12-2874
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2012
DATE SIGNED: 8-14-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. RURAL COUNTY BOARD OF EQUALIZATION, STATE OF UTAH, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 12-2874 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2012 Judge: Chapman

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 mail the response to the address listed near the end of this decision.

Presiding:
D'Arcy Dixon Pignanelli, Commissioner
Robert P. Pero, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Attorney
REPRESENTATIVE-2 FOR TAXPAYER, Attorney
OWNER, Taxpayer
For Respondent: RESPONDENT-1, Deputy RURAL COUNTY Attorney
RESPONDENT-2, RURAL COUNTY Assessor
RESPONDENT-3, from the RURAL COUNTY Assessor's Office
RESPONDENT-4, from the Property Tax Division of the Utah State Tax Commission

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 29, 2013.

Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.

2. The tax year at issue is 2012, with a lien date of January 1, 2012.

3. At issue is whether the subject property qualifies for "greenbelt" assessment under the Utah Farmland Assessment Act ("FAA") for the 2012 tax year.[1] If the subject property does not qualify for greenbelt assessment for 2012, it is subject to the rollback tax.

4. The subject property is located at ADDRESS in CITY-1, RURAL COUNTY, Utah. The subject property is identified as Parcel No. #####.

5. The subject property is owned by TAXPAYER ("Petitioner" or "taxpayer"), which has owned the property since YEAR. NAME REMOVED is the manager/owner of the Petitioner.

6. Both parties agreed to waive an Initial Hearing in this matter and proceed directly to a Formal Hearing before the Commission.

7. The subject property is ##### acres in size and had been assessed as greenbelt property from at least 2000 through 2011. For 2012, however, the RURAL COUNTY Assessor's Office determined that the subject property no longer qualified for greenbelt status, a decision sustained upon appeal to the RURAL COUNTY Board of Equalization ("County BOE"). The taxpayer appealed the County BOE's decision to the Commission.

8. The taxpayer contends that the subject property should retain its greenbelt status for the 2012 tax year on the basis that the property has met all requirements set forth in Utah Code Ann. §59-2-503(1), one of which is that the subject is "actively devoted to agricultural use." In the alternative, should the Commission find that the subject property does not qualify for greenbelt assessment because it does not meet the actively devoted to agricultural use requirement, the taxpayer asks the Commission to grant a waiver of this specific requirement, as allowed under Section 59-2-503(5).

[1] The fair market value of the subject property is not at issue.

9. The County contends that the subject property does not meet the requirements necessary for greenbelt assessment found in Section 59-2-503(1)(b). First, the County contends that the subject property is not "land in agricultural use" because it is not devoted to raising plants and animals "with a reasonable expectation of profit." Utah Code Ann. §59-2-502(4)(a). Second, the County contends that the subject property does not meet the 50% of production requirement, as set forth in Section 59-2-502(1). Furthermore, the County contends that there is insufficient evidence to grant a waiver of the requirement that the land be actively devoted to agricultural use.

10. Historically, the subject property has been classified as Class III Irrigated Tillable property. Before the taxpayer purchased the subject property in 2008, it had been used to grow alfalfa or oats.

11. MANAGER/OWNER OF TAXPAYER "OWNER" testified that she purchased the subject property with the intent to build an equestrian facility at which she could raise and train horses in the discipline of (X). OWNER initially stated that, eventually, she plans to raise and train at least seven horses at any one time on the subject property. Later in the hearing, she clarified that she would be able to sell more than seven horses in any one year.

12. In June or July 2008, before purchasing the subject property, OWNER contacted the County Assessor's Office to ask what she would need to do for the subject property to retain its greenbelt status. OWNER indicates that she spoke with NAME-1and that he told her to keep animals or grow plants on the property and that horses were appropriate animals. There is no evidence, however, to suggest that OWNER and the County official discussed whether the property would still qualify for greenbelt assessment if she worked to convert the property to an equestrian facility for a number of years prior to keeping animals or growing plants on the property. OWNER admitted that their conversation was "general" in nature and that there was no discussion of the number of horses that were needed on the property for it to remain on greenbelt. OWNER also admitted that she had not contacted the County

concerning the subject's greenbelt status at any other time prior to the County's removing the property from greenbelt in 2012.

13. On August 29, 2008, the taxpayer purchased the subject property's ##### acres of land for $$$$$.

14. The evidence does not suggest that OWNER took any steps to convert the subject property into an equestrian facility in 2008.

15. In the spring of 2009, OWNER signed up for and attended, once a week, a six-week "small acreage workshop" taught by RURAL COUNTY Extension Service in CITY-2. The workshop focused on the proper management of small farms. OWNER stated that at the workshop, she learned about soil and irrigation issues. She also learned about what grass to plant and how to manage the land to be sustainable. She indicated that she had been to some equestrian facilities and farms that did not work well and that she wanted to avoid the problems she had seen at these facilities.

16. Also in 2009, OWNER hired a landscape design and architectural company to design a plan for an equestrian facility on the subject property. OWNER stated that she had to hire a second architect because the first one she hired was taking too long. OWNER stated that during 2009, she also talked to barn consultants. She stated that the second architect produced a final schematic in 2009 that shows the plans for the equestrian facility.[2] OWNER admitted that she did not show the plans to the County because she had been assured by the County that "horses would work" for the subject to retain its greenbelt status.

17. The 2009 plan shows that ##### acres of the #####-acre subject property is to be used for a home site. OWNER testified that she is still planning on this ##### acres of the subject property to be used for a home site. OWNER pointed out that the plan provided not only for pastures, but also for some "dry lots" to be built at the back of the subject property. OWNER explained that she did not want the dry

[2] Petitioner's Exhibit P-7.

lots to just be dirt. She explained that the dry lots have been engineered for drainage so they will not retain mud, urine, and feces.

18. The subject property was not used to raise any useful plants or animals during 2009.

19. OWNER explained that there were a number of steps required to convert the subject property into an equestrian facility. She also explained that the steps had to be followed in order and that much of the work needed to occur during the summer months.

20. Some of the steps to convert the subject property into an equestrian facility occurred in 2010. OWNER testified that in 2010, the subject's land was excavated and that white fencing was installed around the property. The subject's land was excavated and graded to a 1½% grade, which OWNER stated could only be done in the summer. She also explained the previous grade of the land was insufficient to allow water to run off at the correct rate.

21. The subject property was not used to raise any useful plants or animals during 2010.

22. More events occurred in 2011 to convert the property into an equestrian facility and for OWNER to learn how to operate such a facility. OWNER admitted that she has never run a (X) training facility before. In 2011, OWNER moved to STATE, where her daughter was living and where she planned to learn the business of training and selling horses. It appears that OWNER and her husband have kept their home in CITY-3, Utah, where they have lived for many years.

23. It also appears that as of the 2013 hearing date, OWNER was still in STATE learning the business of raising and selling horses. Initially in 2011, OWNER rented a home in STATE in which to live while learning this business, but she has since purchased a home there. OWNER owns seven horses that are located in STATE. As of the hearing date, there are three horses on the subject property, which are owned by a friend of OWNER. OWNER does not own any horses that are kept on the subject property.

24. Also in 2011, construction of the steel building housing the indoor arena and the barn and stable was begun. OWNER stated that the stable has ##### stalls, but would be able to hold more than ##### horses.

25. Moreover in 2011, OWNER testified that irrigation pipes were installed on the subject property and that the pasture lots were seeded. The irrigation system is an in-ground system with pop-up heads. OWNER indicated that an above-ground irrigation system would not work for the equestrian facility because of the fencing that exists throughout the property.

26. OWNER stated that around August 2011, she heard from her contractor and property manager, NAME-2, that RESPONDENT-2, the RURAL COUNTY Assessor,[3] had had a conversation with NAME-2 about the subject property's greenbelt status. OWNER testified that she did not speak to the County at this time as she was in STATE. OWNER claims that RESPONDENT-2 told NAME-2 that the property's greenbelt status was in jeopardy and that she wanted to see animals on the property by October 1, 2011. NAME-2 informed OWNER by email that he assured RESPONDENT-2 that they would have animals on site by October 1, 2011.[4]

27. RESPONDENT-2 testified that she told NAME-2 that she was concerned that there was nothing green and no animals on the subject property. She testified that she also told NAME-2 not to lose touch, but stated that she never heard from anyone again until the property was removed from greenbelt. She testified that she told NAME-2 that OWNER could put animals on the land, but she also testified that she did not give him a number of animals that would qualify for greenbelt status. RESPONDENT-2 stated that she checked on the subject property regularly throughout 2011 and did not see the pastures being seeded in 2011, as OWNER had claimed.

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[3] As of the date of the Formal Hearing, RESPONDENT-2 was still the RURAL COUNTY Assessor. As of the date this decision was issued, however, she is no longer the Assessor. NAME-1 is now the RURAL COUNTY Assessor.

[4] Petitioner's Exhibit P-5. This email shows that OWNER and NAME-2 were communicating about RESPONDENT-2'S concerns as early as July 20, 2011.

28. To get animals on the subject property per RESPONDENT-2'S request, OWNER spoke to a friend, NAME-3, and arranged for NAME-3 to place a goat and a pony on the subject property. However, OWNER explained that the goat and pony were unhappy. So, in mid-October 2011, they brought two cows (young steers) onto the subject property. OWNER initially testified that the cows remained on the subject property until they were sold and slaughtered. Later, OWNER testified that she (OWNER) paid for the cows and that NAME-3 got paid to take care of the cows by getting them for meat.

29. OWNER testified that when the cows were placed on the subject property in October 2011, there was no pasture for the cows to graze because the pastures had not been seeded until September 2011. OWNER testified that once grass is planted, it needs one or two full growing seasons to allow the roots to get established before it is grazed. She stated that she wanted to give the grass time to get established.

30. OWNER testified that, as a result, the cows were placed in the dry lots at the back of the subject property, where NAME-3 would bring hay over for them to eat. OWNER testified that the cows remained on the subject property for the remainder of 2011 and throughout 2012. It is assumed that cows were still on the subject property as of the October 2013 hearing date because OWNER testified that the cows *now* graze over the rest of the property.

31. It does not appear that the cows grazed on the subject's pasture during 2012. OWNER stated that during 2012, the pasture was growing. This appears consistent with the County's assertion that it drove by the subject property during 2012 and never saw animals on the property. The County admitted, however, that it would have been difficult to see animals on the property if they were kept in the dry lots at the back of the property.

32. The evidence does not support a finding that animals grazed in the subject's pastures in either 2011 or 2012.

33. Additional events occurred in 2012 to continue the conversion of the subject property into an equestrian facility. OWNER stated that in 2012, they also had to "tweak" the irrigation system that had been installed the previous year.

34. It also appears that the taxpayer continued to work on the barn and stable during 2012 and during 2013. However, it was still not finished as of the October 2013 hearing date, which is more than five years after the taxpayer purchased the subject property.

35. RESPONDENT-2 testified that having only two cows on the subject property would not constitute greenbelt compliance for the subject's ##### acres. RESPONDENT-2 stated that the subject property's greenbelt status could be reinstated after the barn is finished, the animals are "in," and the operations are productive. RESPONDENT-2 stated that even if OWNER uses the subject property for her personal use, it could still qualify for greenbelt if it looks like a working farm once operational.

36. RESPONDENT-4 is the Manager of the Real Property Section of the Property Tax Division of the Utah State Tax Commission, which oversees greenbelt assessment in the State of Utah. RESPONDENT-4 conducted a "greenbelt audit" of the subject property and determined that it did not qualify for greenbelt assessment for 2012.[5]

37. RESPONDENT-4 stated that he visited the subject property in 2012, at which time there were grasses and weeds in the pasture areas of the subject property. He stated that there were no animals grazing on the subject property. Based on a three-month grazing period for land in the subject's area and the number of AUM's (animal unit months) required for the subject property, he concluded that the subject property was not actively devoted to agricultural use and did not qualify for greenbelt assessment.

38. RESPONDENT-4 explained that the AUM tables for agricultural land are determined by Utah State University ("USU"). RESPONDENT-4 explained that for many years, AUM tables were only established for land that was classified as grazing land. RESPONDENT-4 explained that as more

[5] Respondent's Exhibit R-1.

irrigated ground has been used for grazing purposes, USU has developed a new table for land that is classified as irrigated tillable land.

39. The subject property is irrigated tillable land, not grazing land, for purposes of the AUM tables. RESPONDENT-4 stated that the subject property is properly classified as irrigated tillable land because of its soil, slope, and irrigation characteristics. RESPONDENT-4 stated that grazing land is typically found in mountainous areas, whereas the subject property is located in a relatively flat portion of the valley and can be tilled.

40. RESPONDENT-4 stated that under the AUM table for irrigated tillable land, the AUM per acre for land in RURAL COUNTY is #####.[6] An AUM of 4.48 times the subject's ##### acres is ##### AUM's, which is the average agricultural production for the subject if used for grazing purposes. RESPONDENT-4 explained that a property would have to meet 50% of this average, or ##### AUM's, to qualify as land "actively devoted to agricultural use" and be eligible for greenbelt status.

41. RESPONDENT-4 explained how the AUM's would be calculated if two cows had grazed the pastures on the subject property for 2012. RESPONDENT-4 explained that one cow is equal to one AUM per month. He pointed out, however, that a cow cannot graze on the subject property for all 12 months of the year because the growing season for the CREEK area of RURAL COUNTY, where the subject property is located, is only 3 months of the year.[7] He equated the growing season to be equivalent to the period during which grass could be grazed. He explained that if two cows were grazed on the subject property for the entire growing period of three months, this activity would only result in ##### AUM's (2 cows x 1 AUM per month x 3 months), which is less than the ##### AUM's required to meet the required greenbelt production level.

42. Furthermore, RESPONDENT-4 testified that the AUM tables that USU produces for grazed land do not apply to cows that are fed in a dry lot instead of being grazed. As a result, he contends

[6] Petitioner's Exhibit P-11, p. 34.
[7] Petitioner's Exhibit P-11, p. 32.

that the grazing AUM tables do not apply to the cows that were kept on the subject property in 2011 and 2012. He stated that a person would need a lot of cows on an acre of land to qualify as a "feed lot." In his audit, RESPONDENT-4 estimated that the subject's ##### acres of land would have required ##### cows on it to meet the production requirement for a feed lot.[8]

43. RESPONDENT-4 explained that he is familiar with bona fide range improvement programs, which may qualify land for a waiver of the greenbelt production requirement. He stated that he has reviewed these conversions and looked at the information in the programs to see what they say. He stated that such programs are typically seen for overgrazed land. He also stated that he has never seen a plan for the subject property. Moreover, he stated that such programs are relatively rare, as he has only seen five such programs in nine years.

44. On the other hand, the taxpayer contends that the Commission should reject RESPONDENT-4'S assertion that the length of the growing season should be considered when determining the grazing AUM's. The taxpayer stated that having two cows on the subject property for 12 months should be considered ##### AUM's (2 cows x1 AUM per month x 12 months), regardless of whether the cows are grazed on pastures or fed in a dry lot. The taxpayer's argument is unpersuasive. There was no evidence provided to support that grazing can occur more than three months in that area in a year. Further, there was no evidence to suggest that USU designed its grazing tables to apply to the entire year.

45. As an alternative, the taxpayers ask the Commission to consider the AUM table for grazing land and to consider the subject property as grazing land instead of irrigated tillable land. If the Commission were to do this, the taxpayer contends that the animals kept on the property for the last 3 months of 2011 would qualify for that year. The taxpayer explains that the AUM table for grazing land

[8] In his audit, RESPONDENT-4 admitted that "we have not published feedlot standards[.]" However, he stated that "it would be expected that the property should produce over 50% of expected levels" and that "[s]ome published standards recommend 350 to 500 sq ft per cow for a feed lot." Exhibit R-1. Neither the taxpayer nor the County provided any such published standards for the Commission to consider.

shows a production level of ##### AUM per acre, which for the subject's ##### acres is ##### AUM's. Fifty percent of these ##### AUM's would be ##### AUM's, which the taxpayer contends would be the required production level needed to qualify for greenbelt. The taxpayer contends that putting two animals on the subject for three months would result in ##### AUM's and, thus, exceed the required ##### AUM's. The subject property, however, is irrigated tillable land, not grazing land. Accordingly, this argument is unpersuasive.

46. The County contends that the subject property's characteristics require it to be considered irrigated tillable land, not grazed land, under USU's grazing tables. Furthermore, the County contends that the AUM tables for grazing land cannot be used to determine the production requirement for cows fed in a dry lot (i.e., a feed lot). The evidence indicates that the two cows on the subject property in 2011 and 2012 were kept in the dry lots. Therefore, the County's arguments are more convincing.

47. The taxpayer also contends that even if it does not meet the production requirement found in the AUM tables, the subject property may still be considered actively devoted for agricultural use, given the Commission's ruling in *USTC Appeal No. 05-1725* (Initial Hearing Order Jan. 5, 2007).[9] The taxpayer refers the Commission to three sentences in that ruling, specifically:

> . . . There are situations where land may not be subject to measurements for agricultural production. Property where livestock, poultry, and other animals are raised may not produce any crops or forage at all. If the animals raised on such land are sold commercially, the land clearly must qualify for greenbelt. . . .

48. The sentences to which the taxpayer referred in *Appeal No. 05-1725* appear to be dictum concerning a hypothetical situation not present in that case and, thus, may not be binding on the Commission. In addition, this hypothetical referred to animals that are "sold commercially." The evidence in the instant case does not support a finding that any animals kept on the subject property were sold commercially in either 2011 or 2012.

[9] Redacted copies of this and other selected decisions can be viewed on the Commission's website at http://www.tax.utah.gov/commission-office/decisions.

49. Regardless, in *Appeal No. 05-1725*, once the Commission applied the law to the facts of that case, it determined that the taxpayer did have to meet the production requirement, as follows:

> . . . Thus we find that when determining whether land . . . qualifies for greenbelt, the Commission must first and primarily consider whether the production requirements of §§59-2-502 (1) and 59-2-503 (2) have been met. Whether there is a reasonable expectation of profit, although helpful in examining the use of the property, is not critical in establishing that qualification. In the instant case there is no dispute that the subject property meets the production standard. This is corroborated by the fact that the Assessor has allowed the property to remain on greenbelt for the past several years.
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> Once the production requirement has been met, the "expectation of profit" test must also be met to avoid granting the exemption to the "hobby farms" the Legislature was concerned about.[10]

As a result, *Appeal No. 05-1725* is best read to mean that two requirements must be met in order for land to qualify as land actively devoted to agricultural use, specifically: 1) the land must meet the production per acre requirement; and 2) the land must meet the requirement that it be devoted to the raising of crops and animals with a reasonable expectation of profit.

50. The taxpayer has not shown that the subject property met the production per acre requirement for either 2011 or 2012. The taxpayer was never told that feeding two cows on the subject's dry lots would satisfy this requirement. The AUM tables concerning land that is grazed are not applicable since the evidence is insufficient to find that the taxpayer ever grazed the cows in the subject's pastures for these years. However, even if the AUM table for irrigated tillable land were applicable, the taxpayer did not satisfy the AUM requirements derived from this table.

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[10] Earlier in *Appeal No. 05-1725*, the Commission had explained that:

> The Utah Court of Appeals has noted that "[i]n considering the Senate Floor debates in support of the 1992 amendments, it is clear that the purpose behind the amendments was to require farming on land with the reasonable expectation of profit and that 'if you run a farm, you run a real farm; and not a 'hobby farm.' [Citation omitted.] Indeed, as stated by [NAME-4 of Salt Lake County Corporation], those affected most by the amendments are those landowners that 'have chosen to buy five or six acres and keep riding horses on it for themselves and their friends.'" *Bd. of Equalization of RURAL COUNTY v. Stichting Mayflower Recreational Fonds*, 943 P. 2d 238, n. 4 (1997), *aff'd in part and rev'd in part, Stichting, supra*.

51. The taxpayer has also not shown that it has met the production per acre requirement for land on which cows are fed in dry lots. It is noted that there are no production levels provided by USU in the Division's Standards of Practice for animals that are fed in a feed lot or dry lot instead of being grazed. Nevertheless, the taxpayer has not provided any of the evidence referred to in Section 59-2-503(2) to show that feeding two cows on the subject property's dry lots would satisfy the per acre requirement. In addition, the person with the most experience and knowledge about greenbelt production levels to testify at the hearing was RESPONDENT-4, who concluded that ##### of cows would have had to be fed on the subject property to meet the production requirement for such use.

52. Based on the foregoing, the taxpayer did not meet the production per acre requirement for either 2011 or 2012.

53. Furthermore, the taxpayer has not met the other requirement referred to in *Appeal No. 05-1725* for the subject property to qualify as land actively devoted to agricultural use. Specifically, the taxpayer has not shown that the land was devoted to the raising of useful plants and animals with a reasonable expectation of profit. There is no evidence that the raising of the two cows on the subject property in 2012 was "with a reasonable expectation of profit." The cows were never sold. It appears that NAME-3 may have received the cows for meat at some point. However, this is insufficient to demonstrate that that the land was *devoted* to the raising of useful animals in 2012. It is also insufficient to demonstrate that there was a reasonable expectation of profit in 2012.

54. The taxpayer explained that in the future, the subject property may generate an annual profit from selling horses and/or a profit over the life of the property once the property is sold.[11] No

[11] OWNER admitted that in 2012, she did not have a business plan in place for the equestrian facility that she has been building on the subject property. At the hearing, however, OWNER estimated that once the equestrian facility is operational, it could realize a profit of $$$$$ a year, if its annual revenues were $$$$$ and if its annual expenses were $$$$$. These annual revenues would be based on selling 11 horses per year that were "well-trained" in the discipline of (X). These profits were also based on OWNER and her daughter's raising and training the horses without compensation for their services. Petitioner's Exhibit P-15.

OWNER also stated that, so far, she had put approximately $$$$$ into the subject property (which includes the $$$$$ purchase price of the land). She stated that in 2040, near the end of the

horses were raised on the subject property in 2012, much less sold. The expectation of profit in the future from selling horses or from selling the property does not show that in 2012, the subject property was devoted to the raising of useful plants and animals with a reasonable expectation of profit. Furthermore, any profit expected in the distant future from the appreciation of real estate values is not the type of profit necessary for property to be deemed "land in agricultural use" pursuant to Section 59-2-502(4). The profit referred to in that section relates to the raising of useful plants and animals. Accordingly, the subject property was not land in agricultural use for 2012.

55. Even if it were appropriate to consider the taxpayer's future expectation of profit in determining whether the subject property was land in agricultural use for 2012, the evidence is insufficient to show that the land was being used in 2012 with a reasonable expectation of profit. OWNER admitted that she did not have a business plan in 2012, and no written plan was submitted at the hearing. Furthermore, the Commission notes no sense of urgency in OWNER'S completing the equestrian facility and beginning a business venture at the subject property. At the earliest, the facility will not be operational until 2014, approximately six years after the taxpayer purchased the subject property. This timeframe does not suggest that the taxpayer's use of the subject property is for any reasonable expectation of profit.

56. Based on the foregoing, the subject property was not actively devoted to agricultural use in 2012.

57. If the Commission were to find that the subject property was not actively devoted to agricultural use, the taxpayer asks the Commission to waive this requirement for 2012, pursuant to Section 59-2-503(5). The taxpayer contends that waiver is appropriate because the taxpayer has intentionally planted grass in 2011 and because this action qualifies as a bona fide range improvement program or other similar accepted practice. The taxpayer contends that the amount of time it is taking for

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equestrian facility's life, she estimated that the property could be sold for $$$$$. She determined that this $$$$$ sales price could be considered profit based on her estimate that the annual profits through 2040 would be enough to offset the approximately $$$$$ amount that she will have ended up investing for the

the taxpayer to build a world-class horse facility is reasonable and that the taxpayer should continue to receive greenbelt assessment during the process, including the 2012 year at issue. As a result, the taxpayer asks the Commission to find that the taxpayer qualifies for a waiver of the actively devoted to agricultural use requirement and to find that the subject property qualifies for greenbelt assessment for 2012.

58. The County contends that the Commission should not waive the actively devoted to agricultural use requirement for 2012. The County points out that the taxpayer's position could result in the subject's being granted a waiver forever, as long as a "plan" for future agricultural use existed. The County contends that some sort of reasonable standard must be employed. The County contends that it has gone beyond any reasonable standard by allowing the property to remain on greenbelt for three years until 2012, as the last time it had been actively devoted to agricultural use was in 2008. For these reasons, the County asks the Commission to find that the subject property does not qualify for a waiver and does not qualify for greenbelt assessment for the 2012 tax year.

59. The taxpayer did not plant grass in 2011 in order to sell the grass upon maturation or to cut hay from it.[12] Furthermore, even though the grass appears to have matured by 2013, the taxpayer is still not operating the planned equestrian facility for which the grass was planted. As of the late 2013 hearing date, the barn and stable are still incomplete, OWNER appears to still be residing in STATE (at least part time) learning the business of running an equestrian facility, and OWNER does not yet have a business license to train or sell horses at the subject property. In addition, it is noted that the taxpayer did not plant the grass until September 2011, after RESPONDENT-2 had expressed concern around July 2011 about there being nothing green and no animals on the land. The taxpayer has not shown that the subject property would have met the required production level in 2012, except for the pastures being ready. Furthermore, OWNER admitted that not all horse farms have graze areas. The taxpayer already

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equestrian facility to become operational.

had a reasonable opportunity to satisfy the production requirement in the three years that the County waited to remove the land from greenbelt, but did not do so. As a result, it appears that there are other reasons why the taxpayer was not running the equestrian center and meeting the production requirement in 2012, other than the maturation of the grass. Accordingly, the failure of the taxpayer to satisfy the required production level in 2012 was not due to the maturation period of the grass.

60. Furthermore, the taxpayer has not implemented a bona fide range improvement program, a crop rotation program, or other similar accepted cultural practice that would have denied the taxpayer a reasonable opportunity to satisfy the production requirement in 2012. First, the taxpayer's planting of grass for a future equestrian facility is not a "bona fide range improvement program."[13] RESPONDENT-4 stated that such plans are usually written plans. Furthermore, he stated that such plans usually involve land that has been overgrazed, which is not the case for the subject property. Second, there is no evidence that the planting of grass is a crop rotation program or that any other crop will be rotated on the subject property. All evidence suggests that the grass will remain on the subject property into the foreseeable future. Third, the taxpayer has not shown that the planting of grass was a similar accepted cultural practice. There appears to be nothing cultural associated with converting crop land into an equestrian facility, nor does it seem to be a practice that is similar to a bona fide range improvement plan or a crop rotation plan.

61. The taxpayer was not diligent in determining what was required for the subject property to meet the production requirement for 2012. Furthermore, the amount of time the taxpayer has taken to convert the subject property into an equestrian facility is so significant that the taxpayer must be

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[12] OWNER stated that even if the grass were not used to graze animals, it could be used to cut hay. There is no evidence showing that the taxpayer has or ever intends to cut hay from the grass. OWNER testified that she wanted the land to be green and beautiful and healthy for horses.

[13] The FAA provides no definition for "bona fide range improvement program." Black's Law Dictionary ninth edition defines "bona fide" as, "Made in good faith; without fraud or deceit" and "Sincere; genuine." While this helps to establish the definition of "bona fide," which is a part of the term "bona fide range improvement program," it is does not establish what a "bona fide improvement program" is. There is no written document or letter from any organization, such the U.S. Department of Agriculture, suggesting that the taxpayer's actions constituted a "bona fide range improvement program."

considered responsible for the subject property's failure to meet the production requirement for 2012. The length of time that is being spent for the conversion is beyond any reasonable standard to allow the subject property to remain under greenbelt assessment for the entire time.

APPLICABLE LAW

1. Utah Code Ann. §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

> (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. . . .
> . . . .

2. Article XIII, Section 2(3) of the Utah Constitution provides that "[t]he Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use."

3. UCA §59-2-503 provides that property may qualify for assessment based on its value for agricultural use (i.e. greenbelt assessment), if certain conditions are met, 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 . . . .
> (b) except as provided in Subsection (5):
> (i) is actively devoted to agricultural use; and
> (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.
> (2) In determining whether land is actively devoted to agricultural use, production per acre for a given county or area and a given type of land shall be determined by using the first applicable of the following:
> (a) production levels reported in the current publication of the Utah Agricultural Statistics;
> (b) current crop budgets developed and published by Utah State University; and
> (c) other acceptable standards of agricultural production designated by the commission by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
> . . . .

(5) (a) Notwithstanding Subsection (1)(b), 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.

. . . .

4. For greenbelt assessment purposes, UCA §59-2-502 defines "actively devoted to agricultural use" and "land in agricultural use," as follows:

(1) "Actively devoted to agricultural use" means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:
(a) as determined under Section 59-2-503; and
(b) for:
(i) the given type of land; and
(ii) the given county or area.

. . . .

(4) "Land in agricultural use" means:
(a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:
(i) forages and sod crops;
(ii) grains and feed crops;
(iii) livestock as defined in Section 59-2-102;
(iv) trees and fruits; or
(v) vegetables, nursery, floral, and ornamental stock; or

. . . .

CONCLUSIONS OF LAW

1. Property may qualify for greenbelt assessment if it meets three requirements set forth in Section 59-2-503(1), specifically: 1) the property is at least five contiguous acres in size ("first greenbelt requirement"); 2) the property is actively devoted to agricultural use ("second greenbelt requirement"); and 3) the property has been actively devoted to agricultural use for at least two successive years

immediately preceding the tax year at issue ("third greenbelt requirement"). There is no disagreement that the first greenbelt requirement has been satisfied because the subject property, which is ##### acres in size, is more than five contiguous acres in size.

2. The parties, however, disagree on whether the second greenbelt requirement, the "actively devoted to agricultural use" requirement, has been met. The taxpayer contends that the subject property was actively devoted to agricultural use in 2012, while the County contends that it was not. "Actively devoted to agricultural use" is defined to mean "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." Section 59-2-502(1). Within this definition is the phrase "land in agricultural use," which itself is defined to mean "land devoted to the raising of useful plants and animals with a reasonable expectation of profit. . . ." Section 59-2-502(4)(a). Accordingly, to show that land is actively devoted to agricultural use, the land must meet the 50% production requirement and be land that is devoted to raising useful plants and animals with a reasonable expectation of profit. This conclusion is consistent with the Commission's prior ruling in *Appeal No. 05-1725*.

3. The Commission has found that the cows kept and fed on the subject property in 2011 and 2012 do not meet the 50% production requirement for either of these years. Section 59-2-502(1) provides that the "average agricultural production per acre" is determined under Section 59-2-503 for "the given type of land" and "the given county or area." Section 59-2-503(2) provides the sources with which production levels shall be determined. The taxpayer has not provided information from any of these sources that shows that feeding two cows on the subject property's dry lots in 2012 meets the production level necessary to qualify as land actively devoted to agricultural use. The Commission has found that the

two cows do not satisfy the production requirement based on USU's AUM tables for land that is grazed.[14] Nor has the taxpayer shown that the production requirement is met for land on which the cows are fed.

4. In addition, the taxpayer has not shown that the subject property was devoted to raising useful plants and animals with a reasonable expectation of profit. Nothing indicates that the subject property was ***devoted*** to raising useful plants and animals in 2012. In addition, the Commission has found that feeding two cows on the subject property in 2011 and 2012 is insufficient to show that they were raised with a reasonable expectation of profit. For these reasons, the subject property was not "land in agricultural use," as defined in Section 59-2-502(4)(a), in 2012.

5. Based on the conclusions in the preceding two paragraphs, the subject property was not actively devoted to agricultural use in 2012 and, as a result, does not meet the second of the three greenbelt requirements under Section 59-2-503(1).

6. Section 59-2-503(5), however, allows the second greenbelt requirement that the land be actively devoted to agricultural use for the year at issue to be waived if: 1) the owner has appealed ("first waiver requirement"); 2) the land was assessed on the basis of agricultural use for at least two years immediately preceding the year at issue ("second waiver requirement"); and 3) the failure to meet the agricultural production requirements for the year at issue was due to no fault or act of the taxpayer ("third waiver requirement"). The first waiver requirement is met because the owner has appealed the subject's greenbelt status for 2012. It also appears that the second waiver requirement is met because the County allowed the subject property to receive greenbelt assessment for at least two years immediately preceding the 2012 tax year. At issue, however is whether the taxpayer has met the third waiver requirement.

7. The third waiver requirement requires that the failure to meet the agricultural production requirements for the year at issue, in this case 2012, was due to no fault or act of the taxpayer. Section 59-2-503(5)(a)(ii)(B). For purposes of this waiver requirement, the Legislature has provided that "fault" does not include:

[14] Appendix 7C of the Division's FAA Standards of Practice indicates that the AUM tables are

> 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.

Section 59-2-503(5)(b). Earlier, however, the Commission found that neither of these circumstances was present in this case. The taxpayer did not fail to satisfy the required production levels due to the needed maturation period for the grass that was planted in 2011. Nor has the taxpayer implemented a bona fide improvement program, crop rotation program, or other similar accepted practice that did not give the taxpayer a reasonable opportunity to satisfy the required production levels. Furthermore, the Commission has found that it was the fault of the taxpayer in failing to meet the production requirements for 2012. It is unreasonable for the production requirements to be waived for the more than five years it is taking the taxpayer to convert the subject property into an equestrian facility. For these reasons, the third waiver requirement has not been satisfied. Because all of the waiver requirements have not been met, the taxpayer is not entitled to a waiver of the second greenbelt requirement that the subject property is land actively devoted to agricultural use.

8. Because the second greenbelt requirement has not been met or waived, the subject property is not eligible for greenbelt assessment for the 2012 tax year. Accordingly, it is unnecessary to determine whether the third greenbelt requirement has been met and, if not, is subject to waiver. For these reasons, the Commission should sustain the County BOE's decision to remove the subject property from greenbelt assessment for 2012.

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Kerry R. Chapman
Administrative Law Judge

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derived from Utah Agricultural Statistics and USU crop budgets.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject property does not qualify for greenbelt status for the 2012 tax year. Accordingly, the taxpayer's appeal is denied. It is so ordered.

DATED this _____ day of _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601et seq. and 63G-4-401 et seq.