APPEAL #: 22-1712
TAX TYPE: PROPERTY TAX
TAX YEAR: 2022
DATE SIGNED: 1/9/2024
COMMISSIONERS: J.VALENTINE,M.CRAGUN, R.ROCKWELL, J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

COUNTY-1 ASSESSOR, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, EX REL. PROPERTY OWNER, Respondent.	**INITIAL HEARING ORDER** Appeal No. 22-1712 Parcel No: ##### Tax Type: Property Tax Tax Year: 2022 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: PETITIONER'S REP-1, Deputy COUNTY-1 Attorney
PETITIONER'S REP-2, Farmland Assessment Analyst
For Respondent: No One Appeared
For ex Rel. Party: EX REL PARTY REP-1, Attorney at Law
PROPERTY OWNER

STATEMENT OF THE CASE

Petitioner ("County Assessor") brings this appeal under Utah Code §59-2-1006 from the decision of the COUNTY-1 Board of Equalization ("County BOE") in which the County BOE, after the County Assessor had removed the subject property from greenbelt status and assessed a rollback tax, granted the ex rel. Party's (Property Owner's) appeal of that action, and placed the subject property back into greenbelt status and abated the rollback tax on DATE. This matter was argued in an Initial Hearing before the Utah State Tax Commission on DATE, in accordance with Utah Code Ann. §59-1-502.5. At the hearing, a request was made for additional information and the Property Owner's Post Hearing Submission was filed on DATE. The County's reply to the Property Owner's Post Hearing Submission was filed on DATE ("County's Reply").

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.

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 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 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 . . . 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.

. . .
(4) Notwithstanding Subsection (1)(a), the commission or a county board of equalization may grant a waiver of the acreage limitation 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;
. . .

(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
(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.
. . .

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

(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.

”Livestock” is defined in Utah Code Sec. 59-2-102 as follows:

(20) "Livestock" means:
(a) a domestic animal;
(b) a fish;
(c) a fur-bearing animal;
(d) a honeybee; or
(e) poultry.

The Utah State Tax Commission, Property Tax Division’s Standards of Practice 7.5.1 addresses when the raising of honeybees meets the requirements for being actively devoted to agricultural use as follows:

7.5.1 Honeybees
Beehives being placed on a parcel of land would not typically qualify land for FAA assessment. In most cases, the primary qualifying activity (crops and grazing), would qualify the land for FAA assessment. Honeybees most often coexist with other types of agricultural use or serve as a secondary input by providing pollination.

In order to qualify for FAA assessment, land must be “devoted to the raising of useful plants and animals with a reasonable expectation of profit.” (59-2-502). A few honeybee scenarios may qualify land for FAA assessment. For example, an apiary (or bee yard) used for staging or wintering a large number of beehives may fully utilize the 5 acre minimum requirement. Another scenario would be the intensive cultivation of a special forage seed mix intended to improve the quality and quantity of honey production.

Parcels cannot qualify based on “fly-over” of bees from neighboring parcels. Beehives must be located on the parcel in question.

Some evidence of reasonable expectation of profit for a honeybee operation include:

> • License – The beekeeper is licensed with the Utah Department of Agriculture and Food.
> • Water – There is an adequate supply of water during the non-winter months; water sources include ponds, streams, irrigation ditches or other sources.
> • Forage – There is enough quality forage available to the hives throughout the season to produce excess honey. Quality forage blossoms include clover, cherries, apricots, dandelions, and various wildflowers favorable to honey production.
> • Accessibility – There is easy, year-round access to the hives for maintenance including good roads in all weather.
> • Actively devoted – The entire five-plus acres show evidence of being "actively" devoted to the honeybee operation as defined in § 59-2-502(1). For parcels smaller than 5 acres, 80% of the landowner's total income is derived from the honeybee operation.
> • Production – Honey quantities are documented for the assessor. Pollinators provide documentation of proceeds and pollination activities to the assessor.
> • Land classes – On higher-producing FAA land classifications, such as Irrigated I, more beehives are present than on lower-producing land classifications, such as Graze II. Beehives may thrive on steep terrain, but not on Graze III and IV if little vegetation, extreme high altitudes, or extreme weather conditions are apparent.
> • Moving beehives – If hives are moved around to different parcels, adequate production can easily be attributed to all parcels and apportioned for the number of weeks in each location.
> • Forage cultivation – If forage blossoms are cultivated on-site, the seed mix provides for quality, marketable honey with an overall bloom that is sustained throughout most of the year. A well-managed acre can provide enough forage to support up to 100 hives; however, the 50% production requirement would be met by supporting 25-50 hives per acre.
> • Profit – The gross income to the landowner (or tenant) from the honeybee operation, less all honeybee expenses, yields a positive net income. When that net income is capitalized, it indicates a value consistent with the FAA values in Rule R884-24P-53 for the same classification of land. (Cap rates developed by USU for crop budget studies have hovered around 10% for years, so simply dividing the net income by 0.10 would indicate the value of the honeybee operation. That value should be equal to or more than the greenbelt value of the parcel. See Appendix 7D for detailed examples.)
>
> If a landowner pays a beekeeper to stage honeybees on the land, then the staging fee is counted as an expense. If a tenant beekeeper pays rent, that rent is an expense to the honeybee operation. The landowner agrees to an annual audit of the honeybee operation as indicated on the signed FAA application. This includes reporting of honey production and all expenses and income related to the honeybee operation. If land is to be withdrawn from FAA as a result of this new honeybee standard, the owner will be allowed one year to re-qualify under a different agricultural use.

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 is 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:
> (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 . . .

The Utah Supreme Court in *Stichting Mayflower*, 6 P.3d at 564 (Utah 2000), 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 interpreted 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 under 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 *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

This matter is before the Tax Commission based on an appeal filed by the COUNTY-1 Assessor regarding a decision issued by the COUNTY-1 Board of Equalization. On DATE, the County Assessor had removed the subject parcel from greenbelt assessment under the Farmland Assessment Act ("FAA") based on the reason, as stated on the Final Notice of Withdrawal, that the subject property "does not meet agricultural production requirements." The Property Owner had appealed that decision to the County Board of Equalization and the County Board of Equalization reinstated the greenbelt assessment and abated the rollback taxes. The County

Assessor then appealed that decision to the Utah State Tax Commission and that is the matter now before the Utah State Tax Commission in this Initial Hearing.

The subject parcel is located at ADDRESS-1 in COUNTY-1. The property is ##### acres in size. There is a residence on the subject property, which is not at issue in this matter as the residence and land used in conjunction with the residence are not assessed under the FAA as greenbelt. The land has a %%%%%-%%%%% slope in topography, and it is dry with sparse vegetation. There are no open water sources on the subject property, but there is a canal nearby. The Property Owner stated at the Initial Hearing that the subject property was used as an apiary or bee yard for staging or winterizing bee colonies. Several years prior to the removal from greenbelt there had been cattle grazing on the subject property. However, for at least the two years preceding tax year 2022, there had been no grazing or any other agricultural use of the subject property, other than the Property Owner's beekeeping activities.

The Property Owner's representative proffered that the beehives are part of the business operations for BUSINESS-1. She stated that the Property Owner's family has been involved in beekeeping for over ##### years as the Property Owner's great-great grandfather had started the family beekeeping business in DATE. The Property Owner also provided general information at the hearing regarding the BUSINESS-1 operations. He stated that in 2022 and the prior years bee colonies were kept on the subject property for "not very long," but they were on the subject property for staging and from about DATE to DATE or DATE. The Property Owner stated that in DATE or DATE, he would transport the bee colonies to the almond orchards in STATE-1. He indicated that he received compensation to take the bees to STATE-1 to pollinate those orchards. He stated that in about DATE the bees would come back from STATE-1 and he would take them to fruit orchards in Utah. From there, he would take them to areas in the mountains where there was alfalfa. From his explanation, for most of the year the colonies were moved to various locations for pollination and forage. There was no water or forage suitable for bees on the subject property, but the Property Owner's representative pointed out that there was water and forage nearby. The Property Owner stated that he had recently started to keep 12 colonies on the subject property year round, but he did not know how long he had been doing that. He stated that currently the business had ##### bee colonies. He stated that in 2020 and 2021 there were ##### to ##### colonies, but his colonies have suffered from colony collapse. He was not able to give the actual number of bee colonies for any specific year.

The Property Owner's representative explained that BUSINESS-1 also owned a beekeeping warehouse located in CITY-1, Utah, which is used as part of the honey business. The Property Owner said that they used the CITY-1 warehouse for honey extraction and that was

where they maintained and stored the empty beehive boxes. He stated they did not keep the bee colonies at the CITY-1 property. Based on the Property Owner's explanation, BUSINESS-1 owned the subject property and the CITY-1 property, but the beehives were generally transported to other properties for purposes of pollination and to obtain forage for honey. The Property Owner also stated that he had to keep colonies separated and at different locations because they were territorial and could fight.

The Property Owner did provide some documentation to support that there was a beekeeping business and these documents were also provided to the County Board of Equalization at that hearing. The Property Owner had provided a copy of his licenses from the Utah Department of Agriculture and Food, which indicated that PROPERTY OWNER was licensed as a beekeeper for the year 2022. There were also some undated photographs that showed ##### beehives on the subject property. There were additional undated photographs that showed clusters of beehives on properties other than the subject property, where there were orchards and forage. There were undated photographs of a large number of beehives on a truck ready for transport. An additional item provided was a copy of a CCC-471-Non-Insured Crop Disaster Assistance Program (NAP) Application For Coverage form for 2022. The application did not contain information for a dollar value of the insurance or provide what was being insured.

Additionally, the appeal file contained pages from several U.S. Department of Agriculture reports filed by BUSINESS-1 and the Property Owner stated at the hearing that he met with the U.S. Department of Agriculture regularly. There were reports for each of the years 2019 through 2022, which provided the number of bee colonies. They did not provide any honey production amounts.

a) Provided for Program Year 2019:

An FSA-578 was provided for BUSINESS-1. There was a handwritten statement on page 2 of this report that was signed by the Property Owner and dated DATE, that said, "I certify that the number of colonies reported includes all colonies for which producing honey, pollination and or breeding is expected." Page 1 of the report stated under the title "Reported on Non-Cropland" the number #####. It appears this is the number of bee colonies for that year owned by BUSINESS-1.

b) Provided for Program Year 2020

The information for Program year 2020 was nearly identical to that presented for Program Year 2019, except that the amount "Reported on Non-Cropland," was #####.

c) Provided for Program Year 2021

An FSA-578 was provided.There were 3 handwritten notations on this form under "Bee colonies" as follows: 1) 1st colonies-##### colonies; 2) DATE-##### colonies; and 3) DATE colonies. The amount reported on the FSA-578 under the heading "Reported on Non-Cropland" was #####. The Property Owner had signed this form on November 3, 2020 below the statement "I certify that the number of colonies reported includes all colonies for which producing honey, pollination and or breeding is expected."

d) Provided for Program Year 2022

For this year the only document provided was a copy of the FSA-578 and on that form was handwritten "1st colonies #####." This was signed and dated DATE, by the Property Owner under the statement "I certify that the number of colonies reported includes all colonies for which producing honey, pollination and or breeding is expected."

The County did ask for more specific information at the hearing regarding how many beehives were on the subject property in 2022 and the two prior years, and for how long these colonies were present on the subject property, but the Property Owner was not able provide any more specific information at the hearing. The Property Owner stated that he currently had ##### beehives, but did not know specifically when he had obtained the ##### beehives. Additionally, when asked at the hearing, he was not able to provide the honey production numbers or income numbers from sales. He did state at the hearing that the STATE-1 almond orchard growers paid him to bring the bees to those orchards to pollinate those orchards. He also stated that he paid other property owners in honey to be able to place his bees on their properties in order to obtain forage. When asked, he was not able to provide these income numbers and expenses for the honeybee operation. Additionally, it was unclear from the Property Owner's response, even when asked, if the Property Owner filed a Schedule F-Profit or Loss From Farming with his federal income tax return. If he did file that schedule, he did not provide a copy of it for the hearing or in the post-hearing submission.

The Property Owner was given the opportunity to provide information post-hearing to show that the subject property was actively devoted to agricultural production by providing documentation of the amount of production of honey, the honey sales and pollination income and expenses. Also, the Property Owner was given an opportunity to provide a clearer explanation for how the Property Owner used the subject property for honey production, including how many colonies were on the subject property and the specific times they were on the subject property.

The Property Owner's representative did provide a post-hearing submission, although she did not provide any additional factual information or documentation on the amount of the honey production, the income from honey sales and from pollination from the business operations of the

Petitioner, nor did she provide information regarding the number of beehives kept on the subject property and the months that those beehives were on the subject property. On Page 3 of the post-hearing submission dated DATE, she reiterated the following information, which had previously been provided to the County Board of Equalization, in a letter dated DATE:

> CITY-3 Property. The Property is necessary to BUSINESS-1 for several different reasons depending upon the time of year. A brief summary of BUSINESS-1 is as follows:
>
> -December colonies are combined and placed in holding yards to be sent to STATE-1;
> -February to April the colonies are placed in almond orchards for pollination near CITY-2, STATE-1;
> -April to May the colonies are placed in fruit orchards in Utah;
> -May to November the colonies are placed in several different Utah locations for the honey crop;
> -August to September the honey is harvested; and,
> -November the hives are moved from the summer locations to the CITY-3 Property hold yard.
>
> It should be noted that just one location cannot be used because the hives are required to be rotated because the honey bees become territorial and fight with the other honey bees.

In addition to these statements, which had been previously provided by the Property Owner's Representative, she stated, "PROPERTY OWNER was recently given a three year grant from the United State[s] Department of Agriculture to assist him in keeping BUSINESS-1 operational. This program is to help beekeepers due to colony collapse."[1] Documentation of these payments were not provided.

The County argued that the subject property should be removed from greenbelt assessment because the subject property was not actively devoted to agricultural use. The County's representative explained at the hearing that the subject property is Graze III land and it had been placed on greenbelt a number of years prior based on the fact that it was being used for grazing cattle. She indicated that when the County reviewed the subject property, cattle grazing had ceased and there were also no signs of bee colonies on the subject property. The County did provide several aerial photographs of the subject property and they showed that the subject property had very sparse vegetation, was considerably sloped in topography and there was no water on the subject property. The photos do not show any bee colony boxes anywhere on the subject property. However, the photographs were undated.

[1] November 17, 2023 Post Hearing Submission, pg. 3

The County's Farmland Assessment Analyst submitted a hearing brief or letter prior to the Initial Hearing ("County's Hearing Brief"). In the County's Hearing Brief, she explained some of the process that goes into producing honey as follows:

> Honeybees are "housed" in wooden boxes called supers. There are brood supers and honey supers. Brood supers are on the bottom and the first super the bees are housed in. Bees can be purchased usually in 3 lb wired cages with a queen cage. These packages of bees are then released into the brood super that has frames for the bees to build their wax on. The bees start breeding with the queen and laying eggs. As the brood grows in population an additional brood box will be added by the beekeeper. When pollen is available and the brood is doing well then the honey supers will be placed on the top of the "beehive." These top boxes are where the bees deposit honey. A beehive can consist of 3-6 boxes/supers.
>
> As the weather gets colder and pollen is sparse the honey supers are removed and honey spun out of the frames. During the winter the bees do not fly out of the beehive to gather pollen. The bees stay in the hive and gather around the queen to keep her warm. Many bees from the hive will die during the winter. Many beekeepers from Utah ship their beehives to STATE-1 to help pollinate the almond groves. This is often done at the end of November or during December. They receive payment for the service of pollination. There is no honey collection from the pollination of the almond trees. Some beekeepers in Utah put their hives inside warehouses where the beehives are protected from the harsh winter elements.

It was the County's position, as expressed at the hearing, that Utah Code Sec. 59-2-502(4) defined "land in agricultural use" to mean "(a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including" among other things "(iii) livestock as defined in Section 59-2-102." The County acknowledged that "livestock" as defined at Utah Code Sec. 59-2-102(20) included "a honeybee." The County argued, however, that although honeybees could qualify, production levels must be met. In the County's Hearing Brief, the County pointed to the Property Tax Division's Standards of Practice, which address honeybees and how to determine production levels. The County pointed out that Standard of Practice 7.5.1 states:

> Beehives being placed on a parcel of land would not typically qualify land for FAA assessment. In most cases, the primary qualifying activity (crops and grazing), would qualify the land for FAA assessment. Honeybees most often coexist with other types of agricultural use or serve as a secondary input by providing pollination.
>
> In order to qualify for FAA assessment, land must be "devoted to the raising of useful plants and animals with a reasonable expectation of profit." (59-2-502). A few honeybee scenarios may qualify land for FAA assessment. For example, an apiary (or bee yard) used for staging or wintering a large number of beehives may fully utilize the 5 acre minimum requirement. Another scenario would be the

> intensive cultivation of a special forage seed mix intended to improve the quality and quantity of honey production.

In the County's Hearing Brief, the County's Farmland Analyst explained that she had reached out to State Tax Commission-Property Tax Division employees for guidance on how many bee colonies it would take for an apiary used for staging or wintering bee colonies to qualify, as this is what the Property Owner was arguing occurred at the subject property. The County included as a exhibit a copy of the email response from Brady Kelsey of the Property Tax Division of the Utah State Tax Commission, dated DATE. In that email Mr. Kelsey stated that he had information to indicate 4 colonies of bees could be stacked on a 48" by 40" pallet and the pallets placed only two to four feet from one another for winterization. This would be 32 square feet for each 4 colonies. Based on this and other discussions he concluded that 50 bee colonies stacked for winterization this way could qualify only 1 acre of land.

In its Posthearing Reply, the County pointed out that Standard 7.5.1 of the Standards of Practice requires that "[t]he entire five-plus acres [must] show evidence of being 'actively' devoted to the honeybee operation as defined in § 59-2-502(1)." And, to show the production requirements are met, "[h]oney quantities . . [must be] documented for the assessor. Pollinators provide documentation of proceeds and pollination activities to the assessor." The County noted that the Property Owner was given additional time to provide the documentation regarding production to the Commission and the Property Owner never provided any evidence of production.

The Commission reviews the facts presented by the parties and the applicable law. The Commission notes that in most FAA appeals that the Commission reviews it is the property owner who is the petitioner. As stated above, in a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position.[2] In this appeal it is the COUNTY-1 Assessor who is the Petitioner. The COUNTY-1 Assessor has the burden of showing error in the County Board of Equalization's decision.

In this appeal, the County had asked the Property Owner how many bee colonies were on the subject property, when they were on the subject property, and for how long they were on the subject property. The Property Owner could not provide this information. The Property Owner was asked to provide production numbers of honey and did not do so. It would seem production numbers, income from sales, income from pollination activities and expenses would be

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[2] *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.

information that a business would retain and have available, at the very least for the purposes of filing tax returns. It would be expected that agricultural businesses operating with a "reasonable expectation of profit" would file a Schedule F-Profit or Loss from Farming with their federal income tax return, where this information would be reported. The Property Owner did not provide a copy of the Schedule F for 2022, or the two years prior, and did not provide any production or sales information.

Utah Code §59-2-503(1) provides that "land may be assessed on the basis of the value that the land has for agricultural use if" among other requirements, the land "is actively devoted to agricultural use" and "has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year" at issue. "Actively devoted to agricultural use" is defined at Utah Code Ann. §59-2-502(1) to mean "that the land in agricultural use produces in excess of 50% of the average agricultural production per acre . . ." Land in agricultural use is defined at Utah Code Ann. §59-2-502(4) to be "(a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including . . . (iii) livestock as defined in Section 59-2-102." As noted above, a honeybee is considered to be livestock pursuant to Utah Code Ann. §59-2-102. However, the land must still be "actively devoted to agricultural use" and meet the production requirements "with a reasonable expectation of profit."

Standard of Practice 7.5.1 states:

> Some evidence of reasonable expectation of profit for a honeybee operation include:
>
> • License – The beekeeper is licensed with the Utah Department of Agriculture and Food.
> • Water – There is an adequate supply of water during the non-winter months; water sources include ponds, streams, irrigation ditches or other sources.
> • Forage – There is enough quality forage available to the hives throughout the season to produce excess honey. Quality forage blossoms include clover, cherries, apricots, dandelions, and various wildflowers favorable to honey production.
> • Accessibility – There is easy, year-round access to the hives for maintenance including good roads in all weather.
> • Actively devoted – The entire five-plus acres show evidence of being "actively" devoted to the honeybee operation as defined in § 59-2-502(1). For parcels smaller than 5 acres, 80% of the landowner's total income is derived from the honeybee operation.
> • Production – Honey quantities are documented for the assessor. Pollinators provide documentation of proceeds and pollination activities to the assessor.
> • Land classes – On higher-producing FAA land classifications, such as Irrigated I, more beehives are present than on lower-producing land classifications, such as Graze II. Beehives may thrive on steep terrain, but not on Graze III and IV if little vegetation, extreme high altitudes, or extreme weather conditions are apparent.

> • Moving beehives – If hives are moved around to different parcels, adequate production can easily be attributed to all parcels and apportioned for the number of weeks in each location.
> • Forage cultivation – If forage blossoms are cultivated on-site, the seed mix provides for quality, marketable honey with an overall bloom that is sustained throughout most of the year. A well-managed acre can provide enough forage to support up to 100 hives; however, the 50% production requirement would be met by supporting 25-50 hives per acre.
> • Profit – The gross income to the landowner (or tenant) from the honeybee operation, less all honeybee expenses, yields a positive net income. When that net income is capitalized, it indicates a value consistent with the FAA values in Rule R884-24P-53 for the same classification of land. (Cap rates developed by USU for crop budget studies have hovered around 10% for years, so simply dividing the net income by 0.10 would indicate the value of the honeybee operation. That value should be equal to or more than the greenbelt value of the parcel. See Appendix 7D for detailed examples.)

The Property Owner has arguably provided some evidence of reasonable expectation of profit described in Standard of Practice 7.5.1. The Property Owner has a beekeeper's license. The Property Owner also stated that, although the subject property is steep in topography, he has a specialized forklift that can get all around the subject property for access to the beehives. In addition, while there is no water or quality forage on the subject property, water and forage are nearby.

However, as the County argued at the hearing, based on the very limited factual information presented, the Property Owner has not provided sufficient evidence of reasonable expectation of profit as described in Standard of Practice 7.5.1. There is no "forage cultivation" on the subject property. The subject property is not the land class to support beehives. Additionally, the Property Owner has not "documented for the assessor" honey quantities or pollination proceeds. The Property Owner has also not provided information to show gross income and expenses from the operation.

Furthermore, the Property Owner has not established that "[t]he entire five-plus acres show evidence of being 'actively' devoted to the honeybee operation." As stated in Standard 7.5.1, "A few honeybee scenarios may qualify land for FAA assessment. For example, an apiary (or bee yard) used for staging or wintering a large number of beehives may fully utilize the 5 acre minimum requirement." However, the Property Owner did not provide information on the number of hives per acre he had on the subject property nor the time periods when the hives were on the property, or the other production information. Thus, the Property Owner has not demonstrated that the subject property was actively devoted to agricultural use. The Property Owner's activities do not show that the subject property is actively devoted to agricultural use. Therefore, the County Assessor has met its burden of proof to establish error in the County Board of

Equalization's decision. Considering the evidence offered by the County Assessor and the lack of evidence produced by the Property Owner, the subject property was not actively devoted to agricultural use as required by the statute and was properly removed from greenbelt assessment by the County Assessor. The County Board of Equalization's decision should be reversed and rollback taxes should be assessed.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission grants the Petitioner's appeal in this matter and overturns the decision of the County Board of Equalization issued on DATE. The Tax Commission reinstates the County Assessor's DATE decision to remove the subject property from greenbelt and assess 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 _____, 2024.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner