

IN THE SUPREME COURT OF NORTH DAKOTA

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

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

REPLY BRIEF OF THE APPELLANT

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LAW AND ARGUMENT

I. THE BOARD OF COMMISSIONERS DID NOT ACT IN AN ARBITRARY OR CAPRICIOUS MANNER IN REVIEWING ACSC'S REQUEST FOR ABATEMENT.

American Crystal Sugar Company (hereinafter "ACSC") asserts that the Traill County Board of Commissioners (hereinafter "the Commission") acted in an arbitrary manner when it rejected ACSC's requests for abatement. (Appellee/Cross-Appellant Brief, pp. 6-27). ACSC asserts that the Commission arbitrarily rejected market evidence and arbitrarily based its decision on an "unsupported" formula. ACSC's assertions are without merit because the Commission did not act arbitrarily in rejecting the request for abatement.

A. The Commission provided substantial rationale for its decision to reject the request for abatement.

ACSC asserts that "the Board's conclusion regarding the value of the property was arbitrary . . ." and that "the Board gave no consideration to the comprehensive and compelling evidence." (Appellee/Cross-Appellant Brief, p. 6). However, this assertion ignores the two-page written decision issued by the Commission following three days of testimony and argument. In its rejection of the requests for abatement, the Commission specifically noted the following:

ACSC stated that the method used in determining taxable valuation was not fair. ACSC addressed the three methods of determining the value: cost, sales, and income.

The Board of Commissioners decided that the cost method used by the Tax Director's Office was the only fair way the property could be valued. The current valuation is determined by a formula agreed upon by ACSC and Traill County. The original cost of any property added to the tax rolls is provided by ACSC. There have been adjustments to the formulas in past years, requested by ACSC, addressing obsolescence and economic depreciation (1987) and freezing the cost index for the main factory (1998), all favoring ACSC. The ACSC

appraisal completed in December 21, 2004 stated the cost value of all real property for 2001, 2002, and 2003 was \$5,700,000 for each year. The Board of Commissioners decided that these numbers were not valid. The valuation for each year has to change due to depreciation so these numbers are estimates not facts. The Board of Commissioners determined that the appraisal was not tied to relevant numbers. The Board of Commissioners also questions whether this truly was an independent appraisal when the appraiser, Mr. Coates, testified he changed his numbers one month before completing the appraisal because ACSC attorneys told him to.

ACSC testified that the sales method should be used to determine the value of the Traill County property. The Board of Commissioners decided that this method was invalid because some of the sales used were compelled sales.

ACSC testified that the income method was the least reliable method and should not be used. The Board of Commissioners agreed that while this is not the best method to use, it might have value because if the actual income could be determined, it may increase the value of ACSC property in Traill County.

(App. pp. 42-43). In contrast to the naked assertion that the Commission's conclusions were arbitrary, the Commission provided substantial analysis of the process by which it reached its decision. After considering the various alternatives for valuing the property, the Commission determined that the trended cost approach used by the Tax Director's Office was fair. (App. pp. 42-43).

B. ACSC's reliance on the Coates' appraisal is misplaced.

In asserting that the Commission acted arbitrarily, ACSC relies exclusively upon the valuation provided by its retained appraiser, Coates. As noted by the Commission, Coates had limited credibility because he had testified at trial that "he changed his numbers one month before completing the appraisal because ACSC attorneys told him to." (App. p. 42).

Although ACSC attempts to characterize Coates' opinion as credible, Alan Learness, another of ACSC's own witnesses, testified that he found the Coates' valuation opinion to be

a “very difficult document to follow.” (Tr. p. 237). When questioned by Commissioner Osland, Coates provided confusing testimony as to the value of the plant, at one point indicating that its value was \$22,968,000 and further agreeing that \$22,968,000 would be a market value where American Crystal Sugar probably would be willing to sell. (Tr. p. 154).

The Commission is afforded great deference and is responsible for weighing the factual material presented to it. Midwest Processing v. McHenry County, 467 N.W.2d 895, 900 (N.D. 1991). In weighing the credibility of the various witnesses, it was clearly the purview of the Commission to reject Coates’ testimony based upon his contradictory statements. First, he made a determination that in October of 2003 the taxable value of the plant for 2001 was \$12,375,671, that in 2002 the taxable value was \$10,892,934, and that in 2003 the taxable value was \$17,222,233. He subsequently changed his opinion. When asked why he changed his opinion, he conceded that he had been asked to change his opinion by the ACSC attorneys approximately one month before the hearing and as a result he modified his opinion to provide that the value each year was \$5,700,000.

ACSC relies exclusively on the Coates’ opinion. As noted by the Commission and Judge Marquart, the credibility of Coates was seriously impaired. It was not arbitrary or unreasonable for the Commission to reject Coates’ opinion and follow the opinion of the Tax Director’s Office.

Judge Marquart also provided a summary explaining that the determination of the Commission was consistent with the actual facts that were developed during the hearings. That summary noted that the use of the trended cost approach accurately reflects the estimated life expectancy of the plant. (App. p. 29). The trended cost approach used by the County, which through 30 years of the plant’s existence (60% of the life expectancy of the

plant), had depreciated the property 54% “a reasonably close correlation.” (App. p. 29). In contrast, Coates attempted to apply a 90% depreciation factor, a position which lacks credibility. (App. p. 29). It was well within the scope of the Commission’s authority to weigh factual material presented to it and thereafter reject the opinion of Coates as too uncertain or conjectural to form the basis of a reasonable opinion. See, National Sun Industries v. Ransom County, 474 N.W.2d 502, 508 (N.D. 1991).

C. The Commission did not act arbitrarily in rejecting the “market evidence” approach as asserted by Coates.

ACSC asserts that the Commission failed to consider market circumstances in evaluating the request for abatement. However, the Commission specifically addressed the use of the sales method and determined that the sales method “was invalid because some of the sales used were compelled sales.” (App. p. 43).

ACSC relies exclusively upon the testimony of Coates with regard to market conditions and application of the sales approach. However, Coates, during the hearings before the Commission, ultimately conceded that there was insufficient data from which to do a sales analysis.

Coates indicated that there were six sales which he reviewed in order to apply the sales approach. On page 33 of his report, Coates conceded that he had rejected sales 4, 5 and 6 because they did not represent typical sales transactions. (App. p. 27). Of the three remaining sales, Coates conceded, after being examined by Commissioner Osland, that he had relied on a single sale in the state of Michigan. (App. pp. 27-28; Tr. pp. 287 & 302).

Under further questioning by Commissioner Osland, Coates agreed that he valued the plant at \$22,968,000, exclusive of the land value, and further agreed that the market value which would be acceptable by ACSC would be \$22,968,000. (App. p. 28; Tr. p. 154). Those

concessions by Coates are materially different from the position now taken by ACSC that the value of the plant is only \$5,700,000 for each of the years at issue. This is yet another example of Coates' lack of credibility and provided a reasonable basis for the rejection of his opinion by the Commission.

D. Summary: The Commission did not act arbitrarily in rejecting the ACSC appraisal.

ACSC's argument with respect to the assertion that the Commission acted arbitrarily in rejecting its appraisal is premised exclusively upon the assertion that the Commission should have followed the Coates valuation. However, this Court is not permitted to reweigh conflicting evidence to determine which version is more convincing. Midwest Processing v. McHenry County, 467 N.W.2d 895, 897 (N.D. 1991). The Commission is given the exclusive authority to weigh credibility of witnesses and weigh the factual materials in determining whether or not the request for abatement should be granted. Id. at 900.

The Commission found the use of the trended cost approach more persuasive than the valuation provided by Coates. (App. p. 29). As also noted by Judge Marquart, the Commission could easily have determined that Coates' credibility was affected by his manipulation of the taxable value of the plant and that the sales used by Coates as part of his valuation were not properties "reasonably similar in physical characteristics and location" to the property at issue. (App. p. 29). Instead, the Commission found credible the use of the trended cost approach which provided a close match to the estimated life expectancy of the plant as disclosed by ACSC. Under these circumstances, the decision of the Commission cannot be determined to have been issued in an arbitrary, capricious or unreasonable manner. This Court must affirm the decision of the Commission.

II. THE STORAGE SILOS USED TO HOLD SUGAR ARE PROPERLY CLASSIFIED AS “STORAGE FACILITIES” AND MUST BE INCLUDED WITHIN THE REAL PROPERTY VALUATION.

A. ACSC’s reliance on Pennsylvania law is misplaced and misstates this Court’s prior rulings.

This Court has previously issued guidance with respect to classification of storage facilities. See, Ladish Malting Co. v. Stutsman County, 416 N.W.2d 31 (N.D. 1987). As noted by this Court in Ladish, the classification of property is governed by Chapter 57-02 of the North Dakota Century Code and the classification process is a quasi-judicial function and not a policy-making function. Id. at 33-34. Because it is a quasi-judicial function, classification requires reliance on prior judicial decisions and the legislative history. Id.

ACSC asserts that Chapter 57-02 provides a broad definition for personal property that must be interpreted in favor of the taxpayer. (Appellee/Cross Appellant Brief, p. 29). However, this ignores the general rule provided by § 57-02-04 which provides that all property is to be considered real property unless excluded. Ladish Malting Co. v. Stutsman County, 351 N.W.2d 712 (N.D. 1984) (hereinafter “Ladish I”) (interpreting N.D.C.C. § 57-02-04 and its general rule that all property is real property unless excluded).

This Court has previously reviewed the classification of property with regard to storage facilities. Ladish I, 351 N.W.2d at 722. This Court has noted that “a structure used for storage, for example, is part of the realty and subject to real estate taxation.” Id. at 722. This Court also noted that the North Dakota Legislature unambiguously expressed an intent to include within the real property all structures and buildings. Ladish I, 351 N.W.2d at 719 (citing N.D.C.C. § 57-02-04(2)).

It is within the above framework which this Court is required to determine whether or not particular items of property should be classified as real property or personal property for

purposes of taxation. The district court, in examining the storage silos, improperly classified the storage silos as personal property excluded from taxation. The decision of the district court must be reversed and the decision of the Commission with regard to the storage silos reinstated.

B. Storage silos are not an integral part of the production process as asserted by ACSC.

ACSC asserts that the storage silos are an integral part of the production process. (Appellee/Cross Appellant's Brief, pp. 33-34). ACSC relies upon the assertion that the storage silos are an integral part to the process because without "further processing or curing, the crystals would stick together." (Appellee/Cross Appellant's Brief, p. 33) (citing Tr. p. 27).

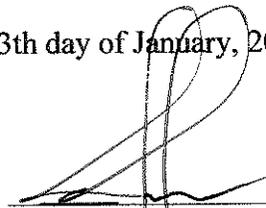
ACSC's assertion ignores the very materials it provided to the Commission to explain the production process. For example, ACSC offered a Process Schematic as part of its presentation to the Commission. On page 12 of the Power Point presentation provided by ACSC, it is clear that the sugar is sent into the storage silos in a dry form rather than a wet form as asserted by ACSC. (Process Schematic; App. p. 46). Additionally, on page 20 of the Power Point presentation provided by ACSC, it is clear that the drying occurs prior to entry into the sugar storage silos. (Process Schematic; App. p. 47).

Contrary to its current assertions, the materials provided by ACSC demonstrate that the storage silos are not used "directly" in the manufacturing process. The storage silos are simply used for storage. Because the storage silos are used simply for storage, this Court must conclude that they are part of the real property and subject to property taxation. The decision of the district court to reverse the determination of the Commission with respect to the storage silos must be reserved and the Commission's determination reinstated.

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 reclassify the land as "agricultural" and require modification of the valuation consistent with that classification and must be reversed. The remaining decision of the district court upholding the determinations of the Commission should be affirmed.

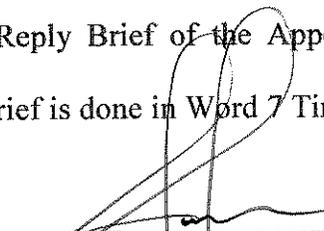
Respectfully submitted this 13th day of January, 2006



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Certification of Compliance

The Appellant Traill Co. Board of Commissioners hereby certifies, by and through its undersigned counsel, that the Reply Brief of the Appellant does not exceed 2,500 words (including footnotes). The brief is done in Word 7 Times New Roman 12 format.



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