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BOARD OF EQUALIZATION MEETING

COUNTY BOARD OF EQUALIZATION

FRIDAY, AUGUST 6, 2021

10:00APM

Pembina County Board of Equalization reconvened at 10:00 AM in the Commissioner’s Meeting Room of the Courthouse with the following members present: Jim Benjaminson, Laverne Doyle, Nick Rutherford, Hugh Ralston and Hetty Walker. Mikka Willits, Director of Tax Equalization, Lisa Wieler, Deputy Tax Director/GIS Specialist, Rebecca Flanders, Pembina County State’s Attorney, Terin Riley, Fleming, DuBois & Fleming, LLP, and several landowners also present. Available by telephone was Camburn Shephard.

Chairperson Doyle called the meeting to order at 10:02 am. Chairperson Doyle stated that since the proposed 2021 valuations were reverted back to the 2020 valuations, appeals will need to be turned into the Soils Committee once it is formed.

Ms. Willits reviewed NDCC 57-13, State Board of Equalization. Most specifically, NDCC 57-13-04: General duties and powers of board and subsection 4 that discusses the duty of board equalizing the classification and taxable status of real property in any district in a county and every county in the state. None of these parcels followed Equalization formality and chose not to appeal to the State Board of Equalization.

Ms. Willits began the review of each parcel individually, per the Board of Equalization’s request, stating the Board may ask her questions or refer to Ms. Flanders for legal advice.

Parcel 28-0020006 in Crystal City and Parcel 07-0610005 in Crystal Township, owned by Estad Farm Corporation, were reviewed. Ms. Willits referred to NDCC 57-02-01, Definition of Agricultural Property, stating it is irrelevant whether the land is platted or unplatted. In 2015, this parcel was reclassified from agricultural land to commercial land when there was a change of use. Ms. Willits stated that to her understanding raising crops is from planting the seed to harvest. Per the Attorney General Opinion 2002-L-70, dated December 4, 2002, the land itself must be used for raising crops or grazing animals. The use of the structure to store grain or potatoes does not convert the land upon which the structure is located into agricultural land. Ms. Willits stated that in her opinion, this parcel should be classified as commercial due to it does not meet the definition of agricultural property and the improvements should be commercial due to the structure does not convert the land into agricultural land and due to lack of clarification from the 67th legislative session in regard to SB 2041. Ms. Willits refers Mr. Estad to the State Board of Equalization for a final determination if he disagrees with

the Board's decision. Ms. Riley, Fleming, DuBois, Fleming, LLP, presented documents showing improvements Mr. Estad made on this property based on the decision made by the Board of Equalization at the June 28, 2021 meeting to exempt these parcels and revert the assessment from commercial to agricultural. Ms. Riley presented pictures of a cow grazing on the property, which was added after the June 28, 2021 meeting, stating it should be classified as agricultural land. Ms. Willits stated she believes her opinion is consistent with similar situations across the state. Ms. Riley presented her argument as to why this property should remain exempt agricultural property and requested the Board to retain their original motion. Ms. Willits asked when the animal was added and noted the animal was not there during the 2021 assessing period. Discussion followed on what constitutes a farm plant and what is the definition of "raising crops".

Ms. Flanders reviewed the Attorney General's Opinion received July 21, 2021 stating that Attorney General's Opinions 2002-L-70 and 2002-L-31 have not been deemed inaccurate. There has been no law, no legislation, and no Supreme Court decision that would overrule their decision. No new question was presented to Vice-Chairperson Rutherford as was instructed at the July 22, 2021 meeting. It is Ms. Flanders understanding that the subsequent meetings of the Board would be for the finalization of the equalization process and if a legal determination was made they have the opportunity to correct any errors that may have been made at the previous meetings. Ms. Flanders encourages the appellants to go to the State Board of Equalization for a final determination if they do not agree with the Board's decision. Ms. Flanders stated that the Tax Director has given the Board her determination as to why the property should be determined taxable and asks that the Board consider all information presented prior to making a decision. Discussion followed.

Curtis Olafson stated that a lot of county officials do not understand their role. Mr. Olafson stated the Board does not take their "marching orders" from the State's Attorney or the Tax Director. Ms. Flanders agreed with Mr. Olafson, stating that the role of the Tax Director and the State's Attorney is to give the Board the information so they can make a well-reasoned determination. The Board ultimately makes the final decision. Decisions cannot be made based on personal feeling but must be made based on the law and the understanding of the law. Per Attorney General's Opinion 2002-L-31 you do not have the ability to make your own determination, the legislature makes the law.

Chairperson Doyle requested the Board to make a decision. Ms. Flanders reviewed one last piece of information with the Board, stating the information gathered was given a lot of consideration and review. She also stated that Mr. Estad is not disputing the parcel where his office is located, which is contiguous to the other parcels he is disputing. All other parcels surrounding the parcels Mr. Estad is disputing are city parcels and have been assessed commercially for several years. Further discussion was held.

Ms. Flanders requested the record be clear. Ms. Flanders' understanding is that the Tax Director's determination is to tax the structure as commercial and tax the land as commercial. Ms. Flanders also stated that according to the Attorney General's Opinions that are currently in place it would be contrary to the definition of agricultural land to not have the properties remain as commercial.

Motion made by Hugh Ralston to rescind the motion made at the June 28, 2021 meeting, for Parcel 28-0020006 and Parcel 07-0610005, to exempt the structure and change the land assessment from commercial to agricultural. Seconded by Jim Benjaminson. Discussion followed on SB 2041. Curtis Olafson stated that he would make a personal commitment to work with the Legislators, County Commissioners, State's Attorneys, and NDACo during the 2023 Legislative Session to address concerns of the landowners as well as the Commission. Further discussion was held. Roll call vote; Jim Benjaminson-yes; Laverne Doyle-no; Nick Rutherford-yes; Hugh Ralston-yes; Hetty Walker-yes. Motion carried.

Motion made by Hugh Ralston and seconded by Jim Benjaminson to return the structure to taxable and return the land assessment from agricultural to commercial, per Attorney General Opinion 2002-L-31, Attorney General Opinion 2002-L-70, the District Court decisions 34-2020-CV-00079 and 34-2020 CV-120, the Attorney Generals' Opinion from July 21, 2021 and the fact that SB2041 did not pass. Roll Call vote: Jim Benjaminson-yes; Laverne Doyle-no; Nick Rutherford-no; Hugh Ralston-yes; Hetty Walker-no. Motion failed. The parcel will remain as agricultural land and the structure will be exempt.

Parcel 28-1640000 in Crystal City, owned by H & V Partnership, was reviewed. This parcel was a prior BNSF lease site and has been classified as commercial for several years. In 2019 the assessor increased the value of the commercial improvements due to new construction of a second warehouse. Currently there are no contiguous acres used for raising crops or grazing farm animals. Ms. Willits' opinion is that the structure on this parcel should be assessed as commercial and taxable and the land should be classified as commercial land. Ms. Riley presented pictures of a cow grazing on the property, which was added after the June 28, 2021 meeting, stating it should be classified as agricultural land. Ms. Willits asked when the animal was added and noted the animal was not there during the 2021 assessing period. Ms. Willits asked why none of the individuals requested an exemption until 2017. One landowner stated he did request an exemption, while another claimed ignorance.

Commissioner Walker left the meeting at this time.

Motion made by Nick Rutherford and seconded by Hugh Ralston to rescind the motion from the June 28, 2021 meeting, for Parcel 28-1640000, to exempt the structure and change the land assessment from commercial to agricultural. Roll call: Jim

Benjaminson—yes; Laverne Doyle—no; Nick Rutherford—no, Hugh Ralston—yes. Motion failed due to a lack of a simple majority. The structure will remain exempt and the land assessment will remain as agricultural.

Parcel 28-1630000 in Crystal City, owned by O.C. Schulz & Sons, Inc, was reviewed. This parcel was a prior BNSF lease site and has been classified as commercial for several years. Currently there are no contiguous acres used for raising crops or grazing farm animals. Ms. Willits' opinion is that the structure on this parcel and the land should be classified as commercial. Mr. Moquist stated the land was assessed as agricultural until 2012 when it was reclassified as commercial. Records show that the land has always been classified as commercial, however the structure was exempt for a short period of time and was corrected in 2011 to taxable with Parcel 28-1610000.

Motion made by Hugh Ralston and seconded by Jim Benjaminson to rescind the motion from the June 28, 2021 meeting, for Parcel 28-1630000, to exempt the structure and change the land assessment from commercial to agricultural. Roll call vote: Jim Benjaminson—yes; Laverne Doyle—no; Nick Rutherford—no; Hugh Ralston—yes. Motion failed due to a lack of majority. The structure will remain exempt and the land assessment will remain as agricultural.

Parcel 28-1610000 in Crystal City, owned by O.C. Schulz & Sons, Inc, was reviewed. This parcel was a prior BNSF lease site located on platted property south of Highway 66 and has been classified as commercial for several years. Currently there are no contiguous acres used for raising crops or grazing farm animals. Ms. Willits' opinion is that the structure on this parcel and the land should be classified as commercial.

Motion made by Nick Rutherford and seconded by Hugh Ralston to rescind the motion made at the June 28, 2021 meeting, for Parcel 28-1610000, to exempt the structure and change the land assessment from commercial to agricultural. Roll call vote: Jim Benjaminson—yes; Laverne Doyle—no; Nick Rutherford—no; Hugh Ralston—yes. Motion failed due to a lack of a simple majority. The structure will remain exempt and the land assessment will remain as agricultural.

Parcel 28-1320010 in Crystal City, owned by O.C. Schulz & Sons, Inc, was reviewed. The parcel is located on platted land in Appleton's 1st Addition, south of Highway 66, and was classified as residential until 2012 when it was reclassified as commercial. Currently there are no contiguous acres used for raising crops or grazing farm animals. Ms. Willits' opinion is that the structure on this parcel and the land should be classified as commercial. Mr. Moquist stated that this parcel is contiguous to other acres owned by O.C. Schulz & Sons, Inc.

Motion made by Hugh Ralston and seconded by Jim Benjaminson to rescind the motion made at the June 28, 2021 meeting, for Parcel 28-1320010, to exempt the structure and change the land assessment from commercial to agricultural. Roll call vote: Jim

Benjaminson-yes; Laverne Doyle-no; Nick Rutherford-no; Hugh Ralston-yes. Motion failed due to a lack of a simple majority. The structure will remain exempt and the land assessment will remain as agricultural.

Parcel 07-0610010 in Crystal Township, owned by Crystal Chippers, was reviewed. This parcel is located along working railroad owned by a private entity. A railroad spur was built attaching the spur to the working railroad to ship their product. The property has been classified as commercial land since 2003 when it was purchased and split from a larger parcel of agricultural land. Currently there are no contiguous acres used for raising crops or grazing farm animals. Ms. Willits' opinion is that the structure on this parcel and the land should be classified as commercial. Ms. Riley presented photographs showing the property is being hayed and stated the property has contiguous acres.

Motion made by Jim Benjaminson and seconded by Nick Rutherford to rescind the motion made at the June 28, 2021 meeting, for Parcel 07-0610010, to exempt the structure and change the land assessment from commercial to agricultural. Roll call vote: Jim Benjaminson-yes; Laverne Doyle-no; Nick Rutherford-no; Hugh Ralston-yes. Motion failed due to lack of a simple majority. The structure will remain exempt and the land assessment will remain as agricultural.

Parcel 07-2080000, in Crystal Township, owned by Heuchert Willow Creek Ranch was reviewed. The parcel was a prior BNSF lease site along a working railroad now owned by a private entity. This parcel has been assessed commercially for several years. Currently there are no contiguous acres used for raising crops or grazing farm animals. Ms. Willits' opinion is that the structure on this parcel and the land should be classified as commercial. Ms. Riley presented pictures of a cow grazing on the property, which was added after the June 28, 2021 meeting, requesting the Board to uphold their June 28, 2021 decision to exempt the structure and leave the assessment as agricultural. Ms. Willits asked when the animal was added and noted the animal was not there during the 2021 assessing period.

Ms. Willits stated she believes her opinion is consistent with similar situations across the state. Ms. Flanders states, on the record, that she concurs with the Tax Director's opinion on all of the above parcels.

Motion made by Jim Benjaminson and seconded by Hugh Ralston to rescind the motion made at the June 28, 2021 meeting, for Parcel 07-2080000, to exempt the structure and change the land assessment from commercial to agricultural. Roll call vote: Jim Benjaminson-yes; Laverne Doyle-no; Nick Rutherford-no; Hugh Ralston-yes. Motion failed due to lack of a simple majority. The structure will remain exempt and the land assessment will remain as agricultural.

Motion made by Jim Benjaminson and seconded by Nick Rutherford to adjourn the Board of Equalization meeting. All voting in favor; motion carried. Meeting adjourned at 12:26 pm.