

APPEAL #:20-2025

TAX TYPE: PROPERTY TAX

TAX YEAR: 2020

DATE SIGNED: 2/21/2023

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

BEFORE THE UTAH STATE TAX COMMISSION

<p>COUNTY-1 ASSESSOR,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, EX REL PROPERTY OWNER,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 20-2025</p> <p>Parcel No: #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2020</p> <p>Judge: Halverson</p>
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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:

Jennifer N. Fresques, Commissioner
Shannon Halverson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONERS REP-1, Deputy COUNTY-1 Attorney
PETITIONERS REP-2, FAA Analyst, COUNTY-1

For Respondent: No One Appeared

For ex rel Party: RESPONDENTS REP-1, Trustee of PROPERTY OWNER
RESPONDENTS REP-2, Attorney, Smith Hartvigsen, PLLC
RESPONDENTS REP-3, Surveyor, Witness

RESPONDENTS REP-4, Witness

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 22, 2022, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue before the Tax Commission at the Formal Hearing is whether Parcel No. ##### should be withdrawn from assessment under the Farmland Assessment Act and assessed rollback taxes. The subject property is owned by the PROPERTY OWNER (“Property Owner”).

2. The COUNTY-1 Assessor’s Office (“Assessor”) determined that the subject property no longer qualified for assessment under the Farmland Assessment Act (“FAA” or “greenbelt”), withdrew the subject property from assessment under the FAA, and assessed rollback taxes that totaled \$\$\$\$¹.

3. The COUNTY-1 Board of Equalization (“County BOE”) reinstated the assessment of the subject property under the FAA and abated the rollback taxes assessed by the COUNTY-1 Assessor’s Office². The Assessor appealed the COUNTY-1 Board of Equalization’s decision to the Tax Commission³.

4. The subject property is a ##### acre parcel that is located at ADDRESS-1. The front portion of the subject property has a residence, a driveway, a yard associated with the residence, a large garage/storage building, sheds, chicken coops, rabbit hutches, and an area with fruit trees, grape vines, and vegetable garden space. There are several pastures and an animal corral area located in the front portion of the subject parcel. The back portion of the subject parcel is a large open pasture that is leased for cattle grazing.

5. The Assessor’s representatives stated at the Formal Hearing that Utah Constitution Article XIII, Section 2 requires taxes to be equal and uniform. They noted that the Utah Constitution and Utah law have made it possible for land that is used in agricultural production to be valued for agricultural purposes. They argued that if a property does not qualify for assessment under the FAA, it is not fair to all of the other taxpayers to assess property that does not meet every statutory requirement under the FAA as farmland.

¹ See Petitioner’s Exhibit P-1, Ex Rel’s Exhibit R-2.

² Ex Rel’s Exhibit R-5.

³ Pleadings.

6. The Assessor's representatives stated that the subject parcel was removed from assessment under the FAA because the Assessor determined that the subject parcel did not meet the ##### acre requirement of the FAA as outlined in Utah Code Ann. §59-2-503. They noted that the subject parcel has a homesite and stated that the homesite, as well as the garage and other portions of the property that are associated with the homesite, are excluded from the calculation for FAA assessment under the law and the Commission's standards of practice. They argued that, as a simple matter of mathematics, the subject parcel does not meet the threshold ##### acre requirement to be eligible for assessment under the FAA.

5. The Assessor's FAA analyst provided testimony at the Formal Hearing that the subject parcel's eligibility for assessment under the FAA came under review because she noted that the subject parcel is just over ##### acres and has a homesite on it. She stated that she reviewed the subject property to determine whether it is eligible for assessment under the FAA. She stated that she looked at the subject parcel's history and aerial photographs of the subject parcel as part of her review. She indicated that she also looked to see if the subject parcel could be grouped with other qualifying parcels to qualify for assessment under the FAA. She indicated that, during that process, she determined that the subject parcel is the only parcel that is owned by the PROPERTY OWNER, and, therefore, is not under identical legal ownership and could not be grouped with any other parcels to qualify for assessment under the FAA.

6. The Assessor's FAA analyst stated that she then took different measurements of the subject parcel to determine whether the subject parcel met the threshold ##### acre requirement to qualify for assessment under the FAA. She indicated that she took several measurements including: the home, the home and the yard, and the home and the garage. She stated that she also looked closer at an area on the side of the home that had trees and tall grasses on it and indicated that it looked like it was part of the home use of the subject parcel. She stated that, after taking all of the measurements, she determined that the subject parcel did not have ##### acres in agricultural production.

7. The Assessor's FAA Analyst stated that she did review the subject parcel's history and noted that the subject parcel had been broken off from a larger parcel, and the back half of the larger parcel had been split off and sold, leaving the remaining ##### acres⁴. She stated that she conducted onsite inspections of the subject parcel twice. She indicated that, during one inspection, the gate was locked and she was not able to gain access to the property, but she indicated that she took photographs of the subject parcel from the road during that inspection. She stated that, during the second inspection, she was able to access the subject parcel with the

⁴ See Petitioner's Exhibit P-1.

residents that were residing on the subject parcel and was able to take photographs of the subject parcel.

8. The Assessor's representatives submitted satellite aerial photographs and measurements of the subject property⁵. The Assessor's FAA Analyst noted that the area outlined in blue in the first aerial image includes the boundaries of the subject parcel, which is the total ##### acres⁶. She noted that the photographs showing the areas surrounding the home site have tall grasses, which she indicated demonstrates that the area has not been grazed⁷. She noted that, in the photographs, the areas that are more green demonstrate that those areas have been grazed while the areas that are dry, yellow, and brown with tall grasses have not been grazed. She stated that she also looked for trails, watering troughs, and other signs that indicate livestock were present on the property. She acknowledged that livestock are not always present when she inspects a property because livestock grazing is rotational but noted that there are typically signs on a property that livestock have been present and grazing.

9. The Assessor's FAA Analyst noted that the photographs show the front portion of the residence and the large building/garage/shed that is located next to the residence on the subject parcel. She noted that the photograph shows that there is a front yard that is a designated residential use area. She noted that there is a driveway and a garage. She also noted that the back portion of the residence also has an overgrown, yellow look from the old tall grasses. She noted there are a number of different sheds that are associated with the subject parcel and the residence that are shown in the aerial photographs.

10. The Assessor's FAA Analyst indicated that, when she inspected the subject parcel with the residents, she learned that the large building/garage/shed is a cinderblock building that was built by one of the family members that previously resided at the property. She noted that the family member was a welder and the building was his welding shop. She stated that three sheds in the back of the large building/garage/shed were storage sheds. She indicated that the smaller sheds behind the two storage sheds were three sided lean-to animal shelters, chicken coops, and rabbit hutches. She also noted that, at the time the aerial photographs were taken, there were some older vehicles and trailers parked in the front yard portion of the subject parcel.

11. The Assessor's FAA Analyst provided testimony that, based on her understanding of Utah law, the Tax Commission's standards of practice, and her training, anything that is associated with a residential use is not to be included in the ##### acres of agricultural production. She stated that usually includes the actual footprint of the house and the

⁵ Petitioner's Exhibit P-1.

⁶ *Id.*

⁷ *Id.*

actual footprint of any buildings not used for agricultural purposes. She indicated that it is her understanding that it would also include any landscaping that is associated with the residential use or any personal use gardens. She stated that typically chicken coops do not qualify as agricultural production because there are only a small amount of chickens on a property that are used for personal and family use, and they are not used for commercial purposes. She indicated that chicken coops, rabbit hutches, and gardens that are for regular farmhouse family use are typically included as part of the residential use of a property and are not included as an agricultural use in calculating whether the ##### acre threshold has been met.

12. The Assessor's FAA Analyst noted that one of the Assessor's photographs shows the back portion of the subject parcel⁸. She indicated that an individual had been leasing the back portion of the subject parcel and was running longhorn cattle on the back portion of the subject parcel. She stated that the individual who was leasing the back portion of the subject parcel became the owner of the portion of the property that was sold when it was divided in DATE.

13. The Assessor's FAA Analyst indicated that she prepared different calculations to determine whether the subject parcel met the ##### acre threshold requirement. However, she indicated that, based on her calculations, over an acre of the ##### acres was a residential use. She indicated that she could not find ##### acres of the subject that were actively devoted to agricultural production, with a reasonable expectation of profit, and that she had not received information demonstrating that at least ##### acres were devoted to agricultural production.

14. The Assessor's FAA Analyst indicated that the last aerial image submitted by the Assessor with the area outlined in yellow totaled ##### acres⁹. She indicated that this is the area that she determined had no agricultural production that was associated with a commercial endeavor. She acknowledged that there were some chicken coops in the sheds and a garden behind the residence but indicated that she determined that those were for residential use. Thus, she stated that the portion of the subject parcel outlined in the yellow box is the area that she determined was for residential use that was non qualifying acreage.

15. The Assessor's representatives submitted a quit claim deed that was executed on DATE that transferred ##### acres that included the subject parcel from the PROPERTY OWNER to BUSINESS-1¹⁰. The Assessor's representatives submitted a quit claim deed that was executed on May 1, 2020 that transferred the 5.11 acres that is the current boundaries of the subject parcel from BUSINESS-1. back to the PROPERTY OWNER¹¹.

⁸ Petitioner's Exhibit P-1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

16. The Assessor's representatives submitted photographs taken by the Assessor's FAA Analyst of the subject parcel on DATE after the Assessor had withdrawn the subject parcel from assessment under the FAA and assessed rollback taxes. She indicated that, at the Board of Equalization hearing, the Property Owner's representatives asserted that they had grapes, fruit trees, and other products that they sold and were a part of their agricultural production. She indicated that the first image was a photograph of the back of the house and noted the overgrowth and that there was a chain link fence with grape vines growing on it. She also noted that in the subsequent photographs it shows that there are many clusters of grapes, and the grapes were rotting on the vine. She indicated that she could not see any livestock or production of crops from the grape vines or fruit trees that would contribute and be eligible for agricultural production on the front portion of the subject parcel. She noted that there appeared to be a lot of overgrowth and neglect on the front portion of the subject property.¹²

17. The Assessor's FAA Analyst noted in the submitted photograph of the subject parcel's driveway entrance and residence that the front of the residence does not face the street but faces the side. She noted that there was a gate at the driveway and a fence around the perimeter of the front yard. She also noted that there were tall grasses surrounding the fruit trees in the submitted photographs, and she indicated that the tall grasses show that the area had not been grazed by livestock for that year. She indicated that the trees had not been pruned and did not look like they had been managed well.¹³

18. The Assessor's representatives submitted photographs of the subject parcel taken by the Assessor's FAA Analyst on DATE¹⁴. The Assessor's FAA Analyst indicated that she and the Assistant Deputy Assessor inspected the subject parcel on that day with the residents. She noted that there was a photograph of the cinderblock building that the residents told her was their grandfather's welding shop. She referenced an interior photograph of the building and noted that many of the grandfather's tools were still hanging on peg boards on the walls of the building. She indicated that a large number of items in the building were items that were used in the welding shop. She noted that, towards the top of the building, there are vents and noted that the building is piped with gas, so that he could run his welding machines and keep the building heated while working. She noted that there were plastic bins and some abandoned vehicle seats in the building. She indicated that she did not know what was being stored in the plastic storage bins. She noted that there was storage of miscellaneous items in the building. She also noted that there was an automatic garage door opener to open the garage door. She noted that the exterior

¹² Petitioner's Exhibit P-1.

¹³ *Id.*

¹⁴ *Id.*

photographs show that the building has two garage bay doors and is of cinder block construction. She also noted that there is an access door and a window at the back of the building.¹⁵

19. The Assessor's FAA Analyst indicated that the Assessor assessed rollback taxes for the subject parcel on DATE. She noted that the assessment would relate to any production that was done in 2020 or in 2019¹⁶. She indicated that typically she would be able to see signs of livestock grazing if it had occurred in those years on the front portion of the subject property.

20. The Assessor's FAA Analyst indicated that she was not provided any receipts of sales of fruit or other crops. She acknowledged that the Property Owner's representatives mentioned the sale of fruit and other crops in their appeal, and she indicated that when she looked at the aerial images of the subject property she was unable to tell where the crops were growing. She indicated that she did not realize they were along the fence line until she inspected the subject parcel.

21. The Assessor's FAA Analyst stated that the Assessor did not have information regarding the large building/garage/shed at the Initial Hearing. She indicated that, after she conducted the inspection, the Assessor's office determined that the building was not an agricultural building but rather was a workshop/garage with residential use/storage and was previously used for professional/building welding items for profit and not a typical agricultural use. She acknowledged that no vehicles were stored in the building, it was unlikely that any welding occurred in the building in 2020, and noted that the residents indicated that, at the time of inspection, the garage was used for storage. She acknowledged that there was one bale of hay and one bag of grain on the floor. She also acknowledged that, in her experience, she has seen some farmers weld.

22. The Assessor's FAA Analyst indicated that she spoke with the lessee of the subject parcel, LESSEE-1. She stated that he indicated to her that he never grazes his cattle around the home or anywhere on the front portion of the subject parcel and he only uses the back portion of the subject parcel to graze his cattle. She noted that his communications to her were not consistent with his statement submitted by the Property Owner's representatives. She indicated that the lessee indicated that he had access from the back side to the back portion of the subject parcel from his parcel.

¹⁵ Petitioner's Exhibit P-1.

¹⁶ The Commission notes that Utah Code Ann. §59-2-503(1)(b) requires that the land is actively devoted to agricultural use and has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part. The Commission notes that the two successive years immediately preceding the tax year for which the land is being assessed would be the 2018 and 2019 tax years.

23. The Assessor's FAA Analyst acknowledged that there was an irrigation ditch behind the residence on the subject parcel and acknowledged that irrigation ditches are included as part of the area that qualifies for FAA assessment. She indicated that she determined that the irrigation ditches were not relevant in this appeal.

24. The Assessor's FAA Analyst indicated that the aerial photographs of the subject parcel submitted by the Assessor's representatives were in the fall, between August and November of 2020. She indicated that she determined the acreage in the area outlined in yellow in the Assessor's photograph by measuring the areas that she determined were not associated with agricultural production, she drew a line around those areas, and used the Assessor's Pictometry program to measure the acreage within the outlined area. She indicated that she measured that area before she inspected the subject parcel and did not make any changes to the measurements after she inspected the subject parcel. She indicated that she determined, based on those aerial photographs and measurements, that the area that included the residence, the yard used with the residence, the large building/garage/shed, the sheds, chicken coops, and rabbit hutches, and the area with fruit trees, grape vines, and vegetable garden space totaled ##### acres in size. The County considered that portion of the subject property to be land under the farmhouse and land used in connection with the farmhouse that was not eligible for assessment under the FAA.¹⁷

25. The Assessor's representatives argued that, even if the portion of the subject parcel that was a residential use only amounted to ##### acres, the amount of land that was devoted to agricultural production was far below the required threshold of ##### acres to qualify for assessment under the FAA. They noted that the total acreage of the subject parcel is only ##### acres, and noted that if the portion of the property that is used for residential use exceeds ##### acres then the subject parcel does not qualify for assessment under the FAA. They argued that there is a large portion of the subject parcel that is not actively devoted to agricultural production. They argued that, to be actively devoted to agricultural production, there must be a reasonable expectation of profit and stated that typically the Property Owner will provide invoices and other documentation to demonstrate that there is a reasonable expectation of profit. They stated that the Property Owner did not provide that documentation in this appeal. They argued that the subject parcel has more than ##### acres that is not actively devoted to agricultural production and, therefore, does not qualify for greenbelt status. They argued that the Property Owner did not qualify for assessment under the FAA for the year at issue in this appeal.

26. RESPONDENTS REP-1 provided testimony that the front portion of the subject parcel included the Front Pasture, the Orchard Pasture, the Northeast Pasture, and the Barns,

¹⁷ Petitioner's Exhibit P-1, PDF page 13.

Sheds, Grain Silo, and North Pasture. The Property Owner's representative submitted an aerial photograph of the subject parcel with the pasture areas outlined and labeled¹⁸. RESPONDENTS REP-1 noted that there is a fence to keep the animals out of the landscaped area near the residence. He indicated that there are fences protecting the trees from the animals, there is a fence dividing the front pasture from the orchard pasture, there is a fence protecting the corral area or central pasture, and several other fences on other portions of the property. He stated that he has seen cattle grazing in the areas that the Assessor's representatives are claiming were not used for grazing and saw cattle grazing in those locations in 2020. He indicated that there are various irrigation ditches on the property that measure approximately four feet with space on each side. He indicated that they do not irrigate where the sheds are located but all of the other areas are irrigated. He indicated that they own ##### water shares for the irrigation of the ##### acres of property. He indicated that the sheds located on the subject parcel are all used for assigned agricultural purposes. He noted that there is a tractor storage area and there are farm implements that are lined up on the property. He acknowledged that there are vehicles parked on the portion of the property near the driveway and indicated that there was a trailer and a baler for hay. He indicated there is also a stock trailer on the property that is used for carrying sheep, goats, and cows. He identified the landscaped area of the house and noted that there is a little garden in the landscaped area of the home. He stated that the area is overgrown because the Property Owners do not landscape the area. He stated that, during 2020, the area was a completely fenced off pasture area that received irrigation. He indicated that the lessee who was grazing his cattle on the subject parcel was nervous about having his longhorn cattle graze next to the residence. He indicated that the cattle occasionally grazed the orchard pasture, the front pasture, and the northeast pasture. He indicated that the lessee accessed the subject parcel by entering through the driveway.

27. RESPONDENTS REP-1 stated that his father was a welder and indicated that his father stopped welding in approximately DATE, when he moved into an assisted living facility. He indicated that, during 2020, the large building/garage/shed was not being used as a welding shed. He indicated that he does not believe it has been used as a welding shed since 2018. He stated that he believes the shed is used for the storage of hay and animal feed. The Property Owner's representative submitted photographs of the interior of the large building/garage/shed and noted that there were farming tools, alfalfa feed, goat feed, garbage cans that are storing

¹⁸ Ex Rel's Exhibit R-9.

animal feed, and hay bales used to feed the goats¹⁹. He argued that the building is a shed that is used for the operation of the farm.

28. RESPONDENTS REP-1 indicated that the reasons for the two transfers of the property between the PROPERTY OWNER and BUSINESS-1 was based on a mistake made by the County. He indicated that BUSINESS-1 was supposed to receive ##### acres and the Property Owner was supposed to retain the ##### acres. He stated that it was never intended that BUSINESS-1 would own the entire parcel and indicated that the transfers were all supposed to happen on the same day.

29. The Property Owner's representatives submitted an aerial photograph of the subject parcel²⁰. RESPONDENTS REP-1 noted in the photograph that there are cattle trails that lead into the Orchard Pasture and into other pastures on the front portion of the subject parcel. He noted that the submitted photograph appears to be taken before DATE because the photograph includes some trees on the North of the property that were removed in DATE. He indicated that the photograph is representative of the property before DATE.

30. RESPONDENTS REP-1 referenced the aerial photograph with the front portion pastures labeled and outlined and noted that there are two grain silos in the Barns, Sheds, Grain Silo, and North Pasture area²¹. He stated that his understanding of the law is that barns, sheds, and grain silos are included in land that is agricultural. He stated that one of the sheds is used for pigs, goats, sheep, lambs, and cows. He indicated that there was a combination turkey/chicken coop. He noted that there were rabbit hutches and a couple of unused sheds. He noted that there is a shed that has well water. He noted that there is also a larger shed that was historically used as an animal shelter but more recently has been used for the feeding of cats and the storage of wheelbarrows, ropes, extension cords, and other things of that nature. He noted that the other large shed has historically been used for some feed but more recently has stored power equipment, including drills and other tools. He noted that there was another shed that was used for storage if there was a fruit harvest.

31. The Property Owner's representatives submitted an aerial photograph of the subject parcel that outlined the irrigation ditches on the front portion of the subject parcel²². He indicated that it is his understanding of Utah Code Ann. §59-2-507(1)(a) that “[l]and under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, and irrigation

¹⁹ Ex Rel's Exhibit R-7.

²⁰ Ex Rel's Exhibit R-8.

²¹ Ex Rel's Exhibit R-9.

²² Ex Rel's Exhibit R-10.

ditches and like facilities is included in determining the total area of land actively devoted to agricultural use.”

32. The Property Owner’s representatives submitted aerial photographs of the subject parcel that showed animals grazing the subject parcel and animal trails and signs of grazing on the front portion of the subject parcel²³. RESPONDENTS REP-1 provided testimony that this was how the subject property looked in 2020. The Property Owner’s representatives also submitted an aerial photograph of the residence, the landscaping surrounding the residence, and the area behind and to the East of the house in the Northeast pasture. He indicated that the area has been used for hay production and animal grazing. He noted there were cement pipes in the pasture and an irrigation ditch in the pasture. He stated that irrigation is necessary to get the water all the way down to the rest of the farm. He noted there was a fence in that pasture that is difficult to see in the photograph. He also noted there was a small, mowed landscaped grass area in front of the residence, as well as a small garden area. He noted there were fruit trees inside the landscaped area.

33. The Property Owner’s representative submitted a letter dated DATE from LESSEE-1, the lessee of the subject parcel, that stated the following²⁴:

I, LESSEE-1, certify that I have been continuously raising my cattle on the property belonging to the PROPERTY OWNER for many years.

The number of cattle I have had on the property has varied between ##### and ##### cows.

The land located behind (both to the North and the East of) PROPERTY OWNER house is pasture area and has not been landscaped in any way.

I have also been utilizing the irrigation ditches for agricultural purposes. Among other ditches, the ditch immediately behind (to the North of) the house in the Northeast Pasture and the ditch along the front (East) of the property are actively being used.

I have also periodically grazed my cattle in the area in the Front Pasture, which is in front of the chain-link fence surrounding the house’s small, landscaped yard. This Front Pasture area is additionally used for other farming activities. It has been important to maintain a closed front gate for the property to ensure that no animals escape from this pasture area.

I have also been grazing my cattle in the Orchard Pasture where the fruit trees are located. I additionally certify that these areas have never been considered part of the house or the landscaping of the house.

The large shed with the overhead doors is a work shed built decades after the house.

34. RESPONDENTS REP-1 stated that LESSEE-1 pays approximately \$\$\$\$ per month for the ability to graze his cattle on the subject parcel. He indicated that there is not a current written lease agreement with the lessee, and he has never submitted a written lease

²³ Ex Rel’s Exhibits R-11 and R-12.

²⁴ Ex Rel’s Exhibit R-6.

agreement to the County as evidence of the agreement between LESSEE-1 and the PROPERTY OWNER.

35. RESPONDENTS REP-1 indicated that the Property Owners have cut and baled hay from the Northeast Pasture periodically for the last ##### years. He indicated that it often was sold, and when his father got older, he would have neighbors come and bale the hay for him. He acknowledged that he did not provide any receipts to the County documenting the sale of the hay.

36. RESPONDENTS REP-1 acknowledged that there were seats from a passenger van that were being stored in the large building/garage/shed. He indicated that he is unaware of what is being stored in the large plastic bins but indicated that those bins are generally used for the storage of animal feed.

37. The Property Owner's representatives submitted a picture of ##### longhorn cattle in the Orchard Pasture and indicated that the picture was taken in the summer of 2020²⁵. RESPONDENTS REP-1 stated that the lessee took the photograph from the eastern fence line and STREET-1 looking to the West.

38. RESPONDENTS REP-1 indicated that he resided on the subject parcel from around DATE to around DATE. He stated that his parents divorced and so he spent every other weekend and six weeks in the summer at the property in subsequent years. He indicated that he has not resided at the property in the last ##### or ##### years. He stated that, in more recent years, he has visited the property at least once a year. He stated that he currently resides in STATE-1.

39. RESPONDENTS REP-1 indicated that he does not have any receipts of any kind for the purchase of any animals. He indicated that the agricultural production that occurred during the 2018 and 2019 time frame was cattle grazing. He stated that he believes that the lessee has to access the subject parcel by going through the Property Owner's land and is not able to access the subject parcel on the back side of the subject parcel from his adjoining property.

40. RESPONDENTS REP-3, Licensed Surveyor, provided testimony at the Formal Hearing that he measured the land under the farmhouse, the land directly to the South of the house in front of the residence, and the land located to the East of the house. The Property Owner's representative submitted a diagram and letter prepared by RESPONDENTS REP-3 showing the areas measured, the boundaries of the measured areas, and the measurement totals for each of those areas²⁶. RESPONDENTS REP-3 diagram indicated that the land under the

²⁵ Ex Rel's Exhibit R-13.

²⁶ Ex Rel's Exhibit R-15.

house measured ##### square feet or ##### acres, the land directly to the South of the house in front of the residence measured ##### square feet or ##### acres, and the land located to the East of the house measured ##### square feet or ##### acres²⁷. RESPONDENTS REP-3 letter was dated DATE and provided an explanation of the reasons for selecting which areas were measured and the boundaries of those measurements²⁸. The acreage of the three areas that were measured totaled ##### acres. His letter stated that the land under the farmhouse measurement does not take into consideration the driveway or any vehicle parking areas²⁹. He indicated that he was told which areas to measure. He acknowledged that he was not an expert in eligibility for assessment under the FAA but indicated that it appeared that the areas not measured fell into the categories outlined in his letter as areas that are qualified for assessment under the FAA.

41. Mr. RESPONDENTS REP-4 provided testimony at the Formal Hearing that he currently resides in the residence located on the subject parcel. He indicated that he has lived in the residence for approximately ##### years. He stated that, during 2020, he was not using the land located to the East of the house that measured ##### acres for any purpose. He stated that the area was not being landscaped. He stated that there was a peach tree located on that portion of land. He indicated that there was a fence on portions of that property. He indicated that the land directly to the South of the house in front of the residence that measured ##### acres was landscaped and indicated that there was a small garden in that area that was used for personal purposes. He indicated that the area just South of the house includes the gravel road that provides access to the residence and an area that he uses to park vehicles and some trailers and is used for irrigation as well.

42. Mr. RESPONDENTS REP-4 stated that they did have cattle graze the Orchard Pasture in 2020. He stated that the cattle grazing in that area was periodic and was not constant. He indicated that cattle would also periodically graze the front pasture and noted that there were stumps in the ground in that area so they would rely on cattle grazing rather than mowing the grass in that area. He indicated that cattle would also graze in the Northeast pasture but indicated that typically the longhorn cattle would not graze in that area due to concerns regarding the proximity of the residence. However, he indicated that the lessee owned a dairy cow and any baby calves would graze in that area.

²⁷ *Id.*

²⁸ Ex Rel's Exhibit R-15.

²⁹ *Id.*

43. The Property Owner's representatives submitted three Google photographs of the subject parcel from ##### years ago³⁰. Mr. RESPONDENTS REP-4 indicated that those photographs were of the front of the property from the road.

44. Mr. RESPONDENTS REP-4 stated that he raises sheep and goats on the subject parcel and has sold the animals. He indicated that he does not make money overall selling the animals but indicated that they help to mow down the lawn so that he does not have to mow the lawn with equipment and maintain that equipment. He indicated that he works nights so it can be difficult to find time during the day to maintain the lawn. He indicated that the animals help to balance his time and maintain the property. The Property Owner's representatives submitted numerous photographs of goats and sheep on the front portion of the subject parcel, as well as photographs of the grazing cattle, the irrigation ditches, and chickens in a chicken coop³¹. Mr. RESPONDENTS REP-4 stated that he took the submitted photographs.

45. The Property Owner's representatives submitted detailed notes prepared by Mr. RESPONDENTS REP-4 and his spouse of the conversation they had when they met with the Assessor's representatives to inspect the subject parcel³².

46. Mr. RESPONDENTS REP-4 stated that he does not weld and does not use the large building/garage/storage shed for welding purposes. He acknowledged that the passenger van seats in the building/garage/storage shed were his. He indicated that he was not aware of the items being stored in the plastic bins in that building and indicated that those were his spouse's storage bins.

47. Mr. RESPONDENTS REP-4 stated that he obtained the goats included in the photographs on DATE, which was the same day that he modified the fence. He acknowledged that the goats were obtained after the rollback taxes were assessed. He acknowledged that he has not submitted any receipts verifying the purchase of those goats. He indicated that he has sold goats before but is not actively breeding them for sale.

48. Mr. RESPONDENTS REP-4 stated that the rabbit hutches were not being utilized and no rabbits were being raised on the property and were not being used for farming. He indicated that there were chickens in the chicken coop in 2021 before the goats were acquired but one chicken perished during the winter and they subsequently sold the other chickens. He indicated that there were chickens in the chicken coops in 2020 but those chickens were being used for personal use.

³⁰ Ex Rel's Exhibit R-17.

³¹ Ex Rel's Exhibit R-4.

³² Ex Rel's Exhibit R-14.

49. Mr. RESPONDENTS REP-4 indicated that he used the front portion of the property on the south side of the gravel driveway to park his vehicles. He indicated that he had two vehicles in 2020 and more currently has parked three vehicles in that area. He stated that those vehicles were personal vehicles but indicated that he did use one of the vehicles to transport the goats.

50. Mr. RESPONDENTS REP-4 stated that he moved into the residence in DATE and his grandfather was also residing in the residence at that time. He indicated that, during that time, his grandfather was still performing farming activities such as feeding barn cats and making sure water was available for the cattle.

51. The County's representative concluded by arguing that the issues in this appeal involve both legal, factual, and mathematical questions. He argued that if the Commission determines that more than ##### acres of the land on the subject parcel is not used for agricultural purposes pursuant to Standard of Practice 7.3.1, which requires that the property associated with the farmhouse be excluded from the calculation, then the property does not qualify as a matter of law. He argued that if the land used for agricultural purposes is less than ##### acres then it does not qualify for assessment under the FAA. He noted that there is ##### acres just in the three portions of the property measured by the Property Owner's surveyor. He noted that there was no measurement for the concrete pad area and asserted that, if the measurement for that area had been included, it likely would have exceeded ##### acres. He argued that if the Commission determines that the northeast pasture, where the longhorn cattle were not allowed to graze due to the proximity of the residence, is used in connection with the farmhouse and not part of the agricultural production, then the subject parcel does not qualify for assessment under the FAA. He argued that if the Commission finds that the large building/garage/shed was used for personal storage in a way that made it part of the farmhouse then the subject parcel does not qualify for assessment under the FAA. He argued that there are a lot of different ways that the subject parcel may not qualify. He argued that the Property Owner's representative is asking the Commission to determine that every inch of the property was used for agricultural production to reach a calculation that satisfies the ##### acre requirement. The County's representatives argued that they do not believe that ##### acres of the subject property are used for agricultural production and indicated that the County's FAA Analyst determined that the front portion of the subject parcel was not being actively grazed and was not being actively dedicated to agricultural production with a reasonable expectation of profit.

52. The County's representative also argued that one of the things the law and standards of practice requires is specificity and documentation. He argued that it is easy to assert

that animals had been grazing the property but argued that if the evidence does not exist to demonstrate that each of the pastures is being actively devoted to agricultural production, the subject parcel does not qualify for assessment under the FAA. He argued that if the concrete pad, as well as the large building/garage/shed, or the northeast pasture is determined to not be included in the portion of the subject parcel that is devoted to agricultural production, then the subject parcel does not qualify. He argued that this is a case where the subject parcel simply does not qualify for assessment under the FAA.

53. The Property Owner's representative concluded by arguing that, in this proceeding, the County carries the burden of proof and has not sufficiently demonstrated that the subject parcel does not have ##### acres that are actively devoted to agricultural production. He noted that the statute requires that the land is "devoted to the raising of useful plants and animals with a reasonable expectation of profit . . ." He argued that the subject parcel has made a profit every year, and the property owner receives a check every month from the lessee who grazes his cattle on the subject parcel. He argued that the County has not provided measurements to demonstrate the total area that is not used for agricultural production.

54. The Property Owner's representative argued that the County's representatives identified a potential area of ##### acres with no agricultural production but argued that there are many agricultural uses within that area, including irrigation ditches and silos, that are located within the area identified by the County. He argued that the Property Owner's witnesses provided explanations of the uses of each of the buildings and argued that the uses for each of those buildings were for agricultural purposes. He argued that the County has not provided measurements other than a huge area that they determined was not used because the grasses in the area were tall. He indicated that two witnesses have provided testimony that the pastures in the front portion of the subject parcel were grazed by cattle and other animals. He argued that the County only inspected the subject parcel twice, and one inspection was not conducted in the relevant time frame. He argued that the County did not provide any measurements that they took to determine that more than ##### acres of the subject parcel was not used for agricultural production. He identified the irrigation ditches that exist on the subject parcel and argued that all of those areas are included in the land that is devoted to agricultural production. He argued that the County did not determine the areas described in Utah Code Ann. §59-2-507(1)(a) as "land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, and irrigation ditches and like facilities," which are included in determining acreage devoted to agricultural use.

55. The Property Owner’s representative argued that the large building/garage/shed and other sheds, chicken coops, rabbit hutches, and grain silos are all farm structures that should be included in acreage that is used for agricultural production. He argued that the statutory provisions provide that only two areas are excluded, which are the land under the farmhouse and the land used in connection with a farmhouse. He also argued that land does not have to be exclusively used for agricultural production purposes to qualify for assessment under the FAA and cited *Salt Lake County ex rel. County Bd. of Equalization v. Utah State Tax Comm’n ex rel. Kennecott Corp.*, 779 P.2d 1131 (Utah 1989) to support that assertion. He argued that the County’s investigation was very cursory and was missing major components in making their determination. He argued that the County has the burden of proof and has not met that burden in this appeal.

APPLICABLE LAW

Utah Code Ann. §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.

The Utah Constitution Article XIII, Section 2, Subsection (3) provides that the Utah Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.

The Utah Legislature has adopted the Farmland Assessment Act (“FAA”) and Utah Code Ann. §59-2-503 provides for the assessment of property as greenbelt under the FAA 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 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.

...

(4) Notwithstanding Subsection (1)(a), the commission or a county board of equalization may grant a waiver of the acreage requirement 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;
 -

Utah Code Ann. §59-2-502 provides definitions applicable to the FAA as follows:

- (1) "Actively devoted to agricultural use" means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:
 - (a) as determined under Section 59-2-503; and
 - (b) for:
 - (i) the given type of land; and
 - (ii) the given county or area.
- (2) "Conservation easement rollback tax" means the tax imposed under Section 59-2-506.5.
- (3) "Identical legal ownership" means legal ownership held by:
 - (a) identical legal parties; or
 - (b) identical legal entities.
- (4) "Land in agricultural use" means:
 - (a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:
 - (i) forages and sod crops;
 - (ii) grains and feed crops;
 - (iii) livestock as defined in Section 59-2-102;
 - (iv) trees and fruits; or
 - (v) vegetables, nursery, floral, and ornamental stock; or
 - (b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.
- (5) "Other eligible acreage" means land that is:
 - (a) five or more contiguous acres;
 - (b) eligible for assessment under this part; and
 - (c) (i) located in the same county as land described in Subsection 59-2-503(1)(a); or
 - (ii) contiguous across county lines with land described in Subsection 59-2-503(1)(a) as provided in Section 59-2-512.

....

- (7) "Rollback tax" means the tax imposed under Section 59-2-506.
- (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;
 - (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 applies 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;

- (d) (i) the legal description of the land changes; and
 - (ii) (A) an owner fails to apply for assessment under this part as required by Section 59-2-509; or
 - (B) (I) an owner applies 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;
- (e) if required by the county assessor, the owner of the land:
 - (i) fails to file a new application as provided in Subsection 59-2-508(5); or
 - (ii) fails to file a signed statement as provided in Subsection 59-2-508(5); or
- (f) except as provided in Section 59-2-503, the land fails to meet a requirement of Section 59-2-503.

A rollback tax is imposed when land is withdrawn from assessment under the FAA in accordance with Utah Code Ann. §59-2-506, below 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.
 - ...
- (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...

Utah Code §59-2-507 provides that the homesite is excluded from the determination of the acreage requirement for assessment under the FAA as follows:

- (1)(a) Land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, and irrigation ditches and like facilities is included in determining the total area of land actively devoted to agricultural use.
- (b) Land that is under a farmhouse and land used in connection with a farmhouse is excluded from the determination described in Subsection (1)(a).

Utah Code §59-2-516 provides that the time to file an appeal to the County Board of Equalization of a determination or denial made by the County Assessor regarding assessment under the FAA is forty-five days from the Assessor's determination as follows:

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

- (1) the county assessor makes a determination under this part; or

- (2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006(1) in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

The Utah Supreme Court in *Stichting Mayflower*, 6 P.3d 560, 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). Based on this language from the Utah Supreme Court, the FAA is to be liberally construed in favor of the property owner, in accordance with relevant case law. The Tax Commission has previously concluded and stated in many appeals it reviews pursuant to Utah Code Ann. §59-2-1006 that in a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. The Commission cites to *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996); *Utah Railway Co. v. Utah State Tax Comm’n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6, 438 P.3d 961 (Utah Ct. App. 2019). In most appeals, the Petitioner is the property owner. In this case, the Petitioner is the County and the Property Owner is merely requesting that the decision issued by the County Board of Equalization be upheld. Therefore, it is the County in this matter that needs to show substantial error in the decision issued by the County Board of Equalization and establish that the property should be withdrawn from assessment under the FAA and rollback taxes assessed.

CONCLUSIONS OF LAW

1. Utah Constitution Article XIII, Section 2, and Utah Code Ann. §59-2-103 provide that all tangible taxable property located in Utah is subject to property tax based on its fair market value, unless otherwise provided by statute. The Farmland Assessment Act provides a statutory exception to that requirement, which allows property meeting the requirements of the FAA to be assessed on the basis of the property's agricultural use, rather than at its fair market value. Assessment under the FAA shifts property tax burdens to other properties during the period that the property qualifies for assessment under the FAA.

2. Pursuant to Utah Code Ann. §59-2-1006, the Commission has previously concluded that, in a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. In this case, the Petitioner is the County Assessor and the Property Owner is merely requesting that the decision issued by the County Board of Equalization be upheld. Therefore, it is the County Assessor in this matter that needs to show substantial error in the decision issued by the County Board of Equalization and establish that the property should be removed from assessment under the FAA.

3. Utah Code Ann. §59-2-503(1)(b)(i) requires that land: “(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” to qualify for assessment under the FAA. Land actively devoted to agricultural use must generally meet production requirements specified in statute. In addition, under Utah Code Ann. §59-2-502(4), “land in agricultural use” must either be part of a crop-land retirement program described in that subsection or be “land devoted to the raising of useful plants and animals with a reasonable expectation of profit.”

4. Furthermore, a property must meet a number of criteria to qualify for assessment under the Farmland Assessment Act. Utah Code Ann. §59-2-503(1) provides that “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” with a limited exception for land devoted to agricultural use in conjunction with other eligible acreage if the land and the other eligible acreage have identical legal ownership. Utah Code Ann. §59-2-507(1) provides:

- (a) Land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, and irrigation ditches and like facilities is included in determining the total area of land actively devoted to agricultural use.
- (b) Land that is under a farmhouse and land used in connection with a farmhouse is excluded from the determination described in Subsection (1)(a).

5. The Commission finds that, based on the arguments, testimony, documentation, and information provided by both parties, the County Assessor has shown error in the County Board of Equalization’s decision. The Commission finds that the subject parcel does not have ##### contiguous acres that are actively devoted to agricultural use because more than ##### acres of the land is not devoted to the raising of useful plants and animals with a reasonable expectation of profit. Utah Code Ann. §59-2-507(1)(b) provides that “(b) [l]and that is under the farmhouse and land used in connection with a farmhouse is excluded from the determination described in Subsection (1)(a).” Although the Utah Code does not specifically define what “used in connection with a farmhouse” means, further guidance is provided in the Property Tax

Division's Standards of Practice 7.3.1, which explains that land on which the farmhouse is located, and land used in connection with the farmhouse; i.e., landscaping, gardening spots, etc. are not eligible for FAA assessment and cannot be included in the acreage to determine FAA eligibility³³. The Property Owner's representative argued that the land under the area where the small storage sheds, lean to animal shelters, chicken coops, and rabbit hutches are located should be included in the calculation of the five acres pursuant to Utah Code Ann. §59-2-507(1)(a), which provides that "[l]and under barns, sheds, silos, cribs, greenhouses and like structures . . . is included in determining the total area of land actively devoted to agricultural use." However, the Commission finds that the land area under the storage sheds, lean to animal shelters, chicken coops and rabbit hutches is included with the land that is used in connection with the farmhouse and is excluded from the calculation pursuant to Utah Code Ann. §59-2-507(1)(b) in this appeal. The Commission notes that the agricultural production occurring on the subject property was the grazing of the lessee's cattle and there was no evidence that in the 2020 tax year or the two years immediately prior to 2020 that the Property Owner was actively selling with an expectation of profit the fruit from the trees, the chickens, the rabbits, or the garden vegetables. Those crops and animals were all used for personal consumption by the individuals residing in the residence on the property rather than the lessee, and, as the County Assessor's representatives noted, this is a typical rural farmhouse use of the property. The Commission notes that the RESPONDENTS REP-1 stated that fruit and other products were sold³⁴, but the Assessor indicated that no receipts were provided to verify those sales³⁵. RESPONDENTS REP-1 also stated that hay was baled on the property but acknowledged that he did not submit receipts to the Assessor to support sales of the hay³⁶. Mr. RESPONDENTS REP-4 indicated that the rabbit hutches were not being utilized, no rabbits were being raised on the property, and the rabbit hutches were not being used for farming³⁷. He also indicated that chickens were raised on the property but stated they were for personal use³⁸. Furthermore, the Commission notes that the Property Owner provided extensive testimony and submitted exhibits regarding the raising of goats and sheep on the subject property. However, Mr. RESPONDENTS REP-4, the resident of the subject property during the relevant time period, provided testimony that the goats and sheep were not brought to the property until

³³ The Commission notes that the standards of practice are issued by the Property Tax Division and are not binding in matters before the Commission but may be persuasive. However, the Commission also notes that Utah Code Ann. §59-2-507 provides that "[l]and that is under a farmhouse and land used in connection with a farmhouse is excluded" in determining the total area of land actively devoted to agricultural use.

³⁴ See Supra Findings of Fact No. 16.

³⁵ See Supra Findings of Fact No. 19.

³⁶ See Supra Findings of Fact No. 35.

³⁷ See Supra Findings of Fact No. 48.

³⁸ See Supra Findings of Fact No. 48.

DATE, which is after the date that the rollback taxes were assessed, and were primarily used for lawn maintenance rather than being bred and sold for a reasonable expectation of profit³⁹. The Commission acknowledges that the Assessor has the burden of proof in this appeal but finds that the arguments, testimony, documentation, and information provide no support that these uses were for agricultural purposes, and in fact show that the uses were personal.

6. The Commission notes that the Property Owner's surveyor determined that the land under the residence totaled ##### acres, the landscaped yard directly south of the residence totaled ##### acres, and the yard to the east of the residence totaled ##### acres. The Commission finds that those areas were all areas where the land was used in connection with the farmhouse and the total acreage of those areas was ##### acres. Furthermore, the Commission notes that the Property Owner's submission prepared by the licensed surveyor outlined the concrete pad area but did not provide a measurement for that area. The Commission finds that the concrete pad area would also be an area that was used in connection with the farmhouse.

7. The Commission acknowledges that the County Assessor has the burden of proof in this appeal and did not provide measurements for the area of land under the concrete pad or the area of the land where the storage sheds, lean to animal shelters, chicken coops, and rabbit hutches are located. However, the Commission finds that it is clear based on the Taxpayer's submitted measurements and the aerial photographs submitted by both parties, that if the area of land under the concrete pad and the area of land under where the small storage sheds, lean-to animal shelters, chicken coops, and rabbit hutches are located is added to the area of the farmhouse and yard around the farmhouse, it would comprise more than ##### acres of land that would need to be excluded.

8. The Commission notes that there are other areas of land that may not qualify as land devoted to agricultural use that should be included as land used in connection with the farmhouse. The Tax Commission, however, does not need look further because the property is under the ##### acre threshold needed to qualify for assessment under the FAA when the area of land under the concrete pad and the area of the land under the storage sheds, lean-to animal shelters, chicken coops, and rabbit hutches are included as part of the farmhouse area. Thus, the Commission finds that the County Assessor has sufficiently demonstrated that the subject parcel did not have ##### contiguous acres that were actively devoted to agricultural use in 2020. The subject parcel should be withdrawn from assessment under the FAA, and the County Assessor's assessment of rollback taxes in 2020 should be sustained.

³⁹ See Supra Findings of Fact No. 47.

Appeal No. 20-2025

Shannon Halverson
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the subject parcel does not qualify for assessment under the FAA and grants the County Assessor's appeal. The subject parcel should be withdrawn from FAA assessment and the rollback tax assessment reinstated. It is so ordered.

DATED this ____ day of ____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

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