05-1725
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2005
SIGNED: 01-05-2007
COMMISSIONERS: M. JOHNSON, P. HENDRICKSON, R. JOHNSON
CONCURRENCE: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2	)	**ORDER**
	)	
Petitioners,	)	Appeal No. 05-1725
	)	Parcel No. #####
v.	)	
	)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION	)	
OF RURAL COUNTY,	)	Tax Year: 2005
STATE OF UTAH,	)	
	)	Judge: M. Johnson
Respondent.	)	

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:
Commissioner Marc B. Johnson
Commissioner Palmer DePaulis[1]

Appearances:

For Petitioner:	PETITIONER REP 1
	PETITIONER REP 2
	PETITIONER 2, by phone
For Respondent:	RESPONDENT REP 1, RURAL County Assessor
	RESPONDENT REP 2, Deputy Assessor
	RESPONDENT REP 3 Millet, Deputy Assessor

[1] Commissioner DePaulis is no longer with the Tax Commission and did not participate in the deliberations for this appeal. He did, however, discuss the issues with other members of the Commission before he left.

Appeal No. 05-1725

RESPONDENT REP 4, Deputy Assessor

STATEMENT OF THE CASE

The County notified Petitioner that it denied her application for assessment under the Farmland Assessment Act and that it imposed the rollback tax on her property. Petitioner brought an appeal of the County's decision. This matter came before the Commission for an Initial Hearing on April 11, 2006 pursuant to the provisions of Utah Code Ann. §59-1-502.5.

APPLICABLE LAW

Tax Commission's Jurisdiction

A party who is dissatisfied with the County Board of Equalization's ("BOE) decision may file an appeal with the Tax Commission pursuant to Utah Code Ann. Sections 59-2-1004.5 and 59-2-1006.

Farmland Assessment Act ("Greenbelt") Requirements

Land may be assessed according to its value for agricultural use if (a) it meets statutory acreage requirements; (b) it is actively devoted to agricultural use; and (c) it has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year at issue. Utah Code Ann. §59-2-503.

For purposes of section 59-2-503, "actively devoted" means that the land produces more than 50% of the average agricultural production per acre for a given type of land in a given location. Utah Code Ann. §§59-2-502 (1) and 59-2-503 (2). "Land in agricultural use" means that the land is devoted to raising useful plants and animals with a reasonable expectation of profit. Utah Code Ann. §59-2-502 (4).

Greenbelt land may continue to be assessed under the greenbelt provisions regardless of whether the land changes ownership. Utah Code Ann. §59-2-509(1). However, the land will be treated as withdrawn from greenbelt status if there is a change of ownership and the land no longer meets the requirements of the program or if the new owner fails to submit an application for greenbelt assessment within 120 days of the change in ownership. Utah Code Ann. §§59-2-509(3) and (4).

When an owner or a lessee actively devotes the land to qualifying agricultural use, an application is for greenbelt status must be submitted along with a written statement, signed under

oath and subject to penalties for perjury, certifying that the property meets the requirements for greenbelt assessment. The application subjects the land use to review and audit. Utah Code 59-2-508.

Rollback Tax

When land is withdrawn from greenbelt status, it is subject to a rollback tax. Utah Code Ann. §59-2-506.

DISCUSSION

The current owner of the subject property, PETITIONER 2, purchased the property in 2004 from PETITIONER REP 2 and PETITIONER REP 1. In exchange for a reduction in the sales price, the sellers retained use of the land for a specified period in a lease back arrangement. PETITIONER REP 2 testified that they use the land primarily to raise alfalfa as feed for her horses. Generally, the horses are kept elsewhere, but there is some indication that they may occasionally "winter" her horses on this property.

During the time that PETITIONER REP 2 and PETITIONER REP 1 owned the property, the Assessor valued it as a greenbelt property. After PETITIONER 2 bought the property, the County Assessor's Office mailed her a greenbelt application and a request for information to support the greenbelt application. Petitioner returned the application, but she did not provide the supporting information requested. Specifically, Petitioner failed to provide any documentation to establish that this land is farmed with the expectation of profit rather than for personal use. Due to Petitioner's failure to supply the information to verify that the property is farmed with the expectation of profit, the Assessor informed Petitioner that the land would be withdrawn from the greenbelt assessment program and that the rollback tax would apply.[2]

PETITIONER 2 objected to the Assessor's action and took the matter to the Board of Equalization. She stated that there has been no change in either the use or the level of profit due to the change in ownership of the property. PETITIONER 2 argued that if the County accepted

[2] The Assessor's letter suggested that the owner or lessee provide copies of certain federal income tax documents as proof that the lessee earns a profit from this land. Although the owner or lessee is not required by statute to produce federal income tax documents, the assessing authority may ask for documentation to support the claim that the land is used "with a reasonable expectation of profit." A federal income tax form is one source of reliable documentation, but it is not the only acceptable documentation.

PETITIONER REP 2's greenbelt application, it has no basis for denying PETITIONER 2's application. With regard to the property's greenbelt status prior to this change of ownership, the Assessor states that the property has been assessed as a greenbelt property in error because PETITIONER REP 2 apparently grew alfalfa for personal use; not for commercial profit.

In reviewing the record and testimony, we note that PETITIONER 2 submitted hand written testimony that states, in part, that:

> She [PETITIONER REP 2] had the property listed as "green belt" status, since she had been producing alfalfa on it for many years. She was able to keep the property in "green belt" since it met all of the requirements, *even though she was not selling the hay, but using it for her personal livestock.* (Emphasis added.)
>
> When we purchased this property, our sales agreement included a clause in which, for a substantial discount in price, PETITIONER REP 2 would continue to maintain possession of the land for a minimum of two years for the expressed purpose of continuing to produce alfalfa for her horses. (Emphasis added.)
> . . .
>
> This property is continuing to be used in the same fashion as it has for the past 8 or more years.

Petitioner's written testimony tends to support the Assessor's position that, while this property has been used to grow agricultural crops, the crops were grown for personal use and not for profit. Nonetheless, whether the greenbelt status was extended to this property in error cannot be determined on this basis alone.

In the hearing before the Tax Commission, both PETITIONER 2 and PETITIONER REP 2 claimed that PETITIONER REP 2 sells hay and sells horses. In support of that claim, PETITIONER REP 2 produced a single check as evidence of a sale of (######) bales of hay in August of 2005 - a sale that occurred after the Assessor terminated the property's greenbelt status. She produced no evidence of any other sale of hay, nor did she produce documentation to show that she is in the business of selling horses. PETITIONER 2 and PETITIONER REP 2 were given an opportunity to submit supporting post-hearing documentation, but did not do so.

Petitioner claims that the "expectation of profit" requirement is met because (a) she bought the property at a discount, and (b) the tenants grow their own feed rather than buying it from another source. As to the first argument, PETITIONER 2's discount is income from a property lease. It is not income from agricultural use, as defined in Utah law. Accordingly, we must address the second argument, i.e., whether the fact that PETITIONER REP 2 and

PETITIONER REP 1 save money by growing her own feed indicates the requisite profit intent, or whether she operates this land only for personal use, as the assessor contends.

The FAA was enacted in 1969 primarily to help family farmers retain their farms. In the absence of the FAA, many farmers would pay significant property taxes because the "highest and best use" of their land was commercial or residential development. See *Bd. of Equalization of Wasatch County v. Stichting Mayflower Recreational Fonds*, 6 P. 3d 560 (Utah 2000). In general, property could qualify if it was not less than five contiguous acres, generated gross income from agricultural use of at least $1,000 per year, was actively devoted to agricultural use, and had been devoted to such use for at least two successive years immediately preceding the tax year in issue.

Historically, it was not difficult to determine whether or not property was used for an agricultural use. Developers, however, realized that they could gain significant tax advantages by continuing some minimal agricultural use of property pending development. See, e.g., *Salt Lake County ex rel. County Bd. Of Equalization v. State Tax Comm'n ex rel Kennecott Corp.*, 779 P.2d 1131 (Utah 1979); *Board of Equalization v. Utah State Commission ex rel Judd,*, 846 P.2d 1292 (Utah 1993); *Salt Lake County ex rel. County Bd. Of Equalization v. State Tax Comm'n ex rel Bell Mountain Corporation*, 819 P.2d 776 (Utah 1991); and *Stichting Mayflower Recreational Fonds*, supra. The Courts recognized that FAA status might not be appropriate in such circumstances, but noted that any narrowing of the exemption should be left to the Legislature.

Subsequently the Legislature made extensive changes to the FAA in 1992. Two of these changes are particularly significant here. First, the $1,000 gross income requirement was replaced with a requirement that the land must produce more than 50% of the average agricultural production per acre as provided under §§59-2-502 (1) and 59-2-503 (2). Second, the definition of "land in agricultural use" was amended to require " a <u>reasonable expectation of profit.</u>" (emphasis added.) See §59-2-502 (4). The Utah Court of Appeals has noted that "[i]n considering the Senate Floor debates in support of the 1992 amendments, it is clear that the purpose behind the amendments was to require farming on land with the reasonable expectation of profit and that 'if you run a farm, you run a real farm; and not a 'hobby farm.' [Citation omitted.] Indeed, as stated by [Senator] Hendricksen, those affected most by the amendments are those landowners that 'have chosen to buy five or six acres and keep riding horses on it for themselves and their friends.'" *Bd. of Equalization of Wasatch County v. Stichting Mayflower Recreational Fonds*, 943 P. 2d 238, n. 4 (1997), *aff'd in part and rev'd in part, Stichting, supra*.

We take administrative notice of the practices of the Property Tax Division ("Division"), which is charged, in part, with providing technical assistance and education to the counties on matters of statewide concern. First, the Division interprets the statutory provision for a "reasonable expectation of profit" to be met if the land meets the minimum agricultural production requirement. Second, according to the Division, most of the land in the various counties throughout the state will qualify for greenbelt based on this standard alone. As a result, if the Commission sustains the BOE in this matter, the taxpayer will be subject to qualifications that are not required from most of the taxpayers in this state.

Although the Commission does not agree that the Division's interpretation is precisely correct, we do find at least some basis for their position. There are situations where land may not be subject to measurements for agricultural production. Property where livestock, poultry, and other animals are raised may not produce any crops or forage at all. If the animals raised on such land are sold commercially, the land clearly must qualify for greenbelt. In such a case, the only standard that the land could meet is the reasonable expectation of profit. In fact, this requirement is critical in order to prevent abuses. In a hypothetical situation where one or two animals per year were sold from a 100-acre parcel of land, the reasonable expectation of profit would not be met. In contrast, the production requirement for cropland avoids abuses where land may not meet that standard, but there is sufficient production for a person to sell fruits or vegetables at a "reasonable profit.

While we do not find that the two standards should be applied separately and individually based on whether land produces crops or is used solely to raise animals, neither do we believe that two standards be applied to crop land while only one standard is applied for raising animals. In fact, the Supreme Court in *Stichting* implicitly approved the use of Animal Unit Months ("AUM's") to determine the productivity of graze land. Thus we find that when determining whether land such as the subject property qualifies for greenbelt, the Commission must first and primarily consider whether the production requirements of §§59-2-502 (1) and 59-2-503 (2) have been met. Whether there is a reasonable expectation of profit, although helpful in examining the use of the property, is not critical in establishing that qualification. In the instant case there is no dispute that the subject property meets the production standard. This is corroborated by the fact that the Assessor has allowed the property to remain on greenbelt for the past several years.

Once the production requirement has been met, the "expectation of profit" test must also be met to avoid granting the exemption to the "hobby farms" the Legislature was concerned about. In this case, PETITIONER REP 2's unrebutted testimony was that they sold both horses and alfalfa. Although the specific sale of alfalfa she actually documented occurred outside the year in issue, the County did not dispute PETITIONER REP 2's contentions. Furthermore, we find that there is no need to show that a profit has been realized in the current year; only that there was a reasonable expectation of profit. In her written comments, PETITIONER REP 2 stated that in addition to growing alfalfa for their own horse, they "sell some to people when they need it."

We note further that had the Commission sustained the Respondent, an equalization problem might have been created between this and other similarly situated properties in RURAL County, and similarly situated properties in most, if not all, of the rest of the State.[3]

A potential argument exists that "hobby farms" for cropland can qualify for greenbelt while land used to raise pleasure horses would not. This is an artificial distinction. In the first case, the crops, at a minimum, would be consumed by the producer in lieu of purchasing them commercially. In the latter instance, we do not believe that raising horses for recreation or pleasure has an equivalent commercial substitute.

In summary, based on the totality of the evidence, we find that the property has met the minimum requirements for the second standard of a reasonable expectation of profit. In so doing, we do not need to address whether the Division's stated position is correct. However, because of the potential equalization problem, we do take it into consideration. In that context then, we find that the prior owners, and current tenants, PETITIONER REP 2 and PETITIONER REP 1, have sold alfalfa in the past and continue to sell it. There is no evidence to show that this is not a reasonable expectation of profit. We believe this property is not a hobby farm as used in the context of existing case law and statute. The property is being used for agricultural purposes.

DECISION AND ORDER

Based on the foregoing, the Commission finds the property is in agricultural use. We reverse the Board's decision and order the County Assessor to reinstate the subject property to

[3] PETITIONER 2 points out that the Board of Equalization hearing officer recommended that this property be restored to greenbelt status because, in his opinion, the County's audit process is discriminatory. Because we decide in favor of PETITIONER 2 on the merits, there is no need to address that argument.

greenbelt status and rescind any rollback taxes that have been assessed.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2006.

_____
Marc B. Johnson
Commissioner

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

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CONCURRING OPINION

I concur with the conclusion of the Order, but disagree with some of the analysis and statements in the Majority decision and the Majority's failure to sustain the Property Tax Division's position, which may lead the Division to a more narrow and improper interpretation of the Greenbelt provision.

I hold the Property Tax Division has developed a sound reading and application of the Greenbelt statute. That is, a property owner will receive a reasonable expectation of profit off the land if it is actively devoted to meeting the 50% agricultural production test.

It is implied, or implicit, that when one owns agricultural land, one would want to reap some profit from the land to offset the costs of owning and working the land; however, the profit may not be all monetary. A reasonable expectation of profit could be a return, yield or proceed from the land or due to the land. It could be growing crops to feed animals that will eventually be slaughtered to feed the family who owns the farm. All the profit may not be realized through the sale of animals or crops, but there may be a profit realized in savings through not having to purchase food and services. In this case, there would be no sales receipts to show proof of profit, but the land could meet the 50% agricultural production test. In essence, there would be no reason to invest the funds necessary to run a farm if there was not a break even element or profit to the family or owner.

It is plausible the actions of the 1992 Legislature were to assist in determining if land met the 50% production requirement by, if necessary, looking at whether there was a reasonable expectation of profit. In essence, land in agricultural use may qualify for greenbelt status if it is producing more than 50% of the average agricultural production (per acre for a given type of land in a given location) because it is devoted to raising useful plants and/or *(/or added)* animals with a reasonable expectation of profit. It is sound to expect the "reasonable expectation of profit" is an additional measure to assist in determining if the primary test -- 50% production -- has been met rather than two separate and mutually exclusive tests that must both be satisfied.

Barring further review and direction by the Legislature, I hold the interpretation of the statute by the Property Tax Division is appropriate. It has been noted in the Majority Opinion that the Courts recognized the Farmland Assessment Act (FAA) statutes might not be appropriate in some circumstances, but also noted that any narrowing of the exemption should be left to the Legislature. I hold that any different interpretation of the Greenbelt statutes, other then how the

Property Tax Division is currently interpreting and applying them, will further narrow the Greenbelt exemption and any narrowing of the Greenbelt exemption is better left to the Legislature.

D'Arcy Dixon Pignanelli
Commissioner