15-1431
TAX TYPE: PROPERTY TAX / GREEN BELT
TAX YEAR: 2015
DATE SIGNED: 4-25-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, EX REL. NAME-1 & NAME-2, Respondent.	**INITIAL HEARING ORDER** Appeal No. 15-1431 Parcel No. ##### Tax Type: Property Tax/Green Belt Tax Year: 2015 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner:	REPRESENTATIVE-1 FOR RESPONDENT, Deputy Utah County Attorney REPRESENTATIVE-2 FOR RESPONDENT, Greenbelt Specialist, Utah County
For Respondent:	RESPONDENT, Deputy Utah County Attorney
For Ex Rel. Party:	No One Appeared

STATEMENT OF THE CASE

Petitioner ("PETITIONER") brings this appeal from the decision of the Utah County Board of Equalization ("County BOE"), which decision was to grant greenbelt status under the Farmland Assessment Act to the subject parcel for the 2015 tax year. This matter was argued before the Utah State Tax Commission in an Initial Hearing on February 1, 2016, in accordance with Utah Code §59-1-502.5. The PETITIONER challenges the decision of the County BOE and argues that under the applicable law, the subject property did not qualify for greenbelt valuation. Although notified of the date and time of the Initial Hearing, the Ex Rel. parties, the actual owners of this property ("Property Owners"), did not appear at the hearing either in person or by telephone.

APPLICABLE LAW

A person may appeal a decision of a county board of equalization, as provided in Utah Code §59-2-1006, in pertinent part below:

> (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by 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.

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

> (1) 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 provided by law to Utah Code §59-2-103 is that if a number of specified criteria are met, land used for agricultural purposes may be assessed on the basis of the value for agricultural use rather than fair market value. The exception is set out in the Farmland Assessment Act at Utah Code Title 59, Chapter 2, Part 5. Utah Code Sec. §59-2-503, provides 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) 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 report 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) 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 defines terms for the Farmland Assessment Act, below in relevant 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…

The application and recertification process are set out at Utah Code 59-2-508, which provides in pertinent part:

. . .

(4)(a) Once the application for assessment described in Subsection (1) has been approved, the county may: (i) require the owner to submit a new application or a signed statement: (A) by written request of the PETITIONER; and (B) that verifies that the land qualifies for assessment under this part . . .

. . .

(7) Any owner of land eligible for assessment under this part because a purchaser or lessee actively devotes the land to agricultural use as required by Section 59-2-503, may qualify the land for assessment under this part by submitting with the application required under Subsection (2), a signed statement from that purchaser or lessee certifying those facts that would be necessary to meet the requirements of Section 59-2-503 for assessment under this part.

For purposes of greenbelt assessment, Utah Code §59-2-502(8) defines "withdrawn from this part" as follows:

(8) "Withdrawn from this part" means that land that has been assessed under this part is no longer assessed under this part or eligible for assessment under this part for any reason including that:

. . . .

> (b) the land is no longer actively devoted to agricultural use;
> (c)(i) the land has a change in ownership; and (ii) (A) the new owner fails to apply for assessment under this part as required by Section 59-2-509; or (B) (I) an owner applied for assessment under this part as required by Section 59-2-509; and (II) the land does not meet the requirements of this part to be assessed under this part;
> . . . .

Utah Code §59-2-506 provides that a property "withdrawn from this part" is subject to a rollback tax, as follows in pertinent part:

> (1) Except as provided in this section, Section 59-2-506.5, or Section 59-2-511, if land is withdrawn from this part, the land is subject to a rollback tax imposed in accordance with this section.
> . . . .
>
> (11) (a) Subject to Subsection (11)(b), an owner of land may appeal to the county board of equalization:
> (i) a decision by a PETITIONER to withdraw land from assessment under this part; or
> (ii) the imposition of a rollback tax under this section.
> (b) An owner shall file an appeal under Subsection (11)(a) no later than 45 days after the day on which the PETITIONER mails the notice required by Subsection (5).

DISCUSSION

The parcel that is the subject of this appeal was at one time part of a large parcel of land that was assessed under greenbelt and had been an orchard and used for grazing sheep. The larger parcel was subdivided into the SUBDIVISION and was fenced off from open BLM land adjacent to this subdivision. The subject parcel was #####-acres in size and was purchased by the Property Owners in March 2012. It backed onto the BLM land and the fence that separated the subdivision from the BLM land. The Property Owners filled out an application for greenbelt in 2013, providing a letter dated April 22, 2013,[1] signed by the prior owner of the property and NAME-3, the owner of the sheep that had grazed the larger parcel. This letter stated that the property had been used for grazing sheep in 2011 and 2012. Based on the information provided at this time that the property had been actively used for agricultural purposes for the two prior years, the County left the subject parcel in greenbelt. However, upon receipt of information from a neighbor that the subject property was not being used for agricultural purposes, the County sent a notice for recertification to the Property Owners on March 2, 2015.

The Property Owners did respond to the recertification notice. However, they falsified documentation to provide proof of production. It appears they had photocopied NAME-3's

[1] Petitioner's Exhibit 12.

signature from the April 22, 2013 letter, to a letter they had produced for March 1, 2015. In the March 2015 letter, they changed the years referenced for grazing sheep from 2011 and 2012 to 2013 and 2014.[2] Upon review of this letter, the County called NAME-3, who told the County that he had not grazed sheep on the property since 2012. He provided a letter supporting the fact that the March 1, 2015 document was falsified.[3] After this call with NAME-3, the PETITIONER's employees confronted the Property Owners about the invalidity of the March 1, 2015 letter, and she admitted that she had changed the dates on the letter and copied and pasted NAME-3's signature onto the new letter. Other than the fraudulent letter, there was no evidence that the Property Owners had actively devoted this property to agricultural use or had leased this property to a farmer or rancher who actively devoted it to agricultural use in 2013, 2014, or 2015, up until the PETITIONER issued the Final Notice. The Property Owners did not own any farm animals during this period themselves and they did not have a lease in place with a farmer or rancher.

The PETITIONER's office concluded that the property did not meet the agricultural production requirements and removed the property from greenbelt on May 11, 2015, issuing the Rollback Billing. The Property Owners appealed this action to the County Board of Equalization

There was at least one occurrence, however, in 2013,[4] when sheep were on the subject property and the Property Owners had taken a photo of the sheep on their property.[5] The circumstances provided at the Initial Hearing for this were unusual. There was a fence along the back of the subject property separating it from BLM land. After 2012, NAME-3 continued to have his sheep graze on the BLM land for which he had grazing permits. He had employed a sheepherder for this purpose who spoke little English. The Property Owners tore down part of the fence that separated their property from the BLM land and the Property Owners told the sheepherder to let the sheep graze on the subject property. Because the subject property, however, was not fully fenced, the sheep began grazing on neighboring properties where they were not wanted and the Sheriff's Office was called. In the end, the Property Owners obtained a photo of sheep on their property, but with the sheepherder being deported. NAME-3 supplied a letter dated June 22, 2014 in which he explained that he never gave permission for his sheep to be taken off of the BLM land and he had never had his sheep grazing in the SUBDIVISION since 2012. He questioned the Property Owners' action, "In a way is that not considered rustling?" The

[2] Petitioner's Exhibit 13 & Respondent's Exhibit 4. There were two different versions of the falsified document submitted by the Property Owners to the County.
[3] Petitioner's Exhibit 11.
[4] The County BOE Hearing minutes identify the two photos provided as being taken on November 11, 2013.
[5] Respondent's Exhibit 8.

Property Owners acknowledged that NAME-3 had not given permission for his sheep to graze in the subdivision at the County BOE hearing on June 30, 2015.[6]

For the appeal to the County BOE, the Property Owners provided the two photographs taken November 11, 2013, with the sheep on the subject property, receipts which were mostly dated in 2015 and mostly appear to be for fencing materials.[7] They acknowledged to the County BOE that they had falsified the March 1, 2015 letter purportedly signed by NAME-3.[8] The County BOE found in favor of the Property Owners and reinstated the greenbelt, despite that the Property Owners admitted to falsifying the letter, and that the sheep had been on their property in 2013 without the sheep owner's permission. Representatives from the PETITIONER's office had pointed out to the County BOE that the Property Owners would have needed to have a lease in place with the rancher or farmer using the property. From review of the County BOE Hearing minutes, there was no evidence that the sheep were on the property long enough in 2013 to meet production requirements and there was obviously no actual expectation of profit on the part of the Property Owners who did not even own the sheep, or the owner of the sheep who did not intend his sheep to be grazing in this subdivision. Further, it was clear from the BOE Hearing that all parties were aware there had been no production in 2014. It is unclear from the minutes how the County BOE reached the conclusion to allow the property to remain in greenbelt for the 2015 tax year.

The facts that came to light in this case are startling in that the Property Owners actually falsified a document in order to qualify for the greenbelt property tax assessment. After the PETITIONER's office had contacted the purported signor of the document and obtained a letter from him indicating fraud on the part of the Property Owners, the Property Owners acknowledged this deceit to the County. They also acknowledged they did not have permission from the owner of the sheep grazing on the BLM land to get the sheep down onto their property, which occurred one time in 2013 and resulted in the Sherriff being called. There is no evidence it occurred again.

Based on the law, it is clear the property was not actively devoted to agricultural purposes during 2013 and 2014 and was properly removed from Greenbelt by the PETITIONER. Under Utah Code Sec. 59-2-103 all tangible taxable property located Utah is subject to property tax based on its fair market value, unless otherwise provided in the statute. An exception to the fair market value assessment is provided under the Farmland Assessment Act which allows property

[6] Petitioner's Exhibit 5.
[7] Respondent's Exhibit 11.
[8] Respondent's Exhibits 4 & 9.

meeting all of the specified criteria in that Act to be assessed on the basis of its agricultural use rather than its fair market value. However, there are a number of criteria that must be met before the property qualifies for this type of assessment. Under Utah Code Sec. 59-2-503(1)(b)(i) the property must be "actively devoted to agricultural use." In order for property to be "actively devoted to agricultural use" it must meet specified production requirements set out at Utah Code Sec. 59-2-502 and be "land devoted to the raising of useful plants and animals with a reasonable expectation of profit." See Utah Code Sec. 59-2-502(4). There is no evidence that production requirements were met for either 2013 or 2014, and there clearly was no expectation of profit on the part of the Property Owners or the owner of the sheep. A property may still qualify for greenbelt assessment where the owner does not farm the property himself or herself, but leases it to a lessee, if the lessee actively devotes the property to agricultural use and meets the production requirements. However, under Utah Code Sec. 59-2-508(7) the Property Owner would have to provide a signed statement from the lessee "certifying those facts that would be necessary to meet the requirements . . . " There was no lessee in this matter. This property was properly removed from greenbelt because it was not actively devoted to agricultural use in 2013 and 2014. In order to have the property placed back in greenbelt, under Utah Code Sec. 59-2-503(1)(b)(ii) it will have to be actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the greenbelt assessment is sought.

From the notes of the BOE Hearing, it does appear the County BOE thought a property with no production for one year could still qualify. Utah Code Sec. 59-2-503(5)(a)(ii)(A) states that a waiver of production for one year may be allowed upon submission of proof that the "land was assessed on the basis of agricultural use for at least two years immediately preceding the tax year" and the no fault requirement was met. However, in this matter the Property Owners did not meet the "no fault" requirement. They could have devoted this property to agricultural uses; they just did not do so.

After weighing the evidence provided by the parties and reviewing the applicable law, the PETITIONER had properly removed the subject property from greenbelt assessment.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds in favor of the PETITIONER and reinstates the PETITIONER's decision to deny greenbelt assessment for tax year 2015. 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 _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner