

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

David Sholy,	)	
	)	
Appellant,	)	Supreme Court No. 20220033
	)	
v.	)	09-2019-CV-02451
	)	District Court No. <del>09-CV-02451</del>
Cass County Commission,	)	
	)	
Appellee.	)	

\* \* \* \* \*

Appeal From Order Denying  
Request For Tax Abatement and Refund  
June 17, 2019  
Cass County Commission

\* \* \* \* \*

\* \* \* \* \*

BRIEF OF APPELLANT  
DAVID SHOLY

\* \* \* \* \*

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Appellant

## TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities.....	(b)
Statement of Issues.....	(c) & (d)
Scope of This Case.....	1
Arguments.....	12

## TABLE OF AUTHORITIES

CASES:	Page
Young, 209 U.S. 123 (1908).....	7
Supreme Court in Scheuer v Rhodes, 416 U.S. 232.94 S.Ct. 1683 1687 (1974).....	7
U.S. v Will, 499 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2 <sup>nd</sup> 392, 406 (1980).....	7
Yates v Village of Hoffman Estates, Illinois, 209 F.Supp. h57 N.D. Ill. (1962).....	8
Hawk v Supreme Court, 42 Cal. App. 3d 108 116, 116 Cal. Rptr. 713, 718 (1974).....	10
Fidelity Mortgage Investors v Camelia Builders, Inc. 550 F.2d 47 (2d) Cir. (1976).....	10
 STATUTES AND AUTHORITIES:	
N.D.C.C., Section 57-23-05.....	2
N.D.C.C., Section 28-32.....	3
N.D.C.C., Section 28-32-44.....	4
A Guide to Appeals in North Dakota (North Dakota Supreme Court).....	5
Rule 3(a)(2) of North Dakota Rules of Appellate Procedure.....	6
North Dakota Supreme Court Administration – Rule 46.....	6
Rule 11(a)(1) of North Dakota Rules of Appellate Procedure.....	6
N.D.C.C., Section 28-32-44.....	8
Rule 11(a)(1) North Dakota Rules of Appellate Procedure.....	8
Rule 3(a)(2) of North Dakota Rules of Appellate Procedure.....	8
N.D.C.C., Section 27-10-01.1.....	10
ABA Code of Professional Responsibility.....	10
N.D.C.C., Section 28-32-44.....	10
Rule 11(a)(1) of North Dakota Rules of Appellate Procedure.....	11

## STATEMENT OF ISSUES

- A) If property taxes are based on property valuations, do said valuations need to be calculated in a fair, consistent, and equitable manner?
- B) If property taxes are based on property valuations, do all factors that affect values need to be included – or just those that an administrative agency feels would be beneficial to it?
- C) If property comparisons are used to determine property valuations, is it not proper and even required for comparative properties to be similar?
- D) If a property has a deficiency or defect that might not even be readily apparent, is it not fair and proper for that factor to be included in determining valuation?
- E) Do the same standards in Law that apply to the public in general also apply to a government administrative agency?
- F) Do the same standards in Law that apply to the public in general also apply to a county states attorney?
- G) Does an administrative agency that administers taxation need to apply its processes equally to all citizens?
- H) Does an independent real estate tracking service that tracks and provides estimates on property value have equal, or even greater, credibility than a government administrative agency that benefits from higher valuations or calculations that result in higher tax receipts?
- I) If a party to an appeal fails/refuses to respond to legal requirements in an appeal and declines to participate in the process, does that party then forfeit rights to object to arguments subsequently presented later in court by the other party?
- J) Can a judge in district court release a party from legal requirements of Law or as stated in the court rules?
- K) Can a judge in district court implement new or expanded standards or requirements that are not specified as necessary in the law?
- L) Can a judge in district court dismiss an appeal in violation of specific provisions stated in Law?
- M) If a judge in district court dismisses an appeal contrary to provisions stated in court rules, is that dismissal action not null and void?

## STATEMENT OF ISSUES

(Page 2)

- N) If a county states attorney, acting at the attorney of an administrative agency, refuses to provide the official record (& transcript) of a hearing that's the basis for an appeal, has that person committed contempt of court?
- O) If a county states attorney, acting as the attorney of an administrative agency, refuses to respond to a directive of the state Supreme Court requesting the official record of a case on appeal, as required by Law, has that person committed contempt of court?
- P) If a judge in the district court takes action in violation of Law or court rules, are there any consequences?
- Q) If a county states attorney takes action in violation of Law or court rules, are there any consequences?
- R) Can an appellee in a case of appeal circumvent the process and block a decision from being made, and thereby "win" the case, by refusing to participate in the action?
- S) If a district court in an appeal: (1) requests additional information not specified in Law from appellant for the filing of his appeal; (2) releases appellee from filing responsive documents specifically required by Law; and (3) then dismisses the case contrary to provisions of the Law; has not the district the district court acted as an agent/advocate for the appellee by knowingly acting to protect and cover up the deficiencies of the appellee while seeking to diminish and extinguish appellant's appeal?
- T) Is this case more properly suited for action against the states attorney and district court judge in U.S. Federal Court for taking action to circumvent law and legal procedure thereby denying appellant due process, as required by the 11<sup>th</sup> Amendment

### **SCOPE OF THIS CASE**

The most striking and alarming aspect of this case is the actions and behavior of the Appellee, Cass County Commission, and its legal representative, Cass County States Attorney – and later even the Cass County District Court. These people presumably take an oath of office to uphold the Law and administer justice. Instead, they (1) didn't know the Law; (2) didn't observe the Law; (3) didn't respect the Law or legal procedure; (4) didn't respond to requirements of the Law or a directive from the North Dakota Supreme Court; and (5) violated said Law and procedure on multiple occasions. And, they did all this with an attitude that suggests that they didn't think – and didn't care – that they'd ever be held accountable for any of it – and didn't think anyone would even try to do so!

The mishandling of this case was so gross that it almost became more significant than the original issue (of the appeal). There are remedies and/or consequences in the Law for their actions and behavior, which if the Law means anything will hopefully be implemented here. The bottom line is that this case is now before the North Dakota Supreme Court NOT because of some unique legal issues or disagreement on application of some Law. Instead, it is here entirely because of the blatant and repeated mishandling of the matter by the parties mentioned above!

This matter began with property tax notices, sent out in 2018 to Appellant David Sholy, advising of new rates on his properties, as follows:

- A 74.29% rate increase on Appellant's commercial property, located at 334 – 27<sup>th</sup> Circle South, Fargo, ND (see document "A").
- A 85.09% rate increase on Appellant's commercial property, located at 346 – 27<sup>th</sup> Circle South, Fargo, ND (see document "B").
- A increased valuation to \$346,500 on Appellant's residential property, located at 3510 – Park Avenue, Fargo, ND (see document "C").



The tax increases on the commercial properties were obviously extreme, unrealistic, and even outrageous – and Appellant David Sholy viewed the valuation on the residential property as also being unjustifiable, compared to other sites in his neighborhood. So, Appellant decided to appeal the rate/valuation increases - and the necessary documents were subsequently filed, with Appellant claiming the following:

- A valuation of \$130,000 (verses \$207,000 in tax notice) on commercial property at 334 – 27<sup>th</sup> Circle South (see document “D”).
- A valuation of \$115,000 (verses \$191,000 on tax notice) on commercial property at 346 – 27<sup>th</sup> Circle South (see document “E”).
- A valuation of \$325,000 (verses \$346,600 on tax notice) on residential Property at 3510 – Park Avenue (see document “F”).

Some correspondence occurred regarding the matter and a representative of the City of Fargo’s Assessor office visited Appellant’s resident property. No meaningful evidence was ever presented to justify the excessive rate/valuation increases – and no corrective action occurred. Eventually, a hearing was scheduled for May 20, 2019, before the Cass County Commission, at the Cass County Courthouse in Fargo (see document “G”). A discussion occurred and the Commission voted 3-2 against Appellant’s Appeal (see document “H”).

Appellant David Sholy was disappointed with the result and dissatisfied with the short notice (6 days) that had been given for the hearing – and it was then discovered that the Notice for the hearing was in violation of N.D.C.C. 57-23-05, which says:

“The county auditor shall give the applicant notice by mail of the time and place of hearing on any abatement or refund not less than ten days days prior to such hearing.”

Simply put, the Cass County Commission apparently didn’t know how to conduct a

proper hearing (or perhaps their normal routine was to simply ignore rules)! Appellant David Sholy had to advise them on how to properly conduct a hearing. So, Appellant notified the Cass County States Attorney of the situation – and then a re-hearing was scheduled for June 17, 2019 (see document “T”), and this time proper notice was given.

This time, Appellant David Sholy actually had adequate time to prepare and assembled an extensive array of documents disputing the excessively high tax rates and valuations that had been proposed. [Note: The Appellant has a seasonable job and the hearing occurred – somewhat inconveniently – right at the peak of his “busy” season.] The documents provided substantial verification that the tax increases: (1) were excessive to the point of being unprecedented; (2) the comparisons cited by the city/county as the basis for the higher tax rates and valuations were faulty; and (3) the tax rates suggested in response by Appellant were more fair, accurate, and reasonable. A discussion was held and Appellee Cass County Commission voted 5-0 against the Appeal (see document “J”).

How was it possible, after a treasure trove of documents were presented supporting Appellant’s appeal, for the Commission to change its initial hearing vote of 3-2 to a united 5-0 vote against the Appeal? The only feasible answer is that: (1) they totally ignored the facts; (2) got mad at Appellant for indentifying their incompetence (on the simple matter of how to run a hearing); and (3) were embarrassed – and responded with revenge by changing its original split vote to a unanimous 5-0 vote against the appeal to “punish” Appellant for daring to think that fairness or justice would actually occur!

So, in accordance with the Administrative Agencies Practices Act, of North Dakota (NDCC 28-32), an Appeal was filed with the District Court, of Cass County, on July 19,



2019. Upon the filing of an Administrative Appeal to a District Court, NDCC 28-32-44

says:

1. An administrative agency shall maintain an official record of each adjudicative proceeding or other administrative proceeding heard by it.
2. Within 30 days, or longer time as the court may direct by order, after an appeal has been taken to the district court as provided by this chapter...the administrative agency shall prepare and file in the office of the district court in which the appeal is pending the original or a certified copy of the entire record of proceedings before the agency.

Appellee Cass County Commission ignored this requirement and refused to comply with the Law. It did not file the mandatory materials with the District Court within 30 days.

In fact, after more than two years and multiple requests from multiple entities , it still has not filed the official record (or transcript) of the hearing – and has never provided any information about it.

Meanwhile, the Covid-19 pandemic situation began and developed rapidly – and it changed the way almost everybody and everything conducted activities. It was announced that activities of the Cass County District Court (and most places elsewhere) were being placed on hold, limited, or postponed. The appeal was going to be delayed and Appellant David Sholy waited patiently for thing to get better and return to normal.

Finally, after nothing happened for a seemingly extended period of time, Appellant wrote to the District Court, on November 15, 2021, to inquire about the status of the Appeal. The District Court responded by sending out copies of two documents:

- 1) a letter dated October 21, 2019, asking for more information.
- 2) a Notice of Dismissal for the Appeal, dated December 9, 2019.

This was rather astonishing because Appellant had not seen either document previously.

on behalf of the Appellee by manufacturing new (or additional) standards for Appellant, which are NOT REQUIRED by Law – but then relieving Appellee from fulfilling specified obligations, which ARE REQUIRED by law.

The district court then utilized the apparent non-response to its October 21, 2019, letter as the basis for dismissing Appellant's Appeal, which occurred on December 19, 2019). Rule 3(a)(2) of North Dakota Rules of Appellate Procedure, however, says:

“An appellant's failure to take any step other than the timely filing of a notice of appeal and payment of any required docket fees does not affect the validity of the appeal...”

Thus, even if the District Court's October 19, 2019 letter actually requested legitimate additional information and the Appellant made the mistake of not responding to it, it still was NOT a basis for dismissing the appeal. Thus, the district court's action to dismiss the appeal was invalid and a violation of North Dakota Law.

District Courts, in general, have certain duties and obligations that are assigned and required by North Dakota Law, including the following:

North Dakota Supreme Court Administration – Rule 46  
Section 2 - Clerk of District Court – Duties

The clerk of district court in every county must:

(d) Comply with and implement procedures consistent with this rule included in the Clerk of Court Manual and other manuals and guides adopted by the Office of the State Court Administrator.

(k) Keep other records and perform other duties prescribed by statute, rule, policy, or procedure.

In addition, there are rules for the District Courts that specifically apply on matters that are appealed. Rule 11 of North Dakota Rules of Appellate Procedure, for example, says:

(a)(1) Except in expedited appeals, the clerk of the district court must forward the exhibits necessary for determination of the appeal and the record on appeal, excluding the transcript, to the supreme court not less than 25 nor more than 30 days after the filing of the notice of appeal unless otherwise directed by the supreme court.

The district court did not observe this requirement.

Appellant David Sholy filed his Notice of Appeal with the ND Supreme Court on January 21, 2022. In response (and acknowledgement), the ND Supreme Court issued a directive on January 31, 2021, stating that the district court “shall” certify the record on appeal by February 20, 2022. The district court ignored the rule and didn’t certify the record until 38 days later, on February 28, 2022 – thereby displaying another act of disrespect for process and even the ND Supreme Court.

Moreover, judges have obligations that even go beyond observing state or local laws, for the purpose of ensuring due process, as required by the U.S. Constitution:

When a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is, in that case, stripped of his official and representative character, and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.

*Young, 209 U.S. 123 (1908)*

In addition:

When a judge does not follow the law i.e. they are a trespasser of the law, the judge loses subject matter jurisdiction and the judges’ orders are void, of no legal effect.

*Supreme Court in Scheuer v Rhodes, 416 U.S. 232.94 S.Ct. 1683 1687 (1974)*

Whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act, or acts of treason.

*U.S. v Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2<sup>nd</sup> 392, 406 (1980)*

When judges act when they do not have jurisdiction to act, or they enforce a void order (an order issued by a judge without jurisdiction), they become trespassers of the law and are engaged in treason.  
*Yates v. Village of Hoffman Estates, Illinois, 209 F.Supp. 57 (N.D. Ill. (1962)*

So, here is a summary of the district court's efforts at administering justice:

- 1) Added unnecessary additional requirements for Appellant to file his appeal, which are not required by law.
- 2) Cancelled the mandatory requirement under Law for Appellee to provide the official record of the hearing (as per NDCC 28-32-44), and did not even inquire about it..
- 3) Failed to respond in a timely manner to ND Supreme Court's directive of January 31, 2022.
- 4) Failed to respond as required by N.D.R.App.P. 11(a)(1).
- 5) Dismissed the appeal, in violation of Rule 3(a)(2).

Thus, it seems accurate to say that the overall handling of this appeal by the district court was improper, unfair, and contrary to ND Law – and perhaps even a violation of Appellant's rights to due process as guaranteed by the 14<sup>th</sup> Amendment to the U.S. Constitution.

Finally, the actions of Appellee Cass County Commission, and its legal representative Cass County State Attorney Birch Burdick, deserves further attention and review. As noted previously, Section 28-32-44 of NDCC, requires a copy of the "entire proceedings" to be filed with District Court within 30 days. The Appellee Cass County Commission and Cass County State Attorney FAILED to do so.

Further after the case was appealed to ND Supreme Court, the Court, via Beth Harrison, issued a directive, on January 31, 2022, stating:

“I am requesting Cass County Commission file a diskette of the administrative transcript or electronically transmit the administrative transcript to the Supreme Court clerk no later than February 7, 2022, unless the transcript was not prepared on a computer or word processor.”

The Appellee Cass County Commission ignored the directive and did not file any transcript or record of the proceedings by the requested date -- and after more than two years has still has not done so.

On February 15, 2022, Appellant David Sholy actually went to the Cass County Courthouse to try getting response on this matter. Appellant went first to the office of the Cass County Commission. Nobody there at the service counter knew anything about the matter and couldn't find any record of it!

Next, appellant went to the Clerk of District Court office -- and while multiple people came up to the service counter (and they actually found a file on the case), nobody knew anything about the official record of the hearing, the transcript, or on the Appeal that had been filed.

So, Appellant then went to the office of Cass County States Attorney Birch Burdick. Shortly after arriving, Mr. Burdick came out into the entry area from a back office to meet. He said he was aware of the case and stated:.

- that the related documents were sitting on his desk.
- that he hadn't done anything with them because he was too busy.
- that he would prepare what had been requested and would send it in -- including a copy to Appellant.
- and he concluded by verifying Appellant's address for mailing.

On March 1, 2022, Appellant David Sholy filed an "Extension of Time" request with the North Dakota Supreme Court (which was approved). The purpose was to allow more

time for the official record and transcript of the hearing to be provided. Unfortunately, no such action or response ever occurred. To sum up: (1) the Law requires the official record (transcript) to be filed (within 30 days); (2) the ND Supreme Court sent a directive asking for it to be filed (by February 20, 2022) ; and the Appellant made several personal attempts to secure it. And, the result was NOTHING!

The Laws of the State of North Dakota provide remedies and/or consequences for such obstructionist actions:

NDCC 27-10-01.1 Definitions

1. "Contempt of court" means:

- c. Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a referee or magistrate.
- e. Intentional refusal to produce a record, document, or other object after being ordered to do so by the court.

Other legal authorities have offered input in case law decisions:

-9-

"A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding."

*Hawk v Supreme Court*, 42 Cal. App. 3d 108, 116, 116 Cal. Rptr. 713, 718 (1974)

"Not only must the attorney refrain from counseling disregard of a court order, he must also avoid advocating the violation of laws, oaths, or even rules."

*ABA Code of Professional Responsibility*

&

*Fidelity Mortgage Investors v. Camelia Builders, Inc.* 550 F.2d 47 (2d Cir. 1976)

And, still other authorities have offered guidance on the issue of failing to respond:

North Dakota Rules of the Judicial Conduct Commission  
Rule 13. Failure to Answer / Failure to Appear:

(B) If the respondent fails to appear when specifically so ordered by the hearing panel or the Supreme Court, the respondent may be deemed to have admitted the factual allegations which were to be the subject of the appearance and to have conceded the merits of any motion or recommendations to be consider at the appearance.

Presumably, the Law (NDCC 28-32-44) and Rule 11 of North Dakota Rules of Appellate Procedure) are equal to a court order. And, presumably, the Law is not optional and there are no exemptions for anyone. Therefore, the record already on file in this appeal, of the Appellee avoiding or refusing to participate in it is a clear demonstration that the Cass County States Attorney has committed contempt of court – on both the District Court and ND Supreme Court. Moreover, if the Appellee, at this late date, belatedly tries to inject some claims or arguments or defenses into this case, the only proper responsive procedure is for those comments or actions to be discarded. Simply put, if the Law means anything and is applied fairly and equally, the Appellee has committed default by its decision of obstruction and non-involvement in the case.



**ARGUMENT – PART ONE**  
**INTRODUCTORY NOTES**

The Appellee Cass County Commission has failed/refused to present the official record (including a transcript of the hearing) of this case. There is probably “good” reason for them do this because there was really nothing presented at the hearing by the Appellee to prove that the excessive tax increases of 74% and 84% on two commercial lots and the high valuation on the residential property were proper – other than a contention or opinion that the taxes ought to be what they say they should be. At the hearing, Ben Hushka, Fargo City Assessor, appeared and actually admitted that many property taxes are calculated by mistake. But the appeal process (as demonstrated by this case), is so difficult that very few people want to deal with it. It’s basically a case of “Power corrupts; absolute power corrupts absolutely”, as the famous old saying goes. When it comes to matters of tax rates and valuations, the government agencies such as Appellee Cass County Commission are pretty much equal to dictators of third world countries!

With the Appellee’s efforts to circumvent the appeals process by not participating in it, Appellant David Sholy has been forced to assemble the record of the case by gathering notices, correspondence, and other documents that were presented or mentioned at the hearing (and minutes of the hearing) – and they are herewith cited and referenced below.

**ARGUMENT – PART TWO**  
**FAIRNESS AND REASON**

The starting point for Appellant’s Appeal in response to the excessive tax increases

on valuations on his two commercial properties and the high valuation on his residential property is simply that it is not fair or reasonable. This simple argument, reportedly, is somewhat problematic for courts because what can be fair and reasonable to one person may not be to another. For example, one person could think that a certain action taken was needed and overdue, while another person could think that the same action was unnecessary and overreach. So, what's fair and reasonable???

Fortunately, in this appeal, it is actually possible to measure various things and then compare them to other standards or occurrences -- and make a determination.

Example #1 (see document "K"):

- Salaries & Wages of Cass County (ND) employees, according to its own Budget Worksheet for 2021 increased by 6.576%
- The tax increase approved by Appellee on Appellant's two commercial properties was more than 1000% higher!!!

Example #2 (see document "L")

- Revenue for the City of Fargo (ND) for its 2022 budget, as compared to 2021, increased by 8.455%.
- The tax increase approved by Appellee on Appellant's two commercial properties was more than 870% higher.

Example #3 (see document "M"):

- The cost of living adjustment (COLA) for social security recipients for 2022, was increased by 5.9%.
- The tax increase approved by Appellee on Appellant's two commercial properties was more than 1255% higher.

Example #4 (see document "N")

- The rate of inflation in USA, reported in February, 2022, was the highest in 40 year -- reported at 7.9% - and is a major topic of concern for being so high.
- The tax increase approved by Appellee on Appellant's two

commercial properties was 936% higher!

Example #5 (see document “O”)

- The average wage increase of citizens living in USA for 2019, was 3.0%
- The tax increase approved by Appellee and Appellant’s two commercial properties was more than 2,460% higher!

Example #6 (see document “P”)

- The pay boost authorized for ND state lawmakers, for 2022, consisted of an increase of 1.5%.
- The tax increase approved by Appellee on Appellant’s two commercial properties was more than 4,900% higher!

Example #7 (see document “Q”):

- The pay rate for North Dakota Supreme Court Justices has increased in recent year by 3% annually.
- The tax increase authorized by Appellee on Appellant’s two commercial properties was more than 2,460% higher.

There is a definite pattern here from which a reasonable and proper conclusion can easily be made. An increase of 3-4-5% is somewhat typical, while an increase of 7.9% (for inflation) or more is rather high (even record high). It is actually difficult, if not if not impossible, to find anything with a 74% or 85% increase – such as the approved valuations by Appellee on Appellant’s properties. Therefore, it is accurate to say the tax increases approved by the Appellee were NOT fair or reasonable – and were extreme to the point of even being appalling!

**ARGUMENT – PART THREE**  
**Re: APPELLANT’S TWO COMMERCIAL PROPERTIES**  
**BASIC INFO AND DESCRIPTION**

Appellant’s two commercial properties are basic vacant lots (document “R”) for

photo). The lots are a simple storage yard area surrounded by a chain link fence. There is no permanent building, no water & sewer service, no electrical service, no paved parking area, no landscaping, and no sidewalks or any other convenient or appealing features. The site is a basic storage yard for supplies and company vehicles.

On any commercial property, the value of the lot is determined largely (as the old saying goes) by location – location – location! Key factors include:

- 1) Easy access.
- 2) On a well known road.
- 3) On a high traffic road.
- 4) An easy to find location.

Appellant David Sholy's two commercial properties have none of the features. The addresses of 334 – 27<sup>th</sup> Circle South and 346 – 27<sup>th</sup> Circle South are very confusing – is it a street or avenue? Nobody is ever sure. People have trouble finding these addresses and Appellant actually avoids giving them out!

**ARUGMENT – PART FOUR**  
**Re: APPELLANT'S TWO COMMERCIAL PROPERTIES**  
**MATH USED TO CALCLATE TAXES & INCREASES DOESN'T ADD UP**

The calculations and tax rates approved by Appellee Cass County Commission don't add up and are contrary to simple logic and third grade arithmetic. Here are their calculations (as per documents "A", "B", and "C"):

Location – 346 – 27<sup>th</sup> Circle South  
Stated value of lot for 2017 ----- \$106,000  
Stated value of lot for 2018 ----- \$191,000  
Dollar amount increase ----- \$85,000  
Percentage increase ----- 80.19%

Location ---334 – 27<sup>th</sup> Circle South  
State value of lot for 2017 ----- \$122,000  
Stated value of lot for 2018 ----- \$207,000

Dollar amount of increase ----- \$85,000  
Percentage increase ----- 69.67%

These calculations and rates don't make any sense for multiple reasons:

Item #1 – The lots are significantly different – different sizes, different square footages, and different frontages – one lot is a corner lot while the other is not. Yet these calculations say that their value went up exactly the same - \$85,000.

Is that feasible? Not likely!

Item #2 – The calculations show that one lot is more valuable than the other - \$122,000 vs. \$106,000. Yet again, both lots went up in value exactly the same (\$85,000). Is that feasible? Not likely! In the real world, a higher priced lot would almost certainly always go up more in value (dollar-wise) than a lower priced lot.

Item #3 – The calculations show that one lot went up in value 80.19% while the other lot went up 69.67%. The numbers show that the lower valued lot went up more - percentagewise – than the higher priced lot! Is that feasible? Not likely!

Item #4 – The percentage difference in the increase of both lots is significant – and likely impossible. In the real world, if real estate values went up by a certain percentage (such as 10%, or 20%, for example), it would seemingly apply rather equally or uniformly to multiple lots – particularly when they are located directly adjacent to each other, as it the case here.

In order for the values and calculations of Appellee Cass County Commission to be fair, accurate, or even possible, the following would have to occur:

- 1) Lots of different sizes would go up by the same dollar value.
- 2) A corner lot would go up in value by exactly the same amount as adjacent lot with limited street access.
- 3) Less desirable lots would go up more in value than desirable sites.
- 4) Properties with different dollar values would go up by exactly the same amount.
- 5) Real estate values typically reflect general market trends – if the market went up by 10% or 20% (or whatever), individual lots would go up by a similar rate – which is NOT the case here.

The likelihood of even one of these things happening is remote. The idea that all five of them could happen at the same time – which is Appellee's position – is totally beyond any realm of possibility. The only feasible explanation for all this is that someone at the Assessor's Office picked a random number - \$85,000 – out of thin air and applied it to both lots. Under normal real estate market conditions, there is no way that the numbers and calculations utilized and approved by Appellee could ever happen!

**ARGUMENT – PART FIVE**  
**Re: APPELLANT'S TWO COMMERCIAL PROPERTIES**  
**COMPARITIVE PROPERTIES DON'T SUPPORT APPELLEE TAX RATE**

Prior to the hearing for Appellant's Request for Tax Abatement, the City of Fargo Assessment Department sent a letter, dated 4/18/18 (see document "S") to Appellant attempting to explain how the taxes on the properties in question were determined. The basic argument put forth in the letter – which was later advocated at the hearing – was that properties are compared to other similar properties to determine valuations and tax rates. Ironically, the information referenced and examples identified did NOT support Appellee's position - and were actually fatally deficient on at least two points:

- 1) Nearly all of the comparison cited were not equal or even remotely similar to Appellant's properties.
- 2) The one site that actually was similar proved that the proposed tax rate was high and excessive.

Here are some examples cited by the City and approved by Appellee:

LOCATION #1 – 3117 – Fiechtner Drive, Fargo (see document “T”)

This is a fully developed site with permanent building, customer entrance, electrical service, water and sewer service, paved parking lot, sidewalks, and landscaping.

City of Fargo valuation of this site - \$4.06 per s.f.

City of Fargo valuation of Appellant’s property - \$4.50 per s.f.

Conclusion:

- City’s site is not comparable to Appellant’s property.
- Appellant’s property has NONE of the features described above.
- The tax rate on this fully developed lot is much lower than Appellant’s undeveloped property.
- Tax rate on Appellant’s property is excessively high.

LOCATION #2 – 3803 – Main Avenue, Fargo (see document “U”)

This is a fully developed site with permanent building, customer entrance, electrical service, water and sewer service, paved parking lot, sidewalks, and landscaping.

City of Fargo valuation of this site - \$3.37 per s.f.

City of Fargo valuation of Appellant’s property - \$4.50 s.f.

Conclusion:

- City’s site is not comparable to Appellant’s property.
- Appellant’s property has NONE of the features described above.
- The tax rate on this fully developed lot is actually much lower than Appellant’s undeveloped property.
- Tax rate on Appellant’s property is excessively high.

LOCATION #3 – 3501 – Westrac Drive, Fargo (see document “V”)

This is a fully developed site with permanent building, customer entrance, electrical service, sewer and water service, paved parking lot, sidewalks, and landscaping.

City of Fargo valuation of this site - \$5.62 per s.f.

City of Fargo valuation on Appellant’s property - \$4.50 per s.f.



Conclusion:

- City's site is not comparable to Appellant's property.
- Appellant's property has NONE of the features described above.
- Valuation is only slightly higher than Appellant's property.
- Tax rate on Appellant's property is unrealistic and high.

LOCATION #4 – 3401 – Westrac Drive, Fargo (see document “W”

This is another fully developed site with permanent building, customer entrance, electrical service, sewer and water service, paved parking lot, sidewalks, and landscaping.

City of Fargo valuation of this site - \$5.60 per s.f.

City of Fargo valuation of Appellant's property - \$4.50 per s.f.

Conclusion:

- City's site is not comparable to Appellant's property.
- Appellant's property has NONE of the features described above.
- Valuation is only slightly higher than Appellant's property.
- Tax rate on Appellant's property is unrealistic and high.

The value of features constructed on any property are typically 3-4 times greater than the value of the land itself. All of the above example cited by City and approved by Appellee are fully developed properties with numerous attractive (and valuable) features. The idea that fully developed properties can be fairly compared to undeveloped properties is pure nonsense!

**ARGUMENT – PART SIX**

**Re: APPELLANT'S TWO COMMERCIAL PROPERTIES  
THE ONLY SITE ON LIST OF COMPARABLE PROPERTIES THAT  
IS ACTUALLY COMPARABLE TO APPELLANT'S PROPERTY SUPPORTS  
APPELLANT'S APPEAL**

Of the listing of comparable properties provided by City of Fargo, only one is actually similar or comparable to Appellant's property (see document ), and it completely demolishes any argument the Appellee could put forth to justify it's rates or valuations, as follows:

LOCATION – 3501 – 4<sup>th</sup> Avenue South, Fargo (see document “X”)

This lot is somewhat similar and a fair comparison to Appellant’s Property. It is a vacant lot (like Appellant’s property) and the only real difference is that it does not have a chain link fence around it.

City of Fargo valuation of this site - \$2.88 per sq. ft.

City of Fargo valuation of Appellant’s property - \$4.50 per s.f.

Conclusion:

- While this lot is similar to Appellant’s property, the valuation is 36% lower!
- Tax rate on Appellant’s property is excessively high.
- If comparisons of similar properties actually matters, the valuation on Appellant’s property should be lower – at around \$2.88 per s.f.

#### **ARGUMENT – PART SEVEN**

##### **Re: APPELLANT’s TWO COMMERCIAL PROPERTIES**

##### **APPELLANT’s COMMERCIAL PROPERTIES HAVE MAJOR DEFICIENCY**

Appellant’s two commercial properties have a serious deficiency because the soil on them consists of fill dirt. Simply put, this means that the sites previously were “low” areas that were filled with soil brought in from elsewhere to raise the grade to the current level. This is a big issue for anyone who would want to build a permanent structure on them because City of Fargo code requires any site for such construction to excavate down to “virgin” (undisturbed) soil – and replaced with sand to ensure stability - which for Appellant’s sites would be about 10 feet deep.

A neighboring property owner, Oye Leasing LLP, at 309 27<sup>th</sup> Circle South, less than a block away from Appellant’s properties, constructed a building a few years ago and was required by the City of Fargo to excavate existing soil to approximately 12 feet deep and replace it with sand in order to get approval for the building permit. The cost

of that work was \$90,000.,

Another property owner, Larkin Properties, at 309 – 27<sup>th</sup> Circle South, directly adjacent to Appellant's properties, was planning to construct a permanent building a couple years ago and subsequently decided to cancel the plan because of the high cost of meeting the requirements of the City's building code.

What this means quite simply is that even if you find a property that appears comparable to Appellant's two commercial sites, it would be necessary to implement a substantial deduction on the price/value because no buyer would be willing to pay full ticket for the lots and then incur the substantial cost of meeting the requirements of the City's building code to construction something. They would want a reduced price – and that fact alone lowers any valuation of Appellant's properties by a significant amount (perhaps \$90,000).

**ARGUMENT – PART EIGHT**  
**Re: APPELLANT'S RESIDENT PROPERTY**  
**GENERAL INFORMATION**

Appellant's residential property is a basic home constructed in 2003, in a newer neighborhood where nearly all homes are similar and valued in the \$300,000 range. It is a nice home, but does not have special or unique features of many other locations. In addition, the City of Fargo has repeatedly miscategorized the house as having 4 bedrooms and 4 bathrooms. This is false! The house actually has three bedrooms and 3 bathrooms.

**ARGUMENT – PART NINE**  
**Re: APPELLANT'S RESIDENTIAL PROPERTY**  
**AUTHORITATIVE INDEPENDENT SOURCES DO NOT SUPPORT**  
**APPELLEE CASS COUNTY COMMISSION'S HIGH TAX RATE**

Trulia and Zillow are two nationally recognized organizations that track real estate transactions throughout the USA -- sales, purchases, and market trends.. They have the most exhaustive and extensive information on real estate sales, values, and current trends of anybody anywhere. Here are the valuations (with revealing comparisons) that they determined on Appellant David Sholy's residential property:

Trulia --- \$326,027 --- on 9/1/2018 (see document "Y")

Zillow --- \$323,382 --- on 12/18/2018 (see document "Z")

Appellant David Sholy's Estimate --- \$325,000 (see document "F")

Appellee Cass County Commission's valuation --- \$346,000  
(see document "C")

**CONCLUSIONS:**

- Trulia and Zillow's valuation are almost exactly the same, which in itself is verification of accuracy.
- Appellant David Sholy's estimate is right on target.
- Appellee Cass County Commission's valuation is high and excessive.

**ARGUMENT – PART NINE**  
**Re: APPELLANT's RESIDENTIAL PROPERTY**  
**COMPARATIVE PROPERTIES CITED BY APPELLEE CASS COUNTY**  
**COMMISSION AREN'T VALID COMPARISONS**

Appellee Cass County Commission claimed to rely on the position that property taxes are based on comparative properties. The City of Fargo Assessment Office sent Appellant a letter of November 15, 2018 (see document "AA"), citing comparative examples of properties used as the basis for property tax/valuation on Appellant's residential property, and this was relied on at the Hearing of June 17, 2019. Once again, however, the examples cited are not valid or similar comparison to Appellant's property, as revealed below:

EXAMPLE #1 – 3505 – Woodbury Court South, Fargo (see document “BB”)

This house has:

- Four bedrooms.
- Four bathrooms.
- New range & refrigerator.
- Two eating areas.
- Granite counter tops.
- Wood laminate floors.
- Security system.

Appellant’s house had/has NONE of these features.

- This house sold for \$336,700 (as per document “AA”)
- Appellee Cass County Commission set a valuation of \$346,000 on Appellant David Sholy’s house.

CONCLUSION: The comparison is not valid – the houses are not similar – the valuation on Appellannt David Sholy’s house is much higher then a house with more features!

EXAMPLE #2 – 2935 – 32<sup>nd</sup> Street South, Fargo (see document “CC”)

This house has:

- Granite counter tops.
- Extra large lot.
- Paver stone patio.
- Retractable awning.
- Wet bar.
- Mature trees.

Appellant David Sholy’s house has NONE of these features.

- This house sold for \$363,500 (see document “AA”)
- Appellee Cass County Commission set a valuation of \$346,000 on Appellant David Sholy’s house.

CONCLUSION: The comparison is not valid – the houses are not similar – the valuation on Appellant’s house is only slightly lower than a house with significantly more features.

EXAMPLE #3 – 3757 – Dorothea Court South, Fargo (see document “DD”)

This house has:

- Stainless steel appliances.
- 3 season enclosed porch.
- Pergola.
- Garage floor drain.
- Garage heater.
- Quartz countertops.

Appellant David Sholy's house has NONE of these features>

This house sold for \$307,400 (see document "AA")

Appellee Cass County Commission set a valuation of \$346,000 on  
Appellant David Sholy's house.

CONCLUSION: This comparison is not valid – the houses are not similar – the valuation  
on Appellant David Sholy's house is MUCH HIGHER than a house with more features.

EXAMPLE #4 – 3762 – Dorothea Court South, Fargo (see document "EE")

This house has:

- Heated garage.
- Stainless steel appliances.
- Granite counter tops.
- Nibler bar.
- Two fireplaces.

Appellant David Sholy's house has NONE of these features.

This house sold for \$321,700 (see Document AA").

Appellee Cass County Commission set a valuation of \$346,000 on  
Appellant David Sholy house.

CONCLUSION: The comparison is not valid – the houses are not similar – the valuation  
on Appellant David Sholy's house is MUCH HIGHER than a house with more features.

EXAMPLE #5 – 4101 – Ashton Court South, Fargo (see document "FF")

This house has:

- Stainless steel appliances.
- Rocked fire place.

- Porch entrances.
- Security system.

Appellant David Sholy's house has NONE of these features.

This house sold for \$321,800 (see Document AA).  
Appellee Cass County Commission set a valuation of \$346,000 on  
Appellant David Sholy's house.

CONCLUSION: The comparison is not valid – the houses are not similar – the valuation on Appellant David Sholy's house is MUCH HIGHER than a house with more features.

**ARGUMENT – PART TEN**  
**Re: APPELLANT's RESIDENTIAL PROPERTY**  
**COMPARATIVE PROPERTY ACTUALLY HAVE LOWER VALUATIONS**

There was/is a lengthy list of properties that were actually similar - and therefore are valid comparisons to Appellant's residential site. They are similar in square footage, date of construction, location, lot size, and interior features. These sites were identified and discussed at the hearing of June 17, 2019, and include the following:

- 3219 – 45<sup>th</sup> Avenue South, Fargo (see document "GG")  
Estimated valuation - \$275,000.
- 2719 – 33<sup>rd</sup> Street South, Fargo (see document "HH")  
Estimated valuation - \$290,981.
- 4734 – 51<sup>st</sup> Street South, Fargo (see document "II")  
Estimated valuation - \$299,000
- 4475 – 48<sup>th</sup> Street South, Fargo (see document "JJ")  
Estimated valuation - \$304,900

All of these homes are similar to Appellant's property, but they all have lower valuations – often much lower valuations. Therefore, if comparison to similar properties is a proper way to determine property values, it is fair and accurate to say that:



- (1) Appellee's valuation of \$346,500 on Appellant's house was high, excessive, and unjustified;
- (2) Appellant's estimate of value on his house of \$325,000 is not only fair and equitable, but it was actually generous.

**ARGUMENT – PART ELEVEN**  
**Re: APPELLANT's RESIDENTIAL PROPERTY**  
**THE HOUSE HAS A SIGNIFICANT DEFECT**

Appellant David Sholy's house has a significant defect – a major crack in the cement of the basement floor. A representative of the City of Fargo Assessor Office actually was at the house prior to the hearing (that is the basis for the Appeal in this case) and he readily acknowledged that it was a significant factor impacting the value of the house. But, no adjustment or corrective action was ever taken. When the house is sold, any buyer would want some sort of allowance for the problem – consisting of either some funds set aside for repair of the problem or a reduced price for the house. Thus, this problem lowers the value of the house even further when compared to similar houses.

**ARUGMENT – PART TWELVE**  
**SUMMARIZATION**

The bottom line is this matter is that the facts, evidence, and simple common sense heavily support and verify Appellant's appeal of this case, as follows:

- 1) It's a simple case of fairness and reason.
- 2) The math used to calculate valuations and rates proposed by Appellee don't make any sense – are actually contrary to real estate market activity and trends.
- 3) Comparative sites identified by Appellee aren't similar.

- 4) The only site that was similar support's Appellant's appeal.
- 5) Appellant's two commercial properties have serious deficiency.
- 6) Independent sources support Appellant's estimate on valuation of the residential lot.
- 7) Comparative sites identified by Appellee on residential site aren't similar.
- 8) Numerous sites that were similar support Appellant's appeal -- and even indicate that Appellant's estimate of value was generous
- 9) Appellant's house basement floor has a defect that lowers valued even further compared to a similar house.

The evidence is overwhelming in support of Appellant David Sholy's appeal. In contrast, the Appellee has nothing but its opinion that taxes ought to be higher -- an opinion that has been proven faulty in this Brief from multiple perspectives.

### **CONCLUSION**

WHEREFORE, the Appellant David Sholy asks this court:

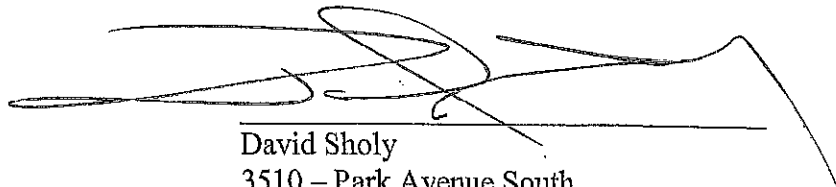
- 1) To implement valuations on the properties in question in this case, as follows:
  - a) The amount of \$130,000 on commercial site at 344 – 27<sup>th</sup> Circle South, Fargo.
  - b) The amount of \$115,000 on commercial site at 346 – 27<sup>th</sup> Circle South, Fargo.
  - c) The amount of \$325,000 on residential site at 3510 – Park South, Fargo.
- 2) To order refund of excessive taxes that have been paid since this appeal was filed.
- 3) To award standard legal fees for an appeal to Appellant David Sholy.
- 4) And, to take any other action the Court may deem necessary or appropriate.

In the event that Appellee Cass County Commission's refusal to participate in this case

with efforts to circumvent a fair and proper resolution (of this appeal) have been successful and the North Dakota Supreme Court is unable or unwilling to make a decision, Appellant suggests the following alternative:

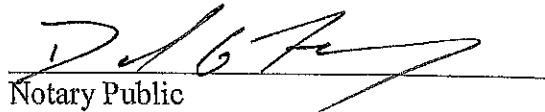
- 1) Send the case back to District court.
- 2) Require scheduling of a hearing.
- 3) Assign a different judge.
- 4) Send a court order to Appellee requiring the official record and transcript be submitted, as required by Law, with penalties for non-compliant.

REPECTFULLY prepared and submitted this 11<sup>th</sup> day of April, 2022.

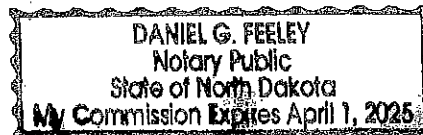


David Sholy  
3510 – Park Avenue South  
Post Office Box 1778  
Fargo, ND 58107  
(701) 866-9692  
[dsholy@sandslandscaping.com](mailto:dsholy@sandslandscaping.com)

SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of April, 2022.



Notary Public



**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

David Sholy,	)	
	)	
Appellant,	)	AFFIDAVIT
	)	OF SERVICE
vs.	)	
	)	Supreme Court No. 20220033
Cass County Commission,	)	
	)	District Court No. 09-CV-02451
Appellee	)	

The undersigned hereby states that on the 11<sup>th</sup> day of April, 2022, s/he served the following documents:

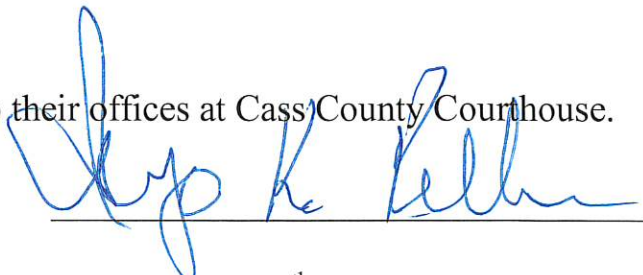
- 1) Brief in support of Appellant's appeal.
- 2) Appendix of documents relating to appeal.

upon the following by placing true and correct copies thereof in envelopes addressed as follows:

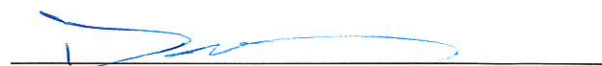
CASS COUNTY COMMISSION  
Post Office Box 2806  
Fargo, ND 58108

CASS COUNTY STATES ATTORNEY  
Post Office Box 2806  
Fargo, ND 58108

and personally delivering them to their offices at Cass County Courthouse.



SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of April, 2022.

  
\_\_\_\_\_  
Notary Public

