

APPEAL # 23-915

TAX TYPE: PROPERTY TAX

TAX YEAR: 2022

DATE SIGNED: 7/18/2024

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.

**ORDER ON MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Appeal No. 23-915

Parcel Nos. #####, #####, #####, #####,
#####, #####, #####, #####, #####, #####,
#####, and #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2022

Judge: Phan

STATEMENT OF THE CASE

On June 23, 2023, Petitioner ("Property Owner") filed a Request for Redetermination of County Decision, appealing the decision issued by Respondent ("County"), in which the County upheld the County Assessor's denial of the Property Owner's application for greenbelt assessment under the Farmland Assessment Act for the above listed parcels.¹ On DATE, the Property Owner's representatives, PETITIONER'S REP-1, PETITIONER'S REP-2 and PETITIONER'S REP-3, Attorneys at Law, submitted a Motion for Partial Summary Judgment ("Motion"). The County's representatives, RESPONDENT'S REP-1 and RESPONDENT'S REP-2 from the COUNTY-1 Attorney's Office, submitted an Opposition Memorandum on DATE ("Opposition"). The Property Owner's representatives submitted their Reply in Support of Motion for Partial Summary Judgment on DATE ("Reply"). In the Motion, the Property Owner "requests that the Commission find useful animals other than livestock may qualify a property for agricultural use assessment; and that the State's preservation and maintenance of elk on PROPERTY

¹ This appeal had been scheduled for an Initial Hearing before the Utah State Tax Commission on DATE, which was continued to DATE at the request of the parties. The parties then requested a second continuance and the hearing was rescheduled for DATE. Because of the timing of the Motion for Partial Summary Judgment and the fact that a decision could not be issued in time for the parties to prepare for the hearing prior to that date, the DATE hearing was also continued.

OWNER's property qualifies such elk as useful animals under this statute.”² The parties did not request a hearing on the Motion and the Tax Commission issues this decision based on these submissions from the parties.

APPLICABLE LAW REGARDING A SUMMARY JUDGMENT PROCEEDING

The Utah Rules of Civil Procedure, Rule 56 provides for a motion or partial motion for summary judgment as follows:

(a) *Motion for summary judgment or partial summary judgment.* A party may move for summary judgment, identifying each claim or defense or the part of each claim or defense on which summary judgment is sought. The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion. The motion and memoranda must follow Rule 7 as supplemented below. [URCP 56](#).

In considering a Motion for Summary Judgment, the Court views the facts and reasonable inferences drawn therefrom in the light most favorable to the non-moving party. *See Broadwater v. Old Republic SUR.*, 854 P.2d 527, 529 (UT 1993).

APPLICABLE LAW REGARDING LEGAL ISSUES PRESENTED

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 Motion, pg. 2.

- (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.

...

"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.

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.

STATEMENT OF UNDISPUTED MATERIAL FACTS

The facts stated in the Property Owner's Motion, which were not disputed by the County, are as follows:

1. The parcels at issue in this motion are: #####, #####, #####, #####, #####, #####, #####, #####, #####, #####, #####, and ##### ("Subject Property").

2. All land parcels of the Subject Property at issue are at least five contiguous acres or grouped with others to aggregate more than five acres.³

3. PROPERTY OWNER. ("PROPERTY OWNER") signed a lease with the Utah Division of Wildlife Resources on DATE ("UDWR") that allowed the UDWR to have elk graze on the Subject Property from DATE, to DATE. This lease also granted the UDWR use of PROPERTY OWNER's Water Rights.. The Property Owner cited to Motion Exhibit A.

4. PROPERTY OWNER signed a lease with the UDWR on DATE, that runs from DATE, to DATE, wherein the UDWR pays ##### to PROPERTY OWNER each year and requires the UDWR to provide maintenance to the land. The Property Owner provided a copy of the lease as Motion Exhibit B and the lease stated in part, "Lessor hereby leases the Leased Premises and the Water Rights to Lessee for the purpose of providing forage for wildlife and wildlife use on the Leased Premises in connection with the management of wildlife on adjacent public lands."

5. The current lease contains similar provisions as the previous lease and grants the same Water Rights to the UDWR. The Property Owner cited to Motion Exhibit B..

6. The current lease also recognized the UDWR's continued permissive use of the leased property between the end of the previous lease on DATE, and the signing of the current lease on DATE. The Property Owner cited to Motion Exhibit B.

7. The UDWR and the PROPERTY OWNER family "have been working together for over ##### years to maintain high quality wildlife habitat to benefit the public in COUNTY-1 and beyond." As support for this statement, the Property Owner's representatives provided a letter from Assistant Director PERSON-1 to PERSON-2, Planning Director of the COUNTY-1 Planning Commission, dated DATE, as Motion Exhibit C.

8. PROPERTY OWNER's land is part of the LOCATION-1 ("WMA"), which consists of ##### acres of land managed by the UDWR, the Bureau of Land Management and the School and

³ Parcels ##### and ##### are less than five acres.

Institutional Trust Lands Administration, and which provides “important big game winter range” for elk. The Property Owner cited to Motion Exhibit C.

9. “The purpose of UDWR ownership and management on the WMA is to protect, preserve, and enhance big game winter range.” The Property Owner cited to Motion Exhibit C.

10. “The PROPERTY OWNER family have been supportive of maintaining the CITY-1 elk population and have continued to provide forage for elk on their property inholdings within the WMA, has assisted the UDWR in providing the public with opportunities for viewing and hunting elk.” The Property Owner cited to Motion Exhibit C.

11. The CITY-1 elk herd unit is one of “the largest and most important big game populations in the state” and provides “beneficial wildlife experiences and opportunities for the public.” The Property Owner cited to Motion Exhibit C..

12. The COUNTY-1 Assessor rejected PROPERTY OWNER’s application for the subject property to be assessed as greenbelt, providing as an explanation that the elk the State is maintaining on PROPERTY OWNER’s property are not livestock. The Property Owner cited to Motion Exhibit D..

DISCUSSION

The Property Owner’s representatives stated in the Motion that “the Farmland Assessment Act is to be liberally construed in favor of the taxpayer.”⁴ The Property Owner’s representatives argued that “liberally construed” means all doubts are resolved in favor of the Property Owner.⁵ The Property Owner’s representatives argued that the plain language of the statute and case law require that the Farmland Assessment Act (“FAA”) allows “useful animals” to qualify a property for agricultural use assessment. The Property Owner’s representative pointed out that land qualifies for agricultural use assessment if it is no less than five contiguous acres, is actively devoted to agricultural use, and has been devoted to agricultural use “for at least two successive years immediately preceding the tax year for which the land is being assessed.” The Property Owner’s representatives then referenced Utah Code Ann. §59-2-503, which defines “land in agricultural use” as “(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 . . .” Section 59-2-102 defines “livestock” to mean: “(a) a domestic animal; (b) a fish; (c) a fur-bearing animal; (d) a honeybee; or (e) poultry.” The Property Owner’s representatives argued that the statute’s

⁴ The Property Owner’s representative cited to *Utah State Tax Commission Appeal No. 19-2269*, pg. 16 (Initial Hearing Order, Jan. 20, 2020) (emphasis added) (referencing *Cnty. Bd. Of Equalization of Wasatch Cnty. v. Stichting Mayflower Recreational Fonds*, 6 P.3d 559, 564 (Utah 2000)).

⁵ The Property Owner’s representative referenced *Salt Lake City. v. Tax Comm’n ex rel. Good Shepherd Lutheran Church*, 548 P.2d 630, 631 (Utah 1976); accord *Ivory Homes, Ltd. v. Utah State Tax Comm’n*, 2011 UT 54, 10, 266 P.3d 751 (where strictly construed requires all doubts resolved against the taxpayer, liberally construed in favor must be the opposite.).

plain meaning is clear and unambiguous⁶ and the use of the word “including” in the statute means that it is a non-exhaustive list, so that other useful plants and animals than those enumerated in the list could qualify the property for agricultural use under the FAA. The Property Owner’s representatives cited to *Boyle v. Christensen*, 251 P.3d 810, 819 (Utah 2011) and *Larry H. Miller Theaters, Inc. v. Utah State Tax Commission*, 2024 UT 8, 545 P.3d 266, to support their contention regarding the interpretation of “including.”

The Property Owner’s representatives argued that elk are “useful” animals. The Property Owner’s representatives stated that “the usefulness of elk is indicated by the Utah Department of Wildlife Resources’ (UDWR’s) efforts to provide a habitat sufficient to increase the elk population on PROPERTY OWNER’s property and in the surrounding area.” The Property Owner’s representatives referenced a letter from the Assistant Director of the UDWR, which stated UDWR’s purpose is to “protect, preserve, and enhance” the elk population on PROPERTY OWNER’s property, and to provide for beneficial wildlife experiences and opportunities for the public, including the viewing of elk in the wild.⁷ The Property Owner’s representatives stated that the letter from the UDWR “emphasizes the importance of elk that are grazing on PROPERTY OWNER’s property,” referring to these herds as “critical” throughout the letter and that “[a]ccording to the UDWR, the elk herd ‘units’ in this area are ‘some of the largest units and most important big game populations in the state.’”⁸

It was the Property Owner’s representatives’ position that whether the elk are “useful animals” is a legal determination and the facts were undisputed regarding Utah’s interest in the elk herd. The Property Owner’s representatives stated, “to the extent it is a question of fact, PROPERTY OWNER requests only that the Commission rule on the legal issue of whether wild elk can qualify as useful animals.” The Property Owner’s representatives stated that the Motion is a motion for partial summary judgment and if the Commission “decides in favor of PROPERTY OWNER, then PROPERTY OWNER would need to establish the number of elk and the grazing classification of the subject land to determine whether the land ultimately qualifies for greenbelt assessment.”⁹

In its Opposition, the County stated that “[w]hether the Elk on PROPERTY OWNER’s property qualify the property for agricultural use is a question of fact and not of law.”¹⁰ The County acknowledged that animals other than livestock could qualify a property for agricultural use, but the County argued that

⁶ The Property Owner’s representatives cited to *State v. Harker*, 240 P.3d 780, 784 (Utah 2010) for the position that statutory interpretation begins with an analysis of the statute’s plain language and should “presume that the legislature used each word advisedly and read each term according to its ordinary and accepted meaning. . . . If the plain meaning of the statute can be discerned from its language, no other interpretive tools are needed.” *See* Motion, pg. 5.

⁷ Motion pg. 8 and Motion Exhibit C.

⁸ Motion pg. 8 and Motion Exhibit F.

⁹ Reply pg. 2.

¹⁰ Opposition pg. 2.

the elk on PROPERTY OWNER's land did not qualify for agricultural use as they were not being treated as domestic animals. The County argued that the word "useful" cannot be severed from the word "animal" and "a more valid definition for 'useful animal' should be defined as one that can be put to use by people." The County explained:¹¹

Further, in the context of the greenbelt exemption, the definition of a useful animal should not be divorced from the historical context of working farm animals that were key to the production of agricultural products or were themselves agricultural products. By its very definition, a wild animal such as elk are not domesticated and cannot easily be herded, manipulated, controlled or put to use on a farm or ranch as can a cow, horse, mule, or sheep. Further, the benefit to the public touted by movant that may come from having an elk herd is ultimately a hunting and recreational opportunity – the harvesting of wild game is not an activity which is considered agricultural by Utah's greenbelt statutes.

Upon review of the Motion, submissions on the Motion and the applicable law, the Tax Commission first looks to principles of statutory construction. As the parties have pointed out in their submissions, in undertaking statutory construction, "we look first to the plain language of a statute to determine its meaning. Only when there is ambiguity do we look further." *J. Pochynok Co., Inc. v. Smedsrud*, 2005 UT 39, P15, 116 P.3d 353. Moreover, "when examining the plain language, we must assume that each term included in the [statute] was used advisedly." *Carrier v. Salt Lake County*, 2004 UT 98, P30, 104 P.3d 1208 (citation omitted). [*MacFarlane v. Utah State Tax Comm'n*, 2006 UT 18, P12, 2006 Utah LEXIS 25, *9, 548 Utah Adv. Rep. 15](#). However, the courts have noted regarding statutory construction, "we do not view individual words and subsections in isolation." [*Penunuri v. Sundance Partners, Ltd.*, 2013 UT 22, 15, 301 P.3d 984](#). And recently, the Utah Supreme Court stated that "the best evidence of the legislature's intent is the plain language of the statute itself," and we construe "each part or section . . . in connection with every other part or section so as to produce a harmonious whole." We thus "interpret statutes to give meaning to all parts, and avoid rendering portions of the statute superfluous." [*Larry H. Miller Theatres, Inc. v. Utah State Tax Comm'n*, 2024 UT 8, P16, 545 P.3d 266, 270, 2024 Utah LEXIS 27, *9-10](#). In reviewing the parties' submissions, the Commission has concerns that the Property Owner is focusing on the terms "useful" and "animals" in isolation and not in connection with every other part or section of the Farmland Assessment Act.

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 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, and meets certain other requirements established in statute. "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

¹¹ Opposition pg. 3.

§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.” Utah Code Subsection 59-2-102(20) defines “livestock” to mean “(a) a domestic animal; (b) a fish; (c) a fur-bearing animal; (d) a honeybee; or (e) poultry.” The Property Owner’s representatives did not argue that elk would qualify as “livestock” under this statutory definition, but instead that wild elk should be considered under Subsection §59-2-502(4) as part of the broader provision of “useful plants and animals.” The Property Owner’s representatives urged the Commission to find that so long as the wild elk are “useful animal[s],” the only remaining inquiry is whether the number of elk and the grazing classification support a finding that the Subject Property qualifies for assessment under the Farmland Assessment Act. However, questions remain including whether providing a habitat for wild, non-domesticated elk, which are not bred, raised and harvested through any type of agricultural production operation similar to domestic animals, constitutes “agricultural production” by “raising” useful animals with a “reasonable expectation of profit.”¹²

In the Reply, the Property Owner’s representatives posited that the Tax Commission could find for the Petitioner on its Motion for Partial Summary Judgment, by answering in the affirmative the question, “whether wild elk can qualify as useful animals.” However, additional material facts and statutory provisions must be considered in addressing the matter presented in this Motion beyond the question of whether a herd of wild elk are “useful animals.”¹³ Therefore, the Motion should be denied and this appeal will be rescheduled for an Initial Hearing.¹⁴

Jane Phan
Administrative Law Judge

¹² The Property Owner’s representatives did not fully address the requirement that the agricultural production must have a “reasonable expectation of profit,” notwithstanding that the Property Owner did receive lease payments of \$\$\$\$ per year in rent for the subject parcels from the UDWR. The Property Owner’s assumption that a payment to the owner would be sufficient to meet this requirement is contrary to the plain language of the statute. The definition of “land in agricultural use” in Utah Code Subsection 59-2-503(4) includes the requirement that “land [must be] devoted to the raising of useful plants and animals with a reasonable expectation of profit” The Tax Commission considered a similar question where land was being leased and it was the lessee who was using the land for agricultural purposes. In *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 21-1720*, pg. 16 (03/01/2024) the Commission concluded, “The statute references a reasonable expectation of profit from the use of the land rather than an expectation of profit to the owner of the land.” This decision is found in a redacted format at <https://tax.utah.gov/commission/decision/21-1720.pdf>.

¹³ The Commission notes that there is a distinction between managing a herd of wild elk on property under a lease agreement as compared to an operation where elk may be raised on property for meat as part of an agricultural operation with a reasonable expectation of profit, similar to the way cattle are raised.

¹⁴ Pursuant to Utah Admin. Rule R861-1A-24(3), and by agreement of both parties, the Initial Hearing may be waived and the appeal would then be scheduled instead for a Formal Hearing.

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies the Petitioner's Motion for Partial Summary Judgment filed in regards to the subject parcels for tax year 2022. It is so ordered.

DATED this ____ day of July____, 2024.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner