

APPEAL # 22-2109  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2022  
DATE SIGNED: 2/6/2024  
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PROPERTY OWNER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 22-2109</p> <p>Parcel No: #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2022</p> <p>Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER'S REP-1, Trustee

For Respondent: RESPONDENT'S REP-1, Chief Deputy, COUNTY-1 Assessor's Office

RESPONDENT'S REP-2, Appraiser, COUNTY-1 Assessor's Office

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the COUNTY-1 Board of Equalization ("County") to deny assessment under the Urban Farming Assessment Act ("UFAA") for the 2022 tax year. This matter was argued in an Initial Hearing on September 20, 2023 in accordance with Utah Code Ann. §59-1-502.5. The County denied assessment under UFAA because the Property Owner was untimely in filing its application.

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.

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102 (13), as follows:

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, “fair market value” shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

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 Urban Farming Assessment Act provides for an exception to the requirement that property be assessed and taxed on the basis of its fair market value, and instead is taxed on the basis of its agricultural use, as provided in Utah Code Ann. §59-2-1703, as follows:

- (1)
  - (a) 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:
    - (i) is actively devoted to urban farming;
    - (ii) is at least one contiguous acre, but less than five acres, in size; and
    - (iii)
      - (A) has been actively devoted to urban farming for at least two successive years immediately preceding the tax year for which the land is assessed under this part; or
      - (B) was assessed under Part 5, Farmland Assessment Act, for the preceding tax year.
  - (b) Land that is not actively devoted to urban farming may not be assessed as provided in Subsection (1)(a), even if the land is part of a parcel that includes land actively devoted to urban farming.
- (2)
  - (a) In determining whether land is actively devoted to urban farming, 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:
    - (i) production levels reported in the current publication of Utah Agricultural Statistics;
    - (ii) current crop budgets developed and published by Utah State University; or
    - (iii) the highest per acre value used for land assessed under the Farmland Assessment Act for the county in which the property is located.
  - (b) A county assessor may not assess land actively devoted to urban farming on the basis of the value that the land has for agricultural use under this part unless an owner annually files documentation with the county assessor:

- (i) on a form provided by the county assessor;
  - (ii) demonstrating to the satisfaction of the county assessor that the land meets the production levels required under this part; and
  - (iii) except as provided in Subsection 59-2-1707(2)(c)(i), no later than January 30 for each tax year in which the owner applies for assessment under this part.
- (3) Notwithstanding Subsection (1)(a)(ii), a county board of equalization may grant a waiver of the acreage requirements of Subsection (1)(a)(ii):
- (a) on appeal by an owner; and
  - (b) if the owner submits documentation to the county assessor demonstrating to the satisfaction of the county assessor that:
    - (i) the failure to meet the acreage requirements of Subsection (1)(a)(ii) arose solely as a result of an acquisition by a governmental entity by:
      - (A) eminent domain; or
      - (B) the threat or imminence of an eminent domain proceeding;
    - (ii) the land is actively devoted to urban farming; and
    - (iii) no change occurs in the ownership of the land.

Utah Code Ann. § 59-2-1704 provides,

- (1) The county assessor shall consider only those indicia of value that the land has for agricultural use as determined by the commission when assessing land:
- (a) that meets the requirements of Section 59-2-1703 to be assessed under this part; and
  - (b) for which the owner has:
    - (i) made a timely application in accordance with Section 59-2-1707 for assessment under this part for the tax year for which the land is being assessed; and
    - (ii) obtained approval of the application described in Subsection (1)(b)(i) from the county assessor.

If a property owner wants land to be assessed under the UFAA, an application is required in accordance with Utah Code Ann. §59-2-1707, as follows:

- (1) For land to be assessed under this part, an owner of land eligible for assessment under this part shall submit annually to the county assessor of the county in which the land is located:
- (a) an application described in Subsection (2); or
  - (b) a renewal application described in Subsection (3) if:
    - (i) the land was assessed under this part for the preceding tax year; and
    - (ii) there have been no changes to the eligibility information provided in the most recently submitted application described in Subsection (2), other than the information described in Subsection 59-2-1703(2)(b).
- (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) the date otherwise required by this part for land that before 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) A renewal 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 the information described in Subsection 59-2-1703(2)(b);
  - (c) be submitted on or before January 30 of the tax year in which the owner requests assessment under this part;
  - (d) be signed by all of the owners of the land;
  - (e) be accompanied by the prescribed fees made payable to the county recorder;
  - (f) include a certification by an owner that the following are true:
    - (i) the facts set forth in the renewal application or signed statement; and
    - (ii) other than the information described in Subsection 59-2-1703(2)(b), the facts set forth in the most recently submitted application described in Subsection (2), as of the date the renewal application is submitted;
  - (g) include a statement that the renewal 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.
- (4) An application described in Subsection (2) or a renewal application described in Subsection (3) constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part.
- (5)
- (a) If the county determines that a timely filed application or a timely filed renewal application is incomplete, the county shall:
    - (i) notify the owner of the incomplete application or renewal application; and
    - (ii) allow the owner to complete the application or renewal 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 (5)(a) shall be considered denied.
- (6)
  - (a) Except as provided in Subsections (1) through (3), a county assessor may not require an additional signed statement or application for assessment under this part.
  - (b) Notwithstanding Subsection (6)(a), a county shall require that an owner provide notice if land is withdrawn from this part as provided in Section 59-2-1705.
- (7) A certification under Subsection (2)(f) or (3)(f) is considered as if made under oath and subject to the same penalties as provided by law for perjury.
- (8)
  - (a) An owner applying for participation under this part or a purchaser or lessee that signs a statement under Subsection (9) is considered to have given consent to a 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 (8)(a) is a condition to the acceptance of an application or signed statement.
- (9) An 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 59-2-1703, may qualify the land for assessment under this part by submitting, with the application described in Subsection (2) or the renewal application described in Subsection (3), a signed statement from that purchaser or lessee certifying those facts that would be necessary to meet the requirements of Section 59-2-1703 for assessment under this part.

A person may appeal a denial of assessment under UFAA to the county board of equalization, in accordance with Utah Code Ann. § 59-2-1713, 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, 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 (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. Absent a showing of any statute or case law to the contrary, the Commission finds no reason to treat the burden of proof in UFAA matters differently from how the Commission treats the burden of proof for purposes of FAA matters.

#### DISCUSSION

The subject property is parcel no. #####, located at ADDRESS-1. The property is improved with a single family residence. The Property Owner sought to have the property assessed under UFAA.

In early January of 2022, the County sent out a letter to property owners who may qualify for assessment under UFAA. The letter explained the qualifications, and how the program works. The letter also included an Urban Farming Land Use Affidavit, and explained:

The affidavit for the Urban Farming Assessment Act included in this letter must be received by January 31st, 2022 with accompanying documents proving use of the land as agricultural. Once the affidavit is received, the legal document creating a lien on the property for a Rollback Tax will be mailed to you and that will have to be signed and notarized before May 1st to qualify for the current tax year.

RESPONDENT'S REP-2, the County's representative, explained that there was a mail merge issue with the initial letters. The Assessor's Office sent out a second letter in mid to late DATE and allowed until DATE for property owners to submit the affidavit.

The Property Owner submitted an Urban Farming Land Use Affidavit to the County Assessor's Office dated DATE, along with supporting documentation. This was the first time the Property Owner applied for assessment under UFAA. The Property Owner received a letter from

the COUNTY-1 Assessor's Office dated DATE indicating that the affidavit was approved, and provided the following instructions:

Your affidavit and documentation for Urban Farming was approved. Enclosed you will find the application for the Urban Farming Assessment Act. Each person whose name is recorded on the property deed must sign the application in the presence of a notary.

There is a **\$40** recording fee. You may pay the recording fee by personal check, cashier's check, money order or credit card. Cash will not be accepted. Please make checks payable to the **COUNTY-1 Assessor** and return all documents to the COUNTY-1 Assessor's Office at ADDRESS-2 If you wish to pay by credit card, there will be a small processing fee.

Please have your application returned to us no later than **May 4, 2022**. Be sure to include **the recording fee and signed and notarized application**. Your property will **not** be included in urban farming without **all** items. Failure to respond to this letter will result in your property not being taxed as Urban Farming for the 2022 tax year.

The Property Owner's Application for Assessment and Taxation was signed and notarized, dated DATE. The Assessor's Office denied the application as untimely.

The Property Owner's representative stated that the application was submitted only two days after the County's deadline. He stated that the Board of Equalization decision indicated that there may have been other properties that were granted assessment under UFAA, even though the application was submitted after the deadline. The Property Owner's representative argued that there were exceptions to the rules, and it is his position that under equal protection of the law, he should have the same forbearance that the others had.

The Property Owner's representative stated that it was a new law, and he does not believe the County interpreted the law properly. He stated that the January letter regarding the program was addressed to another party, but had his address. The Property Owner's representative stated that he prepared the documents showing the two year history of the property, and received a letter saying that the property had been approved. He argued that the DATE letter was not specific, and that he was unaware that he needed to bring in the notarized document. The Property Owner's representative stated that upon receiving the letter that the property had been approved, he set it aside.

The Property Owner's representative argued that there is reasonable cause to allow his application. He referenced Administrative Rule R861-1A-42, which provides circumstances that may be considered reasonable cause for a waiver of penalties and/or interest under Utah Code

Ann. §59-1-401<sup>1</sup>. The Property Owner’s representative stated that the late application was attributable to incorrect advice from the County, it was the first time he had applied for assessment under UFAA, and there was a change in the law that he could not reasonably be expected to be aware of.

The Property Owner’s representative stated that the law is still not clear to him. He argued that it is difficult to understand. The Property Owner’s representative stated that he did not get the application submitted for the following year, and argued that the property should also be allowed to qualify for assessment under the UFAA for the next year.

RESPONDENT’S REP-2 stated that there was one instance where the Assessor’s Office approved a late application for assessment under the UFAA. She stated that the property owner in that case provided documentation to show that they were out of town when the DATE letter was issued through the DATE deadline, and could not have acted during the time period allowed. RESPONDENT’S REP-2 stated that the property owner in that case returned the notarized application within two days of returning from vacation.

RESPONDENT’S REP-2 stated that all individuals who sought to have property assessed under the UFAA had to submit the affidavit and supporting documents by DATE. She stated that the County sent out its next correspondence regarding UFAA on DATE, and that included the application for assessment under UFAA. RESPONDENT’S REP-2 stated that the deadline was DATE but because DATE fell on a Sunday, the Assessor’s Office allowed an extension for filing the application to DATE. She argued that the letter stated that the application, recording fee, and notarized documents were required to be returned by DATE, or the property would not be assessed under UFAA.

RESPONDENT’S REP-2 stated that the Property Owner’s application was submitted on DATE, but that the \$40 recording fee was not submitted. She argued that there has to be a cutoff date for the applications, and because the Property Owner’s application was submitted beyond the deadline, it was denied.

In closing, the Property Owner’s representative stated that upon finding out that the application was late, he immediately tried to correct the issue by filing the notarized documents, and immediately filed the appeal. He argued that the County’s DATE letter was not clear that “no later than” was a deadline and that if it was missed, the property would not qualify for assessment under the UFAA. The Property Owner’s representative stated that he did have a \$40 check for the

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<sup>1</sup> The Commission notes that Utah Code Ann. §59-1-401(14) provides, “upon making a record of the commission’s actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.” The reference to “under this part” is to part 4 of Title 59, Chapter 1 of the Utah Code.



recording fee, but the Assessor's Office would not accept it. He argued that it was a new law that was difficult to interpret, that he had substantial compliance, and attempted to resolve the error immediately.

After review of the law and the facts in this matter the deadline to file an application for assessment under UFAA for a property not previously assessed under UFAA is May 1 of the tax year, in this case May 1, 2022. Utah Code Ann. §59-2-1707(2) sets forth the application requirements, and provides that “an application” must: be on a form approved by the Commission, provided to an owner by the county assessor and at the request of an owner; provide for the reporting of information related to this part<sup>2</sup>; be submitted by May 1 of the tax year in which assessment was requested if the land was not assessed under the UFAA in the year prior; be signed by all of the owners of the land that would be assessed under the UFAA; be accompanied by the prescribed fees; include a certification by the owner that the facts in the application or signed statement are true; include a statement that the application constitutes consent of the owners for the creation of a lien upon the land; and be recorded by the County recorder. The statute does not authorize a separate affidavit and application. The Commission notes that had the Legislature intended for there to be a separate affidavit, it could have included the requirement in statute.<sup>3</sup> Further, the statute lists only May 1 as the date by which the application must be submitted. The Commission finds that the County's use of a process requiring both an affidavit and an application with deadlines other than May 1 interfered with the Property Owner's due process rights, and the application should be granted.

The Commission notes that the Property Owner raised an equal protection argument. The Commission does not have jurisdiction to hear constitutional claims. *See* Utah Supreme Court in *Nebeker v. Utah State Tax Commission*, 2001 UT 74, ¶15 “[I]t is not for the Tax Commission to determine questions of legality or constitutionality of legislative enactments.” (citing *State Tax Commission v. Wright*, 596 P.2d 34 (Utah 1979)”. *See also Steiner v. Utah State Tax Comm'n*, 2019 UT 47, ¶11, which noted, “[t]he Commission lacked jurisdiction to hear the constitutional claims and thus declined to address them.” Thus, the Commission declines to address the Property Owner's equal protection argument.

Jan Marshall  
Administrative Law Judge

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<sup>2</sup> Utah Code Ann. Title 59, Chapter 2, Part 17, Urban Farming Assessment Act.

<sup>3</sup> The Commission notes that the Legislature provided for a written declaration in Utah Code Ann. §59-2-103.5, addressing the procedures to obtain an exemption for residential property.

DECISION AND ORDER

Based on the foregoing, the Commission finds the County interfered with the Property Owner's due process rights, and the application for assessment under UFAA should be granted. 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