

17-1571
TAX TYPE: PROPERTY TAX
TAX YEAR 2017
DATE SIGNED: 08/09/2018
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

| | |
|---|--|
| <p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p> | <p>ORDER ON COUNTY'S DISMISSAL</p> <p>Appeal No. 17-1571</p> <p>Parcel Nos. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2017</p> <p>Judge: Phan</p> |
|---|--|

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Deputy COUNTY
Attorney
REPRESENTATIVE FOR RESPONDENT-2, Clerk for COUNTY
Board of Equalization

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Hearing on County's Dismissal on January 25, 2018. Petitioner ("Property Owner") filed with the Utah State Tax Commission an appeal of the decision issued by Respondent ("County") dismissing the appeal of the above listed parcel for tax year 2017. The County had dismissed the appeal on the grounds that the Property Owner had failed to provide sufficient evidence or documentation with his appeal to achieve standing before the COUNTY Board of Equalization ("County"). Based on Utah Admin. Rule R861-1A-9, on an appeal from a dismissal by the County Board of Equalization, the only matter that will be reviewed by the Commission is the dismissal itself and not the merits of the appeal.

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:

(1)(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 (2);

...

(b) The contents of the application shall be prescribed by rule of the county board of equalization.

(3) The owner shall include in the application under Subsection (1)(a)(i) the owner's estimate of the fair market value of the property and any evidence which may indicate that the assessed valuation of the owner's property is improperly equalized with the assessed valuation of comparable properties.

...

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

(b) The county board of equalization shall make a decision on each appeal filed in accordance with this section within a 60-day period after the day on which the application is made.

...

(e) The decision of the board shall contain a determination of the valuation of the property based on fair market value, and a conclusion that the fair market value is properly equalized with the assessed value of comparable properties.

(f) If no evidence is presented before the county board of equalization, it will be presumed that the equalization issue has been met.

(g) (i) If the fair market value of the property that is the subject of the appeal deviates plus or minus 5% from the assessed value of comparable properties, the valuation of the appealed property shall be adjusted to reflect a value equalized with the assessed value of comparable properties.

(ii) Subject to Sections 59-2-301.1, 59-2-301.2, 59-2-301.4, equalized value established under Subsection (5)(g)(i) shall be the assessed value for property tax purposes until the county assessor is able to evaluate and equalized the assessed value of all comparable properties to bring them all into conformity with full fair market value.

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

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a property owner achieves standing to appeal to a county board of equalization and when the county board is required to issue a decision on the merits as follows:

- (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 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 under Subsection (2)(e) 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.

...

The Commission has promulgated Administrative Rule R884-1A-9 regarding appeals to the Commission of decisions where the County Board issued an order of dismissal. It provides in relevant part:

- (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 revived 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) or (c) was improper;

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

DISCUSSION

The facts relevant to determining whether the County's dismissal of the Property Owner's appeal was proper under Utah Admin. Rule R884-24P-66(3) are the following. It was not disputed that the Property Owner timely filed an appeal form to the County by the September 15, 2017 deadline. On August 16, 2017, he filed the appeal application form provided by the County. The County's application form was geared toward a valuation appeal. There were six check boxes to state the basis of the appellant's market value opinion and each box provided what type of evidence would be needed to support each basis. There was no box that an appellant could check if they were filing an appeal based on equalization and no instruction on what type of evidence would be needed to appeal based on equalization. The Property Owner personally added a seventh check box to the form, which he checked. In that box he had written the reason for his appeal as, "unfair, arbitrary, unjustified, inequitable, and discriminatory inflation increase in market value assessment."

The Property Owner did attach information to this appeal form to support his appeal. He provided a memorandum dated August 13, 2017 explaining that his property had increased by 12.3% and then proceeded to provide information on why he felt that the increase was too high. He provided a handwritten list of 10 parcels from his same subdivision with the 2016 and 2017 values for each parcel and the percentage of increase for each. He listed that the average of the increase was 6.7%. He provided a page where he had summarized four public media excerpts regarding the percentage of increase in housing. There is a notation that, "All above articles will be produced upon request if the Board cannot locate them." He also provided his GRAMA request to the County asking for percentage increase or decreases for his tax area and the County's response to the request.

On August 16, 2017, REPRESENTATIVE FOR RESPONDENT-2, Clerk of the Board of Equalization for COUNTY, issued a letter to the Property Owner stating that additional documentation was needed and provided a deadline for returning the required documentation of August 30, 2017. This letter explained, "Utah State Code 59-2-1004 states that property values can be appealed on the basis of

your property's Market Value Equalization or a Factual Error. Your appeal appears to be on the basis of a percentage increase in property value, which is not appealable under State Code."

The Property Owner responded by filing a new appeal on August 31, 2017. With this appeal, he provided the same list of the 10 properties in his subdivision with the percentage increase from tax year 2016 to 2017 and his calculation of the average increase. He provided full copies of the public media excerpts referred to in the first appeal and the GRAMA request. In addition, he had attached a letter dated August 28, 2017 that notes a person may appeal based on equalization, citing Utah Code Sec. 59-2-1004 and asserting that the County's valuation for his property is inequitable. He also provided a memorandum dated August 28, 2017, which contains some of the information from the August 13, 2017 memorandum, but adds that the percentage increase on his property is inequitable compared to the percentage increases of his neighbors. This second appeal makes it clear that he is appealing based on equalization.

On August 31, 2017, REPRESENTATIVE FOR RESPONDENT-2 issued a letter¹ concerning the second appeal, which again indicated that additional documentation was needed, and giving the Property Owner until September 14, 2017 to provide the information. This letter again makes the statement that, "Utah State Code 59-2-1004 states that property values can be appealed on the basis of your property's Market Value, Equalization, or a Factual Error. Your appeal appears to be on the basis of a percentage increase in property value, which is not appealable under State Code." There was nothing on this letter to suggest what type of evidence the County expected for equalization appeals.

The Property Owner's response to this notice was a memorandum dated September 4, 2017, in which he discusses the provisions of Utah Admin. Rule R884-24P-66 regarding meeting the minimum requirements to obtain standing and the Standards of Practice that indicate property owners ". . . need only pass a very low hurdle to get a hearing." The Property Owner asserts that he has provided enough information to achieve standing and that the County Board of Equalization should have issued a decision on the merits of the appeal under Utah Admin. Rule R884-24P-66(6). He argues that instead of the County Board issuing a decision, the County Clerk of the Board had made the decision and summarily dismissed his appeal.

It is clear and not disputed by the County that the Property Owner's evidence was not evaluated on the merits by the County Board and was instead dismissed by the Clerk of the Board after she had made the decision that it was insufficient to obtain standing. The Property Owner's appeal was dismissed

¹ Also on that date, REPRESENTATIVE FOR RESPONDENT-2 issued a form letter requesting additional information that had check boxes and suggesting the type of evidence to provide for different appeal approaches. There was nothing on the form that applied to equalization appeals.

by letter dated September 19, 2017, from REPRESENTATIVE FOR RESPONDENT-2. Like all the previous letters from REPRESENTATIVE FOR RESPONDENT-2, this letter was unsigned.

After the Hearing before the Utah State Tax Commission, there was a post hearing submission from the Property Owner dated February 1, 2018 and from the County dated February 20, 2018. The Property Owner had raised some arguments regarding the fact that all letters from REPRESENTATIVE FOR RESPONDENT-2 were unsigned and other ancillary issues.

After reviewing the information submitted in this appeal and the law, the Commission must determine whether or not the County's dismissal of the Property Owner's appeal was appropriate and if not appropriate, remand the matter back to the County Board of Equalization. See Utah Admin. Rule R861-1A-9(7). Under Utah Sec. 59-2-1004, which is provided above, a property owner may appeal to the County Board of Equalization based on fair market value or equalization. However, the appeal form provided by the County does not address equalization. There is no box to check on that form and no suggestion as to what type of documents would be required to show that the valuation of the subject property was not equitable. Additionally, it is clear in the Property Owner's second appeal that he is raising the issue of equalization. In the County's letter in response to the second appeal, there is no acknowledgment that this is an equalization appeal and no suggestion as to the documentation the County expected from the Property Owner.²

The Tax Commission has heard many appeals from County Board of Equalization decisions that were based on equalization arguments, including arguments involving a percentage increase similar to what the Property Owner has argued in this matter. Therefore, it is clear other Counties have received these arguments, granted them standing and issued decisions on the merits, even if those decisions were to deny the appeal. The fact that the Tax Commission has not reduced the value based on similar arguments as the Property Owner presented to the County Board,³ and that the Utah Supreme Court has indicated a stringent burden on property owners generally⁴ to demonstrate equalization, is not a basis for the County

² Guidance on what would establish a reduction based on equalization is set out at Utah Code Subsection 59-2-1004(5)(g).

³ The Tax Commission has addressed equalization arguments in numerous appeals, which are published in a redacted format at tax.utah.gov/commission-office/decisions. Some that have addressed the issue of equalization are *Utah State Tax Commission Initial Hearing Decisions, Appeal No. 11-1287* (2013) and *Appeal No. 11-1512* (2011); *Findings of Fact, Conclusions of Law and Final Decisions Appeal No. 11-2163* (2013), *Appeal No. 15-1051* (2016), *Appeal No. 15-171* (2016), *Appeal No. 16-457* (2017), *Appeal No. 16-755* (2017), and *Appeal No. 16-704* (2016).

⁴ See *Mountain Ranch Estates v. Utah State Tax Commission*, 100 P.3d 1206, (Utah 2004) & *Decker Lake Ventures v. Utah State Tax Comm'n*, 2015 UT 66.

Clerk to dismiss the Property Owner's appeal for lack of evidence. As noted by the Property Owner, the minimum evidence or documentation that supports the taxpayer's claim for relief required by Utah Admin. Rule R884-24P-66(2)(e) to achieve standing and have the County issue a decision on the merits is low.⁵ The County should have received his appeal and the County Board of Equalization should have issued a decision on the merits of his appeal, even if that decision was to deny the appeal if that is what the County Board of Equalization found appropriate. That decision would then have been appealable on the merits to the Utah State Tax Commission under Utah Code Sec. 59-2-1006 as long as the appeal was filed within thirty-days of the County Board's decision.

DECISION AND ORDER

Based on the foregoing, the Tax Commission remands this appeal to the COUNTY Board of Equalization to consider the valuation or equalization of the above listed parcel and issue a decision on the merits based on the Property Owner's second appeal. It is so ordered.

DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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.

⁵ This is not the same evidence standard the County Board of Equalization would apply to evaluate the evidence when issuing its decision on the merits and this decision should in no way be considered a comment on how a decision on the merits should be decided. See Standard 1.9.0 of the Standards of Practice. Property owners "... need only pass a very low hurdle to get 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 clear the BOE itself, or the hearing officer, and not office staff, who actually evaluates the evidence to determine its weight and credibility."