IN THE SUPREME COURT OF NORTH DAKOTA

American Crystal Sugar Company, Applicant/Appellee/ Cross Appellant v. Traill County Board of Commissioners, Appellant/Cross Appellee.	))))))))))	Supreme Court No. 20050343 Dist. Ct. 49-05-C-00030

APPEAL FROM THE DISTRICT COURT'S DECISION,
DATED AUGUST 29, 2005;
THE HONORABLE STEVE MARQUART PRESIDING

BRIEF OF THE APPELLANT

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether the District Court erred in its determination that storage silos located at the sugar processing facility were personal property and excluded from property taxation.

II. Whether the District Court erred by determining that the land upon which the sugar processing facility is located should be classified "agricultural" land rather than "commercial" land and therefore allowed a modified value for property taxation.

STATEMENT OF THE CASE

Overview.

American Crystal Sugar Company (hereinafter "ACSC") initiated requests for tax abatement for the years 2001, 2002 and 2003 with respect to property located in Traill County, North Dakota (hereinafter "County") (Applications for Abatement; App. pp. 3-17)[1]. The property can be generally described as a sugar processing facility (hereinafter "property") (Kennedy Test.; Tr. p. 24). The property includes buildings and land (Applications for Abatement; App. pp. 3-17).

The requests for abatement came before the County Board of Commissioners (hereinafter "Commissioners") (Trs., Vol. I and II, dated January 6 and 7, 2005). Following two days of hearing and testimony, the Commissioners denied the requests for abatement (Tr., dated January 25, 2005; Commissioners' Written Decision, App. pp. 42-43). ACSC thereafter initiated an appeal to the North Dakota District Court, the Honorable Steve Marquart presiding (Consolidated Notice of Appeal, Doc. No. 1). ACSC's challenges and the District Court rulings were as follows:

1. ACSC challenged the County's use of the "trended cost" method for valuation of the taxable property - the District Court affirmed the Commissioners' decision to allow the "trended cost" approach;
2. ACSC challenged the County's inclusion of beet storage sheds within the taxable property - the District Court affirmed County's inclusion of the beet storage sheds within the taxable property;

[1] The following abbreviations will be used through this brief: Transcript-"Tr."; Docket-"Doc."; Appendix-"App."; Testimony-"Test."

3. ACSC challenged the County's inclusion of extraction tanks within the taxable property - the District Court affirmed the County's inclusion of the extraction tanks within the taxable property;

4. ACSC challenged the County's inclusion of sugar storage silos within the taxable property - the District Court reversed the County's inclusion of sugar storage silos within the taxable property;

5. ACSC challenged the County's refusal to classify the land upon which the facility sits as "agricultural" and subject to modified valuation - the District Court reversed the County's decision and remanded the matter for modification of the property value based upon a classification of the land as "agricultural;" and

6. ACSC challenged the process under which the hearing before the Commissioners was held asserting that it violated due process – the District Court rejected the due process challenge.

(Memorandum Opinion and Order; App. pp. 18-41).

Procedural History.

ACSC initiated requests for tax abatements for the years 2001, 2002 and 2003 on October 30, 2003 for property located in Traill County, North Dakota (Applications for Abatement; App. pp. 3-17). The following table summarizes the value of the property as assessed by Traill County and the value placed on the property in ACSC's applications for abatement:

Year	Assessed Value	Abatement Application
2001	$ 27,746,143	$ 12,375,671

2002	$ 27,092,238	$ 10,892,934
2003	$ 26,710,980	$ 17,222,233

(Memorandum Opinion and Order; App. p. 18; Applications for Abatement; App. pp. 3-17).

On January 6th and 7th of 2005, the applications for tax abatement came before the Commissioners (Trs., Vol. I and II, dated January 6 and 7, 2005, Vol. I and II). Although the requests for abatement challenged only the assessed value of the property, at the time of the hearing ACSC raised several new issues. First, ACSC asserted that the "property tax value" of the plant was only $5,700,000 for each of the years at issue. Second, ACSC claimed that certain structures on the plant were being taxed as real property but should be classified as personal property and excluded from taxation. Third, ACSC asserted that the land upon which the plant is situated should be taxed as "agricultural" land and subject to a modified valuation.

After a full hearing, the Commissioners determined that the "trended cost" approach used by the tax director's office to determine the value of the property was appropriate and denied the abatements to the extent they sought to reduce the assessed value (Tr., dated January 25, 2005; Commissioners' Written Decision; App. pp. 42-43). The Commissioners also denied ACSC's request to classify storage sheds, extract silos, and storage silos as personal property (Tr., dated January 25, 2005; Commissioners' Written Decision; App. pp. 42-43). The Commissioners further rejected ACSC's request to reclassify the land upon which the plant is located as "agricultural land" (Tr., dated January 25, 2005; Commissioners' Written Decision; App. pp. 42-43).

ACSC appealed the decision of the Commissioners to the North Dakota District Court for Traill County, North Dakota (Consolidated Notice of Appeal, Doc. No. 1). After a

review of the record and the decision of the Commissioners, the District Court made the following determinations:

1. That the Commissioners' decision to accept the "trended cost" method used by the tax director's office was not arbitrary, capricious or unreasonable and therefore should be affirmed (Memorandum Opinion and Order; App. pp. 20-31);
2. That the Commissioners' decision to include the storage sheds (freezers) and extract silos within the real property valuation should be affirmed (Memorandum Opinion and Order; App. pp. 31-37);
3. That the storage facilities should be classified as personal property and excluded from taxation (Memorandum Opinion and Order; App. pp. 31-37); and
4. That the land upon which the plant is located should be reclassified as agricultural land and the valuation of the property modified accordingly (Memorandum Opinion and Order; App. pp. 37-39).

The decision of the District Court was entered on August 29, 2005 (Memorandum Opinion and Order; App. pp. 18-41). A timely Notice of Appeal was filed by Traill County with this Court on September 30, 2005 (Notice of Appeal; Doc. No. 24; App. p. 44). A cross appeal was asserted by ACSC on October 10, 2005 (Notice of Cross Appeal; Doc. No. 27; App. p. 45).

Factual Background.[2]

ACSC operates a sugar factory near Hillsboro, North Dakota, which converts sugar beets into marketable sugar products (Tr., Vol. I, p. 24). ACSC originally constructed the facility in 1973 (Tr., Vol. I, pp. 123, 207-208). The plant was the subject of a significant capacity expansion project that was completed in 1998 (Tr., Vol. I, p. 120) and, in 2000, an additional process referred to as molasses de-sugarization (MDS) was added to the facility (Tr., Vol. I, p. 28).

The sugar processing begins with the delivery of harvested beets to a wet hopper where the beets are entered into the processing facility and large equipment is used to remove rocks, mud and other materials from the beets (Tr., Vol. I, pp. 24-25). The beets are then sliced into the size of shoestring potatoes and undergo the initial extraction process (Tr., Vol. I, p. 25). The extraction process utilizes hot water, pressure and time to separate sugar from the beet fiber, creating a pulp (Tr., Vol. I, p. 25). The pulp goes through a drying or pelletization station where it is pressed and the sugar is extracted (Tr., Vol. I, p. 25). Rotating dryers thereafter separate the pulp from the sugar (Tr., Vol. I, p. 25). The pulp is ultimately pelletalized, loaded into rail cars, and shipped as byproduct of the process (Tr., Vol. I, p. 26).

The juice which results from the extraction process is sent to a purification filtration (Tr., Vol. I, p. 26). The juice is mixed with lime and carbon dioxide and thereafter sent to

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[2]Traill County has initiated an appeal of the District Court's decision to reclassify storage silos as personal property (excludable from the real property valuation) and the District Court's decision to characterize the land upon which the plant is located as "agricultural land." The factual summary contained in this brief is limited to those facts necessary for determination of those issues. It is anticipated that ACSC may challenge as part of its cross appeal the valuation determination at which time, in its reply brief, the County will provide additional facts as necessary for determination of that issue.

reactors where the nonsugars are removed from the juice, producing a pure juice (Tr., Vol. I, p. 26). The pure form of the juice is sent to an evaporation station where steam is used to remove the water and thicken the juice (Tr., Vol. I, p. 26).

After the juice has been thickened it is sent to the crystallization process (Tr., Vol. I, p. 26). A three-stage system is used to extract as much sugar as economically feasible (Tr., Vol. I, p. 26). The sugar crystals are ultimately sent to storage silos and a byproduct, molasses, is sent to storage tanks (Tr., Vol. I, pp. 27-28). The molasses is held in storage tanks until it can be further processed into an extract (Tr., Vol. I, p. 28).

In its requests for abatement, ACSC challenged only the determination of the value of the plant (Applications for Abatement; App. pp. 3-17). At the time of the hearing before the Commissioners, ACSC also challenged the inclusion within the real property three beet storage sheds, three extract storage tanks, and three storage silos.

During the hearing before the County Commissioners, ACSC asserted that the beet storage sheds are an integral part of the processes and part of the "equipment" that allows the beets to be processed (Tr., Vol. I, pp. 29-31). The beet storage sheds use the ambient temperature of outside air to maintain the beets in the frozen state until they are processed (Tr., Vol. I, pp. 34-40). The beets are kept in a frozen state in order to prevent their degeneration into a mush which would not be processable (Tr., Vol. I, pp. 34-40).

The beet storage sheds do not have any artificial refrigerating equipment and consist of buildings on a concrete foundation with double walls (Tr., Vol. I, p. 35). Outside air or inside air is drawn through computer controlled fans and circulated through the beets to maintain the frozen state (Tr., Vol. I, p. 35). The District Court concluded that the storage

sheds were "basically no different than storing the beets outside in cold weather which allows them to freeze" (Memorandum Opinion and Order; App. p. 34).

ACSC also challenged the inclusion of extraction tanks as part of the real property (Tr., Vol. I, pp. 30, 33-34). The extraction tanks are used in the crystallization process of the molasses, a byproduct produced at the facility (Tr., Vol. I, pp. 28, 33-34). Since the 2000 addition of the molasses de-sugarization process, molasses is reintroduced in the production process to remove residual sugar from the molasses (Tr., Vol. I, pp. 28, 33-34). The residual sugar is referred to as extract which is returned to the beginning of the sugar process for concentration and crystallization using the same methods as the initial slicing and extraction process (Tr., Vol. I, pp. 28, 33-34).

The molasses cannot be processed at the same time the plant is processing the initial sugar beets because of a lack of capacity (Tr., Vol. I, pp. 28, 33-34). The molasses extract is therefore stored in the extract storage tanks until after the sugar beets supply has been exhausted (Tr., Vol. I, pp. 28, 33-34). The District Court concluded that the extract tanks were merely storage tanks and properly characterized as real property (Memorandum Opinion and Order; App. p. 19).

There are three sugar storage silos located on the property (Tr., Vol. I, pp. 30-33). The storage silos are located at the end of the crystallization process and are used to store the sugar crystals (Tr., Vol. I, pp. 30-33). Although ACSC asserts that essential drying of the sugar occurs in the silos, the Process Schematic offered by ACSC clearly shows that the drying occurs before the sugar enters the silos (Process Schematic; App. pp. 46-47). The storage silos do not directly impact the sugar process nor do they exist solely for the purpose

of effectuating the process of converting sugar beets into marketable sugar (Tr., Vol. I, pp. 30-33; Process Schematic; App. pp. 46-47).

The plant is located on 695.7 acres of property. ACSC requested that the property be reclassified as "agricultural property." The District Court determined that if the plant was not located on the property that it would be used to raise agricultural crops and therefore should be classified as agricultural property (Memorandum Opinion and Order; App. pp. 37-39). However, the District Court and ACSC failed to acknowledge that Traill County did not increase the value of the property based upon a classification of the land as either commercial or agricultural. Through the use of the "trended cost" approach, Traill County set the assessable value of the land. The "trended cost" approach does not require the classification of the land as either agricultural or commercial.

LAW AND ARGUMENT

I. The District Court erred in classifying storage silos used to hold sugar prior to packaging as personal property.

The original request for abatement filed by ACSC limited its challenge of the assessment to the true and full market value determination made by the County. At the time of the hearing before the Commission, ACSC challenged the inclusion as part of the real property a number of structures located at the property site. ACSC's new challenge asserted that three types of structures located on the property should be classified as personal property and exempt from the real property tax. The structures ACSC sought to classify as personal property were the following:

1. Three beet storage (freezer) sheds;
2. Three extract storage tanks; and
3. Three sugar storage silos.

The District Court concluded that the beet storage (freezer) sheds and the extract storage tanks are real property for taxation purposes (Memorandum Opinion and Order; App. pp. 31-35). The District Court concluded that the sugar storage silos should be classified as personal property (Memorandum Opinion and Order; App. pp. 36-37). Because the sugar storage silos are storage structures, they were properly included within the real property and therefore a proper part of the County's valuation of the property.

A. Classification of property is a question of law subject to de novo review and requires a review of the Commissioners' decision to determine if the classification comports with a correct interpretation of the law.

The District Court issued its decision regarding the classification of the various storage facilities on pages 14 through 20 of its Memoranda Decision and Order

(Memorandum Opinion and Order; App. pp. 31-37). North Dakota Century Code § 57-02-04(2)(2000) exempts from property taxation machinery, equipment and other property, commonly referred to as personal property. Determination that a particular piece of property is personal property results in a reduction of the value of the ACSC property subject to property taxation by the County.

Chapter 57-02 of the North Dakota Century Code provides the framework under which the Commissioners are classifying property as either real or personal property. See, Ladish Malting Co. v. Stutsman Co., 416 N.W.2d 31, 33-34 (ND 1987). The classification of property as either real or personal requires the interpretation and application of Chapter 57-02. Id. at 33-34. This Court has previously held that the classification process is a quasi-judicial function and not a policy making function. Id. at 33-34. A quasi-judicial function requires the Commissioners to rely on prior judicial decisions and the legislative history of the statutes which, in part, necessitates applying rules of law. Id. This Court has therefore determined that the classification of property as either real or personal is a question of law subject to full review by a court. Id.

North Dakota Century Code § 57-02-04 defines real property for taxation purposes. Section 57-02-04 reads, in part, as follows:

> 2. All structures and buildings, including systems for the heating, air conditioning, ventilating, sanitation, lighting, and plumbing of such structures and buildings, and all rights and privileges thereto belonging or in anywise appertaining, but shall not include items which pertain to the use of such structures and buildings, such as machinery or equipment used for trade or manufacture which are not constructed as an integral part of and are not essential for the support of such structures or buildings, and which are removable without materially limiting or restricting the use of such structures or buildings.

This Court has previously interpreted § 57-02-04. Ladish Malting Co. v. Stutsman County, 351 N.W.2d 712 (ND 1984) [hereinafter Ladish I]. Section 57-02-04 first provides the general rule that all property is real property unless excluded.

In interpreting § 57-02-04, this Court established a three-part test for determining and defining when property can be excluded from the definition of real property. The following test defines when items of property can be excluded from the definition of real property:

1. Items which pertain to the use of structures and buildings (such as machinery or equipment used for trade or manufacture);

2. The items must not be constructed as an integral part nor be essential for the support of the structure or building; and

3. The items must not be removable without materially limiting or restricting the use of the remaining structures or buildings.

Ladish I at 721. All three factors must exist to exclude an item from the definition of real property.

This Court further defined what constitutes pertaining to use of structures and buildings, the first factor in the three-party test. Ladish I, 351 N.W.2d at 722. In defining what would constitute an item pertaining to the use of a building or structure, this Court stated the following:

> Items which pertain to the use of structures and buildings are those items which are used directly in and solely for effectuating that particular purpose to which the taxpayer has employed its structures and buildings.

Ladish I, 351 N.W.2d at 722.

In defining what constitutes the third factor, the removability of the item without materially limiting or restricting the use of the structure or building, this Court has stated the following:

> Items which pertain to the use of structures and buildings are those items which are used directly in and solely for effectuating that particular purpose to which the taxpayer has employed its structures and buildings. In the instant case, items which are used directly in and solely for effectuating the transformation of barley into malt meet the first requirement that tax-exempt personal property "pertain to the use of such structures and buildings."
>
> The State refers to that part of the statute: "items ... which are removable without materially limiting or restricting the *use* of such structures or buildings" as the basis for a real property "subclassification for special purpose structures." To construe the word "use" as that particular use to which a taxpayer has employed its structures or buildings would not accommodate the legislative intent to exempt those items of property which fall into the questionable area between real and personal property, i.e., items such as industrial machinery and equipment. If items are used directly in and solely for effectuating that particular purpose to which the taxpayer has employed its structures and buildings, the removal of the items would naturally, in most instances, restrict or limit that particular use. Illustrative is testimony elicited at trial wherein the view was expressed that removal of disputed items from the Ladish plant would certainly prohibit the malting of barley. We construe the statute in a less restrictive manner. Items which are removable without materially limiting or restricting that quality of a structure or building that makes it useful or suitable for any purpose constitutes a construction more conducive to the legislative intent expressed. In other words, items which can be removed without rendering the structure or building nonfunctional, without extensive repair or redesign of the structure or building, and without replacement of removed items satisfy the requirement that personal property be "removable without materially limiting or restricting the use of such structures or buildings."
>
> The word "removable" requires that the movability of property also be considered in determining whether an item is real or personal property for tax purposes. We realize that from a

> theoretical standpoint any structure or building ever built might conceivably be moved. As William Meyer succinctly stated at trial: "If you build it you can unbuild it." Without adopting that expansive a test, we construe this movability aspect of Section 57-02-04(2) to encompass both economic as well as physical considerations. *See City of Lackawanna v. State Bd. of Equal. & Assess., supra,* 250 N.Y.S.2d at 371. Where physical or economic considerations so negate movement as a matter of practicability, the property should be found to be real property. Here a reasonableness test must be applied.

Ladish I, 351 N.W.2d at 722.

This Court, in considering an issue as to whether or not a particular item of property should be exempt from the definition of real property, concluded that "a structure used for storage, for example, is part of the realty and subject to real estate taxation." Ladish I, 351 N.W.2d at 722. This Court's decision was based upon its review of a decision of the Pennsylvania Supreme Court which had held that storage structures were part of the real property and subject to real taxation. Ladish I, 351 N.W. at 722 (citing Borough of Aliquippa, 405 Pa. 421, 175 A.2d 856 (1961)).

In reviewing a particular statute to determine its meaning, this Court's primary objective is to ascertain the intent of the legislature. Ladish, 351 N.W.2d at 718 (citing Rheaume v. State, 339 N.W.2d 90, 92 (N.D. 1983)). If the intent of the legislature can be determined from the language of the statute of itself, that legislative intent must be applied by this Court. Ladish I, 351 N.W.2d at 718 (citing Geo Resources, Inc. v. Tax Commissioner, 288 N.W.2d 54, 55 (N.D. 1980)).

This Court has previously recognized that § 57-02-04(2) of the North Dakota Century Code unambiguously expresses a legislative intent to include within the definition of real property all structures and buildings. Ladish I, 351 N.W.2d at 719. Included within the definition of real property are not only the structures and buildings, but also the heating, air

conditioning, ventilating, sanitation, lighting and plumbing systems which are part of the structures and buildings. Ladish I, 351 N.W.2d at 719. This Court has even held that machinery equipment used for trade or manufacture is not excluded from the definition of real property. Id.

After examining in detail the legislative history behind § 57-02-04(2) of the North Dakota Century Code, this Court concluded that "an item which pertains to the use of structures and buildings should be classified as personal property only if it is not constructed as an integral part of and is not essential for the support of structure of the buildings and is removable without materially limiting or restricting the use of structures or buildings." Ladish I, 351 N.W.2d at 721. This Court thereafter noted that the Supreme Court of Pennsylvania, construing a statute similar to § 57-02-04, concluded that structures used for storage are part of the realty and subject to real estate taxation. Ladish I, 351 N.W.2d at 722. This Court has therefore adopted an interpretation of § 57-02-04 to include within the definition of real property storage facilities.

After reviewing the three categories challenged by ACSC, the District Court confirmed the Commission's classification of the storage facilities (freezers) and the extraction tanks as part of the real property. The District Court disagreed with and reversed the decision of the Commissionerswith regard to the storage silos, determining that the storage silos should be classified as personal property.

B. The storage silos are not excluded from the definition of real property.

The storage silos are used by ACSC to hold the sugar until it is shipped to customers. The sugar is held in the silos for approximately 72 hours before it is packaged. No additional processing is provided to the sugar crystals in the storage silos.

Confirmation that no additional processing occurs is demonstrated by the Process Schematic offered by ACSC at the hearing before the Commissioners. Page 12 of the Power Point presentation offered by ACSC shows that dried sugar is sent to the silos (Process Schematic; App. p. 46). This is significant because ACSC's assertion is that the sugar is dried (asserted to be necessary) in the silos. Page 20 of the Power Point presentation also demonstrates that the drying occurs prior to entry into the sugar storage silos (Process Schematic; App. p. 47).

In order for a structure to be considered personal property and exempt from property taxation, it must be used "directly" in the manufacturing of the product. If the structure is simply used for storage, as this Court determined in Ladish, it must be considered part of the real property and subject to property taxation.

The District Court noted that the term "directly" means "without any intervening space or time" (Memorandum Opinion and Order; p. 17; App. p. 34) (citing Webster's 3rd Int'l. Dictionary 1993). The storage silos are basically no different than storing the sugar in any other storage unit prior to its packaging and shipment. Similar to the beet storage structures, the sugar storage silos are simply sophisticated storage structures used for holding the sugar before it is packaged and shipped to customers. Therefore, the storage silos should be classified as real property and subject to property taxation.

C. Alternatively, consideration of "reclassification" of the storage silos requires reversal and remand for further factual development.

If this Court determines that the Commissioners may have failed to properly classify the storage silos as either real or personal property, the appropriate remedy is reversal of the District Court decision and remand to the for further factual development. ACSC in its original property tax abatement did not raise the issue of classification with regard to any

structure located on the property. Instead, ACSC limited its challenge to the overall value of the property.

Limiting its challenge to the overall value of the property is significant because the standard of review of a valuation determination is significantly different from the standard of review of property classification. The standard of review of a valuation issue is whether the decision was arbitrary and capricious, while the standard of review for classification of property is de novo. By waiting until the presentation of its property tax challenge before the Commissioners to raise the "reclassification" issue, ACSC was able to preclude the County from challenging those assertions. Fair process requires the issue to be raised prior to the time of the hearing in order to allow both parties to adequately prepare for the issue. As such, if this Court determines that the Commission's classification of the storage silos as real property requires further reconsideration, the appropriate action is to reverse and remand these proceedings to the Commissioners for the limited purpose of addressing the classification of the storage silos.

II. The District Court erred in reclassifying land as "agricultural" and the distinction between agricultural and commercial is not relevant under the circumstances of this case.

ACSC's original request for abatement did not challenge the classification of any of the land upon which the sugar processing facility is located. At the time of the hearing, ACSC sought to classify 695.7 acres of land as agricultural. The Commissioners rejected the classification of the 695.7 acres of land as agricultural. The District Court reversed the determination of the Commissioners and reclassified 695.7 acres of land as agricultural. The District Court thereafter remanded to the Commissioners the determination of the value of the land pursuant to it classification as agricultural.

The District Court erred in classifying the land as agricultural. Additionally, classification of the land as agricultural or commercial is not relevant to the determination of value under the circumstances of this case because the real property at issue was valued using a "trended cost" approach.

A. Classification of land as commercial or agricultural is a question of law subject to de novo review.

Classification of property is governed by § 57-02-04(2) of the North Dakota Century Code. The interpretation of a statute is fully reviewable by this Court as a question of law. Ladish I, 351 N.W.2d at 718 (citing Feiler v. Wanner, 340 N.W.2d 168, 169 (N.D. 1983)). In determining the appropriate classification for particular property, this Court independently construes the statutory provisions involved. Ladish I, 351 N.W.2d at 718 (citing United Power Association v. Board of County Commissioners, 300 N.W.2d 36, 38 (N.D. 1980); Butts Feedlots v. Board of County Commissioners, 261 N.W.2d 667, 669 (N.D. 1977); Evangelical Luth. G. Sam. Soc. v. Board of County Commissioners, 219 N.W.2d 900 (N.D. 1974); YMCA of North Dakota State University v. Board of County Commissioners, 198 N.W.2d 241 (N.D. 1972)).

B. The land was not valued as "commercial."

The 695.7 acres of property are utilized by ACSC as part of its production facility. It should initially be noted that the County has not argued that the property should be assessed as "commercial" property. ACSC has instead applied a "trended cost" approach for valuing the plant as a whole, including the structure and the land. The "trended cost" approach neither raised nor lowered the value of the property on the basis that the land was either agricultural or commercial. ACSC's complaint that the valuation is improper because it fails to consider the land as "agricultural" is incorrect and not relevant to determination of the

value of the property. As such, the District Court's decision to require the County to classify the land as "agricultural" and adjust the valuation is improper and should be reversed.

C. Reconsideration of the classification of the land requires reversal and remand for additional factual development.

ACSC's challenge to the classification of the land was not raised in its original abatement request. Instead, ACSC waited until the time of the hearing to raise the issue regarding classification of land, effectively depriving the County and the Commissioners with an opportunity to develop an appropriate record regarding the classification of that property. Similar circumstances existed in Ladish I where this Court recognized that "the Stutsman County Board of Commissioners must be given the opportunity to reconsider Ladish's application for abatement of the $57 million in light of our clarification of § 57-02-04(2) after a new and full hearing."

If this Court determines that there is a genuine issue with regard to classification of the land, the appropriate remedy is for reversal of the District Court decision and remand to the Commissioners for further factual development. The opportunity for further factual development would allow the Commissioners to review the concerns of ACSC with the opportunity for both parties to establish an appropriate record.

D. Determination that the land is agricultural is not relevant to its value in this case.

In valuing the property at issue, the County utilized a "trended cost" method to determine market value of the plant for tax purposes. The District Court acknowledged that this was an appropriate method for determination of the market value of the plant. ACSC challenged the "trended cost" approach by offering the testimony of Mr. Coates. After considerable discussion of the approach suggested by Coates, the District Court rejected

Coates' opinion that the "trended cost" approach was not appropriate. The District Court rejected Coates' opinion by noting that Coates lacked credibility and that Coates admitted a sales approach would not be appropriate (Memorandum Opinion and Order; App. pp. 29-30).

The District Court also noted that the "trended cost" approach provided a valuation equal to a reduction of approximately 54% from the original cost, close to the use of life estimate of 60% (Memorandum Opinion and Order; App. p. 29). In contrast, applying the method used by Coates would have resulted in a 90% depreciation in value (Memorandum Opinion and Order; App. p. 29).

The District Court further noted that ACSC had a record-breaking year for profitability in 2003 (Memorandum Opinion and Order; App. p. 29). This implies that the facility retains significant value and operating capacity.

Under the "trended cost" approach, classification of land as either "agricultural" or "commercial" is not relevant. The "trended cost" approach of determining market value applies the following formula: replacement cost new less physical depreciation, less functional depreciation, less economic depreciation, equals market value.

Looking at the specific mechanics of the calculation is unnecessary for resolution of this issue. Under the "trended cost" method the classification of the land is either agricultural or commercial is not relevant. Instead, what is relevant is the replacement cost of the property. The replacement cost of the property is thereafter reduced by physical, functionally, and economic depreciation. The final result is the market value for the property under the "trended cost" approach.

III. Conclusion.

The District Court's decision to classify the storage silos as personal property and exclude them from property taxation was erroneous and must be reversed. Additionally, the District Court's decision to classify the land as "agricultural" and require modification of the valuation consistent with that classification was erroneous and must be reversed.

Respectfully submitted this 30th day of November, 2005.

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Certification of Compliance

The Appellant Traill Co. Board of Commissioners hereby certifies, by and through its undersigned counsel, that the Brief of the Appellant does not exceed 10,500 words (including footnotes) or 40 pages. The brief is done in Word 7 Times New Roman 12 format.

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IN THE SUPREME COURT OF NORTH DAKOTA

American Crystal Sugar Company, Applicant/Appellee/ Cross Appellant v. Traill County Board of Commissioners, Appellant/Cross Appellee.	)	Supreme Court No.: 20050343 Dist. Ct. 49-05-C-00030 **AFFIDAVIT OF SERVICE BY EMAIL TRANSMISSION**

STATE OF NORTH DAKOTA)
) ss
COUNTY OF GRAND FORKS)

MARIE A. ADAMS, being first duly sworn on oath, deposes and says: That she is of legal age, a citizen of the United States, and is not a party to, nor has she an interest in the above-entitled action; that on the 30th day of November, 2005, she served via email transmission a true and correct copy of the following documents filed in the above-entitled action:

- **Brief of the Appellant;**
- **Appendix of the Appellant**

That said documents were email addressed to:

Wickham Corwin
wcorwin@conmylaw.com

To the best of affiant's knowledge, information, and belief, such email address as given above was the actual email address of the party intended to be so served.

Marie A. Adams

Subscribed and sworn to before me this 30th day of November, 2005.

Notary Public
Grand Forks County, North Dakota

My Commission Expires:
(seal)

LIANNE JOHNSON
Notary Public, State of North Dakota
My Commission Expires June 25, 2010