Westlaw.

303 N.W.2d 107
(Cite as: 303 N.W.2d 107)

C

Supreme Court of South Dakota.
Clarence MORTENSON and Marlin Scarborough, Plaintiffs and Appellants,
v.
STANLEY COUNTY, Stanley County Board of Equalization and South Dakota Board of Equalization, Defendants and Appellees.
No. 12933.

Argued Sept. 8, 1980.
Decided March 11, 1981.

Owners of agricultural property appealed from judgment of the Circuit Court, Sixth Judicial Circuit, Stanley County, Patrick McKeever, J., which refused relief from valuation of their land by the State Board of Equalization. The Supreme Court, Wollman, C. J., held that: (I) decision of circuit court in refusing to reduce valuation of plaintiffs' land due to distance to market, unique type of soil, and other factors was not clearly erroneous, and (2) circuit court did not err in finding that use of soil survey and comparable bare land sales were sufficient to constitute substantial compliance with legislative directives on valuation of agricultural property.

Affirmed.

West Headnotes

[1] Taxation 371 ⚿2722

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)11 Evidence in General
371k2722 k. Presumptions. Most Cited Cases
(Formerly 37lk485(1))
Even though county director of equalization did not actually view assessed property until after appeal was taken to county board of equalization, there existed presumption that the director's valuation was correct where it was not contended that the director was not a qualified assessor or that he merely accepted valuations given to him by others.

[2] Taxation 371 ⚿2704

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)10 Judicial Review or Intervention
371k2700 Further Judicial Review
371k2704 k. Scope of Review. Most Cited Cases
(Formerly 37lk493.8)
Supreme Court's scope of review of a trial court's decision in a trial de novo of a tax assessment matter is to determine whether trial court's findings were clearly erroneous.

[3] Taxation 371 ⚿2699(11)

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)10 Judicial Review or Intervention
371k2691 Review of Board by Courts
371k2699 Proceedings for Review and Parties
371k2699(11) k. Determination and Relief. Most Cited Cases
(Formerly 37lk493.7(6))
Decision of circuit court in refusing to reduce valuation of assessed land due to distance to market was not clearly erroneous. SDCL 10-6-33.1.

[4] Taxation 371 ⚿2523

371 Taxation

371 III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or Agricultural Lands. Most Cited Cases
(Formerly 371k348.1(3))
Valuation of assessed property was not to be reduced due to presence of numerous wet spots, irregular shape of certain tracts valued as cropland, isolated nature of certain tracts valued as cropland, and potential for erosion on certain land rated as cropland even though landowners allegedly used the property as rangeland where such decision could be termed a management decision and where such factors existed countywide, implying that compar-able sales used by director of equalization in determining valuation of the land must also have in-cluded land that had some of such characteristics. SDCL 10-6-33.1.

[5] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or Agricultural Lands. Most Cited Cases
(Fonnerly 371k348.1(3))
Circuit court's decision to refuse to reduce valu-ation of assessed property due to unique type of soil was not clearly erroneous. SDCL 10-6-33.1.

[6] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or Agricultural Lands. Most Cited Cases
(Formerly 371k348.1(3))
Substantial compliance with legislative directives on valuation of agricultural property is sufficient to uphold such valuation. SDCL 10-6-33.1.

[7] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
37lk2520 Valuation of Particular Real Property
37lk2523 k. Rural or Agricultural Lands. Most Cited Cases
(Formerly 371k348.1(3))
Circuit court did not err in finding that use of soil survey and comparable bare land sales were sufficient to constitute substantial compliance with legislative directives on valuation of agricultural property, SDCL 10-6-33.l.
*108 Harold H. Deering, Jr., of May, Adam, Gerdes & Thompson, Pierre, for plaintiffs and appellants.

Douglas E. Kludt, Stanley County Deputy State's Atty., Fort Pierre, for defendants and appellees; Bernard E. Duffy, Stanley County State's Atty., Fort Pierre, on the brief.

WOLLMAN, Chief Justice.

Plaintiffs, the owners of certain agricultural property in Stanley County, made timely objection to the 1977 assessments on their land. The Stanley County Board of Equalization refused to make any adjustments in the assessed valuations, however.[FN1]

FN 1. Shortly thereafter, the Stanley County Board of Equalization reduced the valuations for all agricultural lands in the

county by thirty percent.

Plaintiffs appealed to the State Board of Equalization, which reduced the valuation of plaintiffs' land by five percent because of lack of rainfall. The State Board refused any further relief, however, and plaintiffs appealed to the circuit court pursuant
*109 to SDCL 10-11-43. After a trial de novo, the circuit court entered judgment denying plaintiffs relief. This appeal followed. We affirm.

Plaintiffs contend that the county assessor failed to consider or improperly considered several factors in determining the true and full value of their land. These factors include: (1) the distance of the property from the market place; (2) the presence of nu-merous wet spots on the property; (3) the irregular shape of certain tracts valued as cropland; (4) the isolated nature of certain tracts valued according to the crop rating; (5) the potential for erosion on certain lands rated as cropland; and (6) the lower yield potential of certain sandy soils unique to the alluvi-al character of plaintiffs' soil. Plaintiffs also con-tend that the assessment is discriminatory because or the unique nature of some of their land and that their property is assessed at more than its actual value because of the actual use to which the property is being put.

All property is to be assessed at its true and full value in money.[FN2] SDCL 10-6-33. The South Dakota Legislature has specifically enumerated the factors to be used in determining the value of agri· cultural land. SDCL I0-6-33.1 provides:

> FN2. "True and full value" is defined as "the usual cash selling price at the place where the property to which the term is applied shall be at the time of the assessment." SDCL 10-6-1.

> In fixing the true and full value in money of property, under the provisions of s 10-6-33, the value of agricultural land as defined by s 10-6-31, and which has been used primarily for agriculture use for at least five successive years immediately preceding the tax year for which assessment is to be made shall be based on consideration of the following factors:
>
> 1) The capacity of the land to produce agricultural products as defined in s 10-6-33.2; [FN3]
>
> FN3. SDCL 10-6-33.2 provides:
>
> Capacity of land in agricultural use to produce agricultural products shall be based on average yields under natural conditions, in the case of land producing crops or plants, and on the average "acres per animal unit," in the case of grazing land; said average shall affect each operating unit and shall be based on the ten-year period immediately preceding the tax year in issue. In determining such capacity to produce, the county director of equalization and/or the county board of equalization must take into consideration yields, and/or carrying capacity, as determined by the soil conservation service, the agricultural stabilization and conservation service, the extension service, federal land bank and private lending agencies dealing with land production capacities.
>
> 2) Soil, terrain, and topographical condition of property;
>
> 3) The present market value of said property as agricultural land as determined by the factors contained in subdivisions (1), (2), (4) and (5) of this section;
>
> 4) The character of the area of place in which said property is located; and
>
> 5) Such other agricultural factors as may from time

to time become applicable.

We have held that in determining true value comparable sales of agricultural lands used for agricultural purposes may be considered. County of Butte v. South Dakota State Board of Equalization, 263 N.W.2d 140 (S.D.1978); Hot Springs Ind. School Dist. No. 10 v. Fall River Landowners, 262 N.W.2d 33 (S.D.1978).

Roger Fuller, Director of Equalization and assessor for Stanley County, used comparable sales and a soil survey in determining the assessed valuation of plaintiffs' land. Fuller and a South Dakota Department of Revenue employee gathered bare land sales in Stanley County for a three-year period. They then eliminated any sales that were not comparable, such as a sale that included a lease on other land. There were approximately fifteen different reasons why a particular sale might be eliminated. After eliminating the sales that were not comparable, they arrived at a median figure that they considered to be a fair market value figure for an average acre. At that point Fuller met with assessors of other counties to compare the median *110 sales prices for equalization purposes. After reducing the $100 median sales figure to $83 for equalization purposes, the latter figure was submitted to the State Department of Revenue, which valued each type of land in Stanley County according to its rating.

These ratings are based on a soil survey that was conducted by the Soil Conservation Service. This soil survey included a systematic examination of the different soils throughout the county as well as analysis of the appropriate yield data, and the description, classification and mapping of these soils. The Soil Conservation Service then utilized a land capability classification system. Land suitable for crops would also be given a cropland rating where-as land not suitable for crops would, in Stanley County, be given a rangeland rating.

Fuller then utilized Department of Revenue figures stating how much each type of land was worth and applied those figures to the descriptions and soil survey maps of every taxable acre in Stanley County.

I

The first issue raised by plaintiffs is that their evidence regarding the factors reducing the value of their land was sufficient to overcome the presumption that the Stanley County Director of Equalization's valuation was correct.

On appeal, plaintiffs originally conceded that there was a presumption that the Director of Equalization's valuation was correct. In their reply brief, however, plaintiffs contend that the presumption is not applicable where the Director of Equalization has not actually viewed the property assessed and valued but rather relies on values given to him by others, citing In re Jepsen's Appeal, 76 S.D. 421, 80 N. W.2d 76 (1956). Although the Director of Equalization did not actually view the property in question until after appeal was taken to the Stanley County Board of Equalization, Jepsen's Appeal is distinguishable and is not controlling here. In Jepsen's Appeal there was no qualified assessor, and those purporting to act as assessor never viewed the property but merely accepted the appraisal of a private consulting company. In the case at bar plaintiffs do not contend that the Director of Equalization was not a qualified assessor or that he merely accepted the valuations of a private consulting company.

[1][2] Accordingly, there is a presumption that the Stanley County Director of Equalization's valuation was correct. Knodel v. Bd, of County Com'rs, 269 N.W.2d 386 (S.D.1978); Yadco, Inc. v. Yankton County, 89 S.D. 651, 237 N.W.2d 665 (1975). Moreover, our scope of review of a trial court's decision in a trial de novo of a tax assessment matter is to determine whether the trial court's findings

were clearly erroneous. Knodel v. Bd. of County Com'rs, supra; Willow, Inc. v. Yankton County, 89 S.D. 643, 237 N.W.2d 660 (1975); Yadco, Inc. v. Yankton County, supra.

Before addressing the specific factors enumerated by plaintiffs, we note that although plaintiffs' expert testified regarding the factors to be used in valuation of agricultural land, he gave no opinion regarding the full and true value of plaintiffs' land, nor did he ever disagree or agree with the Director of Equalization's valuation. Plaintiffs were qualified to testify regarding the assessments involved, but the weight to be accorded such testimony is for the trier of fact. Hannahs v. Noah, 83 S.D. 296, 158 N.W.2d 678 (1968): Rau v. Fritz, 81 S.D. 311, 134 N.W2d 773 (1965).

Plaintiffs seek a reduction in their overall assessed valuation because of the distance of their respective ranches from the market. Plaintiff Mortenson seeks a ten percent reduction in valuation while plaintiff Scarborough seeks a nine percent reduction in valuation. Both plaintiffs testified that Fort Pierre-Pierre, which is sixty-five and seventy miles from their respective ranches, is their predominant market, trading center and social center. They testified that this distance increases marketing and production costs. Plaintiffs' expert testified that distance detracts from market value but that there is no set rate of reduction.

*111 The circuit court agreed with plaintiffs that the distance to the market place caused them more expense than landowners living next to town, but found that plaintiffs had not supplied any evidence from which the court could hold that the present market value of plaintiffs' property was altered by such distance.

This Court has noted that the location of property is an element bearing upon the market value of that property, Rau v. Fritz, supra. Likewise, the Supreme Court of Kentucky has held that some farm property may be more desirable than other farm property because it is closer to good schools or to communities offering greater social and cultural advantages or is more accessible to utility services, and that these are factors that bear upon the value of property for agricultural purposes. Kentucky Bd. of Tax Appeals v. Gess, 534 S.W.2d 247 (Ky.1976).

[3] In the case at bar, the Stanley County Director of Equalization considered this factor and determined that distance from market had no appreciable effect on market value in Stanley County. Furthermore, there was no foundational evidence given at trial to support the requested ten and nine percent reductions. Plaintiffs asked the circuit court to accept the reduction requests without adequate explanation of how they were determined and without adequate evidence to support their contention. Additionally, defendants' expert, Roger Schroeder, the Tripp County Director of Equalization, testified that he has never been able to find any evidence indicating that distance from market affects the market value of property and was not aware of any studies that had established that distance to market affects value. Another of defendants' witnesses, Donald Miller, a South Dakota State Department of Revenue employee, testified that after analyzing more than 20,000 agricultural land sales in South Dakota, he could find no consistent indication that distance to market affects the selling price of agricultural land for agricultural uses. Accordingly, we cannot say that the decision of the circuit court in refusing to reduce the valuation of plaintiffs' land due to distance to market was clearly erroneous. The evidence introduced by plaintiffs was not suffi-cient to overcome the presumption that the Director of Equalization's valuation was correct.

Plaintiffs also contend that the valuation of their property should be reduced due lo the presence of numerous wet spots, the irregular shape of certain tracts valued as cropland, the isolated nature of certain tracts valued as cropland, and the potential for

erosion on certain land rated as cropland. In summary, plaintiffs contend that part of their land is rated as cropland but that it is not used as such and instead is used as rangeland. Therefore, plaintiffs contend, the assessed valuation of this land should be reduced to that for rangeland.

Initially, we note that the mere fact that these factors exist in varying degrees throughout Stanley County has no affect on the question whether the assessed valuation of this property exceeds the actual value. Nevertheless, that these factors exist countywide implies that the comparable sales used by the Director of Equalization must also have included land that had some of these characteristics. These comparable sales were then used in determining the valuation of plaintiffs' land.

[4] Although plaintiffs contend that most of the property containing one or more of these four factors is not being used as cropland, similar property in Stanley County is being used as cropland. The decision whether or not to farm such property can be termed a management decision. Although actual use may be a factor in determining the valu-ation of cenain propeny, a landowner should not be able to determine the valuation of propeny by using it as rangeland when it could be used as cropland.[FN4]

FN4. The Director of Equalization did make use of some of these four factors in changing the rating to rangeland on any tract where less than thirty acres per quarter of land was classified as crop-rated soil. With regard to the contention about soil erosion, the soil survey takes into account the slope of land as well as other factors in determining whether land is cropland or rangeland.

* 112 The final factor that plaintiffs claim reduces the valuation of their land is the lower yield potential of certain sandy soils unique to the alluvial character of plaintiffs' soil. On the basis of actual observation, plaintiffs testified that Ree soils present on part of their land produce three-fourths the yield of Promise soils, even though Ree soil types are consistently rated higher. Plaintiffs testified that this type of soil is not found countywide and does not retain moisture as well as other soil types.

[SJ Nevertheless, we cannot say that the circuit court's decision to refuse to reduce the valuation due to this unique type of soil was clearly erroneous. There was evidence that the soil survey that rated Ree soils higher was based on actual yield data using long-term averages. Second, the State Board of Equalization has already adjusted the valuation due to lack of rainfall, which would take into account that Ree soils do not retain moisture as well as other soil types.

II

[6] The second issue raised by plaintiffs is that the findings of fact entered by the trial court are not sufficient to support the conclusion of law that the Director of Equalization substantially complied with his statutory duties in assessing their property. Plaintiffs concede that substantial compliance with the legislative directives on valuation of agricultural property is sufficient to uphold such valuation, Knodel v. Bd. of County Com'rs, supra. Plaintiffs contend that the assessor did not consider the various factors raised by plaintiffs until after the county had denied them relief. They contend that the only evidence of compliance was the use of bare land sales data and the use of the soil survey.

[7] We conclude that the circuit court did not err in finding that the use of the soil survey and the comparable bar land sales were sufficient to constitute substantial compliance. The Director of Equalization used comparative sales data, which this Court has held may be used in determining true value.

Hot Springs Ind, School Dist. No. 10 v. Fall River Landowners, supra. The soil survey takes into account the capacity of the land to produce agricultural products and the soil, terrain, and topographical condition of the property, both of which are factors to be considered under SDCL 10-6-33.1. The Director of Equalization also testified that he did consider the factors enumerated by plaintiffs.

Additionally, there was no showing that the assessed valuation of plaintiffs' land exceeded the actual value of the land. On the contrary, there was evidence that the assessed value was less than the actual value, An expert called by defendants used lease figures provided by plaintiffs' expert and after correlating the monetary value of a lease to the sale value of property covered by such lease, determined that the valuations of plaintiffs' lands were not in excess of market value.

The judgment is affirmed.

All the Justices concur.
S.D., 1981.
Mortenson v. Stanley County
303 N.W.2d 107

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STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF DAY

FIFTH JUDICIAL CIRCUIT

FILED

JUN 23 2017

CLAUDETTE OPITZ
DAY CO. CLERK OF COURTS

IRENE TVINNEREIM

#18CIV15-45

Petitioner,

MEMORANDUM DECISION

vs.

DAY COUNTY, SOUTH DAKOTA,

Respondent.

The above-entitled matter is currently before this Court on appeal from a decision issued by the Office of Hearing Examiners dated July 21, 2015, in case #EQ15-14. Irene Tvinnereim (more accurately described as the Irene J. Tvinnereim Irrevocable Trust dated June 26, 2006, Virginia C. Tobin, Trustee) and Leon E. Tobin and Virginia C. Tobin filed a Notice of Appeal on August 21, 2015. For purposes of this decision, the Irene J. Tvinnereim Irrevocable Trust and Leon E. Tobin and Virginia C. Tobin shall be referred to collectively as Petitioner.

A hearing was held before this Court on the appeal on October 28, 2016. At that time, Petitioner appeared through counsel, Chris Jung, and Day County, South Dakota, was represented by Danny R. Smeins, Day County State's Attorney. No testimony was presented at the time of hearing, only argument was provided by the attorneys. Prior to the hearing, both attorneys had filed briefs. The Court received the Brief Of Petitioner, Irene Tvinnereim, dated November 9, 2015; the Brief Of Respondent, Day County, South Dakota, dated December 14, 2015, and the Reply Brief Of Petitioner, Irene Tvinnereim, dated December 29, 2015. Petitioner's original brief requested oral argument and this request was renewed in the Reply Brief. However, the Brief Of Respondent and Petitioner's Reply Brief were not initially filed with the Clerk. Mr. Jung contacted the Court and opposing counsel by email on January 27, 2016, to inquire about a hearing date. Due to miscommunication, it was not until the Court contacted both attorneys by email on September 30, 2016, that the October 28, 2016, hearing was scheduled.

In addition to the arguments presented at the time of hearing and the briefs submitted prior to hearing, the Court has now had an opportunity to carefully review the record in this matter, including the transcript of proceedings from the hearing before Hearing Examiner Ryan Darling on July 7, 2015, Exhibits A and B introduced at that hearing and the decision of the Hearing Examiner in case #EQ15-14 and hereby issues this Memorandum Decision.

BACKGROUND

This matter involves the assessed value of seven parcels of real estate located in Raritan Township in Day County. The legal descriptions of these parcels are set forth in Findings of Fact #1 in the Referee's Decision in case #EQ15-14. The first six parcels listed are owned by the Irene J.Tvinnereim Irrevocable Trust. The seventh parcel is owned by Leon E. Tobin and Virginia C.Tobin, husband and wife, and is approximately an 80 acre parcel located next to the Trust's parcels. This appeal is properly before this Court as the property that is the subject of the assessment is located in Day County, South Dakota.

The subject parcels contain many low areas and accumulations of water. As was true in most of Day County during the 1990s, excess moisture caused sloughs and potholes to expand. Because more water was accumulating on the parcels, on December 30, 2011, Virginia C. Tobin, Trustee of the Irene J. Tvinnereim Irrevocable Trust executed a Warranty Easement Deed In Perpetuity to the United States of America by and through the Commodity Credit Corporation as part of the Wetlands Reserve Program. The Natural Resources Conservation Service of the United State Department of Agriculture was the acquiring agency. A similar easement was also executed by Leon E. Tobin and Virginia C. Tobin on their 80 acre parcel of property on December 19, 2011. In exchange for the easement, the Trust received payment of $1,182,561.00 and the Tobins received $125,222.00 for their parcel.

On March 7, 2014, Virginia Tobin as Trustee, objected to the real property assessment placed upon the six parcels of property owned by the Trust. On March 17, 2014, Leon E. and Virginia C. Tobin also objected to the real property assessment placed upon their 80 acre tract. The reason given to the Day County Board of Equalization for the objections was because the land was enrolled in the Wetlands Reserve Program under perpetual easement and therefore it was not productive and did not produce any income. The objections were appropriately made to the Day County Board of Equalization for the 2014 assessment because Petitioner did not reside in Raritan Township and did not need to start the process with the local township board of equalization.

Pursuant to the objections, the Day County Board of Equalization met with Petitioner and granted a 50 percent adjustment on all seven parcels of property for the 2014 assessed value. Prior to 2014, the parcels had been adjusted by the county as flooded land. After the county granted a 50 percent adjustment for the 2014 assessed value because of the perpetual easement, the flooded land adjustment was no longer granted. The appeal to the Day County Board of Equalization on the 2014 assessed value, due to the perpetual easements, resulted in an assessed value being placed on the property that did not involve action by the local Raritan Township Board of Equalization.

According to the testimony provided to the Hearing Examiner by Brad Nelson, a member of the township board, the Raritan Township Board became aware of the 50 percent adjustment when they received figures from the Director of Equalization to start the 2015 assessment process.

On March 16, 2015, the Raritan Township Board, sitting as the Raritan Township Board of Equalization met and unanimously approved changing the assessment on the seven parcels of land to the same values that had been in place before the 2014 adjustment by the county. When the assessment by the township board was reviewed by Dari Schlotte, the Day County Director of Equalization, he appealed those values to the Day County Board of Equalization, which was the board that had granted a 50 percent adjustment on the 2014 assessment. The only notice Petitioner would have received of the meeting of the Raritan Township Board would have been through publication in the Reporter and Farmer newspaper published in Webster, South Dakota and through the notification of the assessment appeal process as set forth on assessment notices mailed to each property owner each year.

After Director Schlotte appealed the action of the Raritan Township Board of Equalization to the Day County Board of Equalization a hearing was scheduled and held on April 21, 2015. At that time, representatives from the Raritan Township Board were present as well as Mr. and Mrs. Tobin and the Director of Equalization. The county board inquired of the parties about their positions and the township officials expressed their objections to the values that had been put in place after the 50 percent adjustment. One of the reasons expressed by the township board members for their opposition to the adjustment was due to their knowledge of a decision made by the Office of Hearing Examiner in another case presented to it. The decision was issued in case #EQ12-11 from Yankton County. That decision was not made a part of the record in this case. However, the township board members believed that that decision would prohibit an adjustment to assessed valuation due to a perpetual easement being granted on the land. Additionally, township board members felt that even after the easement was granted, the land continued to have value although they commented that Petitioner had chosen to harvest all at one time by way of the easement payments.

Petitioner testified at the hearing before the Hearing Examiner that when she attended the hearing before the Day County Board of Equalization in April, 2015, she had indicated to the board that she believed they had made the right decision a year earlier and that nothing had changed in connection with the land nor had there been any production or income generated by the land since the 50 percent adjustment was granted in 2014.

Based upon the information provided to it, the Day County Board of Equalization reached a decision that the assessments to the seven parcels of property should be raised for 2015 to the 2014 levels before the 50 percent adjustment was applied. Therefore, the Day County Board of Equalization adopted the assessment figures requested by the Raritan Township Board of Equalization. Based upon this decision, Petitioner appealed the decision of the Day County Board of Equalization to the Office of Hearing Examiners on May 12, 2015, and a hearing was held before Hearing Examiner Ryan Darling on July 7, 2015. A written Decision in case #EQ15-14 was issued on July 21, 2015. It is from that Decision that this appeal to circuit court has been filed.

Petitioner sets out three issues to be addressed in this appeal. Respondent agrees that these are the issues that need to be addressed in determining if the 2015 assessed values for the seven parcels of property are correct. Those issues are:

1. Did the Hearing Examiner err in determining the assessed valuation of the subject property, as determined by the county, was adequately supported?

2. Did the Hearing Examiner err in determining that a tax adjustment for a Federal Wetlands Program easement is a question for the legislature?

3. Did the Hearing Examiner err in failing to consider that the assessed valuation of the subject property lacked uniformity and was discriminatory?

STANDARD OF REVIEW

This is an appeal to circuit court from the Office of Hearing Examiners pursuant to SDCL 10-11-43. Under that statute, the appeal is procedurally governed by SDCL Chapter 1-26. Under SDCL 10-11-42.1, the Hearing Examiner tries the issues *de novo.* On appeal, the circuit court reviews the Hearing Examiner's decision as set forth in SDCL 1-26-36. Smith v. Tripp County, 2009 S.D. 26. This standard of review requires the circuit court to give great weight to the findings and inferences made by the Hearing Examiner on factual questions. When the issue is a question of fact, the Court must ascertain whether the administrative agency was clearly erroneous. When the issue is a question of law, the decision of the administrative agency is fully reviewable. Smith v.Tripp County. supra. Butte County v. Vallery, 1999 S.D. 142.

This action involves the taxable value of Petitioner's property. Generally, taxable value is a question of fact and therefore the decision of the Hearing Examiner will only be overturned if it is clearly erroneous. West Two Rivers Ranch v. Pennington County. 1996 S.D. 70. When the issue is a question of law, the circuit court reviews the decision of the Hearing Examiner *de novo.* Burke v.Butte County, 2002 S.D. 17.

DECISION

1. Did the Hearing Examiner err in determining the assessed valuation of the subject property. as determined by the county, was adequately supported?

Under SDCL 10-6-33, all property shall be assessed at its true and full value in money. Pursuant to SDCL 10-6-33.28, the value of agricultural land is based upon productivity and its annual earning capacity. The statute defines agricultural income value as "[t]he capitalized annual earning capacity on a per acre basis which has been adjusted by an amount that reflects the landowner's share of the gross return." Petitioner asserts that the land in question lacks serious capacity to produce agricultural products. Prior to granting the perpetual easement, Petitioner was only able to rent out around 300 acres of the total of 782 acres contained in the seven tracts of land. The assessed value determined by the Day County Board of Equalization for the 782 acres

averaged approximately $895.99 per acre. Petitioner argues that this value exceeds the true and full value of the property.

At the hearing before the Hearing Officer, the Director of Equalization testified as to the procedures he used in arriving at a value for the Petitioner's property. Based upon his testimony, the Hearing Officer made findings that the Director used the productivity method to assess the value of the land; that there was no evidence that the values were incorrect; that the best and most persuasive evidence of value of the subject property was presented by the county and that the Director of Equalization offered well-reasoned support for the assessed valuation of the property.

The Director testified about the methods he used in considering the soil types and analyzing the property using maps, computers, visual inspections, historic data and comparisons with other properties. The Hearing Examiner found the Director to have well-reasoned support for the assessed valuation of the property.

"There is a presumption that tax officials act in accordance with the law and not arbitrarily or unfairly when assessing the property, and the taxpayer bears the burden to overcome this presumption." Burke v. Butte County, 2002 S.D. 17. "To overcome this presumption, the taxpayer must produce sufficient evidence to show the assessed valuation was in excess of true and full value, lacked uniformity in the same class or was discriminating." Apland v. Butte County, 716 N.W. 2d 787 (SD 2006). The taxable value of the subject property is a question of fact and, therefore, this Court must examine whether the Hearing Officer's determination is "clearly erroneous". West Two Rivers Ranch v. Pennington County, 1996 S.D. 70.

The testimony and exhibits presented by the county provide a detailed description of the analysis done by the Director of Equalization in arriving at the assessed value of the seven parcels of property. The only difference between the value adopted by the Day County Board of Equalization and the Director of Equalization is the adjustment for the perpetual easement. The Director had computed the values for 2015 and then used the 50 percent adjustment that had been granted for 2014 to arrive at the assessed value for the property. He fully complied with the assessment process before applying the 50% adjustment. It was not until the appeal to the Day County Board of Equalization that the arguments of the township were presented along with the holding from the Hearing Examiner's decision issued in Yankton County in case #EQ12-11 concerning the lack of statutory authority to use perpetual easements to adjust assessed value. All of this information was presented as testimony and evidence before the Hearing Examiner.

Petitioner provided no assessment or appraisal values to contradict the assessed value determined by the Day County Board of Equalization. Petitioner argues that there are problems in accessing the property due to the condition of roads or lack of roads across their property. Brad Nelson, a township board member who lives in the area testified as to his familiarity with the property and noted that there are many areas in the township where it is necessary to drive on a neighbor's property to get from one portion of a taxpayer's property to another. The Director of Equalization indicated in his testimony that while he had not walked every acre of the property in question, he was familiar with the topography of the real estate.

The Director also testified as to his knowledge of SDCL 10-6-33.28 and his use of that statute in computing value for agricultural property within the county. A review of the hearing transcript indicates no evidence was presented to show that the Director of Equalization was incorrect in establishing the value of the seven parcels of real estate before the 50 percent adjustment was made for the perpetual easement. The record shows that the Director applied all of the factors required by SDCL 10-6-33 in placing an assessed value on the property.

Petitioner has failed to produce sufficient evidence to overcome the presumption that the assessed valuation established by the Day County Board of Equalization was in excess of true and full value. Petitioner has also failed to establish that the Hearing Examiner was clearly erroneous in adopting the value of $700,667.00 for the assessed value of the seven parcels of real estate at issue in this action. Because the Hearing Examiner was not clearly erroneous in making that determination, the decision of the Hearing Examiner affirming the decision of the Day County Board of Equalization is hereby affirmed as to the assessed value for the property for 2015.

2. Did the Hearing Examiner err in determining that a tax adjustment for a Federal Wetlands Program easement is a question for the legislature?

For the 2014 assessment year, the Day County Board of Equalization had granted a 50 percent adjustment to the assessed evaluation for the seven parcels of real estate at issue in this action. The Director of Equalization sent out paperwork intending to continue that 50 percent adjustment for the 2015 assessed values. When that paperwork was provided to the local Raritan Township Board of Equalization, they objected to the 50 percent adjustment for 2015 and raised the assessed value. Following an appeal to the Day County Board of Equalization, the Day County Board of Equalization withdrew the 50 percent adjustment and assessed the property without the adjustment. This decision was appealed to the Hearing Examiner who affirmed the decision of the Day County Board of Equalization. The Hearing Examiner found that he had no authority to determine if the perpetual easement required the land to be valued differently and entered a Conclusion of Law that a tax adjustment for a Federal Wetlands Program easement is a question for the legislature. Because this is a question of law, it is fully reviewable *de novo* by this Court.

The Hearing Examiner determined that as a matter of law there is no authority provided by statute to adjust the assessed value of agricultural land due to a perpetual easement granted following enrollment in the Federal Wetlands Program. Under SDCL 10-6-33.31, the Director of Equalization is provided by the Department of Revenue with the agricultural income value for the county as computed under SDCL 10-6-33.28. The assessed value of agricultural land may be adjusted under SDCL 10-6-33.31 due to: "(1) The capacity of the land to produce agricultural products as defined in SDCL 10-6-33.2; and (2) The location, size, soil survey statistics, terrain, topographical condition of the land including the climate, accessibility, and surface obstructions." Each adjustment is to be documented. Any adjustment to the assessed value is to be made pursuant to the factors listed in subdivision (2).

Petitioner contends this statute gives the Director of Equalization the authority to make an adjustment to valuation based upon the perpetual easement. In connection with Petitioner's land, the Direct or Equalization initially did recommend the 50 percent adjustment. However, in the subsequent year, the local township board of equalization and the Day County Board of Equalization rejected this adjustment. Petitioner voluntarily entered into the perpetual easement with the Federal Wetlands Program. Although Petitioner may have done so due to the amount of water on the property, the easement was created by the taxpayer, not by Mother Nature. The easement is not a "natural condition" of the property at issue. The factors allowing for an adjustment of the assessed value under SDCL 10-6-33.31(2) do not include adjustment for a voluntary perpetual easement. The perpetual easement is not a condition of the property, it is a limitation on the use of the property placed upon the property by Petitioner in exchange for payment through the NRCS.

County cites to the South Dakota Supreme Court case of Yadco, Inc.• v. Yankton County, 237 N.W. 2d 665 (SD 1975), to support the argument that a voluntary decision of the taxpayer that burdens their property with a long-term uneconomical lease should not require the adjustment of the assessed value of the property. A prior decision of the Hearing Examiners Office from Yankton County case #EQ12-11 was also discussed at the hearing before this Court. No copy of that decision has been made available for this Court's review. County also cited Mortenson v. Stanley County, 303 N.W. 2d 107 (SD 1981) for its holding that a land owner should not be able to determine the valuation of property by using it as range land when it could be used as crop land and Apland v. Butte County, 716 N.W. 2d 787 (SD 2006), for its holding that farm management decisions cannot change the earth's value for taxation purposes.

It is clear from a review of the record and SDCL 10-6-33.31, that a taxpayer's voluntary decision to grant a perpetual easement on real estate is not a factor that can be used under that statute to adjust the assessed value of the property. The Hearing Examiner determined that the granting of a perpetual easement to the Federal Wildlife Program is not a factor that can be used to adjust the assessed value of property under SDCL 10-6-33.31. This Court's review of the record and that statute clearly shows that the ruling of the Hearing Examiner was correct. An adjustment for a perpetual easement is not statutorily authorized. Even after the granting of the easement, the land continues to have value. If that value has been reduced by the granting of the easement, the landowner received compensation through payments made in exchange for the easement to offset any reduction in value. The decision of the Hearing Examiner on Issue 2 is hereby affirmed.

3. Did the Hearing Examiner err in failing to consider that the assessed valuation of the subject property lacked uniformity and was discriminatory?

This issue is presented to this Court without any specific finding having been made by the Hearing Examiner. However, an assessed valuation of property must have uniformity in the same class and cannot discriminate among classes or taxpayers. Apland v Butte County, 716 N.W. 2d 787 (SD 2006).

Petitioner initially argues that the decision of the Day County Board of Equalization in failing to give a 50 percent adjustment for the 2015 assessed value for Petitioner's property is discriminatory in that the testimony presented at the hearing before the Hearing Examiner showed that in addition to the 50 percent assessment previously granted to Petitioner, there were two other similar adjustments granted to two other taxpayers in other townships in Day County. However, the testimony also showed that Director Schlotte had checked with the Farm Services Administration Office and the National Resource Conservation Service Office and determined that there were 180 property owners in Day County who had granted easements on their property with some of those landowners granting multiple easements.

Of all the easements granted 113 easements were of the perpetual variety similar to that granted by Petitioner in this case. Those easements added up to 25,000 acres under easement in Day County. While some of the easements varied in the restrictions placed on the landowner and the use of the property, generally the easements prohibited the landowner from haying, mowing, harvesting crops, building, planting, grazing and drainage. Including Petitioner, three of those easements had been granted a 50 percent adjustment in the past. Before the Hearing Examiner, Director Schlotte testified that as to the remaining two property owners, no objections had been made at the time of the hearing by any local board or the county board of equalization. However, based upon the information obtained in this case and the action taken, he testified that those adjustments may be negated in the future. No other information was available to this Court as to whether that action has been taken at this time or not.

Petitioner argues that to take away the adjustment in 2015 that was granted for the property in 2014 would discriminate against Petitioner and create a lack of uniformity in assessments. However, based upon the Court's determination on Issue 2 above, it does not appear that this Petitioner and the other two taxpayers were entitled by statutory authority to receive the 50 percent adjustment in the first place. It also appears that a great lack of uniformity would be caused by allowing three of 113 property owners to receive an adjustment that is not authorized by statute. While the Petitioner argues that removal of the 50 percent adjustment unfairly singles out Petitioner without an immediate resolution of the other two adjustments for those two taxpayers, to allow this adjustment to continue to the benefit of Petitioner would certainly discriminate against the other 110 property owners who have never received an adjustment. The action taken by the Day County Board of Equalization which was affirmed by the Hearing Examiner simply restores the assessed value to the appropriate level.

Petitioner also argues that the county's indication that Petitioner could still apply for an inundated farmland adjustment under SDCL 10-6-33.21 is a "red herring" because the flooded land adjustment was only applied prior to 2014 when the 50 percent adjustment was put in place. Director Schlotte testified that once the 50 percent adjustment was made, the county was no longer going to grant an inundated farmland adjustment in addition to the 50 percent adjustment. In order to receive the inundated farmland adjustment under SDCL 10-6-33.21, a landowner must submit an application to the Director of Equalization. Petitioner still has that process available for future assessments.

Petitioner argues that the entire property is no longer farmable and therefore it can generate no agricultural products upon which the property can be valued. The only reason the entire property is not farmable is because of the perpetual easement voluntarily entered into by Petitioner. While there is no question that there are bodies of water located on the property that is not a situation that just developed in 2014. The Director testified as to the types of soil he evaluated in reaching the assessed value of the property. Much of the property included marsh land soil. It is abundantly clear from a review of the hearing transcript that the inundated farmland adjustment was no longer granted because a 50 percent adjustment against the assessed value was granted. Now that the Day County Board of Equalization has taken the position that no adjustment can be made for the voluntary perpetual easement that does not mean that an adjustment would no longer be available under SDCL 10-6-33.21. Obviously, Petitioner would have to apply for that adjustment before the outcome would be known.

Petitioner has not been singled out by the county and unfairly had the assessed valuation of Petitioner's property raised. It was due to the action of the local Raritan Township Board of Equalization that the 50 percent adjustment was objected to for 2015 assessed values. Through that process, the Day County Board of Equalization, based upon the information presented to it at the hearing in April, 2015, made a decision not to grant the 50 percent adjustment for the voluntary perpetual easement. At that time, Petitioner was one of three people out of 113 similarly situated landowners in the county who was receiving an adjustment. The action taken by the Day County Board of Equalization simply corrected a mistake that had been made in 2014, since there was no statutory authority to take the action undertaken by the board.

It is clear form review of the record that the action of the Day County Board of Equalization was not discriminatory. While the board's action in this case did not correct the other two adjustments at the same time, those landowners have property in a different township and were not a party to this action. The establishment of assessed valuations and objections to assessed valuations can only be raised during specified times of the year pursuant to statute. Whether that situation has been corrected in subsequent years is not known to the Court. However, since there is no statutory authority for Petitioner to receive the adjustment that is sought, removing that adjustment and restoring the assessed value of the property in question is not discriminatory and does not cause lack of uniformity in the assessment process.

Although the Hearing Examiner did not make a specific finding as to whether the assessment determined by the Day County Board of Equalization lacked uniformity or was discriminatory, the Court's review clearly shows that the assessment does not lack uniformity nor is it discriminatory. Therefore, the decision of the Hearing Examiner affirming the decision of the Day County Board of Equalization is affirmed on this issue as well.

CONCLUSION

Based upon the above analysis and findings, the Hearing Examiner clearly did not err in determining the assessed valuation of the subject property by affirming the decision of the Day County Board of Equalization. The assessed valuation of Petitioner's property as determined by

the board was supported by the testimony of the Director of Equalization. There was no evidence presented that this valuation was incorrect.

The Hearing Examiner also did not err in determining that a tax adjustment for a voluntary perpetual Federal Wetlands Program easement is not authorized under SDCL 10-6-33.31. An easement is not one of the factors listed under subsection 2 of that statute and therefore there is no statutory authority to adjust the assessed value of agricultural land for the voluntary perpetual easement.

The Hearing Examiner also did not err in failing to determine that the assessed valuation of the subject property lacked uniformity or was discriminatory. The Court's review of the record clearly shows that the decision of the Day County Board of Equalization to deny the further grant of the 50 percent adjustment for 2015 is supported by statute, the testimony of the Director and the record and was not discriminatory even though this action affected only one of the three landowners receiving the adjustment of the 113 similarly situated landowners in Day County. It is also clear that the action of the Day County Board of Equalization did not lack uniformity.

Petitioner has not met her burden to establish that the assessed value of the seven parcels of real estate was in excess of true and full value and has not shown by credible evidence that the assessed value was unjust and inequitable. Therefore, the decision of the Hearing Examiner set forth in writing and dated July 21, 2015, is hereby affirmed in all respects.

Counsel for Respondent is hereby directed to draft an appropriate Order affirming the Hearing Examiner's decision and incorporating this Memorandum Decision by reference and, unless waived by Petitioner, to also prepare Findings of Fact and Conclusions of Law also incorporating this Memorandum Decision by reference.

Dated this 23rd June, 2017.

BY THE COURT:

Circuit Court Judge

Clerk of Courts