

19-2267

TAX TYPE: PROPERTY TAX

TAX YEAR: 2019

DATE SIGNED: 11/20/2020

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION	
TAXPAYERS Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 19-2267 Parcel No. ##### Tax Type: Property Tax Tax Year: 2019 Judge: Marshall

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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYERS, LAW FIRM
REPRESENTATIVE-2 FOR TAXPAYERS, TAXPAYER¹
REPRESENTATIVE-3 & REPRESENTATIVE-4 FOR
TAXPAYERS
REPRESENTATIVE-5 FOR TAXPAYERS

¹ The additional parties appearing for the petitioner are petitioners in appeal nos. 19-2269, 19-2271, and 19-2272. The parties are all represented by REPRESENTATIVE-1 FOR TAXPAYERS and agreed to have all four cases heard at the same time, as they involve the same underlying issue, understanding that individual decisions would be issued for each case.

REPRESENTATIVE-6 FOR TAXPAYERS, HOUSING
DEVELOPMENT-1 and HOUSING DEVELOPMENT-2
For Respondent: RESPONDENT-1, Deputy COUNTY Attorney
RESPONDENT-2, COUNTY Assessor
RESPONDENT-3, COUNTY Assessor's Office
RESPONDENT-4, COUNTY Assessor's Office

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the COUNTY-1 Board of Equalization ("the County"). This matter was argued in an Initial Hearing on June 10, 2020 in accordance with Utah Code Ann. §59-1-502.5. At issue is the withdrawal of the subject parcels from assessment under the Farmland Assessment Act ("assessment as greenbelt"), and the assessment of rollback taxes.

APPLICABLE LAW

Utah Code Ann. §59-2-103² 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.

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102 (13), as follows:

"Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

The Farmland Assessment Act provides for an exception to the requirement that property be assessed and taxed on the basis of its fair market value, and instead is taxed on the basis of its agricultural use, as provided in Utah Code Ann. §59-2-503 as follows:

- (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

² The Commission cites to and applies the 2019 version of the Utah Code.

- (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.
- (3) Land may be assessed on the basis of the land's agricultural value if the land:
 - (a) is subject to the privilege tax imposed by Section 59-4-101;
 - (b) is owned by the state or any of the state's political subdivisions; and
 - (c) meets the requirements of Subsection (1).
- (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
 - (ii)
 - (A) the failure to meet the acreage requirement arose solely as a result of an acquisition by a governmental entity by:
 - (I) eminent domain; or
 - (II) the threat or imminence of an eminent domain proceeding;
 - (B) the land is actively devoted to agricultural use; and
 - (C) no change occurs in the ownership of the land.
- (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.
- (6) Land that otherwise qualifies for assessment under this part qualifies for assessment under this part in the first year the land resumes being actively devoted to agricultural use if:
 - (a) the land becomes ineligible for assessment under this part only as a result of a split estate mineral rights owner exercising the right to extract a mineral; and
 - (b) the land qualified for assessment under this part in the year immediately preceding the year the land became ineligible for assessment under this part only as a result of a split estate mineral rights owner exercising the right to extract a mineral.
- (7) Land that otherwise qualifies under Subsection (1) to be assessed on the basis of the value that the land has for agricultural use does not lose that qualification by becoming subject to a forest stewardship plan developed under Section 65A-8a-106 under which the land is subject to a temporary period of limited use or nonuse.

Utah Code Ann. §59-2-504 provides exclusions for designation of agricultural use of land as follows:

- (1) Except as provided in Subsection (2), land may not be assessed under this part if the land is:
 - (a) part of a platted subdivision or planned unit development, with restrictions prohibiting its use for agricultural purposes with surface improvements in place, whether within or without a city; or
 - (b) platted with surface improvements in place that are not an integral part of agricultural use.
- (2)
 - (a) If land has been platted with surface improvements in place, the land has been withdrawn from this part, and the owner is not able to transfer title to the platted property, or continue development of the platted property due to economic circumstances, or some other reasonable cause, the owner may petition the county assessor for reinstatement under this part for assessment purposes as land in agricultural use without vacating the subdivision plat.
 - (b) The county assessor may grant the petition for reinstatement described in Subsection (2)(a) if the land is actively devoted to agricultural use.
- (3) For purposes of this section:
 - (a) "platted with surface improvements in place" means that:
 - (i) land is platted; and
 - (ii) all surface improvements necessary for the land to be sold as a lot or a unit are in place:
 - (A) regardless of whether or not it is the owner of the land who puts the surface improvements in place; and
 - (B) as determined by the:
 - (I) county legislative body if the land is located in an unincorporated area of the county;

- (II) city legislative body if the land is located in a city; or
- (III) town legislative body if the land is located in a town; and
- (b) "surface improvement" means:
 - (i) a curb;
 - (ii) a gutter; or
 - (iii) pavement.

Utah Code Ann. §59-2-506 imposes a rollback tax on land withdrawn from the Farmland Assessment Act, 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...
- (2) (a) An owner shall notify the county assessor that land is withdrawn from this part within 120 days after the day on which the land is withdrawn from this part...
- (3) (a) The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between:
 - (i) the tax paid while the land was assessed under this part; and
 - (ii) the tax that would have been paid had the property not been assessed under this part.
- (4) (a) The county treasurer shall:
 - (i) collect the rollback tax; and
 - (ii) after the rollback tax is paid, certify to the county recorder that the rollback tax lien on the property has been satisfied...
- (5) (a) The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that:
 - (i) the land is withdrawn from this part;
 - (ii) the land is subject to a rollback tax under this section; and
 - (iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice...

The following definitions found in Utah Code Ann. §59-2-502 are relevant to these proceedings:

As used in this 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
- (a) 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.”
- (6) “Platted” means land in which:
 - (a) parcels of ground are laid out and mapped by their boundaries, course, and extent; and
 - (b) the plat has been approved as provided in Section 10-9a-604 or 17-27a-604...
- (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:
 - (a) an owner voluntarily requests that the land be withdrawn from this part;
 - (b) the land is no longer actively devoted to agricultural use...

DISCUSSION

The issue before the Commission is whether the subject properties qualify for assessment as greenbelt. For the 2019 tax year, the County withdrew the subject properties from assessment as greenbelt and assessed rollback taxes. The Taxpayers appealed the removal of the properties from assessment as greenbelt to the County Board of Equalization, and subsequently appealed to the Tax Commission. Following are the parcels at issue, the acreage of each, and the assessed rollback taxes:

REDACTED THE TABLE OF 28 PARCELS, ACRES, OWNERSHIP AND DOLLAR AMOUNT

The subject parcels are part of an overall larger ranch that is a total of #####-acres. The ranch straddles COUNTY-2 and COUNTY. The parcels in question are in the northwest corner of COUNTY, near RESERVOIR. The Taxpayer provided a number of maps and aerial photographs showing the relative location of the ranch and the subject properties.

The Taxpayers’ representative stated that the law is clear as to what is required to obtain assessment as greenbelt. He argued that this case involves a tax imposition statute, and thus must be construed in favor of the Taxpayer. The Taxpayers’ representative cited to *County Board of Equalization of Wasatch County v. Stichting Mayflower Recreational Fonds*, 6 P. 3d 560 (Utah 2000), which found that taxation statutes like the Farmland Assessment Act should be interpreted

liberally in favor of taxpayers. The Taxpayers’ representative stated that Utah Code Ann. §59-2-503 provides that land may be assessed on the basis of its value for agricultural use if it is not less than 5 contiguous acres and is actively devoted to agricultural use. He noted that “actively devoted” is defined as in excess of 50% of the average production per acre for the given land. The Taxpayers’ representative stated that Standards of Practice 7 provides the standards for graze property, explaining what the AUMs are for each classification. He noted that under Utah Code Ann. §59-2-508(8), the owner of land is eligible for assessment for leased land if the land is devoted to agricultural use and the owner submits a signed statement from the lessee that the requirements for assessment as greenbelt are met. The Taxpayers’ representative argued that as long as the lessee submits a signed statement certifying that they meet the requirements for assessment as greenbelt that should be sufficient to qualify for assessment as greenbelt. The Taxpayers’ representative stated that the subject properties are leased to a rancher, NAME-1, who runs his ANIMALS on the land.

The Taxpayers provided an affidavit from NAME-1. NAME-1’ affidavit indicates that he leases the entire ranch, in excess of #####-acres.³ He grazes #####-pair/AUM (MOTHER & BABY ANIMALS) over the ranch. NAME-1’ affidavit explained that he rotates the ANIMALS from pasture to pasture so as to not overgraze the land. The subject properties are located in what has been designated as “Pasture 6.” NAME-1’ affidavit indicated that he starts bringing ANIMALS to the ranch on the first day of June, and that the ANIMALS are unloaded onto Pasture 6 where they remain for two weeks. The affidavit stated that the ANIMALS were brought back to Pasture 6 from, DATE to DATE. The ANIMALS remain on the entire ranch for a period of about ##### months. NAME-1 noted in his affidavit that he keeps detailed records of how the ranch is grazed, to ensure that it is not overgrazed in order to qualify for federal grants. Included with NAME-1’ affidavit was a photograph of the ANIMALS in Pasture 6 on DATE. Additionally, there were photographs of the land before and after grazing, with a measuring tape showing the depth of the grass/weeds.

The Taxpayers’ representative stated that there is some dispute as to whether the subject properties should be classified as Graze II or Graze IV. In addition, he stated that the guidance in *Stichting Mayflower* is to calculate the AUM on the entire ranch, not just the subject properties. The Taxpayers’ representative argued that no matter which way the calculation is done, the subject properties meet the AUM requirements, and provided the following calculation:

	Standard 7 Example	Graze II Pasture 6	Graze II Entire Ranch	Graze IV Pasture 6	Graze IV Entire Ranch
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³ NAME-1’s affidavit indicates the cattle ranch is #####-acres. The Taxpayers’ representative indicated that the total ranch was #####-acres.

Acres	#####.	#####.	#####.	#####.	#####.
AUMs/Acre	#####.	#####.	#####.	#####.	#####.
AUMs	#####.	#####.	#####.	#####.	#####.
AUMs x %	#####.	#####.	#####.	#####.	#####.
> than %	#####.	#####.	#####.	#####.	#####.
ANIMALS month	#####.	#####.	#####.	#####.	#####.
ANIMALS months	#####.	#####.	#####.	#####.	#####.

The Taxpayers’ representative noted that with #####ANIMALS on the ranch, the Taxpayers meet the production requirements. It is the Taxpayers’ position that the property never should have been removed from assessment as greenbelt, and they question why the County did so. The Taxpayers asked to have the subject properties assessed as greenbelt.

The Taxpayers’ representative explained that Pasture 6 is #####-acres, but the acreage under appeal is approximately #####-acres. He explained that the remaining acreage that is a part of Pasture 6 was not removed from assessment as greenbelt by the County, or is located in COUNTY-2. The Taxpayers’ representative questioned how the County could find that some of the parcels that are part of the ranch meet the greenbelt requirements, but others do not.

The County’s representative argued that the subject properties never should have been assessed as greenbelt because they are a part of a platted subdivision with improvements. He stated that under Utah Code Ann. §59-2-504, land may not be classified as agricultural land actively devoted to agricultural use if the land is part of a platted subdivision or PUD with legal restrictions prohibiting use for agricultural purposes or if it is platted with surface improvements in place that are not an integral part of agricultural use. The County’s representative stated that improvements is defined to mean curb, gutter, or pavement. The County’s representative acknowledged that the subject properties are not paved, and there is no curb and gutter. However, it is the County’s position that all other improvements are in place, and that the subject properties are fully developed within the “spirit” of the statute and should not be allowed to remain under assessment as greenbelt.

The County provided copies of the plat map for HOUSING DEVELOPMENT-2, Phases 1 and 2, as well as the Planning & Zoning Commission meeting minutes from DATE. The County’s representative noted that the subject properties are all part of the subdivision. The County provided a copy of the Declaration of Covenants, Conditions and Restrictions for the HOUSING DEVELOPMENT-2 (“CCRs”). The County’s representative pointed out that Section 11 of Article X is titled “Animal Control.” He specifically noted subsection (b) provides that an owner may have

a corral within the perimeter of the lot for THREE TYPES OF ANIMALS. The County's representative argued that animal use was prohibited at the time the subject subdivision was created. He further stated that if the CCRs were being adhered to, there would not have been sufficient AUMs for the property.

The County's representative stated that the County provided Greenbelt Questionnaires to the Taxpayers. Each of the Taxpayers submitted their responses to the County. They indicated that the subject properties are leased to NAME-1, who grazed ##### pair of ANIMALS. The questionnaire for the parcels under appeal in 19-2272 indicated that the animals were on the property for four to five months. The remaining questionnaires indicated the animals were on the property for four months. The parties also included a copy of their respective ANIMALS lease agreements with NAME-1 for 2019. The County's representative noted that the information did not include any information regarding the properties located in Pasture 6 that are not under appeal. He stated that the information regarding the full extent of the lease was not initially provided to the County, and that it was not until the County received NAME-1's affidavit (Petitioner's Exhibit 14) that the County understood the full extent of the lease and grazing. The County's representative stated that the first grazing statement the County received was for 2018, and showed that the ANIMALS were only on Pasture 6 for a two-week period. The Taxpayers provided the County with an undated document titled "Grazing Rotation For 2018." The Grazing Rotation appears to be incomplete. It showed that the ANIMALS were on Pasture 6 from DATE to DATE, and then rotated to the other pastures. The last date on the 2018 Grazing Rotation was DATE which is the date that the ANIMALS were placed on Pasture 5. There is no date for when the ANIMALS were removed from Pasture 5. The 2018 Grazing Rotation seems to indicate that the ANIMALS would once again be placed on Pasture 6 after they were removed from Pasture 5.

The County provided a map of the entire ranch, showing the different pasture locations. Also indicated on the map are the locations that County employees observed ANIMALS on Pasture 3 in MONTH of 2019 and on Pasture 4 in MONTH of 2019. RESPONDENT-3 stated that she visited the ranch on DATE. She stated that she entered from the COUNTY-2 side of the ranch, and saw ##### ANIMAL. RESPONDENT-3 noted that she did not see any ANIMALS on land located in COUNTY. She stated that she visited the property again on DATE, and again saw ANIMALS on the COUNTY-2 side, but did not see any ANIMALS on the part of the ranch located in COUNTY. On DATE, RESPONDENT-3 stated that she drove through the ranch again, and saw ANIMALS along the COUNTY-2 border, but did not see any ANIMALS on the COUNTY side. She stated that she visited the property on DATE, and saw "quite a few" ANIMALS on land located in COUNTY. RESPONDENT-3 visited the property again, and stated that she did not see any

ANIMALS on the land located in COUNTY. She stated that she entered through Pasture 6, and that the road goes North and South. She stated that from the main road, she could see to the east and west. She stated that there are other roads with gates that prevented her from going up towards the mountains. RESPONDENT-3 noted that in order to see the NAME-3 property (Appeal No. 19-2271) she would have had to have gone through a gate. She stated she does not believe she could see the NAME-4 property (Appeal No. 19-2269). RESPONDENT-3 stated that she could see the TAXPAYER property (Appeal No. 19-2267), but did not go onto the property. She stated that portions of the property are steep and mountainous. The County provided a number of photographs, which were taken by RESPONDENT-3. She stated that all of the photographs were taken from COUNTY. She noted the fencing, land that had been grazed, and ANIMAL DROPPINGS.

Upon questioning, RESPONDENT-3 stated that from the roadway that runs North and South on Pasture 6, that she could not see the boundaries of Pasture 6. She acknowledged that it is possible that there were ANIMALS beyond her field of vision. However, she stated that she saw no ANIMAL DROPPINGS, or other evidence that ANIMALS had been in the area. RESPONDENT-3 acknowledged that she did not climb to the top of the hills visible in the photographs to see if there were ANIMALS on the other side, and that she could not access/see parts of the NAME-4 and NAME-3 properties (parcel nos. ##### and #####) from the roadway.

The County's representative stated that the only documents provided by the Taxpayers showing participation in the Department of Agriculture grant programs indicate that the rancher participated in the program in COUNTY-2, not COUNTY. The County's representative stated that the County had requested a Schedule F to verify how many ANIMALS were on the property, and how many had been sold, but that information was not provided. The County's representative stated that it was only after the Taxpayers submitted their proffered evidence for this hearing that the County received any information regarding how many ANIMALS were on the property.

The County provided AUM calculations for the subject properties. The County has classified most of the property as Graze II, though there is some Graze I and Graze III acreage.

DELETED TABLE FOR PARCEL NO'S., ACRES, CLASS, AUM's/ACRES, # OF AUM's and # AUMSL/ 1 MONTH⁴

The County's representative noted that the Board of Equalization hearing records indicate that County employees had visited the subject properties and not seen evidence of grazing, and that the Taxpayers had not provided a copy of Schedule F. The County's representative also noted that there is some concern as to where and the extent to which the ANIMALS can be watered, noting

that County employees did not see any troughs, pools, or other sources of water for the ANIMALS when they visited the property.

RESPONDENT-2 added that the properties were removed from assessment as greenbelt because the County did not receive information from the Taxpayers to show that the property was being actively devoted to agricultural use. She stated that the County is unable to determine that the property is being grazed to the extent the Taxpayers claim. RESPONDENT-2 stated that the County had not received an exact count of the ANIMALS, and only received one photograph from the Taxpayers. In addition, RESPONDENT-2 argued that the subject properties should not be assessed as greenbelt under Utah Code Ann. §59-2-504 because they are part of a platted subdivision. RESPONDENT-2 conceded that there is grazing on the COUNTY-2 side of the overall ranch.

RESPONDENT-2 was asked whether the County had granted assessment as greenbelt to any of the parcels located in Pasture 6, to which she indicated that she did not know off the top of her head, and would need specific parcel numbers. The Taxpayers' representative provided copies of the 2018 and 2019 property tax notices for parcel no. #####, as well as a map of the parcel. RESPONDENT-2 acknowledged that parcel was located in Pasture 6 and was assessed as greenbelt in both 2018 and 2019. However, she maintains that there was an interfacing error, and the property should not have been assessed as greenbelt. The Taxpayers' representative provided copies of the 2018 and 2019 property tax notices for parcel no. #####, which was also located in Pasture 6. RESPONDENT-2 again acknowledged the parcel was located in Pasture 6 and was assessed as greenbelt in both 2018 and 2019, but maintains it was an error.

Upon questioning, RESPONDENT-2 acknowledged that the County was provided copies of the lease agreements between the property owners and NAME-1, but stated she does not believe the County was provided lease agreements for the entire ranch. RESPONDENT-2 stated that there is a payment obligation for NAME-1 to pay the lessor for the privilege of being able to graze the ANIMALS, and the County did see proof of deposits being made.

In rebuttal, the Taxpayers' representative stated that he is concerned that the County is trying to remove the subject properties from assessment as greenbelt under the "spirit of the law" rather than the letter of the law. He stated that the County has argued that because the subject properties were subdivided, the land never should have been assessed as greenbelt. However, the Taxpayers' representative noted that the surface improvements are not in place on the subject properties, and as such, it does not satisfy the plain language of the statute. The Taxpayers' representative noted that in *Board of Equalization of Salt Lake County v. Utah State Tax Comm'n ex rel. Judd*, 846 P.2d 1292 (1993), the Court recognized that the plain language of the statute is

controlling. He noted that in *Judd*, a subdivision had been platted, surface improvements were in place, and individual lots were for sale. However, under the Farmland Assessment Act provisions in place at the time, prior to the enactment of Utah Code Ann. §59-2-504, the lots could be assessed as greenbelt. The Taxpayers' representative stated that the Court in *Judd* noted that though the decision may turn land developers into ranchers, it was up to the legislature to make any changes.

The Taxpayers' representative stated that in this case, the law does not require the assessor to drive through the ranch and see ANIMALS, but it requires a signed statement of the rancher. He stated that it seems as though the County just does not believe that the ANIMALS are being grazed on the subject properties. The Taxpayers' representative stated that the County acknowledges there was proof of deposits for the leasing of the property, and questions why a rancher would pay to lease property for grazing and not actually use the property.

The Taxpayers' representative argued that there is nothing in Section 11 of the CCRs that prohibits the grazing of animals or using the land for agricultural purposes. He noted that Subsection (e) of Section 11 specifically states that there are range ANIMALS in the area, and that owners can put up fencing to keep them out. The Taxpayers' representative stated that the CCRs were amended, and that Amendment 12 provides as follows:

For clarification to Article X Section 11(e) that states "owners may wish to fence their property to keep out range ANIMALS." Owners with lots that qualify for greenbelt status (and thus not fencing out the range ANIMALS) are and have been permitted by the HOA to lease their property directly with the ANIMALS rancher adjacent to the subdivision to obtain legal greenbelt status. This amendment supersedes Article X Section 1 and Article X Section 11. (DATE)

With regard to the concerns raised by the County regarding water available for the ANIMALS, the Taxpayers' representative noted that the County has acknowledged that they have not viewed every acre of the ranch. He stated that the Taxpayers' maps show the "current water" on the ranch, though someone would have to go off the road in order to see the water. The Taxpayers' representative further argued that the statute does not require water, it requires that the land meet 50% of the agricultural use for a given classification of land. He stated that the County has not disputed the Taxpayers' calculation of eligibility. The Taxpayers' representative asked to have the subject properties returned to assessment as greenbelt, arguing there is no valid reason for the properties to have been removed.

In closing, the County's representative stated that while a landowner is required to submit a signed statement to obtain assessment as greenbelt, the land owner also agrees to be audited. He stated that the County has not seen that the Taxpayers were in compliance, and that is why the greenbelt status was revoked. He noted that the information provided by the Taxpayers show #####

ANIMALS on each parcel. The Taxpayers' representative stated that it is impossible for the County to tell from the information received the extent to which the property was actively devoted to agricultural use. He stated that it was only two weeks prior to this hearing that the County received NAME-1' affidavit explaining the full extent of the ranch operation. The County's representative stated the Taxpayers have not made it easy for the County to figure out what they are doing, and argued the County acted in good faith, and its audit does not support the subject properties remaining in greenbelt. He stated there is no proof or evidence of ANIMALS being on the properties. The County's representative stated that the CCRs do not indicate that the developer is reserving the right to have ANIMALS on the properties in the subdivision, but rather, it contains a warning that there may be range ANIMALS in the area. He stated he does not believe the restrictions say there is no restriction on the use of property for agricultural purposes. The County's representative stated that the County is not looking for ways to pull property out of greenbelt, but argued the Taxpayers have not complied with the County's audit and have not been completely forthcoming. He stated that the subject properties are completely developed, other than having curb, gutter, and sidewalk. The County's representative stated that the subject properties have other improvements and are as functional as properties in any other subdivision. However, he did not specify what those improvements might be. Finally, he argued the Taxpayers have not met the burden of proof to show that the subject properties should continue to be in greenbelt.

In closing, the Taxpayers' representative stated that the leases with NAME-1 clearly states that he is leasing approximately #####-acres, or the entire ranch. He stated that the subject properties are located within that ranch. The Taxpayers' representative stated that the law does not require a parcel by parcel determination as to whether the property meets qualifications and that it should be looked at as a whole. He noted that in *Stichting Mayflower*, the Court of Appeals erred in determining a parcel should be assessed separately than the other parcels in the unit. The Taxpayers' representative stated that grazing occurs on all of the land, whether the ANIMALS are in Pasture 6 or spread over the whole ranch. He stated that the proffered testimony of the County was that they could not see any animals, not that there were not any animals. The Taxpayers' representative stated there was a lease in place, and payments were being made. He stated that when the notices of removal from assessment as greenbelt and the audit questionnaire was issued, the documents show that the Taxpayers did reply to the County's request. The Taxpayers' representative stated that the only thing the Taxpayers did not provide was NAME-1' Schedule F. He noted there is no longer a requirement of profit to qualify for assessment as greenbelt, and that the Taxpayers do not have access to NAME-1' Schedule F. The Taxpayers' representative stated that the Taxpayers were forthcoming with the information they had to try and remain in assessment

as greenbelt, and reiterated that there has been no contention from the County that the Taxpayers' calculation of AUMs is incorrect.

The County has argued that the subject properties should not have been assessed as greenbelt under Utah Code Ann. §59-2-504, which provides as follows:

Except as provided in Subsection (2), land may not be assessed under this part if the land is:

- (a) part of a platted subdivision or planned unit development, with restrictions prohibiting its use for agricultural purposes with surface improvements in place, whether within or without a city; or
- (b) platted with surface improvements in place that are not an integral part of agricultural use.

The subject subdivision has been platted. However, there are no specific restrictions in the CCRs that prohibit the use of the subject properties for agricultural purposes. Subsection (b) of Section 11 of Article X of the CCRs provides that owners may have a corral within the perimeter of their lot for THREE TYPES OF ANIMALS. Subsection (e) specifically states that there are range ANIMALS in the area, and allows owners to put up fencing to keep them out. The subject subdivision does not have surface improvements in place. "Surface improvements" are defined in Subsection (3)(b) of Utah Code Ann. §59-2-504 to mean a curb, gutter, or pavement. The parties agree that there is no curb, gutter, or pavement on the subject properties. The subject properties should not be excluded from assessment as greenbelt under Utah Code Ann. §59-2-504.

The Commission must determine whether the subject properties meet the requirements of Utah Code Ann. §59-2-503(1) to be assessed as greenbelt. The first requirement is that the property be not less than five contiguous acres. The second requirement is that in general the subject property be actively devoted to agricultural use, and that the property has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year in question.

The Taxpayers' representative has argued that whether a property qualifies for greenbelt assessment should be construed in favor of the Taxpayer. The Utah Supreme Court in *Stichting Mayflower*, 6 P.3d at 564, stated "We 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). The Commission recently included a footnote in Appeal No. 19-2564, "[t]he Farmland Assessment Act is not an exemption; however, it allows for a favorable assessment based on a qualifying property's value for agricultural use, so it operates similarly to an exemption."⁴ This footnote is in conflict to *Stichting Mayflower*,

⁴ The Commission cited to *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah

and the Commission takes this opportunity to overturn the position taken in the footnote of Appeal No. 19-2564, and confirms that the Farmland Assessment Act is to be liberally construed in favor of the Taxpayer, in accordance with relevant case law. However, the Commission also notes that the burden of proof is on the Taxpayers to show that they meet all of the statutory requirements to qualify for greenbelt assessment. In general, the courts have placed the burden of proof on property owners in property tax matters. See *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); and *Utah Railway Co. v. Utah State Tax Comm’n*, 2000 UT 49, 5 P.3d 652 (Utah 2000).

Utah Code Ann. §59-2-503(1)(a) sets forth the first requirement to qualify for assessment as greenbelt, as follows:

- (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 in Subsection (4).

The parcels under appeal in 19-2267 (#####), 19-2269 (#####), and 19-2271 (#####) are each more than ##### contiguous acres. Additionally, parcel no. #####, owned by HOUSING DEVELOPMENT-1, (Appeal No. 19-2272), is larger than ##### contiguous acres. The above-referenced parcels satisfy the first requirement to be assessed as greenbelt.

With regard to the remaining parcels under appeal in 19-2272, parcel nos. #####, #####, #####, #####, and ##### also meet the requirement that the land not be less than ##### contiguous acres. However, twenty other parcels in appeal no. 19-2272, are each less than ##### contiguous acres. Thus, to qualify for assessment as greenbelt, the Taxpayer must show that those parcels are devoted to agricultural use in conjunction with other eligible acreage, and that the land and the other eligible acreage have identical legal ownership.⁵ “Identical legal ownership” is defined in Utah Code Ann. §59-2-502(3) to mean legal ownership held by “identical legal parties” or “identical legal entities.” With the exception of parcel no. ##### owned by HOUSING

1980), “exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption.”

⁵ The Taxpayers have not argued that Subsection 59-2-503(4) is applicable for any of the parcels in question.

DEVELOPMENT-1, the parcels in appeal no. 19-2272 are all owned by HOUSING DEVELOPMENT-2, Thus, the requirement of identical legal ownership is satisfied. “Other eligible acreage” is defined in Utah Code Ann. §59-2-502(5) as land that is five or more contiguous acres, eligible for assessment under the FAA, and land located in the same county as land described in Utah Code Ann. §59-2-503(1).⁶ Parcel nos. #####, #####, #####, #####, and ##### are each five or more contiguous acres, and are located in the same county as the remaining parcels owned by HOUSING DEVELOPMENT-2. However, the Commission must determine whether parcel nos. #####, #####, #####, #####, and ##### are eligible for assessment under the Farmland Assessment Act, meaning the requirements of Utah Code Ann. §59-2-503(1)(b) are also met, before it can determine whether the HOUSING DEVELOPMENT-2, parcels that are under five acres in area qualify for assessment as greenbelt.

Utah Code Ann. §59-2-503(1)(b) sets forth the second requirement to qualify for assessment as greenbelt, as follows:

- (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...
 - (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.

The Taxpayers have not argued, nor presented any information that would indicate, that an exception provided in Subsection (5) or (6) is applicable in this case. Thus, the Commission must determine whether the subject properties were actively devoted to agricultural use for the 2019 tax year at issue, as well as whether the properties were actively devoted to agricultural use for the 2017 and 2018 tax years.

“Actively devoted to agricultural use” is defined in 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 for the given type of land and the given county or area. Agricultural production is determined in accordance with the Farmland Assessment Act and relevant administrative rules and standards of practice. The parties referred to the agricultural production requirements set forth in Standard 7 of the Standards of Practice provided by the Property Tax Division of the Utah State Tax Commission. The parties agree that the subject property is grazing land. Appendix 7A of

⁶ The Commission notes that the statute also provides that “other eligible acreage” may also include land that is contiguous across county lines with land described in Subsection 59-2-503(1)(a), as provided in Section 59-2-512. In this case, although the entire ranch operation includes land located in both COUNTY-1 and COUNTY, the subject properties are all located in COUNTY.

Standards of Practice 7 sets forth the guidelines for determining the grazing classification based on climate, production, vegetative condition, and vegetative quantity. For grazing land, the production standards are as follows:

TABLE REMOVER FOR, CLASSIFATION AND AUMs/ACRE.

The parties do not agree on the classification for the subject properties. The Taxpayers' representative provided AUM calculations as if the subject properties were classified as Graze II and Graze IV. The Taxpayers' representative calculated the AUMs required for the total acreage of Pasture 6, as well as the total acreage of the ranch. The County provided AUM calculations on only those parcels under appeal, and has the acreage classified as Graze I, II, or III. Of the subject properties, the County determined there were a total of #####-acres of Graze I, #####-acres of Graze II, and #####-acres of Graze III.

Agricultural production requirements are calculated based on acreage. Thus, the Commission must determine the unit of property to be used. The Taxpayers' representative argued that the subject properties should not be looked at individually, but as a whole. In *Stichting Mayflower*, the Appellant owned several parcels of land, though only three of these parcels, totaling #####-acres were at issue in the appeal. The Appellant leased the three parcels to an individual to graze ANIMALS-1 and ANIMALS. The individual grazed animals on the three parcels, as well as #####-acres of his own adjoining land. The Court in *Stichting Mayflower* held that the Court of Appeals erred in determining that one of the parcels in question should be assessed independently of the other parcels. The Court in *Stichting Mayflower* noted that the Farmland Assessment Act appears to indicate a preference for treating contiguous parcels under the same ownership as one unit rather than as separate parcels, citing to Utah Code Ann. §59-2-512, which addresses the treatment of parcels located in more than one county. *Id* at 563. Additionally, the Court in *Judd*, 846 P.2d #####-acre farm. Both cases looked at whether the properties had been operated as a single agricultural unit.

Like the lessee in *Stichting Mayflower*, the proffered affidavit of NAME-1 indicates that he operates an ANIMAL ranch totaling #####-acres that he has broken into ##### open pastures. The ANIMAL ranch includes land in both COUNTY-2 and COUNTY. The subject properties are a part of the overall ranch, and are located in COUNTY in the area designated as Pasture 6 by NAME-1. The Commission finds that parcel no. #####, owned by HOUSING DEVELOPMENT-1, and the parcels under appeal in 19-2267 (#####), 19-2269 (#####), and 19-2271 (#####) should be considered together as part of Pasture 6 of the ranch operated by NAME-1, consistent with the ruling in *Stichting Mayflower*. The Court included the acreage owned by both *Stichting Mayflower*

and the lessee in determining whether the AUM capacity per acre was met. *Stichting Mayflower*, 6 P.3d at 565-566.

The Commission finds that the properties owned by HOUSING DEVELOPMENT-2 should be considered separately from the parcels previously addressed. Many of the parcels owned by HOUSING DEVELOPMENT-2 are less than five acres in size. Those parcels qualify for assessment as greenbelt only if the requirements of Utah Code Ann. §59-2-503(1)(a)(i) are met. As discussed previously, the parcel must be used in conjunction with other eligible acreage, and the land and the other eligible acreage must have identical legal ownership. The statute does not contemplate agricultural use with properties owned by other individuals or entities for those properties that are less than five acres. Thus, the Commission finds that in determining whether those parcels qualify for assessment as greenbelt, only those parcels owned by HOUSING DEVELOPMENT-2 are to be considered in determining whether production standards are met.

The Commission finds the entire ranch is not the appropriate acreage for calculating whether the subject properties are actively devoted to agricultural use. Utah Code Ann. §59-2-512 provides that if contiguous land is in agricultural use, in one ownership, located in more than one county, the total area and production of the contiguous land are to be the basis of determining whether it qualifies for assessment as greenbelt. In this case, though the ranch is located in more than one county, it is not under one ownership. Thus, under a plain reading of Utah Code Ann. §59-2-512, the entire ranch is not the appropriate acreage for calculating whether the subject properties are actively devoted to agricultural use.

The County provided the only proffer of ANIMALS on the ranch for the 2019 tax year. RESPONDENT-3 visited the ranch in MONTH, MONTH, MONTH, and MONTH of 2019. She proffered that she saw ANIMALS on the COUNTY-2 side of the ranch in MONTH, MONTH, and MONTH. However, RESPONDENT-3 stated that she did not see any ANIMALS on land located in COUNTY during those visits to the ranch. RESPONDENT-3 visited the ranch again in MONTH of 2019 and saw “quite a few” ANIMALS on land located in COUNTY. It appears that the County does not dispute that there were at least some ANIMALS on the ranch in 2019. However, the Taxpayers have the burden of proof. As noted previously, parcel no. #####, owned by HOUSING DEVELOPMENT-1, and the parcels under appeal in 19-2267 (#####), 19-2269 (#####), and 19-2271 (#####) should be considered together as part of Pasture 6 in determining whether the agricultural production standards were met. Additionally, the parcels owned by HOUSING DEVELOPMENT-2 are to be considered as a separate unit when determining whether the agricultural production standards were met. The Taxpayers did not proffer any evidence or testimony as to the number of ANIMALS that were on the ranch, the number of days the ANIMALS

were on the ranch, and which parcels the ANIMALS were on for 2019. The Taxpayers have not shown that either the four parcels considered together as part of Pasture 6, or the HOUSING DEVELOPMENT-2 parcels were actively devoted to agricultural use in 2019.

In addition to showing that the property was actively devoted to agricultural use for the year in question, the Taxpayers must also show that the land was actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed. The Taxpayers provided an affidavit of NAME-1, who operated a ranch that included the subject properties. NAME-1's affidavit indicated that he had ##### pair of ANIMALS on the ranch in 2018 that he moved between the pastures, and included a photograph of ANIMALS in Pasture 6 in MONTH of 2018. Based on the production requirements calculated by the County, and NAME-1's affidavit indicating the number of ANIMALS that were on the ranch, the production requirements may have been met for 2018. However, as with 2019, the Taxpayers did not proffer any evidence or testimony as to the number of ANIMALS that were on the ranch, the number of days the ANIMALS were on the ranch, and which parcels the ANIMALS were on in 2017. The Taxpayers have not shown that the subject properties, the four parcels together as part of Pasture 6⁷, and the unit of HOUSING DEVELOPMENT-2 parcels, were actively devoted to agricultural use in the two successive years immediately preceding the year for which the land is being assessed.

The Taxpayers have not shown that the subject properties, as identified above, were actively devoted to agricultural use in 2019. Additionally, while the production requirements may have been met for 2018 based on NAME-1's affidavit, the Taxpayers have provided no evidence of agricultural production on the subject properties for 2017. The Taxpayers have failed to show that the subject properties were actively devoted to agricultural use during the 2019 year in question and the two immediately preceding tax years. Thus, the County properly withdrew the properties from assessment as greenbelt.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the County properly withdrew the subject properties from assessment as greenbelt, and denies the appeal. It is so ordered.

⁷ Parcel nos. ##### (19-2272), ##### (19-2267), ##### (19-2269), and ##### (19-2271).

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 _____, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner