16-1709
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2016
DATE SIGNED: 5-2-2017
COMMISSIONERS: J. VALENTINE, R. PERO, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	**ORDER ON COUNTY'S DISMISSAL** Appeal No. 16-1709 Parcel No. XXX-052, XXX-283-006- and XXX-276-006 Tax Type: Property Tax / Locally Assessed Tax Year: 2016 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge
Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT-1, COUNTY-1, Tax Administrator
RESPONDENT-2, COUNTY-1
RESPONDENT-3, COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Hearing on County's Dismissal on March 23, 2017. Petitioner ("Property Owner") filed with the Utah State Tax Commission an appeal of the decisions issued by Respondent dismissing the appeals of the above listed parcels for tax year 2016. The County had dismissed the appeals because the Property Owner had failed to provide sufficient evidence or documentation with his appeals to the COUNTY-1 Board of Equalization ("County"). Based on Utah Admin. Rule R861-1A-9, on an appeal from a dismissal by the County Board of Equalization, the only matter that will be reviewed by the Commission is the dismissal itself and not the merits of the appeal.

APPLICABLE LAW

Utah Code §59-2-1004 provides that a taxpayer or property owner may appeal the assessed value set by a County Assessor to the County Board of Equalization as set forth below 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);
> . . .
>
> (b) The contents of the application shall be prescribed by rule of the county board of equalization.
>
> (3) The owner shall include in the application under Subsection (1)(a)(i) the owner's estimate of the fair market value of the property and any evidence which may indicate that the assessed valuation of the owner's property is improperly equalized with the assessed valuation of comparable properties.
> . . .
>
> (6) If any taxpayer is dissatisfied with the decision of the county board of equalization, the taxpayer may file an appeal with the commission as prescribed in Section 59-2-1006.

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a property owner achieves standing to appeal to a county board of equalization and when the county board is required to issue a decision on the merits as follows:

> (2) 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;
> (e) evidence or documentation that supports the taxpayer's claim for relief; and
> (f) the taxpayer's signature.
> (3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing 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.
> (4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.
> (5) If the information required under Subsection (2) is supplied, the county board of

equalization shall render a decision on the merits of the case.
(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.
. . .

The Commission has promulgated Administrative Rule R884-1A-9 regarding appeals to the Commission of decisions where the County Board issued an order of dismissal. It provides in relevant part:

(5) Appeals to the commission shall be on the merits except for the following:
(a) dismissal for lack of jurisdiction;
(b) dismissal for lack of timeliness;
(c) dismissal for lack of evidence to support a claim for relief.
. . . .
(7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be revived by the commission is the dismissal itself, not the merits of the appeal.
(8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:
(a) dismissal under Subsection (5)(a) or (c) was improper;
(b) the taxpayer failed to exhaust all administrative remedies at the county level;
(c) in the interest of administrative efficiency, the matter can best be resolved by the county board;
(d) the commission determines that dismissal under Subsection (5)(a) or (c) is improper under Rule R884-24P-66; or
(e) a new issue is raised before the commission by a party.

DISCUSSION

The facts relevant to determining whether the County's dismissal of the Property Owner's appeals to the County Board of Equalization was proper under Utah Admin. Rule R884-24P-66(3) are the following. The Property Owner timely filed appeal forms to the County Board of Equalization for each parcel, however, the Property Owner did not attach an appraisal, comparable sales, cost information or bids on construction work to the appeal forms. The Property Owner did attach a handwritten statement to each appeal form explaining his position regarding each specific property.

For parcel no. XXX-052 (Parcel 052), the Property Owner had checked the boxes on the appeal form indicating the appeal was based on "Factual error or cost approach to value" and "Income Approach to Value." The appeal form makes it clear that documentation is required. The Property Owner did not provide a cost approach, an income approach or income and expense information. Instead, he provided this statement, which he had signed and attached to the appeal form:

> This property cannot be valued as it has been. I have appealed this in 2012, 2013, 2014 & 2015. Now I appeal the value for the 5th time. This is a big waste of my time & yours. I wish you would fix this problem. It is not fair for me as a taxpayer. Also I have completed the approval of this as open space in a PUD. I should be exempt.

For parcel no. XX283-006(Parcel 283-006), the Property Owner had not checked any box on the form, but had written in "other-see attached." The Property Owner had attached the following statement to this appeal form:

> I had a bid to renovate the cabin & found that it does not comply with Code. I[t] cannot be rebuilt without hooking to the sewer & bringing the footing & foundation into compliance. Sandburry Construction has verified that there is no economic value to the building & all I have is a lot value less the cost to remove the existing bld. I have proceeded with the County & have permission to proceed subject to approval of plans.

For parcel no. XXX-276-006("Parcel 276-006"), the Property Owner had checked the box on the appeal form for "Factual error" and wrote on the form "see attached analysis." Attached to this appeal form was the following statement:

> These 2 properties are mine claim properties on slopes that exceed 30% and are not buildable. Mine claim properties have an accepted value by the County of $$$$$ per acre. I have attached 2 other properties that I own that adjoin these properties. These properties are valued correctly at $$$$$ per acre.

Although the Property Owner's statement on Parcel 276-006 did indicate that he was attaching information regarding two adjoining properties, from the record forwarded up from the County appeal, there was no information on these adjoining properties attached.

On the forms to appeal to the County Board of Equalization, there is a box that a taxpayer or property owner may check if they want all the notices sent via email. The Property Owner did not check this box on the appeal forms.

After reviewing the appeal forms and attached statements submitted by the Property Owner, the County Board of Equalization determined that the Property Owner had not provided sufficient evidence or documentation for these appeals and issued for each of the three parcels a "Notice of Intent to Dismiss" on September 12, 2016. The County retains a copy of these notices and the copies indicate they were mailed to the Property Owner at ADDRESS-1, CITY-1, Utah, ZIP CODE which was the Property Owner's correct address. Although the County employee could not testify regarding the mailing of these specific notices, due to the hundreds of notices mailed around this time, it appeared to the County based on its standard business practice that the Notices had, in fact, been mailed to the Property Owner.

The Notices of Intent to Dismiss stated, "Your appeal to the COUNTY-1 Board of Equalization for the property identified above does not contain sufficient evidence to meet the minimum requirements of the Board of Equalization to support an appeal." It goes on to tell what type of evidence should be submitted and that the response is "due on or before" "Monday, September 26, 2016."

The Property Owner did not respond to the Notices of Intent to Dismiss, so the County issued its orders dismissing the appeals on October 20, 2016. The Property Owner testified that he did not respond because he had never received the Notices of Intent to Dismiss.

The Property Owner provided three arguments as to why these appeals should not have been dismissed. First, it was the Property Owner's testimony at the hearing that he never received the Notices of Intent to Dismiss. He states that had he received them, he would have responded. He points out that he owns numerous properties in the County and has filed numerous appeals over the years, so that he is familiar with the process. It was his contention that no one from the County can actually testify that they put the notices in the mail. Alternatively, he argued that he and his neighbors did have some issues with receiving their mail, so maybe there had been a delivery error on the part of the Post Office. He provided letters from two different neighbors indicating problems with the mail.

Second, or in the alternative, he argued the appeals should not have been dismissed for lack of evidence or documentation because his statements attached to the appeal forms should have been accepted as evidence. He stated that he was a builder and a contractor so his written statements should have been accepted as a good opinion regarding value. He argued if the statements had been written by a real estate agent they would have been accepted as evidence, so he felt that his own statements should be given the same weight. Third, he argued that the County should not have the authority to impose office procedures that deny him the right to appeal.

It was the County's position that the Property Owner's handwritten statement of opinions, without supporting documentation, was not sufficient evidence to support the Property Owner's appeal. The County argues that based on its standard business practices, County employees had placed the Notices of Intent to Dismiss in the mail addressed to the correct address for the Property Owner. The County stated that it makes of copy of the notices and keeps it for its records. The County produced the copies for this hearing. It was the County's position that because the Property Owner failed to respond it was appropriate for the County to dismiss the appeals. The County points out that if the Property Owner was having problems with mail delivery, the Property Owner could have checked the box on the appeal form to have all notices sent by email instead of regular mail and the Property Owner had not done so.

The issue before the Tax Commission is whether the County's Dismissal of these appeals was appropriate. Under Utah Admin. Rule R884-24P-66(2) the property owner must submit evidence or documentation to support his or her claim for relief in order to achieve standing with a County Board of Equalization. If a County determines that insufficient evidence has been submitted for a property owner to achieve standing, the rule requires the notification of intent to dismiss and for the dismissal of the appeal. Regarding appeal deadlines, the assertion that one did not receive a notice is not basis alone for setting aside or extending the deadline stated in the notice and there is nothing in the statute or rule that allows the Tax Commission to extend the deadline based on the claim that notice was not received. Therefore, the Property Owner's argument that he did not receive the Notices of Intent to Dismiss is not grounds for the Commission to set aside the County's dismissal of these appeals.

The Commission then reviews the original documentation and evidence submitted with the appeal forms to the County Board of Equalization for each parcel to determine if, in fact, the Property Owner had submitted "evidence or documentation that supports the taxpayer's claim for relief" as required by Utah Admin. Rule R884-24P-66(2)(e). For each parcel, the Property Owner had submitted a very general statement without specific information or supporting documents. Due to the lack of specific information, had the statements been written by a real estate agent instead of the Property Owner, they still would likely have been insufficient. Regarding Parcel 052, the Property Owner had stated that this was the fifth year in a row he had to appeal and that it was "a big waste of my time." He did not provide the values that had resulted from the four prior appeals. If the value had been reduced for each of those years because of an appeal and to what amount, submitting that information would have been helpful. It appears this would be information the County could have looked up for this parcel; however, the law and rule require that the Property Owner provide the evidence, not the County. On this appeal form, the Property Owner also stated, "I have completed the approval of this as open space in a PUD" but does not provide the date of when this occurred or a copy of the approval or who had issued the approval. The County appropriately concluded his statement was insufficient evidence regarding this parcel. Therefore, there is no basis for the Tax Commission to conclude the dismissal by the County was inappropriate.

For Parcel 283-006, the Property Owner makes the statement that he cannot just renovate the cabin, that it would have to be rebuilt. He also asserts that a construction company had verified there was "no economic value" to the building. An economic value to a construction company does not equate to the contributory value of the building in a fair market value analysis. Again, these statements are very general and the County's conclusion that this did not meet the sufficient threshold level is not

unreasonable.

For Parcel 276-006, the Property Owner makes an equalization argument. His statement that he had attached two other properties that adjoin this parcel makes it appear that he was requesting this parcel be valued the same as the two adjoining parcels. However, there is no indication that he actually attached the assessments of the two adjoining parcels. So again, the County's conclusion that this did not meet the threshold level for evidence or documents is not unreasonable.

The Property Owner had argued that the County should not have the authority to impose office procedures that deny him the right to appeal. However, the appeal requirements are set out by statute and rule. Utah Admin. Rule R884-24P-66 ("Rule 66") provides that a property owner needs to provide evidence or documentation when filing an appeal to the County Board of Equalization to achieve standing before the County Board of Equalization and have a decision issued on the merits of an appeal. The County Board concluded the Property Owner did not provide sufficient documentation or evidence with his appeals. Rule 66 is clear on the process for when a property owner does not provide the required "evidence or documentation" with the appeal form. Rule 66(3) provides, "if the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure . . ." The County provided copies of the Notices of Intent to Dismiss and testified based on its business practice they would have mailed them to the address listed on the notices, which was a correct address for Petitioner. It appears they did follow this procedure and dismissed the appeal when there was no response from the Property Owner. The assertion of failure to receive a notice is not a basis to extend the deadline for Property Owner to provide the information.

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the County's dismissal of these appeals. It is so ordered.

DATED this _____day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights: If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.