

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1 See *Kimball Condos. Owners Ass'n v. County Bd. Of Equalization*, 943 P.2d 642 (Utah 1997); *Alliant Techsystems, Inc. v. Salt Lake County Bd. Of Equalization, et al.*, 110 P.3d 691 (Utah 2005).

2 At the bottom of the Petitioner's TC-194 Form, the County BOE indicated that the "date of the BOE decision" was November 16, 2012. However, this date does not reflect the date that the County BOE took its final action. November 16, 2012 is the date that the County BOE hearing officer made his recommendation to

February 5, 2013 date on which the Assessor signed and submitted the TC-194 Form occurred 55 days after the December 12, 2012 date on which the County BOE took its final action. Accordingly, the Assessor did not file its appeal to the Tax Commission within 30 days of the date that the County BOE took its final action, as required by Section 59-2-1006(1).

The County BOE's representative, RESPONDENT, receives and processes the forms that parties submit to appeal to the Tax Commission. At the hearing, RESPONDENT stated that soon after the County BOE made its final decision to reduce the subject's 2012 value, the Assessor came to her and verbally indicated its desire to appeal the County BOE's decision. RESPONDENT stated that this conversation probably occurred in mid-December 2012 because she was away from work from late December 2012 to late January 2013 because of surgery. However, she has no record of when she spoke to the Assessor. Nevertheless, she stated that she recommended that the Assessor wait to see if the taxpayers appealed the County BOE's decision to the Tax Commission before the Assessor filed an appeal.

The taxpayers did not file an appeal of the County BOE's decision to the Tax Commission. On February 5, 2013, soon after RESPONDENT returned to work in late January 2013, the Assessor filed the TC-194 Form to appeal the County BOE's decision to the Tax Commission.

It is clear that the Assessor did not file his appeal to the Tax Commission within the 30-day deadline required under Section 59-2-1006(1). Although RESPONDENT suggested for the Assessor wait and see if the taxpayer appealed before filing his own appeal, she did not tell the Assessor that he could file an appeal beyond the 30-day period allowed by law or that he should wait until after the 30-day period had expired. The Assessor is also not excused from filing an appeal within the 30-day timeframe because an employee in the Auditor's office was away from work because of illness. The Assessor could have filed an appeal within the

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the County BOE. The County BOE did not accept the hearing officer's recommendation and did not issue its

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30-day deadline regardless of whether RESPONDENT was at work. None of the parties submitted any law or court precedent showing that the Commission should excuse the 30-day deadline to file an appeal under these circumstances. For these reasons, the Commission should find that it does not have jurisdiction in this matter. Accordingly, the Commission should dismiss the appeal and not address the subject's current 2012 value of \$\$\$\$\$.

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Kerry R. Chapman  
Administrative Law Judge

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decision (i.e., its final action) until December 12, 2012.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission dismisses this appeal. The Commission is not authorized to consider an appeal of the County BOE's final decision concerning the subject's 2012 value because no party, including the Assessor, filed an appeal to the Tax Commission within 30 days of the County BOE's final action, as required under Section 59-2-1006(1). As a result of this order, the subject's 2012 value will remain at the \$\$\$\$ value established by the County BOE. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the taxpayer's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner