17-230
TAX TYPE: GREENBELT/ROLLBACK
TAX YEAR: 2016
DATE SIGNED: 8/16/2017
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 17-230 Parcel Nos. ##### & ##### Tax Type: Greenbelt/Rollback Tax Year: 2016 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT-1, CITY-1 Deputy County Attorney
RESPONDENT-2, COUNTY-1 Assessor
RESPONDENT-3, Deputy County Assessor
RESPONDENT-4, Deputy County Assessor

STATEMENT OF THE CASE

Petitioner ("Property Owner") files this appeal according to the provisions of Utah Code §59-2-1006, from the decision of the COUNTY-1 Board of Equalization ("the County"). The decision of the County was to remove the parcels subject to this appeal from greenbelt assessment under the Farmland Assessment Act and to issue a rollback assessment. This matter was argued in an Initial Hearing on May 8, 2017, in accordance with Utah Code §59-1-502.5.

APPLICABLE LAW

A person may appeal a decision of a county board of equalization, as provided in Utah Code §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.

Utah Code §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.

An exception provided by law to Utah Code §59-2-103 is that if a number of specified criteria are met, land used for agricultural purposes may be assessed on the basis of the value for agricultural use rather than fair market value. The exception is set out in the Farmland Assessment Act at Utah Code Title 59, Chapter 2, Part 5. 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…
> (b) except as provided in Subsection (5) or (6):
> (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.
> (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 report 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 designated by the commission by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
> . . .

Utah Code §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…

The application and recertification process are set out at Utah Code 59-2-508, which provides in pertinent part:

. . .

(4)(a) Once the application for assessment described in Subsection (1) has been approved, the county may: (i) require the owner to submit a new application or a signed statement: (A) by written request of the county assessor; and (B) that verifies that the land qualifies for assessment under this part . . .
. . .

(7) Any owner of land eligible for assessment under this part because a purchaser or lessee actively devotes the land to agricultural use as required by Section 59-2-503, may qualify the land for assessment under this part by submitting with the application required under Subsection (2), a signed statement from that purchaser or lessee certifying those facts that would be necessary to meet the requirements of Section 59-2-503 for assessment under this part.

For purposes of greenbelt assessment, Utah Code §59-2-502(8) defines "withdrawn from this part" as follows:

(8) "Withdrawn from this part" means that land that has been assessed under this part is no longer assessed under this part or eligible for assessment under this part for any reason including that:
. . . .
(b) the land is no longer actively devoted to agricultural use;
(c)(i) the land has a change in ownership; and (ii) (A) the new owner fails to apply for assessment under this part as required by Section 59-2-509; or (B) (I) an owner applied for assessment under this part as required by Section 59-2-509; and (II) the land does not meet the requirements of this part to be assessed under this part;
. . . .

Utah Code §59-2-506 provides that a property "withdrawn from this part" is subject to a rollback tax, as follows in pertinent part:

> (1) Except as provided in this section, Section 59-2-506.5, or Section 59-2-511, if land is withdrawn from this part, the land is subject to a rollback tax imposed in accordance with this section.
>
> . . . .

DISCUSSION

The two parcels at issue in this appeal total approximately ##### acres in size and are unfenced. There is no pond or natural water source on the property and the land is not irrigated. The Property Owner has a mobile home on the property which he states he has been fixing up and he uses this property a couple times a year as a vacation or recreational property. It was his contention that the property should remain assessed under the Farmland Assessment Act as greenbelt because he leased the property to COMPANY-1 to be used for grazing. The Property Owner did provide a copy of a lease between himself and COMPANY-1, in which he agreed to allow livestock grazing on his property for a term from February 5, 2013 to February 5, 2018. However, the rent amount indicated in the lease was $$$$$ and the lease does not state how many livestock would be grazed on the property.

The Property Owner also provided a letter from NAME-1 for COMPANY-1, dated November 10, 2016. In the letter NAME-1 stated that the property is grazed in conjunction with other leases that he has for several other properties that are adjacent to the subject. He acknowledges that there are no boundary fences on any of the properties "so the livestock are free to graze any and all of them." He also states that the "property is usually grazed in the months of May & June and again in Oct., Nov. and December." In the letter, NAME-1 goes on to state, "In the year of 2016 [it] was not used in May and June months so as to preserve the feed for the later months." NAME-1 does not say how many cattle he grazed on these combined properties. The Property Owner stated he thought that the number of cows that NAME-1 had grazed were thirty to fifty, but that he did not know how much land in addition to his was being grazed.

At the hearing the Property Owner argued that the County should have given him a warning first that there was not enough grazing or agricultural activity for the property to qualify and give him time to change what he was doing, rather than just removing the property from greenbelt assessment. He does not cite any statute or other legal precedent to support this argument.

At the hearing, the representatives for the County explained that the subject property was in their reappraisal area in 2016 and it came the attention of the County's Green Belt Specialist to take a look at because it did not appear to be actively devoted to agricultural use. The County then sent out its audit packet to the Property Owner, which required an Application and

information on how the property was being used. The Property Owner did respond to the audit packet, but the information was insufficient to establish that the minimum requirements were met. The County Assessor and the Green Belt Specialist visited the property in person and walked over much of the property. At the hearing they stated that the property was not fenced, there were no animals on the property, no water for animals to drink on the property and very little signs that any cattle had been on the property. They concluded that the property was not "actively devoted to agriculture," therefore, determined it did not qualify for greenbelt assessment. The County also points out that it has an ordinance (COUNTY-1 Code §8-9-9) which requires fencing to contain animals in order to keep livestock. The County also asserts that just because there was a lease, did not mean that a property would qualify for the exemption. There still has to be sufficient use to meet the minimum requirements of Utah Law.

The County explained that the subject property is classified as class GZ3 and CZ4, which is non-irrigated graze land. In order to qualify as actively devoted to agriculture under the Utah Code it would have to meet a certain animal unit month (AUM) requirement, which the County said would have been two cows and two calves grazing on the property for three full months each year. The County's representatives stated that NAME-1 has tied up ##### acres for grazing and would need to have grazed over 100 cow/calf pairs for this much acreage to qualify. The County did not have information on how many pairs of cows NAME-1 actually grazed on all of this acreage.

Reviewing the facts presented by the parties and the law at issue, the County's position in this matter is appropriate. Under Utah Code Sec. 59-2-103 all tangible taxable property located in Utah is subject to property tax based on its fair market value, unless otherwise provided in the statute. An exception to the fair market value assessment is provided under the Farmland Assessment Act, which allows property meeting all of the specified criteria in that Act to be assessed on the basis of agricultural use, rather than its fair market value. However, in order to qualify for this favorable assessment, there are a number of criteria that must be met. Allowing properties to be assessed as farmland under the greenbelt provisions shift property tax burdens to other properties. Under Utah Code Sec. 59-2-503(1)(b)(i) in order to qualify for greenbelt assessment the property must be "actively devoted to agricultural use." To be "actively devoted to agricultural use" it must meet specified production requirements set out at Utah Code Sec. 59-2-502 and be "land devoted to the raising of useful plants and animals with a reasonable expectation of profit." See Utah Code Sec. 59-2-502(4). There is clearly no expectation of profit on the part of the Property Owner because he is not charging rent in return for allowing NAME-1 to graze cattle on the property and NAME-1 expectation is unknown. A property may still qualify for greenbelt

assessment where the owner does not farm the property himself or herself, but leases it to a lessee, if the lessee actively devotes the property to agricultural use and meets production and other requirements. However, under Utah Code Sec. 59-2-508(7) the Property Owner would have to provide a signed statement from the lessee "certifying those facts that would be necessary to meet the requirements . . . " The lessee did not prove the number of cow pairs that were grazed on the combined parcels for which he had leases. It is the Property Owner that has the burden of establishing that his property meets all of the statutory requirements to receive the reduced property tax provided under the Farmland Assessment Act.[1] The Property Owner has not shown that the property met the required animal unit months (AUM) to qualify for assessment under greenbelt.[2] The County has followed the statutory procedure and there is no provision in the statute to give property owners a warning and chance to correct any deficiencies as argued by the Property Owner. The County Assessor has properly removed the subject property from greenbelt assessment and assessed the rollback tax.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds in favor of the County and denies the appeal. It is so ordered.

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, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division

[1] As noted by the Utah Supreme Court in *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980), "exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption." Although the Farmland Assessment Act is not an exemption, it is an alternative form of assessment and the courts have placed the burden of proof on the property owners in general in property tax matters. See *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 (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*, 2000 UT 49, 5 P.3d 652 (Utah 2000).

[2] See *County Board of Equalization of Wasatch County v. Stichting Mayflower Recreational Fonds et al.* 2000 UT 57.

210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

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

DATED this _____day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner