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March 15, 2023

House Agricultural Committee
Representative Paul J. Thomas, Chairman
600 E. Boulevard Ave.
Bismarck, ND 58505

Dear Committee Chair Thomas and Committee members,

My name is Mikka Willits and I am the Director of Tax Equalization for Pembina County. I am writing to request the committee to amend Senate Bill 2279 to a study and review it alongside House Bill 1247 during the upcoming interim.

Currently, properties located within the city limits should be taxable based on NDCC § 57-02-08 and Attorney General Opinions. Improvements located on farm plants on agricultural land are currently exempt unless they have a commercial business tied to their parcel, like seed sales and storage rental.

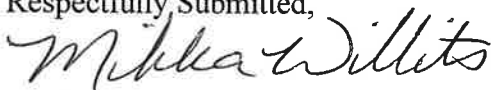
There was a property in question located within the city limits of Crystal. Loren Estad, the owner of this property provided verbal testimony in support of this bill to the Senate Agricultural and Veterans Affairs Committee that misrepresents the history of this property. Pembina County had two litigation cases brought forth regarding this property. The Court had made determination in favor of Pembina County in both cases. I have included the Memorandum Opinion and Order for one of those cases. In the order, a comprehensive history of this parcel is articulated. The issues surrounding the conflict are thoroughly outlined throughout the decision. I would draw your attention to paragraph six (6) on page eleven (11) of fourteen (14).

Improvements either purchased or built within the city limits away from the main farm plant are by choice. It may have been to take advantage of the roads, railways, utilities, infrastructure and opportunities they would not be offered if located on the main farm plant. Many other business opportunities may also present itself when similar types of parcels are located within the same area. Examples may be that of leasing, brokering, transportation, fertilizer and seed sales.

An adoption of SB 2279 as written would decrease the taxable valuations located within our local jurisdictions. Without a supplement for decreased valuations, the financial burden will fall back on the remaining taxpayers. It will also have a detrimental impact on our schools, EMS, fire districts, local jurisdictions and the maintenance of infrastructure. I do not believe this was the intent of the bill at hand.

I strongly urge you to amend SB 2279 into a study so that it can be reviewed along with HB 1247. This review will allow for a comprehensive study of the impact of these proposed changes and help to prevent any unintended consequences that would be harder to remove in the future.

Respectfully Submitted,



Mikka Willits
Pembina County Director of Tax Equalization

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF PEMBINA

NORTHEAST JUDICIAL DISTRICT

Estad Farm Corporation,)
)
 Appellant,)
)
 v.)
)
 Pembina County Board of)
 County Commissioners,)
)
 Appellee.)

File Number 34-2020-CV-79

**MEMORANDUM OPINION
AND ORDER**

- [1] Estad Farm Corporation (hereinafter "Estad") appeals a decision of the Pembina County Board of County Commissioners (hereinafter "the Board") regarding classification of a potato warehouse for taxation purposes. Estad filed its appeal in April. *Odyssey Doc. 1*. The Board timely answered in May. *Odyssey Doc. 9*. The record was certified in June, and a briefing schedule was entered. *Odyssey Docs. 11 & 55*. The case was assigned to this Court in July. *Odyssey Doc. 59*. The parties stipulated to an extension of briefing deadlines, which the Court accepted. *Odyssey Docs. 61 & 64*. Estad filed its brief. *Odyssey Doc. 65*. The Board filed its brief. *Odyssey Doc. 67*. Estad filed its reply brief. *Odyssey Doc. 75*.
- [2] Oral argument was held utilizing reliable electronic means on September 22, 2020. Attorneys Lawrence DuBois and Terin Riley of Fleming, DuBois & Fleming, Cavalier, ND, were present on behalf of Estad. Howard Swanson, Special Assistant State's Attorney for Pembina County, of Swanson & Warcup in Grand Forks, ND, was present on behalf of the Board.
- [3] The Court has reviewed the briefs filed by the parties, the law cited therein, and the certified record in this case. Based on that review, the Court addresses jurisdiction and the standard of review relating to this appeal as follows:

Jurisdiction & Standard of Review

- [4] This Court has jurisdiction over an appeal of a decision made by the Board regarding classification of property for taxation purposes. *N.D.Const.Art. VI, § 8; N.D.C.C. §§ 57-23-04(3), 11-11-39, 27-05-06 and 28-34-01.*
- [5] The parties have correctly set out the standard of review this Court must utilize when reviewing a decision of the Board. The review is limited to determining whether the Board's decision was arbitrary, capricious or unreasonable, and whether the decision was supported by substantial evidence. *Tibert v. City of Minto*, 2006 ND 189, ¶ 8, 720 N.W.2d 921. The burden is upon Estad to show that the Board acted arbitrarily, capriciously or unreasonably; or to show that there is no substantial evidence to support the decision. *Dahm v. Stark County Board of County Commissioners*, 2013 N.D. 241, ¶ 10, 841 N.W.2d 416.
- [6] A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. *Tibert* at ¶ 8. It is also noted that if the Board failed to correctly interpret and apply the controlling law, failure of this nature is deemed arbitrary, capricious and unreasonable. *Trollwood Village Limited Partnership v. Cass County Board of County Commissioners*, 557 N.W.2d 732, 734 (N.D. 1996).
- [7] When reviewing a case to determine whether a decision is supported by substantial evidence, "substantial evidence" is defined as relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Dahm* at ¶ 10. The possibility of drawing two inconsistent conclusions from the evidence presented to the Board does not mean there was a lack of substantial evidence. *Citizens State Bank of Neche v. Hamilton*, 238 N.W.2d 655 (N.D. 1976); *Bank of Rhame*, 231 N.W.2d 801 (N.D. 1975).
- [8] In the same vein, when considering evidence, it is the responsibility of the Board to assess credibility and weight, not the reviewing Court. See generally *Midwest Processing Co. v. McHenry County*, 467 N.W.2d 895 (N.D. 1991); *Koch Hydrocarbon Co. v. Board of Equalization*, 454 N.W.2d 508 (N.D. 1990); *Ulvedal v. Board of Co. Comm. of Grand Forks Co.*, 434 N.W.2d 707 (N.D. 1989); *Chernick v. City of Grand Forks*, 210 N.W.2d 73, 78 (N.D. 1973). Only when there is such a complete absence of evidence or reason so as to amount to an arbitrary, capricious or unreasonable action does a reviewing Court have a basis to reverse the decision of the Board. *Dakota Northwestern Assoc. Ltd. Partnership v. Burleigh Co. Bd. of Co. Comm.*, 2000 ND 164, 616 N.W.2d 349.

- [9] In an appeal of this nature, a reconsideration of evidence is limited to the evidence in the record.¹ The evidence must be viewed in light of the Board's decision to determine whether it was arbitrary, capricious, or unreasonable. *Dahm* at ¶ 10. Moreover, the record is adequate to support the findings and conclusions of the Board if it allows this Court to discern the rationale for the Board's decision. *Dahm* at ¶ 8.

The Parcel at Issue

- [10] Estad owns and operates a potato warehouse that sits on approximately 11 acres on the outskirts of Crystal, located within Pembina County. Pembina County has classified the land as commercial property for taxation purposes, and has determined the potato warehouse is not exempt from taxation. Estad asserts the warehouse is situated on agricultural land, it is part of his farm plant, and therefore it is exempt from taxation. *Odyssey Doc. 22*, p. 61, l. 13-20.²
- [11] Estad's parcel is located in the southeast corner of section 12, or part of the E1/2 of the SE1/4 12-159-55. *Odyssey Doc. 42*. The parcel is located at the intersections of Sections 12 and 13, Crystal Township, and Section 7 and 18 of Elora Township. Estad's parcel is partly within Crystal Township, and partly within the city limits of the town of Crystal. *Odyssey Doc. 47*.
- [12] There is a noteworthy issue in the record the Court must address. The statutory scheme to determine whether Estad's potato warehouse is or is not exempt from taxation involves a determination of whether the land it sits on is platted as part of the town of Crystal.
- [13] An understanding of the meaning of "platted land" is necessary in order to move forward with the analysis.

- A. The North Dakota Century Code does not provide a specific definition of a "plat," although the term is used throughout the Code. (e.g., N.D.C.C. §§ 11-

¹ The Court notes the Board's objection in its brief (*Odyssey Doc. 67*, ¶¶ 25 & 28), to arguments made by Estad's counsel regarding matters outside of the record (*Odyssey Doc. 65*, ¶¶ 18 & 35). The Court agrees with the Board's position and advises the parties that it neither considered nor relied upon arguments of counsel that were based upon investigations and conversations of counsel outside of the official record.

² The page numbers referred to throughout this opinion are commonly called "Bates Numbers" which are stamped on the lower right-hand corner of the record in this case.

18-21, 11-33.2-01, 11-33.2-11, 11-33.2-12.1, 11-33.2-14, 40-28-22, 40-50.1-01, 47-19-02, and 57-02-39.) The most comprehensive description of what must be contained within a plat is found at N.D.C.C. § 40-50.1-01.

- B. With no specific statutory definition of "plat" located within the Code, the Court relies on the ordinary and common meaning of the word. N.D.C.C. § 1-02-02. Merriam-Webster defines plat as: "a plan, map, or chart of a piece of land with actual or proposed features (such as lots)." *Merriam-Webster.com Dictionary*, <https://www.merriamwebster.com/dictionary/plat>.
- C. A deed is not the same as a plat. A deed evidences transfer of ownership of the property defined by the legal description. A legal description is not a plan. A legal description is not a map. A legal description is not a chart.
- D. In the same vein, a recorded deed which conveys a small portion of a larger piece of land (*i.e.*, parceling it out) does not by operation equate to platting of the smaller portion.
- E. After reviewing scarce case law, opinions and the statutory use of the term "plat," this Court notes the filing of plats is typically undertaken as part of the development of city or other lands dedicated to public use. The plat is a document that has a graphic or diagrammatic depiction of the property. It sets out streets, alleys, and public grounds. It includes notations of open waterways. It is to scale. It is recorded in the office of the recorder in the county where the plat is located. It is recorded in a plat book, separate and apart from other recorded instruments. See N.D.C.C. Chapter 40-50.1, *et seq.*

- [14] This Court considered the historical documents related to the City of Crystal, found in the record as *Odyssey Doc. 51*. The initial establishment documents go back to 1891 and refer to the incorporation of the town of Crystal. *Odyssey Doc. 51*, pp. 216-236. Significantly, there is a meets and bounds description of the area sought to be incorporated as the town of Crystal. See *Odyssey Doc. 51*, p. 230, enlarged at p. 237. This description is, essentially, a one square mile area of land. It is located mostly in Sections 12 and 13 of Crystal Township, but it also encompasses a quarter mile strip on the western edges of Sections 7 and 18 in Elora Township.
- [15] There is a plat in the record. *Odyssey Doc. 51*, pp. 238 & 239. The document is stamped "Original" and "(Rearranged Plat)" over the lots between Appleton Avenue and Euclid Avenue, to the west of Third Street. The Court is unable to ascertain the

date of this document. It appears from p. 239 that the document came from a spiral bound book.

- [16] Of significance, this plat covers only a portion of the square mile area identified as the incorporated town of Crystal as per the meets and bounds description referenced in ¶ 14, *supra*. It appears this plat covers a very small portion of the intersection of Sections 12 and 13, Crystal Township, and Sections 7 and 18 in Elora Township, which is the location of Estad's parcel. The Court believes that the circular stamp in the upper right hand corner of the document is likely the intersection where Estad's parcel is located.
- [17] The Court notes the platted land on pp. 238 & 239 is essentially the town of Crystal. There are several parcels of land on the outskirts of this plat identified only by ownership, and they lack any dedication for streets, alleyways and the like.
- [18] The record does not contain any other *documentary* evidence to show Estad's parcel was platted.
- [19] The record also shows Estad's parcel falls partly within the original incorporated city limits of the town of Crystal, and partly within Crystal Township. *Odyssey Doc. 47*. It is indisputable that the potato warehouse itself is situated within the city limits of the town of Crystal.
- [20] All of this history is necessary because twice Estad represented to the Board at its meeting on March 3, 2020, that his parcel **is platted**, it has **always been platted**, and he **did not plat** it. *Odyssey Doc. 22*, p. 81, l. 5-7, and p. 90, Line 21 [emphasis supplied]. Yet, curiously, he did not produce a plat to support his assertion. Nevertheless, it is clear from the record that all of the parties, **including Estad**, operated under the belief the parcel was platted. See *Odyssey Docs. 19 & 22*.
- [21] Of significance, Estad changed his position between the first meeting of the Board held March 3, 2020, and the second meeting of the Board held March 17, 2020. During the March 17th meeting, Estad asserted that the parcel was "**still un-platted land**." See *Odyssey Doc. 26*, p. 123, Line 7 [emphasis supplied].
- [22] With this backdrop, the Court moves forward to consider the heart of Estad's appeal.

Taxation of Agricultural Property and Improvements

- [23] The North Dakota Century Code sets out numerous classifications of property for taxation purposes. N.D.C.C. § 57-02-01 lists:
1. Agricultural property
 2. Air carrier transportation property
 4. Centrally assessed property
 5. Commercial property (all property, or portions of property, not included in subsections 1, 4, 11 & 12)
 11. Railroad property, and
 12. Residential property.

The Court notes that the definition of commercial property is a catch-all definition. All property is commercial, unless it is agricultural, centrally assessed, railroad or residential.

- [24] Of specific import to the case *sub judice* is the statutory definition of agricultural property. The definition of agricultural property is found at N.D.C.C. § 57-02-01 at subsection 1:

"Agricultural property" means 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 use other than raising agricultural crops or grazing farm animals . . .

In general, land used for raising agricultural crops or grazing farm animals is taxed as agricultural property.

- [25] This definition then carves out an exception related specifically to property that was platted after March 30, 1981. The exception is that property platted after that date "is not agricultural property" when four of seven conditions exist. Those seven conditions are:

- (1) *The land is platted by the owner.*
- (2) *Public improvements, including sewer, water, or streets, are in place.*
- (3) *Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.*
- (4) *Property is zoned other than agricultural.*
- (5) *Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.*

- (6) *The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.*
- (7) *The property sells for more than four times the county average true and full agricultural value.*

N.D.C.C. § 57-02-01(1)(a).

[26] Overlaying this definition of agricultural property is the provision of North Dakota law which provides exemption from taxation for certain farm structures and improvements located on agricultural lands. Specifically, N.D.C.C. § 57-02-08 states:

All property described in this section to the extent herein limited shall be exempt from taxation:

* * *

a. *All farm structures and improvements located on agricultural lands.*

(1) *This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant,³ or as a farm residence.*

* * *

(3) *Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, any structure or improvement used by a manufacturing facility as defined in section 19-24.1-01, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.*

* * *

³ According to the North Dakota Office of State Tax Commissioner, the farm plant is "the entire farm enterprise operated as an economic unit." The document specifies that the land where the building is sitting "must be used for raising agricultural crops." *Odyssey Docs. 49 & 50, ¶ 1.*

- [27] The Board was required to utilize this legal framework when considering the appropriate classification of Estad's potato warehouse.

Review of Decision

- [28] Did the Board act arbitrarily, capriciously or unreasonably? The record contains a full history of the Board's review related to the classification of Estad's property. It shows the Board considered numerous factors before reaching its decision.
- A. The Board discussed the matter at numerous meetings. *Odyssey Docs. 14, 17, 18, 20-22 & 24-26.*
 - B. The Board relied upon information collected and presented by the County Tax Director. *Odyssey Docs. 16, 19, 23, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39, 40, 41 & 44.*
 - C. The Board considered the recommendation of the Township Board of Equalization. *Odyssey Docs. 12, 13, 15 & 27.*
 - D. The Board reviewed information about the history, location, and use of the property. *Odyssey Docs. 33, 34, 42, 43, 45, 46, 47 & 48.*
 - E. The Board considered historical records regarding the town of Crystal. *Odyssey Docs. 51 & 52.*
 - F. The Board considered information provided by the County State's Attorney and the State of North Dakota. *Odyssey Docs. 49, 50 & 53.*
 - G. Significantly, the record reflects Estad's active participation throughout the process. The record shows Estad was in communication with the County Tax Director, and he was afforded numerous opportunities to address the Board regarding the taxation status of his property.
- [29] Based upon these actions by the Board, it is evident the members conducted a comprehensive examination of the issue before arriving at a decision. In that regard, the Board did not act arbitrarily, capriciously or unreasonably.
- [30] The analysis does not end here, however. The more salient issue in this appeal is whether, after considering all of the aforementioned information, the Board correctly

interpreted and applied the law to that information. Failure to do so has been deemed arbitrary, capricious and/or unreasonable. *Trollwood Village, supra*.

[31] *Did the Board correctly interpret and apply the controlling law?* The record is replete with efforts by the Board to follow the law regarding taxation of Estad's potato warehouse. But to answer this question, the Court must walk through the statutes before deciding whether the Board correctly interpreted and applied the law. This analysis is fact driven.

[32] Still, this Court is mindful that it must not substitute its judgment for that of the Board. *Dakota Northwestern Assoc. Ltd. Partnership v. Burleigh Co. Bd. of Co. Comm.*, 2000 ND 164, ¶ 8, 616 N.W.2d 349; *Appeal of Johnson*, 173 N.W.2d 475, 484 (N.D. 1970). The Board is presumed to have faithfully performed its duties, to have exercised its discretion in honesty and good faith, and to have sufficient and competent evidence before it to justify its decision. *Ulvedal, supra*.

[33] The Court undertakes its review of the correct interpretation and application of the controlling law as follows:

- A. First, the Court refers to N.D.C.C. § 57-02-08, which is the statute listing various properties exempt from taxation. This statute exempts "all farm structures and improvements located on agricultural lands."
- B. Next, the Court looks to N.D.C.C. § 57-02-01(1), which provides the definition of agricultural property, regardless of whether the property is or is not platted. A parsing of this definition is required under the facts of this case.
 - i. Is the 11 acres, whether platted or not platted, used for raising agricultural crops?⁴ The County Tax Director consistently asserted the land was not being used to raise agricultural crops. In fact, the record shows in 2015 the parcel was reclassified from agricultural to commercial. *Odyssey Doc. 23*, p. 105. Estad asserted that the parcel is used as an economic unit with his farming operation of cultivating and harvesting potatoes. *Odyssey Doc. 22*, p. 90, l. 21 and p. 91, l. 10-17. The crux of Estad's argument is that the land always was agricultural, and it remains agricultural because it is an extension of his farm plant.

⁴ That portion of the statute referring to grazing animals is not referred to in the Court's analysis, as there is no evidence that the parcel was or is used for animal husbandry.

- ii. Accepting Estad's argument, the analysis then returns to § 57-02-08 to determine if the potato warehouse is an exempt structure.
- iii. Relying upon § 57-02-08(15)(a)(1), a reasonable person could conclude that the potato warehouse is an exempt structure as part of Estad's farm plant. But further reading of the statute is required.
- iv. § 57-02-08(15)(a)(3) provides that "any structure or improvement located on platted land within the corporate limits of a city" is not exempt. At the March 3, 2020, meeting of the Board, the Tax Director asserted, "the land was platted by the owner when you took it and platted it." *Odyssey Doc. 22*, p. 64. Estad did not object to this characterization of the parcel as being platted. In fact, Estad represented that his parcel was platted. See ¶ 20, *supra*. The record clearly establishes the potato warehouse is within the corporate limits of the town of Crystal. Both provisions being met, the plain language of this subdivision would result in a determination that Estad's potato warehouse is not an exempt structure.

C. But arguments on appeal address other issues as well. The record shows that the Board considered further the definition of agricultural property as applied to Estad's potato warehouse, specifically the second phrase of § 57-02-01(1). That phrase provides that 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.

- i. Relying upon Estad's representation that the property was platted (¶ 20, *supra*), the question becomes: Was the land assessed as agricultural property prior to March 30, 1981? The record shows that all concerned accepted without objection that the parcel had been assessed as agricultural land until 2015, when it was changed to commercial land. *Odyssey Doc. 26*, p. 118, l. 3-8.
- ii. Hence, when Estad purchased approximately 12.5 acres in 2009 (*Odyssey Doc. 42*), he purchased property that had been classified as agricultural land. The record shows that in 2012, he began making plans for the construction of an office building and a potato warehouse on this site. *Odyssey Docs. 33 & 34*.
- iii. In 2015, Estad parceled out a little more than 1 acre where the office building had been constructed. That property was then classified as

commercial land and the office building taxed as an improvement. *Odyssey Doc. 26*, p.117, l. 20-21 and p.118, l. 1-2. The reclassification of the office building and property was without objection by Estad. *Odyssey Doc. 22*, p. 75, l. 9-14.

- iv. Again, it is the reclassification of the remaining 11 acres that is the point of contention. Estad is steadfast the construction of his potato warehouse on those remaining 11 acres constitutes part of his ongoing farming operation, and hence the use is agricultural. Estad acknowledges the portion of the 11 acres not dedicated to the warehouse structure is not being farmed by him, and he considers it wasteland. *Odyssey Doc. 26*, p. 129, l. 18-19.
- v. To tie up this line of analysis, then, the issue to be addressed is: Was the property "put to a use other than raising agricultural crops?" In other words, in 2015 when Estad carved out 1.39 acres from his original 12.5 acre purchase to establish his commercial office building, did that change the nature of the remaining acreage such that it was no longer used for raising agricultural crops?
- vi. The evidence in the record, when viewed from the perspective of the Board's decision, supports the reasonable conclusion that the remaining 11 acres was being put to a use other than raising agricultural crops. The evidence before the Board included that (a) Estad had purchased a relatively small parcel of land for a price significantly greater than the price of agricultural land, (b) that he then developed a commercial office on a portion of the parcel, and the construction of the office was contemporaneous with the construction of the potato warehouse, (c) that the property was within the city limits of Crystal, at an intersection surrounded by other commercial businesses, (d) that Estad was no longer raising crops on the parcel because the construction of the commercial office and the potato warehouse ended viability to raise crops, and (e) that the potato warehouse parcel also contained the welcome sign for the town of Crystal. Although Estad does not agree, it is nevertheless a reasonable conclusion reached by the Board.
- vii. Based upon this analysis, the Board had evidence that the use of the 11 acres changed from raising agricultural crops to commercial use. Consequently, the Board reasonably concluded that although the parcel had previously been platted and assessed as agricultural

property, it was now being put to a use other than raising agricultural crops. Applying this phrase of the statute to Estad's situation, the potato warehouse is not an exempt structure.

- D. Although likely unnecessary because of Estad's prior representation that the parcel had always been platted, the Board also considered that provision of § 57-02-01 regarding property platted *after* March 30, 1981. The record suggests that at the conclusion of the March 3rd meeting, the parties were in agreement that at the next meeting they would review the factors listed in subsection 1, subparagraph a, of § 57-02-01. *Odyssey Doc. 22*, pp. 100-102. The record contains a point-by-point analysis conducted during that follow-up meeting. *Odyssey Doc. 26*.
- i. At the March 17th hearing, the County Tax Director presented to the Board based upon the parcel being platted after 1981. It appears the County Tax Director believed the land was "platted" when purchased in 2009 and/or "platted" when the commercial office building was parceled out in 2015.⁵ The County Tax Director asserted that Estad met six of the seven factors to be considered. *Odyssey Doc. 26*, p. 117-123. *See also Odyssey Doc. 23*, described as "Pembina County Tax Director's Narrative – Commission Meeting March 17, 2020," which provides a comprehensive explanation of the seven factors.
 - ii. Only at the very end of the hearing on March 17th did Estad assert to the Board that the property was not platted. *See* ¶ 21, *supra*.
 - iii. Estad was at the meeting, addressed the Board, interacted with the County Tax Director, and voiced his disagreement with the analysis presented. *Odyssey Doc. 26*, pp. 120-134, pp. 4-18.
 - v. The Board then voted on and determined that six of the seven factors existed, and therefore the potato warehouse is not an exempt structure. *Odyssey Doc. 26*, p. 134.

[34] Based upon this analysis of the operations of the Board, the record shows the Board considered the evidence presented by the County Tax Director as well as evidence presented by Estad, and then applied the law to the various statutory schemes that could be utilized under the circumstances of Estad's situation. That

⁵ The Court knows not whether this is based upon an erroneous view of the effect of the recordation of the deed, or whether there are plats on file for these pieces of property.

the Board reached a conclusion different than Estad does not mean it wrongfully interpreted and/or applied the law.

- [35] This decision was clearly within the discretion of the Board, who is to consider and weigh the information presented and reach a conclusion. Although the Board did not have an actual plat of Estad's parcel in the record, they most certainly could rely on Estad's initial representation to them that the land was platted, and had been long before he took ownership of it in 2009. Whether the platting took place before or after March 30, 1981, matters not. Under either analysis, the record supports that that the potato warehouse is **not an exempt structure**. The Board did not incorrectly interpret or apply the law to the evidence as presented.
- [36] In the same vein, if the Board's belief that the land was platted is later determined to be factually inaccurate – that is of no consequence to the end result. Ultimately, the question of whether the land has an agricultural use comes back to the analysis of whether the land is being used to raise crops. As determined in ¶ 33(C)(vi), *supra*, the Board considered the use of the land, and did not see the parcel as having an agricultural nature. If the land itself is no longer agricultural in use, than any building thereon is **not an exempt structure**.
- [37] In other words, regardless of how Estad presents the property to the Board (*i.e.*, platted, unplatted), the issue always returns to whether the parcel is agricultural land or not. Ultimately, the Board exercised its discretion and reasonably concluded that the parcel should be reclassified from agricultural to commercial use based upon all of the evidence in the record.
- [38] *Did the Board have substantial evidence to support its decision?* Finally, this Court must address Estad's argument that the Board did not have substantial evidence to support its decision. The Court has combed this record, which includes documentation not only of public meetings but also of work undertaken by the County Tax Director to document the nature and use of the property at issue. The record is extensive, and this Court has referenced point by point, *supra*, the evidence before the Board.
- [39] Additional recital of the "substantial evidence" is unnecessary. There was ample and competent evidence presented which allowed the Board to reach its conclusion that the potato warehouse is not an exempt structure. No hearing is perfect, and gaps in information can exist that do not require a reviewing Court to overturn a decision made in honesty and good faith. The decision of the Board that the potato warehouse is **not an exempt structure** is supported by substantial evidence.

Order

[40] This Court, having reviewed the record and arguments presented by the parties, finds that the Pembina County Board of County Commissioners did not act arbitrarily, capriciously, or unreasonably and its decision was based upon substantial evidence contained within the record. The Board's decision that Estad's potato warehouse is not an exempt structure is **AFFIRMED**.

[41] The Court appreciates the length of time this case has been before the Court awaiting decision. The Court thanks the parties and counsel for their patience during the pendency of this appeal.

[42] **IT IS SO ORDERED** this 2nd day of March, 2021.

BY THE COURT:



Barbara L. Whelan
District Court Judge
Northeast Judicial District