

APPEAL # 23-1628
TAX TYPE: PROPERTY TAX
TAX YEAR: 2023
DATE SIGNED: 11/19/2024
COMMISSIONERS: M.CRAGUN, R.ROCKELL, AND J.FRESQUES
EXCUSED/RECUSED: J.VALENTINE

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.</p>	<p>ORDER ON RESPONDENT'S DISMISSAL- RECONVENING COUNTY BOARD OF EQUALIZATION</p> <p>Appeal No. 23-1628 Parcel No: #####'S Tax Type: Property Tax Tax Year: 2023</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, CFO PROPERTY OWNER

For Respondent: RESPONDENT'S REP-1, Assessor, COUNTY-1
RESPONDENT'S REP-2, Tax Administration Supervisor, COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on August 19, 2024 for a Hearing on County's Dismissal. The County Board of Equalization ("County BOE") had issued a decision letter dated DATE, notifying Petitioner ("Property Owner") that the County BOE had dismissed the Property Owner's appeal to the County BOE for the subject parcels due to the Property Owner missing the appeal filing deadline. The County's decision letter explained "[Y]our appeal has been dismissed due to untimely filing. Tax Commission Rule R884-24P-66(12) allows for late filing in limited circumstances of which your explanation of a perceived agreement with the county assessor's office was deemed not extraordinary and unanticipated. . . On an appeal from a dismissal by a county board for lack of timeliness, the only matter that will be reviewed by the state tax commission is the dismissal itself, not the

merits of the appeal per Rule R861-1A-9(7).” On DATE, the Property Owner submitted to the Tax Commission an appeal of the County BOE’s decision to dismiss the Property Owner’s appeal for untimely filing and the matter proceeded to this Hearing on County’s Dismissal.

APPLICABLE LAW

Utah Code Ann. §59-2-1004 provides that a taxpayer may file an appeal to the County Board of Equalization as follows 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); or
 - (ii) making an application by telephone or other electronic means within the time period described in Subsection (3) if the county legislative body passes a resolution under Subsection (9) authorizing a taxpayer to make an application by telephone or other electronic means.
- (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).

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a county board of equalization is required to accept an application to 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.

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;

(iii) any other adjustment to a valuation methodology; or

(iv) an assertion of an error in the classification of property as residential property eligible to receive a residential exemption if:

(A) an application for the residential exemption is required under Section 59-2-103.5; and

(B) the application described in Subsection (1)(c)(iv)(A) was not timely filed.

Counties are required to mail a valuation notice to property owners no later than July 22 for each tax year at Utah Code Sec. 59-2-919.1, as follows:

(1) In addition to the notice requirements of Section 59-2-919, the county auditor, on or before July 22 of each year, shall notify each owner of real estate who is listed on the assessment roll.

(2) The notice described in Subsection (1) shall:

(a) except as provided in Subsection (5), be sent to all owners of real property by mail 10 or more days before the day on which:

(i) the county board of equalization meets; and

(ii) the taxing entity holds a public hearing on the proposed increase in the certified tax rate;

(b) be on a form that is:

(i) approved by the commission;

...

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;

...

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.

DISCUSSION

If a property owner disagrees with the assessed value of their property for any tax year, the law puts the responsibility on the property owner to file a property tax appeal by the statutory deadline for that tax year. Every year the County mails the Valuation Notice by July 22. The Valuation Notice explains the assessed value and the proposed tax amount. It also states the deadline to file an appeal to the County Board of Equalization and provides appeal instructions. Every year the deadline to file an appeal to the County Board of Equalization for that year, 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 before the end of July and should be aware that if they want to appeal the taxable value, they need to file the appeal by September 15 of the tax year at issue.

The issue before the Tax Commission at this hearing is whether the County had properly dismissed the Property Owner's tax year 2023 appeal to the County Board of Equalization due to the Property Owner missing the appeal deadline of September 15, 2023.

From the information provided by the Property Owner's representative at the hearing, prior to the appeal period, he had been in communication with PERSON-1, an employee of the COUNTY-1 Assessor's Office, regarding the value and valuation issues with the subject parcels. The representative for the Property Owner indicated the subject properties had not been classified as an affordable housing project on the County's records. He explained that he had started talking to the County in DATE and there were several emails, telephone calls and an in-person visit with the County on DATE. He explained that a number of corrections were made by the County, but he and the County's employee, PERSON-1, were still in discussions about the capitalization rate. The representative for the Property Owner explained at the hearing and in a letter explaining his appeal that he was initially arguing for a %%% capitalization rate and the County was at %%%. The Property Owner's representative explained that there had been a lot of back and forth emails and waiting for responses from the County employee. The Property Owner's representative stated that he had received an email on DATE from PERSON-1, which he thought indicated the values had been adjusted to near the amounts he had been requesting because the email stated the County had applied a %%% capitalization rate. He stated that he had responded to PERSON-1 on DATE and asked for a copy of the new values and was told that they were being mailed on DATE. The Property Owner's representative stated that because of these emails he thought the values had been adjusted and he did not think he needed to file an appeal. He stated that in October he followed up by checking the County's website, which then still showed the higher values, and was told at that time the values indicated on the County's website were wrong. He stated that it was not until DATE, after more attempts on his part to reach the County, that he received an email from the County that said the information was correct on the website. He then immediately filed his appeal with the County and the County dismissed his appeal as a late appeal because it was after the September 15 appeal deadline.

The County responded at the hearing that the emails back and forth between the Property Owner and the County's employee did not say that the County had agreed to lower the value to the value the Property Owner was requesting, and the Property Owner should have filed an appeal by September 15 if he wanted to contest the values. The County indicated that the emails spoke for themselves.

The parties provided copies of the emails that had gone back and forth between the Property Owner's representative and PERSON-1 prior to the September 15 deadline. The emails said in pertinent part as follows:

Email DATE 3:12 PM. From PERSON-1 to PETITIONER'S REP-1:

Just finishing up the last bit on your parcels. We have adjusted for a cap rate at %%% and we are finalizing the data specifically on the three multi-unit buildings. We have already come down nearly \$\$\$\$ for the corrections made on the partially complete buildings as well as a few of the parcels that did not have the low income value applied correctly. We have applied a low income multiplier already to all parcels that lowers the value substantially from the standard market value. If you are still unsatisfied with that value, you are welcome to appeal. REDACTED URL

Email DATE 3:14 PM. From PETITIONER'S REP-1 to PERSON-1:

Would you be able to send me copies of the new property tax notices by email. Or could I come by and pick them up sometime next week? I have to provide them to BUSINESS-1 as part of our tax credit reporting and they have already been bugging me about it.

Email DATE 3:18 PM. From PERSON-1 to PETITIONER'S REP-1:

The notices usually take some time to generate, but I will work on getting them updated and emailed to you early next week.

Email DATE 3:36 PM From PERSON-1 to PETITIONER'S REP-1:

I just wanted to update you that we have updated all of the values on your parcels for 2023 and have the information off to the Clerk's Office. They are getting your revised tax notices mailed as we speak. If you don't see them by Friday, please let me know.

Upon review of the information and evidence submitted by the parties, the Property Owner has established that he had received emails from the County prior to the appeal deadline. It was not unreasonable for him to assume the values would be reduced based on the County agreeing to raise its capitalization rate from %%% to %%%. It is clear that the Property Owner's representative tried to obtain the final numbers from the County prior to September 15, and was told on September 12 that they would be mailed to him "as we speak," which did not happen. The County did not provide the new values to the Property Owner until after the appeal period had expired. The County argued the Property Owner misunderstood the email from the County that indicated it would apply a %%% capitalization rate, because that email did not state any specific value for the parcels. The Property Owner's appeal was not filed until after the deadline set by Utah Code §59-2-1004 had expired. However, the Tax Commission has concluded in prior appeals it would be appropriate to allow a late filed appeal where the petitioner established that an action on the part of the County had deprived the petitioner of due process rights, including the ability to file an appeal timely.¹ In this matter, it is clear from the DATE email from the

¹ See *Utah State Tax Commission Order of Dismissal, Appeal No. 23-124 (3/16/2023), Order Allowing Appeal to*

County, that the County had stated it was making an adjustment on the capitalization rate, a factor that would lower the value if all other factors stayed the same. Additionally, on DATE, the County had stated it would provide the revised values, but did not provide the revised values to the Property Owner prior to September 15. Based on the information presented, it appears that the County has denied the Property Owner due process. Therefore the County's dismissal in this matter was not appropriate and should be overturned. The County Board of Equalization should be reconvened to hear the Property Owner's appeal of the values of the subject parcels for tax year 2023.

Jane Phan
Administrative Law Judge

ORDER

Based upon the foregoing, the Tax Commission hereby orders the County Board of Equalization to reconvene to hear the Property Owner's appeal of the above listed parcels for tax year 2023 and issue a decision on the merits of the valuation and equalization of the subject parcels pursuant to Utah Code Sec. 59-2-1004. Once the County Board of Equalization has issued its decision for tax year 2023, that decision will be appealable to the Utah State Tax Commission pursuant to Utah Code Sec. 59-2-1006. 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: 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.

Proceed, Appeal No. 23-621 (6/13/2023) and Dismissal, Appeal No. 22-1756 (2/14/2023). These decisions are available for review in a redacted format at: <https://tax.utah.gov/commission-office/decisions>.

