

12-2931
TAX TYPE: PROPERTY TAX/LOCALLY ASSESSED/GREENBELT
TAX YEAR: 2012
DATE SIGNED: 1-10-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION:

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 12-2931 Parcel Nos. #####-1 & #####-2 Tax Type: Locally Assessed/Greenbelt Tax Years: 2012 Judge: Phan
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Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR PETITIONER, Manager PETITIONER
For Respondent: RESPONDENT-1, Deputy Utah County Attorney
RESPONDENT-2, Farmland Assessment Analyst

STATEMENT OF THE CASE

The representative for Petitioner (“Property Owner”) brings this appeal from the decision of the Utah County Board of Equalization (“County”) under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on October 28, 2013, in accordance with Utah Code §59-1-502.5. The Utah County Board of Equalization had denied the Property Owner’s application for Greenbelt valuation under the Farmland Assessment Act for failure to meet production requirements on October 30, 2012. The Property Owner had timely appealed this denial by filing a Request for Redetermination of County Board of Equalization Decision on November 27, 2012. However, the County noted at the hearing that the Property Owner had not followed the County’s process for appeal. The County Assessor had issued a letter to the Property Owner that it had denied the application for Greenbelt on May 16, 2012. The letter did explain to the Property Owner that she could appeal the decision to the County Commission at Board

of Equalization. It was the County's contention that the Property Owner had 45 days to file an appeal of that decision, but did not file an appeal until July 13, 2012. Regardless, the County Board's decision had been to deny the appeal on the merits rather than dismiss the appeal as untimely.

APPLICABLE LAW

A property may be assessed on the basis of the value the land has for agricultural use, or given a Greenbelt assessment, if the specific requirements of the Farmland Assessment Act are met. Utah Code Sec. 59-2-503 provides 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 . . . and (b) except as provided in Subsection (5): (i) is actively devoted to agriculture 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.

(2) In determining whether land is actively devoted to agricultural use, production per acre for a given county or area and a given type of land shall be determined by using the first applicable of the following: (a) production levels reported in the current publication of the Utah Agricultural Statistics; (b) current crop budgets developed and published by Utah State University; and (c) other acceptable standards of agricultural production

(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 part upon: (i) appeal by the owner, and (ii) submission of proof that: (A) the land was assessed on the basis of agriculture use for at least two years immediately preceding that tax year, and (B) the failure to 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 . . .

The deadline to file an appeal of the decision of a County Assessor to remove a property from Greenbelt is set out at Utah Code Sec. 59-2-506(10) as follows:

(10)(a) Subject to Subsection (10)(b), an owner of land may appeal to the county board of equalization: (i) a decision by a county assessor to withdraw land from assessment under this part; or (ii) the imposition of a rollback tax under this section. (b) An owner shall file

an appeal under Subsection (10)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).

A property owner who is dissatisfied with the County Board of Equalization's decision may appeal that decision to the Utah State Tax Commission pursuant to Utah Code Sec. 59-2-1006(1) which provides:

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.

DISCUSSION

At the hearing the Property Owner stated that the subject property had been in Greenbelt prior to 2007. The Property Owner had sheep on the property until sometime in 2006. In 2006 a portion of the subject property was taken by CITY and UDOT to widen ROAD. During this process the fence was taken down and there has been no grazing or agricultural use on this property since that time. The County had removed the property from Greenbelt assessment on August 13, 2007. At this hearing the Property Owner did not dispute that there has been no agricultural production on the subject property since 2007, but argues that this is due to litigation that has dragged on for years and the fact that the fence was never replaced on this property. The Property Owner had reapplied for Greenbelt assessment in 2012. The County reviewed the request and the County Assessor's Office denied the request by letter dated May 16, 2012. The letter explained how the Property Owner could appeal the decision to the County Board of Equalization, but did not provide a deadline for filing the appeal. There were some extenuating circumstances during this period of time for the Property Owner as her husband was terminally ill and he died in July 2012.

The subject property is located in an HS zoning in CITY. This zoning does not allow for farming or agricultural use. However, the Property Owner argues that she would still be entitled to use the property for grazing of ANIMALS. To support this contention, the Property Owner provided a letter, dated August 25, 2006, from the CITY Attorney, NAME-1, in which NAME-1 stated that:

However, at the time the property was annexed from Utah County into the City of CITY, putting the property to Agriculture Use was permitted by Utah County. Inasmuch as the property owner has kept livestock on the Property and put the Property to an Agricultural Use since its annexation into the City, the property owner may continue to put the

Property to Agricultural Use, in substantial conformity with his land use rights. These rights shall continue until the owner abandons such use. The temporary removal of animals from the Property during the construction of ROAD adjacent to the Property and/or during the time that the Property, or part of it, is used as a staging site (if negotiated as such with the City), shall not be considered abandonment of the property owners rights to put the Property to agriculture use in conformance with the terms herein.

The construction on the road was completed years ago. Because the letter from the city attorney had been issued in 2006, and there has been no agriculture use of the property since that time, it is not apparent from this letter that the City would allow the Property Owner to resume grazing uses on the subject property. However, the Property Owner argued that she could not resume the agricultural use of the subject property because the fence was never replaced by the City and the property became embroiled in a lawsuit with the city and a neighboring property owner over development agreements. There was no evidence that the lawsuit prohibited her from replacing the fence if she incurred the costs.

At the hearing the County provided photographs evidencing that there has been no agricultural use of the subject property for years, a position which the Property Owner did not refute.

Upon review of the law and the facts in this matter, the County properly denied the Greenbelt assessment as the Property Owner did not submit proof that the land has been actively devoted to agriculture use for at least the two successive years immediately preceding the 2012 tax year when she applied for Greenbelt. Even if the Property Owner were to show that the failure to meet the agricultural production requirements for 2012 were due to “no fault” of her own under Utah Code 59-2-503(5), which has not been shown in this matter, she would still have had to show that the land was assessed as Greenbelt for at least two years immediately preceding 2012 under Utah Code Sec. 59-2-503(5)(a)(II)(A). This property had last been assessed as Greenbelt in 2006. There is no provision in the law that would allow a property owner to start being assessed under Greenbelt on a year when there was no production, regardless of whether no fault was shown. This property had been removed from Greenbelt in 2007 and there has been no production since that time. The 2012 application is a new application. The Property Owner’s appeal should be denied.

This determination is made on the merits of the Property Owner’s claim. The Property Owner had appealed the County Assessor’s decision to deny the Greenbelt assessment to the County Board of Equalization, but the County now argues that the Property Owner had filed that appeal late. The County Board heard and denied the Property Owner’s appeal on the merits. It did not dismiss the Property Owner’s appeal as untimely. The Commission does the same in this appeal. However, the Commission

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does point out to the County, that the County Assessor's notice dated May 16, 2012, notifying the Property Owner that the Greenbelt application had been denied, failed to provide the Property Owner with the appeal deadline. If an appeal to the County Board is filed untimely, the County Board could dismiss the appeal rather than make a decision on the merits. Had the County Board dismissed the appeal the only issue before the Commission would be whether the dismissal was appropriate. However, in this matter the County Board did not dismiss the appeal for being filed untimely and its possible that was due to the Property Owner's circumstances around the appeal period or that the County had failed to provide notice of the deadline. As the County Board denied the appeal, that is the decision that was appealed to the Commission and for which the Commission has jurisdiction to review.¹

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's appeal in this matter. 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

¹ See Utah Admin. Rule R861-1A-9.

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

DATED this _____ day of _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner