

20-849

TAX TYPE: PROPERTY TAX

TAX YEAR: 2019

DATE SIGNED: 3/05/2021

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

BEFORE THE UTAHSTATE TAX COMMISSION

PETITIONER,	ORDER REMANDING APPEAL TO COUNTY BOARD OF EQUALIZATION
Petitioner,	
v.	Appeal No. 20-849
COUNTY BOARD OF EQUALIZATION,	Parcel No. #####
STATE OF BUSINESS-1H,	Tax Type: Property Tax
Respondent.	Tax Year: 2019
	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Attorney at Law
REPRESENTATIVE-2 FOR PETITIONER, Representative,
PETITIONER

For Respondent: REPRESENTATIVE-1 FOR RESPONDENT, Deputy County Attorney
RESPONDENT-1, Commercial Appraiser, COUNTY
RESPONDENT-2, Commercial Appraiser, COUNTY

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on appeal filed by the Petitioner ("Property Owner") pursuant to Utah Code Sec. 59-2-1006. The matter proceeded to an Initial Hearing on November 30, 2020, scheduled pursuant to Utah Code Sec. 59-1-502.5. However, at the Hearing the Property Owner argued that the matter should be remanded back to the County Board of Equalization for a hearing, after proper notice to the Property Owner, on the valuation of the subject parcel for the January 1, 2019 lien date. The representative for the County argued that the matter should not be remanded back to the County Board of Equalization at this point and instead the Tax Commission should hear the facts and evidence regarding the market value of this property and issue a decision on the merits of the appeal. For the lien date at issue in this appeal the subject parcel, which is parcel ##### (PARCEL-#####), had

originally been valued by the County Assessor at \$\$\$\$\$. The Property Owner did not appeal the value of the subject parcel to the County Board of Equalization. The County Board of Equalization raised the value of the subject parcel to \$\$\$\$\$. The Property Owner argued that the County had not provided the Property Owner adequate notice that the County Board of Equalization would be having a hearing to raise the value for the subject property, so, therefore did not have the opportunity to present evidence and argument at the County Board of Equalization regarding the value of the subject parcel as of the lien date at issue.

APPLICABLE LAW

Utah Code §59-2-1002 provides for changes in assessments as follows:

(2) During its sessions, the county board of equalization may direct the assessor to:

...

(c) make and enter new assessments, at the same time cancelling previous entries, when any assessment made by the assessor is considered by the board to be incomplete or incorrect.

(3) The clerk of the board of equalization shall give written notice: (a) to all interested persons of the day fixed for the investigation of any assessment under consideration by the board at least 30 days before the action is taken; . . .

Utah Code §59-2-1003 provides that a County Board may increase or decrease an assessment as follows:

(1) The county board of equalization may, after giving notice as prescribed by any rules the commission makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, increase or decrease any assessment contained in any assessment book, so as to equalize the assessment of all classes of property under Section 59-2-103.

...

Although the Tax Commission has not made rules governing notice under Utah Code Sec. 59-2-1003, the Commission has promulgated Standard of Practice, Standard 1.13 as follows:

Standard 1.13 Assessor-Initiated Appeals 1.13.0 Assessor-Initiated Appeals When the assessor initiates appeals to the BOE after the assessment roll has been delivered to the auditor, the assessor must, in writing, notify the auditor of recommended changes and the bases for the changes. The auditor must then notify the taxpayer of any change to the valuation notice and provide an explanation of or basis for the change and allow the taxpayer the following options: 1) Sign the notification document indicating agreement with the change(s) and return to the auditor; or 2) Allow the taxpayer the later of 45 days or September 15th in which to appeal the change(s) to the BOE. In either case, the

information is presented to the BOE.

DISCUSSION

Based on the information provided at this hearing, the Property Owner had filed an appeal to the County Board of Equalization of parcel no. ##### (“PARCEL-#####”). PARCEL-##### was common area in the development and was owned by BUSINESS-1. It had been assessed at \$\$\$\$ by the County Assessor as of the 2019 lien date and the Property Owner filed an appeal of PARCEL-##### arguing that it should be 100% exempt. After the Property Owner had filed its appeal of PARCEL-#####, the County sent a Notice of Hearing to the Property Owner of the date and time for the hearing before the County Board of Equalization. Upon receipt of this notice, it appeared to the Property Owner that the subject of the hearing was the Property Owner’s appeal of PARCEL-#####, which was the only parcel in the development that the Property Owner had appealed. There were, however, three other parcels in the development, which had not been appealed. These were parcels #####, #####, and #####.

The parties provided a copy of the notice that the County had mailed to the Property Owner of the hearing on the Property Owner’s appeal. The Notice of Hearing was dated December 5, 2019. The relevant portions of the Notice of Hearing letter are as follows:

Parcel number(s): #####
Associated Parcels: #####, #####, #####

NOTICE OF HEARING

The Assessor has completed review and disclosed their evidence in response to your Board of Equalization appeal filing. You may request a copy of the assessor’s evidence upon submission of a signed confidentiality agreement. . . .

The COUNTY Board of Equalization has scheduled a hearing regarding your property based on the petition filed for the current tax year. The hearing has been set for:

Date: Monday, DATE, 2020

. . . .

PLEASE NOTE THAT YOUR CASE HAS BEEN SCHEDULED FOR A HEARING WITH A HEARING OFFICER APPOINTED BY THE BOARD OF EQUALIZATION. Be prepared to state your claim, comment on your initial evidence, and allow for questions with the allotted time period. . . .

Once the hearing officer has reviewed your filing and the Assessor’s information, a written recommendation will be submitted to the COUNTY’s Board of Equalization. A

formal written decision will subsequently be issued to you. If you disagree with the decision, you have the right to appeal that decision to the Utah State Tax Commission.

Although the notice had listed the three additional parcels as “associated parcels,” one of which was the subject parcel, there was nothing in the notice to indicate to the Property Owner that, in addition to considering the Property Owner’s appeal, the County Board was also going to be considering a request by the County to raise the values of the three parcels listed as associated parcels. The Property Owner’s attorney did attend the hearing at the County Board of Equalization and argued the Property Owner’s position in regards to the only parcel the Property Owner had appealed, which was PARCEL-#####. The Property Owner’s attorney proffered that the county hearing officer never asked him about the three parcels listed as associated parcels and there was no discussion whatsoever about the County requesting an increase for those parcels and that the increase of the associated parcels was also to be the subject of the hearing.

When the County Board of Equalization issued its decision, PARCEL-##### was changed to 100% exempt, as the Property Owner had requested. However, the Property Owner then also received decisions on the three parcels that had been listed as associated parcels that increased the value substantially for each parcel. The parcel subject to this appeal was raised from \$\$\$\$\$ to \$\$\$\$\$. When the Property Owner later obtained a copy of the County hearing officer’s record, that record stated that the Property Owner had presented no evidence regarding the associated parcels. The Property Owner’s attorney acknowledged that he had not presented evidence on the three associated parcels, but it was because he had no knowledge that the associated parcels were being considered for a value increase and there was no discussion in that regard at the County Board of Equalization Hearing.

The County argued at the Initial Hearing that regardless of the notice and whether or not it was adequate, the appeal was now before the State Tax Commission on the merits and the parties should present their evidence regarding the valuation of the subject parcel and that the Tax Commission should then just issue a decision on the value. The Property Owner was not prepared to argue the merits before the Tax Commission at the Initial Hearing and instead argued the matter should be remanded back to the County Board of Equalization for an actual hearing at that level in regards to the 2019 value of the subject parcel.

Neither party contested that the County Board of Equalization had the statutory authority to hear and increase the value of properties that were not appealed by a property owner or taxpayer. However, the Commission finds that the County did not give the Property Owner adequate notice that the County intended to address the assessed values of the associated parcels at the County Board of Equalization

hearing, or that the hearing was to include a proposed increase for the associated parcels. The Property Owner was prejudiced by the County's lack of notice and the Property Owner requested the matter be remanded to the County Board. Therefore, the matter should be remanded to the County Board of Equalization for a hearing on the County's increase to the original assessed value of the subject parcel.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission reconvenes the 2019 County Board of Equalization to hear this matter and remands the matter back to the County Board of Equalization to schedule a hearing on the County's increase in value of the subject parcel for tax year 2019. It is so ordered.

DATED this _____ day of _____, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
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.