

N.D.A.G. Letter to LaQua (Dec. 19, 1991)

December 19, 1991

Mr. Vincent A. LaQua
Wells County State's Attorney
PO Box 347
Fessenden, ND 58438

Dear Mr. LaQua:

Thank you for your November 22, 1991, letter wherein you inquire about the statutory requirement for the appraisal of real estate prior to the annual sale of real estate acquired by tax deed.

Your letter sets forth the following factual events:

The county acquired tax deed to a number of city lots and some farm land due to the failure of owners to redeem their property from tax deed proceedings.

The Board of County Commissioners overlooked the appraisal of the property for the annual tax sale as provided in 57-28-10, which would have been done on or about October 1, 1991. The appraisal was completed by the Board of Commissioners on November 4, 1991.

The board sent out a letter on October 21, 1991, wherein they stated the date for hearing objections to the minimum sale price on the property was set for November 4, 1991, at 9 a.m.

The letter to the City of Harvey set forth the description of the lots and the appraisal thereof which amount was the delinquent taxes, interest, penalty and costs.

The other letters on lots that were not redeemed gave the amount of delinquent taxes, penalty, interest, and costs or the amount that was appraised last year on lots that were not redeemed in 1990.

The County Commissioners however did not mail out a letter to townships that had village lots and farm real estate that was not redeemed as provided in 57-28-11 nor had they appraised said real estate on

October 1, 1991, or 30 days prior to the annual sale.

On the date of hearing schedule for November 4, 1991, no representatives of the City of Harvey or Fessenden came in to object to the minimum sales price. The City of Harvey on November 13, 1991, sent a check for a number of the lots that

were listed that were valued for the unpaid taxes, penalty, interest, and costs for a total sum of \$23,972.93.

Under these factual circumstances, you wish to know whether the provisions of N.D.C.C. §§ 57-28-10 and 57-28-11 prohibit the sale of the subject properties.

For the following reasons, it is my opinion that the county may sell those properties which were described in the notices of hearing sent to the several cities but that the county cannot sell those properties located in townships if notices of hearings were not sent to the board of supervisors of the respective townships.

N.D.C.C. §§ 57-28-10 and 57-28-11 provided:

57-28-10. Appraisal for annual sale - Minimum sale price. All property acquired by the county by tax deed must be appraised by the board of county commissioners at least thirty days before the annual sale under this chapter. The appraised price must be sufficient to cover all taxes, special assessments, penalties, interest, and costs which were due against the property at the time of the service of the notice of expiration of the period of redemption, plus an amount equal to the estimated taxes and special assessments for the current assessment year. If the fair market value of the property is more than the total amount due against the property, the minimum sale price of the property must be at least equal to the total amount due against the property. If the fair market value of the property is less than the total amount due against the property, the board shall fix a fair minimum sale price for the property.

57-28-11. Hearing on appraisal. After making the appraisal of property acquired by tax deed, the board of county commissioners shall set a date for hearing objections to the minimum sale price determined. At least ten days before the hearing, the county auditor shall mail to the auditor of any city, or the clerk of the board of supervisors of any township, in which appraised property is located a written notice stating the time when objections to the established minimum sale price will be heard. Any member or representative of the governing body of any taxing district may appear at the hearing with reference to the fair market value of appraised property, and the board may make appropriate changes in the minimum sale price of property.

(Emphasis supplied.)

In Horab v. Williams County, 19 N.W.2d 649 (N.D. 1945), the supreme court held that there was substantial compliance with the statutory requirement for an appraisal and notice of hearing on the appraisal when a notice of hearing was sent to the city auditor or township clerk identifying the property and setting forth a minimum sales price, even though the sales price was not based upon a formal appraisal.

In reaching this conclusion, the Supreme Court reasoned:

Interested taxing districts were notified of that minimum price and given an opportunity to make objections. No objections are shown to have been made either at the time fixed in the county auditor's notice or at any time before the property was sold to the plaintiff. There is no intimation in the record that the minimum sales price so determined was not the actual market value of the land. The fact that interested taxing districts made no objection supports the assumption that it was a fair price. The procedure outlined by the statute for fixing this price is provided for the protection of the county and the interested taxing subdivisions.

...

Thus it would appear that the fixing of a minimum sales price in the manner we have outlined and as indicated by the notice sent out by the county auditor amounted in substance at least, to an appraisalment.

Id. at 651.

Although the statutory language has been amended since the Horab decision, the amendments would not be cause to change the supreme court's reasoning.

Because the notices which were sent to the cities by Wells County were timely, contained the description of the subject properties and listed the amount of delinquent taxes, penalty and interest, and the noticed cities made no objections, there was substantial compliance with the statutory criteria.

Under Horab if any error was created when the county failed to perform a formal appraisal, that error was harmless because the affected cities and townships were given notice that they could attend a statutorily mandated hearing and address their grievances.

Because no notices of the hearing were sent by Wells County to the townships, the township boards of supervisors were not afforded the opportunity to be heard. Therefore, Wells County cannot sell those properties located in the affected townships until the requirements of N.D.C.C. §§ 57-28-10 and 57-28-11 are met.

Sincerely,

Nicholas J. Spaeth

vkk