APPEAL #: 23-573
TAX TYPE: PROPERTY TAX
TAX YEAR:2022
DATE SIGNED: 11/13/2023
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. 23-573 Parcel No: ##### and ##### Tax Type: Property Tax Tax Year: 2022 Judge: Phan

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: PROPERTY OWNER-1, Property Owner
LESSEE-1, Property Lessee

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 had, after the County Assessor had removed the subject parcels from greenbelt status and assessed a rollback tax, approved the ex rel. Party's appeal of that action, and placed the subject parcels back into greenbelt status and abated the rollback tax on March 31, 2023. This matter was argued in an Initial Hearing before the Utah State Tax Commission on August 15, 2023, in accordance with Utah Code Ann. §59-1-502.5.

APPLICABLE LAW

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

> (2) 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, except that land may be assessed on the basis of the value that the land has for agricultural use:
> (i) if:
> (A) the land is devoted to agricultural use in conjunction with other eligible acreage; and
> (B) the land and the other eligible acreage described in Subsection (1)(a)(i)(A) have identical legal ownership; or
> (ii) as provided under Subsection (4); and
> (b) except as provided in Subsection (5) or (6):
> (i) is actively devoted to agricultural use; and
> (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.
>
> (2) In determining whether land is actively devoted to agricultural use, production per acre for a given county or area and a given type of land shall be determined by using the first applicable of the following:
> (a) production levels reported in the current publication of the Utah Agricultural Statistics;
> (b) current crop budgets developed and published by Utah State University; and
> (c) other acceptable standards of agricultural production designated by the commission by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act..
>
> . . .
>
> (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; or

. . .

(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.

. . .

(3) "Identical legal ownership" means legal ownership held by:

(a) identical legal parties; or

(b) identical legal entities.

(4) "Land in agricultural use" means:

(a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:

(i) forages and sod crops;

(ii) grains and feed crops;

(iii) livestock as defined in Section 59-2-102;

(iv) trees and fruits; or

(v) vegetables, nursery, floral, and ornamental stock; or

(b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.

(5) "Other eligible acreage" means land that is:

(a) five or more contiguous acres;

(b) eligible for assessment under this part; and

(c) (i) located in the same county as land described in Subsection 59-2-503(1)(a); or

(ii) contiguous across county lines with land described in Subsection 59-2-503(1)(a) as provided in Section 59-2-512.

The Property Tax Division's Standards of Practice 7.3.7 addresses the circumstances under which non-contiguous parcels may qualify for assessment as greenbelt as follows:

> "Non-contiguous parcels may together qualify if they meet the criteria of actively devoted to agricultural use as long as:
> • One of the pieces of property meets the 5 contiguous acre and production requirements by itself;
> • The parcels are located in the same county;
> • The parcels have identical legal ownership; and
> • All parcels have a direct relationship to the total agricultural enterprise and make a significant contribution to the total agricultural production.

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 came before the Tax Commission based on an appeal filed by the County Assessor of a decision issued by the County BOE. On DATE, the County Assessor had removed the subject parcels from greenbelt assessment under the Farmland Assessment Act ("FAA") and assessed the rollback tax based on the position that the subject parcels did not meet the requirements of the FAA to be assessed as greenbelt on the basis of "Insufficient Acreage in this Name." The Ex rel Party ("Property Owner") had appealed that decision to the County BOE and the County BOE reinstated the greenbelt assessment and abated the rollback taxes for both parcels.

The subject parcels are located at approximately ADDRESS-1. Parcel ##### ("Parcel #####") is ##### acres in size. Parcel ##### ("Parcel #####") is ##### acres in size. From the aerial photographs the County provided, Parcel ##### is a narrow strip of land that has long frontage on STREET-1, and narrow frontage on STREET-2. This property is fully fenced and is adjacent to Parcel #####. The Property Owner provided a letter from the CITY-1 Attorney that stated this parcel was never subdivided into a residential lot and would not qualify because it was too narrow for required setbacks. Parcel ##### contains a residence at the front of the subject parcel on STREET-2. The rear portion of the parcel appears to be fully fenced and contains a field or pasture area with an open shed like structure that would be suitable for livestock. The County stated that ##### acres of Parcel ##### are assessed with the residence and only the remaining acreage was assessed as greenbelt.

The County Assessor argued that the subject parcels should be removed from greenbelt because they are not five acres or more in size and do not make a significant contribution to other qualifying acreage. The County Assessor acknowledged that the Property Owner does own another parcel in the county that was ##### acres in size, Parcel ##### ("Parcel #####"). The County Assessor stated that Parcel ##### was a considerable distance from the subject properties, located in the LOCATION-1, while the subject parcels were located in CITY-1. The County did not dispute that Parcel ##### has identical legal ownership with the subject parcels.[1] Parcel #####

[1] The County provided copies of the deeds for all the parcels in its exhibits.

was leased to LESSEE-1 and the County did not dispute that LESSEE-1 used the ##### acre parcel in his farming operation. Parcel ##### has been assessed as greenbelt for many years including the tax year at issue in this appeal. The County provided that LESSEE-1 owned approximately ##### acres and leased ##### acres around the CITY-2 area. The County stated that LESSEE-1 owns a ##### acre parcel of land that has his residence and livestock corrals, where he has cattle and horses. The County indicated that LESSEE-1 grows crops and raises ##### head of cattle.[2]

At the Initial Hearing, both the Property Owner's representative and LESSEE-1 appeared to explain the Property Owner's position. They proffered that the subject parcels are leased to LESSEE-1 along with the ##### acre Parcel #####. The Property Owner's representative produced a "Lease Agreement," which was signed by both trustees for the Property Owner and LESSEE-1 and dated DATE. This lease was a very simple statement and did not actually include the lease amount. This agreement stated in its entirety:

> This cash lease agreement is made and entered into by and between PROPERTY OWNER-1 and PROPERTY OWNER-2 (Owner) and BUSINESS-1 (LESSEE-1 Operator) for the following Parcels: #####, #####; and #####.
> This is a cash lease that begins in 2018 and is ongoing until terminated by either party.

The Property Owner's representative also submitted the federal income tax Form 4835 Farm Rental Income and Expenses for each year 2018 through 2022. For each year the amount of the gross income stated on this federal tax form was $$$$$. Although expenses differed yearly, for each year except for 2021, these forms indicated net farm rental income. The forms did not, however, state what land was being leased. The Property Owner's representative also presented a copy of LESSEE-1's 2018 through 2021 federal tax Schedule F Profit or Loss from Farming forms to show that LESSEE-1 was conducting a farming operation. In addition, the Property Owner's representative provided undated photographs, which showed cows on Parcel #####. The Property Owner's representative also provided two signed statements from individuals who discussed using small pastures for grazing cows or horses and how important it was due to the high cost of feed.

At the hearing, LESSEE-1 explained that he had been using the subject parcels as pasture for horses. He stated that the subject parcels were very good pasture land because they were irrigated and grew good grass. He also stated that he likes to have his horses there because they can eat the grass and also move around and get some exercise. He explained that his horses were

[2] See County's Exhibit 17.

essential to his operation because he grazes cows over a ##### acre area on the mountain and the horses were essential for gathering the cows from the mountain in the fall and for other care like branding and vaccinations during the year. He explained that the cows are in an area that is steep and not accessible by road, so this part of his cattle operation requires horses. He also stated that he does sometimes place cows in the pasture. In addition, he stated the cows or horses placed in the subject parcels could feed from the grass of the pasture, so he did not need to obtain feed for them elsewhere.

After reviewing the proffers of the parties and the information submitted at the Initial Hearing, the Commission first considers who has the burden of proof in this proceeding. The Tax Commission had concluded and stated in many appeals it reviews pursuant to Utah Code Sec. 59-2-1006 that in a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. The Commission cites to *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6. In most appeals, the Petitioner is the property owner. In this case the Petitioner is the County Assessor and the Property Owner is merely requesting that the decision issued by the County Board of Equalization be upheld. Therefore, it is the County Assessor in this matter that needs to show error in the decision issued by the County BOE and establish that the property should have been removed from greenbelt.

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 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. Based on this authorization, the Utah Legislature adopted the Farmland Assessment Act ("FAA"). Utah Code §59-2-503 of the FAA provides for the assessment of property as greenbelt if a number of criteria are met. Utah Code §59-2-503(1) states one of the criteria, that "land may be assessed on the basis of the value the land has for agricultural use if the land: (a) is not less than five contiguous acres in area . . ." The subject parcels are both less than five contiguous acres. The statute does provide an exception to the five acre minimum at Utah Code §59-2-503(1)(a) if "the land is devoted to agricultural use in

conjunction with other eligible acreage" and "the land and the other eligible acreage . . . have identical legal ownership." The term "other eligible acreage" is defined in Utah Code §59-2-502 to mean "land that is: . . . five or more contiguous acres; . . . eligible for assessment under this part; and . . . located in the same county" as the subject parcels. The Property Tax Division has further clarified the circumstances under which non-contiguous parcels may qualify for greenbelt assessment in Standard of Practice 7.3.7, which provides:

> "Non-contiguous parcels may together qualify if they meet the criteria of actively devoted to agricultural use as long as:
> • One of the pieces of property meets the 5 contiguous acre and production requirements by itself;
> • The parcels are located in the same county;
> • The parcels have identical legal ownership; and
> • All parcels have a direct relationship to the total agricultural enterprise and make a significant contribution to the total agricultural production. (59-2-503).

In this matter, neither the parties nor the Property Owner contested that Parcel ##### met the requirement of being five or more contiguous acres or that Parcel ##### was actively devoted to agricultural use. Furthermore, it was undisputed that Parcels #####, #####, and ##### were located in COUNTY-1, had identical legal ownership, and that Parcel ##### qualified for greenbelt assessment.

The only issue that was contested is whether the subject parcels are "devoted to agricultural use" in conjunction with Parcel #####. Standard of Practice 7.3.7 clarifies that "[a]ll parcels" must "have a direct relationship to the total agricultural enterprise and make a significant contribution to the total agricultural production."

The Property Owner's representative has proffered at the hearing that the subject parcels are devoted to agricultural use as part of LESSEE-1's farming operation and had been since 2018. There has been a lease between LESSEE-1 and the Property Owner since 2018. LESSEE-1 stated at the hearing that he used the subject parcels for grazing of cows and horses and it provided food for horses or cows that he would otherwise have to get from some other source. The Property Owner's representative provided some photographs of cows on the subject parcels. However, LESSEE-1 stated that he did not have records to show the exact dates and times he had used the subject parcels, but that he was using the subject parcels for grazing.

The County Assessor argued at the hearing that under Standard of Practice 7.3.3 the subject parcels must have a direct relationship to the total agricultural enterprise and make a significant contribution to the total agricultural production.These are the same requirements as under Standard of Practice 7.3.7 for non-contiguous parcels. The facts indicate that LESSEE-1

raised cattle and grazed cattle on a ##### acre area on the mountain, which necessitated the use of horses. Therefore, the grazing of some cattle or horses on the subject parcels meant that these animals did not have to be fed from some other source. It is a use that is "in conjunction with" his farm operation. In this matter, the County Assessor has the burden of proof. Furthermore, the Utah Supreme Court stated in *Stichting Mayflower*, 6 P.3d at 564 (2000), that "[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). In reviewing the arguments and information presented by the parties and by the Property Owner, and in construing the FAA statutes liberally in favor of the Taxpayer, the Commission finds that the County Assessor has not met its burden of proof to show that the subject parcels were not used "in conjunction with" the Property Owner's farming operation, nor did the County Assessor show that this use was not a significant contribution to the agricultural production of the farming operation or that Parcels #####, #####, and ##### combined were not "actively devoted to agricultural use."

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the County Assessor's appeal and sustains the decision of the County Board of Equalization in this matter, which reinstated the greenbelt status and abated 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 _____, 2023.

ohn L. Valentine
ommission Chair

Michael J. Cragun
Commissioner

ebecca L. Rockwell
ommissioner

Jennifer N. Fresques
Commissioner