

17-1997
TAX TYPE: PROPERTY TAX
TAX YEAR: 2017
DATE SIGNED: 08/17/2018
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| <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. 17-1997</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/ Locally Assessed</p> <p>Tax Year: 2017</p> <p>Judge: Phan</p> |
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Attorney at Law
For Respondent: RESPONDENT-1, COUNTY Assessor
RESPONDENT-2, Appraiser, COUNTY

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Hearing on County’s Dismissal on March 12, 2018. Petitioner (“Property Owner”) filed with the Utah State Tax Commission an appeal of the decision issued by Respondent 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 evidence supporting a change in value in its appeal to 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, 59-2-301.3, and 59-2-301.4, equalize 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 equalize 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 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) 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 to the County by the September 15, 2017 deadline. On September 13, 2017, a representative for the Property Owner completed the form provided by COUNTY for an appeal to the County Board of Equalization. The Property Owner had filled out its name, parcel number appealed, address and location of the property being appealed. However, question 2 on that form asked for "Owner(s) Opinion of Fair Market Values as of January 1," and the Property Owner did not provide a value, but instead wrote in "To be determined by appraisal." Question 3 on that form requires evidence. It states, "You Must Provide Evidence that the Market Value on Your Notice Exceeds "Fair Market Value." Then there are boxes to check what type of evidence is being submitted. The Property Owner had checked the box for a professional fee appraisal. However, no appraisal was submitted with the appeal form and no other evidence was submitted with the form. A brief letter from NAME-1, a representative for the Property Owner was included with the form. This letter stated in relevant part the following:

Since the buildings and structures on the property are to be valued at scrap value to NWR, we feel that the taxable value of \$\$\$\$ is greatly overstated.

Our attorney is hiring an appraiser to appraise the value of the assets on the property, which will be submitted as soon as we get the report.

After the appraisal is submitted we request that a new value be assessed for the property.

The County maintains that on September 22, 2017, it issued a "10 day notice" to the Property Owner by regular mail. The Property Owner's representative stated that the letter was never received by the Property Owner through regular mail, but acknowledges receipt by email on September 29, 2017. In this letter, the County stated in pertinent part:

As of today's date we have not received any documentation regarding the appeal and no supporting evidence was submitted with the appeal so at this time we are requesting supporting evidence for your appeal. This is a 10 day notice to provide this

documentation. Please provide any and all supporting evidence to this office no later than October 6, 2017 by 5:00 pm. If this information is not received by this date and time the appeal will be dismissed.

There was some email correspondence on October 2, 2017 and October 3, 2017. The Property Owner had asked for an "Improvement List" on October 2, 2017. RESPONDENT-2 for the County had emailed on Tuesday, October 3, 2017, that he was still working on the list¹ and it would not be available until after he went over it with the County Assessor, who would be out of the office until that Thursday. On October 3, 2017, the Property Owner's representative responded by email, "Since we need to have that list to effectively dispute the amount, can we please extend the deadline for the appeal?" RESPONDENT-2 responded back on that same day, "No. I'm sorry. You said you had an appraisal. That would be your evidence to indicate our value is too high. When do you expect that?"

At the hearing, the attorney for the Property Owner, REPRESENTATIVE FOR TAXPAYER, explained that he did hire an appraiser to appraise the property and provided a copy of the Terms of Engagement Letter signed by the appraiser on October 3, 2017 and signed by REPRESENTATIVE FOR TAXPAYER on October 5, 2017. In the terms of engagement letter, it indicated the appraisal report would be prepared and delivered in 21 days.

REPRESENTATIVE FOR TAXPAYER explained that because he was not able to get the appraisal before the "10 day notice" deadline, he submitted the information that he had available at that time to the County on October 5, 2017. His October 5, 2017 submission was hand delivered and the County acknowledges receipt. REPRESENTATIVE FOR TAXPAYER's October 5, 2017 submission included a cover letter in which REPRESENTATIVE FOR TAXPAYER explained the Property Owner was in the process of having the property appraised, it would take about three weeks and he would let the County know when it was finished. The letter also indicates, "Enclosed, please find a market analysis of the subject property, including recent sales of comparable parcels, prepared by COMPANY." He goes on to state the analysis supported the Property Owner's opinion of the "property value." The analysis from COMPANY concluded a land value for ##### acres of the subject property at \$\$\$\$ or \$\$\$\$ per acre.

The County points out that the COMPANY market analysis was in regards to the land only, not the buildings on the property. The market analysis included land sales, which the County argues supported the land value the County had on the property, but based on further analysis of the land sales is

¹ At the hearing, there was mention of a personal property valuation issue as well as the real property issue that is the subject of this appeal and it is not clear whether this list pertained to the personal property or the real property.

not an objective conclusion. The County points out that of the total value for this property of \$\$\$\$\$, about \$\$\$\$\$ was for the commercial buildings. The valuation was complicated because there was ##### acres of the parcel that were used as farmland and assessed under the FAA as greenbelt property. There was an agricultural building on the property. There was also a residence and land used with the residence. The parties did provide the 2017 tax notice, but that notice does not break out the land values from the building values. At the hearing, the County's representative explained that about \$\$\$\$\$ of the total value was for the commercial land and \$\$\$\$\$ was for the commercial buildings.

It was the County's conclusion that the October 5, 2017 documents provided by REPRESENTATIVE FOR TAXPAYER were insufficient to meet the minimum evidence requirement. On October 10, 2017, the County dismissed the Property Owner's appeal and issued a letter notifying the Property Owner of the dismissal. In that letter the County stated, "The information provided by REPRESENTATIVE FOR TAXPAYER was insufficient to meet this requirement as it did not show any evidence for a value change. The land value indicated by this information supports the market value of the Assessor's Office. No other information was provided."

REPRESENTATIVE FOR TAXPAYER filed an appeal of the County's dismissal with the County Auditor on November 8, 2017. On November 9, 2017, he sent the completed appraisal to the County Auditor. The County Auditor responded by letter dated November 13, 2017, in which the auditor stated that on an appeal from a dismissal the only matter that would be reviewed by the State Tax Commission is the dismissal itself, not the merits, citing Utah Admin. Rule R861-1A-9. This letter instructed that REPRESENTATIVE FOR TAXPAYER file the appeal on dismissal directly to the Utah State Tax Commission, which he did and that was the filing that is now before the Commission in this matter.

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. 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 include "evidence or documentation that supports the taxpayer's claim for relief." Under Subsection R884-24P-66(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." 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.² 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. In fact, Standard 1.9.0 of the Standards of Practice instructs the counties that 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.”

In this matter, the Property Owner did respond to the County’s 10-Day Notice Letter by providing some evidence. The evidence did pertain only to land values, and the land values were only a fraction of the total value for the subject property. However, the land value information, despite the County’s argument to the contrary at this hearing, could have been considered to support a reduction in the value attributed to the land. The County’s representative at the hearing had stated that 184 acres of the land were assessed as commercial land at \$\$\$\$\$. This is \$\$\$\$\$ per acre. The land sales analysis provided by the Property Owner indicated a value of \$\$\$\$\$ per acre. Regardless of the fact that the Property Owner had not been able to provide information regarding the improvement values within the 10-day notice period, what was provided could have been considered to support a change to the land value and was sufficient to meet the minimum evidence standards to achieve standing before the County Board of Equalization. The County Board of Equalization then should have reviewed the evidence and issued a decision on the merits. Once a decision was issued on the merits of the appeal, the Property Owner would have the right to appeal that decision under Utah Code Sections 59-2-1004 and 59-2-1006 to the Utah State Tax Commission. This matter should be remanded back to the County Board of Equalization for a decision on the merits.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission remands this matter back to the COUNTY Board of Equalization to consider the evidence submitted by the Property Owner for the above listed parcel and issue a decision on the merits. It is so ordered.

DATED this _____ day of _____, 2018.

² This decision should in no way be considered a comment on how a decision on the merits should be decided.

Appeal No. 17-1997

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.