

Date Issued: May 4, 1982 (AGO 82-37)

Requested by: Richard L. Schnell, Morton County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a tract of land which was platted and assessed as nonagricultural property prior to March 30, 1981, for the purpose of ad valorem taxation should be classified as agricultural land for that purpose after March 30, 1981.

II.

Whether zoning a tract of land for nonagricultural purposes changes the classification of that tract of land for the purpose of ad valorem taxation if the use of that tract continues to be an agricultural use.

III.

Whether the making of improvements such as curb and gutter or roads or the inclusion of a tract of land within a special assessment district affects the valuation of that tract for the purpose of ad valorem taxation so long as that tract is classified as agricultural property.

IV.

Whether a tract of land that is platted by a county auditor pursuant to the provisions of section 57-02-39 of the North Dakota Century Code becomes "platted" land for the purpose of applying the provisions of section 57-02-01(11), N.D.C.C.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a tract of land which was platted and assessed as nonagricultural property prior to March 30, 1981, for the purpose of ad valorem taxation should not be classified as agricultural land for that purpose after March 30, 1981.

II.

It is my further opinion that zoning a tract of land for nonagricultural purposes does not change the classification of that land for the purpose of ad valorem taxation if the use of that tract continues to be an agricultural use.

III.

It is my further opinion that the making of improvements such as curb and gutter or roads or the inclusion of a tract of land within a special assessment district does not affect the valuation of that tract for the purpose of ad valorem taxation so long as that tract is classified as agricultural property.

IV.

It is my further opinion that a tract of land that is platted by a county auditor pursuant to the provisions of section 57-02-39, N.D.C.C., does not become "platted" land for the purpose of applying the provisions of section 57-02-01(11), N.D.C.C.

- ANALYSIS -

I.

Section 57-02-27.1, N.D.C.C., provides that all taxable property shall be assessed at its true and full value as defined by section 57-02-01(4), N.D.C.C., except that the value of agricultural property for assessment purposes shall be determined according to the provisions of section 57-02-27.2, N.D.C.C.

Section 57-02-01(11), N.D.C.C., defines agricultural property as follows:

1. "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.

As a general rule, exceptions in a statute should be strictly construed. 82 C.J.S. Statutes section 382(c). It is clear from reading section 57-02-01(11), N.D.C.C., that a tract of land which was platted and assessed as nonagricultural property prior to March 30, 1981, for the purpose of ad valorem taxation cannot be defined as agricultural property after March 30, 1981.

II.

Zoning a tract of land for nonagricultural purposes does not change the classification of that land for the purposes of ad valorem taxation if the use of that tract continues to be an agricultural use. It has been concluded as a matter of law that the act of zoning property to a nonagricultural use does not require that the property be reclassified for taxation purposes when the use of the property remained, in fact, agricultural. Fogg v. Broward Cty., 397 So.2d. 944 (Fla. 1981).

Therefore, since actual use is the determining factor, each case must be evaluated on its own set of facts.

III.

It is presumed that improvements such as curb and gutter or roads would in most cases add to the market value of property. Sections 57-02-27.1 and 27-02-01(4), N.D.C.C. However, if a tract of land has been classified as agricultural property pursuant to the provisions of section 57-02-01(11), N.D.C.C., it must be valued for ad valorem taxation purposes according to the formula provided by section 57-02-27.2, N.D.C.C.

Since this formula does not take into consideration the existence of curb or gutter or roads or, for that matter, the existence of a special assessment district, their existence has no effect on the valuation of land classified as agricultural property for ad valorem taxation.

IV.

Under certain circumstances described within the provisions of section 57-02-39, N.D.C.C., a county auditor may plat land that is otherwise described by metes and bounds. However, this auditor's plat is made only for the convenience of the county auditor and tax officials in describing property on the tax rolls and does not confer rights in or transfer title to land. An auditor's plat does not mean that the land has been platted pursuant to the provisions of chapter 40-50, N.D.C.C. *Frandsen v. Mayer*, 155 N.W.2d. 294 (N.D. 1967); and *Great Lakes Pipe Line Co. v. City of Grand Forks*, 142 N.W.2d. 126 (N.D. 1966).

Therefore, land which has been platted by a county auditor is not "platted" land as contemplated by the provisions of section 57-02-01(11), N.D.C.C., which defines agricultural property.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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