17-657
TAX TYPE: PROPERTY TAX
TAX YEAR: 2016
DATE SIGNED: 01/12/2018
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

COUNTY ASSESSOR, Petitioner, v. COUNTY BOARD OF EQUALIZATION, ex rel. TAXPAYER, Respondent.	**INITIAL HEARING ORDER** Appeal No. 17-657 Parcel Nos. #####, ##### and ##### Tax Type: Property Tax Tax Year: 2016 Judge: Phan

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. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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 send the response via email to taxredact@utah.gov, or via mail to the address listed near the end of this decision.

Presiding:
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner:	REPRESENTATIVE FOR PETITIONER-1, Deputy COUNTY Attorney REPRESENTATIVE FOR PETITIONER-2, COUNTY ASSESSOR
For Respondent:	Did Not Appear
For Ex. Rel Party:	REPRESENTATIVE FOR EX. REL PARTY-1, Attorney at Law REPRESENTATIVE FOR EX. REL PARTY-2, Owner of TAXPAYER

STATEMENT OF THE CASE

Petitioner ("County Assessor") files this appeal according to the provisions of Utah Code §59-2-1006, from the decision of the COUNTY Board of Equalization ("the County BOE"). The decision of the County BOE was to allow the parcels subject to this appeal to remain assessed as greenbelt property under the Farmland Assessment Act. The parcels at issue belong to the TAXPAYER, which is the ex rel. party and appeared at the Initial Hearing in this matter to represent its interest. This matter was argued in an Initial Hearing on August 24, 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 three parcels at issue in this appeal total approximately 1,188 acres in size and are unfenced. The property is not irrigated and could be used as graze land for cattle. The County Board had found that these parcels should remain valued as greenbelt properties under the Farmland Assessment Act. The County Assessor filed this appeal and argues that these properties do not qualify for assessment under the Farmland Assessment Act for favorable tax treatment because the land is not actively devoted to agricultural use. The County Assessor requests that the Tax Commission find that this property should be removed from greenbelt and the rollback tax assessed.

The County Assessor proffered that he and another County employee had walked over much of the property in 2016 and 2017 during the months that the Property Owner had stated this property was being grazed. They found no pond or natural water source on the property for cattle to drink from and no water that would have been trucked into the property for cattle. They said the nearest water to the property was 2.85 miles away and cows will not travel more than 1 mile for water. The County Assessor had been on the property several times in 2016 and 2017 and stated that he had found no cattle and almost no signs that there had been grazing on the grasses that were on the property. There was almost no cow manure on the property. The County Assessor provided photographs of the property taken in August and September of 2016 that

support this proffer. These photographs were dated, show ungrazed grasses, no cattle, no water and almost no cow manure. The County Assessor also submitted photographs taken in 2017 that show the same. The County Assessor's representative proffered that they had spoken with NAME-1 who was the rancher that leased the property and NAME-1 had told them that he does not truck water up to the property for cattle and has taken cattle to the property and "they follow me home." He also proffered that an oil company worker who is often on the property told the County employees he has never seen cows on the property.[1]

In order for the property to be considered actively devoted to agriculture use, a certain amount of production needs to be met based on the Farmland Assessment Act. The subject parcels were primarily categorized as Graze Land IV. Based on the number of acres it would require 74 animal unit months (AUMs) for the subject property to qualify. An AUM consists of both a cow and calf, so this would be 148 cows in total. The County's representative points out that a cow produces 2 cubic feet of manure per day,[2] so if 74 cow pairs had been grazing on the property for thirty-days, there should be a significant amount of manure.

The County also made the point that the subject property was not fenced and COUNTY Ordinance §8-9-9 requires that property be fenced before it can be used for grazing.

The Property Owner did not ranch the subject property, but had it leased to NAME-1. The Property Owner had provided to the County two leases with NAME-1 prior to this hearing. Neither lease actually provided an effective date as they both stated, "This Agreement will be effective on the date signed below." However, no date was filled in when the agreements were signed. The first lease indicated that the term was from July 1, 2010 to July 1, 2015 with an option to renew for one year. This agreement indicated that NAME-1 would lease for the purpose of cattle grazing 8,000 acres from the Owl & the Hawk, which would encompass the 1,188 acres at issue in this appeal as well as other acreage. This agreement indicated NAME-1 anticipated grazing at least 80 head of cows from July 1 to August 15. The second agreement said the term was from July 1, 2015 to July 1, 2018 with a one-year option to renew. This agreement indicated the number of acres leased was 2,500, which would encompass the subject

[1] These statements as reported from NAME-1, the oil worker and one noted later from a surveyor are clearly hearsay. Although the Commission may admit hearsay evidence into its Initial or Formal Hearings, no decision of the Commission will be based solely on hearsay evidence. See Utah Admin. Rule R861-1A-28(2)(b). Because the parties provided conflicting hearsay statements from persons who were not at the hearing, should this proceed to a Formal Hearing the parties should consider subpoenaing these people to appear as witnesses so their testimony would be recorded, taken under oath or affirmation and subject to cross-examination.

[2] The County submitted a page from an Agricultural Waste Management Field Handbook that indicated a beef cow in confinement's waste was 2 cubic feet per day and a growing calf .8 cubic feet. Cows on the subject property would be grazing and not in confinement, so this does not apply directly but does give an idea of the volume.

acreage and additional acreage and also indicated NAME-1 would graze at least 80 head of cattle for a period from July 1 to August 15. Under these two leases with the amount of acreage, the number of cattle would be insufficient to meet the AUM requirements for all of this property to qualify for greenbelt assessment under the Farmland Assessment Act.

At the hearing, the Property Owner submitted a third version of this agreement, again with no effective date so it is unknown when this document was purported to be signed. The first page of this agreement differs from the first page of the prior agreement because this one indicates the term was April 1, 2015 to July 1, 2018, with the one-year option. Two other differences in this lease on the first page indicates the leased acres to be 1,188 acres of Sections Sec. 29/30/31, which would just encompass the acreage at issue in this appeal. The second change was that the grazing would occur from April 1 to July 15. The last page of this agreement is identical to the last page of the prior agreement, including the placement, shape and size of the signatures. Again, neither document was dated. This calls into question when this third agreement was signed, if, in fact, it had actually been properly executed by the parties. However, this agreement was attached as Exhibit A to a signed statement from NAME-1 in which he states, "A copy of my Cattle-Grazing Lease Agreement is attached as Exhibit A."

At the hearing, the Property Owner also submitted the written statement from NAME-1, which he had signed and dated on August 9, 2017. In this statement, NAME-1 said "I graze between 112 to 120 cattle on the Property each year." He also states, "The Property provides adequate feed and water for the grazing and production of my cattle." This is specifically in reference to the ##### acres subject to this appeal. However, he does not state how long the 112 to 120 cattle were on the property grazing and it is unknown if he meant 112 to 120 cattle pairs or 56 to 60 cattle pairs.

The Property Owner attended the hearing and she did not reside at the property and only occasionally visited the property. The Property Owner's representative stated that the property has been used for grazing for more than 20 years and it had been leased to NAME-1 for grazing for the last 10 years. It was the Property Owner's position that the use has not changed. The Property Owner's representative argues that NAME-1 has said he grazed 120 cattle on the property for all three months from April to July and during that time of year there is water on the property. This is more than what was included in NAME-1's signed statement. The Property Owner submitted that there has been a surveyor at the property looking for a falcon and he had told her he saw cows on the property. She submitted some photographs she had taken of the property. These photos were undated and showed no cows. They showed three or four cow pies, which combined would maybe equal 1 cubic foot of manure. They also showed a lot of dry,

ungrazed grass. There were also photos showing considerable deer or rabbit droppings, but because these animals are not farmed or ranched on the property, no amount of that kind of waste would qualify the subject property under the Farmland Assessment Act.

The Property Owner's representative points out that the Farmland Assessment Act does not require fencing for a property to qualify for assessment under the act.

After reviewing the information submitted in this matter, the facts are heavily in dispute and much of the evidence is hearsay or otherwise not reliable. Generally, it is the property owner and not the County that has the burden to establish that a property meets the requirements of the Farmland Assessment Act to qualify for the favorable assessment under that act. [3] In this case, however, there is also a presumption in favor of the County Board of Equalization's decision and the County Board had allowed the property to remain in greenbelt. Without having NAME-1 at the hearing to clarify his written statement and having no effective dates on lease agreements that are key factors in this case, the best evidence is the photographs submitted at the hearing, many dated in 2016 that show almost no signs of cattle as well as the statements of the County Assessor and a County employee who had personally walked the property in 2016 as well as 2017. If the property had been actively devoted to agricultural use, the grasses would be grazed and there would be much more manure on the property than a few cow pies.[4]

Based on the facts and law at issue, the County Assessor's position that the subject property does not qualify for assessment under the Farmland Assessment Act 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

[3] 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. 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).

[4] Using just the 2 cubic feet per cow pair per day and 74 cow pairs on the property for 30 days equals 4,440 cubic feet of manure. The Property Owner is stating there were 120 cows per day for 90 days; this would be 21,600 cubic feet and should be readily noticeable, even on the ####-acre parcel.

Utah Code Subsection 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 Subsection 59-2-502(4). A property may qualify for greenbelt assessment where the owners do not farm the property themselves, but lease it to a lessee, if the lessee actively devotes the property to agricultural use and meets production and other requirements. However, under Utah Code Subsection 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 statement from the lessee in this matter is unclear as to how many cows were on the property and for how long the cows were on the property. Photographs of the property and statements of persons who had personally walked the property do not indicate it was sufficient enough time to meet the requirements.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the subject parcels should be removed from greenbelt assessment under the Farmland Assessment Act for tax year 2016 and the rollback tax should be assessed. The County Auditor is to comply with the provisions of this order. 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
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 _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner