APPEAL #: 21-1701
TAX TYPE: PROPERTY TAX
TAX YEAR: 2021
DATE SIGNED: 7/20/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

PROPERTY OWNERS, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 21-1701 Parcel No: ##### Tax Type: Property Tax Tax Year: 2021 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 Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Jennifer N. Fresques, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER-1, Owner, PROPERTY OWNERS
PROPERTY OWNER-2
For Respondent: RESPONDENT'S REP-1, COUNTY-1 Attorney
RESPONDENT'S REP-2, Greenbelt Specialist, COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 24, 2023, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue before the Tax Commission at the Formal Hearing is the Petitioner's ("Property Owner's") appeal of the Respondent's ("County's") decision to sustain the withdrawal of Parcel No. ##### from assessment under the Farmland Assessment Act for tax year 2021 and assess rollback taxes.

2. The procedural background for this appeal was that on DATE, the COUNTY-1 Assessor's Office issued a letter to the Property Owner indicating that the subject property had been withdrawn from the Farmland Assessment Act (greenbelt), and assessing rollback tax in the amount of $$$$$.[1] The Taxpayer appealed the removal of the subject property from assessment as greenbelt to the County Board of Equalization. After a hearing, the Board of Equalization issued a letter dated DATE denying the Taxpayer's request for the subject property to continue being assessed as greenbelt. The Taxpayer appealed the County's decision to the Tax Commission and the matter proceeded to this Formal Hearing.

3. The subject property is parcel no. #####, and is ##### acres of unimproved land that is classified as Graze III and Graze IV. The subject parcel abuts and is directly adjacent to PROPERTY-1 and is on a downward gradient away from PROPERTY-1. This is a fact not in dispute. There is a perimeter fence around PROPERTY-1 that separates PROPERTY-1 from the subject property. The Property Owner testified at the hearing that about half of the subject property is fenced by PROPERTY-1 perimeter fence. The Property Owner testified at the hearing and it was not refuted by the County, that due to the slope he is not able to get access to the top portion of the property that is adjacent to PROPERTY-1.

4. The Property Owner testified at the hearing that the subject property was environmentally contaminated from wastes that were dumped over many years at PROPERTY-1. The Property Owner testified that his family had been using the subject property for grazing of cows up until the 1980's, but during the 1980's had learned that the springs and seeps on the subject property, from which the cattle obtained their water, were contaminated. The Property Owner provided as evidence a document dated DATE from the GOVERNMENT AGENCY-1,[2]

[1] Respondent's Exhibit 1, PDF # 1-2.
[2] Petitioner's Exhibit 2.

which indicated three different springs had been tested and were found to be contaminated and were not safe for cattle to be drinking. The conclusion from that exhibit stated, "In summary, the springs tested contain arsenic, copper, and sulfate at a potentially toxic concentration, and iron at a proven toxic concentration." It noted that other toxins were also too high to make a "safe" assumption.[3] The document did not identify the location of the springs tested but described them as "West Spring," "Perimeter Fence Spring," and "Water Trough." The Property Owner testified at the hearing that these springs were on the subject property.

5. The Property Owner submitted as an exhibit the Federal Facility Agreement Under CERCLA Section 120, which was reached between the United States Environmental Protection Agency, the Utah Department of Health and the MILITARY BRANCH-1, which was dated DATE.[4] This agreement documents that PROPERTY-1 is a federal Superfund Site and that there is hazardous waste at PROPERTY-1. The Agreement states that its purposes were to "[i]dentify operable unit remedial actions," "[i]dentify the nature, objective, and schedule of response actions," "[i]mplement the selected remedial actions" and "expedite the cleanup process to the extent consistent with protection of human health and the environment," among other purposes.[5] The agreement also describes the site covered by the agreement, as follows:[6]

> "Site" shall mean the entire ##### acre parcel of land known as PROPERTY-1, Utah, and any area outside the boundaries of the parcel to or under which a release of hazardous substances, pollutants or contaminants has migrated from a source located on the parcel.

6. The fact that environmental contamination was found at PROPERTY-1 and that this agreement had been entered into in 1991 was not in dispute.

7. The Property Owner testified that until the 1980's his family had cattle grazing on the subject property and after they learned of the contamination, they stopped grazing cattle on the subject property, but up through the 1990's they had horses on the subject property. The Property Owner acknowledged that they had stopped grazing or running horses on the subject property years ago because it was his conclusion that it was not safe for people or the horses to be on the subject property and they could not keep the horses from drinking water from the springs or the seeps that would have water from time to time, which he testified were contaminated. He argued at the hearing that based on CERCLA he was required to safeguard the subject property and keep people away from the subject property. He also testified that he had received legal advice that they should not sell any product that would or could end up in food for human

[3] Petitioner's Exhibit 2, PDF # 7.
[4] Petitioner's Exhibit 1.
[5] Petitioner's Exhibit 1, pgs.5-6.
[6] Petitioner's Exhibit 1, pg. 7, 4.1(n).

consumption, because they would be subject to liability if anyone that consumed the product that had grazed on the subject property or fed on alfalfa grown on the subject property became ill. He argued at the hearing that because of the contamination on the subject property, they could no longer use the subject property for agricultural purposes and their failure to use the subject property was due to no fault or act of their own.

8. The Property Owner provided a more recent letter dated DATE, from PERSON-1, of the MILITARY BRANCH-1. This letter was addressed only to, "Dear Agricultural Operations Owner/Operator" and the envelope showing the addressee's address was not provided. The letter states, "Our sampling detected perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) above the notification levels . . . Your agricultural operation is located within one mile downgradient of PROPERTY-1. I obtained your name and address from the U.S. Department of Agriculture as part of our consultation with them in providing this notice." Although the Property Owner did not have the envelope to show that he was the recipient of this letter, it is clear that the subject property is within one mile downgradient of PROPERTY-1.

9. At the hearing the Property Owner testified that after determining the cost to clean up the environmental damage caused by the hazardous pollution migrating from the base, the MILITARY BRANCH-1 did not pay to have the pollution mitigated on the subject property and other properties outside of the base, and instead choose the option of leaving the ground alone and after some 40 years or more the contamination would resolve itself. The Property Owner testified that the property is still polluted.

10. The County did not offer any evidence to refute the Property Owner's position that the subject property was contaminated. Instead the County offered evidence that the subject property was not being actively devoted to agricultural use. The County provided a transcript of a Formal Hearing on DATE for tax year 2018 regarding the subject property, in which the Property Owner had acknowledged they were no longer actively using the subject property for any agricultural purposes. This fact was not refuted by the Property Owner at this Formal Hearing. The Property Owner acknowledged that they had stopped using the subject property for agricultural purposes in the 1990's because it was not safe for humans or animals, and would subject them to liability.

11. The County submitted the Rollback Tax Estimate. This document showed that the subject property had been assessed as greenbelt from 2016 through 2020. However, the testimony at the hearing indicated that the subject property had been assessed as greenbelt for decades. The County also provided copies of several of the Property Owner's Applications for

Assessment and Taxation of Agricultural Land, with the oldest application dated January 16, 2001.[7]

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.

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 adopted the Farmland Assessment Act ("FAA") and Utah Code Ann. §59-2-503 provides for the assessment of property as greenbelt under the FAA, 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.
> (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 designated by the commission by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
>
> . . . .
> (5) (a) 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

[7] Respondent's Exhibit 1.

(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 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 which do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use.
. . .

Utah Code Ann. §59-2-502 provides definitions applicable to the FAA, 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.
  . . .

(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;[8]
    (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.
. . .

(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

[8] "Livestock" is defined at Utah Code Sec. 59-2-102(20) to mean "(a) a domestic animal; (b) a fish; (c) a fur-bearing animal; (d) a honeybee; or (e) poultry."

(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 assessment under the FAA 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…

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 FAA , 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.

The Utah Supreme Court in *Stichting Mayflower*, 6 P.3d 560, at 564, stated "We interpret taxation statutes like the FAA 'liberally in favor of the Taxpayer,'" quoting *Salt Lake County ex rel. County Bd. of Equalization v. Utah State Tax Comm'n ex rel. Kennecott Corp.*, 779 P.2d 1131, 1132 (Utah 1989). Based on this language from the Utah Supreme Court, the FAA is to be liberally construed in favor of the property owner, in accordance with relevant case law. The Tax Commission has previously concluded and stated in many appeals it reviews pursuant to Utah Code Ann. §59-2-1006 that in a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. The Commission cites to *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); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6, 438 P.3d 961 (Utah Ct. App. 2019).

CONCLUSIONS OF LAW

1. Pursuant to Utah Code Ann. §59-2-1006, the Commission has previously concluded that, in a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. *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); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6, 438 P.3d 961 (Utah Ct. App. 2019).

2. Utah Constitution Article XIII, Section 2, and Utah Code Ann. §59-2-103 provide that all tangible taxable property located in Utah is subject to property tax based on its fair market value, unless otherwise provided by statute. 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 Farmland Assessment Act provides a statutory exception to the fair market value requirement, which allows

property meeting the requirements of the FAA to be assessed on the basis of the property's agricultural use, rather than at its fair market value.

3. Both the constitutional and statutory provisions require that the land be used for agricultural purposes. Utah Code §59-2-503(1)(b)(i) requires that to qualify for assessment under the FAA, land must be "actively devoted to agricultural use" and have "been actively devoted to agricultural use for at least two successive years immediately preceding the tax year" among other requirements. Utah Code Ann. §59-2-502 (1) defines "actively devoted to agricultural use" to mean 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." The evidence in this appeal clearly shows that the subject property has not been "actively devoted to agricultural use" pursuant to this statutory definition for decades.

4. However, pursuant to Utah Code §59-2-503(5) the commission may grant a waiver of the requirement that the land is actively devoted to agricultural use "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 to meet the agricultural production requirements for that tax year was due to no fault or act of the owner, purchaser, or lessee." In this appeal the Property Owner argued that he no longer actively devoted the land to agricultural use because the land was environmentally contaminated, it was not safe for animals or for humans and would subject him to liability. He argued, therefore, that his failure to meet the agricultural production requirements were due to no fault or act of the owner. The evidence also indicated that the land had been assessed on the basis of agricultural use for at least the two years immediately preceding the tax year at issue in this appeal. The issue before the Commission is whether the failure to meet the agricultural production requirements was due to no fault or act of the owner consistent with the constitutional and statutory requirements. The term "no fault" is not defined in the FAA, but Utah Code §59-2-503(5)(b) provides that "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 circumstances described in the statute are temporary situations, such as a maturation period that affects production levels, or a farming practice to improve the quality of the land that results in a temporary cessation of production. The facts in the subject case are not a temporary situation and are not analogous with planting crops that are in

need of a longer maturation period or a crop rotation program. The Property Owner has believed that the subject property has not been suitable for agricultural production due to environmental contamination for decades and, likely, will not be suitable for agricultural production for many more years. Article XIII, Section 2, Subsection (3) of the Utah Constitution provides the requirement that the land be "used for agricultural purposes" and Utah Code Ann. §59-2-503 provides for assessment of property as greenbelt if, among other requirements, the land "is actively devoted to agricultural use." As noted by the Utah Supreme Court in *Steiner v. Tax Commission*, 2019 UT 47, at ¶58, "[a]s in all cases of statutory interpretation, we begin with the text." And in *Ivory Homes v. Tax Commission*, at 2011 UT 54, ¶21 the Court explained, "our plain language analysis is not so limited that we only inquire into individual words and subsections in isolation; our interpretation of a statute requires that each part or section be 'construed in connection with every other part or section so as to produce a harmonious whole.'" Construing Subsection §59-2-503(5) in connection with the rest of the FAA and the Utah Constitution, supports the position that a temporary cessation of production through no fault of the owner does not disqualify a property from FAA valuation. However, if a property is not "actively devoted to agricultural use" and fails to meet the production requirements for many years or indefinitely as this property has, because of conditions on the property that make it unsuitable for agriculture, it does not meet the express requirements for greenbelt assessment under the Constitution and FAA.

The subject parcel was properly withdrawn from assessment under the FAA, and the County Assessor's assessment of rollback taxes in 2021 should be sustained.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the subject parcel does not qualify for assessment under the FAA for tax year 2021 and denies the Property Owner's appeal. It is so ordered.

DATED this _____ day of _____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.