

APPEAL #: 22-1046

TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED

TAX YEAR: 2021

DATE SIGNED: 11/22/2022

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

PROPERTY OWNER,

Petitioner,

v.

BOARD OF EQUALIZATION OF COUNTY-1,
STATE OF UTAH,

Respondent.

**ORDER REQUIRING COUNTY BOARD OF
EQUALIZATION TO HOLD A HEARING
ON THE MERITS AND ISSUE FINAL
DECISION ON TIMELY FILED APPEAL**

Appeal No. 22-1046

Parcel No. ##### & Multiple Parcels¹

Tax Type: Property Tax/Locally Assessed

Tax Year: 2021

Judge: Phan

STATEMENT OF THE CASE

On May 13, 2022, Petitioner ("Property Owner") filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization, Form TC-194A, asking the Commission to order the Respondent ("County") to reconvene in order to hear an appeal of the valuations for multiple parcels for the 2021 tax year. The County submitted an Opposition to Request to Reconvene and the Property Owner submitted a Reply to the County's Opposition on DATE. This decision is issued based on the written submissions of the parties. A Request to Reconvene is typically filed when a property owner had failed to file a valuation or equalization appeal pursuant to Utah Code Sec. 59-2-1004, by the September 15 deadline for the tax year at issue, which in this case would have been September 15, 2021. However, in this appeal the Property Owner had, in fact, filed a timely appeal to the County Board of Equalization for tax year 2021 prior to the September 15, 2021 deadline. Therefore, there had been a timely filed appeal to the County Board and the County Board had opened and processed the appeal, but based on the evidence now before the Tax Commission, the County Board has not yet issued a final decision on that appeal.

APPLICABLE LAW

¹ The parcels subject to this appeal are listed in Attachment A, which is attached to this Order.

Utah Code Ann. §59-2-1004 provides the time to file an appeal to the county board of equalization regarding valuation or equalization as well as requirements of the appeal process as set forth below in pertinent part:

(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.

(b) 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 (3)(a).

....

(5) In reviewing evidence submitted to a county board of equalization by or on behalf of an owner or a county assessor, the county board of equalization shall consider and weigh:

(a) the accuracy, reliability, and comparability of the evidence presented by the owner or the county assessor;

(b) if submitted, the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date;

(c) if submitted, the sales offering price of property that was offered for sale as of the lien date but did not sell, including considering and weighing the amount of time for which, and manner in which, the property was offered for sale; and

(d) if submitted, other evidence that is relevant to determining the fair market value of the property.

(6) (a) The county board of equalization shall meet and hold public hearings as described in Section 59-2-1001.

...

(c) The county board of equalization shall make a decision on each appeal filed in accordance with this section within 60 days after the day on which the taxpayer makes an application.

...

(f) The decision of the county board of equalization shall contain:

(i) a determination of the valuation of the property based on fair market value; and

(ii) a conclusion that the fair market value is properly equalized with the assessed value of comparable properties.

...

(7) If any taxpayer is dissatisfied with the decision of the county board of equalization, the taxpayer may file an appeal with the commission as described in Section 59-2-1006.

Utah Admin. Rule R884-24P-66 provides further instructions regarding the County Board of Equalization appeal process as follows in pertinent part:

(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 county 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.

...

(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.

...

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

- (i) the name and address of the property owner;
- (ii) the identification number of the property;
- (iii) the date the notice was sent;
- (iv) a notice of appeal rights to the commission; and
- (v) a statement of the decision of the county board of equalization; or
- (vi) a copy of the decision of the county board of equalization.

Effective as of May 12, 2020, Utah Code §59-2-110 was adopted to provide that a property owner may designate a representative for mailings in property tax proceedings as follows:

(1) (a) Except as provided in Subsection (1)(b), if a governmental entity is required under this chapter to send information or notice to a person, the governmental entity shall send the information or notice to:

- (i) the person required under the applicable provision of this chapter; and
- (ii) each person designated in accordance with Subsection (2) by the person described in Subsection (1)(a)(i).

(b) If a governmental entity is required under Section 59-2-919, 59-2-919.1, or 59-2-1317 to send information or notice to a person, the governmental entity shall send the information or notice to:

- (i) the person required under the applicable section; or
- (ii) one person designated in accordance with Subsection (2) by the person described in Subsection (1)(b)(i).

(2) (a) A person to whom a governmental entity is required under this chapter to send information or notice may designate a person to receive the information or notice in accordance with Subsection (1).

(b) To make a designation described in Subsection (2)(a), the person shall submit a written request to the governmental entity on a form prescribed by the commission.

(3) A person who makes a designation described in Subsection (2) may revoke the designation by submitting a written request to the governmental entity on a form prescribed by the commission.

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a county board of equalization may accept a late appeal as follows in relevant

part:

- (12) Except as provided in Subsection (14), 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 Subsection 59-2-1004(3)(a) if any of the following conditions apply:
- (a) During the period prescribed by Subsection 59-2-1004(3)(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.
 - (b) During the period prescribed by Subsection 59-2-1004(3)(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.
 - (c) The county did not comply with the notification requirements of Section 59-2-919.1.
 - (d) A factual error is discovered in the county records pertaining to the subject property.
 - (e) The property owner was unable to file an appeal within the time period prescribed by Subsection 59-2-1004(3)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Subsection 59-2-1004(3)(a), and no co-owner of the property was capable of filing an appeal.
- (13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.
- (14) The provisions of Subsection (12) 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.

DISCUSSION

Many of the facts in this appeal as presented by the parties in their written submissions were not in dispute. It was not in dispute that the Property Owner had timely filed an appeal to the County Board of Equalization on DATE, by and through its agent, PETITIONER'S REP-1. On the appeal submission, PETITIONER'S REP-1 was designated as the agent representing the Taxpayer and his contact information, including his telephone number, email address and mailing address were provided. There was no language on the County's form to alert a property owner that even if they designate a representative, the County would still only mail the notices and decisions relating to the appeal to the property owner and would not mail them to the representative. There was no instruction provided that if the property owner wanted notices and decisions to be mailed to the agent or representative that they would have to submit a different form. On DATE, the County mailed to the Property Owner's address, but not to the representative's address, a cover letter dated DATE, from RESPONDENT'S REP-1, Board of Equalization Clerk, and an accompanying Stipulation of Agreement for Real Property Valuation. The cover letter from RESPONDENT'S REP-1 explained in relevant part:

Attached is a copy of your property tax appeal stipulation. Please look it over, sign it, and return it ASAP.

...

If you disagree with the stipulation:

- 1) Sign that you disagree
- 2) Scan and email it back to me (you can mail it - it's just a longer process)
- 3) Call to schedule an informal hearing 435 336-3027 (I do have to have the stipulation back before I can schedule the hearing)

If you agree with the stipulation, this will end your appeal for the 2021 tax season and the agreed upon value will be the amount you will be taxed on in November.

If we do not receive the stipulation back within 30 business days, it will be assumed that you agree with the stipulation.

...

The stipulation that accompanied the letter was titled 2021 Stipulation of Agreement for Real Property Valuation. It contained the name and address of the Property Owner, and the address listed was not the property situs address. There were boxes on the form titled "Name of Agent Representing Owner," "Agent's Phone" and "Agent's Email" but those boxes were left blank, even though the County was aware the Property Owner had an agent. The form then provided the "Current Value" and the "BOE Corrected Value," which showed no change or reduction. There was a place on the form for "Explanation" and the County had filled out its explanation as follows:

Request for adjustment was denied, data provided includes multiple mathematical errors that has skewed the results. The data provided is for timeshare sales, ##### of the properties appealed are commercial units, parking stalls or storage units and no data was provided to support any value reduction for these units. ##### of the ##### units appealed are timeshares although errors in the sale data has skewed the data. This stipulation will cover all ##### units, a list of the units is attached.

The Stipulation of Agreement had a box to check and a place for a property owner's signature if they agreed with the stipulation and a different box to check if they disagreed with the stipulation. If they checked the box that they disagreed, they would be requesting a hearing with the COUNTY-1 Board of Equalization. Unlike the explanation provided on the cover letter, there was nothing on the Stipulation of Agreement that indicated that failure to return the stipulation would result in no hearing or in the value being set at the "BOE Corrected Value." The Stipulation of Agreement was signed by the "BOE Chair" as well as someone identified as "Appraiser/Assessor/Auditor" with a non-legible signature. There was no signature from the Property Owner or the Property Owner's agent.

Because the cover letter and Stipulation of Agreement were not mailed to the Property Owner's agent, and the address they were sent to was an office location for the Property Owner that had gone to remote working due to the COVID-19 pandemic, the Property Owner did not see the cover letter and Stipulation of Agreement and did not respond to it during the thirty day period, so there was no actual hearing before the County Board of Equalization. Furthermore, the County did not issue an order

regarding the value of the property or that the property owner could appeal the decision to the Utah State Tax Commission. In its submissions the Property Owner asserted, and it was not refuted by the County, that in late September and early October 2021, PETITIONER'S REP-1 office contacted COUNTY-1 on several occasions to inquire as to the status of the appeal. These inquiries occurred after the Stipulation of Agreement had been mailed, but before the 30 day period to request a hearing had expired. The Property Owner asserted that County representatives told PETITIONER'S REP-1 office that "the appeal was under review" and did not tell him the Stipulation for Agreement had already been issued. The Property Owner also asserted and it was not refuted by the County that sometime after the thirty-day period had expired, PETITIONER'S REP-1 was informed of the Stipulation of Agreement and he immediately contacted the County to "reaffirm the initial request for a hearing." However, the County was unwilling to open the matter.

In its response, the County argued it was not required to mail the cover letter and Stipulation of Agreement to the Property Owner's agent, even though the County had the agent's address and contact information on the appeal application. In its reply, the Property Owner pointed out that there was nothing on the County's appeal form that stated that even if an agent was designated, mailings would not be sent to that agent. Also, instructions were not provided to property owners to clarify the address they wanted to use for mailings. The facts in this appeal are similar to a decision where the Tax Commission concluded a County had denied a property owner due process by failing to mail its decision to the Property Owner's agent. In *Utah State Tax Commission Order Accepting Appeal, Appeal No. 18-177* (DATE) the Tax Commission stated:

[T]he County has also provided a space on its appeal form and provided forms by which a property owner can designate a representative. There is no indication on these forms that even if so designated, the County will not mail its decision to the designated representative. The proceeding before the County Board of Equalization is an administrative hearing process. Once a property owner has designated a representative, especially where the County has provided forms to do so, the general expectation would be that the decision would be mailed to the representative.

...
In this case, the property owner had a reasonable expectation that the designated representative would receive a copy of the County Board of Equalization's decision. Therefore, the County's action in not mailing the notice to the representative has denied due process to the Property Owner.

The County in its Opposition, in support of its position that it was not required to mail the Stipulation to the Property Owner's designated agent, pointed to Utah Code Sec. 59-2-110, and argued the Property Owner had not designated the representative using "a form prescribed by the commission." The Property Owner had designated its representative on the County's appeal form, but the County argued its form is not one prescribed by the Commission. The County asserted that to designate an agent the

Property Owner should have filed a TC-737-Power of Attorney and Declaration of Representative. The Property Owner in its reply pointed out that there is no different or additional information requested on the Form TC-737 than what was requested on the County's own form and provided by the Property Owner. There is no check box on the Form TC-737 that says check here if you want notices or decisions mailed to your representative, and no language at all regarding mailings, just like the County's own form.

In addition to the parties' arguments, the Tax Commission notes that the Form TC-737 has been in use for many years and was not prepared as a property tax appeal form, but was instead designed for state tax audit appeals. Utah Code Sec. 59-2-110 was only recently enacted, with an effective date of May 12, 2020. The Tax Commission had not yet "prescribed" a form to be used pursuant to Utah Code Sec. 59-2-110. Therefore, the County's argument that it was not required to mail the Stipulation and Agreement to the representative is not persuasive and in the absence of the "prescribed" form, the County was on notice in regards to the Property Owner's representative. The Commission would reach the same conclusion in this matter as reached in *Appeal No. 18-177*, if the County had actually issued a final decision on the appeal filed by the Property Owner to the County Board of Equalization.

Ultimately, however, the County has failed to comply with the board of equalization hearing process as outlined at Utah Code Sec. 59-2-1004 and Utah Admin. Rule R884-24P-66 regarding the making and issuance of a decision, because the County has not issued a decision based on those provisions. Utah Code Subsection 59-2-1004(6)(c) provides that the county board of equalization shall make a decision on each appeal. Subsection 59-2-1004(6)(f) provides that the decision of the county board of equalization shall contain "(i) a determination of the valuation of the property based on fair market value; and (ii) a conclusion that the fair market value is properly equalized with the assessed value of comparable properties." A Stipulation of Agreement, signed by only one party, is not an adequate determination of the value "based on fair market value" and there was no statement in regards to the value being properly equalized. Additionally, Utah Admin. Rule R884-24P-66(8) provides the county board of equalization shall notify the taxpayer in writing of its decision and that the notice shall include, among other requirements, "a notice of appeal rights to the commission" and a "statement of the decision of the county board of equalization." The County has not issued a final decision that complies with these requirements. Instead, the County mailed the Stipulation of Agreement. This is not a final decision. In fact, the Stipulation of Agreement itself does not inform the Property Owner that failure to sign and return would be considered an agreement with the stipulation and result in the loss of the right to a hearing, although that was stated in the cover letter.²

² Regarding this format used by the County, the Property Owner noted in its Reply that the assumption that a nonresponse to a proposed stipulation is an assent to the stipulation is contrary to contract law. The Property Owner cites to *Rossi v. Univ. of Utah*, 2021 UT 43, §31; *Cea v. Hoffman*, 2012 UT App 101, §25; and *The Majestic*, 166 U.S. 375 (1897).

The County has denied the Property Owner due process by failing to send its notices to the Property Owner's designated representative and failing to issue a final order that complies with the statutory requirements and the Administrative Rule. Based on these considerations, the Tax Commission hereby concludes this matter should be remanded back to the County Board of Equalization to hold a hearing on the merits of the Property Owner's appeal to the County Board of Equalization and to issue a final written decision that meets the requirements of both the statute and the Administrative Rule.

DECISION AND ORDER

Based on the foregoing, the Commission hereby remands this matter back to the County Board of Equalization to hold a hearing on the merits and issue a final written decision regarding the Property Owner's County Board of Equalization appeal of the value of the subject properties for tax year 2021, and that final decision must comply with the requirements of Utah Code Sec. 59-2-1004(6)(f) and Utah Admin Rule R884-24P-66(8). Additionally, the County's final order must be mailed to both the Property Owner and the Property Owner's agent. Once the County issues its final decision, the Property Owner may appeal that decision to the Utah State Tax Commission by filing Form TC-194 with the County Auditor's Office pursuant to Utah Code Subsection 59-2-1004(7) and Section 59-2-1006. The appeal must be filed within the thirty-day statutory deadline set out at Section 59-2-1006. It is so ordered.

DATED this ____ day of _____, 2022.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
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.

Attachment A
TABLE REDACTED