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## BOARD OF PEMBINA COUNTY COMMISSIONERS PROCEEDINGS

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November 10, 2021

1:00 PM

Board of Pembina County Commissioners met in Special session at 1:00 PM in the Farmers Room of the Pembina County Courthouse with the following members present: Jim Benjaminson, Laverne Doyle, Nick Rutherford, Hugh Ralston and Andrew Cull.

Chairperson Doyle called the meeting to order at 1:02 PM.

Others in attendance were: Mikka Willits, Tax Director, Lisa Wieler, Deputy Tax Director, Rebecca Flanders, State's Attorney, Terin Riley, Fleming, Dubois & Fleming, Donald Heuchert, Kayo Vivatson, Thomas Shephard, Clyde Reilly, Dave Moquist, Camburn Shephard, Rick Vivatson, and Loren Estad.

The Commission met to discuss the 2019 and 2020 abatement requests for the following parcels: 28-0020006 and 07-0610005 owned by Estad Farm Corporation, 28-2080000 owned by Heuchert Willow Creek, 28-1640000 owned by H & V Farm Partnership and 07-0610010 owned by Crystal Chippers.

Ms. Riley requested to place on record the email dated November 3, 2021 to Rebecca Flanders, States Attorney, Mikka Willits, Tax Director, Linda Schlittenhard, County Auditor, Commissioner Jim Benjaminson, Commissioner Laverne Doyle and Commissioner Nick Rutherford. Ms. Riley requested to renew their previous motion to have Commissioner Benjaminson and Commissioner Ralston recuse themselves from voting. Ms. Riley requested Exhibit 4 and Exhibit 5, the emails from Mr. Clyde Reilly presented by the State's Attorney at the October 20, 2021 meeting, be stricken from the record, as they have no relevance to the abatement hearings. Ms. Flanders' legal opinion on the request stated the two Commissioners have an obligation not to recuse themselves, but do have an obligation to vote, absent there be a personal or pecuniary interest in the outcome of the abatement. A motion was made by Nick Rutherford and seconded by Hugh Ralston to move forward with the information presented allowing the full board to vote. All voting in favor; motion carried.

The first abatement hearing is for Parcels 28-0020006 and 07-0610005. Mr. Estad asked what the recommendation of the Tax Department is on his abatement. Mr. Estad asked if the Tax Department considers the two parcels in question to be a part of his larger farm plant. Ms. Willits stated she would

answer these questions during her presentation. Mr. Estad requested a yes or no answer. Ms. Willits, in her opinion, does not believe the facility is a part of his larger farm plant. Mr. Estad asked if Ms. Willits or Commissioner Rutherford saw any commercial activity at his facility when they were onsite while he was loading bins. Mr. Estad stated the IRS considers his operation a farm operation and he is not required to pay sales tax to the ND State Tax Department, which he would be required to pay if it were a commercial operation. Commissioner Cull asked how many of the facilities have wash plants. Discussion followed. Mr. Estad asked if the letter requesting an Attorney General's Opinion, drafted by Ms. Riley on the State's Attorney's letterhead, was ever sent. Ms. Flanders responded "Absolutely not!" Discussion followed. Ms. Riley requested the Commission accept the decisions stated in the 2021 Crystal City and 2021 Crystal Township Equalization minutes and return this property to agricultural land and exempt the structure for tax year 2020.

Ms. Willits reminded everyone that this is an abatement request for the 2020 property taxes. The decision made at the 2021 County Board of Equalization meeting was for 2021 and does not carry back to 2020 or prior. The decisions Ms. Riley is discussing pertain to the 2021 Crystal City and Crystal Township Equalization recommendations. The County Board of Equalization heard Mr. Estad's appeal in 2020, but ruled to add the improvement valuation to the 2020 tax rolls. The burden of proof is on the claimant to prove why they should be exempt. Mr. Estad was given the information regarding protocol to appeal his decision to the State Board of Equalization. Instead of appealing at the State Board of Equalization Mr. Estad litigated against the County Board of Equalization and Board of County Commissioners. Litigation resulted in favor of the County Board of Equalization and Board of County Commissioners. Discussion followed. Ms. Willits recommends the 2020 abatement request be denied since the property does not meet the definition of agricultural property, due to the litigation cases found to be in favor of Pembina County and no contiguous acres are being farmed. Mr. Estad stated he did not go to the State Board of Equalization because he was waiting for an opinion from the Attorney General's office, which was to be requested in 2017. Ms. Riley stated that Mr. Estad was not required to take his appeal to the State Board of Equalization and had every right to litigate the decision. Ms. Riley is requesting the Commission consider all of the facts presented to them today and respect the 2021 decisions of the Crystal City and Crystal Township Equalization Boards and grant the abatement.

Don Heuchert stated that when he had his abatement hearing on July 7, 2020, the Commission asked Ms. Flanders to send a letter to the Attorney General requesting an opinion on the definition of agricultural property and raising crops. Ms. Flanders requested assistance from Larry DuBois, Fleming, Dubois & Fleming, in drafting the questions. Mr. Dubois stated he was not able to request an opinion, only Ms. Flanders would be able to compose the letter requesting an opinion.

Mr. Moquist asked what type of documentation needs to be provided to the Tax Director's office to prove that these properties are for agricultural use and should not be assessed as commercial.

Ms. Riley stated on record that the 2020 information was corrected with the Declaration of Facts signed by all owners.

Ms. Flanders presented her opinion of the law for the Commission to consider prior to making a decision. As the Board, they must consider each property individually, and relevant only to the abatement application review period for each property (2019 or 2020). Each decision must be determined based upon the law. Ms. Flanders reviewed Attorney General Opinion L-31 which cites NDCC 57-02-08(15) related to the definition of agricultural property. The 2002 ND Attorney General Opinions L-31 and L-70 overrule the Manbeck determination that land used for storing grain was agricultural land. Greenhouses are not relevant to these proceedings. Ms. Flanders reviewed ND Attorney General Opinions 98-L-146, related to dereliction of duty and 2006-L-35 and 2009-L-15, related to the Commissioners being held personally liable for not following the advice of the Attorney General or State's Attorney. Ms. Flanders understands that the claimants do not agree with the Attorney General Opinions but she is not aware of any questions that have not been answered by the Attorney General. Ms. Flanders placed on record that she did not forward the letter drafted by Fleming, DuBois & Fleming on her letterhead.

Ms. Riley requested to correct the record stating this property is not personally owned by Loren Estad but is owned by Estad Farm Corporation.

Motion made by Jim Benjaminson to deny the abatement requests on both Parcel 28-0020006 and 07-0610005, based on NDCC 57-02, the Attorney General Opinions L-31, L-70, and on the court case that was decided in favor of the County. Second by Hugh Ralston. Roll call: Jim Benjaminson – yes; Laverne Doyle – yes; Nick Rutherford – yes; Hugh Ralston – yes; Andrew Cull – no. Motion carried.

Ms. Riley reviewed information related to the request for the abatement of 2020 taxes for Parcel 07-0610010, owned by Crystal Chippers. The land is fully located in Crystal Township, the contiguous property is and has been used for raising crops, the structure is used for storing the owner's crops, and the structure is solely used by the owners. For these reasons, Ms. Riley is requesting the Commission grant the abatement and return the assessment to agricultural and exempt the building. Ms. Willits stated the abatement request is for the 2020 property tax. This property is located along railroad Right-of Way and has been classified as commercial since 2003. There were no requests to change the assessment until the commercial improvement was added to the parcel in 2017 and that is when the disagreement began. No individuals appeared to appeal the decision to add this improvement to the tax rolls for tax year 2020, so the

commercial building assessment was added. A notice was sent to Mr. Shephard to attend the State Board of Equalization if he did not agree with the County Board of Equalization's decision. Ms. Willits reviewed NDCC 57-02-03, 57-02-01, and 57-02-08(15). Per ND Attorney General Opinion L-70 the land must be used for raising crops or grazing farm animals. Discussion followed on the railroad spur (loop) that was installed by the owners. Thomas Shephard stated the railroad spur is a private spur and has never been railroad property. Mr. Shephard also stated the surrounding land is being farmed and showed the area on the map that is being farmed. Ms. Willits recommends the Commission deny the 2020 property tax abatement as it does not meet the NDCC definition of agricultural property.

Motion made by Jim Benjaminson and seconded by Nick Rutherford to approve the abatement request for Crystal Chippers. Roll call vote: Jim Benjaminson - yes; Laverne Doyle - yes; Nick Rutherford - yes; Hugh Ralston - yes; Andrew Cull - yes. Motion carried.

Ms. Riley reviewed the documentation previously presented for the request for the abatement of the 2020 taxes for Parcel 28-1640000 owned by H & V Farm Partnership. The property was purchased by Heuchert Willow Creek from BNSF in June of 2011 and later sold to H & V Partnership in December 2016. The structures are solely used by the owners for storage of the owner's personal crop. Ms. Riley requested the Commission grant the abatement and return this parcel to an agricultural assessment and exempt the structures for tax year 2020. Ms. Willits stated the abatement request is for the 2020 property tax. Ms. Willits researched this parcel and stated this parcel has been assessed commercially for as far back as she could tell. The parcel is located along railroad Right-of-Way within Crystal City and there are no contiguous acres being farmed near this parcel. Ms. Willits reviewed NDCC 57-02-03, 57-02-01, and 57-02-08(15). Per ND Attorney General Opinion 2002 L-70 the land must be used for raising crops or grazing farm animals. The use of the structure to store crop does not convert the land into agricultural land. Ms. Willits' recommendation is to deny the 2020 abatement request, stating that this parcel is located within city limits and should be assessed commercially as it does not meet the definition of agricultural property.

Motion made by Hugh Ralston and seconded by Nick Rutherford to deny the abatement request for Parcel 28-1640000. Roll call vote: Jim Benjaminson - yes; Laverne Doyle - yes; Nick Rutherford - yes; Hugh Ralston - yes; Andrew Cull - no. Motion carried.

Ms. Riley reviewed the request for the abatement of the 2019 and 2020 taxes for Parcel 07-2080000, owned by Heuchert Willow Creek Ranch. Ms. Riley reviewed the documentation previously presented to the Commission. The parcel is located primarily in Crystal Township with a minimal amount in Crystal City. The structure is used by the owners for storage of the owner's personal crop. Ms.

Riley requested the Commission grant the abatement and return this parcel to an agricultural assessment and exempt the structures for tax years 2019 and 2020. Ms. Willits, reviewed her findings stating that this property is located along railroad Right-of-Way, has been classified as commercial since 1973, and there are no contiguous acres being farmed. Ms. Willits reviewed NDCC 57-02-03, 57-02-01, and 57-02-08(15). Ms. Willits' recommendation is to deny the 2019 and 2020 property tax abatement requests as it does not meet the NDCC definition of agricultural property.

Ms. Flanders discussed what happens to railroad property once it is sold. Attorney General Opinions L-31 and L-70 state that non-operating property owned by a railroad must be assessed as commercial property unless it meets the requirements of another category of property, such as "agricultural property". Property can be categorized as "agricultural property" only if it is used for raising crops or grazing farm animals (NDC 57-02-01). The use of the structure to store grain does not convert the land upon which the structure is located into agricultural land. It is the Attorney General's Opinion that if a structure is located on unplatted land in a city that is not used for raising crops or grazing farm animals, the structure does not qualify for the agricultural exemption.

Motion made by Jim Benjaminson and seconded by Hugh Ralston to deny the abatement request for the 2019 and 2020 taxes on Parcel 07-2080000 for Heuchert Willow Creek Ranch. Roll call vote: Jim Benjaminson - yes; Laverne Doyle - yes; Nick Rutherford - yes; Hugh Ralston - yes; Andrew Cull - no. Motion carried.

Motion made by Jim Benjaminson and seconded by Nick Rutherford to adjourn the meeting. All voting in favor; motion carried. Meeting adjourned at 3:36 PM.