APPEAL #: 22-1581
TAX TYPE: PROPERTY TAX
TAX YEAR: 2022
DATE SIGNED: 6/27/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

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| PROPERTY OWNER,<br><br>Petitioner,<br><br>v.<br><br>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,<br><br>Respondent. | **INITIAL HEARING ORDER**<br><br>Appeal No. 22-1581<br>Parcel No: #####<br>Tax Type: Property Tax-FAA Assessment<br>Tax Year: 2022<br>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:**
Jane Phan, Administrative Law Judge

**Appearances:**
For Petitioner: PROPERTY OWNER
For Respondent: RESPONDENT'S REP-1, Farmland Assessment Analyst, COUNTY-1
RESPONDENT'S REP-2, Attorney for COUNTY-1

## STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal pursuant to Utah Code Ann. §59-2-1006(1) from the decision of the COUNTY-1 Board of Equalization ("the County") to remove the subject property from greenbelt status and assess rollback taxes. The County had issued its decision on DATE. The County's decision had upheld the County Assessor's determination to remove the subject parcel from greenbelt eligibility and assess rollback taxes. The Property Owner had timely appealed the decision to the Utah State Tax Commission and the appeal was argued in an Initial Hearing on DATE, in accordance with Utah Code Ann. §59-1-502.5.

## APPLICABLE LAW

Utah Code Ann. §59-2-103(2) provides for the assessment of property, as follows:

> 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 has adopted the Farmland Assessment Act ("FAA") and Utah Code §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.
> . . .
>
> (4) Notwithstanding Subsection (1)(a), the commission or a county board of equalization may grant a waiver of the acreage requirement for land upon:
> (a) appeal by the owner; and
> (b) submission of proof that:

(i) 80% or more of the owner's, purchaser's, or lessee's income is derived from agricultural products produced on the property in question;

. . . .

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.
(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.

. . .

(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 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 §59-2-507 provides that the homesite is excluded from the determination of the acreage requirement for assessment under the FAA as follows:

(1)(a) Land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, and irrigation ditches and like facilities is included in determining the total area of land actively devoted to agricultural use.

(b) Land that is under a farmhouse and land used in connection with a farmhouse is excluded from the determination described in Subsection (1)(a).

Utah Code §59-2-516 provides that the time period 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 is 45 days from the Assessor's determination or denial 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, or a tax relief decision made under designated decision-making authority as described in Section 59-2-1101, may appeal that decision to the commission by:
>
> (a) 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 or entity with designated decision-making authority described in Section 59-2-1101....

The Utah Supreme Court in *Stichting Mayflower*, 6 P.3d at 564, stated "[w]e 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. However, the Tax Commission had concluded and stated in many appeals it reviews pursuant to Utah Code Sec. 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.

## DISCUSSION

The County Assessor had removed the subject property from greenbelt eligibility on DATE, on the basis that the subject parcel did "not have five acres actively devoted to agricultural use with a reasonable expectation of profit." The parcel at issue is located at ADDRESS-1. The subject property has a residence with a residential yard space that contains lawn and landscaped areas as well as a driveway. The remainder of the subject property contains agricultural land used as an alfalfa field with a barn and a driveway to the barn. The parcel is in total ##### acres in size. However, in 2021 the County determined that the land under the residence, driveway to the residence and residential yard space was ##### acres in size. It was the County's position that the

land under the residence and land used in connection with the residence is excluded from the determination of the 5 acre minimum requirement pursuant to Utah Code Sec. 59-2-507. Subtracting the ##### acres from the ##### total acres puts the parcel below the 5 acre minimum requirement to be assessed as greenbelt under the Farmland Assessment Act.

At the hearing the Property Owner did not contest that the land under the residence and land used in connection with the residence was ##### acres and that the land used for the alfalfa field, barn and driveway to the barn was less than 5 acres in total. Instead, the Property Owner offered an equity or fairness argument. The Property Owner explained at the hearing and in a written statement he had prepared for the hearing, dated DATE, that he and his wife purchased the subject property on DATE, with the assumption that the subject property qualified for greenbelt assessment because it had been assessed as greenbelt for many years. The Property Owner explained that the prior owner, PERSON-1, had purchased the land and built the residence on the land in DATE and PERSON-1 applied for greenbelt assessment in DATE. The Property Owner explained that from what he was able to review of the County records, the County had re-approved the subject property for greenbelt eligibility in DATE and again in DATE. The Property Owner submitted the COUNTY-1 records, which showed that the subject property had been assessed as greenbelt from DATE through DATE.

When the Property Owner purchased the property in DATE, he assumed it would be able to continue to qualify for greenbelt, so did not account for the rollback taxes in their purchase negotiations. After purchasing the property in DATE, the Property Owner did not change the size of the yard space used with the residence and continued to use the same agricultural area for alfalfa as had the prior owner. The Property Owner explained that the County's removal of the property from greenbelt assessment in DATE, after they had purchased the property, made the Property Owner and his wife responsible for the entire $$$$$ of rollback taxes. He also pointed out that they did not even own the property during the ##### years for which the rollback taxes were calculated, but they are now the ones responsible to pay. The Property Owner explained his argument in his written statement as follows:

> The primary position from me (PROPERTY OWNER) is that the property hasn't changed, the home, yard, alfalfa field all haven't changed, the Greenbelt laws haven't changed and even the county assessor hasn't changed. Only the owner has changed. Yet somehow the ruling or assessment has also changed.

The Property Owner argued that if the County had made a mistake by initially approving the property for greenbelt assessment, he should not be "held accountable for their mistake and expected to pay rollback tax . . ." He argued: "Should there be any expectation from a citizen and resident to depend on a decision that is made multiple times over the course of ##### years?" He

noted that "[t]his isn't a single decision by one person. This is a combination of decisions made by the county by multiple assessors. This pattern includes the current assessor making the exact same decision multiple times" . . . . "In my assessment, COUNTY-1 has violated expectations of acting with equity and fairness. This is a blatant example of the County applying the law differently and they have done so without supportable reason for making the change. Therefore, it is arbitrary and capricious." The Property Owner also argued if the County's decision to allow the property greenbelt assessment eligibility for prior years was not a mistake, the greenbelt status should continue.

The County pointed to the statutory requirement that to be assessed under the FAA, the property needs to be at least 5 acres in size and the land used with the residence is excluded from the minimum acreage requirement. The County explained that Utah Code Subsection 59-2-507(1)(b) states that "[l]and that is under a farmhouse and land used in connection with a farmhouse . . ." is excluded for purposes of determining whether the acreage requirement is met. The County's representatives stated at the hearing that the property is not entitled to greenbelt assessment because there is not 5 acres or more used for agricultural purposes.

The County also explained that the County had approved the prior greenbelt eligibility based on the applications submitted by the prior owner PERSON-1. The County said that PERSON-1 had claimed on the applications that five or more acres were being used for agricultural uses. The County also made the point that approval for greenbelt is always subject to review. In the County Board of Equalization hearing evidence that was forwarded to the Tax Commission with the appeal, the County had included copies of the applications submitted by PERSON-1 in DATE and DATE. On the DATE application, PERSON-1 had claimed that ##### of the total ##### acres were being used for farming. On the DATE application he claimed that ##### acres were being farmed of the total ##### acres.[1] At the bottom of each application just before the line for the property owner's signature, was a statement that said, "I certify: (1) The agricultural land covered by this application constitutes no less than five contiguous acres exclusive of homesite and other non-agricultural acreage . . ." PERSON-1 had signed the statement and had it notarized.

Both parties provided aerial photographs of the property as it is currently situated. The landscaping of the yard space looks mature, as if it has been in place for several years. It supports the Property Owner's position that the Property Owner did not change the configuration of yard and agricultural land after he purchased the property. However, neither party provided aerial or

[1] There is a rounding difference on these documents as the total acreage is ##### acres, but it was generally rounded to ##### acres.

other photographs of the property from DATE, DATE or DATE. Therefore, it is unknown whether at some point the prior owner had been using more of the land for agricultural purposes and less land for the residence and yard space for the residence.

The County's representatives explained that the County now has the ability to actually measure how much acreage is being used for agricultural purposes with aerial photography and computer software. RESPONDENT'S REP-1 stated that there was a review because of the ownership change when the Property Owner submitted the required statement to request the land stay in greenbelt. When that request was made, the County used the software to check the measurement of how the land was being used and concluded the agricultural land was less than the 5 acre minimum requirement. It was during this review that the County determined the property did not qualify for greenbelt assessment and assessed rollback taxes.

After reviewing the evidence and argument of the parties, as well as the applicable law, the County's position is correct that the subject property is not eligible for greenbelt assessment. Under Utah Code §59-2-103(2) all property is subject to property tax at a uniform and equal rate on the basis of its fair market value unless otherwise provided by law. An exception to this is provided for land actively devoted to agricultural use and Utah Code §59-2-503(1)(a) provides that land actively devoted to agricultural use may be assessed on the basis of the value that the land has for agricultural use if the land "is not less than five contiguous acres in area." Utah Code §59-2-507(1)(b) provides, "[l]and that is under a farmhouse and land used in connection with a farmhouse is excluded from the determination described in Subsection (1)(a)." In this appeal there was not a factual dispute that the land used for agricultural purposes was less than 5 acres in size. The subject property does not meet the size requirement and the County Assessor's decision to withdraw the subject parcel from FAA assessment and assess rollback taxes complies with the express statutory provisions. Utah Code Subsection 59-2-509(1) provides that when there has been a change in ownership, "land assessed under this part may continue to be assessed under this part if the land continues to comply with the requirements of this part." Subsection 59-2-509(4) requires that the new owner submit an application, and the Property Owner did comply by submitting the application. The application triggered a review by the County Assessor's Office. Because of technological advances, the County now had the ability to actually measure the portion of the parcel devoted to agricultural use and the portion used with the residence. This review indicated to the County that the property did not qualify. Although the property had been assessed as greenbelt since DATE, the assessment was based on applications filed by a prior owner who stated on the applications that 5 acres or more were actively devoted to agriculture. This does create a burden for the Property Owners, who assumed that the property was eligible

for greenbelt assessment because it had been assessed that way for multiple years. Regardless, there is no basis in the law for the County to collect rollback taxes from a prior owner. The law puts the responsibility for payment on the current owner and provides that the County may place a lien against the property.

The Tax Commission does not have statutory authority to set aside statutory requirements based on the equity or fairness arguments made by the Property Owner at this hearing. The Property Owner's appeal should, therefore, be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the subject parcel is not eligible for greenbelt assessment under the FAA for tax year 2022 and denies the Property Owner's 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
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 _____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner