11-23
TAX TYPE: PROPERTY TAX- LOCALLY ASSESSED
TAX YEAR: 2010
DATE SIGNED: 10-5-2012
COMMISSIONERS: B. JOHNSON, M. JOHNSON, M. CRAGUN
COMMISSIONER D. DIXON DISSENTS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF RURAL COUNTY, UTAH, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 11-23 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2010 Judge: Jensen

This Order may contain confidential "commercial information" within the meaning of Utah Code Section 59-1-404, and is subject to disclosure restrictions as provided in that section and Utah Admin. Rule R861-1A-37. In accordance with Section 59-1-404(4)(b)(iii)(B), Utah Admin. Rule R861-1A-37(6) prohibits parties from disclosing commercial information obtained from the opposing party to nonparties outside of the hearing process. As provided by Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the 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:
Marc B. Johnson, Commissioner
Michael J. Cragun, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER, Taxpayer
REPRESENTATIVE FOR TAXPAYER, Attorney for the Taxpayer
For Respondent: RESPONDENT-1, RURAL COUNTY Assessor
RESPONDENT-2, RURAL COUNTY Attorney's Office, for the County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 23, 2012. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The-above-named Petitioner ("the Taxpayer") is appealing the assessed value of the subject

property as set by the RURAL COUNTY Board of Equalization (the "County") for the lien date January 1, 2010.

2. The subject property, parcel no. #####, is located at approximately ADDRESS in CITY-1, Utah. The County Assessor had set the value of the subject property, as of the lien date, at $$$$$ ($$$$$ per acre). The County Board of Equalization sustained the value. At the formal hearing, the Taxpayer requested that the value be reduced to $$$$$ ($$$$$ per acre). The County requested that the value set by the board of equalization be increased to $$$$$ ($$$$$ per acre).

3. The subject property is an unimproved #####-acre lot with GC (general commercial) zoning. As of the lien date, it was burdened with a colony of Utah prairie dog, a species with endangered species' protection. Applicable law prohibits improvement of property with prairie dog without steps to mitigate loss of habitat.

4. The Taxpayer relies on a September 10, 2009 Initial Hearing Decision of the Utah Tax Commission in case number 09-0435 as well as the Initial Hearing Decision in this case, no. 11-23. In both of those decisions, the Commission ordered that the value of the subject property for tax years 2008 and 2010 should be set at the value for land limited to agricultural uses. The evidence before the Commission in both cases did not show any uses that would bring a higher value to the subject property that were "physically possible, legally permissible, financially feasible, and maximally productive." Utah Tax Commission Initial Hearing Decision 09-0435, *citing* THE APPRAISAL OF REAL ESTATE (12th ed.). In case no. 09-0435, the Commission directed the County to "place a value consistent with property that is being used for agricultural uses that reflect the conditions that would be allowed by [the Utah Division of Wildlife Resources]." In the initial hearing decision in this case, 11-23, the Commission, at the specific request of the RURAL COUNTY Assessor, clarified that in case no. 09-0435, the order to value the subject property as agricultural land meant the value of agricultural land that was not being held for future speculative development uses. The Commission adopted a value of $$$$$ per acre, noting that this figure was the only evidence before it for agricultural land and that the County had not presented evidence of market value to refute a value of $$$$$ per acre.[1]

5. In the formal hearing in the case now before the Commission, the Taxpayer presented a September 3, 2010 report from the United States Department of Agriculture (the "USDA Report") indicating

[1] The County's timely request for a formal hearing in this case no 11-23 prevented the initial hearing order from becoming final or having binding effect on the parties. *See* Utah Administrative Rule R861-1A-29(2)(a)(iv).

that as of January 1, 2010, the "average Utah cropland value was $$$$$ per acre." On the basis of the USDA Report and the rationale as expressed by the Commission in case no. 09-0435 and in the initial hearing decision in this case no 11-23, the Taxpayer requested a value of $$$$$, or approximately $$$$$ per acre for the ##### acre subject property.

6. The Taxpayer submitted newspaper articles, memoranda, correspondence, and similar documents to show that there was concern and controversy surrounding the prairie dog issue in RURAL COUNTY. The Taxpayer argued that this created a significant stigma associated with any land with active or even suspected prairie dog colonies present.

7. The County argued that a statewide average value included many types of agricultural land such as marginally-productive land in the west desert and would thus not be as reliable to value the subject property as would comparable sales near the subject property. The County also challenged any assertion that the only legally permissible use of the subject property was as agricultural land.

8. The county provided an appraisal, prepared by NAME-1. It was the appraiser's conclusion that the value for the subject property as of the lien date at issue was $$$$$. The appraiser relied on the sales of four comparable properties with sale dates from December 2003 to November 2009. The appraiser made adjustments to account for differences between the subject property and the comparable sales for factors such as time of sale, location, lot size, and zoning. The subject property and the comparable properties are as follows:

Sale Date	Sale Price	Acreage	Price/Acre	Proximity	Adj. Value/Acre
Subject Property		#####		0.00 miles	
10/12/2005	$$$$$	#####	$$$$$	0.13 miles	$$$$$
12/12/2003	$$$$$	#####	$$$$$	1.13 miles	$$$$$
11/19/2009	$$$$$	#####	$$$$$	2.54 miles	$$$$$
05/12/2008	$$$$$	#####	$$$$$	15.06 miles	$$$$$

The appraiser reconciled these to a final value of $$$$$ per acre or a rounded value of $$$$$ for the #####-acre subject property. The appraiser testified that the comparables that sold in 2005 and 2003 were within recognized prairie dog habitat areas. The appraiser did not present evidence that any of the four comparable sales had active prairie dog colonies as of their respective dates of sale. The two comparables that sold in 2009

and 2008 were not in habitat areas.

9. The appraiser deducted fees of $$$$$ that would be associated with prairie dog mitigation. In addition to this, the appraiser made further deduction for uncertainty and stigma associated with active colonies of prairie dog. He testified that he made analysis of sales of properties with various types and degrees of stigma uncertainty. He determined that typical discounts were in the range of 15% to 45% and that the appropriate deduction for the subject property was $$$$$ (25%) in addition to $$$$$ for mitigation fees. This amounted to a total deduction $$$$$ to account for the effect of prairie dog colonies on the subject property. Deducting $$$$$ from $$$$$ resulted in a final rounded value for the subject property of $$$$$.

10. The appraiser concluded that the highest and best use of the property would be to hold for speculation.

11. The County Assessor provided testimony that she was aware of properties in the area of the subject property that had sold with active prairie dog colonies present. She provided details for three sales:

a. A ##### acre parcel of commercial property approximately five miles north of the subject property that sold in February 2006 for $$$$$ ($$$$$ per acre).

b. A ##### acre parcel of commercial property approximately two miles north by northeast of the subject property that sold in June 2007 for $$$$$ (approximately $$$$$ per acre). The County Assessor testified that the active prairie dog colonies were on the back portion of this property and did not know how much mitigation was necessary for the parcel.

c. A ##### acre parcel of commercial property that she described as "north of the old coke plant" that sold in August 2007 for $$$$$ or approximately $$$$$ per acre.

12. When asked, the County Assessor indicated that the County was providing evidence of the above-listed three sales to show that properties with active prairie dog colonies did sell; the County was not presenting the sales as direct comparables to value the subject property.

13. The County valued the subject property for 2010 at $$$$$ ($$$$$ per acre) in an attempt to comply with the Commission's order in case no. 09-0435. If not for the Commission's order in 09-0435, the County would have valued the subject property consistent with its land valuation guideline. Under the County's guideline, the subject property would have been valued at $$$$$ per acre for 2009. For the January 1, 2010 valuation, the County factored land near the subject property downward by 15% for a 2010 value of $$$$$ per acre. These values assumed no prairie dog issues with the subject property. The County Assessor

testified that the County would adjust its guideline values downward 30% to account for the presence of prairie dog. This would lower the valuation from $$$$$ per acre to $$$$$ per acre or a rounded value for the #####-acre subject property of $$$$$.

14. The County provided witness testimony regarding prairie dog mitigation programs available to landowners in RURAL COUNTY. Three of those programs required the ability to complete property improvements within a certain time, as follows:

a. The Habitat Conservation Plan ("HCP") would allow a landowner to pay a fee based on an estimate of the number of prairie dog that would be displaced by improvements to the land. The program required a "take" for each prairie dog that would be killed or displaced by the land improvements. The HCP program was available on the lien date, but was limited to ten takes per applicant. Before 2009, there were insufficient takes available to remedy prairie dog issues at the subject property. In 2009, the number of takes available was sufficient that one property owner applied multiple times and received sufficient takes to displace 25 prairie dog and allow improvement of his property. The "improvement" in that case amounted to grading and then spreading of six inches of gravel that effectively prevented prairie dog from returning to the property. However, to gain any benefit from the HCP, a property owner had to make payment for the takes within 30 days of receiving approval and commence improvements within 60 days of payment. Improvements would have to continue through completion. If a property was not improved or if progress was halted, the applicant under the HCP would have to repeat the application process. The cost for the Taxpayer to have purchased "takes" for the subject property would have been $$$$$ as of the lien date. The County's appraiser appears to have relied on this figure in calculating remediation amounts for the subject property.

b. Another program allowed the owner of property burdened by prairie dog colonies to purchase ten acres of School and Institutional Trust Lands Administration (SITLA) land for every acre of land to be developed. This program was available as of the lien date, but required completion of improvements similar to the HCP.

c. A mitigation payment program allowed a property owner to make payments into a program that would allow for the creation of additional prairie dog habitat. This option was available as of the lien date, but required completion of improvements similar to the HCP.

15. The County provided testimony regarding three prairie dog mitigation programs that did not require the ability to complete property improvements within a specified time:

a. The Little Horse Valley Mitigation Program ("LHV") allowed a land owner to purchase credits in a land bank of 1,000 acres of land specifically purchased for prairie dog mitigation. The number of credits required to clear an acre of ground were determined by the quality of prairie dog habitat that a land owner wished to clear. Low quality habitat required seven credits per acre; medium quality habitat required ten credits per acre; high quality habitat required thirteen credits per acre. The County presented testimony from a county planner and a wildlife biologist, both of whom have roles in administering the LHV. Their testimony was that the subject property would most likely be considered medium quality prairie dog habitat and would thus require ten credits per acre or 33.9 credits for the #####-acre subject property. The credits cost $$$$$ each or $$$$$ to clear the subject property. Once granted, the permit received under the LHV runs with the land into perpetuity. The county planner testified that while environmental groups could challenge the program, they would have to do so before the issuance of permits under the program. The planner and the wildlife biologist testified that once the permits are granted, they are not susceptible to collateral attack. The wildlife biologist testified that the LHV became available in 2009 and was therefore available for a landowner as of January 1, 2010.

b. The Utah prairie dog Credit Exchange Program ("Exchange Program") is a program similar to the LHV, with two exceptions. First, its credits cost $$$$$ each rather than $$$$$ each. Second, it required fewer credits per acre to gain a permit to clear a property into perpetuity. Under the Exchange Program, low quality habitat requires six credits; medium quality habitat requires eight credits; high quality habitat requires ten credits. The Exchange Program was not available as of January 1, 2010.

c. Under a direct mitigation program, a land owner had the ability to gain approval to create new prairie dog habitat on private land. This required the approval of program administrators and was similar to a plan for direct mitigation with a pending project, but did not require immediate land improvement. This program was available on January 1, 2010.

16. The County presented mitigation plans as a cost to cure under its sales comparison approach to value. Under this argument, the County used the $$$$$ per acre value that its land guideline would suggest for

the subject property for a value of $$$$$ for the #####-acre subject property. From that, the County subtracted $$$$$ for the cost of a permit under the LHV to clear the subject property into perpetuity. Under this approach, the net rounded value of the subject property would be $$$$$.

APPLICABLE LAW

1. All tangible taxable property 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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. "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. (Utah Code Ann. 59-2-102(12).)

DISCUSSION

In this case it is first necessary for the Commission to determine whether a presumption of correctness applies to the $$$$$ value set by the board of equalization for the subject property for the 2010 tax year. Generally, a presumption of correctness applies to a value determination by a body such as a county board of equalization. *See Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *see also Utah Power & Light Co. v. Utah State Tax Commission*, 590 P.2d. 332 (Utah 1979). The presumption of correctness "does not arise, however, unless and until available evidence supporting the original property valuation is submitted to the Commission." *Utah Railway Company v. Utah State Tax Commission,* 2000 UT 49, ¶9, 5 P.3d 652, 655. Without the presentation of available evidence, the Commission has "no evidence before it upon which to base" a decision to adopt an original valuation. *Id.* at ¶8. From the Court's language requiring the presentation of "available" evidence, it is clear that a party need not obtain additional evidence, such as an appraisal, to cause the Commission to accord a presumption of correctness to an original valuation. Rather, it is sufficient that a party submit the evidence that is available to it. *See id.* at ¶9.

Utah Code Ann. §59-2-1006(2)(b) required that the RURAL COUNTY Auditor supply to the

Commission a copy the minutes of the proceedings of the county board of equalization and all documentary evidence received in that proceeding. The file provided to the Commission indicates that in this case, the auditor complied with Utah law and provided those items. This enables the Commission to comply with a requirement that it "*shall* consider, but is not limited to, the facts and evidence submitted to the county board." Utah Administrative Rule R861-1A-9(6)(a) (emphasis added). More important, it helps to trigger the presumption of correctness that arises under *Utah Railway* when a party submits available evidence in support of a board of equalization value.

Although the County in this case abandoned the board of equalization value and argued for a higher value, the Commission may nevertheless consider information submitted in support of that higher value as additional support of the board of equalization value. *See Utah Railways* at ¶8 (presumption of correctness did not arise because party abandoned original position *and* failed to introduce evidence supporting original value).

Considering the appraisal submitted in support of the County's $$$$$ valuation request, the Commission notes that the County's appraiser considered stigma deductions between 15% and 45%. The Commission is aware that the appraiser has significant experience and relied on that experience in settling on a deduction of 25% for the stigma associated with active prairie dog colonies. Nevertheless, the appraiser's testimony cannot rule out different stigma percentages or different applications of the stigma percentages.

The board of equalization value of $$$$$ ($$$$$ per acre) is approximately 62% less than the $$$$$ value per acre that the County's appraiser used for land that did not have the prairie dog stigma associated with the subject property. The difference between the $$$$$ value of land with no stigma and the $$$$$ per acre used by the board of equalization makes sense if the Commission were to recognize a 62% stigma for active prairie dog colonies. Given the evidence presented by the Taxpayer of the scope and notoriety of the prairie dog problem in RURAL COUNTY, the Commission does not find a 62% figure for prairie dog stigma unreasonable. On that basis, the Commission finds additional support for the board of equalization value of $$$$$ ($$$$$ per acre).

The County's appraisal contains additional support for a value of $$$$$ per acre in its comparable sales. The County's appraiser used four comparables, but three of those comparables had sale dates that significantly predated the January 1, 2010 valuation date for this case. One was in 2005, one was in 2003, and one was in 2008. The remaining sale was in November 2009 and was a #####-acre parcel that sold for $$$$$. The appraiser made a $$$$$ negative adjustment for lot size that appears warranted given a #####-acre

comparable for a #####-acre subject property. The appraiser's $$$$$ adjustment for possible future residential use for the comparable compared with possible future commercial use for the subject property appears less well supported given the speculative nature of land held for future development. Deducting the appraiser's $$$$$ adjustment to the $$$$$ per acre sale price gives a final value of $$$$$. To equal the $$$$$ value set by the board of equalization value would require a 50% adjustment for stigma. For the reasons discussed in connection with a 62% stigma, the Commission notes there is no evidence that would rule out a 50% stigma deduction.

From the evidence in the appraisal submitted by the County, it is also reasonable to conclude that a prospective buyer would consider remediation methods other than the one relied on by the County's appraiser. For example, the Commission notes that deducting the $$$$$ per acre cost of the Little Horse Valley Mitigation Program from the $$$$$ per acre value of land with no prairie dog problem would indicate a remediated value of $$$$$ per acre. While the County presented evidence that remediation under this program would allow building at any time, it did not rule out the prospect of collateral attack by an individual or group concerned with prairie dog habitat. More important, the County did not demonstrate that a prospective buyer would view remediated land as equal in value to land that had no prairie dog issues. If the stigma associated with remediated land were near 50%, there would be another data point that would support the $$$$$ value set by the board of equalization.

Given the presentation of available evidence in support of the board of equalization value, there is good cause for the Commission to apply a presumption of correctness to that value and to impose a burden of proof on any party seeking a change in value. That burden is to (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by the Taxpayer. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). In this case, both parties are seeking a change from the $$$$$ value set by the board of equalization. Each thus has a burden of proof to show error in that value.

The Taxpayer's evidence in support of its valuation request is a USDA Report indicating that as of January 1, 2010, the average Utah cropland value was $$$$$ per acre. That was the most persuasive evidence presented in the initial hearing in this case for two reasons. First, the County had not effectively refuted the Taxpayer's contention and a prior Commission decision finding that agriculture was the only legally permissible use available for the subject property. Second, the Taxpayer's evidence was the only evidence

regarding market value. At the initial hearing, the County presented no evidence of market value.

At the formal hearing, the County presented evidence of the sales of three properties that sold with active prairie dog colonies at the time of sale and the sales of two properties that were within recognized prairie dog habitat at the time of their sale. However, none of these sales were within 2-3 years prior to the lien date. In fact, there is no evidence of a sale of land with active prairie dog colonies during the 2008 tax year for Appeal 09-0435. Nor did the County present any evidence that the property could be used for anything other than agricultural purposes in its "as-is" condition with prairie dog on the property. Finally, there is no evidence that any of the sales were investments made for speculation as suggested in the appraiser's highest and best use analysis. Although this evidence was not presented at previous hearings for the subject property, there is no basis to conclude that there is a market for the subject property beyond the agricultural market unless the property is mitigated.

The Commission considers the County's sales comparables. It is noteworthy that the County was aware of the sales of three properties with active prairie dog colonies but did not present them as sales comparables for the subject property. The County provided no basis to establish that these sales were valid comparables. Their sale dates in 2006 and 2007 weaken them considerably as comparable sales, but the Commission notes that these are more recent than two of the sales comparables relied on by the County's appraiser. Given that these three sales are the only possible evidence of sales of properties burdened by active colonies, the Commission is concerned that the County chose not to present the properties as comparable sales.

Nonetheless the Commission is concerned over the lack of evidence of any sales or any kind of market activity for properties associated with prairie dog since 2005, based on the appraiser's comparable sales or 2007 according to those provided by the County. In any event, it is clear from the evidence before the Commission that by mid-2007 sales of prairie dog habitat land had completely stopped, whiles sales of other land may have slowed, but had not stopped.

The County's argument would be considerably more persuasive if even one sale of such property had occurred within the last two years. That no sales have taken place of property located in habitat areas suggests that a discount of even as much as 45% is insufficient to attract willing and knowledgeable buyers. In fact, the County has not even presented an offer from a buyer willing to purchase property within prairie dog habitat. Accordingly, the County has not met its burden to show that the value of the property is $$$$$; much less the $$$$$ estimated by the appraiser.

CONCLUSIONS OF LAW

1. The $$$$$ ($$$$$ per acre) set by the board of equalization is entitled to a presumption of correctness.

2. Notwithstanding the presumption of correctness attached to the $$$$$ board of equalization value, the Commission finds adequate support to sustain the board's value not merely on a presumption of correctness, but on independent evidence presented by the County.

3. The evidence, taken as a whole, does not support the County's requested value of $$$$$ or the Taxpayer's requested value of $$$$$. It does, however, provide ample support for the board of equalization value of $$$$$.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission sustains the $$$$$ value determined by the board of equalization for the subject property as of January 1, 2010. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

Michael J. Cragun
Commissioner

COMMISSONER D. DIXON DISSENTS

I respectfully dissent.

I hold the majority's finding that it received evidence in support of the BOE value is in error.

In the case before the commission, the BOE minutes show the Assessor's value was sustained, but there is no documentary evidence in the record submitted to the Commission showing why the value of $$$$$ per acre was sustained. There is no documentation that there was any evidence at all provided to the BOE by the Assessor to support the $$$$$ per acre or $$$$$ total value assessed to the subject property. The Utah Supreme Court case *Utah Railways* presumes there is evidence supporting the original valuation and as such states the evidence supporting the original valuation is to be submitted to the Tax Commission. In the case before us, there is no document that shows the BOE received from the Assessor evidence in support of the original assessment. For *Utah Railways* to be satisfied there should be a BOE record that shows the BOE received evidence in support of the original value. This can be the BOE minutes summarizing the evidence provided or copies of documents received as evidence. There is no record of the County submitting evidence supporting the original assessment at proceedings either at the County or Commission level. For these reasons, the original assessment should not be accorded the presumption of correctness.

I also respectfully disagree with the majority's final determination of value. The Commission was provided no evidence of comparable sales to the subject property. The certified appraiser testifying on behalf of the county provided only one sale closest to and prior to the lien date; however, it was not similarly zoned and not proven to be a comparable to the subject property. Neither party provided sales of prairie dog inhabited land in the year prior to the lien date. As the majority correctly concluded, there is no basis to conclude that there is a market for the subject property beyond the agricultural market unless the property is mitigated; however, the Commission has no evidence before it of sales of agricultural land, similar to and in proximity to the subject property, and in the year prior to the lien date.

While not a finding of fact, it is in the record of this formal hearing that the Assessor testified that for equalization purposes, the previous assessor used the value assessed on other farmland near the subject property as the value to assess the Subject Property. This value of adjacent farmland was $$$$$ an acre; however, it was also testified by the Assessor that it was not known which, if any of the farmland parcels used to determine an assessed value for the Subject Property had any prairie dog or the amount of prairie dog if any. The Assessor also testified the $$$$$ per acre values were adjusted to $$$$$ per acre based on a county factor for general decline in the value of sales, but there was no testimony that the comparable farmland values used were adjusted for stigma associated with or the mitigation for the presence of prairie dog. The Assessor also testified that of the sales of agricultural land in 2009 prior to the lien date the land was immediately developed

indicating there was no need for prairie dog mitigation.

Based on the testimony by the Assessor, the evidence submitted and the testimony by the other parties, I believe the only agricultural land value the Commission has that is comparable to the subject property are the $$$$$ per acre 2009 values of agricultural land used by the previous Assessor to set the assessed value as testified by the current Assessor. It was testified the $$$$$ per acre values were adjusted to $$$$$ per acre based on a county factor for general decline in the value of sales, but there was no consideration of stigma associated with or the mitigation for the presence of prairie dog. Based on this testimony, I hold the $$$$$ per acre value, and adjusted to $$$$$ per acre, should be further adjusted in consideration of the stigma of or mitigation for prairie dog presence, as the testimony supports it was not considered.

The Property Owner did not provide any information or options for stigma adjustments for or costs to mitigate the presence of prairie dog. The County provided testimony on stigma adjustments and mitigation options. These are summarized as follows:

1. The Assessor stated she would have applied a 30% adjustment.
2. The certified appraiser testifying on behalf of the county stated the comparable sales used in his appraisal support an adjustment of anywhere between 15% to 45%, and that mitigation fees would be $$$$$.
3. The wildlife biologist testifying on behalf of the county provided six options for mitigation. Five of the six were either not available, did not provide the costs to cure, or were not supportive of the highest and best use determined by the appraiser which was to hold for speculation. Only one, the Little Valley Horse (LHV) program, seemed possible and was given a cost of $$$$$.

Based on this information, I find there are two methods for determining the value of the subject property.

The first method is based on applying a stigma percent adjustment as advanced by the County Assessor and the appraiser. The appraiser stated $$$$$ should be deducted for mitigation fees, and an adjustment of up to 45% for stigma could be warranted, but the appraiser's stigma adjustment was based on comparative sales significantly prior to the lien date, with the exception of one sale in 2009, but that was zoned residential, not commercial like the subject property and being held for possible future development. For this reason an adjustment greater than 45% is warranted. As there is no evidence to the contrary, a 55% adjustment seems

reasonable.

The second method is based on mitigation. The most plausible and reasonable mitigation method appears to be the Little Horse Valley (LHV). The amount to mitigate was given as $$$$$; however, there was still a question as to whether there would be a legal challenge prior to permits being issued.

These methods and resulting values are outlined and shown in the chart below.

First Method	Second Method
$$$$$ #####-acres @ $$$$$/acre -$$$$$ 55% for stigma = $$$$$ -$$$$$ mitigation fees = $$$$$ resulting value Or $$$$$ per acre	$$$$$ #####-acres @ $$$$$/acre -$$$$$ LHV mitigation = $$$$$ resulting value Or $$$$$ per acre

Reconciling the resulting values for the unknown stigma, the speculative nature of future development, and the lack of sales of prairie dog inhabited land leading up to the lien date to provide a possible market value, the maximum value of the subject property would not be more than $$$$$ per acre. It is possible the value could be as low as $$$$$ or less based on perceived stigma and a legal challenge with the LHV mitigation, but the Commission is without evidence to determine the real possibility of litigation, or a more precise percentage adjustment for stigma.

I find the property owner did not provide enough evidence to support the requested value of $$$$$ per acre for a total value of $$$$$. I also find the County did not provide enough evidence to support its requested value of $$$$$ per acre or a total value of $$$$$.

Based on the evidence and testimony I find the value of the subject property as of the lien date to be $$$$$ per acre or $$$$$.

D'Arcy Dixon Pignanelli
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 in accordance with 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. §§59-1-601 and 63G-4-302 et. seq.