

APPEAL #: 22-1766  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2022  
DATE SIGNED: 1/9/2024  
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PROPERTY OWNER,  Petitioner,  v.  BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,  Respondent.</p>	<p><b>ORDER ON COUNTY’S DISMISSAL</b></p> <p>Appeal No. 22-1766 Parcel No: ##### Tax Type: Property Tax Tax Year: 2022  Judge: Phan</p>
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**Presiding:**  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioner: PROPERTY OWNER  
For Respondent: RESPONDENT'S REP-1, COUNTY-1 Assessor  
RESPONDENT'S REP-2, COUNTY-1

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the COUNTY-1 Board of Equalization ("the County") to dismiss the Property Owner’s valuation appeal of the above listed property. The County Board of Equalization had dismissed the Property Owner’s appeal on October 7, 2022. The Property Owner appealed the dismissal to the Utah State Tax Commission. On an appeal from a dismissal by a county board of equalization, the only matter that will be reviewed by the Tax Commission is the dismissal itself and not the merits of the appeal. *See* Utah Admin. Rule R861-1A-9(7). The matter was argued in a Hearing on County’s Dismissal on October 23, 2023.

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)(a) 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; and

(ii) a signed statement of the personal property located in a multi-tenant residential property, as that term is defined in Section 59-2-301.8 if the taxpayer: (A) appeals the value of multi-tenant residential property assessed in accordance with Section 59-2-301.8; and (B) intends to contest the value of the personal property located within the multi-tenant residential property.

(b)(i) For an appeal involving qualified real property: (A) the county board of equalization shall presume that the fair market value of the qualified real property is equal to the inflation adjusted value; and (B) except as provided in Subsection (4)(b)(ii), the taxpayer may provide the information described in Subsection (4)(a).

(ii) If the taxpayer seeks to prove that the fair market value of the qualified real property is below the inflation adjusted value, the taxpayer shall provide the information described in Subsection (4)(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.

Utah Administrative Rule R884-24P-66 provides the process for achieving standing to have a decision on the merits issued by the County Board of Equalization, as follows in relevant 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.
- (3) If the evidence or documentation required in Subsection (2) 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.

Utah Code §59-2-1006 provides that a taxpayer or property owner may appeal a decision of the County Board of Equalization, as set forth below in pertinent part:

- (1) Any 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, or a tax relief decision made under designated decision-making authority as described in Section 59-2-1101, may appeal that decision to the commission by:
  - (a) 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 or entity with designated decision-making authority described in Section 59-2-1101; and

(b) if the county assessor valued the property in accordance with Section 59-2-301.8 and the taxpayer intends to contest the value of personal property located in a multi-tenant residential property, as that term is defined in Section 59-2-301.8, submitting a signed statement of the personal property with the notice of appeal.

Utah Administrative Rule R861-1A-9 provides the following regarding appeals to the Tax Commission:

(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 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) through (c) was improper;
- (b) the taxpayer failed to exhaust 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) through (c) is improper under Rule R884-24P-66; or
- (e) a new issue is raised before the commission by a party.

Utah State Tax Commission, Property Tax Division Board of Equalization Standards of Practice, also addresses the evidence necessary to achieve standing. Standard 1.10.0 provides in relevant part as follows:

The county's assessment has a presumption of validity until challenged with some evidence of a different value. The assessment is presumed to be correct if the taxpayer presents no evidence to support an adjustment. (§ 59-2-1004) However, the taxpayer need only pass a very low hurdle to get to 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. It is the BOE itself, or the hearing officer, and not office staff, who actually evaluates the evidence to determine its weight and credibility. The signed affidavit should include a summary or an indication of the evidence or documentation that will be presented at the BOE hearing.

The taxpayer does not have to have a "winning" case to get a hearing before the BOE or hearing officer. Whether the taxpayer's case is a "winning" case is a matter to be determined through the hearing process and not by a "screening process" which is outside the hearing process.

Utah Code Ann. §59-2-109 addresses the burden of proof in certain circumstances, as follows in relevant part:

- (2) For an appeal involving the valuation of real property to the county board of equalization or the commission, the party carrying the burden of proof shall demonstrate:
  - (a) substantial error in:
    - (i) for an appeal not involving qualified real property:
      - (A) if Subsection (3) does not apply and the appeal is to the county board of equalization, the original assessed value;
      - (B) if Subsection (3) does not apply and the appeal is to the commission, the value given to the property by the county board of equalization; or
      - (C) if Subsection (3) applies, the original assessed value; or
    - (ii) for an appeal involving qualified real property, the inflation adjusted value; and
  - (b) a sound evidentiary basis upon which the county board of equalization or the commission could adopt a different valuation.

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. *See 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); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); *Fraughton v. Tax Commission*, 2019 UT App 6, 438 P.3d 961 (Utah Ct. App. 2019); and *Patience LLC v. Salt Lake County Board of Equalization*, 2021 UT App 4.

#### DISCUSSION

The process to appeal a property's value to the County Board of Equalization is set out in Utah Code Subsection 59-2-1004(2)(a) and Utah Admin. Rule R884-24P-66. Utah Code Subsection 59-2-1004(2)(a) provides that "[a] taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property" may file an appeal to the County Board of Equalization. Utah Administrative Rule R884-24P-66(2) ("Rule 66(2)") sets out what a property owner must provide to achieve standing to have a decision on the merits issued by the County Board of Equalization. The information and documentation described in Rule 66(2) that a property owner must provide is as follows:

- (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.

The County provided a copy of the original appeal and documentation that the Property Owner had submitted to the County Board of Equalization regarding the subject property. On DATE, the Property Owner submitted an incomplete Request for Review form to the County Board of Equalization regarding the subject property. The Property Owner did not submit any evidence with the request. The Property Owner included with the request only a letter in which he stated that the subject property's "market value for this year also increased %%%%. A reasonable person would assume this to be erroneous as well. Please adjust accordingly."

On DATE, the County issued a Notice of Intent to Dismiss letter instructing the Property Owner that he needed to provide evidence or documentation and a completed and signed Request for Review form. The letter stated the deadline to submit the evidence was by 5:00 pm on DATE. The letter explained:

THE PROPERTY OWNER CARRIES THE BURDEN OF PROOF WHEN APPEALING PROPERTY VALUE AND MUST PRESENT EVIDENCE THAT THE CURRENT MARKET VALUE DETERMINED BY THE ASSESSOR IS INCORRECT. EVIDENCE MUST BE SUBMITTED BASED ON THE LIEN DATE OF JANUARY 1ST. PLEASE SUBMIT EVIDENCE WITHIN A ONE YEAR RANGE TO SUPPORT YOUR ESTIMATION OF VALUE. FOR EXAMPLE COMPARABLE SALES SHEETS FROM A REALTOR AS CLOSE TO THE LIEN DATE AS POSSIBLE BUT NOT EXCEEDING A ONE YEAR RANGE.

The Property Owner responded by completing and signing the Request for Review form on DATE. The Property Owner's daughter hand-delivered the form to the County, along with some pages listing value trend information for COUNTY-1 from Redfin that the Property Owner had obtained online. These pages showed a June 2021 to June 2022 increase of %%%%. Additionally, the Property Owner's information included a letter dated DATE, that said "I would suggest the %%%% increase, year over year, in assigned market value for each of these properties<sup>1</sup> is significantly outside the ballpark."

At the hearing, the representative for the County explained that this documentation had been hand-delivered to the County by the Property Owner's daughter within the ten-day period.

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<sup>1</sup> The Property Owner had appealed the values of two separate properties and both were subject to a Notice of Intent to Dismiss letter. However, for the other property, Parcel #####, the Property Owner submitted an appraisal, and the County concluded that the appraisal was sufficient evidence to achieve standing for Parcel ##### and issued a decision on the merits with respect to that parcel. Parcel ##### is not the subject of this appeal.

The County’s representative had told the daughter that the Redfin trend information was not adequate and that the property owner needed to provide something like comparable sales. The Property Owner did have some email exchanges with the County Assessor after the ten-day period discussed in the Notice of Intent to Dismiss, but prior to the September 15, 2022 appeal deadline. In an email from the County Assessor to the Property Owner dated DATE, the Assessor explained “there has been no evidence provided that is specific to that property supporting the requested value of \$\$\$\$” and “[t]he auditor’s office can accept any evidence through this Thursday September 15th. That is a hard deadline which by law can not be extended.” There were some additional emails and the Property Owner had provided a document titled “Summary” in which he explained the following regarding the subject property:

This is a small ##### bed ##### bath house with a total of ##### square feet. We tried to find comparable 2021 sales. There are none. So, I went online to find COUNTY-1 market value trends. I found REDACTED LINK that showed the year over year growth for COUNTY-1 is %%%%. This information was provided in the appeal and fits nicely with the email I sent yesterday. Since the market value of ##### is clearly overstated on the tax notice, I am certain the market value for ##### is just as wrong. As you will see in the spreadsheet sent yesterday,<sup>2</sup> I used evidence showing how erroneous the market value is for 22 as a roadmap for evaluating the correct market value for 21. It is absolutely impossible for a small house on way less than an acre to be worth \$\$\$\$ more than in 2021. In the spreadsheet under the heading “What They Should Be” I show a %%%% increase in market value. This is %%%% more than Redfin.com.

At the hearing, the Property Owner stated that the subject parcel, which has a small residence, is next door to parcel ##### (“Parcel #####”). Parcel ##### was the property where the Property Owner resided. The Property Owner had appealed the value of Parcel ##### and provided an appraisal for Parcel #####. That appeal had proceeded to a hearing before the County. The Property Owner argued at this hearing before the Tax Commission that the County had increased the assessed value of the subject property %%%% from tax year 2021 to tax year 2022 and the market trend information showed the increase was excessive. He argued that it should be sufficient evidence to achieve standing and asked about the standard of evidence, asserting that the County does not provide written instructions on what evidence needs to be submitted. He argued that it was expensive and difficult to obtain information and asked how a property owner was supposed to know what they needed to submit. He also argued that the burden of proof should be on the County.

At the hearing, it was the County’s position that market trends do not support a specific

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<sup>2</sup> This spreadsheet was not provided.

dollar amount for the subject property. The County pointed out that the burden of proof is on a property owner and the evidence types were listed on the back of the County's appeal application form. The County cited Utah Admin. Rule R884-24P-66(2) which states, "[t]o 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: . . . (e) evidence or documentation that supports the taxpayer's claim for relief . . ."

Upon review of the facts presented by the parties and the applicable law, the Commission first addresses the Property Owner's question as to why it is the property owner and not the County that has the burden of proof to provide evidence or documentation. Utah Code §59-2-1004 provides, "(4)(a) 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 . . ." Utah Administrative Rule R884-24P-66(2) provides that in order for a property owner 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: . . . (e) evidence or documentation that supports the taxpayer's claim for relief . . ." Once a property owner has provided the information required under Rule R884-24P-66(2) to achieve standing with the county board of equalization to have a decision issued on the merits, it is the petitioner who generally still has the burden of proof in property tax appeals.<sup>3</sup> See *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); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); *Fraughton v. Tax Commission*, 2019 UT App 6, 438 P.3d 961 (Utah Ct. App. 2019); and *Patience LLC v. Salt Lake County Board of Equalization*, 2021 UT App 4.

However, in this proceeding, the only issue before the Tax Commission is whether or not the County's dismissal of the Property Owner's appeal for failure to provide sufficient evidence to achieve standing 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 specifically requires that a taxpayer provide "evidence or documentation

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<sup>3</sup> Utah Code Ann. §59-2-109 addresses which party has the burden of proof in a proceeding before a county board of equalization, the Commission, or a court. The determination of which party has the burden of proof in a valuation appeal on the merits depends on the appeals history of the property subject to the appeal, and the values requested by the parties. For purposes of achieving standing before a county board of equalization, the appeals history and values requested by the parties are not at issue.



that supports the taxpayer's claim for relief." Under Subsection R884-24P-66(5), "[i]f the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case." Under Subsection R884-24P-66(3), "[i]f the evidence or documentation required in Subsection (2) 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." The County has provided a copy of the Notice of Intent to Dismiss that was mailed to the Property Owner. The Property Owner responded by submitting the completed appeal form and general market trend information, which the County had concluded was not sufficient to achieve standing.

Furthermore, the Property Owner had continued email communications with the County Assessor and submitted an appraisal as evidence for Parcel #####, which was a residential property adjacent to the subject property. He provided his Summary in which he stated there were no comparables for a #####-bedroom and #####-bathroom house, but the evidence for Parcel ##### could be "a roadmap for evaluating the correct market value" for the subject parcel. Given that these two properties were adjacent residential properties, even if the subject residence was smaller than the residence on Parcel #####, there would be some relevance to the appraisal data submitted for Parcel ##### to the value for the subject parcel.

As noted in the Board of Equalization Standards of Practice, Standard 1.10, to achieve standing before the County Board of Equalization, "the taxpayer need only pass a very low hurdle to get to a hearing." The Standard states, "If the taxpayer presents any evidence that addresses value (or exemption or other issues), the county has an obligation to defend its value . . ." Standard 1.10 goes on to state, "The taxpayer does not have to have a "winning" case to get a hearing before the BOE . . ." In this matter the Property Owner did provide that a general market trend indicated values in COUNTY-1 had increased %%%%, while the County had increased the assessed value of the subject property by %%%%. He also provided market evidence of the neighboring Parcel #####, including an appraisal that could serve "as a roadmap" for valuing Parcel #####, as the Property Owner stated. Although the neighboring residence was larger, the appraisal would contain comparables that could be relevant in valuing the subject property. With the general market trend, the appraisal and the evidence submitted for Parcel #####, the Property Owner did provide some evidence to the County and it was sufficient to meet the "very low hurdle to get to a hearing." Therefore, the County Board of Equalization should have scheduled a hearing, reviewed the Property Owner's evidence and issued a decision on the merits of his appeal.

DECISION AND ORDER

After reviewing the applicable law and the information presented by the parties, the Commission remands the matter back to the COUNTY-1 Board of Equalization to hold a hearing on the Property Owner's appeal of the value of the subject property, review the evidence that was submitted by the Property Owner and issue a decision on the merits regarding the value of the subject property for tax year 2022. It is so ordered.

DATED this \_\_\_\_ day of \_\_\_\_, 2024.

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.