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PROPERTY CLASSIFICATIONS FOR PROPERTY TAX ASSESSMENT PURPOSES - DEFINITION OF AGRICULTURAL PROPERTY

This memorandum provides information on the property classifications used for property tax assessment purposes and information related to the definition of agricultural property. The first section provides general information regarding property classifications for property tax assessment purposes, including the definitions of each property classification. The second section provides historical information related to the definition of agricultural property and includes information regarding the legislative history of the creation of and each amendment to the defined term. The final section provides an overview of Attorney General opinions that provide analysis regarding the definition of agricultural property since the creation of the definition.

PROPERTY CLASSIFICATIONS GENERALLY

North Dakota Century Code Chapter 57-02 outlines the practices and procedures for property assessment and provides all property in this state is subject to taxation unless expressly exempted. To determine a property's taxable value, the property must be classified as either agricultural property, centrally assessed property, commercial property, or residential property. Each of these property classifications are defined in Section 57-02-01. The table below includes the definition for each property classification.

Property Classification	Statutory Reference	Definition
Agricultural Property	Section 57-02-01(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 a use other than raising agricultural crops or grazing farm animals. Agricultural property includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse. 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. a. Property platted on or after March 30, 1981, is not agricultural property when any four of the following conditions exist: (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.

Property Classification	Statutory Reference	Definition
		b. Land that was assessed as agricultural property at the time the land was put to use for extraction of oil, natural gas, or subsurface minerals as defined in section 38-12-01 must continue to be assessed as agricultural property if the remainder of the surface owner's parcel of property on which the subsurface mineral activity is occurring continues to qualify for assessment as agricultural property under this subsection.
Centrally Assessed Property	Section 57-02-01(4)	"Centrally assessed property" means all property which is assessed by the state board of equalization under chapters 57-05 [railroad property], 57-06 [public utilities], and 57-32 [air transportation companies].
Commercial Property	Section 57-02-01(5)	"Commercial property" means all property, or portions of property, not included in the classes of property defined in subsections 1 [agricultural property], 4 [centrally assessed property], 11 [railroad property], and 12 [residential property].
Residential Property	Section 57-02-01(12))	"Residential property" means all property, or portions of property, used by an individual or group of individuals as a dwelling, including property upon which a mobile home is located but not including hotel and motel accommodations required to be licensed under chapter 23-09 nor structures providing living accommodations for four or more separate family units nor any tract of land upon which four or more mobile homes are located.

HISTORY OF THE DEFINITION OF AGRICULTURAL PROPERTY

The Legislative Assembly defined statutory classifications of real property, including agricultural property, in response to the North Dakota Supreme Court decision in *Soo Line Railroad Company v. State of North Dakota*, 286 N.W.2d 459 (1979). Prior to 1981, North Dakota law called for equal assessment of all taxable property at true and full market value. However, a system had evolved which was characterized by disparity of assessments within and among types of property and taxing districts, essentially creating a de facto property classification system. This de facto property classification system caused a disproportionate shift of tax burden to railroad and utility property, which resulted in litigation involving the Soo Line Railroad Company. In the *Soo Line* case, the North Dakota Supreme Court held the use of a higher assessment ratio for centrally assessed property as compared to locally assessed property was impermissible, and the de facto classification system in place at that time was no longer acceptable.

The legislative response to the *Soo Line* decision included the passage of Senate Bill No. 2323 (1981), which extensively reshaped the state's property assessment procedures. Statutory classifications of real property were created, including agricultural property, centrally assessed property, commercial property, and residential property. Following the passage of Senate Bill No. 2323, the term "agricultural property" was defined as follows:

> "Agricultural property" means lands which are used for raising agricultural crops or grazing farm animals but shall not include platted lands.

While the statutory classifications of real property are still in place today, the definitions of the statutory classifications have been amended over time. The definition of agricultural property, has been amended six times since its creation in 1981, described in more detail below.

1981 Reconvened Legislative Session

The Legislative Assembly reconvened after the 1981 regular legislative session and revisited the definition of agricultural property. Following the enactment of House Bill No. 1671 (1981), the Legislative Assembly modified the definition of agricultural property to provide:

> "Agricultural property" means 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.

Upon a review of the legislative history pertaining to House Bill No. 1671, the perceived intent of the Legislative Assembly was to correct what was described as an error in the original definition. Concerns were raised regarding the application of the definition to land that had been annexed into a city for purposes of proper and orderly development of the city and, in some cases, to apply special assessments for improvements. Prior to the creation

of the definition, and at the time the property was annexed by certain cities, the cities represented to the property developers that the land would be taxed as agricultural land until the land use changed. However, when the definition of agricultural property was applied to these properties, the properties were classified and assessed as commercial property because they were platted and therefore did not meet the criteria for agricultural property. Based on the legislative history, the perceived intent of the amendment was to include what was referred to as a "grandfather provision" to allow these properties, which were platted and assessed as agricultural property before March 30, 1981, to be taxed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. Notably, the date included in the definition of agricultural property, March 30, 1981, is the date Senate Bill No. 2323 was approved with an emergency clause.

1983 Legislative Session

The definition was amended in 1983, through the enactment of House Bill No. 1296. The bill added a list of seven statutory conditions that must exist before a property platted on or after March 30, 1981, was required to be reclassified to a nonagricultural classification, as follows:

> "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 a use other than raising agricultural crops or grazing farm animals. 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 and not contiguous to agricultural property.
>
> g. The property sells for more than four times the county average true and full agricultural value.
>
> (Emphasis added)

Upon a review of the legislative history pertaining to House Bill No. 1296, the perceived intent of the Legislative Assembly was to address the classification of land platted on or after March 30, 1981, particularly for undeveloped land purchased by property developers. The list of statutory conditions was intended to help assessors determine the point at which land must change from an agricultural classification to a nonagricultural classification. These seven criteria were referenced as "guidelines" for assessors to use when determining whether the use of the land was no longer consistent with an agricultural property classification. Notably, the Legislative Assembly considered removal of the "grandfather provision" applicable to land platted and assessed as agricultural property prior to March 30, 1981, but ultimately decided against removal to honor representations that may have been made to property owners before March 30, 1981.

1989 Legislative Session

The definition was amended in 1989, through the enactment of Senate Bill No. 2526. The Legislative Assembly added the following language to the definition to clarify the effect of the time limitations in the section:

> 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.

Upon a review of the legislative history pertaining to Senate Bill No. 2526, the perceived intent of the Legislative Assembly was to provide clarification for interpretation of what has been referred to as the "grandfather provision" applicable to land platted and assessed as agricultural property prior to March 30, 1981. The legislative history indicates the bill was in response to the Attorney General's opinion that under the definition of agricultural property in effect at the time, land platted and assessed as nonagricultural property before March 30, 1981, should not be classified as agricultural land after March 30, 1981, even if the land meets the other criteria of agricultural property. The Legislative Assembly generally disagreed with the Attorney General's opinion. As introduced, the bill sought to remove the "grandfather provision" to eliminate confusion regarding the effect of the clause. However, the

Legislative Assembly ultimately decided against removal of the provision, and instead, added language to make clear the time limitations in the definition may not be construed to put a restriction on land being reclassified as agricultural land, if it otherwise meets all criteria.

1997 Legislative Session

The definition was amended in 1997, through the enactment of Senate Bill No. 2303. The bill increased from three to four the number of statutory conditions that must exist before property must be reclassified to a nonagricultural classification. The list of statutory conditions included considerations of platting, public improvements, moving of topsoil, zoning, adjacent development, location in regard to other agricultural property, and sales price.

Upon a review of the legislative history pertaining to Senate Bill No. 2303, the perceived intent of the Legislative Assembly was to help property developers as city boundaries continued to encroach into rural areas. The Legislative Assembly determined it was appropriate to increase the required number of statutory conditions to reflect a majority of the criteria.

2005 Legislative Session

The definition was amended in 2005, through the enactment of House Bill No. 1517. The amendment provided that land on which a greenhouse is located is agricultural property if the land is used for a nursery or other purposes associated with the greenhouse. The bill also specifically included greenhouses or other buildings used primarily for the growing of horticultural or nursery products from seed, cuttings, or roots, if not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products, as "farm buildings and improvements" for purposes of the farm structure exemption.

Upon a review of the legislative history pertaining to House Bill No. 1517, the perceived intent of the Legislative Assembly was to recognize greenhouse operators as agriculture producers and treat greenhouses in rural settings as farming operations rather than commercial operations for property tax purposes.

2011 Legislative Session

The definition was amended in 2011, through the enactment of House Bill No. 1071. The definition was amended to require land, which was assessed as agricultural property when put to use for extraction of oil, natural gas, or subsurface minerals, to continue to be assessed as agricultural property if the remainder of the surface owner's parcel on which the subsurface mineral activity was occurring continued to qualify for assessment as agricultural property.

Upon a review of the legislative history pertaining to House Bill No. 1071, the perceived intent of the Legislative Assembly was to protect the property classification of land otherwise fitting the criteria for agricultural property but for the use of the land for subsurface mineral extraction. It was noted when subsurface resources are being developed, conditions may arise that may result in reclassification of the land from agricultural property to commercial property, often resulting in an increase of property taxes owed by the surface owner. The amendments to the definition were proposed to prevent an increase in property taxes owed by the surface owner while subsurface mineral activity was occurring.

ATTORNEY GENERAL OPINIONS RELATED TO THE DEFINITION OF AGRICULTURAL PROPERTY

Since 1981, the Attorney General has issued a number of opinions in response to questions regarding the proper application of the definition of agricultural property under varying circumstances, including the opinions summarized below.

1981 N.D. Op. Att'y Gen. No. 81-114
(Letter to Representative Alvin Hausauer)

In 1981, the Attorney General rendered opinions in response to two questions submitted by the chairman of the Finance and Taxation Committee of Legislative Council related to the definition of agricultural property.

First, the Attorney General opined a city was not allowed to vacate a plat retroactive to January 1, 1981, to change the assessment classification of the property for the 1981 tax year to agricultural property. The Attorney General reasoned that changes made in the ownership, use, or other status of taxable property after the February 1 assessment date did not provide a basis for changing the assessment that was made in that year unless there was a statute that expressly provided for changing the assessment.

Second, the Attorney General opined the newly created definition of agricultural property superseded other Century Code provisions that provided that agricultural lands annexed by a city must be classified as agricultural lands for tax purposes until put to another use. The Attorney General reasoned because the provisions were in irreconcilable conflict as it related to classification on platted lands in cities, the definition of agricultural property prevailed because it was enacted later.

1982 N.D. Op. Att'y Gen. Advisory Opinion
(Letter to Mr. Richard L. Schnell)

In 1982, the Attorney General rendered opinions in response to four questions submitted by the Morton County State's Attorney related to the definition of agricultural property.

First, the Attorney General was asked whether a tract of land platted and assessed as nonagricultural property before March 30, 1981, should be classified as agricultural land after March 30, 1981. In response to this question, the Attorney General strictly construed the statutory definition of agricultural property in effect at the time and opined that a tract of land platted and assessed as nonagricultural property before March 30, 1981, should not be classified as agricultural land after March 30, 1981. Notably, the Legislative Assembly modified the definition of agricultural property in 1989 to clarify the effect of the time limitations in the definition of agricultural property.

Second, the Attorney General opined that zoning a tract of land for nonagricultural purposes did not change the classification of that land for property tax purposes if the use of the tract continued to be an agricultural use. Citing case law from a Florida court, the Attorney General reasoned it had been concluded as a matter of law that zoning property to a nonagricultural use does not require the property to be reclassified for taxation purposes when the use of the property remained, in fact, agricultural.

Third, the Attorney General opined that making improvements such as curb and gutter or roads or the inclusion of a tract of land within a special assessment district did not affect the value of that tract for property tax purposes so long as that tract is classified as agricultural property. The Attorney General reasoned if a tract of land is classified as agricultural property, the property must be valued according to statute and need not take into consideration improvements, such as curb and gutter or roads, if the statute does not require it.

Lastly, the Attorney General opined a tract of land platted by a county auditor pursuant to Section 57-02-39 did not become "platted" land for the purpose of applying the definition of agricultural property. The Attorney General reasoned that creation of a plat pursuant to Section 57-02-39 did not confer rights in or transfer title to land. Rather, under this section, a county auditor could plat land otherwise described by metes and bounds for the convenience of the county auditor and tax officials in describing the property on the tax rolls. As such, the Attorney General opined land platted pursuant to Section 57-02-39 was not "platted" land as contemplated in the definition of agricultural property.

1990 N.D. Op. Att'y Gen. Advisory Opinion - Overruled
(Letter to Mr. Douglas Manbeck)

In 1990, the Nelson County State's Attorney asked the Attorney General whether a grain bin owned by a farmer and used as part of the farmer's farming operation was exempt under the farm structure exemption if the bin was located on a railroad lease site platted before March 30, 1981. The Attorney General opined that the grain bin was exempt from taxation under the farm structure exemption and reasoned that the language enacted following the passage of Senate Bill No. 2526 (1989) allowed the platted land to be reclassified as agricultural property. The Attorney General further reasoned because grown and harvested crops were customarily stored by the farmer until they were marketed, the storage of harvested grain fell within the meaning of the phrase "used for raising crops"; therefore, the land used for storing the grain was agricultural.

It is important to note that this Attorney General opinion was overruled by *2002 N.D. Op. Att'y Gen. No. L-31* and *2002 N.D. Op. Att'y Gen. No. L-70,* discussed below.

2002 N.D. Op. Att'y Gen. No. L-31
(Letter to Nicholas B. Hall)

In 2002, the Grafton City Attorney asked the Attorney General to clarify the limits of a city official's discretion when applying the provisions of the farm structure exemption to a potato warehouse located either on platted property within a city or on unplatted city property. To qualify for the farm structure exemption, the structure must be located on agricultural land. As such, the Attorney General examined the definition of agricultural property and opined that "if a structure is located on unplatted land in a city and is not used for raising crops or grazing farm animals, and the land is properly assessed as commercial property, the structure does not qualify for the agricultural

exemption under [Section 57-02-08(15)]." The Attorney General further opined "[t]o the extent the opinion conflicts with the July 25, 1990, letter to Douglas Manbeck, Nelson County State's Attorney, the Manbeck opinion is overruled."

2002 N.D. Op. Att'y Gen. No. L-70
(Letter to James W. Wold)

Also in 2002, the Griggs County State's Attorney requested the Attorney General's opinion regarding whether a grain elevator located on unplatted railroad land and owned by a farmer for storage was exempt under the farm structure exemption. Because qualification for the farm structure exemption requires the structure to be located on agricultural land, the Attorney General analyzed whether the land was considered agricultural property. The Attorney General noted "property can be categorized as 'agricultural property' only if it is 'used for raising agricultural crops or grazing farm animals'" and "[t]he use of a structure to store grain does not convert the land upon which the structure is located into agricultural land." The Attorney General reasoned that the "use of a structure to store grain does not convert the land upon which the structure is located into agricultural land." Thus, the Attorney General determined "if the real property on which the grain elevator is situated is not used for either 'raising agricultural crops' or 'grazing farm animals' […] the real property cannot be reclassified as 'agricultural property.'" Related to the grain elevator, the Attorney General opined "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 under [Section 57-02-08(15)]."

The Attorney General further discussed the extent to which the Attorney General's July 25, 1990, opinion to Douglas Manbeck was overruled. In this regard, the Attorney General stated:

> The opinion to Mr. Manbeck concluded that land used for storing grain was agricultural land. The 2002 opinion overruled that by concluding it is not the use of the structure that determines whether land is "agricultural property." The land itself must be used for raising crops or grazing farm animals. […] Consequently, the use of the structure to store grain does not convert land upon which the structure is located into agricultural land.

2021 WL 3160275
(Letter to Rebecca Flanders)

In 2021, the Pembina County State's Attorney submitted a request for an Attorney General's opinion regarding whether the 2002 Attorney General's opinions[1] discussed above were still the opinion of the Attorney General's office. The request also specifically inquired about the possible effect of two North Dakota Supreme Court cases, *Boehm v. Burleigh Cnty.*, 130 N.W.2d 170 (N.D.1964) and *Fredrickson v. Burleigh Cnty.*, 139 N.W.2d 250 (N.D.1965), on the current applicability of the 2002 Attorney General's opinions.

In response to the inquiry, the Attorney General issued an advisory opinion, indicating the 2002 opinions continue to be the opinion of the Attorney General's office. The Attorney General noted the *Boehm* and *Fredrickson* cases were decided long before the 2002 Attorney General opinions. The Attorney General also noted Senate Bill No. 2041 (2021) was introduced in an apparent attempt to create a tax exemption for potato warehouses in certain circumstances, but the bill ultimately failed. The Attorney General reasoned if Senate Bill No. 2041 passed, it would have rendered the 2002 opinions inaccurate; however, because the Legislative Assembly defeated the legislation, it was clear the Legislative Assembly specifically declined to include potato warehouses in the farm structure tax exemption. Ultimately, the Attorney General advised "[t]here have been no intervening court cases or legislation that would lead to a new opinion that would be contrary to the previously issued [2002] opinions."

[1] 2002 N.D. Op. Att'y Gen. No. L-31; 2002 N.D. Op. Att'y Gen. No. L-70.