

20-1916
TAX TYPE: PROPERTY TAX
TAX YEAR: 2020
DATE SIGNED: 8/25/2021
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. COUNTY BOARD OF EQUALIZATION, STATE OF UTAH, Respondent.	ORDER ON COUNTY’S DISMISSAL Appeal No. 20-1916 Parcel No: ##### Tax Type: Property Tax Tax Year: 2020 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT-1, COUNTY Assessor
 RESPONDENT-2, COUNTY Auditor
 RESPONDENT-3, COUNTY Commission Chair
 RESPONDENT-4, COUNTY Commissioner

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Hearing on County’s Dismissal on April 15, 2021. The hearing was conducted via teleconference. Petitioner (“Property Owner”) filed with the Utah State Tax Commission an appeal of the decision issued by Respondent (“County”) dismissing the appeal of the above listed parcel for tax year 2020. The County issued its dismissal on September 21, 2020, stating in its decision the appeal was dismissed because, “All of the requested actions were not taken and submitted to the Board.” A Notice of Intent to Dismiss had been issued on August 13, 2020, requesting certain information or actions by August 31, 2020. 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:

(2)(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 (3);

...

(b) (i) The county board of equalization shall make a rule describing the contents of the application.

...

(3)(a) Except as provided in Subsection (3)(b) and for purposes of Subsection (2), 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 provides the notice under Section 59-2-919.1.

...

(4)(s) Except as provided in Subsection (4)(b), the taxpayer shall include in the application under Subsection (2)(a):

(i) the taxpayer's estimate of the fair market value of the property and any evidence that may indicate that the assessed valuation of the taxpayer's property is improperly equalized with the assessed valuation of comparable properties;

...

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 R861-1A-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.
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- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed 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 Property Owner had filed an appeal to the County Board of Equalization regarding the assessed value of her property for tax year 2020 on July 30, 2020, which was within the deadline for filing set out at

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Utah Code Sec. 59-2-1004. On the form provided by the County to file a County Board of Equalization appeal, which provided a checklist for “Reason for Appeal,” the Property Owner had checked the box “Other.” Then she wrote on that form “Defective Building & Foundation.” The Property Owner did provide a letter with this appeal form to the County Board of Equalization which she had signed and dated July 29, 2020. The Property Owner had stated in the letter, “The Cabin has extensive foundation damage that would make it impossible to sell as is.” She also explained in the letter, “Just this past October (2019) we had to have the SYSTEM replaced because they were failing and the house was sinking again. I’m expecting this will be an ongoing issue.” She explained in the letter that the basement was unfinished and “will never be able to be finished due to all the foundation and structure damage without doing the suggested engineer fixes.” The letter also outlines ongoing issues with the septic system. In addition to this letter, the Property Owner had provided with her appeal form to the County Board of Equalization a copy of a report from an engineering company in regards to these issues, but the report was dated June 1, 2004. She also provided some additional letters or portions of expert witness reports from litigation over the defect, but these were dated in 2005. The Property Owner did not attend the County Board of Equalization hearing.

At the subject hearing before the Tax Commission, the representatives for the County Board explained that all of the documentation the Property Owner had submitted to the County Board of Equalization to support the structural issues was very old information and it was from a period prior to when the subject residence had been finished and prior to a certificate of occupancy being issued for the residence, which occurred in 2012. They also pointed out that the Property Owner has been living at that residence since 2012. Therefore, they felt the evidence that the Property Owner had submitted with her Board of Equalization appeal was insufficient. They explained that was the reason the County Board of Equalization issued a Notice of Intent to Dismiss the Property Owner’s County Board of Equalization appeal on August 13, 2020.

The language on the Notice of Intent to Dismiss letting the Property Owner know she needed to provide more current information stated as follows:

The Board of Equalization is requesting more current supporting documentation. They would like to have an appraisal by a certified appraiser and possibly an inspection by the COUNTY Building Inspector. Documentation will need to be submitted by August 31, 2020 by 5 pm. If you have questions please call,#####.

The Board of Equalization Record of Appearance and Minute Entry from the County Board of Equalization hearing, which had been dated August 11, 2020, was also sent to the Property Owner with the Notice of Intent to Dismiss. The notes on the Minute Entry indicated that the County had decided to issue an Intent to Dismiss and stated the following:

- 1-Have an independent certified appraiser value the property.
- 2-Have COUNTY Building Inspector inspect it.

At the hearing, the Property Owner testified that she thought she needed to obtain a new appraisal. The Property Owner had an appraisal for the property from when the property was refinanced in August 2019 and the County pointed out that there was a trust deed note for \$\$\$\$ taken out on the property at that time. This appraisal certainly would have been current enough to be relevant for tax year 2020 because it was within six months of the January 1, 2020 lien date. However, the Property Owner explained she thought she needed to obtain a new appraisal.

The Property Owner stated at the hearing that after receiving the Notice of Intent to Dismiss, she contacted an appraiser to obtain a new appraisal. It was her statement that the appraiser said she would not be able to finish the new appraisal before the August 31, 2020 deadline. The Property Owner testified at the hearing that she did call the County and spoke with RESPONDENT-2 letting her know that she was getting a new appraisal, but it would not be done by the deadline. The Property Owner stated that RESPONDENT-2 then actually called the appraiser to confirm. RESPONDENT-2 acknowledged at the hearing that she had called the appraiser to confirm and that the appraiser told her it would take two or three more weeks. However, the County Board of Equalization met on September 21, 2020 and dismissed the appeal. The appraisal was submitted on September 23, 2020.¹

In addition to the appraisal, the Property Owner documented that she had tried to get the building inspector to look at her property pursuant to the request from the County Board of Equalization and he would not come out and look at it. In this regard the Property Owner submitted an email chain between

¹ Although this appraisal was not submitted to the County until September 23, 2020, the effective date the appraiser had written on the appraisal was September 6, 2019 and the report signature date was September 22, 2019. This was written on the appraisal in multiple places. The Property Owner testified at the hearing that the appraiser had made a typo and the actual dates were in September 2020. She also testified that she had obtained a corrected copy of this appraisal and had offered to send it to the County, but was told that she did not need to do so. However, RESPONDENT-2, from the County, testified she would not have told the Property Owner that.

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herself and RESPONDENT-2. On September 28, 2020, RESPONDENT-2 had emailed to the Property Owner the following statement:

PETITIONER,

Thank you for submitting the appraisal requested by the Board of Equalization. We just need to set up a time with the Building Inspector's office. After this has been completed we can take the information back to the Board for review. The Building Inspector's office will be contacting you either by email, EMAIL ADDRESS, or by phone, #####. If you have any questions please let me know.

Thanks,

RESPONDENT-1

The Property Owner responded later that day,

I also would be open to an outside professional inspector, because as you know if you see the court certified files, it was the building inspector that okayed the footings with a phone call. I have all the depositions if you would like. I can have the law office send them to you.

The Property Owner then sent an email again to RESPONDENT-2 on October 26, 2020, in which she stated in part:

no one has gotten back with me. How did this misunderstanding happen? I sent you the appraisal on September 23, 2020 and on the letter that you sent shows they had already dismissed on 09/21/20? You sent me an email on 9/28/20 that someone from the building department would call to set up a time? NAME-1 [the COUNTY Building Inspector] left me a voice message talking about condemning my home. . . and he may need the county attorney etc., that he didn't know what he was supposed to do . . .

At the Hearing on County's Dismissal, the representatives for the County Board of Equalization stated that the Property Owner had not submitted anything in response to its Notice of Intent to Dismiss by the time it met on September 21, 2020, so the County Board of Equalization dismissed the appeal. The Notice of Intent to Dismiss had stated that the Property Owner had until August 31, 2020 to respond. The County had waited for three weeks after that date before dismissing the appeal. It was the County's position that the appeal was properly dismissed because the Property Owner had failed to respond to the Notice of Intent to Dismiss in a timely manner.

The issue before the Tax Commission is whether or not the County's dismissal of the Property Owner's appeal was appropriate. See Utah Admin. Rule R861-1A-9(7). Utah Admin. Rule R884-24P-66(2)

provides the minimum requirements to achieve standing before a County Board of Equalization, which include “evidence or documentation that supports the taxpayer’s claim for relief.” Under Subsection R884-24P-66(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.” The Utah State Tax Commission has previously found that the minimum evidence or documentation that supports a property owner’s claim for relief required by Utah Admin. Rule R884-24P-66(2)(e) to achieve standing and have the County issue a decision on the merits is low. The evidence required to achieve standing is not the same evidence standard the County Board of Equalization would apply to evaluate the evidence when issuing its decision on the merits.² Standard 1.9.0 of the Standards of Practice instructs the counties that property owners “. . . need only pass a very low hurdle to get a hearing. If the taxpayer presents any evidence that addresses value (or exemption or other issues), the county has an obligation to defend its value (or position) in light of that evidence.”

The Property Owner’s initial appeal filing to the County Board of Equalization failed to contain evidence or documentation that supported the taxpayer’s claim for relief. Therefore, her initial appeal filing was insufficient to obtain standing pursuant to Utah Admin. Rule R884-24P-66(2). The evidence and documentation she provided with her appeal was from 2004 and 2005. In addition the information was from prior to when the residence was completed and prior to a certificate of occupancy being issued. Therefore, the only relevant information pertaining to the lien date at issue in this appeal, January 1, 2020, was her statement in the letter dated July 29, 2020, that she had sent in with that appeal, which said the SYSTEM had been replaced in October 2019, speculated it would be an ongoing problem and noted issues with the basement and septic system. The Property Owner had stated these things in the letter, but failed to provide evidence to establish that these issues negatively affected value as of the January 1, 2020 lien date. Considering the lack of evidence to support these claims, the County’s conclusion that the Property Owner had not submitted enough evidence to achieve standing was valid.

However, the County’s request for an appraisal in order for the appeal to not be dismissed was improper. There is no support in the law or rule for a County Board of Equalization to require an appraisal from a property owner in order to achieve standing to be heard at the County Board of Equalization. The

² See *Utah State Tax Commission Order on County’s Dismissal, Appeal No. 17-1977* (8/17/2018). This and other Tax Commission decisions may be reviewed in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

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County properly requested “more current supporting documentation,” but should not have required that the documentation be an appraisal.³ Considering the building inspection requirement, if the County Board of Equalization had the authority to require the COUNTY Building Inspector to inspect the property, they could have required that to occur. However, it was improper for the County to impose this request on the Property Owner in order for her to achieve standing before the County Board of Equalization. It would seem the County Board of Equalization could have asked the County Assessor to inspect the property, as that would have been within the scope of the Assessor’s job duties, but that was not the request made by the County Board of Equalization.

Upon review of all the facts, the County has denied the Property Owner due process by requiring an appraisal and the inspection from the Building Inspector. Had the County limited its request in the Notice of Intent to Dismiss to “more current supporting documentation” the Property Owner may have had information regarding the issues with the property that she could have submitted instead of trying to obtain a fee appraisal and arrange an inspection. But the request for an appraisal and inspection from the Building Inspector goes far beyond what a property owner needs to submit to achieve standing before the County Board of Equalization.

Based on these considerations, and notwithstanding the County’s conclusion that the Property Owner had not submitted enough evidence with her original appeal to achieve standing, the County’s request for an appraisal and Building Inspector inspection of the property in order to achieve standing was improper. The appeal should be remanded back to the County Board of Equalization to schedule a hearing on the merits.

Jane Phan
Administrative Law Judge

³ Residential appraisals often cost \$\$\$\$ or more and requiring one would make filing an appeal cost prohibitive for many property tax appeals. It is possible the County Board of Equalization was aware of the trust deed being filed in 2019 and their request was meant to be a request for the appraisal that they assumed was already prepared. However, if that was what they meant in their request it was not clear.

DECISION AND ORDER

After reviewing the information presented by the parties regarding the County's dismissal of the Property Owner's appeal, as well as Utah Code §59-2-1004 and Administrative Rule R884-24P-66, the Property Owner's appeal of the County's decision to dismiss her appeal is granted. The matter is remanded back to the County Board of Equalization to issue a decision in writing on the merits of the proper assessed value of the subject property for property tax purposes for lien date January 1, 2020. Once the County Board of Equalization issues its written decision, the Property Owner has thirty days from the date the decision is issued to appeal that decision to the Utah State Tax Commission pursuant to Utah Code Sec. 59-2-1006. It is so ordered.

DATED this _____ day of _____, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
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.