

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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Appeal No. 31020

THEA PALLANSCH, KARIE M. GEYER, JENNIFER NELSON,  
Plaintiffs/Appellants,

v.

ROBERTS COUNTY, SOUTH DAKOTA,  
Defendant/Appellee.

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APPEAL FROM THE CIRCUIT COURT  
FIFTH JUDICIAL CIRCUIT  
ROBERTS COUNTY, SOUTH DAKOTA

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THE HONORABLE MARSHALL C. LOVRIEN  
Circuit Court Judge

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BRIEF OF THE APPELLANTS

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NOTICE OF APPEAL FILED MARCH 10, 2025

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### **PRELIMINARY STATEMENT**

Citations to the settled record as reflected by the Clerk's Index are designated with "SR" followed by the page number. Citations to the Appendix are designated "App." followed by the page number.

References to Plaintiffs/Appellants in this matter, may be collectively referred to as "Pallansch". The Defendant/Appellee in this matter, may be referred to as "Roberts County" or the "County". Any transcript referred to herein will be designated with the settled record "SR" page number followed by the line number.

### **JURISDICTIONAL STATEMENT**

The date and form of the judgment or order sought to be reviewed is the circuit court's Memorandum Opinion and Order dated February 25, 2025 and filed with the Clerk of Courts on February 25, 2025. (SR 728; App. 1). Notice of Entry of said Memorandum Opinion and Order was dated February 26, 2025, and filed with the Clerk of Courts on February 26, 2025. (SR 760). Notice of Appeal was given on March 10, 2025, and filed with the Clerk of Courts on March 10, 2025. (SR 762).

This Court has appellate jurisdiction in this case under SDCL 1-26-37, and SDCL 15-26A-3(1), (2) and (4), as well as SDCL §§ 15-26A-7 and 15-26A-10.

## **STATEMENT OF THE ISSUES**

### **I. Whether the subject property was assessed higher than its market value in violation of the South Dakota Constitution?**

The circuit court held that the Appellants failed to submit sufficient evidence to challenge the tax assessments of the properties at issue.

*Most relevant authorities:*

S.D. Const. art. XI, § 2

Pirmantgen v. Roberts Cnty., 2021 S.D. 5, ¶ 23, 954 N.W.2d 718, 725

Yadeo, Inc. v. Yankton County, 237 N.W.2d 665 (S.D. 1975)

Poppen v. Walker, 520 N.W.2d 238, 242 (S.D. 1994)

### **II. Whether the South Dakota Constitution specifically requires a certified real estate appraisal as the only manner in which to determine real property's actual value for tax purposes?**

The circuit court held that Appellants were required to provide an appraisal to show the assessed valuation of the properties at issue was in excess of true and full value, and that a professional broker's opinion was insufficient.

*Most relevant authorities:*

S.D. Const. art. XI, § 2

Pirmantgen v. Roberts Cnty., 2021 S.D. 5, ¶ 23, 954 N.W.2d 718, 725

Matthews v. Linn, 78 S.D. 203, 206-07, 99 N.W.2d 885, 887-88 (1959)

SDCL 36-21A-12.2

## STATEMENT OF THE CASE

The Appellants own two parcels of property located in Goodwill Township, Roberts County, South Dakota, described as follows:

**Rinas Outlot 1 in the NE1/4 (48.7 A) Section 24-125-51 Goodwill Township, Roberts County, South Dakota** (Parcel No. 11782), and

**Rinas Conservation Easement Tract 1 in the NE1/4 (107.87 A) Section 24-125-51 Goodwill Township, Roberts County, South Dakota** (Parcel No. 11781).

The above described properties will be referred to as “Subject Properties”. In 2022, the Roberts County Director of Equalization assessed the Subject Properties using the agricultural productivity formula pursuant to SDCL 10-6-127 *et seq.* Appellants appealed the assessment to the local township Board of Equalization for Goodwill Township. (SR 748). Appellants then appealed the assessment to the Roberts County Board of Equalization. (SR 748). A hearing was held before Administrative Law Judge Ryan Darling of the Office of Hearing Examiners on July 11, 2023. On August 11, 2023, Judge Darling affirmed the county Director of Equalization’s assessment of the Subject Properties, and he entered Findings of Fact and Conclusions of Law. (SR 27). Appellants appealed Judge Darling’s decision to the circuit court. (SR 1). On May 13, 2024, the circuit court remanded the matter to the Hearing Examiner with instructions to issue a decision that contains sufficient factual findings regarding the evidence Appellants presented to enable a meaningful appellant review. (SR 146).

Unfortunately, Judge Darling passed away prior to his issuance of a new decision. A new evidentiary hearing was held before Administrative Law Judge Catherine Williamson on September 10, 2024. Judge Williamson entered an order affirming the tax

assessment, and declined to consider the constitutional issue presented due to the separation of powers doctrine. (SR 630).

Appellants appealed Judge Williamson's decision to the circuit court. (SR 162). The circuit court considered the record and briefs submitted by counsel, and it entered its Memorandum Opinion and Order on February 25, 2025, affirming the tax assessment on the Subject Properties and holding that Appellants failed to submit sufficient evidence to challenge the tax assessment. (SR 728). Appellants filed their Notice of Appeal of the circuit court's Memorandum Opinion and Order on March 10, 2025. (SR 762).

### **STATEMENT OF THE FACTS**

Many years ago, when the Subject Properties were owned by Thea Pallansch's uncle, the Subject Properties were put into a Wetlands Reserve Program (WRP), a perpetual land easement. (SR 582-617). In Roberts County, a prior Director of Equalization established a policy that WRP land was assessed at \$450 per acre. (SR 654:21-655:7; App. 33-34). Due to a Day County Circuit Court memorandum decision named Tvinnereim v. Day County, South Dakota, No. 18CIV15-45 (June 23, 2017), the arbitrary \$450 per acre value for WRP land was deemed incorrect. (SR 656:17-657:7; App. 35-36). All WRP land in Roberts County was then deemed as agricultural land, and that land was valued using the agricultural land productivity formula pursuant to SDCL 10-6-127 *et seq.* (SR 656:17-657:7, App. 35-36).

For Appellants, this change in valuation method caused the former value of Parcel 11782 to jump from \$74,703 to \$81,761 in 2023. (SR 659:25-660:3, App. 37-38). The change in valuation method caused the former value of Parcel 11781 to jump from



\$48,452 to \$243,306 in 2023. (SR 660:6-9, App. 38). This calculates to Parcel 11782 being valued at \$1,750.77 per acre, and Parcel 11781 being valued at \$2,259.73 per acre.

The parcels were appraised in 2017 for \$897 per acre. (SR 578, App. 71). The parcels were again valued by means of a professional broker's opinion on March 28, 2023, from Gary Hanson, which broker's opinion placed a value on the parcels of \$1,000 per acre. (SR 570, App. 63). Local licensed real estate broker Tony Valnes, who also provides broker's opinions, testified that he agreed with Mr. Hanson's broker's opinion that the Subject Properties each had a value of \$1,000 per acre. (SR 694:4-10, App. 49). Furthermore, a 2022 sale of WRP land in Roberts County, South Dakota reflected a fair market value purchase price of \$1,250 per acre. (SR 627, App. 85). Said real property that sold for \$1,250 is nearby and comparable to the Subject Property. (SR 695:1-7, App. 50; 706:13-18, App. 60).

The initial Hearing Examiner determined it was proper for the Director of Equalization to utilize the agricultural land productivity formula to assess the value of the subject properties. (SR 27). The Fifth Judicial Circuit Court entered a Memorandum Opinion and Order on May 13, 2024, remanding the matter to the Hearing Examiner to utilize the existing record to issue a decision that contains sufficient factual findings regarding the evidence Appellants presented to enable meaningful appellate review. (SR 728).

Because the initial hearing examiner unexpectedly passed away prior to a new written decision being issued, a new evidentiary hearing was held on September 10, 2024 before another hearing examiner. The new hearing examiner found Mr. Hanson's and Mr.

Valnes's testimony to be credible that the subject properties would likely sell at about \$1,000 per acre because of the WRP easements on the land. (SR 632, App. 19). However, said hearing examiner affirmed the tax assessment and declined to address the constitutional issue presented due to the separation of powers doctrine. (SR 635, App. 22).

After review of the hearing examiner's Decision on Remand, the circuit court affirmed the tax assessment as proper pursuant to SDCL 10-6-127 *et seq.*, and held that the Appellants failed to satisfy their burden in challenging the tax assessment because they did not submit an appraisal as evidence. (SR 728, App. 1). Appellants then filed their Notice of Appeal of the circuit court's Memorandum Opinion and Order on March 10, 2025. (SR 762).

### **STANDARD OF REVIEW**

In an administrative agency appeal to the Supreme Court, this Court will "examine agency findings in the same manner as the circuit court to decide whether they were clearly erroneous in light of all the evidence." Pirmantgen v. Roberts Cty., 2021 S.D. 5, ¶ 20, 954 N.W.2d 718, 724 (citing Clarkson and Co. v. Harding Cnty., 1998 S.D. 74, ¶ 5, 581 N.W.2d 499, 501, superseded by statute on other grounds, SDCL 10-3-16). In doing so, this Court will "accord great weight to the findings and inferences made by the hearing examiner on factual questions." Id. (citing Butte Cnty. v. Vallery, 1999 S.D. 142, ¶ 8, 602 N.W.2d 284, 287). "When the issue is a question of law, the decisions of the administrative agency and the circuit court are fully reviewable." Id. (citing Butte Cnty. v. Vallery, *supra*).

## ARGUMENT

### **I. Whether the subject property was assessed higher than its actual value in violation of the South Dakota Constitution?**

The first issue presented here is whether the Subject Properties were assessed at a value that is higher than the actual value contrary to South Dakota statutory and constitutional requirements. As shown below, the Roberts County Director of Equalization assessed the Subject Properties higher than its actual value and higher than comparable properties, and therefore did not properly assess the Subject Properties in compliance with South Dakota constitutional requirements. In assessing real property for tax purposes, the following “underlying constitutional provisions must . . . be complied with:

(1) the burden of taxation of all property is to be equitable, S.D. Const. art. XI, § 2,

(3) *valuation of property is not to exceed its actual value*, S.D. Const. art. XI, § 2,

(4) taxation is to be uniform on all property in the same class. S.D. Const. art. VIII, § 15; S.D. Const. art. XI, § 2.”

Apland v. Butte Cnty., 2006 SD 53, ¶ 16, 716 N.W.2d 787, 792 (quoting Butte Cnty. v. Vallery, 1999 S.D. 142, ¶ 12, 602 N.W.2d 284, 287) (emphasis added). In carrying out this provision, the Legislature has directed that “[a]ll property shall be assessed at its true and full value in money.” SDCL 10-6-119 (formerly SDCL 10-6-33). The South Dakota Supreme Court in Pirmantgen v. Roberts Cnty., 2021 S.D. 5, recently reminded Roberts County as follows:

The assessment of real property in South Dakota at its true and full value is both constitutionally and statutorily mandated. See Smith v. Tripp Cnty., 2009 S.D. 26, ¶ 11, 765 N.W.2d 242, 246. *Our Constitution provides that "[t]axes shall be uniform on all property of the same class, . . . and the valuation of property for taxation purposes shall never exceed the actual value thereof."* S.D. Const. art. XI, § 2. By statute, "[a]ll property shall be assessed at its true and full value in money." [SDCL 10-6-119]. Further, under [SDCL 10-6-105], "[a]ll real property subject to taxation shall be listed and assessed annually, but the value of such property is to be determined according to its value on the first day of November preceding the assessment." As we explained in Sabow v. Pennington County, "[t]he statute commands the director of equalization to appraise property each year." 500 N.W.2d 257, 260 (S.D. 1993).

Pirmantgen v. Roberts Cnty., 2021 S.D. 5, ¶ 23, 954 N.W.2d 718, 725 (emphasis added).

The full and true value of the property in question is the price which a willing purchaser will pay a willing seller in the open market. Id. Accord Yadco, Inc. v. Yankton County, 237 N.W.2d 665 (S.D. 1975); see also SDCL 10-6-104. The current assessed valuation of Pallansch's property for taxation purposes greatly exceeds the actual value thereof in violation of S.D. Const. art. XI, § 2.

In support of the Appellants' position, they did submit as evidence at the time of the hearing before the Examiner Catherine Williamson the following:

1. Broker's opinion - FMV = \$1,000/acre (SR 570; App. 63);
2. Prior Appraisal - FMV = \$897/acre (SR 578; App. 71);
3. WRP easement information (SR 582-617);
4. Purchase price information (2019) (SR 618; App. 75);
5. Purchase price information of nearby WRP land (SR 627; App. 85);
6. Testimony of real estate broker Gary Hanson (SR 702-709); and

7. Testimony of real estate broker Tony Valnes (SR 692-702).

Here, the property in question is subject to a perpetual very restrictive WRP easement so that the land is not guaranteed to produce any income. (SR 582-617; 684:6-685:6, App. 42-43). Appellants have shown that Parcels 11781 and 11782 were assessed by the Director of Equalization in excess of said properties' true and full value. In support of the Appellants' position, at the time of the hearing held before the Examiner Catherine Williamson, they did submit as evidence the above information, along with testimony from the broker who authored the submitted Broker's Opinion, Gary Hanson, and testimony from another local real estate broker, Tony Valnes. Mr. Hanson testified that he used two comparable sales of property that are also under WRP easements to arrive at his valuation of the Subject Properties. (SR 707:11-15, App. 61). Mr. Valnes agreed with Mr. Hanson's valuation and testified that it is difficult to sell agricultural land under a WRP easement. (SR 693:21-696:21, App. 48-51).

The Broker's opinion completed on or about March 28, 2023, determined the fair market values of Parcels 11781 and 11782 to be \$1,000 per acre. (SR 570, App. 63). Said parcels were also previously appraised on or about September 27, 2017, by Braun Appraisals, Inc. for \$897 per acre. (SR 578, App. 71). Both the broker's opinion and the appraisal note the land is held subject to a perpetual WRP easement which severely limits its agricultural production and income production capabilities. The Amended Purchase Agreement entered into when Appellants acquired the subject property shows that said parcels were purchased for a total price of \$20,000 in 2019. (SR 618, App. 75). The parcels were offered to the public, the state of South Dakota, and Sisseton-Wahpeton

Sioux Tribe, and while there was one other person who competed to buy the land, Pallansch purchased it for \$20,000. (SR 137:14-24). Nearby land held in WRP was recently purchased for \$1,250 per acre. (SR 627, App. 85). Lastly, Mr. Valnes agreed with Mr. Hanson's valuation. (SR 694:20-25, App. 49).

The undisputed testimony of Pallansch given before hearing examiner Ryan P. Darling on July 11, 2023 included the following:

*"my understanding of South Dakota law is that the valuation of property for taxation purposes shall never exceed the actual value thereof, taken from the South Dakota Constitution, Article 11, Section 2." (SR 127:22-25, App. 28).*

Pallansch continues:

*"I feel my land should be assessed for no more than \$1,000 an acre, and this is supported by the March 28, 2023, broker's opinion provided by Gary Hanson, broker associate, Coteau Land Management, LLC, and also supported by a recent sale information where Kent Kraft purchased conservation easement wetland reserve property in Roberts County, South Dakota, for \$1,250 an acre." (SR 128:9-15, App. 29).*

During the September 10, 2024 hearing, Pallansch testified in a similar manner before hearing examiner Catherine Williamson:

*Counsel: As far as the manner and the formula and the statutes relied on by Roberts County, you don't have an objection with the way that they did their work, provided the number didn't exceed the actual value of the property; is that correct?*

*Pallansch: I have no objection, correct.*

*Counsel: But the issue here is when they came up with their numbers based on the soil productivity index, based on the formula, that the number the computer kicked out was a number per acre in excess of the actual value of your property, correct?*

*Pallansch: Correct.*

*Counsel: That's your objection?*

*Pallansch: That's my objection.*

*Counsel: Had the computer program kicked out a number of \$999 per acre, you wouldn't have objected to that, correct?*

*Pallansch: No, because of the most recent appraisal of \$1,000. I have no problem with the increase, but...*

*Counsel: As long as it doesn't exceed the actual value, correct?*

*Pallansch: Yes.*

(SR 685:7-686:1, App. 43).

In the circuit court's Memorandum Opinion and Order, the relevant issue to be decided was stated as follows: Were the subject properties assessed at a value that violates the South Dakota constitution? (SR 737, App. 10).

The circuit court stated, "the tax payer must produce sufficient evidence to show the assessed valuation was in excess of true and full value..." Apland v. Bd. of Equalization for Butte Cnty., S.D., 2013 S.D. 33, ¶ 9, 830 N.W.2d 93, 97. It is clear from the record that Pallansch did produce such sufficient evidence showing that the assessed valuation was far in excess of the actual value of the Subject Properties. This is shown by the March 28, 2023 broker's opinion (SR 570, App. 63), the appraisal (SR 578, App. 71), the purchase price (SR 618, App. 75), the comparable WRP property (SR 627, App. 85), Mr. Hanson's testimony (SR 704, et seq.), and Mr. Valnes's testimony (SR 694, et seq.), all of which were admitted as evidence to support Pallansch's contention that her land is worth \$1,000 an acre.

In Pirmantgen v. Roberts Cnty., the Supreme Court of South Dakota authorizes by reference the method of using a broker's opinion to establish true and full value of real property, as argued in more detail below. 2021 S.D. 5, P34, 954 N.W.2d 718, 728.



The Director of Equalization assessed Pallansch's property at \$1,750.77 per acre for parcel 11782 and \$2,259.73 per acre for parcel 11781. However, the record supports that the Subject Properties' actual value is only \$1,000 per acre. No buyer would pay more than \$2,000 per acre for land held in this kind of WRP easement. (SR 697:9-14, App. 52). The Director assessed Appellants' property in excess of actual value contrary to the South Dakota Constitution.

Instead of considering the actual value of the property, as required by the South Dakota Constitution, the Director of Equalization simply used the agricultural productivity formula to assess Pallansch's subject property, even though it far exceeds the land's actual value. The Director's valuation methodology was performed for the purposes of a tax valuation as compared to a valuation to determine that price which a willing buyer and willing seller would agree upon. "Put another way, it was not a valuation with the constitution of our state in mind; it was an evaluation for a tax purpose, in itself. This cannot be." Brookings Associates v. South Dakota, 482 N.W.2d 873 (S.D. 1992). Constitutional and statutory assessment requirements must be observed by an assessor. Id.

The South Dakota Supreme Court in Poppen v. Walker tells us that the legislature cannot define the scope of a constitutional provision by subsequent legislation. 520 N.W.2d 238, 242 (S.D. 1994) (citing Edge v. Brice, 113 N.W.2d 755 (Ia. 1962)). "The Constitution is the mother law. It is not the baby. Statutes must conform to the Constitution, not vice versa." Cummings v. Mickelson, 495 N.W.2d 493, 507 (S.D. 1993), (Henderson, J., concurring in part; dissenting in part).



Again, the full and true value of the property in question is the price which a willing purchaser will pay a willing seller in the open market. Pirmantgen, 2021 S.D. 5, ¶ 23; Accord Yadco, Inc. v. Yankton County, 237 N.W.2d 665 (S.D. 1975). The assessed value placed on Pallansch's land by the Director of Equalization does not reflect what a willing purchaser and willing seller would agree upon for these parcels based on the land's determined value of \$1,000 per acre and the comparable sales of nearby WRP land which sold for \$1,250 per acre. Again, no buyer would purchase this land for \$2,000 per acre because the land is not guaranteed to produce any income. (SR 697:9-14, App. 52). As such, the Director's assessment exceeds the value of the subject property.

While the Board of Equalization and the circuit court rely on the county assessor's methodology of assessing agricultural property pursuant to SDCL 10-6-127 *et seq.*, statutory law does not trump the constitution. A tax assessment simply cannot exceed the actual value of the property; manuals, computer software, and a goal to establish a tax valuation cannot be vaulted over constitutional, statutory and decisional law. When examining statutes in the context of constitutional provisions, it bears repeating that "statutes must conform to the South Dakota Constitution, not vice versa." State v. Wilson, 618 N.W.2d 513, 519 (S.D. 2000) (citing Poppen v. Walker, 520 N.W.2d 238, 242 (S.D. 1994) (*overturned on other grounds*)).

Pallansch offered ample evidence to contradict the Director of Equalization's assessed value and shows that the assessment does exceed the actual value of the land. It must be noted that Pallansch did not request the Board of Equalization to return the subject property's assessment to the arbitrary value of \$450 per acre. Instead, she is

requesting the subject property be assessed equal to the land's actual value of \$1,000 per acre, which is consistent with the broker's opinion valuation and the sale of nearby comparative WRP property. Furthermore, Hearing Examiner Catherine Williamson made factual findings that Mr. Hanson and Mr. Valnes testified credibly that WRP land in this area sells for only \$1,000 per acre. (SR 632, App. 19).

At each hearing before the Hearing Examiners, Pallansch, as the taxpayer, did produce sufficient evidence to show the assessed valuation of the subject property was in excess of true and full value. See Knodel v. Bd. of Cnty. Comm'r of Hamlin County, 269 N.W.2d 386, 389 (S.D. 1978). In contrast, at the hearings, the Defendant Roberts County produced *no evidence at all* as to the *actual value* of the Subject Properties. The agricultural productivity formula cannot be placed above the South Dakota Constitution. Because the director of equalization's assessment ignored the Subject Properties' actual value, and the assessment was in excess of the Subject Properties' actual value, the assessment of the Roberts County Director of Equalization and the decisions of the County Board of Equalization must be set aside, and the circuit court's opinion reversed. See Apland v. Butte Cnty., 2006 SD 53, ¶ 16, 716 N.W.2d 787, 792; see also Town Square Ltd. Partnership v. Clay Cnty. Bd. of Equalization, 2005 S.D. 99, 704 N.W.2d 896.

**II. Whether the South Dakota Constitution specifically requires a certified real estate appraisal as the only manner in which to determine real property's actual value for tax purposes?**

The circuit court held that the Appellants were required to provide an appraisal to show the assessed valuation was in excess of true and full value. (SR 737-740, App. 11-

13). The circuit court decided that because the Appellants did not submit a certified real estate appraisal to challenge the director of equalization's assessment, there was not sufficient evidence that the tax assessment of the Subject Properties was in excess of their actual value. *Id.* However, in making this holding, the circuit court read too far into the plain language of S.D. Const. Article XI, § 2.

“When determining the meaning of a constitutional provision, we normally would examine the language of the provision. Where a constitutional provision is quite plain in its language, we construe it according to its natural import.” *Brendtro v. Nelson*, 2006 S.D. 71, ¶ 16, 720 N.W.2d 670, 675. “Where the language used in a statute is plain, the court cannot read words into it that are not found therein either expressly or by fair implication, even to save its constitutionality, because this would be legislation, and not construction.” *Matthews v. Linn*, 78 S.D. 203, 206-07, 99 N.W.2d 885, 887-88 (1959) (citing 11 Am. Jur., *Constitutional Law*, § 99, p. 733; and see 16 C.J.S. *Constitutional Law* § 98, p. 385; and *Fremont, E. & M. V. R. Co. v. Cnty. of Pennington*, 22 S.D. 202, 116 N.W. 75 (1908)). “Whenever possible, this Court will ‘construe terms in a constitutional provision *in pari materia*.’” *State v. Wilson*, 2000 S.D. 133, 618 N.W.2d 513, 518-19 (citing *Poppen v. Walker*, 520 N.W.2d 238, 247 (SD 1994)). “In addition, we will not construe a constitutional provision to arrive at a strained, unpractical, or absurd result.” *Id.* (citing *Nelson v. State Bd. of Dentistry*, 464 N.W.2d 621, 624 (SD 1991)).

The South Dakota Constitution does not specifically require a *certified real estate appraisal* as the only manner that determines real property's actual value for tax purposes. S.D. Const. Article XI, § 2 reads verbatim as follows:

To the end that the burden of taxation may be equitable upon all property, and in order that no property which is made subject to taxation shall escape, the Legislature is empowered to divide all property including moneys and credits as well as physical property into classes and to determine what class or classes of property shall be subject to taxation and what property, if any, shall not be subject to taxation. Taxes shall be uniform on all property of the same class, and shall be levied and collected for public purposes only. Taxes may be imposed upon any and all property including privileges, franchises and licenses to do business in the state. Gross earnings and net incomes may be considered in taxing any and all property, and *the valuation of property for taxation purposes shall never exceed the actual value thereof*. The Legislature is empowered to impose taxes upon incomes and occupations, and taxes upon incomes may be graduated and progressive and reasonable exemptions may be provided.

(Emphasis added). The plain language of this section of our state constitution does not limit the manner of determining actual value of real property to a certified real estate appraisal only. Nor did the Pirmantgen court interpret this section of our state constitution to require a certified real estate appraisal as the only manner to determine actual value of real property. The circuit court erred in its holding that a broker's opinion is not sufficient evidence to determine real property's actual value.

Rather, in Pirmantgen v. Roberts Cnty., this Court did in effect authorize the use of a broker's opinion to make a showing of real property's actual value. The Pirmantgen court stated the following:

We have further held "that, notwithstanding any alleged deficiencies in the Director's assessment, the first question is whether [a taxpayer's] *evidence constituted a prima facie showing of entitlement to relief*," i.e., "that the Director's assessment was in excess of true and full value." [Smith v. Tripp County, 2009 S.D. 26, ¶ 16, 765 N.W.2d 242, 248]. Further, "a taxpayer challenging excessive valuation must show more than a failure to comply with statutory mandates[.]" Id. ¶ 17 (citing Knodel v. Bd. of Cnty. Comm'rs of Pennington Cnty., 269 N.W.2d 386, 390 (S.D. 1978)).

Pirmantgen, 2021 S.D. 5, ¶ 29, 954 N.W.2d at 726-27 (emphasis added).

[SDCL 10-6-104] defines "full and true value" and "fair market value" to "mean the price in money that property will bring in a competitive and open market under all conditions requisite to a fair sale between a willing buyer and a willing seller, each acting prudently and with full knowledge of the relevant facts, and assuming the price is not affected by any undue stimulus." See Yadco, Inc. v. Yankton Cnty., 89 S.D. 651, 655, 237 N.W.2d 665, 667 (1975) (noting that our decisions consider true and full value to mean "the amount a willing purchaser will pay a willing seller in an open market").

Id. ¶ 30.

In Pirmantgen, the evidence submitted by the tax payer was "testimony from Tony Valnes, a real estate broker for northeastern South Dakota whose main office is in Sisseton. ... He indicated that he had identified comparable sales and personally inspected the six properties to arrive at his stated valuations, ..." Id. ¶ 9.

Mr. Hanson, who authored the broker's opinion submitted as evidence herein (SR 570), testified that he used comparable sales to arrive at this valuation of \$1,000 per acre for the Subject Properties. (SR 706:13-20; 707:11-23, App. 60-61). Mr. Valnes testified that his opinion of the Subject Properties' actual value being \$1,000 per acre was based on the same comparable sales as well as his experience in selling property in Roberts County. (SR 695:19-696:21, App. 50-51).

The Pirmantgen court had no issue with Mr. Valnes, the same Mr. Valnes that testified herein, using comparative values to assign an actual value to the properties in the Pirmantgen case. See Pirmantgen, ¶¶ 9, 31. The Pirmantgen court affirmed the circuit court's modification of the county's assessment of properties to reflect Mr. Valnes' valuations. See Pirmantgen, ¶¶ 33-34. Therefore, South Dakota law authorizes the use of

a valuation made from comparative sales, such as a broker's opinion, as evidence to show that a property's assessed value is in excess of its actual value in violation of the South Dakota Constitution.

The circuit court erred in believing that this Court has required a certified real estate appraisal to show the value of property for tax purposes. While this Court in Burke v. Butte County, 2002 SD 17, 640 N.W.2d 473, and in Richter Enterprises, Inc. v. Sully Cnty., 1997 SD 61, 563 N.W.2d 841, mentioned that an appraisal would be sufficient evidence to overcome the director of equalization's presumption of correctness in the tax assessment, it must not be lost that the taxpayers in those cases did not submit any admissible evidence other than their own testimony. Also, this Court in those cases did not specify that said "appraisals" must be certified real estate appraisals. To do so would serve to add language into S.D. Const. Article XI, § 2.

Rather, it seems that the Supreme Court used the term "appraisal" to be synonymous with "valuation". For instance, Mr. Valnes used comparative values to assign an actual value to the properties in the Pirmantgen case. See Pirmantgen, ¶¶ 9, 31. South Dakota statutory law defines "appraisal" or "evaluation" as the "act or process of developing an opinion of value of real estate for another and for compensation." SDCL §§ 36-21D-3; 36-21A-3; 36-21B-2. A broker's opinion is defined as "an estimate prepared by a licensed broker or salesperson that details the *probable selling price* or leasing price of a particular parcel of or interest in real property and provides a varying level of detail about the property's condition, market and neighborhood, and information *on comparable properties...*" SDCL 36-21A-12.2 (emphasis added). Mr. Valnes's



valuations in Pirmantgen fit the definition of a broker's opinion under SDCL 36-21A-12.2. A broker's opinion details the property's true and full value, i.e. the price which a willing purchaser will pay a willing seller in the open market. See Yadco, Inc. v. Yankton County, 237 N.W.2d 665 (S.D. 1975); see also SDCL 10-6-104.

Furthermore, "a recent sale should not be 'entirely excluded from consideration.'" Willow, Inc. v. Yankton County, 89 S.D. 643, 650, 237 N.W.2d 660, 664 (1975) (citation omitted). Therefore, the South Dakota Supreme Court has not interpreted the South Dakota Constitution to read that the taxpayer must obtain a certified real estate appraisal as the only way to show that real property's assessed value exceeds its actual value. Here, both brokers that testified for Pallansch, who valued the Subject Properties at \$1,000 per acre, used recent comparable sales of WRP land, and their experience as a broker.

Additionally, the circuit court noted that Pirmantgen dealt with residential property, while the case at bar concerns agricultural property. (SR 739, App. 12). The Pirmantgen decision should not be distinguished from the present case based on this minor detail. To interpret S.D. Const. Article XI, § 2 to read that only certified real estate appraisals can determine *agricultural* real property's actual value for tax purposes, but that broker's opinions would be sufficient for *residential* properties, like in Pirmantgen, would be impractical and create an absurd result. There is no legal reason to make this distinction, and especially no such distinction exists within S.D. Const. Art. XI, § 2.

Again, actual value or full and true value of property is the price which a willing purchaser will pay a willing seller in the open market. Pirmantgen, 2021 S.D. 5, ¶ 23, 954 N.W.2d at 725. *Accord* Yadco, Inc. v. Yankton County, 237 N.W.2d 665 (S.D. 1975). A

broker's opinion determines just that: a probable selling price using comparable properties. SDCL 36-21A-12.2. Here, Pallansch presented more than enough evidence to make a prima facie showing that the tax assessments of the Subject Properties were in excess of their true and full value. Pirmantgen, 2021 S.D. 5, ¶ 30. Mr. Hanson's testimony bolstered the credibility of his broker's opinion, and Mr. Valnes's testimony bolstered the credibility of Mr. Hanson's opinion. Both Mr. Hanson and Mr. Valnes as experienced real estate brokers testified that WRP land, such as the Subject Properties, sell for \$1,000 per acre. (SR 694, 704). Said WRP land would not sell for the price that the agricultural productivity formula proposed. The actual value of WRP land maintains a similar actual value and does not fluctuate as regular crop land. (SR 695:8-18, App. 50). To interpret that a broker's opinion is not sufficient enough to determine actual value under S.D. Const. Art. XI, § 2 is erroneous.

Lastly, the circuit court erred in its alternative holding that the broker's opinions submitted by Pallansch were insufficient to show the assessed valuation was in excess of actual value. (SR 740, App. 13). A broker's opinion is defined as "an estimate prepared by a licensed broker or salesperson that details the probable selling price or leasing price of a particular parcel of or interest in real property and *provides a varying level of detail* about the property's condition, market and neighborhood, and information on comparable properties..." SDCL 36-21A-12.2 (emphasis added). The hearing examiner was tasked with making factual findings as to the credibility of the brokers' testimony. Both brokers testified of their experience in WRP real property and gave their opinions of the Subject



Properties' actual value. The hearing examiner found their testimonies credible, (SR 632, App. 19).

The circuit court took issue that Mr. Hanson's broker's opinion was not clear whether the Subject Properties and the comparable sale properties had similar soil ratings, (SR 741, App. 14). However, because these properties are under perpetual WRP easements, the soil ratings of the Subject Properties and the comparable sale properties would not affect the price that a willing buyer and a willing seller would agree upon. (SR 698:10-16, App. 53). This is because these WRP easements prevent agricultural production from the land except for haying every three to five years as approved by the USDA. (SR 684:6-685:3, App. 42-43). Therefore, Mr. Hanson need not include soil ratings in his broker's opinion for the Subject Properties. Further, both Mr. Hanson and Mr. Valnes consider soil ratings when they make valuations of agricultural property. (SR 698:5-9, App. 53; 708:5-11, App. 62).

The circuit court also noted in its opinion that there is no evidence that either Mr. Hanson or Mr. Valnes personally visited the subject properties. (SR 742, App. 15). However, the circuit court ignores Mr. Hanson's and Mr. Valnes's testimony of their experience in selling real estate, and their familiarity with government easements on agricultural land. (SR 692:19-693:20, App. 47-48; 703:3-10; 703:20-704:22, App. 57-58). The WRP easement significantly restricts the landowner's ability to produce income from the land to the point where there is no guaranteed income, so how the appearance or structure of the property would not affect the price that a willing buyer and a willing seller would agree upon. Importantly, there is no evidence or comparable sales that would

suggest that a buyer would pay the agricultural productivity formula assessment per acre price for property with a WRP easement because of its appearance or structure.

The circuit court erred in its holding that the Appellants were required to provide an appraisal to show the assessed valuation was in excess of true and full value. The circuit court effectively read words into the constitution in doing so. The circuit court also erred in its alternative holding that the broker's opinion (SR 570) was insufficient to show actual value. However, a broker's opinion, by definition, details a probable selling price of property, which is sufficient evidence of a property's actual value. As such, the circuit court's Memorandum Opinion and Order should be reversed.

### **CONCLUSION**

The circuit court's Memorandum Opinion and Order must be reversed, and this matter should be remanded so that the Subject Properties' assessed value reflects its actual value of \$1,000 per acre.

Dated this 25 day of April 2025.

DELANEY, NIELSEN & SANNES, P.C.

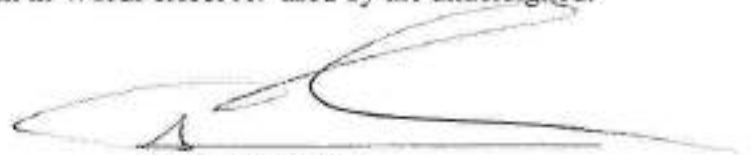


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### CERTIFICATE OF COMPLIANCE

Gordon P. Nielsen, one of the attorneys for Appellants, hereby certifies that the foregoing brief meets the requirements for proportionately spaced typeface in accordance with SDCL 15-26A-66(b) as follows:

- a. Appellants' brief does not exceed 32 pages;
- b. The body of Appellants' brief was typed in Times New Roman 12 point typeface; and
- c. Appellants' brief contains 5,659 words and 29,569 characters, according to the word and character counting system in WordPerfect X9 used by the undersigned.

A handwritten signature in black ink, appearing to read 'Gordon P. Nielsen', written over a horizontal line.

Gordon P. Nielsen

### CERTIFICATE OF SERVICE

I certify that on the 25 day of April 2025, the undersigned served a true and correct copy of the Brief of the Appellants and Appendix via electronic transmission by the Clerk's Office via eFileSD to the following parties:

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Roberts County State's Attorney  
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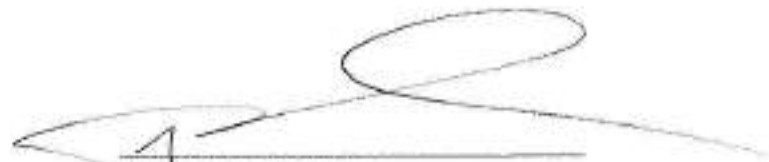
and that on the 25 day of April 2025, a true and correct copy of the Brief of the Appellants was served via first-class mail, postage prepaid to the parties listed below:

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Gordon P. Nielsen

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FEB 25 2025

STATE OF SOUTH DAKOTA

Roberts County Clerk of Courts  
Sisseton, SD

IN CIRCUIT COURT

COUNTY OF ROBERTS

FIFTH JUDICIAL CIRCUIT

THEA PALLANSCH, KARIE M.  
GEYER, and JENNIFER NELSON,

Plaintiffs and Appellants,

vs.

ROBERTS COUNTY, SOUTH  
DAKOTA,

Defendant and Appellee.

54 CIV. 23-52

MEMORANDUM OPINION  
AND ORDER

### INTRODUCTION

On September 10, 2024, the South Dakota Office of Hearing Examiners held a hearing following this court's May 13, 2024, Opinion and Order remanding the matter regarding the property tax assessment of two parcels of property located in Goodwill Township, Roberts County, South Dakota.

On September 23, 2024, the Hearing Examiner issued her Decision on Remand, affirming the County's assessment of the subject properties. On September 24, 2024, Appellants filed their Notice of Appeal with this court. On October 28, 2024, Appellants filed their Brief; on November 22, 2024, the County filed its response, and by way of email correspondence, on December 30, 2024, counsel for Appellants indicated he was "satisfied with the Court considering the record in its current form" and elected not to file a Response to

the County's brief. The transcript of the September 10, 2024, was filed on January 6, 2025, and the matter was submitted to the undersigned the same date.

Having considered the parties' written submissions, the entire record, and applicable authorities, the court now issues this Memorandum Opinion and Order.

### **FACTS<sup>1</sup>**

Appellants, Thea Pallansch, Karie M. Geyer, and Jennifer Nelson are the owners of two adjacent tracts of land situated in Goodwill Township, Roberts County, South Dakota, parcels 11781 and 11782. (DOR 1).

Parcel 11781 is described as Rinas Conservation Easement Tract 1, in the Northeast Quarter (NE $\frac{1}{4}$ ) of Section Twenty-Four (24), Township One Hundred Twenty-five (125) North, Range Fifty-One (51) West of the Fifth Principal Meridian, Goodwill Township, Roberts County, South Dakota and consists of approximately 107.87 acres. (DOR 1).

Parcel 11782 is described as Rinas Outlot 1 in the Northeast Quarter (NE $\frac{1}{4}$ ) of Section Twenty-Four (24), Township One Hundred Twenty-Five

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<sup>1</sup> This Opinion and Order constitutes the court's findings of fact and conclusions of law. SDCL 15-6-52(a). Citations to the July 11, 2023, hearing transcript are "HT" followed by the appropriate page number and line. Citations to the September 10, 2024, remand hearing transcript are "RHT" followed by the appropriate page number and line. Citations to the September 24, 2024, Decision on Remand are "DOR" followed by the appropriate page number.

(125) North, Range Fifty-One (51) West of the Fifth Principal Meridian, Goodwill Township, Roberts County, South Dakota and consists of approximately 48.7 acres. (DOR 1).

The properties which are the subject of this action are classified as agricultural lands for assessment and taxation purposes pursuant to SDCL 10-6-110 and SDCL 10-6-112. (DOR 2, 7) (RHT 7:16-17).

Appellants purchased these properties from the estate of Franklin Rinas, Appellant Pallansch's uncle, in March 2019, for \$20,000, or approximately \$127 per acre. In 2017, the subject properties were appraised at \$897 an acre. (DOR 2) (RHT 32:16-19, 34:11-13).

In 1998 and then again in 2013 and 2014, the late Mr. Rinas entered the subject properties into a federal wetlands preserve program for which he received approximately \$275,000 from the federal government. (OFR 2). In exchange for the \$275,000, Rinas granted a perpetual wetlands easement on the subject properties to the federal government. This easement results in restrictions of certain activities on the property unless authorized by the federal government acting through the Natural Resources Conservation Service (NCRS). (DOR 2). This management decision made by Mr. Rinas "runs with the land" and affects the Appellants' use of the lands. The easements were recorded and of record when Appellants purchased the



properties in 2019. Appellants were aware of the perpetual wetlands reserve program easement when they purchased the land in 2019. (RHT 38:7-11).

The properties produce revenue to Appellants in the following ways: they are currently authorized by NCRS to harvest hay from the land every three years. (HT 17:8-13); Appellants are also able to hunt deer and pheasants on the property, although no permanent hunting structures are authorized (HT 18:16-20).

For a period of approximately twenty years prior to the 2023 assessment of the subject properties, land in Roberts County subject to perpetual wetlands easements (similar to the subject properties) was assigned an assessed value by the County at \$450.00 per acre. (RHT 8:17-9:20) (OFR 2). However, in light of a Fifth Circuit court decision in 2017, *Twinnereim v. Day County*, 18 CIV. 15-45, which upheld a decision by the Office of Hearing Examiners that there was no authority to adjust the assessed value of agricultural land due to a perpetual easement following enrollment in the Federal Wetlands Program, the Roberts County Director of Equalization's Office, in making its 2023 assessments, removed the \$450.00 per acre valuation of all lands in Roberts County that are subject to wetlands perpetual easements. (*Id.*) (OFR 2-3).

In assessing the value of the subject properties, the Director of Equalization

utilized the agricultural productivity formula as directed by the Legislature set forth in SDCL 10-6-127 *et seq.* (OFR 7, 9). The subject properties were two of the few properties that had not been reassessed by the productivity method until 2023. (RHT 18:11-19:5). All agricultural property in Roberts County is now assessed under the agricultural productivity method, as required by law. (OFR 3) (RHT 18:11-19:5).

Use of the agricultural productivity formula led to the determination that the assessed value of parcel 11782 as of November 1, 2022, was \$81,761.00 or \$1,678.77 per acre. (OFR 3). The assessed value on parcel 11781 as of November 1, 2022, was \$243,306.00 or \$2,255.54 per acre. (OFR 3).

The assessed valuation of the property was initially determined by the office of the Roberts County Director of Equalization. Appellants disagreed with these assessed values and first appealed the assessment to the local township Board of Equalization for Goodwill Township and then appealed the local board decision to the Roberts County Board of Equalization. The County Board affirmed the decision of the local board.

Appellants then appealed the decision of the Roberts County Board of Equalization. A hearing was held before Administrative Law Judge Ryan Darling of the Office of Hearing Examiners on July 11, 2023. At that hearing, Appellants presented an opinion letter from real estate broker Gary Hanson

which opined that the value of the subject land was \$1,000 per acre. They also presented information from one sale of land in Roberts County that was also subject to a perpetual wetlands easement which sold as hunting land at \$1,250 per acre.

On August 11, 2023, a decision was entered affirming the decision by the Roberts County Board of Equalization concerning the assessed value of real property owned by Appellants and situated in Goodwill Township, Roberts County, South Dakota. Appellants appeal to this court followed. On May 13, 2024, this court remanded the matter to the Hearing Examiner with instructions to utilize the existing record to issue a decision that contains sufficient factual findings regarding the evidence Appellants presented to enable meaningful appellate review.

Sadly, Administrative Law Judge Darling passed away on June 3, 2024, prior to a new, written decision being issued. Consequently, a new evidentiary hearing was required to properly make credibility determinations on the witnesses and the evidence presented. That hearing was conducted on September 10, 2024. At that hearing, testimony from the Roberts County Director of Equalization, Appellant Pallansch, and two local realtors was received.

One of the local realtors, Gary Hanson, a licensed real estate agent with

over thirteen years of experience testified that he values property by giving a *broker's opinion*. (RHT 55:20-22). Hanson further testified that he had prepared a broker's opinion for the subject properties and concluded that the actual value was between \$900 to \$1,000 an acre. (RHT 56:16). That broker's opinion, dated March 28, 2023, is part of the record.

The other realtor, Tony Valnes, a licensed real estate broker with over twenty years of experience testified that he also provides property valuations by giving a *broker's opinion*. Valnes testified that he agreed with Hanson's broker's opinion that the subject properties each had a value of \$1,000 an acre. He further testified that it was his opinion that the actual value of the subject properties was \$800 to \$1,000 an acre based on his "experience in selling property in [Roberts County]." (RHT 47:23-25).

## ANALYSIS

### STANDARD OF REVIEW

As instructed by the South Dakota Supreme Court:

[T]he question before [this court] is whether the hearing examiner's findings of fact are clearly erroneous and whether [her] conclusions of law are correct:

Under SDCL 10-11-42.1, the hearing examiner tries the issues de novo. On appeal[,] [the Circuit Court] review[s] that decision as set forth in SDCL 1-26-36. This standard of review requires [this court] to accord great weight to the findings and inferences made by the hearing examiner on factual questions. When the issue is a question of fact, [the court must] ascertain whether the administrative agency was clearly

erroneous. When the issue is a question of law, the decisions of the administrative agency . . . are fully reviewable.

*Smith v. Tripp Cnty.*, 2009 S.D. 26, ¶ 9, 765 N.W.2d 242, 246 (quotations and citations omitted).

*DID THE COUNTY ALESS THE SUBJECT PROPERTIES CONSISTENT WITH THE STATUTORY REQUIREMENTS?*

As provided by SDCL 10-4-1, “[a]ll real property in this state . . . except such as is hereinafter expressly excepted, is subject to taxation[.]” Agricultural land is to be “assessed based on its agricultural income value on a per acre basis.” SDCL 10-6-127. Furthermore, “[t]he agricultural income value of agricultural land shall be determined on the basis of productivity and the annual earnings capacity of the agricultural land.” *Id.*

SDCL 10-6-128 through SDCL 10-6-132 sets forth the formulas and methodology for determining the productivity and annual earning capacity of agricultural land. Once the Director of Equalization has calculated the value of the agricultural land, using the formulas set out by the Legislature, he or she may then adjust the assessed value of the land if any of the factors listed in SDCL 10-6-131 affect the productivity of the land. Those specifically enumerated factors are: location, size, soil survey statistics, terrain, topographical condition, climate, accessibility or surface obstructions, including shelterbelts. Importantly, WRP easements are not a basis for

deviation.

While “no legal presumption of correctness attaches to the director’s assessed valuation of property,[<sup>2</sup>]” there is a presumption that tax officials act in accordance with the law and not arbitrarily or unfairly when assessing property, and the taxpayer bears the burden to overcome this presumption.” *Apland v. Bd. of Equalization for Butte Cnty., S.D.*, 2013 S.D. 33, ¶ 9, 830 N.W.2d 93, 97 (quotations and citations omitted)

Based on the record before me, I find and conclude that the Roberts County Director of Equalization did follow the statutory mandates in determining the correct value of the subject properties for taxation purposes. The subject properties were assessed like all other agricultural land in Roberts County, including those subject to WRP easements.<sup>3</sup> The Hearing Examiner’s Findings of Fact were not clearly erroneous, and the Hearing Examiner correctly decided the questions of law. The County and the Hearing

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<sup>2</sup> SDCL 10-3-16

<sup>3</sup> This finding is further supported by Appellant Pallansch’s own testimony at the September 10, 2024 hearing, wherein the following exchange took place:

Q: As far as the manner and formula and the statutes relied on by Roberts County, you don’t have an objection with the way that they did their work, provided the number exceed the actual value of the property; is that correct?

A: I have no objection; correct.

(RHT 37:7-11).

Examiner's decision in this respect is affirmed.

*WERE THE SUBJECT PROPERTIES ASSESSED AT A VALUE THAT  
VIOLATES THE SOUTH DAKOTA CONSTITUTION?*

Even though the correct statutory methodology was employed in determining valuation for tax purposes, Article XI, Section 2 of the South Dakota Constitution, provides, in pertinent part, that, "the valuation of property for taxation purposes shall never exceed the actual value thereof." Appellants argue that the valuation, as determined by the valuation model, exceeds the actual value of the land, which violates the above-cited provision of the South Dakota Constitution.

Appellants raised this theory with the Hearing Examiner, and while the Hearing Examiner made general credibility determinations as to facts testified to by Hason and Valens<sup>4</sup>, she made no finding that those facts supported Appellants argument that the subject properties were assessed higher than actual value. "Any constitutional question brought forward by Petitioner is outside the jurisdiction of this office" based on the separation of powers doctrine. (DOR 6).

It is well-established that, "taxation disputes incorporate a presumption that tax officials act in accordance with the law and the taxpayer bears the burden to overcome the presumption. *Trask v. Meade Cnty. Comm'n*, 2020 S.D. 25,

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<sup>4</sup> See DOR, Findings of Fact 20-25.



¶ 36, 943 N.W.2d 493, 501 (quotations and citations omitted). To overcome the presumption that the tax officials acted in accordance with the law, “the taxpayer must produce sufficient evidence to show the assessed valuation was in excess of true and full value, lacked uniformity in the same class, or was discriminatory.” *Apland v. Bd. of Equalization for Butte Cnty., S.D.*, 2013 S.D. 33, ¶ 9, 830 N.W.2d 93, 97 (quotations and citations omitted). The only issue here is whether the assessed valuation was “in excess of true and full value.”

As is well-established in South Dakota, in satisfying their burden that the assessed value was “in excess of true and full value,” the Appellants were, at “the very least . . . required to submit an alternate *appraisal* establishing that [the Director of Equalization’s] assessment was in question.” *Burke v. Butte Cnty.*, 2002 S.D. 17, ¶ 22, 640 N.W.2d 473, 479 (emphasis added). See also, *Richter Enterprises, Inc. v. Sully Cnty.*, 1997 S.D. 61, ¶ 14, 563 N.W.2d 841. “Even more compelling is that Taxpayer failed to offer an *appraisal* different from Director’s valuation via expert testimony or otherwise.” *Id.* at 845 (emphasis added). See, also, *Lincoln Twp. v. S. Dakota Bd. of Equalization*, 1996 S.D. 13, ¶ 26, 543 N.W.2d 256. “Without an *appraisal* showing [the Director of Equalization’s] assessment was erroneous, [taxpayers] have not overcome the presumption of correctness.” *Id.* at 260 (emphasis added).



Here, Appellants offered *broker opinions* to support their claim that the taxation valuations exceeded the “actual value” of the land. Broker opinions and appraisals are not the same. A broker opinion is:

... an estimate prepared by a licensed broker or salesperson that details the probable selling price or leasing price of a particular parcel of or interest in real property and provides a varying level of detail about the property’s condition, market and neighborhood, and information on comparable properties, but does not include an automated valuation model. *A broker price opinion or a comparative market analysis is not an appraisal.*

SDCL 36-21A-12.2 (emphasis added). In their October 28, 2024, Brief, Appellants argue that “[i]n Pirmantgen v. Roberts Cnty., the Supreme Court of South Dakota authorizes by reference the method of using a broker’s opinions to establish true and full value of real property. Pirmantgen v. Roberts Cnty., 2021 SD 5, P 34, 954 N.W.2d 718, 728.” Appellants’ Brief at 9. I disagree. Nowhere in *Pirmantgen* did the Supreme Court equate a broker’s opinion with an appraisal. Furthermore, *Pirmantgen* dealt with the tax assessment of *residential* property. *Burke* and *Lincoln Township* both involved, like this case, *agricultural* property<sup>5</sup>. The Supreme Court’s directive in *Burke* and *Lincoln Township* was clear: to overcome a county assessor’s valuation, a taxpayer must, at a minimum, present an *appraisal* showing that the assessment was erroneous.

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<sup>5</sup> *Richter Enterprises, Inc.* involved commercial property.

Consequently, Appellants were required to provide an appraisal to show the assessed valuation was in excess of true and full value. The only appraisal on this record is one prepared *five years prior* to the County's assessment of the subject properties. See SDCL 10-6-105, which mandates that the "value of [all real property] is to be determined according to its value on the first day of November preceding the assessment." See also, *Sabow v. Pennington Cnty.*, 500 N.W.2d 257, 260 (S.D. 1993) "The statute commands the director of equalization to appraise property *each year*." *Sabow v. Pennington Cnty.*, 500 N.W.2d 257, 260 (S.D. 1993) (emphasis added).

No sufficient evidence was presented that linked or otherwise explained the value of the subject properties as determined by the 2017 appraisal with the County's November 1, 2022, assessment. No appraisal was presented that showed what the value of the subject properties was on November 1, 2022. On this basis alone, Appellants have failed to meet their burden.

Alternatively, assuming the broker's opinions qualify as "appraisals," I find them insufficient to show the assessed valuation was in excess of true and full value. Hanson testified that he was asked to prepare a broker's opinion for the subject properties. Hanson's written broker opinion contains a conclusion as to what he thinks the market value of the subject properties is, but his methodology to reach that conclusion is simply a recitation that "comparable

sales [were evaluated] to determine the market value of real estate.” However, *nothing* in his broker’s opinion describes how those sales are comparable to the subject properties. In fact, his written broker’s opinion has *no* information on comparable properties.

Hanson’s testimony at the September 10, 2024, hearing provided more context to his brokers opinion: namely, the comparable sales he based his opinion were from the sale of two other properties. (RHT 59:11-23). However, his testimony was that these two other properties were located approximately 20 miles away from the subject properties. (RHT 59:24-60:4). Hanson’s testimony and the record are both unclear as to whether the other two properties share, for example, similar soil ratings with the subject properties – factors that would help determine whether the two other properties are, in fact, comparable to the subject properties in determining whether the assessed values exceed the actual value.

Valens testified that, in his opinion, WRP property, in general, in Roberts County has a fair market value of \$800 to \$1,000 an acre (RHT 46:4-10). He further testified that his opinion of the actual value of the subject properties in this action were \$800 to \$1,000 an acre (RHT 47:19-22). The basis of his opinion was his general experience in selling real estate and two other sales in Roberts County – one in 2021 and one in 2022 (RHT 47:1-7; 48:10-17). These are the same

properties referenced by Hanson. While Valens described, in very broad terms, the sale of two other parcels of real estate in Roberts County, the majority of Valens' testimony was regarding how WRP easements potentially affect land values. The extent of Valens' testimony regarding his broker's opinion "provid[ing] . . . varying level of detail about the [subject] property's condition" was as follows:

Q. It's my understanding, Tony, and see if you agree with me, the subject property here is totally covered by a WRP easement with no possibility of building; is that your understanding?

A. Yep, that's my understanding, limited haying easement restriction.

(RHT 48:22-49-2). There was no evidence that either Hanson or Valens ever personally visited the subject properties in deriving their opinions as to the value of the subject properties<sup>6</sup>. Their opinions were based on two other real estate sales in Roberts County – one of which was the year *prior* to the 2022 assessment<sup>7</sup> and both of which were located nearly twenty miles away from the subject properties. I find and conclude that Appellants have failed to meet their burden

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<sup>6</sup> Compare with *Pirmantgen* where Valens testified he "he had identified comparable sales and personally inspected the six properties to arrive at his stated valuations, which were lower than the County's assessed values on all but one of the six properties." 954 N.W.2d 718 at 722.

<sup>7</sup> The two sales were referred to as the Bartz and Kraft properties. The Kraft property was sold in 2022. (RHT 47:1-6) The Bartz property was sold in 2021. (RHT 48:14-17). There was no oral testimony at the September 2024 hearing, regarding what each of these parcels actually sold for, though it appears that the Bartz property sold for \$1,250 an acre. (HT 16: 15-17; DOH 3 - Finding of Fact #24).

in presenting sufficient evidence to overcome the presumption that tax officials have acted in accordance with the law.

### CONCLUSION

Here, Roberts County properly assessed the subject properties. There was - and is - no statutory basis for the County to adjust the values of the property downward based on WRP easements. Whether the properties were assessed at a value higher than their actual value in violation of the South Dakota Constitution required Appellants to present evidence, in the form of an appraisal, to overcome the presumption of correctness. Appellants have failed to meet their burden of presenting sufficient evidence to show that the Director failed to act in accordance with the law or to overcome the presumption that the Director's assessment is valid.

Based on the foregoing, the decision of the Hearing Examiner is  
AFFIRMED.

Dated this 25<sup>th</sup> day of February, 2025.



BY THE COURT:

MARSHALL C. LOVRIEN  
Circuit Judge

ATTEST:

Brenda Guy  
Clerk of Courts

**STATE OF SOUTH DAKOTA  
OFFICE OF HEARING EXAMINERS  
Pierre, South Dakota**

---

**THEA PALLANSCH, KARIE M.  
GEYER, AND JENNIFER NELSON,**  
Petitioners,

**EQ 23-019**

v.

**DECISION  
ON REMAND**

**ROBERTS COUNTY,  
SOUTH DAKOTA**  
Respondent.

---

An administrative hearing was held in the above matter on September 10, 2024 in Sisseton, South Dakota. Petitioners, Thea Pallansch, Karie M. Geyer, and Jennifer Nelson (Petitioners) appeared at the hearing. They were represented at hearing by Attorney Gordon Nielsen. Roberts County was represented by Special Deputy States Attorney Kay Nikolas. Appearing as witness at the hearing was Kim Schroeder, CAA, the former Director of Equalization for Roberts County. Also testifying at hearing were Thea Pallansch, Tony Valnes, and Gary D. Hanson.

This matter was initially heard in July 2023 and a Decision followed by Judge Ryan Darling. The matter was appealed to the Fifth Judicial Circuit. Following oral argument on April 11, 2024, the Honorable Judge Marshall Lovrien remanded the matter to this office to utilize the existing record to make sufficient factual findings. Judge Darling passed away on June 3, 2024, prior to a new written decision. A new hearing was required to properly make credibility determinations on the witnesses and the evidence presented. This matter is heard de novo. All documents part of the July 2023 hearing and April 2024 appeal are considered.

**ISSUES**

Whether the subject property was assessed higher than market value and/or is assessed higher than comparable property?

**FINDINGS OF FACT**

1. The parcel numbers of the subject property are 11781 and 11782.
2. Parcel Number 11781 has a legal description of Rinas Conservation Easement, Tract 1, in the Northeast Quarter (NE  $\frac{1}{4}$ ) of Section Twenty-four (24), Township One Hundred Twenty-five (125) North, Range Fifty-one (51) West of the Fifth Principal Meridian, Goodwill Township, Roberts County, South Dakota. It consists of about 107.87 acres.
3. Parcel Number 11782 has a legal description of Rinas Outlet 1 in the Northeast Quarter (NE  $\frac{1}{4}$ ) of Section Twenty-four (24), Township One Hundred Twenty-Five (125) North,



Range Fifty-one (51) West of the Fifth Principal Meridian, Goodwill Township, Roberts County, South Dakota. It consists of about 48.7 acres.

4. The subject property is classified as agricultural property pursuant to SDCL §10-6-110 and SDCL §10-6-112. The parties have not contested the classification.
5. In 2019, Petitioners purchased the properties from the estate of Ms. Pallansch's uncle, Mr. Franklin Rinas for \$20,000 or \$127.74 per acre. Petitioners were not the only bidders on the property, however, the property was on the open market for many months.
6. In 2017, the subject property was appraised for \$897 per acre. This appraisal was performed as part of the probate of Mr. Rinas's estate.
7. In 1998, and again in 2013 and 2014, Mr. Rinas entered the properties into the federal Wetlands Reserve Program (WRP). In return, Mr. Rinas received approximately \$276,000 from the federal government for the perpetual easements.
8. The National Resources Conservation Service (NRCS) is the authority that approves any activities that occur on this property.
9. The easement on the subject prohibits most any activity on the land, including any structure being built, and any crops grown or harvested. The NRCS may allow haying or grazing of the land. Petitioners understand that the NRCS may allow hay to be cut every 3 years or every 5 years.
10. The Petitioners may still hunt wild game on the property but may not build permanent tree stands or similar facilities.
11. The South Dakota legislature implemented a productivity model for valuing agricultural property in 2008. The first year for this system to be implemented for valuation purposes was in 2010. This system no longer uses sales as the basis for valuation but rather uses an 8-year Olympic average of incomes for each county. The top dollar for crop and grass (non-crop) is generated by the South Dakota Department of Revenue and given to each county as a starting point for valuations. The starting value is then adjusted by each county to ensure uniform and fair valuations.
12. To complete the productivity model, the "top dollar" for each county is multiplied by the soil rating and that number is multiplied by the number of acres.
13. For at least 20 years prior to 2023, the County assessed WRP properties for about \$450.00 per acre. The County was not following the productivity model for assessing WRP ag-land.
14. In 2017, the Fifth Judicial Circuit made a decision in the case of *Tvinnereim v Day County*, 18CIV15-45, upholding an Office of Hearing Examiners decision. The OHE



gave the opinion that enrolling agricultural land in a federal easement program is a management decision; a management decision does not affect the value of ag-land.

15. Following the *Tvinnereim* decision, the County Equalization Office started reassessing all ag-land under the statutory productivity formula found at SDCL §10-6-127 et seq. The subject properties were two of the few properties that had not been reassessed by the productivity method until 2023.
16. Testimony is that all ag-land properties in the County are now being assessed under the productivity method as required by law.
17. In 2023, the County reassessed the subject property as ag-land, under the productivity formula found in statute. All ag-land, including the WRP land is assessed by the county with the same process.
18. The assessed value of Parcel #11781, as of November 1, 2022, is \$243,306 or about \$2,256 per acre.
19. The assessed value of Parcel #11782, as of November 1, 2022, is \$81,761 or about \$1,678.87 per acre.
20. Testimony from local realtors, indicate that the market value of WRP property is about \$800 to \$1000 per acre.
21. Mr. Tony Valnes, a local realtor and crop insurance agent, testified credibly that each WRP property value on the open market depends upon the easement agreement. Each easement is different, and some allow more activity by owners. The subject properties have very strict easements, and the properties are difficult to sell in the open market.
22. Mr. Valnes credibly testified that for similar property, he was able to convince a neighbor to sell a small 2-3 acre plot to attach to a WRP property, in order to sell the WRP land.
23. Mr. Gary D. Hanson, a licensed real estate broker and local farmer/rancher, testified credibly that a WRP easement reduces the amount of money that a buyer might pay for land. Without a WRP easement, average crop land sells for about \$4,000 to \$5,000 per acre. With the WRP easement, the same crop land will sell for about \$800 to \$1000 per acre.
24. There was a Roberts County sale of WRP ag-land reported in 2022 that sold for \$1,250 per acre.
25. Mr. Hanson works in the same office as the Petitioner's attorney. Hanson's testimony was supported by Mr. Valnes. Both presented credible testimony.
26. A WRP easement reduces the number of people who are willing to purchase ag-land with the easement.

27. The subject properties are not inundated by water in normal years. The Petitioners have not requested the County classify the properties as inundated farmland under SDCL §§ 10-6-125 and 10-6-126.
28. Petitioners timely appealed the assessed value to this Office.
29. Any additional findings included in the Reasoning section of this decision are incorporated herein by this reference.
30. To the extent any of the findings of fact are improperly designated and are instead conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

### **REASONING**

All real property in South Dakota is subject to taxation, unless expressly excepted. SDCL §10-4-1. Taxes on real property are based on value. Agricultural land value is based upon the productivity model as set out in statute. SDCL §10-6-128 et seq. As stated in SDCL §10-6-133:

The agricultural income value for agricultural land as determined by §10-6-127 to 10-6-132, inclusive, represents the fair market value of agricultural land for purposes of assessment, equalization, and taxation, and the department shall provide the director the factor of adjustment necessary for the computation required pursuant to §§10-3-41, 10-12-31.1, 10-12-42, and 10-13-37.  
SDCL §10-6-133.

The Director of Equalization must use the soil survey based on SDCL §10-6-130 and the productivity method set out in SDCL §10-6-131. The soil survey indicates the type and quality of the soil. The soil survey does not take into effect what is planted on the land or the use of the land, as those are management decisions by the property owner. The value per acre of each soil type is then determined by the Department of Revenue and sent to the County for assessment. The Director of Equalization multiplies the top dollar value per acre by the soil rating and the number of acres of that particular soil. The resulting soil values are added together to find the assessment of the property. The County testified that all the calculations are performed by a computer program. The County inputs the soil values given to them by the Department. The acres of each type of soil per property are already in the computer.

The Director may then adjust the assessed value of the land if any of the factors in SDCL §10-6-131 affect the productivity of the land. The statute reads in full:

The director may adjust the assessed value of agricultural land to the extent one or more of the following factors affect the productivity of the land:

- (1) Location;
- (2) Size;
- (3) Soil survey statistics;

- (4) Terrain;
- (5) Topographical condition;
- (6) Climate;
- (7) Accessibility; or
- (8) Surface obstructions, including shelterbelts.

The director shall document each adjustment by using data from sources reasonably related to the adjustment being made. In addition, the director may use data from comparable sales of agricultural land to document the adjustment concerning productivity for any of the factors listed in this section.

If the actual use of agricultural land varies from the land use category specified by soil classification standards, or if any factors listed in this section exist that affect the productivity of the land, the property owner may request an examination of the land by the director on a form prescribed by the department. The director shall determine whether to adjust the assessed value of the agricultural land pursuant to the factors listed in this section.

The director shall document all supporting evidence for the adjustment determination. The director shall provide any adjustment documentation to the department upon request. The director must keep the adjustment documentation in the director's office for the life of the adjustment.

For the purposes of this section, the term "shelterbelt" means field shelterbelts, farmstead windbreaks, wildlife tree plantings, living snow fences, and other tree plantings made specifically for conservation purposes, but excluding trees planted for ornamental or commercial purposes.

SDCL §10-6-131. None of the above adjustment factors are voluntary easements or legal impediments to productivity that may be placed upon the property. Similar to previous rulings, management decisions by property owners, or in this case, previous owners, are not factors for an adjustment of an assessment.

The Supreme Court looked at the productivity method for valuations in the case of *Trask v. Meade Cnty. Comm'n*, 2020 S.D. 25. When affirming the valuation placed upon the land by Meade County, in saying that the County followed statute, the Court concluded that the method of valuation is set by the Legislature and that is the proper place to argue for changes to statute. *Id.* at ¶42. The argument by the taxpayers in both the *Trask* case and the case at hand was/is that ag-land assessment is not based upon the actual productivity of a piece of land but upon a potential productivity. In *Trask*, the Court stated:

The circuit court did not err when it found that the Appellees properly followed statutory law in its 2016 assessment of the Trasks' agricultural property and did not violate the State constitution. We understand that the Trasks offer a determined argument that productivity valuation should be based upon the actual use and production of the land. However, our role in this appeal is not to determine this claim of inequity directly. Instead, we must faithfully interpret and apply the statutes enacted by the Legislature for the specific purpose of departing from a market-based method of valuation for agricultural land. Linger

dissatisfaction with the resulting statutory procedure is best addressed by the Legislature, whose fact-finding committees and task force are uniquely situated to carefully study the impact of the productivity model statewide and propose legislative changes or adjustments.

*Trask* at ¶42.

Petitioners make a constitutional argument that the assessed value of the subject property exceeds the market value of the property, in contradiction of S.D. Constitution; “The valuation of property for taxation purposes shall never exceed the actual value thereof.” *S.D. Constitution*, Article 11, §2. This argument was also presented in the *Trask* case. The Court wrote, “In application, we acknowledge that exact uniformity and mathematical accuracy in assessments is absolutely impossible, but there must be substantial compliance with constitutional mandates.” *Trask v. Meade Cnty. Comm’n*, 2020 S.D. 25, ¶35.

Any constitutional question brought forward by Petitioner is outside the jurisdiction of this Office. As determined by the Eighth Circuit, United States Court of Appeals, and in other state jurisdictions, an executive branch agency is required to treat a duly adopted law as constitutionally valid unless a judicial determination has ordered otherwise. The separation of powers doctrine requires that the executive branch not declare legislation to be unconstitutional, that power is left to the judicial branch. See *Colonial Pipeline Company v. Morgan et al*, 263, S.W.3d 827, 841-844 (2008) (citing *Alleghany Corp v. Pomeroy*, 698 F. Supp. 809, 813-814 (D.N.D. 1990), rev’d on other grounds, 898 F.2d 1314 (8<sup>th</sup> Cir. 1990) (agency without power to adjudicate constitutional issues); *Belco Petroleum Corp v. State Bd of Equalization*, 587 P.2 204, 208 (Wyo. 1978) (Agency does not determine facial constitutionality of statute or constitutionality of its application); 73 C.J.S. *Public Administrative Law and Procedure* §65 at 536; 1 Am.Jur2d *Administrative Law* §185 at 989-90).

Therefore, the constitutionality of the ag-land assessment of property tax, as set out in Statute and followed by the County and the Department of Revenue in this case is presumed and will not be analyzed further. For this Office to the further question the constitutionality would be a violation of the separation of powers.

The Supreme Court clarified the burden of proof in county equalization cases:

We have previously stated that taxation disputes incorporate a presumption that tax officials act in accordance with the law and the taxpayer bears the burden to overcome the presumption. Taxpayers meet their burden to overcome this presumption by producing sufficient evidence to show the assessed valuation was in excess of true and full value, lacked uniformity in the same class, or was discriminatory.

*Trask v. Meade Cnty. Comm’n*, 2020 S.D. 25, ¶36 (internal quotes, citations, and footnote omitted). Petitioners have not shown that the County’s assessment of the subject property was

not uniform within the same class or was discriminatory. They also have not proven that the assessed valuation was in excess of true and full value or fair market value as defined by statute. SDCL §10-6-133.

Therefore, the County's assessment of the subject property is affirmed.

### CONCLUSIONS OF LAW

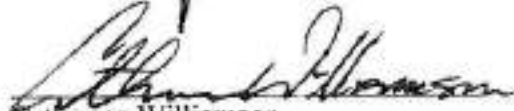
1. The Office of Hearing Examiners has jurisdiction over the parties and the subject matter of this appeal pursuant to the provisions of SDCL Ch. 1-26D, §10-10-11 and §10-11-42.
2. SDCL §10-3-16. "The director of equalization shall assess for taxation all property subject to taxation, except property which the secretary of revenue has been directed to assess, which is situated in the county or municipality for which the director is appointed, including all property located within the corporate limits of each municipality.
3. "The Constitution of South Dakota, Art. XI, Section 2, requires that '(t)axes shall be uniform on all property of the same class, ... and the valuation of property for taxation purposes shall never exceed the actual value thereof.'" *Smith v. Tripp County*, 765 N.W.2d 242 (2009).
4. The subject properties are classified as agricultural property under SDCL §10-6-112.
5. Roberts County assessed the property based upon state law regarding agricultural income value, earning capacity, and soil types, as set out in state law. SDCL §10-6-127.
6. "The agricultural income value for agricultural land as determined by §10-6-127 to 10-6-132, inclusive, represents the fair market value of agricultural land for purposes of assessment, equalization, and taxation...." SDCL §10-6-133.
7. Petitioner has not proven by a preponderance that the assessed value is in excess of true and full value, lacks uniformity in the same class, or is discriminatory. Petitioner has not met their burden.
8. The County Board of Equalization set the assessed value of the subject properties at \$243,306 and \$81,761 as of November 1, 2022. This assessment was determined by the ag-land valuation laws found at SDCL §§10-6-127 to 10-6-132, inclusive.
9. Any additional conclusions of law included in the Reasoning section of this decision are incorporated herein by this reference.
10. Any Conclusions of Law in the reasoning section of this decision are incorporated herein by reference. To the extent any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as findings of fact.



## ORDER

It is the Order of the Hearing Examiner that the assessment of the subject properties for taxation purposes set by the Roberts County Board of Equalization be affirmed. The Petitioners' property at issue in this hearing is assessed as: Parcel 11781 at \$81,761, and Parcel 11782 at \$243,306.

Dated September 23, 2024.



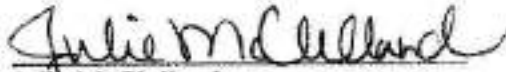
Catherine Williamson

Office of Hearing Examiners

NOTICE: This is the final decision in this matter unless you appeal the decision directly to circuit court within 30 days after this Order has been served on you. Decisions of the circuit court may be appealed to the South Dakota Supreme Court.

### CERTIFICATE OF SERVICE

I certify that on September 23, 2024, at Pierre, South Dakota, a true and correct copy of the Decision in the above-entitled matter was sent Certified via U.S. Mail to each party listed below.



Julie McClelland  
Administrative Assistant

GORDON P. NIELSEN  
DELANEY NEILSEN & SANNES, PC  
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SISSETON SD 57262

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SISSETON SD 57262

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KAY NIKOLAS, DEPUTY  
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SECRETARY MICHAEL HOUDYSHELL  
DEPARTMENT OF REVENUE  
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1

STATE OF SOUTH DAKOTA  
OFFICE OF HEARING EXAMINERS  
Pierre, South Dakota

THEA PALLANSCH, KARIE M.  
GEYER, and JENNIFER NELSON,

Petitioners,

vs.

ROBERTS COUNTY, SOUTH DAKOTA,

Respondent.

FILED  
BRENDA GUY  
APR 11 2024  
Roberts County Clerk of Courts  
Sisseton, SD

HEARD BEFORE HEARING EXAMINER RYAN P. DARLING

Tuesday, July 11, 2023

APPEARANCES

THEA PALANSCH, 44799 107th Street, Veblen, SD 57270,  
appearing pro se.

KAY F. NIKOLAS, Roberts County State's Attorney, 414 3rd  
Avenue East, Sisseton, SD 57262,  
appearing on behalf of Roberts County.

Carla A. Bachand, RMR, CER  
pcbachand@pie.midco.net/605.222.4235

App. 026

I N D E X

WITNESSES:

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THEA PALLANSCH

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EXHIBITS:

RECEIVED:

Exhibit A. . . . . 4

Exhibit B. . . . . 4

Certificate of Court Reporter . . . . . 31

Carla A. Bachand, RMR, CRR  
pcbachand@pie.midco.net/605.222.4235

1 certified, testified as follows:

2 EXAMINATION

3 BY HEARING EXAMINER DARLING:

4 Q. Could you state your name for the record please?

5 A. My official name is Thea Lee Pallansch.

6 Q. And okay, let me start with one thing. I got three  
7 people here. You own the subject property in question or how  
8 do you three --

9 A. Yes.

10 Q. How do they fit together?

11 A. They are in a life -- they are in with the financial  
12 planning, life estate, with me.

13 Q. Are they like your relatives?

14 A. My daughters, they are my daughters.

15 Q. The three of you, okay.

16 A. Yes.

17 Q. Okay, now is your chance to testify and tell me what's  
18 going on.

19 MS. PALLANSCH: Well, Your Honor, again, my name is  
20 Thea Pallansch, and I have ownership in certain real estate  
21 located in Goodwill Township in Roberts County, South Dakota.  
22 I feel the assessment for this property is too high, and my  
23 understanding of South Dakota law is that the valuation of  
24 property for taxation purposes shall never exceed the actual  
25 value thereof, taken from the South Dakota Constitution,

1 Article 11, Section 2.

2 Currently parcel number 11782, Rinas Outlot 1 in the  
3 northeast quarter, 48.7 acres, Section 24-125-51, Goodwill  
4 Township, a perpetual WRP easement is assessed for \$81,761 or  
5 \$1,678.87 an acre. And parcel number 11781, Rinas Conservation  
6 Easement Tract 1 in the northeast quarter, \$107.87 an acre  
7 (sic), Section 24-125-51, Goodwill Township, a perpetual WRP  
8 easement is assessed for \$243,306 or \$2,255.54 an acre.

9 I feel my land should be assessed for no more than  
10 \$1,000 an acre, and this is supported by the March 28, 2023,  
11 broker's opinion provided by Gary Hanson, broker associate,  
12 Coteau Land Management, LLC, and also supported by a recent  
13 sale information where Kent Kraft purchased conservation  
14 easement wetland reserve property in Roberts County, South  
15 Dakota, for \$1,250 an acre.

16 Therefore, my arguments, Your Honor, in this instance,  
17 the remedy would be to reduce the assessed value of the subject  
18 properties to its fair market value of \$1,000. Thank you for  
19 your time.

20 HEARING EXAMINER DARLING: Okay. I'm going to -- I  
21 can't write as fast as you are talking; so I've got some  
22 questions here.

23 A. Yes.

24 EXAMINATION (cont.)

25 BY HEARING EXAMINER DARLING:

Carla A. Bachand, RMR, CRR  
pcbachand@pie.midco.net/605.222.4235

16

1 Q. Okay, you said that there -- I'm looking at this  
2 appraisal report that's in part of your information.

3 A. Uh-huh.

4 Q. Somebody said something about 1,250 an acre. You had  
5 two things going on. One was a sale or purchase and one was an  
6 appraisal. Let's start with the appraisal.

7 A. Okay.

8 Q. What was that?

9 A. The appraisal by Gary Hanson, broker, March 28, 2023,  
10 was placed at \$1,000 an acre.

11 Q. That's for your land, the land we are talking about?

12 A. Yes.

13 Q. Okay. And I think -- okay, and then -- okay, then  
14 somebody bought some similar WRP land?

15 A. Yes, near New Effington, South Dakota, a wetland  
16 reserve, a Kent Kraft, which is in this supplied information,  
17 for \$1,250 an acre. That was in 2022.

18 Q. Now, I thought I heard you say something about you  
19 mentioned -- okay, then this is where \$81,000, that was the  
20 assessed value of the current assessment?

21 A. That's the current, yes.

22 Q. \$243,306 is the current assessment?

23 A. Correct.

24 Q. How much does that come out per acre or -- if anybody  
25 has that.

Carla A. Bachand, RMR, CRR  
pcbachand@pie.midco.net/605.222.4235

App. 030

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF ROBERTS

FIFTH JUDICIAL DISTRICT

=====

THEA PALLANSCH, KARIE M.  
GEYER, and JENNIFER NELSON,

Plaintiffs and Appellants,

vs.

ROBERTS COUNTY, SOUTH DAKOTA,

Defendant and Appellee.

=====

HEARD BEFORE HEARING EXAMINER CATHERINE WILLIAMSON

Tuesday, September 10, 2024

=====

APPEARANCES

GORDON P. NIELSEN, Delaney, Nielsen & Sannes, PO Box 9,  
Sisseton, SD 57262,  
appearing on behalf of Plaintiffs and Appellants.

KAY E. NIKOLAS, Roberts County Deputy State's Attorney,  
414 3rd Avenue East, Sisseton, SD 57262,  
appearing on behalf of Defendant and Appellee.

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1 the test and then you then take a further test of books that  
2 you have studied for the International Association of  
3 Assessors, IAAO, and you have to pass that test after  
4 completing these five books, these are mass appraisal, sales  
5 approach, cost approach, income approach, for getting the  
6 certified assessor. So then after you take that test, then you  
7 are a certified assessor at that time. Prior to that I was in  
8 health care. I had my master's in physical therapy; so it was  
9 a new career, to go to assessors school.

10 Q. So you did complete the course work that the  
11 Department of Revenue, the State of South Dakota requires?

12 A. Yes, to become a certified assessor with the State of  
13 South Dakota.

14 Q. Were you certified when you did the assessment on the  
15 parcels that are subject to this hearing?

16 A. Yes.

17 Q. Let's talk about these parcels. There are two parcels  
18 in question; is that correct?

19 A. Correct.

20 Q. And they are both --

21 A. 11781 and 11782. 11781, Rinas Conservation Easement  
22 Tract 1, and 11782, Rinas Outlot 1. These parcels -- 11781 had  
23 been placed at, according to what I was told by the former  
24 director and the staff about, oh, 20 years prior to me being  
25 there, the director at that time determined a value of 450 an

1 acre for parcels that had been put into this WRP assessment.

2 Q. Okay, so at the time you initially looked at these  
3 properties, previous assessments had set all wetlands reserve  
4 program properties at 450?

5 A. All of them.

6 Q. In the whole county?

7 A. The whole county was my understanding.

8 Q. And that was done by the previous director of  
9 equalization in the county before --

10 A. Arden Owen (phonetic), I believe, the previous  
11 director. 11782 was never at the 450 an acre, it's always been  
12 on the soils.

13 Q. Okay. Are these parcels located in Goodwill Township  
14 in Section 24 in Roberts County, South Dakota?

15 A. Yes.

16 Q. And these are classified as agricultural lands?

17 A. Yes.

18 Q. Could you describe kind of what kind of property this  
19 is or what kind of -- let me back up. Are they classified as  
20 crop land or pasture land or how are they classified in terms  
21 of types of agricultural land?

22 A. So the state soil survey, if you look in the packet,  
23 it says what soils they are made of. On page 19 and 20, a soil  
24 survey was done and then every parcel in Roberts County has a  
25 soil survey that had been loaded into our software program that

1 gives the different types of soils. That soil survey had been  
2 done by the state that established what soils are on that  
3 parcel, and there's different ratings, crop versus non-crop.  
4 So it's a mix.

5 Q. Okay.

6 A. 11781 basically has 102 acres of crop rated soil and  
7 then five acres of non-crop rated soil. And you can see on  
8 that sheet the different divisions, acres, because some soils  
9 are rated better soils than other. That's where that rating  
10 .784, so they are saying that that Dovray soil is 78 percent of  
11 the top AAA full.

12 Q. I'm going to interrupt you just a minute. The page  
13 number and the reference you are making is to what is Exhibit  
14 A, I believe. I just want to make sure the record is clear  
15 that you are referencing pages in what's been admitted as  
16 Exhibit A, correct?

17 A. Correct. I assume my people. . . So then that was  
18 for each of those two parcels. So then WRP, the 450 an acre,  
19 because of a court case in Day County, the director previous to  
20 me did remove WRP 450 an acre and basically put them on the  
21 agricultural land productivity formula that all parcels in  
22 Roberts County that are ag parcels are supposed to be on.

23 And the reasoning was, based on that court case, that  
24 since starting with that 2010 assessment, all were supposed to  
25 be on there. These WRP parcels were not. The court case

1 determined that the WRP is a management decision and not a  
2 condition that mother nature has created, it's a management  
3 decision, and therefore, this property should be valued like  
4 every other agricultural parcel in the state of South Dakota in  
5 the county of Roberts. And so all WRP were then put on the  
6 soil calculation, which is based on what you see on page 19 and  
7 20.

8 Q. So basically because there was a circuit court  
9 decision in another county dealing with wetlands easements that  
10 suggested that an arbitrary or a number that the previous  
11 director of equalization had made at 450 an acre for any lands  
12 subject to that type of conservation easement was to be valued  
13 at a set amount, that was not supported by law and there was  
14 no -- nothing in the law books that said you could just pick a  
15 number for that, correct?

16 A. That is my understanding, yes.

17 Q. And so your predecessor advised that as you were going  
18 to do assessments for 2023, you could no longer do that flat  
19 across the board 450 for WRP lands?

20 A. Correct.

21 Q. You went back to the formula that the statutes require  
22 to you use; is that correct?

23 A. Yeah, the agricultural land productivity calculation.

24 Q. And could you briefly outline what it is that you do?  
25 You have already talked about the different soil types on the

1 Q. Your office has nothing to do with gathering that  
2 amount of how much the income is.

3 A. No, thank God, that would be a difficult task to  
4 gather all that data across the state and come up with your  
5 average, because they pick out -- each year it cycles different  
6 ones, it could be corn, could be beans, could be wheat. So  
7 it's different crops that are picked out for that.

8 Q. That number is based on what you call Olympic average.  
9 They average out these and they toss off the top?

10 A. The highest and the lowest.

11 Q. And so six years out of the last eight, they average  
12 and use that number to send to the directors of equalization?

13 A. Every county gets their own that we then put into the  
14 programs. They are different each year.

15 Q. The counties invested in software that does the  
16 calculations for you based on the soil types; is that correct?

17 A. Correct.

18 Q. So as long as you punched in the right numbers for the  
19 top dollars, the computer then does the work in terms of  
20 sorting out the various soil types and the percentages?

21 A. Yes, and I check like three times because that would  
22 affect everyone in the county, had I mistyped a number.

23 Q. As a result of that, you came up with what kind of a  
24 valuation for the parcels?

25 A. This particular year, 11782 on soils was \$81,761.34.

1 There's a history of the valuations also in the book.

2 Q. Which pages are those?

3 A. So for 11782, it's pages 20, 21, and 22. And then the  
4 other one falls right before that, 11781 starts on -- I'm  
5 sorry, 31, 32 it starts for 11781, and 11782 follows right  
6 afterwards. When 11781 was taken off of the WRP and put back  
7 on soils, it's 107.67 acres, its valuation based on its soils  
8 present and its parcel came to 243,306, so a significant jump.  
9 It had been at 48,452 since 2014.

10 Q. Were you asked -- I'll back up. Under the state law,  
11 there is a basis once you get that, you are allowed to make  
12 adjustments for certain factors; is that correct?

13 A. Yeah, PT 3005, which because there's a statute, like  
14 10-6-131, where directors can, if people fill out paperwork,  
15 based on size, topography, climate, WRP enrollment is not one  
16 of them, it was determined by that court case, because it's a  
17 management decision, no different than if someone comes to us  
18 and says they only have cows on it, how come they have these  
19 crop soils? Well, that's their decision to make it all pasture  
20 land, it's not the soil's decision, mother nature's decision.

21 Q. So the fact that someone may have placed the land  
22 under -- in a wetlands reserve program with the federal  
23 government and given the federal government an easement on that  
24 land, that doesn't figure into location or size, the soil  
25 survey statistics, the terrain, topographical conditions,

1 Q. Are both parcels enrolled in a perpetual WRP program,  
2 a wetland reserve program easement?

3 A. Yes.

4 Q. And did you enroll the property in that WRP easement?

5 A. No.

6 Q. Who did?

7 A. My uncle, Frank Rinas.

8 Q. That was done prior to the time that you purchased it?

9 A. Yes.

10 Q. It's my understanding the property is classified as  
11 agricultural land; is that correct?

12 A. Yes.

13 Q. And you don't dispute that, it's more than 41 acres?

14 A. No, I don't. No.

15 Q. When you -- what has happened to the assessment of the  
16 property as far as the assessed value from the time that you  
17 purchased it until now?

18 A. It has gone up.

19 Q. With respect to parcel 11781, did the assessed value  
20 go from about 48,000 to 243,000?

21 A. Yes.

22 Q. Is that an increase of about five times?

23 A. Yes.

24 Q. Do you believe that Roberts County has failed to  
25 assess your property in a manner that is consistent with the



1 South Dakota Constitution?

2 A. No.

3 Q. You don't think they did it right, do you?

4 A. No.

5 Q. Okay. At the time -- prior to the time that you  
6 purchased the property, had it been appraised?

7 A. Yes.

8 Q. A copy of the appraisal was included in Exhibit B,  
9 correct?

10 A. Right.

11 Q. Was the appraised value \$897 per acre when you  
12 acquired it?

13 A. Yes.

14 Q. As part of this proceeding, did you obtain a broker's  
15 opinion to determine the value of the subject property?

16 A. Yes.

17 Q. And Mr. Gary Hanson provided you with a broker's  
18 opinion?

19 A. Yes.

20 Q. And a copy of that broker's opinion is set forth in  
21 Exhibit B; is that correct?

22 A. Yes.

23 Q. What was the opinion put on the property by Mr.  
24 Hanson?

25 A. \$1,000 an acre.

1 Q. Do you believe that's the appropriate actual value of  
2 your property?

3 A. I went with what Mr. Hanson appraised it, yes.

4 Q. And you also had obtained some comparable sales.

5 A. Yes.

6 Q. That's also in Exhibit B.

7 A. Yes.

8 Q. At any time did Roberts County ever provide you with  
9 any indication as far as their opinion as far as the actual or  
10 the fair market value of the property?

11 A. No.

12 Q. Based on the assessed value placed on your parcels,  
13 they have one parcel assessed at \$1,678 an acre; is that  
14 correct?

15 A. Yes.

16 Q. And the other at \$2,255 an acre, that's the assessed  
17 value of this parcel; is that correct?

18 A. Yes.

19 Q. What is it that you would think your property should  
20 be assessed for, what rate?

21 A. What I had requested from the broker, the \$1,000 an  
22 acre.

23 Q. Do you want the Hearing Examiner to make a finding as  
24 to the actual value of your property?

25 A. Yes, that's what I've been waiting for. Yes.

1 Q. And Judge Lovrien, on his order for remand, was  
2 looking for -- is it your understanding looking for someone to  
3 put a factual value as far as the actual value of your  
4 property?

5 A. Yes.

6 Q. Do you understand that -- what do you understand as  
7 far as the restrictions placed on your property because of  
8 these WRP contracts, easements?

9 A. I work through the regional director, and it's very  
10 restrictive for perpetual easement, very. I can have it hayed,  
11 depending on the USDA's approval for a particular year, it can  
12 be anywhere from every three or every five years.

13 Q. Can you plant any crops on it?

14 A. No.

15 Q. Forever?

16 A. Forever.

17 Q. Can you build any structures on it?

18 A. No.

19 Q. Forever?

20 A. Forever.

21 Q. In fact they said you can't put in a permanent deer  
22 stand.

23 A. Correct.

24 Q. And you can only hay it if they tell you you can hay  
25 it?

1 A. Correct. The other -- there was a program regarding  
2 fencing, and I thought, oh, that would be great to have pasture  
3 but could not put in a stock dam.

4 Q. There is no other source of water on this property?

5 A. There is no other source other than the slough, which  
6 depends on the year; so that thought financially. . .

7 Q. As far as the manner and the formula and the statutes  
8 relied on by Roberts County, you don't have an objection with  
9 the way that they did their work, provided the number didn't  
10 exceed the actual value of the property; is that correct?

11 A. I have no objection, correct.

12 Q. But the issue here is when they came up with their  
13 numbers based on the soil productivity index, based on the  
14 formula, that the number that the computer kicked out was a  
15 number per acre in excess of the actual value of your property,  
16 correct?

17 A. Correct.

18 Q. That's your objection?

19 A. That's my objection.

20 Q. Had the computer program kicked out a number of \$999  
21 per acre, you wouldn't have objected to that, correct?

22 A. No, because of the most recent appraisal of \$1,000. I  
23 have no problem with the increase, but. . .

24 Q. As long as it doesn't exceed the actual value,  
25 correct?

1 done for the Estate of Frank Rinas, your late uncle, that was  
2 done by Mike Braun, who was a real estate appraiser; is that  
3 correct?

4 A. Yes.

5 Q. He came up with \$897 an acre. That would have been  
6 back from now probably -- I used to be able to do math in my  
7 head -- five or six years ago?

8 A. At the time, yes.

9 Q. Do you know whether or not or what -- do you know  
10 whether or not Mr. Braun took into account the fact that there  
11 is a perpetual easement on the property, in reaching that  
12 figure?

13 A. I'm sure in the information, he knew that it was, but  
14 I am not an appraiser.

15 Q. Does that appear anyplace in the exhibit that you  
16 provided, do you know?

17 A. No.

18 Q. And for you to determine actual value of that depends  
19 upon the market for the property; is that correct? That's how  
20 you come up with the actual value of the property.

21 A. If I would put it on the market, I would state what  
22 the appraiser appraised it for, but as fair market value, if I  
23 had someone such as a hunter, for instance, or anyone else, I  
24 would be negotiating with that individual.

25 Q. You indicated that you also, besides going by what Mr.

1 Hanson had indicated in his broker's letter, you said there is  
2 other comparable sales. Were there more than one other sale  
3 that you used?

4 A. I think most recently --

5 Q. At the time of the --

6 A. At the time there was just that comparable sale, yes,  
7 of the perpetual, yes.

8 Q. Okay. Well, if the assessed value had come in at  
9 \$1,001 instead of 999, would we still be here? That's above  
10 what you say the fair market value is. If it's a dollar more  
11 than that an acre, is that beyond its actual value in violating  
12 your constitutional rights?

13 A. I would -- it would not be five times the amount of  
14 taxation.

15 Q. I understand that.

16 A. I would consider and I would probably discuss it with  
17 my lawyer or contact the board of equalization.

18 MS. NIKOLAS: I don't believe I have any other  
19 questions.

20 MR. NIELSEN: Just a couple follow-up.

21 HEARING EXAMINER WILLIAMSON: Go ahead.

22 REDIRECT EXAMINATION

23 BY MR. NIELSEN:

24 Q. Thea, in Exhibit B is a copy of the appraisal that Ms.  
25 Nikolas indicated. Do you agree with me that on page seven of

1 that appraisal, Mr. Braun did make reference to --

2 A. Oh, yes, it had WRP, yes.

3 Q. There was WRP on it?

4 A. Yes.

5 Q. The fact that it had a WRP easement, the property we  
6 are talking about, that's likely why he came up with the value  
7 of \$897 an acre when he did the appraisal in 2017?

8 A. Correct.

9 MR. NIELSEN: No further questions.

10 HEARING EXAMINER WILLIAMSON: Anything further, Ms.  
11 Nikolas?

12 MS. NIKOLAS: It's on page seven. (Mumbling heard.)

13 RECROSS-EXAMINATION

14 BY MS. NIKOLAS:

15 Q. Was there anything in Mr. Braun's appraisal that said  
16 this property is worth this only because the wetlands reserve  
17 easement is there? He mentioned that it's subject to all the  
18 land -- these parcels are subject to this WRP easement, but did  
19 he explain anyplace in the appraisal what the effect of having  
20 that easement on that property was in terms of its  
21 marketability?

22 A. I think he dealt with it as an appraiser.

23 MS. NIKOLAS: No further questions.

24 HEARING EXAMINER WILLIAMSON: Anything further?

25 MR. NIELSEN: No.



1 HEARING EXAMINER WILLIAMSON: Any further witnesses?

2 MR. NIELSEN: Yes. Tony Valnes.

3 HEARING EXAMINER WILLIAMSON: Have a seat. I will  
4 swear you in.

5 Thereupon,

6 TONY VALNES,  
7 called as a witness, being first duly sworn as hereinafter  
8 certified, testified as follows:

9 HEARING EXAMINER WILLIAMSON: The record shall reflect  
10 the witness is sworn.

11 DIRECT EXAMINATION

12 BY MR. NIELSEN:

13 Q. Tony, can you state your full name for the record  
14 please?

15 A. Tony Valnes.

16 Q. Tony, where do you live?

17 A. Sisseton, South Dakota, or I guess my address is  
18 officially Browns Valley, Minnesota now.

19 Q. How long have you lived in Roberts County?

20 A. Most of my life, probably around 50 years. I was in  
21 the Sioux Falls area for three or four.

22 Q. Tony, how are you employed?

23 A. Real estate is my main occupation. I also sell crop  
24 insurance.

25 Q. Are you a licensed real estate broker?

1 A. Yes.

2 Q. How long have you been in the real estate business?

3 A. 20 plus years.

4 Q. As part of your business, do you sell real estate in  
5 Roberts County, South Dakota?

6 A. Yep, Roberts, Day, Marshall, a little bit of Brown.

7 Q. Trickle into Minnesota?

8 A. Yeah.

9 Q. As part of your business, do you do property  
10 valuations by giving broker's opinions?

11 A. Yes.

12 Q. Do you have experience in selling agricultural land in  
13 Roberts County, South Dakota?

14 A. Yes.

15 Q. Do you feel like you have a good understanding as far  
16 as the real estate market for land in Roberts County?

17 A. Yes.

18 Q. Have you sold real estate parcels that are subject to  
19 perpetual WRP easements in the past?

20 A. Yes.

21 Q. Are they easy to sell or do you find them to be more  
22 difficult to sell?

23 A. Difficult to sell.

24 Q. One of the -- let's strike that. For a different  
25 client were you called upon to do a broker's opinion for WRP

1 property located in Roberts County, South Dakota, as recently  
2 as this summer?

3 A. Yes.

4 Q. And in your opinion, for land in Roberts County -- let  
5 me ask you this. Do you have an opinion or have you formed an  
6 opinion as far as the fair market value of WRP property in  
7 Roberts County, South Dakota?

8 A. Yes.

9 Q. And what is your opinion?

10 A. Around 850, 800 to 1,000 an acre. There's different  
11 things in the WRP easements. Some of them you can't do  
12 anything. Some are ones where if there's an existing puddle,  
13 you can't drain the existing puddle, but you can still farm  
14 around it.

15 Q. Okay.

16 A. Those ones have more value because you have income,  
17 and the ones that have tighter rules, like the subject property  
18 we are speaking about today, have less income so they have less  
19 value.

20 Q. Previously as part of the record, Gary Hanson had put  
21 in a broker's opinion that this subject property would have a  
22 value of \$1,000 an acre. Does that sound reasonable and is  
23 that consistent with your experience as far as valuing WRP  
24 property in Roberts County, South Dakota?

25 A. Yes.

1 Q. The comparable sale here, we called it the Kraft  
2 property, which was 80 acres of WRP property located in Roberts  
3 County, South Dakota, were you the broker of record on that  
4 property?

5 A. Yes.

6 Q. And that sold in 2022?

7 A. Yes.

8 Q. The assessment that we are talking about in this case  
9 is 2023. Have you noticed the value of WRP property  
10 fluctuating a great deal or has it maintained?

11 A. Maintains. Crop land goes up and down with the  
12 market. Obviously residential goes up and down with the  
13 market, et cetera. But it doesn't fluctuate a lot, it's very  
14 slow moving. People who buy land, the majority, I wouldn't  
15 want to pick a number, but almost everybody who buys land buys  
16 it to make money, not to lose money. And when the land doesn't  
17 make you very much money, you don't want to pay very much money  
18 for it.

19 Q. In your opinion, is the actual value of the Pallansch  
20 property that is the subject matter of this hearing in the  
21 range of 800 to \$1,000 per acre?

22 A. Yes.

23 Q. Is that based on your experience in selling and -- or  
24 selling property in this county?

25 A. Yes. And the last couple of those that I sold, two of

1    them actually had a little bit more -- they are difficult to  
2    sell because you can't build or do anything on them, as  
3    everybody was discussing earlier. The one comp you mentioned,  
4    that actually had like 2.5 acres that wasn't in the easement,  
5    but you had to drive across the easement land to get to it; so  
6    you couldn't build a driveway. But on that back part, you  
7    could maybe put in a food plot, you can maybe camp, you can  
8    maybe put up a permanent deer stand; so that added to the  
9    value.

10           Other ones I've sold, we actually had to carve out,  
11    like talk the farmer into giving up three acres of land that  
12    was tillable land so the guy could build a house near his  
13    hunting land. They are difficult to sell.

14           Q.    The one you are talking about there, that second one,  
15    that's a property that you sold in 2021 for Roy Bartz, it  
16    included 61 acres of WRP; is that correct?

17           A.    Yep, we also had to include three acres, had to talk  
18    Mr. Roy out of three acres near the land that was in the  
19    easement because the easement land was only good for one thing  
20    and that was hunting and fishing, and hunting and fishing  
21    doesn't make a lot of money.

22           Q.    It's my understanding, Tony, and see if you agree with  
23    me, the subject property here is totally covered by a WRP  
24    easement with no possibility of building; is that your  
25    understanding?

1 A. Yep, that's my understanding, limited haying easement  
2 restriction.

3 Q. How would that affect the value of the property?  
4 Would that increase the value or decrease the value?

5 A. Decreased value. Again, people who buy land like to  
6 make money, and how they can use it to make money affects what  
7 they will pay for it. Most people like to make money, not lose  
8 money.

9 Q. One parcel here, there's two parcels that we are  
10 talking about today, one of them is parcel 11781, the county  
11 has that parcel, it's about 107 acres, assessed at \$2,255.56 an  
12 acre for tax purposes. Have you had any success in selling WRP  
13 property for over \$2,000 an acre?

14 A. No.

15 MR. NIELSEN: That's all the questions I have for you,  
16 Tony.

17 HEARING EXAMINER WILLIAMSON: Ms. Nikolas.

18 MS. NIKOLAS: Thank you.

19 CROSS-EXAMINATION

20 BY MS. NIKOLAS:

21 Q. You indicated that the fair market value of perpetual  
22 easement WRP properties you would estimate runs between 850 and  
23 \$1,000 an acre, depending upon the restrictions, correct?

24 A. Yep.

25 Q. And the Kraft property that you sold, the New

1 Effington property that was part of Exhibit B, you were the  
2 broker and it was advertised as hunting land, wasn't it?

3 A. Yep. It would be superior to this land because of  
4 that little two-acre thing, to give you a little --

5 Q. You didn't check to see what the agricultural  
6 productivity model would show up as far as --

7 A. Absolutely, yep, I make soil maps on everything. I  
8 have a computer program I buy, I check the county average sale  
9 rating, I do productivity index, soil maps, et cetera, yep.

10 Q. And do you recall on what I will call the Kraft  
11 property what that valuation ended up being in terms of  
12 applying the agricultural productivity value, valuation  
13 program, like the county uses to come up with an assessed  
14 value?

15 A. I don't go by what they go by. I go by reality, what  
16 it will actually sell for.

17 Q. You go by what it can be used for; is that correct?

18 A. What it can be used for affects the value of it, yep,  
19 in land, and most people buy land as an investment or to make  
20 money. So they will pay more if they can make more, common  
21 sense, if it's good tillable corn and you can make money on it,  
22 then you will pay more per acre. If you can't do anything on  
23 it, then they pay less.

24 Q. The restrictions that are placed on it are placed on  
25 it by the federal government, based on the agreement between



1 whoever put it into the program --

2 A. And they are a one-time payment; so it's not good  
3 residual income like CRP, for an example. It's just a one-time  
4 payment that somebody else got a long time ago.

5 Q. Am I correct that not all WRP easements are perpetual,  
6 there is some that are a term of years, 30-year, or are they  
7 all perpetual?

8 A. To the best of my knowledge, I think they are almost  
9 all perpetual. There's different types of them, some have more  
10 restrictions than others.

11 Q. When you spoke with Mr. Nielsen about the actual value  
12 of these properties, would you define for me what you mean by  
13 actual value or how you determine what actual value is?

14 A. The reality of what it would sell for, what a willing  
15 buyer would pay and a willing seller would accept. A seller is  
16 not going to take \$20 an acre and the buyer is not going to pay  
17 \$2,000 an acre. Just what would it sell for.

18 Q. So the value of WRP properties is going to vary  
19 depending upon the restrictions, correct?

20 A. Yep. This one has tight restrictions; so this one  
21 would be in the number range everybody is talking about in Mr.  
22 Braun's appraisal, who is very reputable in the land industry.  
23 And I agree with Gary's opinion over there, he probably sells  
24 90 percent land.

25 Q. The land itself, in looking at the lands subject to

1 those, if there was not the perpetual easement on it, how would  
2 that affect the value of the land? The land itself could be  
3 productive, right?

4 A. Could be, maybe, yep, depending on how wet it is,  
5 yeah. To answer your question, if there's no easement on it,  
6 it's worth more money. The easement devalues it.

7 Q. In all circumstances?

8 A. Oh, yes. Well, there's one type of WRP you can still  
9 plant corn and beans, you just can't drain or fill the existing  
10 natural wet spots, but that's different.

11 Q. Is that a perpetual easement that you are talking  
12 about?

13 A. Yeah, those are perpetual, too. That's the good --  
14 sorry, what I call the good WRPs because you can still do quite  
15 a bit with it and you just have to leave the wet spots wet.  
16 The type that's on the subject property has very tight rules,  
17 very restrictive limits what you can do with it.

18 Q. And those restrictions are management decisions that  
19 basically the federal government then makes for the landowner;  
20 is that correct?

21 A. Yep, usually it's a landowner at one point that did it  
22 years ago, usually, statistically. I haven't seen anybody  
23 enter one recently, but yep, the government offers you a  
24 program to sign up for.

25 Q. So in the case of these parcels, back in the nineties,

1 Mr. Rinas entered into the program with the federal government,  
2 and if I remember correctly from the exhibits, he got somewhere  
3 between 247 and \$260,000 in payments for that.

4 A. Yep.

5 Q. That was a decision on his part to how he was going to  
6 manage those parcels; is that correct? Would you agree with  
7 that?

8 A. Yep, and then he devalued the land for the future for  
9 all future sales.

10 Q. But that was his management choice. The land itself  
11 did not -- the value of the land itself, in terms of its  
12 ability to produce stuff, didn't change, the ability to get  
13 that money off of it or that product off of it changed because  
14 of the restrictions.

15 A. It depends on how you look at it. He took a one-time  
16 payment, and he devalued the land for the future. It does  
17 affect it because now you can't get quality income off it. You  
18 can't build. Building lots bring a lot lot more, you know, if  
19 there's a place to build, I can get as high as \$10,000 an acre  
20 if it has residential capability to build a house. Crop land  
21 can go from six to \$10,000 an acre if you can plant corn and  
22 beans there. But if you can't, then it devalues the property  
23 when it's these wetland easements and grassland easements and  
24 stuff.

25 Q. It depresses the market for the property.

1 please?

2 A. Gary Hanson.

3 Q. Gary, where do you live?

4 A. Roberts County, Sisseton, South Dakota.

5 Q. How long have you lived here?

6 A. 74 years.

7 Q. Gary, are you a licensed real estate agent?

8 A. Yes.

9 Q. How long have you been?

10 A. Oh, about 13 years.

11 Q. Prior to that, you were a farmer/rancher?

12 A. Yes.

13 Q. And you still are a farmer/rancher?

14 A. Trying not to be.

15 Q. Your son is taking over?

16 A. Yes.

17 Q. As part of your business, Gary, do you sell real  
18 estate in Roberts County, South Dakota?

19 A. Yes.

20 Q. As part of your business, do you value property by  
21 giving broker's opinions?

22 A. Yes.

23 Q. Do you feel that you have a good understanding as far  
24 as the real estate market in Roberts County?

25 A. Yes.

1 Q. Particularly with respect to ag land?

2 A. Yes, ag land.

3 Q. As far as your involvement in the real estate sales  
4 business, do you focus primarily on ag land?

5 A. Yes.

6 Q. Are you familiar with the Roberts County land that is  
7 the subject of this proceeding?

8 A. Yes, I am.

9 Q. Were you asked by Ms. Pallansch to prepare a broker's  
10 opinion for the property that's the subject matter of this  
11 action?

12 A. Yes, I was.

13 Q. At that time did you determine that the actual value  
14 for this type of property would be in the neighborhood of  
15 \$1,000 per acre?

16 A. Yes, I did. 900 to 1,000.

17 Q. Do you still believe that that would be the actual  
18 value for this type of property?

19 A. Yes, I do.

20 Q. What effect does having WRP easements have on the  
21 value of property?

22 A. It devalues it considerably.

23 Q. If this was in Roberts County, South Dakota, if this  
24 was good, quality ag land that didn't have WRP easements on it,  
25 what's average farm land going for in Roberts County, without

1 an easement?

2 A. Without easement in that same position there or  
3 location?

4 Q. Yeah.

5 A. I would say 45 to maybe \$5,000.

6 Q. If it's other parts in the county where the soil is a  
7 little better, drains a little better, would it be higher?

8 A. Yes.

9 Q. Pasture land would be lower?

10 A. Where it's at now?

11 Q. Yes.

12 A. Yes.

13 Q. What's your understanding, Gary, as far as the WRP  
14 easement that's on this property?

15 A. Well, this one here is the most restrictive. You  
16 can't do nothing on there. If you read the easement brochure,  
17 you can't even hay it or put any grain on it or plant anything,  
18 but the NRCS has control over it. And like Thea said earlier,  
19 they can allow you from three to five years, one of those  
20 years, but they can say no, nothing is done, you can't hay it  
21 even.

22 Q. There's no guaranteed income?

23 A. There's no guaranteed income.

24 Q. But if the government allows it, you could hay it  
25 every three years or so?

1 A. Right.

2 Q. Is that --

3 A. If it's possible, there's no water on it.

4 Q. Do you agree with Mr. Valnes that the fact that this  
5 property has a WRP easement on it has devalued the property?

6 A. Yes.

7 Q. If the Pallansch property were listed to be sold,  
8 would you expect it to sell for around \$1,000 an acre?

9 A. Yes.

10 Q. Have you, in your business, listed and sold WRP  
11 property in the past?

12 A. Yes, I think we have, yeah.

13 Q. And you are familiar with comparable sales, what other  
14 WRP property is going for in Roberts County?

15 A. Yes, they are in here.

16 Q. You were in the room today and heard Mr. Valnes  
17 testify; is that correct?

18 A. Yes.

19 Q. Do you agree with the testimony that he provided?

20 A. Yes, I do.

21 MR. NIELSEN: That's all the questions I have for you,  
22 Gary.

23 HEARING EXAMINER WILLIAMSON: Okay.

24 CROSS-EXAMINATION

25 BY MS. NIKOLAS:



1 Q. Mr. Hanson, you are a broker associate in your firm;  
2 is that correct?

3 A. Yes.

4 Q. And the broker in the firm is Mr. Nielsen?

5 A. Yes.

6 Q. How many sales have you been involved with with  
7 permanent easements involving WRP?

8 A. How many sales in my 13 years?

9 Q. Yeah.

10 A. Oh, boy. I'm going to guess about maybe five or six.

11 Q. And when you did your broker's opinion, how many  
12 comparable sales did you use to come up with your \$1,000  
13 valuation?

14 A. We used the two here in this one that are in the  
15 witnesses packet.

16 Q. So your only comparable sale was the Kraft property  
17 that Mr. Valnes sold?

18 A. No, there was another one in there I think by New  
19 Effington.

20 MR. NIELSEN: The Bartz one.

21 A. Bartz one.

22 Q. (BY MS. NIKOLAS) So two sales; is that correct?

23 A. Yes.

24 Q. How far is the Bartz property from the subject  
25 properties in this?

1 A. About 20 miles, something like that.

2 Q. And the Kraft property that Mr. Valnes sold, do you  
3 know how far that is?

4 A. About the same, I think.

5 Q. And do you know how those properties compare in terms  
6 of soil types? Were they comparable to what's the taxpayers  
7 here?

8 A. I don't remember the numbers on the soils, no.

9 Q. Is that something you take into account when you are  
10 doing your appraisal --

11 A. Yes.

12 Q. -- for your opinion? The capacity of the land itself  
13 to produce income off of it doesn't change with or without the  
14 easement; is that correct?

15 A. Right.

16 Q. The land itself is still capable, unless something  
17 happens to the land or somebody alters something, the land  
18 itself is capable of producing.

19 A. Exactly, yep.

20 Q. It's the management decisions of the federal  
21 government with their perpetual easement that messes up how  
22 much actual income comes off of it.

23 A. Right.

24 Q. And so the easement doesn't actually devalue the  
25 property itself but the market for the property.



## COTEAU LAND MANAGEMENT, LLC

PO Box 86  
Sisseton, South Dakota 57262

March 28, 2023

Thea Loy Pallansch  
44799 107<sup>th</sup> St.  
Veblen, SD 57270

**RE: Thea Pallansch (Karie M. Geyer and Jennifer Nelson)**

**Parcel #11782  
Rinas Outlot 1 in the NE1/4 (48.7 A) Section 24-125-51 Goodwill Township**

**Parcel #11781  
Rinas Conservation Easement Tract 1 in the NE1/4 (107.87 A) Section 24-125-51  
Goodwill Township**

Dear Thea:

You have asked me to provide you with a broker's opinion as to the current fair market value of the above described real estate.

Looking at comparable sales to determine the market value of real estate, I believe that a sum \$900 - \$1,000 per acre for comparable WRP acres would be reasonable.

In my opinion, the current fair market value of the above referenced parcel of real estate as of the date of this opinion would be **\$1,000.00** per acre or **\$154,370.00** (\$1,000 x 154.37 acres).

If you have any questions, or if you need anything further, please let me know.

This opinion is based on the limitation set forth below.

Sincerely,

COTEAU LAND COMPANY, LLC.

By:   
Gary Hanson, Broker Associate

GH:pr

App. 063



### LIMITATIONS/DISCLAIMER

The above broker's opinion as to value has been prepared under the following general assumptions and limiting conditions:

1. Information furnished by others is assumed to be true, factually correct, and reliable. No responsibility for its accuracy is assumed by the broker. Should there be any material error in the information provided to the broker, the results of this report are subject to review and revision.
2. Any mortgages, liens and encumbrances have been disregarded unless so specified within this report. The subject property is analyzed as though under responsible ownership and competent management. It is assumed in this analysis that there were no hidden or unapparent conditions of the property, subsoil, or structures, including hazardous waste conditions, which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them. No responsibility is assumed for legal matters existing or pending, nor is opinion rendered as to title, which is assumed to be good.
3. Unless prior arrangements have been made, the broker, by reason of this report, is not required to give further consultation or testimony, or to be in attendance in court with reference to the property that is the subject of this report.
4. Unless otherwise noted, this broker has not given any specific consideration to the contributory or separate value of any mineral and/or timber rights associated with the subject real estate.
5. This broker's opinion was prepared by the broker named herein for the exclusive use of the client named herein. The information and opinions contained in this opinion/appraisal set forth the broker's best judgment in light of the information available at the time of the preparation of this report. Any use of this report by any other person or entity, or any reliance or decisions based on this report are the sole responsibility and at the sole risk of the third party. The broker accepts no responsibility for damages suffered by any third party as a result of reliance on or decisions made or actions taken based on this report.

# **APPRAISAL REPORT OF AGRICULTURAL LAND**

LOCATED IN

**GOODWILL & DRYWOOD LAKE TOWNSHIPS  
ROBERTS COUNTY, SOUTH DAKOTA**

**FOR:  
ESTATE OF FRANKLIN RINAS**

**Date of Value  
September 27, 2017**

**REQUESTED BY:  
DELANEY, NIELSEN, & SANNES P.C.  
ATTN: GORDON NIELSEN  
PO BOX 9  
SISSETON, SD 57262**

**PREPARED BY:  
BRAUN APPRAISALS, INC.  
MICHAEL A. BRAUN  
STATE CERTIFIED GENERAL APPRAISER – 672CG-2018**

**109 ELM STREET  
LANGFORD, SD 57454**

*Phone: 605-493-6528 - Fax: 605-493-6528  
E-mail: [mbraun@braunappraisals.com](mailto:mbraun@braunappraisals.com)*

**LEGAL DESCRIPTIONS**

**Tract 1:**

**SW1/4NW1/4 Exc. H-1, All that part of Lot 4 & SE1/4NW1/4 lying S. & W. of Hwy  
Section 3-125-51**

**Tract 2:**

**S1/2NW1/4, N1/2SW1/4, SE1/4SW1/4, N1/2SE1/4 & SW1/4NE1/4  
Section 21-125-51**

**Tract 3:**

**NW1/4NE1/4, NE1/4NW1/4, E1/2NE1/4 Exc. of Section 23-125-51**

**Tract 4A:**

**NE1/4 of Section 26-125-51**

**Tract 4B:**

**SE1/4 of Section 26-125-51**

**Tract 4C:**

**SW1/4NW1/4 of Section 25-125-51**

**Tract 5:**

**Rinas Outlot 1 in the NE1/4 of Section 24-125-51  
Rinas Conservation Easement Tract 1 in the NE1/4 of Section 24-125-51**

**Tract 6:**

**N1/2SW1/4 of Section 29-125-51**

**Tract 7A:**

**Lots 1, 2 & 3, E1/2NE1/4, SW1/4NE1/4, N1/2SE1/4, NW1/4NE1/4 & SE1/4NW1/4  
Section 30-125-51**

**Tract 7B:**

**Lot 4 of Section 19-125-51**

**GOODWILL TOWNSHIP, ROBERTS COUNTY, SOUTH DAKOTA**

**Tract 8:**

**NE1/4, SW1/4 & N1/2SE1/4 of Section 25-125-52**

**Tract 9:**

**SW1/4NE1/4, NW1/4SE1/4, SE1/4NE1/4, N1/2NE1/4, N1/2NW1/4, NE1/4SE1/4  
Section 36-125-52**

**DRYWOOD LAKE TOWNSHIP, ROBERTS COUNTY, SOUTH DAKOTA**



## BRAUN APPRAISALS, INC.

Michael A. Braun

State Certified General Appraiser

109 ELM STREET

Langford, SD 57454

Phone: (605) 493-6528

Fax: (605) 493-6528

December 6, 2017

Delaney, Nielsen & Sannes, P.C.

Attn: Gordon Nielsen

PO Box 9

Sisseton, SD 57262

RE: APPRAISAL FOR ESTATE OF FRANKLIN A. RINAS AGRICULTURAL LAND LOCATED IN GOODWILL AND DRYWOOD LAKE TOWNSHIPS OF ROBERTS COUNTY, SOUTH DAKOTA

In accordance with your request I have made an appraisal of the property legally described as:

Tract 1:

Southwest Quarter of the Northwest Quarter except H-1 (SW1/4NW1/4 Exc. H-1), All that part of Government Lot Four and the Southeast Quarter of the Northwest Quarter lying South and West of Highway (All that part of Gov't Lot 4 & SE1/4NW1/4 lying S. & W. of Hwy) of Section Three (3), T125N - R51W of Goodwill Township, West of the 5th P.M., Roberts County, South Dakota.

Tract 2:

South Half of the Northwest Quarter (S1/2NW1/4), North Half of the Southwest Quarter (N1/2SW1/4), Southeast Quarter of the Southwest Quarter (SE1/4SW1/4), North Half of the Southeast Quarter (N1/2SE1/4) and the Southwest Quarter of the Northeast Quarter (SW1/4NE1/4) of Section Twenty-one (21), T125N - R51W of Goodwill Township, West of the 5th P.M., Roberts County, South Dakota.

Tract 3:

Northwest Quarter of the Northeast Quarter (NW1/4NE1/4), Northeast Quarter of the Northwest Quarter (NE1/4NW1/4) and the East Half of the Northeast Quarter except (E1/2NE1/4) of Section Twenty-three (23), T125N - R51W of Goodwill Township, West of the 5th P.M., Roberts County, South Dakota.

Tract 4A:

Northeast Quarter (NE1/4) of Section Twenty-six (26) - T125N - R51W of Goodwill Township, West of the 5th P.M., Roberts County, South Dakota.

Tract 4B:

Southeast Quarter (SE1/4) of Section Twenty-six (26) - T125N - R51W of Goodwill Township, West of the 5th P.M., Roberts County, South Dakota.

Tract 4C:

Southwest Quarter of the Northwest Quarter (SW1/4NW1/4) of Section Twenty-five (25) - T125N - R51W of Goodwill Township, West of the 5th P.M., Roberts County, South Dakota.

## Tract 5:

Rinas Outlot One in the Northeast Quarter (Rinas OL 1 in NE1/4) and Rinas Conservation Easement Tract One in the Northeast Quarter (Rinas Conservation Easement Tract 1 in the NE1/4), All in of Section Twenty-four (24), T125N - R51W of Goodwill Township, West of the 5th P.M., Roberts County, South Dakota.

## Tract 6:

North Half of the Southwest Quarter (N1/2SW1/4) of Section Twenty-nine (29), T125N - R51W of Goodwill Township, West of the 5th P.M., Roberts County, South Dakota.

## Tract 7A:

Governments Lots one, Two and Three (Gov't Lots 1, 2 & 3), East Half of the Northeast Quarter (E1/2NE1/4), Southwest Quarter of the Northeast Quarter (SW1/4NE1/4), North Half of the Southeast Quarter (N1/2SE1/4), Northwest Quarter of the Northeast Quarter (NW1/4NE1/4) and the Southeast Quarter of the Northwest Quarter (SE1/4NW1/4) of Section Thirty (30), T125N - R51W of Goodwill Township, West of the 5th P.M., Roberts County, South Dakota.

## Tract 7B:

Government Lot Four (Gov't Lot 4) of Section Nineteen (19) - T125N - R51W of Goodwill Township, West of the 5th P.M., Roberts County, South Dakota.

## Tract 8:

Northeast Quarter (NE1/4), Southwest Quarter (SW1/4) and the North Half of the Southeast Quarter (N1/2SE1/4) of Section Twenty-five (25), T125N - R52W of Drywood Lake Township, West of the 5th P.M., Roberts County, South Dakota.

## Tract 9:

Southwest Quarter of the Northeast Quarter (SW1/4NE1/4), Northwest Quarter of the Southeast Quarter (NW1/4SE1/4), Southeast Quarter of the Northeast Quarter (SE1/4NE1/4), North Half of the Northeast Quarter (N1/2NE1/4), North Half of the Northwest Quarter (N1/2NW1/4) and the Northeast Quarter of the Southeast Quarter (NE1/4SE1/4) of Section Thirty-six (36), T125N - R52W of Drywood Lake Township, West of the 5th P.M., Roberts County, South Dakota.

The appraisal has as its purpose the estimation of a fee simple interest of market value of the above property as of September 27, 2017, date of death of Franklin A. Rinas, as inspected on November 29, 2017. No responsibility has been assumed for matters which are legal in nature: nor has any opinion of title been rendered, and this appraiser assumes marketable title. Liens and encumbrances have been disregarded, and the property appraised as though free of indebtedness.

The property under appraisal consists of:

Tract 1, approximately 86 acres of unimproved agricultural land, of which 62.9 acres are tillable, 12.3 acres are enrolled in the Conservation Reserve Program (CRP) and 10.8 acres are pasture/non-crop.

Tract 2, approximately 320 acres of improved agricultural land, of which 169.5 acres are tillable, 6.6 acres are farm site and 143.9 acres are pasture/non-crop.

Tract 3, approximately 128.6 acres of unimproved agricultural land, of which 89.9 acres are tillable and 38.7 acres are CRP.

Tract 4A, approximately 160 acres of unimproved agricultural land, of which 149 acres are tillable, 4 acres are CRP and 7 acres are pasture/non-crop.

Tract 4B, approximately 160 acres of unimproved agricultural land, of which 134.3 acres are tillable, 15.6 acres are CRP and 10.1 acres are pasture/non-crop.

Tract 4C, approximately 40 acres of unimproved agricultural land, of which 21.4 acres are tillable, 11.9 acres are CRP and 6.7 acres are pasture/non-crop.

Tract 5, approximately 154.3 acres of unimproved agricultural land, of which all 154.3 acres are in the Wetland Reserve Program (WRP).

Tract 6, approximately 80 acres of unimproved agricultural land, of which 77.6 acres are tillable and 2.4 acres are pasture/non-crop.

Tract 7A, approximately 398.5 acres of improved agricultural land, of which 105.2 acres are tillable, 23 acres are farm site, 268.1 acres are pasture/non-crop and the balance is road and waste.

Tract 7B, approximately 39.5 acres of improved agricultural land, of which all 39.5 acres are pasture/non-crop.

Tract 8, approximately 400 acres of unimproved agricultural land, of which all 400 acres are pasture/non-crop.

Tract 9, approximately 320 acres of unimproved agricultural land, of which 319.8 acres are pasture/non-crop and the balance is road and waste.

The property was inspected by Michael A. Braun, State Certified General Appraiser. This letter does not constitute an appraisal. The summary appraisal report is separate and follows this transmittal letter.

As a result of my investigation and analysis, I am of the opinion that the market value of the subject property as of September 27, 2017, date of death of Franklin A. Rinas, as inspected on November 29, 2017, was:

**FINAL VALUE:**

**TRACT 1:**

**TWO HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED DOLLARS**

**TRACT 2:**

**NINE HUNDRED FORTY-FOUR THOUSAND ONE HUNDRED DOLLARS**

**TRACT 3:**

**FIVE HUNDRED FORTY THOUSAND ONE HUNDRED DOLLARS**

**TRACT 4A:**

**SEVEN HUNDRED THOUSAND THREE HUNDRED DOLLARS**

TRACT 4B:

SIX HUNDRED SEVENTEEN THOUSAND SEVEN HUNDRED DOLLARS

TRACT 4C:

ONE HUNDRED TWENTY-NINE THOUSAND FIVE HUNDRED DOLLARS

\$129,500

\$3,237 Per Acre

TRACT 5:

ONE HUNDRED THIRTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS

\$138,500

\$897 Per Acre

TRACT 6:

THREE HUNDRED SIX THOUSAND EIGHT HUNDRED DOLLARS

TRACT 7A:

ONE MILLION TWO HUNDRED THIRTY-SIX THOUSAND FOUR HUNDRED DOLLARS

TRACT 7B:

EIGHTY-FOUR THOUSAND DOLLARS

TRACT 8:

EIGHT HUNDRED THIRTY-SIX THOUSAND NINE HUNDRED DOLLARS  
-----

TRACT 9:

SIX HUNDRED SIXTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS


FINAL VALUE ALL TRACTS:

SIX MILLION FOUR HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED DOLLARS

Market value is defined as the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.

This appraisal report has been prepared in conformance with the Appraisal Institute's Code of Professional Ethics and Standards of Professional Appraisal Practice and the 2016/2017 edition of the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation and meets the requirements for all federally related transactions. Additionally, the appraisal was prepared in conformance with OCC-12 CFR 34, Subpart C; FDIC-12 CFR 323; Title XI of Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). Likewise, this appraisal has been prepared in conformance with the "Interagency Appraisal and Evaluation Guidelines", issued in December, 2010, by the five federal banking authority agencies - the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board, the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervisions, and the National Credit Union Administration (NCUA).

Sincerely,



Michael A. Braun  
State Certified General Appraiser  
SD #672CG-2018  
ND #CG-2701  
MN #40063071

**FINAL VALUE:**

**TRACT 1:**

TWO HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED DOLLARS

**TRACT 2:**

NINE HUNDRED FORTY-FOUR THOUSAND ONE HUNDRED DOLLARS

**TRACT 3:**

FIVE HUNDRED FORTY THOUSAND ONE HUNDRED DOLLARS

**TRACT 4A:**

SEVEN HUNDRED THOUSAND THREE HUNDRED DOLLARS

**TRACT 4B:**

SIX HUNDRED SEVENTEEN THOUSAND SEVEN HUNDRED DOLLARS

**TRACT 4C:**

ONE HUNDRED TWENTY-NINE THOUSAND FIVE HUNDRED DOLLARS

0

**TRACT 5:**

ONE HUNDRED THIRTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS

\$138,500

\$897 Per Acre

**TRACT 6:**

THREE HUNDRED SIX THOUSAND EIGHT HUNDRED DOLLARS

**TRACT 7A:**

ONE MILLION TWO HUNDRED THIRTY-SIX THOUSAND FOUR HUNDRED DOLLARS

TRACT 7B:  
EIGHTY-FOUR THOUSAND DOLLARS

TRACT 8:  
EIGHT HUNDRED THIRTY-SIX THOUSAND NINE HUNDRED DOLLARS

TRACT 9:  
SIX HUNDRED SIXTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS

FINAL VALUE ALL TRACTS:  
SIX MILLION FOUR HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED DOLLARS



THIS DOCUMENT PREPARED BY:  
DELANEY, NIELSEN & SANNES, P.C.  
520 2<sup>nd</sup> Avenue East  
PO Box 9  
Sisseton, South Dakota 57262  
Phone: 605-698-7084  
Fax: 605-698-7178

### AMENDMENT TO PURCHASE AGREEMENT

THIS AGREEMENT made and entered into this 4 day of March, 2019 by and between:

Robert Horton, whose address is 45922 126<sup>th</sup> St., Sisseton, South Dakota and  
G. Todd Garry, whose address is 513 Main St., Webster, South Dakota 57274,  
as Co-Personal Representatives of the Estate of Franklin A. Rinas

("Seller"), and

Thea Pallansch, of 44799 107<sup>th</sup> St., Veblen, South Dakota 57270

("Buyer").

WHEREAS, Thea Pallansch, the designated Buyer and Robert Horton and G. Todd Garry, Co-Personal Representatives of the Estate of Franklin A. Rinas, the designated Seller entered into a Purchase Agreement a copy of which is attached and hereby incorporated herein by reference as Exhibit A,

WHEREAS, said Purchase Agreement covered the real property described as follows, to wit:

154.3 acres +/- described as Rinas Outlot One in the NE1/4 and Rinas Conservation Easement Tract One in the NE1/4, all in Section 24-125-51, Goodwill Township, Roberts County, South Dakota.

WHEREAS, the undersigned Buyer and Seller hereby agree to the following amended/additional terms:

NOW THEREFORE, the undersigned Buyer and Seller hereby agree as follows:

- I. 2. (a) Purchase price of \$20,000.00 due at the date of closing. Date of Closing shall be held on or before the 30<sup>th</sup> day of March, 2019, or within two weeks following the issuance of a title commitment policy or whichever is later. The Buyer is to have possession of the above described real property upon closing.


- III. All other terms set forth in the Purchase Agreement between Thea Pallansch, the designated Buyer and Robert Horton and G. Todd Garry, Co-Personal Representatives of the Estate of Franklin A. Rinas, shall remain the same.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Purchase Agreement.

SELLER:

ESTATE OF FRANKLIN A. RINAS

Robert Horton, personal representative



G. Todd Garry, personal representative

BUYER:



Thea Pallansch

THIS DOCUMENT PREPARED BY:  
DELANEY, NIELSEN & SANNES, P.C.  
520 2<sup>nd</sup> Avenue East  
PO Box 9  
Sisseton, South Dakota 57262  
Phone: 605-698-7084  
Fax: 605-698-7178

### **PURCHASE AGREEMENT**

THIS AGREEMENT made and entered into this \_\_\_\_ day of October, 2018, by and between:

Robert Horton, whose address is 45922 126<sup>th</sup> St., Sisseton, South Dakota and  
G. Todd Garry, whose address is 513 Main St., Webster, South Dakota 57274,  
as Co-Personal Representatives of the Estate of Franklin A. Rinas

("Seller"), and

Thea Pallansch, of 44799 107<sup>th</sup> St., Veblen, South Dakota 57270

("Buyer").

WHEREAS, Seller is the owner in fee of certain real property more specifically described hereinafter, and Buyer desires to purchase such property,

NOW, THEREFORE, in consideration of the covenants, conditions, and promises mutually undertaken to be kept and performed by the parties,

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. **Sale and Description.** If Buyer makes the payments and performs the covenants hereinafter mentioned on his part to be made and performed, then Seller shall convey, or cause to be conveyed, to Buyer, in fee simple, by a good and sufficient Personal Representative's Deed, marketable title to the following described real property:

154.3 acres +/- described as Rinas Outlot One in the NE1/4 and Rinas Conservation Easement Tract One in the NE1/4, all in Section 24-125-51, Goodwill Township, Roberts County, South Dakota.

Subject to easements, restrictions, and reservations of record, if any.

("the Property").

2. Purchase Price and Terms. As payment for the Property, Buyer shall pay to Seller the sum of \$20,000.00, payable as follows:
  - (a) Purchase price of \$20,000.00 due at the date of closing. Date of Closing shall be held on or before the 16<sup>th</sup> day of November, 2018, or within two weeks following the issuance of a title commitment policy or whichever is later. The Buyer is to have possession of the above described real property upon closing.
  - (c) Seller and Buyer agree that the terms of this purchase agreement may be subject to Court approval regarding the administration of the Estate of Franklin A. Rinas. Seller will use best efforts to obtain said Court approval if necessary.
3. Government Programs. Seller transfers any federal farm program crop base acres associated with the Property to Buyer.
4. CRP Contract. If all or any portion of the Property is subject to a Conservation Reserve Program ("CRP") contract, then Seller shall assign the CRP contract payments for all crop years after the date of closing to Buyer, and Buyer shall assume all obligations under such contract. If Buyer violates or terminates such contract, Buyer shall indemnify Seller and Seller's previous tenant, if any, against any liability for repayment of benefits under such contract. Each party shall cooperate with the other to facilitate the assignment of the CRP contract.
  - (a) It is agreed that Seller shall be entitled to the full 2018 CRP payment (payable in September or October of 2018) and all prior payments and that Buyer shall be entitled to the full 2019 CRP payment (payable in September or October of 2019) and all subsequent payments.
5. Condition of Property. Buyer has inspected the Property and accepts the Property in the condition and state of repair existing on the date of this Agreement, that is, in its "AS IS" condition.
6. Title Insurance. Seller shall provide proof of title by furnishing to Buyer an owner's title insurance policy issued in the amount of the purchase price. The policy shall be a standard form policy issued by a title company acceptable to Buyer. A commitment policy shall be issued before closing and a final policy shall be issued immediately after closing, with copies of each provided by Buyer to Seller. The cost of the title insurance shall be paid one-half by Seller and one-half by Buyer. If requested by Buyer, Seller will take all reasonable steps to remove any title defects which appear in the commitment policy.
7. Title Warranties. Seller warrants that Seller is the owner in fee of the Property, and that the Property is free from all encumbrances, except the following:

- (a) Patent reservations.
  - (b) Rights of the public in all roads, highways, and section lines not heretofore vacated.
  - (c) Public utility easements (e.g. telephone, electrical, and water system lines) not materially affecting use of the Property.
  - (d) Vested drainage rights now of record, if any.
  - (e) Farm Lease for the 2018 crop year, with Seller retaining the 2018 rental income.
8. Inspection. It is agreed by and between the parties hereto that the Seller has not and does not make any representations or warranties as to the amount of land embraced within the tract of land hereinbefore described, nor as to any property lines. The Buyer has made an inspection and relies on his own inspection as to the property being herewith sold to the Buyer.
9. Costs. Costs shall be allocated as follows:
- (a) Seller shall pay: the charges of Seller's attorney (if any) for drafting instruments (such as Personal Representative's Deeds) and advising; transfer fee at the rate of \$0.50 for each \$500.00 of value or fraction thereof; costs necessary to clear any title problems; and one-half of the charges for closing this transaction.
  - (b) Buyer shall pay: the charges of Buyer's attorney (if any) for drafting instruments and advising; recording fees; and one-half of the charges for closing this transaction.
10. Real Estate Taxes. It is agreed between the parties that the Seller will pay the year 2018 real estate taxes, due and payable in the year 2019. Buyer agrees to pay all subsequent real estate taxes
11. Possession. Subject only to the existing lease described in paragraph 7 (e) herein, the Buyer is to have possession of the above described real property upon closing.
12. Remedies. Regarding the rights and remedies of each party upon the other's default;
- (a) Seller's. If Buyer fails or refuses to comply with his obligations under this Agreement, then Seller may, at Seller's option, (1) hold and retain the down payment or deposit and any additional funds paid or deposited by buyer as liquidated damages for breach of this Agreement, and rescind and terminate this Agreement, whereupon all rights and obligations hereunder shall cease and determine; or (2) enforce this Agreement by appropriate action, including an action for specific performance or for damages for breach, and retain all monies paid or deposited by Buyer pending the determination of such action. Seller shall give Buyer written notice of election with respect to his exercise of either of these options.

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  - (b) Rights of the public in all roads, highways, and section lines not heretofore vacated.
  - (c) Public utility easements (e.g. telephone, electrical, and water system lines) not materially affecting use of the Property.
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- (b) Buyer's. If Seller fails or refuses to perform his obligations under this Agreement, including the furnishing of good title as herein defined and transfer of possession, then Buyer may, at Buyer's option, (1) rescind the Agreement and recover all depositions and other amounts paid by Buyer hereunder, and all expenses paid or incurred by him; or (2) pursue any remedy available to Buyer, in law or equity, including an action to compel specific performance of this Agreement or one for damages for breach, separately or alternatively.
  - (c) Remedies Not Exclusive. The remedies outline herein shall not be exclusive of any other right of remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, or by statute.
13. Risk of Loss. Until either legal title or possession of the Property passes to Buyer, Seller bears the risk of loss if the Property is destroyed without fault of Buyer or is taken by eminent domain and Seller cannot enforce this Agreement against Buyer and Buyer is entitled to recover any portion of the purchase price that has been paid. When either legal title or possession of the Property has passed to Buyer, buyer bears the risk of loss if the Property is destroyed without fault of Seller or is taken by eminent domain and Buyer is not relieved of the obligation to pay the purchase price or entitled to recover any portion of the purchase price that has been paid.
14. General Provisions. The following general provisions apply to this Agreement:
- (a) Acts of Agent. Any act which either party could do hereunder may also be done by and for such party by a duly constituted agent or attorney-in-fact. Proof of such relationship must be provided to the other party in writing, and the other party need not investigate whether such appointment remains valid. Each party shall be bound by the acts of its agent or attorney-in-fact and ratifies any acts done on such party's behalf by such agent or attorney-in-fact.
  - (b) Amendments. This Agreement may not be amended or modified except by a writing signed by all parties hereto.
  - (c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.
  - (d) Captions and Catchlines. Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the intent of the parties with respect to any provision of this Agreement may be drawn from them.
  - (e) Entire Agreement; Merger; Inducement. This document constitutes the entire agreement between the parties. Course of dealing, course of performance, trade usages, or parol evidence may not be used to modify this Agreement. Neither



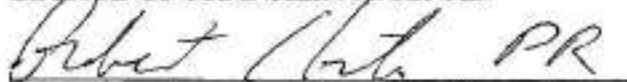
party shall be bound by any terms, conditions, statements, or representations, whether oral or written, not contained herein. All previous negotiations, statements, and preliminary documents by the parties or their representatives are merged in this Agreement. Each party hereby acknowledges that in executing this Agreement he has not been induced, persuaded, or motivated by any promise or representations made by the other party, unless expressly set forth herein.

- (f) Survival of the Agreement. The promises, terms, conditions, representations, warranties and provisions set forth in this Agreement shall survive the Closing and the delivery and recording of the Deed and any other instrument for the transfer of the Property; and if the Deed or any other recorded instruments are or may be construed to be inconsistent with any such provision of this Agreement, then the applicable provision of this Agreement shall control and shall not be deemed to have been merged into such Deed or other recorded instruments, unless otherwise expressly provided in any such instruments.
  - (g) Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of South Dakota.
  - (h) Grammatical Usages. In this Agreement, the word "may" is used to indicate that an action either is authorized or is permitted, the word "shall" is used to indicate that an action is both authorized and required, and the phrase "may not" is used to indicate that an action is both unauthorized and forbidden.
  - (i) Time. Time is of the essence.
15. Legal Representation. Seller is represented by Gordon P. Nielsen of the law firm Delaney, Nielsen & Sannes, P.C., and Buyers are not represented by an attorney. All parties, by signing below, acknowledge that they have had ample opportunity to consult with such advisors, legal or otherwise, as they each deem necessary and appropriate.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

SELLER:

ESTATE OF FRANKLIN A. RINAS



Robert Horton, personal representative

\_\_\_\_\_  
G. Todd Garry, personal representative

party shall be bound by any terms, conditions, statements, or representations, whether oral or written, not contained herein. All previous negotiations, statements, and preliminary documents by the parties or their representatives are merged in this Agreement. Each party hereby acknowledges that in executing this Agreement he has not been induced, persuaded, or motivated by any promise or representations made by the other party, unless expressly set forth herein.

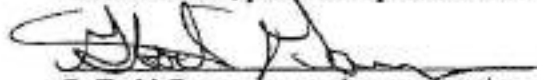
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SELLER:  
ESTATE OF FRANKLIN A. RINAS

Robert Horton, personal representative



G. Todd Garry, personal representative

BUYER:

  
Thea Pallansch

Home > Sold Properties > 80 Acres of Hunting Land in NE SD



## 80 Acres of Hunting Land in NE SD

**\$100,000/SOLD**

107th St, New Effington, SD 57255, USA



**80 acres**  
Lot Size

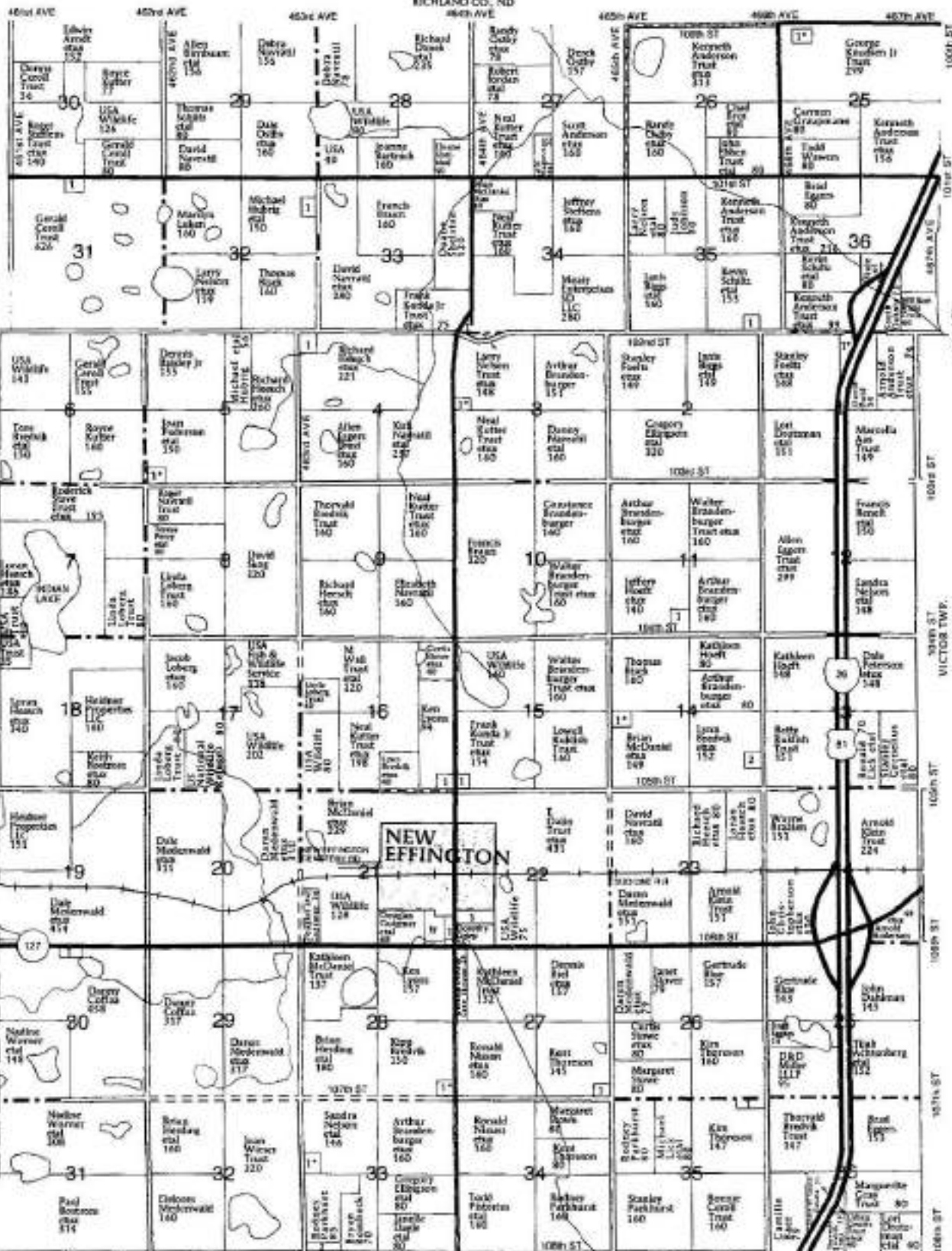
**\$345**  
Property Taxes

DESCRIPTION	ADDRESS	DETAILS
<p><b>Description</b></p> <p>SOLD! 80 Acres of hunting land in North East South Dakota located near New Effington, SD. The land offers thick grassy open areas, wetlands, plus trees, and brush. The property offers deer, pheasant hunting, and some waterfowl hunting on the property. 77.50 acres is enrolled in a conservation easement Wet Land Reserve program, with 2.50 Acres of the property laying along the South edge is not in the easement program and has some potential.</p> <p>From I-29 take Exit 246- go 1.5 miles West, 1 mile South and ¼ mile east to the property.</p> <p>From New Effington SD go East 1 mile on HWY 127 (106th ST) to 465th AVE (Gravel) go South 1 Mile to 107th St (Dirt Road) go ¼ mile east on 107th to the North West corner of the property.</p>		

*\$ 1,250 /acre*

RICHLAND CO., ND

46th AVE



PART TWO

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- SECTION 2  
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1. Otter Tail Power Co 20

## SECTION 14

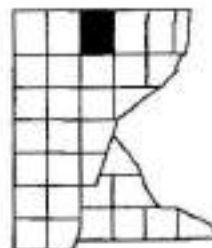
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Identify	Details	Map
Record	14737	
Owner	KENT KRAFT	
Legal	LICK CONSERVATION EASEMENT TRACT 1 IN THE E2NW4 (77.50 A) SEC 35- 128-50 LIEN TOWNSHIP	
Legal Acres	077.50	
Additional Owner		
Property Address		
Section	35	
Township	128N	
Range	50W	
Sec-Twp-Range	35-128N-50W	
Township Name	LIEN	
Date	1/17/2019	
Record Query	14737	
Owner Address	300 S PARK AVE	
Owner City	COLTON	
Owner State	SD	
Owner Zip	57018-	
School District	54-2	
Twp/Block	128	
Quarter	2	
Sixteenth	1	
Split		
Filed Date	02/25/2022	
Instrument	02/28/2022	
Book	106	
Page	832	
Deed Type	WD	
Lot Size		
Year Built	0	
Sale Price	100000	

Roberts  
County MapNet

Quick Search

Identify

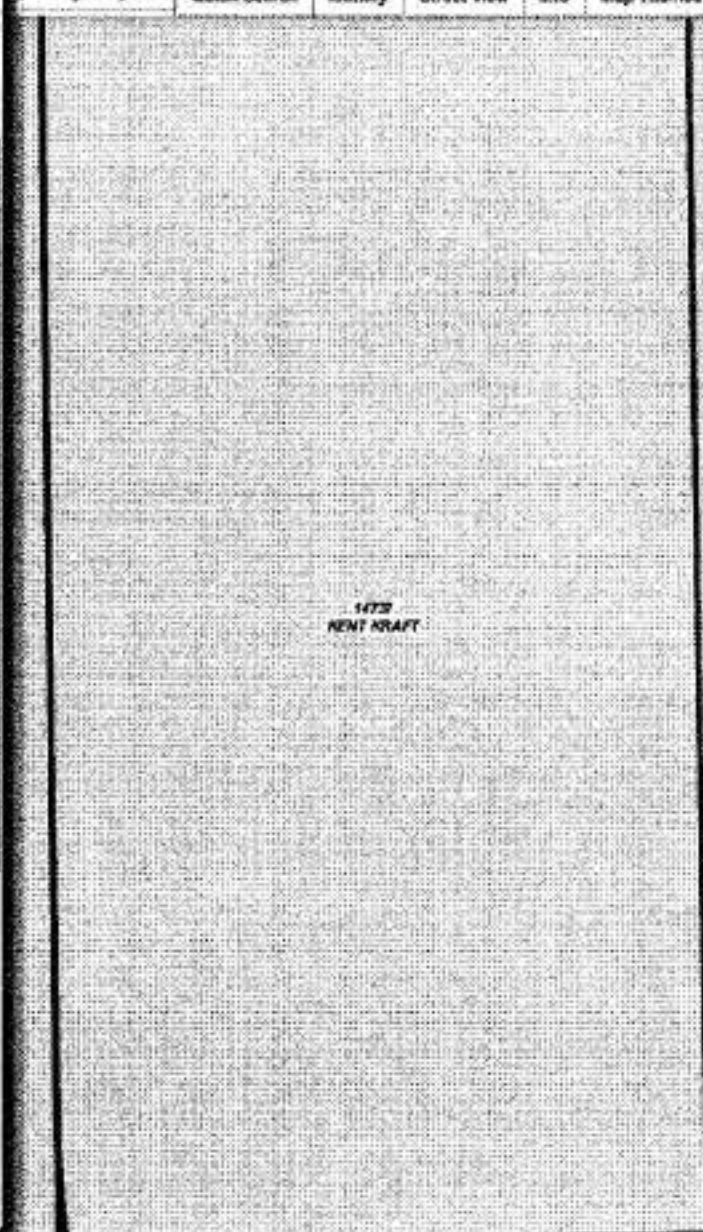
Street View

Info

Map Themes

Print

Sign In



35-128N-50W



IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

Appeal No. 31020

THEA PALLANSCH, KARIE M. GEYER, AND JENNIFER NELSON  
Plaintiffs and Appellants,

v.

ROBERTS COUNTY, SOUTH DAKOTA  
Defendant and Appellee.

---

APPEAL FROM THE CIRCUIT COURT  
FIFTH JUDICIAL CIRCUIT  
ROBERTS COUNTY, SOUTH DAKOTA

---

THE HONORABLE MARSHALL C. LOVRIEN  
Circuit Court Judge

---

BRIEF OF THE APPELLEE

---

ATTORNEYS FOR APPELLANTS:

Gordon P. Nielsen  
Delancy, Nielsen & Sannes, P.C.  
520 2<sup>nd</sup> Avenue East  
PO Box 9  
Sisseton, SD 57262  
(605) 698-7084

ATTORNEYS FOR APPELLEE:

Roberts County State's Attorney  
Dylan D. Kirchmeier  
Tessa M. Dalberg  
414 3<sup>rd</sup> Avenue East  
Sisseton, SD 57262  
(605) 698-7071

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NOTICE OF APPEAL FILED MARCH 10, 2025

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### **PRELIMINARY STATEMENT**

The Plaintiffs/Appellants in this matter, may be referred to as “Taxpayers”. The Defendant/Appellee in this matter, may be referred to as “Roberts County” or “the Director of Equalization”.

Citations to the Settled Record in this matter as laid out in the Clerk’s Index are noted by “SR” followed by the page number.

### **STATEMENT OF JURISDICTION**

The Appellants are seeking review of the Fifth Judicial Circuit court’s Memorandum Opinion and Order dated February 25, 2025, and was filed with the Clerk of Courts on February 25, 2025. (SR, 728). Notice of Entry of said Memorandum Opinion and Order was dated February 26, 2025, and was filed with the Clerk of Courts on February 26, 2025. (SR, 760). Notice of Appeal was given on March 10, 2025, and filed with the Clerk of Courts on March 10, 2025. (SR, 762).

This Court has appellate jurisdiction over this case under SDCL 1-26-37, SDCL 15-26A-3(1), (2) and (4), and SDCL 15-26A-7.

### **STATEMENT OF THE ISSUES**

The Appellants raise two issues upon their appeal of the assessed valuation of their property as completed by the Roberts County Director of Equalization’s Office.

1. Does the assessed valuation of taxpayers’ agricultural land obtained by using the legislatively mandated agricultural income productivity method exceed the

property's "actual value" in violation of Article XI, Section 2 of the South Dakota Constitution?

The circuit court found that the evidence presented by the Taxpayers was insufficient to show "the assessed valuation was in excess of true and full value."

Most Relevant Authorities

Article XI, Section 2 of the South Dakota Constitution

*Apland v. Butte County*, 2006 SD 53, 716 N.W.2d 787

*Telkamp v. SD State Board of Equalization*, 515 N.W. 2d 689 (SD 1994)

SDCL 10-6-110

SDCL 10-6-104

SDCL 10-6-127

2. Does the South Dakota Constitution require a certified real estate appraisal as the only manner in which to determine real property's actual value for tax purposes?

The circuit court found that the Taxpayers were required to present evidence, "in the form of an appraisal," to overcome the presumption of correctness and to establish that the properties were assessed at a higher value than their "actual value."

Most Relevant Authorities

Article XI, Section 2 of the South Dakota Constitution

*Burke v. Butte County*, 2002 SD 17, 640 N.W.2d 473

*Richter Enterprises, Inc. v. Sully County*, 1997 SD 61, 563 N.W.2d 841

SDCL 36-21A-12.2

SDCL 36-21B-2

### **STATEMENT OF THE CASE**

This is an appeal by Thea Pallansch, Karie M. Geyer, and Jennifer Nelson (Hereinafter Taxpayers), from the decision of the Circuit Court regarding the assessed value of certain pieces of their property situated in Roberts County, South Dakota, said assessment which was done by the Roberts County Director of Equalization's office in 2022. (SR, 748). The matter was remanded by the Circuit Court to the Office of Hearing Examiners following an earlier appeal by Taxpayers of this assessment. (SR, 749).

Due to the death of the original Hearing Examiner following remand, a new hearing was conducted on September 10, 2024 by Hearing Examiner Catherine Williamson. (SR, 630). Williamson issued her decision affirming the valuation action by the Roberts County Equalization Office on September 23, 2024. (SR, 630). The Appellants then filed a notice to appeal that decision to the Circuit Court on September 24, 2024. (SR, 744). The Circuit Court through the Honorable Marshall C. Lovrien entered its Memorandum Opinion and Order on February 25, 2025 which affirmed the Hearing Examiner's decision. (SR, 728). This appeal follows.

### **STATEMENT OF FACTS**

Taxpayers are the owners of certain parcels of agricultural property situated in Roberts County, South Dakota described as:

Parcel 11781 – Rinas Conservation Easement, Tract 1, in the Northeast Quarter (NE ¼) Of Section Twenty-Four (24), Township One Hundred Twenty-Five (125) North, Range Fifty-one (51) West of the Fifth Principal Meridian, Goodwill Township, Roberts County, South Dakota, containing 107.87 acres,

And

Parcel 11782 – Rinas Outlot 1 in the Northeast Quarter (NE ¼) of Section Twenty-Four (24), Township One Hundred Twenty-Five (125) North, Range

Fifty-one (51) West of the Fifth Principal Meridian, Goodwill Township, Roberts County, South Dakota, consisting of 48.7 acres.

These lands have been classified as agricultural lands pursuant to SDCL 10-6-110 and SDCL 10-6-112. Neither party disputes the classification of the property as agricultural land.

Taxpayer Pallansch purchased the properties from the estate of her late uncle, Franklin Rinas, in 2019, for \$20,000.00 or \$127.74 per acre and the property was titled in the names of all of the Taxpayers/Appellants. (SR, 333 ¶9-23). The property had been offered for several months on the open market prior to the purchase by Taxpayers. (SR, 334 ¶14). The Estate had had the property appraised in the course of the administration of the estate and was valued by the appraiser at \$897.00 per acre. (SR, 682 ¶8-13).

During the course of his ownership of the subject property, Taxpayer's predecessor-in-interest Franklin Rinas placed the property in a federal Wetlands Reserve Program, receiving approximately \$276,000.00 in exchange for a perpetual easement on the properties. (SR, 582-617). The easement restricts the usage of the land, including prohibitions on building any structure or harvesting any crops, except that hay is allowed to be cut every three to five years when authorized by the federal government. (SR, 582-617). Hunting on the properties is allowed but no permanent tree stands, or similar facilities are allowed. (SR, 631). Taxpayers had notice of the existence of this easement when they acquired the property from Rinas' estate in 2019. (SR, 686 ¶7-11).

In 2008, the South Dakota Legislature enacted a productivity model for valuing agricultural land. This productivity model was first implemented in 2010. The productivity model does not rely on comparable sales as the basis of the valuation of agricultural land. The productivity model uses an 8-year Olympic average of income for



each county for croplands and non-croplands. (SR, 658 ¶2-9). The South Dakota Department of Revenue gathers information to calculate the top dollar for crop and non-crop lands. This information is provided to county equalization offices as a starting point for valuations. (SR, 658 ¶2-9).

The county equalization offices use the top dollar value with the soil rating for each parcel and multiplies this by the number of acres of that soil type in each parcel to arrive at the assessed valuation of the property. In Roberts County, in 2023, these computations were done using a computer program into which the information concerning top-dollar value and soil types was uploaded. (SR, 659 ¶15-23).

Prior to 2023, Roberts County did not follow the agricultural productivity model for lands that were subject to a WRP perpetual easement. Instead, those land values were set at \$450.00 per acre. (SR, 654 ¶21 – 655 ¶7).

In 2017, the Fifth Judicial Circuit Court, Day County, South Dakota, issued a decision in the case of *Tvinnereim v. Day County* (18 Civ.15-45) which upheld an OHE decision which determined that enrollment of property in a federal easement program is a management decision that does not affect the capacity of the agricultural land to produce income and thus does not affect the value of agricultural land. (SR, 656 ¶17 – 657 ¶7).

Following the *Tvinnereim* decision, Roberts County started reassessing agricultural lands in accordance with the agricultural productivity model as set forth in SDCL 10-6-127 through 10-6-132. (SR, 656 ¶17 – 657 ¶23). As a result, the subject properties' assessed values as of November 1, 2022 were set at \$243,306 or about \$2,255 per acre for the land in Parcel 11781, and \$81,761 or about \$1,678 per acre for the land in Parcel 11782. (SR, 683 ¶12-18).

Appellants presented testimony from two local real estate brokers, Tony Valnes and Gary Hanson, both of whom focused on valuation of the property under the market approach to valuation. Tony Valnes indicated that easements vary in the nature and number of restrictions, and that the restrictions on the subject properties are among the most stringent. (SR, 699 ¶11- 700 ¶ 17). He indicated that such properties are difficult to sell in the open market. (SR, 695 ¶ 23-25 – 696 ¶ 1-9). Gary Hanson also indicated that a WRP easement reduces the amount of money a prospective buyer might be willing to offer for such property. (SR, 704 ¶ 20-22). Both real estate brokers indicated that lands subject to WRP easements have market values of \$800.00 to \$1,000.00 per acre. (SR, 697 ¶21-24).

Hanson also opined that average crop land in the area sells for \$4,000.00 to \$5,000.00 per acre without a WRP easement, while the same land with the easement will sell for about \$800-\$1,000.00 per acre. (SR, 704, ¶13 – 705, ¶5). Information was presented at the hearing of one relatively recent sale of land in Roberts County with a WRP easement on it for about \$1,000.00 per acre. (SR, 663 ¶8-13). Neither real estate broker addressed the value of agricultural land using the productivity model now used to calculate value for assessment and taxation purposes.

### **STANDARD OF REVIEW**

An appeal from a decision made by an administrative agency hearing examiner is reviewed using the standard as set forth in SDCL 1-26-36. The Supreme Court has found that “[t]his standard of review requires us to accord great weight to the findings and inferences made by the hearing examiner on factual questions. ‘When the issue is a question of fact, we ascertain whether the administrative agency was clearly erroneous.’”

*Smith v. Tripp County*, 2009 SD 26, 765 N.W. 2d 242, 246 (citing, *Butte County v. Vallery*, 602 N.W.2d 284, 287). However, “[w]hen the issue is a question of law, the decisions of the administrative agency and the circuit court are fully reviewable.” *Id.*

## **ARGUMENT**

### **A. DOES THE ASSESSED VALUATION OF TAXPAYERS’ AGRICULTURAL LAND OBTAINED BY USING THE LEGISLATIVELY MANDATED AGRICULTURAL INCOME PRODUCTIVITY METHOD EXCEED THE PROPERTY’S “ACTUAL VALUE” IN VIOLATION OF ARTICLE XI, SECTION 2 OF THE SOUTH DAKOTA CONSTITUTION?**

The South Dakota Constitution in Article XI, Section 2, authorizes the Legislature to divide all property into classes and to determine what classes will be subject to taxation and what property will be exempt from taxation. This is to be done to see that the burden of taxation is equitable on all property and that no property which is made subject to taxation shall escape. Gross earnings and net incomes may be considered in taxing any and all property, and the valuation of property for taxation purposes shall never exceed the actual value thereof. However, in setting forth that limitation on valuation, the Constitution does not direct how the value of the property is to be ascertained. This section of the Constitution is not self-executing and action by the Legislature is and was needed to set out the methods of assessing property for taxation purposes, keeping in mind that taxation on property be equitable.

In carrying out its responsibilities under Article XI, Section 2, the Legislature has classified property as agricultural, non-agricultural, and owner-occupied residential property. SDCL 10-6-110. It sets out criteria for determining when lands can be classified

as agricultural lands. SDCL 10-6-112. The Legislature then gave direction concerning the basis for determining value for taxation purposes, found in SDCL 10-6-119.

SDCL 10-6-119 indicates that the fair market value of property is to be determined by applying the market approach, cost approach, and income approach to appraisal of property. These approaches are to be used to determine the fair market value of the property.

Until 2009, Directors of Equalization used these methodologies to determine the fair market value of property. In 2009, however, the Legislature determined that fair market value of agricultural land was to be based on its agricultural income value on a per acre basis. Notwithstanding the use of the three approaches to appraising property set out in SDCL 10-6-119, SDCL 10-6-127 directs that the agricultural income value of agricultural property shall be determined on the basis of productivity and annual earnings capacity of agricultural land. A methodology was spelled out in SDCL 10-6-127 through 10-6-132, which uses eight-year averages of cropland and non-cropland incomes on a statewide basis. Soil types are also used in the agricultural productivity model used to determine the value of agricultural lands. Directors of Equalization are authorized to make adjustments for certain factors, including location, size, soil survey statistics, terrain, topographical conditions, climate, accessibility, or surface obstructions in making their determination of the value of each tract of agricultural land. SDCL 10-6-131. The Director of Equalization has not been granted authority to make adjustments due to the impact of restrictions on the use of agricultural lands due to easements, such as the perpetual wetlands easement in this case.

The Legislature has determined that the agricultural income value for agricultural land as determined by the use of the methodology set forth in SDCL 10-6-127 through 10-6-132 represents the fair market value of agricultural land for purposes of assessment, equalization, and taxation. SDCL 10-6-133. It is the capacity of the land to produce income, not the actual income produced from a tract of land, which is the basis of valuation of agricultural land in South Dakota for purposes of taxation, assessment, and equalization. Since 2009, use of the market approach, as proposed by the Taxpayers in this case, referencing comparable sales, is no longer the method by which agricultural lands are valued for taxation purposes. As to other types of property, SDCL 10-6-104 indicates that the term "fair market value" and the term "full and true value" mean

the price in money that property will bring in a competitive and open market under all conditions requisite to a fair sale between a willing buyer and a willing seller, each acting prudently and with full knowledge of the relevant facts and assuming that the price is not affected by any undue stimulus.

SDCL 10-6-104. Thus, as to non-agricultural property and owner-occupied residences, the fair market value is to be determined as the market value. As to agricultural lands, the Legislature has determined that fair market value is based on the capacity of the land to produce income.

Taxpayers do not dispute that the calculations done by the Roberts County Director of Equalization's office represent an accurate valuation using the agricultural productivity model required by SDCL 10-6-127 through 10-6-132. (SR, 685 ¶7-11) The objection is that the value established by the use of the mandated model exceeds what the sales price of the land would be if use of comparable sales was the basis of the assessment. (SR, 685 ¶12-19).

Taxpayers testified that there had not been any changes in the character of the land itself following their purchase of the properties. (SR, 686 ¶24 – 687 ¶3). The capacity of the land to produce agricultural income has not changed since the time it was owned by Mr. Rinas.

The decision of Mr. Rinas to enroll these parcels of land resulting in a perpetual easement in favor of the United States government is what limits the actual income receivable by Taxpayers. This was a management decision by Mr. Rinas for which he received over \$275,000.00 in compensation, which affected not only his income from these parcels, but also created the restrictions on the use of these parcels and the income actually generated by the parcels. The land itself still has the capacity to produce income. It is that capacity that forms the basis of the valuation in this matter. As the South Dakota Supreme Court has indicated in *Apland v. Butte County*, 2006 SD 53, 716N.W.2d 787, “Farm management decisions cannot change the earth’s value for taxation purposes.” 2006 SD 53, ¶22, 716N.W. 2d, 787, 793. See also, *Smith*, 2009 SD 26, 765 N.W. 2d 242 (“The farming practices of the individual landowners are not to be considered when assessing the land’s value. Farm management decisions cannot change the earth’s value for taxation purposes.”) at ¶ 19, citing *Butte County*, 1999 SD 142 ¶16, 602N.W. 2d at 289.

Taxpayers have presented no evidence that “actual value” as set out in the Constitution means the market value as determined by comparable sales. Their argument assumes that actual value means market value as determined by comparable sales. The Legislature was empowered by Article XI, Section 2, to divide all property into classes for taxation purposes. The Legislature has done so. The Constitution permits special



treatment for agricultural lands. Where the Constitution permits different classes and different rates, different levels and methods of assessment are reasonable and logical. *Telkamp v. SD State Board of Equalization*, 515 N.W. 2d 689, 692 (SD 1994). The true and full value or fair market value as defined by the Legislature in SDCL 10-4-133 is the value reached by the County. To reach their concept of “actual value” Taxpayers use a different methodology to measure value than that which the Legislature enacted for the specific purpose of departing from a market-based approach method of valuation for agricultural lands. *Trask v. Meade County Commission*, 2020 SD 25, ¶ 42. Nothing that Taxpayers presented used the agricultural income capacity model to show what “actual value” is. The burden is on Taxpayers to show that County’s assessment used an erroneous method or reached an erroneous result in its computations of assessed values. Taxpayers have failed to do so.

Taxpayers’ parcels of agricultural land are assessed like all other agricultural lands in Roberts County, including those that are subject to WRP easements. (SR, 656-657). There is no discrimination against them because there is a WRP perpetual easement on these parcels. The assessments properly consider the constitutional concern that taxation be equitable, and that taxation be uniform for all property within each class.

**B. WHETHER THE SOUTH DAKOTA CONSTITUTION SPECIFICALLY REQUIRES A CERTIFIED REAL ESTATE APPRAISAL AS THE ONLY MANNER IN WHICH TO DETERMINE REAL PROPERTY’S ACTUAL VALUE FOR TAX PURPOSES?**

The South Dakota Constitution and South Dakota law require that a certified real estate appraisal is the only manner in which to determine the real property’s actual value for tax purposes. In *Burke v. Butte County*, which is a case involving the valuation of



agricultural land, the South Dakota Supreme Court found that “[i]n the very least, Burke was required to submit an alternate appraisal establishing that [the Director’s] assessment was in question.” *Burke v. Butte County*, 2002 SD 17, ¶ 22. It has also been found that “[w]ithout an appraisal showing [the Director’s] assessment was erroneous, [taxpayers have] not overcome the presumption of correctness.” *Richter Enterprises, Inc. v. Sully County*, 1997 SD 61, ¶ 14 (citing, *Lincoln Twp. v. South Dakota Bd. Of Equalization*, 1996 SD 13, ¶ 26). The Appellants in this case have not presented a new appraisal to support their claims that the real property’s value was not assessed properly.

The Appellants in this case have instead relied on broker opinions to support their claims that the Roberts County Director of Equalization’s taxation valuation of the land exceeded the “actual value” of the land. However, a broker opinion is different from the appraisal that is required for determining the “actual value” of the real property. South Dakota statutes define an appraisal as the “act or process of developing an opinion of value of real estate for another and for compensation.” SDCL 36-21B-2. Alternatively, South Dakota statutes define a broker opinion as “an estimate prepared by a licensed broker or sales person that details the probable selling price or leasing price of a particular parcel of or interest in real property...but does not include an automated valuation model. A broker price opinion or a comparative market analysis is not an appraisal.” SDCL 36-21A-12.2. The further definition of a broker opinion suggests that South Dakota law considers a broker opinion and an appraisal to be different things.

The Appellants argue that the Supreme Court in *Pirmantgen v. Roberts Cty.* permitted the use of a broker’s opinion to determine the valuation of land for taxation

purposes, however, the Supreme Court does not explicitly state in that opinion that a broker's opinion is the same as a certified real estate appraisal. *Pirmantgen*, 2021 SD 5.

However, even if the Court were to find that *Pirmantgen* permitted the usage of a broker's opinion to determine the valuation of land for taxation purposes, *Pirmantgen* is distinguishable from the present case. The court in *Pirmantgen* was dealing with the taxation valuation of residential property, whereas the present case is dealing with the taxation valuation of agricultural property. *Id.* The South Dakota Legislature has, since 2009, determined that the market approach proposed by the Taxpayers in this case is no longer the method by which agricultural lands are valued for taxation purposes. However other types of property have their "full and true value" determined as "the price in money that property will bring in a competitive and open market under all conditions requisite to a fair sale between a willing buyer and a willing seller." SDCL 10-6-104. In comparison the Legislature has determined that agricultural land's fair market value is to be based on the capacity of the land to produce income.

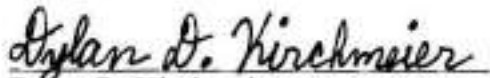
Thus while it may have been proper for the testimony in *Pirmantgen* of "Tony Valnes, a real estate broker for northeastern South Dakota...[who] indicated that he had identified comparable sales and personally inspected the six properties to arrive at his stated valuations" to show that the taxation valuation of the property was incorrect, it would not be proper here. *Pirmantgen*, 2021 SD 5, ¶ 9. The South Dakota Legislature determined that agricultural land and the other types of land, such as the residential property in *Pirmantgen*, need to have different valuation methods. The different types of valuation methods would then require different types of evidence to be necessary to show that the taxation valuation was excessive. Taxpayers here only presented a broker's

opinion and did not present an appraisal, other than an appraisal that had been completed five years prior to the valuation that is before the Court in the present case.

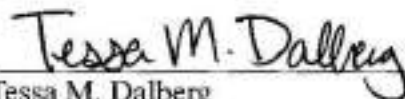
### **CONCLUSION**

The Director of Equalization properly reached the assessed value of these parcels based on their capacity to produce agricultural income as mandated by the Legislature. The WRP easement and its restrictions on actual income from the parcels are the result of a management decision made by Taxpayers' predecessor-in-interest. The land's capacity to produce income has not changed. The circuit court's Memorandum Opinion and order should be affirmed, and the properties' assessed values should remain as previously assessed by the Director of Equalization.

Dated this 30<sup>th</sup> day of May, 2025.



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**CERTIFICATE OF COMPLIANCE**

Tessa M. Dalberg, one of the attorneys for the Appellee, hereby certifies that the foregoing brief meets the requirements for proportionally spaced typeface in accordance with SDCL 15-26A-66(b). The Appellee's brief does not exceed thirty-two pages. The body of Appellee's brief was typed in Times New Roman with a twelve-point typeface. Finally, Appellee's brief contains 3,745 words and 19,767 characters, according to the word and character counting system in Microsoft Office Word.

  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

The undersigned attorney for Appellee Roberts County hereby certifies that on the 30<sup>th</sup> day of May, 2025, a true and correct copy of the foregoing Appellee's Brief was served by electronic transmission by the Clerk's Office or mailed first class mail, postage prepaid, emailed, hand delivered or faxed this date to the parties listed below:

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

Appeal No. 31020

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THEA PALLANSCH, KARIE M. GEYER, JENNIFER NELSON,  
Plaintiff and Appellant,

v.

ROBERTS COUNTY, SOUTH DAKOTA,  
Defendant and Appellee.

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APPEAL FROM THE CIRCUIT COURT  
FIFTH JUDICIAL CIRCUIT  
ROBERTS COUNTY, SOUTH DAKOTA

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THE HONORABLE MARSHALL C. LOVRIEN  
Circuit Court Judge

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REPLY BRIEF OF THE APPELLANTS

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NOTICE OF APPEAL FILED MARCH 10, 2025

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## **PRELIMINARY STATEMENT**

Citations to the settled record as reflected by the Clerk's Index are designated with "SR" followed by the page number. Citations to the Appendix are designated "App." followed by the page number.

References to Plaintiffs/Appellants in this matter, may be collectively referred to as "Pallansch". The Defendant/Appellee in this matter, may be referred to as "Roberts County" or the "County". Any Transcript referred to herein will be designated with the settled record "SR" page number followed by the line number.

## **ARGUMENT**

### **I. Whether the subject property was assessed higher than its actual value in violation of the South Dakota Constitution, particularly Article XI, Section 2.**

Article XI, Section 2 of the South Dakota Constitution imposes a clear and unambiguous limitation on the taxation of real property: "The valuation of property for taxation purposes shall never exceed the actual value thereof." S.D. Const. art. XI, § 2. This constitutional mandate is controlling and operates independently of the Legislature's authority to classify property for tax purposes. While the County may categorize property as agricultural, that classification does not permit it to assess property at a value that exceeds its actual, market-based worth. The controlling inquiry remains the actual value of the specific parcel, not its hypothetical value if unencumbered.

The South Dakota Legislature has defined "fair market value" and "full and true value" to mean "the price in money that property will bring in a competitive and open

market under all conditions requisite to a fair sale between a willing buyer and a willing seller, each acting prudently and with full knowledge of the relevant facts, and assuming the price is not affected by any undue stimulus.” SDCL 10-6-104. Under this standard, any proper valuation must necessarily take into account the WRP easement, because a willing buyer and seller, both acting prudently and with full knowledge, would consider the permanent legal restrictions imposed on the property’s use when negotiating a purchase price. A valuation that disregards the WRP easement assigns value based on a hypothetical unencumbered condition that does not exist, and fails to reflect the price the property would actually bring in the open market as required by South Dakota law.

The County argues that because the Constitution does not specify how value must be determined, the Legislature’s chosen methodology controls. (Appellee’s Brief, p. 7). This argument misstates the constitutional framework. While Article XI, Section 2 of our state constitution permits the Legislature to adopt assessment methods, it imposes a substantive limitation that no assessment may exceed actual value, regardless of the method employed. The statutory methodology authorized by the Legislature is therefore subordinate to, and constrained by, this constitutional ceiling. Even if the property is properly classified as agricultural, its assessed valuation must still reflect its actual value in the marketplace as encumbered by the WRP easement. Because the County’s assessment exceeds that actual value, it violates both Article XI, Section 2 of the South Dakota Constitution and the statutory definition of fair market value under SDCL 10-6-104.

Furthermore, the County relies on SDCL 10-6-131 to argue that Directors of Equalization are limited to making adjustments for certain enumerated factors such as location, size, soil survey statistics, terrain, topography, climate, accessibility, and surface obstructions when valuing agricultural land. (Appellee's Brief, p. 8). However, this reliance ignores the overriding constitutional limitation that "[t]he valuation of property for taxation purposes shall never exceed the actual value thereof." S.D. Const. art. XI, § 2. While SDCL 10-6-131 identifies factors that may typically affect agricultural land valuation, it does not—and cannot—displace the constitutional requirement that any assessment must not exceed the property's true actual value, particularly where, as here, a WRP easement imposes permanent legal restrictions that directly affect the land's use, productivity, and market value.

In support of Appellants' contention that the County's assessment exceeds the true and actual value of the subject property, Appellants have submitted multiple pieces of valuation evidence demonstrating the property's fair market value as encumbered by the WRP easement. Specifically, a Broker's Opinion of Value completed on or about March 28, 2023, concluded that the fair market value of the subject property was \$1,000 per acre. (SR 570, App. 63). In addition, an earlier appraisal conducted by Braun Appraisals, Inc. on or about September 27, 2017, estimated the value at \$897 per acre. (SR 578, App. 71). Both valuations reflect the actual price that a willing buyer and seller, acting prudently and with full knowledge of the property's legal restrictions, would agree to in an open market transaction.

Further, local real estate brokers Gary Hanson and Tony Valnes provided testimony explaining the appropriate method for calculating the market value of the subject property and describing the substantial impact the WRP easement has on the property's marketability and economic utility. Their expert testimony confirms that the permanent restrictions imposed by the easement severely limit the property's productive capacity and significantly reduce its market value when compared to unencumbered agricultural land. This valuation evidence, based on actual market conditions and supported by qualified professionals familiar with local land sales, directly demonstrates that the County's assessed value is excessive, fails to reflect the property's actual fair market value, and violates both Article XI, Section 2 of the South Dakota Constitution and SDCL 10-6-104. It should also be noted that the Appellants' evidence as to the actual value of the subject property was uncontradicted by the County.

The County argues that "[i]t is the capacity of the land to produce income, not the actual income produced from a tract of land[.]" (Appellee's Brief, p. 9). However, this argument mischaracterizes the issue. The County assumes that the subject property retains full productive capacity and is simply underutilized by the landowner. That is not the case here. In this case, the WRP easement imposes permanent legal restrictions that limit farming, grazing, or other forms of agricultural production on the property. As a result, the property's capacity to produce income is not merely diminished by the current owners' choice or circumstance—it is legally eliminated or substantially restricted.

By disregarding these legal limitations, the County improperly values the property as though it retains productive capacity it does not possess. In doing so, the County conflates hypothetical productive potential with actual, lawful use. This is akin to taxing an individual based on the income they might earn if employed in a higher-paying occupation, rather than on their actual earnings. The Constitution does not permit property to be assessed based on speculative or unattainable income; it requires that valuations reflect the property's true market value, taking into account all legal restrictions that affect its permitted use. It should also be noted that the County's characterization of this matter as merely a business decision is misplaced. The Appellants purchased land that was already encumbered by a WRP easement, and neither they nor any future purchasers have the ability to alter or remove that legal restriction. The easement is permanent and binding, irrespective of ownership, and must be considered in any assessment of the property's actual value.

Furthermore, the County's contention that the market approach and comparable sales are no longer relevant for assessing agricultural land is inaccurate. While the Legislature has authorized alternative valuation methods for agricultural property, those statutory methods cannot override the constitutional requirement that property be assessed at no more than its actual value. The determination of fair market value remains essential to ensure compliance with Article XI, Section 2 of the South Dakota Constitution. As recognized in Cummings v. Mickelson, "[t]he Constitution is the mother law. It is not the baby. Statutes must conform to the Constitution, and not vice versa." 495 N.W.2d 493, 507 (S.D. 1993) (Henderson, J., concurring in part and

dissenting in part). Consistent with the reasoning in Brookings Associates v. South Dakota, the County's assessment of the subject property was not conducted with the Constitution in mind, but rather as a calculation solely for tax purposes. 482 N.W.2d 873, 876 (S.D. 1992). As the Court explained, such an approach is impermissible. Thus, regardless of the assessment method employed, the County remains obligated to ensure that any valuation does not exceed the property's true market value, accounting for all legal restrictions, including the WRP easement.

The assessed value placed on Pallansch's property by the Director of Equalization does not reflect "the actual value thereof" as required by the South Dakota Constitution. No buyer would purchase this land for \$2,000 per acre because the land is not guaranteed to produce any income. (SR 697:9-14, App. 52). Moreover, the fact that certain valuation models generate higher assessed values does not insulate the County from constitutional review. The Director's reliance on uniform appraisal techniques as required by statutory law cannot substitute for an individualized consideration of the unique legal restrictions burdening this property. It bears repeating here that "statutes must conform to the South Dakota Constitution, not vice versa." State v. Wilson, 618 N.W.2d 513, 519 (S.D. 2000). While mass appraisal may serve as a starting point for assessment, it cannot justify valuations that plainly depart from market realities. The Constitution demands that assessments reflect the true value of the specific parcel under its actual conditions — not the theoretical productivity of similarly classified land.



For the Court's consideration, the Nebraska Administrative Code provides a well-reasoned framework that this Court should consider when addressing the valuation of property encumbered by Wetlands Reserve Program (WRP) easements. Under Nebraska law, land burdened by a WRP easement that prohibits or substantially restricts agricultural or horticultural uses cannot be classified as agricultural land and must instead be valued at its actual value. Neb. Admin. Code Title 350, Ch. 10, § 002.15B(2). Nebraska further defines "actual value" as the most probable price that a property would bring in an open-market, arm's-length transaction between a willing buyer and seller, both fully informed of the property's permitted uses and legal restrictions. Neb. Admin. Code Title 350, Ch. 10, § 002.01. This approach correctly recognizes that permanent legal restrictions, such as WRP easements, directly limit both the property's productive capacity and its marketability, and therefore must be reflected in any fair valuation. The same principles apply with equal force under South Dakota's constitutional and statutory framework. Just as Nebraska has expressly prohibited taxing WRP-encumbered land as though it was still capable of full agricultural use, this Court should likewise hold that property encumbered by a WRP easement cannot be assessed based on hypothetical productive capacity it no longer possesses. Instead, the assessment must reflect the property's true actual value, consistent with the plain language of Article XI, Section 2 of the South Dakota Constitution.

**II. Whether the South Dakota Constitution specifically requires a certified real estate appraisal as the only manner in which to determine real property's actual value for tax purposes?**

Contrary to the County's contentions, the South Dakota Constitution does not require a certified real estate appraisal as the exclusive means of determining the actual value of real property for tax purposes; rather, it mandates that any assessment, regardless of the valuation method used, must not exceed the property's true actual value. S.D. Const. art. XI, § 2. The County would like the Court to believe that the constitution reads "The valuation of *agricultural* property for taxation purposes shall never exceed the actual value thereof, *as determined by a certified real estate appraisal.*" It does not. While a certified appraisal may serve as persuasive evidence of actual value, it is not the only form of evidence that can establish whether an assessment exceeds actual value. The County's attempt to insert an appraisal requirement into the Constitution adds language that simply does not exist, and would improperly shield unconstitutional assessments from review whenever no certified appraisal is presented.

Furthermore, the Court has held that "[w]here the language used in a statute is plain, the court cannot read words into it that are not found therein either expressly or by fair implication, even to save its constitutionality, because this would be legislation, and not construction." Mathews v. Linn, 78 S.D. 203, 206-07, 99 N.W.2d 885, 887-88 (1959) (citing 11 Am. Jur., Constitutional Law, § 99, p. 733). The absence of any appraisal requirement in the constitutional text confirms that any reliable evidence of value, whether derived from appraisals, broker opinions, market data, or expert testimony, may properly be considered when determining whether an assessment exceeds the property's actual value.

Moreover, the Court in Pirmantgen expressly recognized that a broker's opinion may serve as competent evidence of a property's actual value. Pirmantgen, 2021 S.D. 5, ¶ 29, 954 N.W.2d 716, 726-27. In that case, the property owner presented testimony from a local real estate broker who applied the comparable sales method and relied on his professional experience to establish the property's fair market value. It is worth noting that the real estate broker in Pirmantgen is also one of the brokers relied upon in this case.

The County attempts to distinguish Pirmantgen on the grounds that it involved residential property rather than agricultural land. However, this distinction is irrelevant. The constitutional mandate under Article XI, Section 2 applies uniformly to all property classifications, stating without exception that "[t]he valuation of property for taxation purposes shall never exceed the actual value thereof." S.D. Const. art. XI, § 2. The type of property involved does not alter the constitutional standard or limit the forms of evidence that may be offered to prove actual value.

The County also urges this Court to affirm the circuit court's decision regarding this matter based on the holdings in Burke v. Butte County, 2002 SD 17, 640 N.W.2d 473, and Richter Enterprises, Inc. v. Sully Cnty., 1997 SD 61, 563 N.W.2d 841. Although both of these cases mention that an appraisal would be sufficient evidence to overcome the Director of Equalization's presumption of correctness in the tax assessment, there is no basis in law for a determination that a certified appraisal is the only way to overcome this presumption. It is not the role of the Court to insert language into constitutional or statutory provisions that the drafters did not include.

Rather, it is apparent that the term "appraisal" is often used interchangeably with "valuation" in this context. South Dakota statutory law defines both "appraisal" and "evaluation" as "the act or process of developing an opinion of value of real estate for another and for compensation." SDCL 36-21D-3; 36-21A-3; 36-21B-2. Under this statutory language, a broker's opinion of value, developed for the purpose of expressing an opinion as to market value, satisfies the general definition of an appraisal or valuation. Therefore, limiting acceptable evidence of actual value solely to a certified appraisal ignores both the statutory definitions and the broader constitutional principle that all credible valuation evidence may be considered when determining whether an assessment exceeds actual value.

Furthermore, the Court has held that "a recent sale should not be 'entirely excluded from consideration.'" Willow, Inc. v. Yankton County, 89 S.D. 643, 650, 237 N.W.2d 660, 664 (1975) (citation omitted). This further demonstrates that requiring a certified appraisal is unfounded and that other means of evaluating real property is sufficient to overcome the Director of Equalization's presumption of correctness.

Again, the actual language of the South Dakota Constitution reads as follows: "The valuation of property for taxation purposes shall never exceed the actual value thereof." S.D. Const. art. XI, § 2. Actual value, or full and true value, is the price which a willing purchaser will pay a willing seller in the open market. Pirmantgen, 2021 S.D. 5, ¶ 23, 954 N.W.2d at 725. The broker's opinion, conducted by a licensed broker and supported by subsequent testimony, establishes the actual value in a manner fully consistent with South Dakota law. This evidence directly addresses the constitutional

standard and provides competent proof that the Director's assessment exceeds the property's true market value.

The County's attempt to dismiss this evidence solely because it is not a certified appraisal finds no basis in the Constitution or any South Dakota law. Further, the County's citations to previous precedent seemingly requiring appraisals to overcome the Director's presumption of correctness is misguided. Finally, the County failed to produce any evidence to contradict the evidence as to the actual value of the subject property.

### **CONCLUSION**

The South Dakota Constitution imposes an express limitation that no property may be assessed for tax purposes at more than its actual value. S.D. Const. art. XI, § 2. In this case, the County's assessment of the Pallansch property ignores the legal restrictions imposed by the WRP easement and assigns value based on hypothetical, unattainable productive capacity. This directly violates both the South Dakota Constitution and South Dakota's definition of fair market value. The evidence presented by the Appellants—including a broker's opinion of value, expert testimony, comparable sales data, and prior appraisal evidence—clearly establishes that the assessed value exceeds the property's actual value.

Moreover, the County's position that *only* a certified appraisal can rebut the Director of Equalization's presumption of correctness finds no support in the constitutional text, statutory law, or this Court's prior holdings. The Constitution does not require any specific form of evidence to establish actual value; rather, specific,

credible and competent valuation evidence may suffice. Adopting the rigid rule urged by the County would improperly insert language into the Constitution that the drafters did not include, in violation of settled principles of constitutional interpretation.

For these reasons, the Appellants respectfully request that this Court reverse the circuit court's decision and remand the matter with instructions to reassess the subject property in accordance with its actual value, as established by the unrefuted evidence in the record.

Dated this 23 day of June 2025.

DELANEY, NIELSEN, SANNES, P.C.

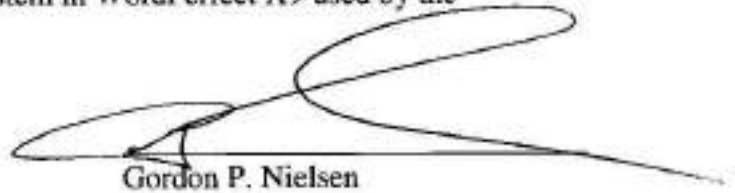
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### CERTIFICATE OF COMPLIANCE

Gordon P. Nielsen, as the attorney for Appellants, hereby certifies that the foregoing brief meets the requirements for proportionately spaced typeface in accordance with SDCL 15-26A-66(b) as follows:

- a. Appellant's Reply brief does not exceed 16 pages;
- b. The body of Appellant's Reply brief was typed in Times New Roman 12 point typeface; and
- c. Appellant's Reply brief contains 2,949 words and 16,691 characters, according to the word and character counting system in WordPerfect X9 used by the undersigned.



Gordon P. Nielsen



### CERTIFICATE OF SERVICE

I certify that on the 23 day of June 2025, the undersigned served a true and correct copy of the Reply Brief of the Appellants via electronic transmission by the Clerk's Office via eFileSD to the following parties:

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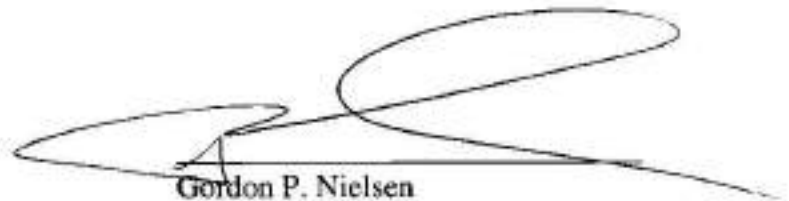
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