

APPEAL # 22-1724

TAX TYPE: PROPERTY TAX

TAX YEAR: 2022

DATE SIGNED: 3/28/2024

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

PROPERTY OWNER,

Petitioner,

v.

BOARD OF EQUALIZATION OF
COUNTY-1, STATE OF UTAH,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
FINAL DECISION**

Appeal No. 22-1724

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:

Jennifer N. Fresques, Commissioner

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER

For Respondent: RESPONDENT'S REP-1, Residential Appraiser, COUNTY-1

RESPONDENT'S REP-2, Appraiser, COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 14, 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

I. General Information About Property

1. The issue before the Tax Commission at the Formal Hearing is the Petitioner’s (“Property Owner’s”) appeal of the Respondent’s (“County Board of Equalization”) decision to sustain the County Assessor’s removal of the subject property from greenbelt assessment under the Farmland Assessment Act and assess rollback taxes. The County Assessor had removed the subject property from greenbelt assessment and assessed rollback taxes in DATE. The Property Owner appealed to the County Board of Equalization and the County Board of Equalization upheld that decision on DATE. The Property Owner timely appealed the County Board of Equalization decision to the Utah State Tax Commission and the matter proceeded to this Formal Hearing before the Utah State Tax Commission.

2. The subject property is a land parcel that is ##### acres in size located in COUNTY-1. The subject property is classified as Tillable III. The address for the subject property is at approximately ADDRESS-1.

3. The subject parcel is contiguous to a parcel in COUNTY-2 that is 37.22 acres in size. The subject parcel and the COUNTY-2 parcel have the same owner and are under the same legal ownership. The two parcels combined total ##### acres. The County recognized that ##### acres of the COUNTY-2 parcel are in agricultural production, but the County representatives had concluded from aerial photographs that ##### acres of the COUNTY-2 property were not in agricultural use and that the subject parcel, with its ##### acres, was not in agricultural use and had not been used as such for several years.

4. The Property Owner conceded that the subject parcel has not been in agricultural use for several years. However, the Property Owner argued that the production from the portion of the property that was irrigated and planted was sufficient to qualify both parcels and all ##### acres.

II. Property Owner’s Evidence

5. The Property Owner explained at the hearing that due to drought conditions over

the last few years, there has not been enough water to irrigate all ##### acres. The Property Owner leases the combined ##### acres to a tenant and the tenant had used all the water available for irrigation for the ##### acres in COUNTY-2. The tenant PERSON-1 attended the hearing and he explained that this resulted in more than the average amount of water being used to irrigate the ##### acres and a higher than average crop yield per acre for the ##### acres.

6. The Property Owner testified that all ##### acres had been purchased together at the same time by his father in DATE and had been used together as farmland for decades. He had inherited the property after his father's death.

7. The Property Owner Submitted an "Affidavit Production Statement of Agricultural Land Lease" from PERSON-1. This statement had been signed and notarized on DATE. PERSON-1 included an aerial photograph of the subject parcel and the other parcel that was located in COUNTY-2. PERSON-1 labeled the subject parcel "Field D" on the photograph while Fields A, B and C were located in COUNTY-2. In the affidavit, PERSON-1 stated the following:

I, PERSON-1, entered into a land lease on the property defined above beginning in 2021 and continuing until the present . . . The lease includes the use of 37 class "D" full acre COMPANY-1 Irrigation water shares which have been used in full every season on the property. I pay an annual lease fee, and the bi-annual water assessment fees to COMPANY-1. My fertilizer cost (material only) has been ~ \$\$\$\$ per acre per season, applied in the Spring.

In 2021 the annual alfalfa production on ##### acres (Fields A & B) was ##### tons per acre, or ##### tons total. This crop was used for the PERSON-2 dairy cattle feed in an arrangement agreed after PERSON-2 passed away in DATE.

In 2022 the annual alfalfa production on the ##### acres (Fields A & B) was ##### tons per acre, or ##### tons total. As with the PERSON-2 this was used internally to feed one half my own ##### head herd

In 2023 the alfalfa production on the ##### acres (Fields A & B) was ##### tons per acre, or ##### tons total. In addition a third new water wheel line and mover was acquired in DATE to allow production in fields C&D (Approximately ##### Acres).

The year of 2023 was the first in over a decade that COMPANY-1 Irrigation water reserves had sufficient volume to irrigate this increased acreage. This was originally planned back in 2014 when the header system was installed . . .

The fallow lands in the 2021 and 2022 season included ##### acres in the eastern end of Field D and ##### acres in Fields C&D, for a total of ##### acres which includes the COUNTY-1 parcel (All of Field D).

In 2023 the fallow lands were reduced to ##### acres in the eastern half of Field B and ##### acre at the northern end of Field C for a total of ##### acres. . .

8. The Property Owner also submitted an Affidavit-Production Statement on

Agricultural Land Lease from PERSON-3. This affidavit had been signed by PERSON-3 on DATE and had been notarized. In this affidavit PERSON-3 stated the following:

My late husband, PERSON-2, and I entered into this Agricultural land lease beginning in 2012 and continuing through 2021 to produce alfalfa, barley and oats as winter feed for our Holstein dairy herd of approximately ##### head. The property included the use of ##### class “D” full acre COMPANY-1 Irrigation water shares which were used every season in full while we held the lease on the property. . .

My husband, PERSON-2, installed buried irrigation headers and risers in 2014 for the pressurized irrigation of the entire cross county parcel by wheel line, COMPANY-1 water supplies permitting . . . The land was fertilized every year, and the full ##### acre water allotment was spread out over the ##### planted acres . . From DATE to DATE Alfalfa production of ##### tons per acre was obtained from the ##### acres (approximately ##### tons each season DATE to DATE.) . . To feed our own dairy cattle herd through the winter was the reason we entered into and maintained this alfalfa operation on this Agricultural lease.

Beginning in 2020, due to water reductions from COMPANY-1 and a need to return the borrowed wheel line sections . . [we] returned the total irrigated acreage to approximately ##### acres in Field A, and Field B remained at ##### acres. The increased water density of the irrigation in 2020 (##### full acre water shares were being used on ##### acres), helped to offset the lower water volumes delivered by COMPANY-1 in 2020 due to a seasonal drought. End of year production yield in 2020 only decreased slightly to ##### tons per acre, or a total of ##### tons for the 2020 season, which was used as feed for our dairy herd.

9. The Property Owner had submitted a late exhibit from the *Utah Department of Agriculture and Food*, to show average alfalfa production per acre in Utah. This exhibit was not received as a direct exhibit from Petitioner due to its late submission. However, the Tax Commission may take administrative notice of a report that is similar to the one offered by the Property Owner, but is actually prepared annually for the Utah State Tax Commission. The Tax Commission takes administrative notice of the *2023 Report to the Farmland Advisory Committee prepared for the Utah State Tax Commission*. This report also looks at average crop yields per acre in Utah, and at PDF # 10 indicates average production numbers on a per acre basis, stating the following for alfalfa:

REDACTED TABLE

III. County’s Evidence

10. The County provided as evidence a written timeline and explanation of its position (“Hearing Brief”), as well as exhibits. The County’s Hearing Brief provided a history for the subject parcel, which indicated that the parcel had been assessed as greenbelt for many years, but also that its agricultural use had been questioned on a number of previous occasions. The Hearing Brief stated that in 2012 the County Assessor at that time had questioned the subject property’s use. The County had received a letter in response in 2013 that stated the property was utilized each year for grazing and that the back part of the property was in production.¹

11. The County also asserted that during the 2016 reappraisal cycle, the County had again questioned the subject property’s use. At that time there was no evidence of agricultural use and the fences were down. The County stated in its Hearing Brief that fences were in need of repair and the parcel was covered in Russian Knapweed, which the County pointed out was not vegetation that animals would eat. The County also provided photographs from 2016 to support these assertions.² The County had left the property in greenbelt after the Property Owner had explained that they had replaced the irrigation system.

12. The County provided an infrared map from 2018. The infrared map shows parcels with a heat signature, which indicates whether the parcels contain some kind of vegetation, such as lawns or fields. This map shows that in 2018 the subject parcel as well as ##### acres of the property in COUNTY-2 did not produce any vegetation.³

13. The County then explained that in 2021, during the last reappraisal cycle, the property’s qualification for greenbelt assessment was again questioned due to lack of use. The County stated that the County saw no evidence of agricultural use and the fences were down. The County provided photographs that support this position.⁴ The County also presented photographs of the subject property from 2022 that showed no change to this condition.⁵ The County’s representatives stated that when they started to look at the property in 2021, they spoke with PROPERTY OWNER and PERSON-1, who was leasing the subject property. They understood from PERSON-1 that he was growing a crop on the COUNTY-2 side, but the COUNTY-1 side was not in use at that time. The County also concluded from the aerial photos that only approximately ##### acres of the COUNTY-2 property were in alfalfa production.

14. In its Hearing Brief and exhibits, the County discussed production requirements for the entire ##### acre parcel to qualify for greenbelt assessment. The County stated in its

¹ County’s Hearing Brief, Exhibit B3.

² County’s Hearing Brief, Exhibits C1-C6.

³ County’s Hearing Brief, Exhibit A2.

⁴ County’s Hearing Brief, Exhibits D1-D11.

⁵ County’s Hearing Brief, Exhibits E1-E12.

Hearing Brief, “In order to meet the minimum production, the entire property would need to produce an equivalent of ##### tons of alfalfa per acre (Exhibit F). Since the total property area is ##### acres, ##### tons of alfalfa would need to be produced.”⁶ The exhibit the County provided was a page from Utah Farmland Assessment Act-Land Classification Handbook (“Handbook”), which stated that the average crop yield for Irrigated III tillable cropland for alfalfa was #####-##### tons per acre per cutting. However, the County did not argue that there should be multiple cuttings during the year and the page from the Handbook also stated that the growing season for Irrigated III Tillable Cropland was only ##### to ##### days. The County made its production calculation by multiplying the ##### acres by ##### tons. This calculation does not take into account that under Utah Code Subsection 59-2-502(1), for property to be “actively devoted to agricultural use,” the production must be “in excess of %%% of the average agricultural production per acre” as determined under the Farmland Assessment Act.

15. In its Hearing Brief, the County also pointed to the Property Tax Division’s Standards of Practice, Standard 7.4.4, which states how field production needs to be substantiated. That Standard states that “Agricultural production shall be substantiated by appropriate income tax schedules, sales receipts, or production records.”

16. The County representatives asserted at the hearing that they were both from farming backgrounds and getting the ##### tons or the ##### tons of alfalfa per year from the ##### or so acres that were in production was a very high production amount and seemed high based on their experience. The County representatives also pointed out that in years past the Property Owner had stated the subject parcel was being grazed and had not provided declarations of production amounts. They noted that the declarations from the two lessees had not been provided during the County Board of Equalization proceeding and had just been submitted prior to the Formal Hearing. Therefore, the County had not previously tried to calculate the production requirements based on alfalfa production for the entire parcel. The County representatives pointed out that the Property Owner did not provide tax returns or farm schedules on tax returns or receipts to support the production numbers. The County argued Standard 7.4.4 of the Standards of Practice published by the Utah State Tax Commission, Property Tax Division, required this type of evidence to support production numbers.

V. Tax Commission Evidence Conclusions

17. The Petitioner has provided as evidence signed and notarized declarations from individuals who were leasing both the subject parcel and the COUNTY-2 parcel. These lessees

⁶ County’s Hearing Brief, PDF#3 & Exhibit F.

stated in their declarations the alfalfa production amounts going back to 2017. The production amounts did decrease in 2020, which, based on the declarations, was due to there being less water available because of drought conditions. For each of those years the declarations provided the total production as follows:

REDACTED TABLE

18. The excerpt from the Utah Farmland Assessment Act-Land Classification Handbook, which is published by the Property Tax Division of the Utah State Tax Commission, provided the average alfalfa yield per acre per cutting for Class III Irrigated Crop land. This indicated an average yield per acre of #####-##### tons per cutting. However, Class III Irrigated Crop land has a short growing season as stated in that report. The County did not assert that there should have been more than one cutting and #####-##### tons per acre per year is consistent with the *Report to the Farmland Advisory Committee prepared for the Utah State Tax Commission*. Using ##### tons per acre per year, when multiplied by the total ##### acres, would indicate the average production for the entire ##### acre parcel would be ##### tons per year. Using ##### tons per acre per year multiplied by the ##### total acres results in ##### tons per year. Mathematically, %%% of the average production for the entire ##### acre parcel, based on ##### tons per acre per acre per year, would be ##### tons. Using ##### tons per acre per year, this would be ##### tons. Based on the declarations offered by the Property Owner, the Property Owner's tenants had produced more than ##### tons each year from 2017 to 2022. Therefore they had produced more than %%% of the average production for Class III Irrigated Crop Land for the combined parcel to qualify.

19. As discussed in more detail in the Conclusions of Law below, it is the Property Owner who is the Petitioner in this appeal and, therefore, has the burden of proof. The Property Owner did submit evidence of production in the form of declarations. The County did not subpoena the declarants or provide any documents to rebut the statements made in the declarations. The County representatives pointed out that the Property Owner did not provide tax returns or farm schedules on tax returns or receipts and argued that the production numbers were a little high based on their experience. The Property Owner countered the high production was because the lessees had used the available water on the 26.8 acres that were actively cultivated in 2020, 2021 and 2022, thereby getting higher yields per acre. Mathematically, using the 2021 yield of 121 tons of alfalfa and dividing it by the ##### acres that were actually in production that year indicates a production per acre of ##### tons, which is slightly over the average production numbers indicated in the Handbook.

20. There is also the factual issue of whether the property was being used for a reasonable expectation of profit. The declarations provided in this matter indicated that the tenants were paying a lease fee to use the land and also incurred costs for water and fertilizer. The declarations stated that they were using the alfalfa produced from the property to feed their cattle in their respective dairy farm or cattle business. The fact that they were making these expenditures to grow a product and then using the product in their existing farming operations does indicate that there was a reasonable expectation of profit from the agricultural use of the subject property.

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:
 - ...
 - (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
 - (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;⁷
 - (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.

...

In order for land to be eligible for assessment as greenbelt under the FAA, the property owner must submit an application pursuant to Utah Code §59-2-508 as follows:

⁷ "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."

(1) If an owner of land eligible for assessment under this part wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located.

(2) An application required by Subsection (1) shall:

(a) be on a form: (i) approved by the commission; and (ii) provided to an owner: (A) by the county assessor; and (B) at the request of an owner;

(b) provide for the reporting of information related to this part;

(c) be submitted by: (i) May 1 of the tax year in which assessment under Subsection (1) is requested if the land was not assessed under this part in the year before the application is submitted; or (ii) by the date otherwise required by this part for land that prior to the application being submitted has been assessed under this part;

(d) be signed by all of the owners of the land that under the application would be assessed under this part;

(e) be accompanied by the prescribed fees made payable to the county recorder;

(f) include a certification by an owner that the facts set forth in the application or signed statement are true;

(g) include a statement that the application constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part; and

(h) be recorded by the county recorder.

(3) The application described in Subsection (2) constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part.

(4)

(a) If the county determines that an application that was timely filed is incomplete, the county shall: (i) notify the owner of the incomplete application; and (ii) allow the owner to complete the application within 30 days from the day on which the county provides notice to the owner.

(b) An application that has not been completed within 30 days of the day of the notice described in Subsection (4)(a) shall be considered denied.

(5)

(a) Once the application described in Subsection (1) has been approved, the county may: (i) require, by written request of the county assessor, the owner to submit a new application or a signed statement that verifies that the land qualifies for assessment under this part; or (ii) except as provided in Subsection (5)(b), require no additional signed statement or application for assessment under this part.

(b) A county shall require that an owner provide notice if land is withdrawn from this part: (i) as provided in Section 59-2-506; or (ii) for land that is subject to a

conservation easement created in accordance with Section 59-2-506.5, as provided in Section 59-2-506.5.

(c) An owner shall submit an application or signed statement required under Subsection (5)(a) by the date specified in the written request of the county assessor for the application or signed statement.

(6) A certification under Subsection (2)(f) is considered as if made under oath and subject to the same penalties as provided by law for perjury.

(7)

(a) All owners applying for participation under this part and all purchasers or lessees signing statements under Subsection (8) are considered to have given their consent to field audit and review by: (i) the commission; (ii) the county assessor; or (iii) the commission and the county assessor.

(b) The consent described in Subsection (7)(a) is a condition to the acceptance of any application or signed statement.

(8) Any owner of land eligible for assessment under this part, because a purchaser or lessee actively devotes the land to agricultural use as required by Section 59-2-503, may qualify the land for assessment under this part by submitting, with the application described in Subsection (2), a signed statement from that purchaser or lessee certifying those facts that would be necessary to meet the requirements of Section 59-2-503 for assessment under this part.

Utah Code §59-2-512 provides for greenbelt assessment of property located in more than one County as follows:

(1) If contiguous land in agricultural use in one ownership is located in more than one county, compliance with this part:

(a) shall be determined on the basis of the total area and production of the contiguous land; and

(b) is not determined on the basis of the area or production of land that is located in one particular county.

(2) If land in agricultural use in one ownership is located in more than one county but the land is not contiguous across county lines, compliance with the requirements of this part shall be determined on the basis of the total area and production of the land in each county.

The Standards of Practice published by the Utah State Tax Commission, Property Tax Division, give guidance as to the type of proof needed to verify the appropriate agricultural production. Standard 7.4.4 provides as follows:

Agricultural production shall be substantiated by appropriate income tax schedules, sales receipts, or production records. When either the State Tax Commission or the county assessor requires production verification, the property owner is required to provide such information. At the time of application, if the

request for production verification is denied by the owner, FAA assessment shall not be granted. (§ 59-2-508). In the case of an audit by either the state or county, if the owner fails to supply the requested production information, the property will be removed from FAA assessment and a rollback tax charged. (R884-24P-42).

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 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.

On an appeal before the Tax Commission from a decision issued by the County Board of Equalization, a party may submit new evidence and raise new issues that were not raised to the County Board of Equalization. Utah Admin. Rule R861-1A-9(6) provides as follows:

- (a) The Commission shall consider the facts and evidence presented to the commission including facts and evidence presented by a party that was submitted to the county board.
- (b) A party may raise a new issue before the Commission.

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. However, 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). Therefore, the petitioner, or Property Owner in this matter, needs to show error in the County's decision and establish a sound evidentiary basis that the property should be assessed as greenbelt under the FAA.

CONCLUSIONS OF LAW

1. In instances where there is an issue of statutory interpretation, the Utah Supreme Court has instructed the Tax Commission in *County Board of Equalization of Wasatch County v. Stitching Mayflower et al.*, 2000 UT 57, 6 P.3d 560, at 564, "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, if there is a question of statutory interpretation, the FAA is to be liberally construed in favor of the property owner, in accordance with relevant case law.

2. The burden of proof in proceedings brought before the Tax Commission pursuant to Utah Code Ann. §59-2-1006, is generally only 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).

3. The Utah Constitution and Utah Code Ann. §59-2-103(2) provides that "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 for property actively devoted to agricultural use. 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. Based on this authorization, the Utah Legislature adopted the Farmland Assessment Act ("FAA").

4. Utah Code §59-2-503 of the FAA requires that to qualify for greenbelt 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 %%% 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.” In addition, “land in agricultural use” is also statutorily defined at Utah Code §59-2-502(4)(a) to be “land devoted to the raising of useful plants and animals with a reasonable expectation of profit” Therefore, in order to be “actively devoted to agricultural use” the land must meet both the production requirements and be “devoted to” the raising of useful plants and animals “with a reasonable expectation of profit.”

5. The Property Owner has provided and submitted evidence of production in the form of declarations or sworn statements from two different tenants who had leased the subject parcel and the COUNTY-2 parcel, the total combined ##### acres, as far back as 2012. The County argued that the declarations or sworn statements are insufficient, and that the Property Owner should have provided the types of proof listed in Standard 7.4.4, of the Standards of Practice published by the Utah State Tax Commission, Property Tax Division. Standard 7.4.4 states, “Agricultural production shall be substantiated by appropriate income tax schedules, sales receipts, or production records.” The Standard also states, “When either the State Tax Commission or the county assessor requires production verification, the property owner is required to provide such information.” In this matter, the Property Owner does not use the property for agricultural purposes. Rather, he leases the property to lessees, who use the property to grow alfalfa to feed their cattle in their agricultural operations. Utah Code §59-2-508(8) addresses application requirements for greenbelt assessment under the FAA when that qualification is based on the activity of a lessee. Utah Code §59-2-508(8) states, “Any owner of land eligible for assessment under this part, because a purchaser or lessee actively devotes the land to agricultural use as required by Section 59-2-503, may qualify the land for assessment under this part by submitting, with the application described in Subsection (2), a signed statement from that purchaser or lessee certifying those facts that would be necessary to meet the requirements of Section 59-2-503 for assessment under this part.” Additionally, Utah Code §59-2-508(5)(a) provides that once property is in greenbelt, the County may “(i) require, by written request of the county assessor, the owner to submit a new application or a signed statement that verifies that the land qualifies for assessment under this part.” The Property Owner has submitted signed statements from the lessees and the lessees have certified in those signed statements the amount of production from the subject property for the years 2017 through 2022. The lessees’ declarations also provided information to show that they have a “reasonable

expectation of profit” from their use of the property. The declarations satisfy the statutory requirements to establish eligibility that are set out at Utah Code §59-2-508.

6. One issue raised by the County in this matter, was that although portions of the total ##### acres had been in production, the production in the last few years had been solely on the COUNTY-2 parcel, while there had been no production on the subject ##### acre parcel located in COUNTY-1. The Property Owner did not dispute that the subject parcel had been fallow for the last several years. Rather, the Property Owner argued that the subject parcel qualified based on the total production from the entire ##### acre parcel. Utah Code §59-2-512(1) states, “If contiguous land in agricultural use in one ownership is located in more than one county, compliance with this part: (a) shall be determined on the basis of the total area and production of the contiguous land; and (b) is not determined on the basis of the area or production of land that is located in one particular county.” The subject parcel is in COUNTY-1 and is contiguous to a COUNTY-2 parcel that is assessed under the FAA. The ownership is the same for both parcels. The alfalfa production requirements to qualify all ##### acres has been shown to have been met based on declarations for all of the years 2017 through 2022. The statutory language at Utah Code §59-2-512(1) is clear and supports the Property Owner’s position. The Tax Commission must look at the total production from all ##### acres and determine if that production is sufficient to qualify all ##### acres.

7. In addition, the Property Owner’s position that the subject parcel may qualify because there was sufficient production to qualify the entire ##### acres is consistent with the Court’s decision in *Stitching Mayflower et al.*, 6 P.3d 560. In *Stitching Mayflower*, the court affirmed that three separate parcels comprised one unit and grazing that occurred mostly on two of the parcels was sufficient to meet the agricultural production requirements for all three parcels combined.

8. This appeal presents to the Tax Commission primarily questions of fact regarding whether the subject property was “actively devoted to agricultural use”⁸ sufficient for the subject property to qualify for greenbelt assessment under the FAA. The burden of proof is on the Property Owner. The Property Owner has provided declarations from the lessees of the property. The County’s argument that the production amounts stated by the lessees in their declarations were a little high, was rebutted by the Property Owner’s explanation of using all the water on the 26.8 acres. The lessees have also established the reasonable expectation of profit as they were growing the alfalfa to feed their own cows in their respective dairy or cattle businesses.

⁸ In discussing whether the “property satisfied the 50% production minimum” the Court in *Stitching Mayflower* at ¶23 stated, “This is an issue of fact.”

Therefore, the Property Owner has established that the entire ##### acre property, having the same ownership and being contiguous across county lines, was “actively devoted to agricultural use” and that the subject parcel qualifies for assessment as greenbelt under the FAA.

The Tax Commission should grant the Property Owner’s appeal, reinstate the subject property to greenbelt assessment under the FAA for tax year 2022, and abate the assessment of rollback taxes.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission grants the Property Owner’s appeal, finds that the subject parcel qualified for assessment under the FAA for tax year 2022 and abates the rollback taxes. It is so ordered.

DATED this ____ day of ____, 2024.

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.