

N.D.A.G. Letter to Wang (May 20, 1991)

May 20, 1991

Mr. James P. Wang
Benson County State's Attorney
PO Box 211
Minnewaukan, ND 58351

Dear Mr. Wang:

Thank you for your March 8, 1991, letter concerning the ad valorem assessments of lands located on the West Bay of Devils Lake.

Specifically, you are concerned with certain riparian lands where the owners acquired land in the lake bed under the doctrine of reliction and where the lands subsequently were declared by the federal district court to be subject to the doctrine of submergence. 101 Ranch v. U.S., 714 F.Supp. 1005 (D.Ct. N.D. 1988). You wish to know at what time of the year these lands are to be surveyed and valued for the purpose of taxation.

The general rule of law regarding the assessment of real property was expressed in an earlier opinion of this office:

Section 57-02-11(1), N.D.C.C., provides for the listing and assessment of real property annually "with reference to its value" on February first of the assessment year. This requirement that it be assessed with reference to its value on February first of the assessment year means that its taxable or exempt status and its value are determined with respect to the facts existing on the February first assessment date. See United Telephone Mutual Aid Corporation v. State, 87 N.W.2d 54 (N.D. 1957).

Changes made in the ownership, use, or other status of taxable property after the February first assessment date do not provide a basis for changing the assessment that was made that year in reference to the value and taxable status of the property on February first unless there is a statute that expressly provides for changing that assessment.

1981 N.D. Op. Att'y Gen. 345, 347.

Therefore, the description of these lands and their value are to be determined as of February first of each taxable year.

All real property is to be valued at its true and full value for assessment purposes, unless otherwise provided by law. N.D.C.C. §§ 57-02-27.1 and 57-02-27.2.

"True and full value" for the purpose of the assessment of real property is defined as follows under N.D.C.C. § 57-02-01(15):

57-02-01. Definitions. As used in this title, unless the context or subject matter otherwise requires:

. . . .

15. "True and full value" means the value determined by considering the earning or productive capacity, if any, the market value, if any, and all other matters that affect the actual value of the property to be assessed. This shall include, for purposes of arriving at the true and full value of property used for agricultural purposes, farm rentals, soil capability, soil productivity, and soils analysis.

The three basic methods for determining the value of all locally assessed real property, except agricultural property, were recognized by the North Dakota Supreme Court in Ulvedal v. Board of County Commissioners, 434 N.W.2d 707 (N.D. 1989):

3. There are three basic approaches to the valuation of property . . . :
 - (1) Comparable sales, sometimes referred to as the market value or market data approach;
 - (2) The cost (or original-cost or reproduction cost-less-depreciation) approach; and
 - (3) The income (or economic) approach.

(Footnote omitted). 7 Nichols On Eminent Domain § 4.04[3] "The Appraisal Report" (1987)

Ulvedal, at 710, n.3.

"Agricultural property" for assessment purposes is defined under N.D.C.C. § 57-02-01(1) as:

platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies

under this subsection. Property platted on or after March 30, 1981, is not agricultural property when any three of the following conditions exist:

- a. The land is platted by the owner.
- b. Public improvements including sewer, water, or streets are in place.
- c. Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
- d. Property is zoned other than agricultural.
- e. Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
- f. The parcel is less than ten acres (4.05 hectares] and not contiguous to agricultural property.
- g. The property sells for more than four times the county average true and full agricultural value.

True and full value for agricultural property is based upon a productivity formula set forth under N.D.C.C. § 57-02-27.2.

I am also enclosing a copy of a May 30, 1989, letter to Game and Fish Commissioner Dale Henegar. This letter may be helpful to you because it addresses various issues which may affect the valuation of the land in question.

If you have further questions about this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J Spaeth

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