

APPEAL # 23-1757
 TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED
 TAX YEAR: 2023
 DATE SIGNED: 2/6/2024
 COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p>ORDER ON PETITIONER'S REQUEST TO RECONVENE BOARD OF EQUALIZATION</p> <p>Appeal No. 23-1757</p> <p>Parcel No. #####, #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2023</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

On December 18, 2023, PERSON-1, a trustee for Petitioner (“Property Owner”) filed a Request to Reconvene the Board of Equalization, Form TC-194A (“Request”), asking the Commission to order the Respondent ("County") to reconvene in order to hear an appeal regarding the assessed value of parcel nos. ##### and ##### for the 2023 tax year. The Property Owner had failed to file an appeal to the County Board of Equalization by the statutory deadline for tax year 2023, which was September 15, 2023, as set by Utah Code §59-2-1004. The Tax Commission had issued an Order to the County to respond to the Request on DATE, and the County submitted its response on DATE. The trustee for the Property Owner submitted a reply to the County’s response on DATE.

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).

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;
- ...

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.

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 and provides appeal instructions. Every year the deadline to file an appeal 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 by the first week in August. If a property owner has not received the valuation notice, they can contact the County for a copy or obtain a copy online¹. 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 for that year. *See* Utah Code Subsection 59-2-1004(3). This does place the burden on the property owner to review the assessment and file an appeal by the statutory deadline each year when warranted. In this matter, the Property Owner failed to file a Utah Code §59-2-1004 appeal to the County Board of Equalization by the tax year deadline of September 15, 2023.

As established by administrative rule, an extension of the appeal deadline to March 31 of the following year may be allowed under limited circumstances, if certain requirements have been met. Utah Admin. Rule R884-24P-66(12) was adopted to provide the circumstances under which a late filed appeal may be allowed. On the Request form, 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 Request, PERSON-1 for the Property Owner had checked the boxes for "medical emergency," "death of owner or immediate family member" and "factual error in the county's records." PERSON-1 had not filled out the section of the Request form that asks about "Additional Owners" but after an email from the Tax Appeals Clerk on December 20, 2023, requesting he complete that information, PERSON-1 responded by email on that same day. The subject property is owned by the PROPERTY OWNER. PERSON-1 indicated that he and his wife, PERSON-2, are the only owners of the trust.

On the Request form and letter attachment to the form, regarding the medical emergency and death of owner or immediate family member, PERSON-1 explained that his sister, PERSON-3 had come out to visit him in DATE, from her home which was in STATE-1. He explained during that visit she had broken her leg and ended up being hospitalized in Utah for ##### months because of three surgeries and the discovery of a number of additional life altering diagnoses. PERSON-1 provided two different letters which were written in DATE and document PERSON-3 medical issues. Both letters were written for purposes of getting PERSON-3 qualified for a medical transport back to STATE-1 where her husband and family were located, because she was too ill to return to STATE-1 via commercial airline flights. PERSON-1 explained that his sister died on DATE from complications resulting from these medical issues. He explained in an email that he had sent to the County on DATE, why his sister's medical condition, even though she had returned to STATE-1 in early 2023, had an impact on his not being able to timely file property tax appeals. He stated in the email the following:

. . . PERSON-3 and I were very, very close and talked almost daily. She fell and broke

¹ Information is available at:
REDACTED URL

her leg in DATE, while visiting me here in CITY-1, and ended up being hospitalized here for ##### months because of three surgeries and of the discovery of five additional, life altering diagnoses. I am a veterinarian and the only family member with any medical knowledge. So, both out of necessity and by her request, I became her medical representative and medical Power of Attorney. After her return to her home in STATE-1, her medical issues persisted, with lengthy illnesses, three more surgeries, and ultimately her death on September 23, 2023. In addition to being her medical representative, she and her husband asked for my help in managing their finances and household affairs, including mounds and mounds of medical billing associated with the issues described above. Her hardship became a near full-time undertaking for me, dealing with what I've described above and her subsequent funeral and her estate thereafter. I was putting a great deal more time into trying to manage her situations than managing my own affairs, until very recently.

In regards to why the other owner of the property, PERSON-2, did not file the appeal, PERSON-1 explained the following in the email to the Tax Commission Appeals Unit dated DATE:

As in most marriages, my wife and I have split up household responsibilities, which have been pretty consistent for 30+ years, I am the one who, for all that time, has handled property taxes-appeals when necessary, and payments. In that 30+ years, we have never been delinquent in either the appeal or payment of any property tax, in either COUNTY-2 or COUNTY-1 counties (or any county, for that matter). In this instance, while I was very preoccupied with my sister's illness and passing, my wife inadvertently filed the initial Notices of Property Valuation and Tax Changes, rather than putting them in my to do pile, or bringing them to my attention. And with all that I had going on, I failed to remember that I should be looking for the notices around that time of year.

PERSON-1 had also checked the box for "factual error" on the Request form. In this regard he explained on the Request form, "The lots are an nearly impossible build [sic] and the reason that we were able to purchase them in 2022 for \$\$\$\$\$ each." In his later reply to the County's response, PERSON-1 provided copies of a Settlement Statement and other documentation regarding the purchase of the subject parcels.

The County had submitted a response to the Request by letter dated DATE. In the response the County asked that the Request be denied and stated, "The Assessor's office does not recognize factual error. We have had many sales along the LOCATION-1 that support the increase in value." The County also stated that Utah Admin. Rule R884-24P-66(12) provided for a late appeal if "during the period prescribed by Subsection 59-2-1004(3)(a), the property owner or immediate family member of the property died, and no co-owner of the property was capable of filing an appeal." The County stated in the response, "Immediate family members have not generally extended out to adult siblings." The County stated in the response letter that PERSON-3 medical condition was "an ongoing issue as opposed to an emergent issue." The County also pointed out that PERSON-3 death was after the filing period deadline and that "there is a co-owner that-while not her regular duties-was capable of filing the appeal."

The Commission reviewed the information submitted and the applicable law. The law provides

the deadline to file an appeal at Utah Code Subsection 59-2-1004(3), and it is generally September 15 of each tax year. As established by administrative rule, a County Board of Equalization shall accept a late application to appeal the valuation or equalization of property under Subsection 59-2-1004(3) if some very limited circumstances have been established by a property owner. PERSON-1 has asserted facts in this matter and provided documentation of a medical emergency on the part of his sister that started in DATE and culminated with her death on DATE. Utah Admin. Rule R884-24P-66(12)(b) provides that a late appeal shall be allowed if “[d]uring 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.” The period prescribed by Subsection 59-2-1004(3)(a) is the appeal period which starts when the Valuation Notice is mailed by July 22 and ends on the September 15th deadline. In this case, PERSON-1’s sister had died, but the death occurred after the appeal period. Utah Admin. Rule R884-24P-66(12)(a) provides that a late appeal shall be allowed if “[d]uring the period prescribed by Subsection 59-2-1004(3)(a)², 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.” PERSON-3 clearly had a medical emergency and although it had started almost one year prior to the appeal period for tax year 2023,” it was severe and resulted in her death just after that period. DATE was the sister of PERSON-1. PERSON-1 did not state that he was traveling back and forth to STATE-1 to physically care for her. PERSON-1 stated he was dealing with financial issues for both PERSON-3 and her husband that they were not able to handle due to her medical condition. This does appear to be a difficult time for PERSON-1 based on his statements.

However, as the County noted, there was another owner of the subject property, PERSON-2. There was no indication that PERSON-2 was impacted by the medical emergency to PERSON-3 in a manner that would have made her not “capable of filing an appeal.” The fact that PERSON-1 normally handled the tax issues does not mean that PERSON-2 was incapable of filing the appeal. There was no reason she could not have filed the appeal, had she taken the time to review the Tax Notice and fill out the appeal form. The Tax Commission has previously concluded that the fact that one property owner normally handled the tax filings does not mean that the other owner was incapable of filing an appeal for purposes of Rule R884-24P-66(12)(a).

The Property Owner had also argued factual error. He asserted that the properties were steep and only marginally buildable and he had purchased the properties in 2022 for an amount that was much less than the County’s 2023 assessed value. This does not establish factual error. For purposes of the rule, “factual error” is defined at R884-24P-66(1)(a) to mean “an error described in Subsection (1)(b): (i) that is objectively verifiable without the exercise of discretion, opinion, or judgment; (ii) that is demonstrated

² For tax year 2023 this period was from July 22, 2023 to September 15, 2023.

by clear and convincing evidence; and (iii) the existence of which is recognized by the taxpayer and the county assessor.” Additionally R884-24P-66(1)(b) provides that “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.” As stated in R884-24P-66(1)(c) a "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 . . .” The Property Owner has not established a “factual error” based on these criteria.

DECISION AND ORDER

After reviewing the information in this matter, the Property Owner has not shown a sufficient basis for the Tax Commission to order the County Board of Equalization to reconvene pursuant to Utah Code Subsection 59-2-1004(3) and Utah Admin. Rule R884-24P-66(12). Therefore, the Property Owner’s request is denied. 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.