

APPEAL # : 22-2055
 TAX TYPE: PROPERTY TAX / LOCALLY ASSESSED
 TAX YEAR: 2022
 DATE SIGNED: 3/14/2023
 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.	<p style="text-align: center;">ORDER ON PETITIONER'S REQUEST TO RECONVENE BOARD OF EQUALIZATION</p> <p>Appeal No. 22-2055</p> <p>Parcel Nos. ##### and ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2022</p> <p>Judge: Phan</p>
---	---

STATEMENT OF THE CASE

On December 20, 2022, Petitioner ("Property Owner") filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization, asking the Commission to order the Respondent ("County") to reconvene in order to hear an appeal of the valuation of parcel nos. ##### and ##### for the 2022 tax year. The Property Owner had not filed a property tax appeal for tax year 2022 to the County Board of Equalization by September 15, 2022, which was the deadline to file a valuation or equalization appeal for tax year 2022 pursuant to Utah Code Sec. 59-2-1004. The Property Owner now asks the Tax Commission to order the County Board of Equalization to reconvene to hear the Property Owner's late filed appeal. The Property Owner's basis for the request had been factual error and extraordinary and unanticipated circumstances. The Tax Commission issued to the County an Order to Show Cause as to Whether the County Assessor Recognizes the Existence of a Factual Error on January 17, 2023. The County did not submit a response to the Tax Commission's Order to Show Cause.

APPLICABLE LAW

Utah Code Ann. §59-2-1004(3) provides that the time to file an appeal to the county board of equalization is generally September 15th of the year at issue, as set forth below in pertinent part:

...

- (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).

When a property owner has requested a late filed appeal based on factual error, Administrative Rule R861-1A-9 provides as follows:

- (6)(a) The commission shall consider the facts and evidence presented to the commission, including facts and evidence presented by a party that was submitted to the county board.
- (b) A party may raise a new issue before the commission.
- (c)(i) If a taxpayer asserts before the commission a factual error as defined in Section R884-24P-66, the commission may issue an order to show cause as to whether the county assessor recognizes the existence of the factual error.
- (ii) If the county assessor fails to respond to an order to show cause within 15 calendar days of issuance under Subsection (6)(c)(i), the commission may find that the failure to respond constitutes that the county assessor recognizes the existence of the factual error.

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a county board of equalization may accept an appeal that has been filed after the statutory deadline, 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) Subsection (12) applies only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) This rule applies only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Sections 59-2-1006 and R861-1A-9.

For purposes of Administrative Rule R884-24P-66(12), "factual error" is defined at Administrative Rule R884-24P-66(1) as follows:

(1)(a) "Factual error" means an error described in Subsection (1)(b):

(i) that is objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) that is demonstrated by clear and convincing evidence; and

(iii) the existence of which is recognized by the taxpayer and the county assessor.

(b) Subject to Subsection (1)(c), "factual error" includes an error that is:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption, deferral, reduction, or abatement under Section 59-2-103;

(iv) valuation of a property that is not in existence on the lien date; and

(v) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) "Factual error" does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

...

DISCUSSION

If a property owner disagrees with the assessed value of their property, the law puts the responsibility on the property owner to file a property tax appeal by the statutory deadline. Every year the County mails the valuation notice by July 22 and every year the deadline to file an appeal pursuant to Utah Code Subsection 59-2-1004(3) is generally September 15. These dates are set by statute and are the same dates every year, so a property owner should expect to receive the valuation notice by the first week in August. For any year that a property owner disagrees with the assessed value, it is the property owner's responsibility to file an appeal by the statutory deadline. In this matter, the Property Owner failed to file a Utah Code Sec. 59-2-1004 appeal to the County Board of Equalization by the September 15 deadline for tax year 2022. As established by administrative rule, a late application to appeal may be allowed under limited circumstances if certain requirements have been met. Utah Admin. Rule R884-24P-66 was adopted to provide the criteria under which a late filed appeal may be allowed.

On the Request to Reconvene the Board of Equalization, Form TC-194A, each of the circumstances set out in Rule 66 are listed with a check box for property owners to indicate which of the

circumstances apply. On the Form TC-194A submitted by the Property Owner, the Property Owner checked the boxes for “factual error” and “extraordinary or unanticipated circumstances.” The Property Owner then attached a detailed explanation with exhibits to support its request. This decision is issued based on this written submission from the Property Owner.

Regarding the assertion of factual error, the Property Owner pointed out that the value for parcel ##### had increased %%% from tax year 2021 to tax year 2022. The Property Owner provided the documentation to show that the original assessed value for tax year 2021 for this parcel had been \$\$\$\$ and it was lowered at the County Board of Equalization on appeal to \$\$\$\$\$. For tax year 2022 the assessed value was \$\$\$\$\$. The Property Owner asserted that the %%% increase must have been a factual error. Regarding parcel #####, the Property Owner stated that the County actually stated two different assessed values and this appears to be a factual error on the part of the County. The 2022 Tax Notice for this parcel states that the market value for this parcel is \$\$\$\$\$. The Property Owner had actually sold the subject parcels in DATE and at the time of sale asked the County to provide the Greenbelt Rollback Calculation. On the Greenbelt Rollback Calculation the 2022 market value listed for parcel ##### was \$\$\$\$\$. The County had calculated the rollback tax based on the \$\$\$\$ amount and not the \$\$\$\$ that was stated on the tax notice. Clearly one of these statements of market value was in error.

Regarding its request based on extraordinary and unanticipated circumstances, the Property Owner’s representative explained that the Property Owner is an LLC with two members. One of the members, PROPERTY OWNER-1 (Member A), had been responsible for many years for receiving all of the tax notices, reviewing the notices, taking any necessary action and making the tax payments. The tax mailings were sent to a post office box that only he had access to. The other member, PROPERTY OWNER-2 (Member B), generally took care of day to day management tasks. The Property Owner’s representative explained in the submission that Member A had recently started suffering from cognitive decline, explaining as follows:

Unfortunately, due to an on-going medical condition, Member A has been recently suffering cognitive decline. Member B, as well as others, which regularly interact with Member A have come to realize that he struggles with memory and other tasks requiring careful thought. During recent months, including the period that the Property Owner could appeal the Assessor’s valuation, Member A continued to struggle with remembering information and performing tasks requiring careful thought. Member B was unaware of the extent of Member A’s cognitive difficulties during that period.

In addition to the cognitive decline of Member A, who did regularly pay the taxes on the subject parcels, the representative for the Property Owner pointed out that the actual tax amounts on the 2022 assessments were very small and did not increase from year to year because the property was assessed under the FAA as greenbelt. The 2022 tax amounts listed on the Tax Notices for the two subject parcels

were \$\$\$\$ and \$\$\$\$ respectively, so did not alert either member that there had been the %%%% increase in market value. The Property Owner asserted that this also added to the extraordinary and unanticipated circumstances.

As noted above, the County did not submit a response to the Property Owner's request or the Order to Show Cause as to whether County Assessor Recognizes the Existence of a Factual Error. So there is no explanation from the County regarding the discrepancy in assessment for parcel no. ##### or answer regarding the %%%% increase for parcel #####. Therefore, as the County failed to respond, there was no objection to the request from the County in this matter.

As established by administrative rule, a late application to appeal under Subsection 59-2-1004(3) may be allowed under limited circumstances and Utah Admin. Rule R884-24P-66 was adopted to provide those circumstances. The Property Owner requested the late appeal be allowed based on "factual error." Pursuant to Utah Admin. Rule R884-24P-66(12)(d) a late appeal may be allowed if "[a] factual error is discovered in the county records pertaining to the subject property." "Factual error" is defined for purposes of the rule at R884-24P-66(1)(a) as an error "(i) that is objectively verifiable without the exercise of discretion, opinion, or judgment; (ii) that is demonstrated by clear and convincing evidence; and (iii) the existence of which is recognized by the taxpayer and the county assessor." "Factual error" includes an error "that is a clerical or typographical error in reporting or entering the data used to establish valuation or equalization." See R884-24P-66(1)(b). Furthermore, as the rule requires that the County Assessor also recognize the existence of a factual error, Utah Admin. Rule R861-1A-9(6)(c)(i) states, "[i]f a taxpayer asserts before the commission a factual error as defined in Section R884-24P-66, the commission may issue an order to show cause as to whether the county assessor recognizes the existence of the factual error." Subsection (6)(c)(ii) then provides, "[i]f the county assessor fails to respond to an order to show cause within 15 calendar days of issuance under Subsection (6)(c)(i), the commission may find that the failure to respond constitutes that the county assessor recognizes the existence of the factual error." In this matter, there is a clear error regarding parcel #####, because the County has asserted two different market values for tax year 2022. Regarding parcel #####, generally a significant increase in value from one year to the next does not necessarily indicate a factual error. However, in this matter there is a very significant increase in the value of parcel #####, and the County Assessor failed to respond to the Order to Show Cause. Thus, R884-24P-66(6)(c)(ii) provides that "the commission may find that the failure to respond constitutes that the county assessor recognizes the existence of the factual error." In this matter, the commission finds that the county assessor recognizes the existence of the factual error.

Because the commission finds the existence of a "factual error" in this matter, the commission orders the County Board of Equalization to reconvene to hear the Property Owner's valuation appeal for

both parcels at issue. The commission declines to rule on the issue of whether extraordinary and unanticipated circumstances also exist in this matter sufficient to order the County Board of Equalization to reconvene, as the commission orders the County Board of Equalization to reconvene based on “factual error.”

DECISION AND ORDER

After reviewing the information in this matter, the Property Owner has provided grounds to have the County Board reconvened pursuant to Utah Code Subsection 59-2-1004(3) and Utah Admin. Rule R884-24P-66(12) based on factual error. Therefore, the request is granted and the County Board of Equalization is ordered to reconvene to review the assessments on the subject parcels for factual error and make any changes to the values that result from the correction of any factual error. It is so ordered.

DATED this ____ day of ____, 2023.

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.