

APPEAL #: 23-1038

TAX TYPE: FAA EXEMPT PROPERTY

TAX YEAR: 2022

DATE SIGNED: 4/8/2025

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

EXCUSED/RECUSED: J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

PROPERTY OWNER,

Petitioner,

v.

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

Respondent.

INITIAL HEARING ORDER

Appeal No. 23-1038

Parcel No: #####, #####, #####,
and #####

Tax Type: FAA Exempt Property

Tax Year: 2022

Judge: Phan

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER

For Respondent: RESPONDENT'S REP-1, COUNTY-1, FAA Specialist

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal pursuant to Utah Code §59-2-1006 from the decision of the COUNTY-1 Board of Equalization ("County BOE") upholding the removal of the subject parcels from greenbelt assessment under the Farmland Assessment Act ("FAA") for tax year 2022 and imposing rollback taxes. The County Assessor had removed the subject properties from FAA assessment

and imposed rollback taxes on DATE. The Property Owner appealed that decision to the County BOE and the County BOE issued its decision denying the appeal on DATE. The Property Owner timely appealed that decision to the Utah State Tax Commission and the matter proceeded to this Initial Hearing before the Tax Commission on DATE, in accordance with Utah Code Ann. §59-1-502.5.

APPLICABLE LAW

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

All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

An exception to the fair market value standard is provided by law for property actively devoted to agricultural use. The Utah Constitution Article XIII, Section 2, Subsection (3) provides that the Utah Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.

The Utah Legislature adopted the Farmland Assessment Act (“FAA”) and Utah Code §59-2-503 (2022)¹ 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..

...

¹ This decision cites to the substantive Utah Code provisions that were in effect for tax year 2022.

- (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.
 - (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 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.

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

The parcels at issue in this appeal are located around the intersection of STREET-1 and STREET-2 in COUNTY-1, Utah. Each of the subject parcels are more than 5 acres in size and they total ##### acres combined. The size of the parcels are as follows:

REDACTED TABLE

In this matter the Property Owner did not dispute that the subject parcels had not been used for grazing or any other agricultural production in either 2021 or 2022, because of issues with fencing, flooding and weather. Additionally, the County and Property Owner had some agreements regarding deadlines of when the subject parcels would be put back to use as grazeland. The Property Owner explained at the Initial Hearing that the subject parcels front onto STREET-1. He stated that at some point he had a high fence separating the subject parcels and the highway, which kept the cows in. He explained that there were many deer in the area and due to the height of the fence, deer trying to jump the fence often ended up stuck in the fence. He stated people driving by would often just cut the fence to free the deer from the fence. He also stated that at some point the Department of Natural Resources (“DNR”) asked him to take down his high fence and put in a lower one so deer could jump it without getting stuck. He stated that he tore out the tall fence, but could not remember what year this had been done. He stated that he then put in the lower fence. The Property Owner provided no documentation of a request from DNR regarding the tall fence removal. The Property Owner stated that after he put in the lower fence, his cows, as well as the deer, were able to get out of the fence, so he could no longer graze his cows in the subject parcel fields. He pointed out that vehicles traveled on STREET-1 at speeds of 60 to 70 miles per hour, and if the cows got onto the highway, drivers who hit them could be killed.

It was not clear at the hearing the number of years prior to 2021 there had not been grazing on the subject parcels. However, it was clear that the subject parcels had not been used in 2021 and 2022. In fact, based on the information submitted in this matter, the Property Owner did not start putting cows back on the subject property for grazing until DATE.

At the hearing, there were numerous documents presented by the County that showed how the County had been working with the Property Owner and the procedural history of the process of removing the subject parcels from greenbelt, with the assessment of the rollback tax. These documents indicate the following timeline of events.

- 1) DATE: The Property Owner entered into an Action Plan agreement with the County. This agreement recognizes there had been no grazing on the subject parcels and stated that the Property Owner will have cows grazing on the subject property by DATE.

- 2) DATE: The Property Tax Division of the Utah State Tax Commission issued an FAA Audit Report of the subject parcels and other parcels owned by the Property Owner. The Property Tax Division's audit regarding the subject parcels found they were mostly now fenced, but they "have not technically met the requirements of the County's 'action plan.' As such, these parcels should be removed from the FAA." The Audit Report noted that the Property owner had "fenced a majority of the highway frontage and noted some portions of fencing had been 'washed out during recent flooding.'" The Audit Report further stated, "That being said, I have advised PROPERTY OWNER to appeal the removal and subsequent rollbacks and petition the county for a small extension of time sufficient enough to get his parcels into complete compliance."²
- 3) DATE: The County Assessor issued a statement of Postponement of Rollback. This statement indicates that the County's rollback of the subject parcels will be temporarily postponed "to allow PROPERTY OWNER the opportunity to get these parcels in compliance to meet the FAA standards and production requirements. The deadline for these parcels to be in compliance is DATE."
- 4) DATE: The County Assessor removed the subject parcels from greenbelt and the rollback notices were issued. These notices explained to the Property Owner that he had the right to file an appeal of this action to the County BOE.
- 5) Petitioner appealed to the County BOE. There is no date on the appeal documents, but it was treated as a timely appeal to the County BOE.
- 6) DATE: The County BOE appeal was heard by a Hearing Officer and on DATE, the Hearing Officer issued his recommendation that the rollback be stayed until DATE. As part of that decision, on DATE, a Compliance Agreement was signed by the County Assessor and the Property Owner, in which the Property Owner stated that there would be cows on the property by DATE.
- 7) DATE: County BOE issues its decision. The County BOE's decision rejected the recommendation made by the County BOE Hearing Officer. The decision noted that as of that day, DATE, the parcels were still not in compliance with the FAA and that the County "has the final say whether to approve or deny recommendations made by the hearing officer." The County BOE decision gave the Property Owner notice that he had the right to appeal the decision to the Utah State Tax Commission.

² Property Tax Division's Audit Report, pg. 2-3.

- 8) DATE: The Property Owner submitted his appeal of the County BOE decision to the Utah State Tax Commission and the matter proceeded to this Initial Hearing.

At the Initial Hearing, the Property Owner explained that he had the property fenced and ready to put the cows on to graze in DATE, to comply with the DATE, Postponement of Rollback agreement. However, he did not have a shelter on the subject parcels for the cows. He stated that the weather had gotten bad, there was rain and then heavy snow, with the snow blowing over the the top of the fence posts, so he could not put his cows on the property in DATE. He stated that when he had explained that to the County Assessor and the County BOE Hearing Officer, in DATE, they had agreed to the DATE extension, and he stated that he had his cows grazing on the subject parcels by DATE. He did not understand why the County BOE had rejected its Hearing Officer's recommendation and the DATE Compliance Agreement.

The representative for the County at the Initial Hearing explained that he was the County Farmland Assessment Specialist and he had agreed to the DATE Compliance Agreement with the Property Owner. He stated that he did not have information as to why the County BOE rejected the agreement and the Hearing Officer's recommendation.

The Tax Commission issues its decision based on these facts presented at the Initial Hearing and the applicable law. Utah Code §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) provides that "land may be assessed on the basis of the value that the land has for agricultural use if, among other requirements, the land "is actively devoted to agricultural use" and "has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year" at issue. "Actively devoted to agricultural use" is defined at Utah Code §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 §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."

The information submitted in this matter was that the subject parcels had not been "actively devoted to agricultural use" in 2021 or 2022, and possibly for years prior to 2021. The fact that the land was not actively devoted to agricultural use had come to the attention of the County in early 2021. Rather than removing the parcels from greenbelt at that time, the County entered into an Action Plan with the Property Owner on DATE, giving the Property Owner until DATE to be in compliance by having cows graze the subject parcels. This gave the Property Owner nearly seven months to fix fences, or do what needed to be done for cattle to graze on the subject parcels. The Property Owner did not meet that deadline. And, when the subject parcels were audited nearly a full year after the expiration of the deadline, in DATE, there still had not been any grazing on the subject parcels and the fencing, although mostly complete, was not fully complete. The County again gave the Property Owner an extension until DATE. The Taxpayer also did not commence grazing cows on the parcels by that date. Therefore, no grazing occurred on the subject parcels at any point during 2021 or 2022.

Utah Code §59-2-503(5) provides a limited exception to the "actively devoted to agricultural use" requirement. Utah Code §59-2-503(5)(a) provides that the commission or a county board of equalization may grant a waiver of the requirement that the land is actively devoted to agricultural use upon 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" Although the Property Owner did not specifically cite this statutory provision, he did make the argument that the issue with the fencing and the weather were not within his control. It does appear that the County had considered this provision when it entered into the Action Plan agreement with the Property Owner on DATE, which gave the Property Owner nearly seven months to address the issues. The Property Owner missed this deadline and then missed the further extension deadline of DATE, which he stated was due to the weather. It is the Property Owner who has the burden of proof in this matter and he has not established evidence to support that his insufficient action from DATE through DATE constituted "no fault or act of the owner" for purposes of this exception. Therefore, the County BOE's decision to deny the appeal is consistent with the applicable law in this matter and should be upheld.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Petitioner's appeal and sustains the County BOE's DATE decision, which upheld the removal of the subject properties from greenbelt and the assessment of 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 ____, 2025.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner