

19-1346

TAX TYPE: PROPERTY TAX

TAX YEAR: 2019

DATE SIGNED: 1/13/2020

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioners, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 19-1346 Parcel No. ##### Tax Type: Property Tax Tax Year: 2019 Judge: Phan
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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 Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER 1& TAXPAYER-2,
Attorney at Law

For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy COUNTY
Attorney
RESPONDENT-1, COUNTY Farmland Assessment Analyst

STATEMENT OF THE CASE

Petitioners ("Property Owners") filed an appeal to the Utah State Tax Commission according to the provisions of Utah Code §59-2-1006, from the decision of the COUNTY Board

of Equalization (“the County”) regarding Parcel No. #####-1. The decision of the County was to remove the parcel 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 DATE, 2019, in accordance with Utah Code §59-1-502.5.

When the Property Owners had submitted the appeal to the Utah State Tax Commission on Form TC-194 they had written that the parcel they were appealing was Parcel No. #####-1 and they wrote no additional parcel numbers or provided any indication that they intended the appeal to include other parcels. This appeal was received at the Utah State Tax Commission on DATE, 2019. The appeal was processed and a Notice of Initial Hearing was issued to the parties on DATE, 2019. There is a line on that notice that lists the parcel number or numbers subject to the appeal. On that notice, the only parcel number listed was Parcel No. #####-1, because that was the only parcel appealed to the Utah State Tax Commission. On DATE, 2019, the County submitted its Designation of Potential Evidence, which was a response regarding only Parcel No. #####-1. On DATE, 2019, the Property Owners’ evidence for the hearing was submitted. On the cover letter, the attorney for the Property Owners had listed only Parcel No. #####-1, although included in the evidence documents were the Final Notice of Withdrawal and Rollback Assessments for both Parcel No. #####-1 (“Parcel #####-1”) and a second parcel, which was Parcel No. #####-2 (“Parcel #####-2”). There were photographs included as evidence which were not labeled as to what parcel they depicted. There were also receipts, which had no indication as to which parcel they pertained. At the hearing, the Property Owners’ representative argued that the Property Owners thought both Parcel #####-1 and Parcel #####-2 were included in the appeal and it became evident only after explanation that the photographs and receipts pertained primarily to Parcel #####-2. It was the Property Owners’ contention that Parcel #####-2 should be included in the appeal and made part of the Initial Hearing.

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.

An exception to the fair market value standard is provided by law for property actively devoted to agricultural use. The Utah Constitution Article XIII, Section 2, Subsection (3) provides that the Utah Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.

The Utah Legislature has adopted the Farmland Assessment Act and Utah Code §59-2-503 provides for the assessment of property as greenbelt under the Farmland Assessment Act as follows:

- (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, except that land may be assessed on the basis of the value that the land has for agricultural use:
 - (i) if:
 - (A) the land is devoted to agricultural use in conjunction with other eligible acreage; and
 - (B) the land and the other eligible acreage described in Subsection (1)(a)(i)(A) have identical legal ownership; or
 - (ii) as provided under Subsection (4); and
 - (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.

...

Utah Code Ann. §59-2-502 provides definitions applicable to the Farmland Assessment Act as follows:

- (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.
- (2) "Conservation easement rollback tax" means the tax imposed under Section 59-2-506.5.
- (3) "Identical legal ownership" means legal ownership held by:
 - (a) identical legal parties; or
 - (b) identical legal entities.
- (4) "Land in agricultural use" means:
 - (a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:
 - (i) forages and sod crops;
 - (ii) grains and feed crops;
 - (iii) livestock as defined in Section 59-2-102;
 - (iv) trees and fruits; or
 - (v) vegetables, nursery, floral, and ornamental stock; or
 - (b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.
- (5) "Other eligible acreage" means land that is:
 - (a) five or more contiguous acres;
 - (b) eligible for assessment under this part; and
 - (c) (i) located in the same county as land described in Subsection 59-2-

- 503(1)(a); or
 - (ii) contiguous across county lines with land described in Subsection 59-2-503(1)(a) as provided in Section 59-2-512.
- (6) "Platted" means land in which:
- (a) parcels of ground are laid out and mapped by their boundaries, course, and extent; and
 - (b) the plat has been approved as provided in Section 10-9a-604 or 17-27a-604.
- (7) "Rollback tax" means the tax imposed under Section 59-2-506.
- (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:
- (a) an owner voluntarily requests that the land be withdrawn from this part;
 - (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 applies 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;
- (d) (i) the legal description of the land changes; and
- (ii) (A) an owner fails to apply for assessment under this part as required by Section 59-2-509; or
 - (B) (I) an owner applies 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;
- (e) if required by the county assessor, the owner of the land:
- (i) fails to file a new application as provided in Subsection 59-2-508(5);
 - or
 - (ii) fails to file a signed statement as provided in Subsection 59-2-508(5); or
- (f) except as provided in Section 59-2-503, the land fails to meet a requirement of Section 59-2-503.

A rollback tax is imposed when land is withdrawn from greenbelt in accordance with Utah Code Ann. §59-2-506, below 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.
- ...
- (3) (a) The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between:
 - (i) the tax paid while the land was assessed under this part; and
 - (ii) the tax that would have been paid had the property not been assessed under this part...
- (5) (a) The county assessor shall mail to an owner of the land that is subject to a

rollback tax a notice that:

- (i) the land is withdrawn from this part;
- (ii) the land is subject to rollback tax under this section; and
- (iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice described in Subsection (5)(a)...

Utah Code §59-2-516 provides that the time to file an appeal to the County Board of Equalization of a determination or denial made by the County Assessor regarding assessment under the Farmland Assessment Act is forty-five days from the Assessor's determination as follows:

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

- (1) the county assessor makes a determination under this part; or
- (2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006(1) 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.

DISCUSSION

Parcel #####-2

The Commission first must consider the Property Owners' request to have Parcel #####-2 included at the hearing and as part of this appeal. As noted above, when filing their appeal to the Utah State Tax Commission, the Property Owners only listed Parcel #####-1 as the subject of the appeal to the Utah State Tax Commission. That was how the appeal was processed and the appeal was only opened for Parcel #####-1. The parties were provided notice of this on the Notice of Initial Hearing, which the Tax Commission's Appeals Staff had mailed on DATE, 2019. It was not until the Initial Hearing itself that the Property Owners' representative requested verbally that Parcel #####-2 be included as part of the appeal.

Based on the documents the parties had submitted in this matter, the County issued a separate Final Notice of Withdrawal from Greenbelt and Assessment of the rollback tax for each

parcel, but both were issued on the same date, DATE, 2019. When the Property Owners filed their appeal of this action to the County Board of Equalization, on that appeal form they did list both parcel numbers on the same form. The County mailed two letters, one for each parcel, on DATE, 2019, notifying the Property Owners of the hearing date and time before the County Board of Equalization. When an appeal is filed from the decision of the County Board of Equalization to the Utah State Tax Commission, the record from the County Board of Equalization hearing and decision is forwarded to the Utah State Tax Commission. In this matter, because only Parcel #####-1 was appealed to the Utah State Tax Commission, the County Board forwarded only its decision on Parcel #####-1. The County had denied the Property Owners' appeal on Parcel #####-1 by letter dated DATE, 2019. This letter only refers to Parcel #####-1. Presumably, the County Board of Equalization also denied Parcel #####-2, by a separate letter, but the Tax Commission does not have the document because the Property Owners had not included Parcel #####-2 in the Tax Commission appeal and the Property Owners did not provide this document with its submissions to the Tax Commission. From the documentation it is clear the County treated the two parcels separately, with separate Final Notices, separate letters notifying the Property Owners of the hearing and separate decisions. However, when the Property Owners filed their appeal to the Utah State Tax Commission, they only appealed Parcel #####-1.

Under Utah Code Subsection 59-2-1006(1) a property owner may appeal the decision of the County Board of Equalization regarding the valuation or exemption of property to the Utah State Tax Commission by filing a notice of appeal "within 30 days after the final action of the county board." In this case, the final action occurred on DATE, 2019, and the Property Owners filed their appeal to the Utah State Tax Commission for Parcel #####-1 within the thirty-day deadline.¹ However, no appeal for Parcel #####-2 was filed within the thirty-day deadline.

There is no discretion in the statute for the Tax Commission to extend the appeal-filing deadline, even if good cause had been shown. The Tax Commission strictly honors appeal deadlines² and generally would only allow a late filed appeal of a County Board of Equalization decision if the County had taken some action that denied due process or hindered the property owner's ability to file an appeal, for example if the County mailed the decision to an incorrect

¹ The appeal must be filed first with the County Auditor and, in this case, that filing occurred on or around DATE, 2019 for Parcel #####-1, so that appeal was filed timely. The County Auditor then forwarded the appeal on Parcel #####-1 to the Tax Commission on DATE, 2019.

² See *Utah State Tax Commission Order of Dismissal in Appeal No. 14-1728* (3/30/2015); *Appeal No. 19-1108* (9/3/2019); *Appeal No. 16-1307* (12/22/2016); *Appeal No. 16-1553* (4/27/2017); and *Appeal No. 16-322* (5/9/2016). These and other Tax Commission decisions are available for review in a redacted format at tax.utah.gov/office/decisions.

address. There was no indication in this matter that an action on the part of the County prevented the Property Owners from filing an appeal of Parcel #####-2 when they appealed Parcel #####-1, it appears to have been a clerical error made by the Property Owners and not a deprivation of due process issue on the part of the County. As recently noted by the Utah Court of Appeals in *A-Fab Engineering v. Tax Commission*, 2019 UT 87, ¶14, “This court has held that an untimely appeal to an administrative agency is the equivalent of failing to exhaust administrative remedies . . .” In *A-Fab Engineering* the court upheld the Tax Commission’s dismissal of a late filed appeal. The Property Owners’ request at the Initial Hearing to include Parcel #####-2 is an untimely appeal of Parcel #####-2 and, therefore, the Property Owners’ request to include Parcel #####-2 should be dismissed.

Parcel #####-1

The Property Owners’ appeal regarding Parcel #####-1 was filed timely. Parcel #####-1 is a #####-acre parcel of land that is improved with a single-family residence, which is where the Property Owners reside. The County points out that this parcel on its own is too small to meet the minimum acreage requirements to be assessed as greenbelt under Utah Code §59-2-503. Utah Code Subsection §59-2-503(1)(a) does provide that a smaller parcel could qualify if the land is “devoted to agricultural use in conjunction with other eligible acreage . . .” Parcel #####-1 is adjacent to Parcel #####-2 and Parcel #####-2 is #####-acres in size. The County points out, however, that because Parcel #####-2 was removed from greenbelt that parcel is not “eligible acreage.”

From the aerial and other photographs, as well as the information proffered at the hearing, Parcel #####-1 is not being used for agricultural production and instead is used for a residence and yard for the residence. Parcel #####-2 at one time had been used as a commercial AGRICULTURAL BUSINESS. The PLANTS were all removed and sold two years ago. About three acres of Parcel #####-2 is now being used for the production of alfalfa. The rest of the parcel appears to have almost no plant growth and is used to store and sell A and B products. Information was proffered that the Property Owners operate an AGRICULTURAL BUSINESS from the property, BUSINESS-1. From the invoices and receipts the Property Owners provided, BUSINESS-1 was involved in purchasing PLANTS grown at other nurseries and then selling and delivering them to third parties. This involved some specialty equipment, which the Property Owners had from their prior business. At the hearing, the Property Owners’ representative proffered that they sometimes stored the PLANTS on the subject property for a few days until the

PLANTS were moved to the purchaser's location. The PLANTS were not planted in the soil of the property when they were stored there.

After reviewing the law and the information proffered by the parties, the County does have a valid point. Utah Code §59-2-503(1)(a) does make it clear that in order for the #####-acre Parcel #####-1 to qualify it would need to be devoted to agricultural use in conjunction with other "eligible acreage." Parcel #####-2 is not "eligible acreage" because it was removed from greenbelt so Parcel #####-1 does not qualify because it is below the minimum acreage requirement. Additionally, it does not appear to be devoted to agricultural use on its own.

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 by law. An exception to the fair market value assessment is provided under the Farmland Assessment Act, Utah Code Sec. 59-2-501 et. seq., 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. This may be a significant reduction in property tax. 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 shifts property tax burdens to other properties.

It is the Property Owners that have the burden to establish that a property meets the requirements of the Farmland Assessment Act to qualify for the favorable assessment under that act. 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 a form of property tax assessment that generally results in a reduction in property taxes and, therefore, should be treated similarly to a property tax exemption. In addition, the courts have placed the burden of proof on property owners in general in property tax matters. See *Fraughton v. Tax Commission*, 2019 UT App 6; *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); and *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996). Parcel #####-1 does not qualify for greenbelt assessment under the provisions of the Farmland Assessment Act. The appeal regarding Parcel #####-1 should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission dismisses the Property Owners' request to add Parcel #####-2 to this appeal and denies the Property Owners' appeal regarding the County's 2019 removal of Parcel #####-1 from greenbelt and assessment of the rollback tax. 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 _____, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner