

12-618
TAX TYPE: PROPERTY
TAX YEAR: 2011
DATE SIGNED: 02-27-2013
COMMISSIONERS: R. JOHNSON, M. CRAGUN, D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF (X) COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-618</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2011</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, *Pro Se*
For Respondent: RESPONDENT REPRESENTATIVE-1, Real Property Manager,
(X) County
RESPONDENT REPRESENTATIVE-2, (X) County Assessor's
Office
RESPONDENT REPRESENTATIVE-3, (X) County Assessor's
Office

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the Board of Equalization ("the County"). This matter was argued in an Initial Hearing on September 13, 2012 in accordance with Utah Code Ann. §59-1-502.5. The (X) County Assessor's Office valued the subject property at \$\$\$\$ as of the January 1, 2011 lien date which the Board of Equalization sustained. The County is asking the Commission to sustain the Board of Equalization. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$\$. Additionally, the Taxpayer is requesting that the property be assessed under the Farmland Assessment Act ("greenbelt").

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, “fair market value” shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

Land used for agricultural purposes may be assessed on the bases of that agricultural use in accordance with Utah Code Ann. §59-2-503, as follows in pertinent part:

- (1) For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land:
 - (a) is not less than five contiguous acres in area...
 - (b) except as provided in Subsection (5):
 - (i) is actively devoted to agricultural use; and
 - (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part...
- (5) (a) Notwithstanding Subsection 1(b), the commission or a county board of equalization may grant a waiver of the requirement that the land is actively devoted to agricultural use for the tax year for which the land is being assessed under this party upon:
 - (i) appeal by the owner; and
 - (ii) submission of proof that:
 - (A) the land was assessed on the basis of agricultural use for at least two years immediately preceding that tax year; and
 - (B) the failure or meet the agricultural production requirements for that tax year was due to no fault or act of the owner, purchaser or lessee.
- (b) As used in Subsection (5)(a), “fault” does not include:
 - (i) Intentional planting of crops or trees which, because of the maturation period, do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use; or
 - (ii) Implementation of a bona fide range improvement program, crop rotation program, or other similar accepted cultural practices which do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production level required for land actively devoted to agricultural use.

Utah Code Ann. §59-2-502 defines terms for the Farmland Assessment Act, below in

relevant part:

- (1) “Actively devoted to agricultural use” means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:
 - (a) as determined under Section 59-2-503; and
 - (b) for:
 - (i) the given type of land; and
 - (ii) the given county or area...
- (4) “Land in agricultural use” means:
 - (a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit...

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the value established by the County contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm’n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

The subject property is parcel no. #####, located at ADDRESS in CITY 1. It is a #####-acre parcel that is improved with an ASSET, FARM BUILDING-2, FARM BUILDING-1, and PROPERTY AREA USED FOR ANIMALS.

The Taxpayer stated that he purchased the subject property twenty to twenty-three years ago, and that it has always been taxed under greenbelt. He stated that his understanding was that if a property had over five acres, it would automatically qualify for greenbelt. He stated that a year or two ago he was taken off greenbelt, when, without his permission, his PERSON sold an additional ACREAGE that he had owned. The Taxpayer also stated that he believes the property

is over-assessed because it is twenty three years old, and there are newer homes in the area that have lower values than the subject.

When asked about the agricultural uses for the property, the Taxpayer stated that he has FARM BUILDING 1, PROPERTY AREA USED FOR ANIMAL 1, 2 AND 3, an ASSET, used for storage and a FARM BUILDING 2. He stated that he used to have ANIMAL 1 on the property, but he removed them about two years ago because no one was living in the ASSET. He stated that he still grows hay on the property, which he intends to cut within the next day or two. The Taxpayer stated that his plans are to move back to the property, and he will bring the ANIMAL 1, with him when he does. He stated that they are his personal ANIMAL 1, though he also owns ANIMAL 2. He intends to bring four or five ANIMAL 3 with him, where he will raise the babies and then sell them.

When asked by the County whether the Taxpayer had any documentation to support his requested market value, he replied that he did not. When asked whether he had specific data of comparable properties for his equalization argument, the Taxpayer replied that he did not.

The County's representative stated that the subject property does not qualify for greenbelt. The County provided aerial photographs and began looking at the areas that could potentially be used for agricultural purposes. They determined that of the #####-acres, #####-acres could actually be used for production. They noted that most of the subject property is being used for the ASSET site, and not for agricultural production purposes. The County's representative further noted that when they reviewed the property, they saw no indication of any production. It is the County's position that not only does the Taxpayer not meet production requirements, but that he does not meet the acreage requirements because of the size of the ASSET site. Further, the County noted that the Taxpayer has not provided evidence supporting his requested value.

In rebuttal, the Taxpayer stated that this property has been like this for twenty three years, and had always qualified for greenbelt. He stated that the only improvement he made was to the X-1, which he changed to an X-2. He stated that all of the landscaping and the PROPERTY AREA USED FOR ANIMALS, are still in the original state and he would like to keep it that way.

In seeking a value other than that established by the board of equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann.

§59-2-103. Utah Code Ann. §59-2-102 defines “market value” as the amount for which property would exchange hands between a willing buyer and seller.

The Taxpayer has not provided any evidence in support of his requested value, and has not sustained his burden of proof. Therefore, the Board of Equalization value of \$\$\$\$ should be sustained. The Taxpayer has not provided evidence to support his contention that the subject property should be assessed under greenbelt. While he has FARM BUILDING 1, a FARM BUILDING 2, PROPERTY AREA USED FOR ANIMALS 1, 2 AND 3, and some additional acreage; the Taxpayer has not actually had his ANIMALS there. He has not shown that he meets the production requirements to qualify for greenbelt.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2011 lien date, and sustains the Board of Equalization. The subject property does not qualify to be assessed under greenbelt for the tax year at issue. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner