

A REVIEW OF THE AGRICULTURAL LAND ASSESSMENT SAGA AND THE NEED FOR MORE GUIDANCE

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ABSTRACT

Benjamin Franklin is credited with the old saying: “in this world nothing can be certain, except death and taxes.” The agricultural landowners of South Dakota know the latter to be a certainty, even as the model in which they are assessed has changed over time. With this change, there continues to be uncertainty and inconsistency throughout the assessment process.

I. INTRODUCTION

Local governments in South Dakota look to property taxes for their primary source of funding.¹ Landowners, however, do not want to pay more than their “fair share” of property taxes. The agricultural land valuation method is a complicated process that has continued to change over the years. However, there is still not enough guidance provided to county directors of equalization, who are a key piece

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1. RAYMOND RING, LINCOLN INST. OF LAND POLICY, STATE-BY-STATE PROPERTY TAX AT A GLANCE: SOUTH DAKOTA 1 (Feb. 2018), <https://perma.cc/4HVS-43NK>.

of the puzzle.

The current productivity valuation model uses the productivity of a parcel of land to value the parcel for tax purposes.² The productivity of a parcel is determined by a formula set out in statute, which involves the gross revenue per acre, landowner's share, and capitalization rate.³ The gross revenue is calculated using data published by the United States Department of Agriculture (USDA).⁴ The landowner's share and capitalization rate are located in statute.⁵ The old market valuation model used comparable sales and market value to determine the assessment value of the parcel.⁶ The South Dakota Department of Revenue provides each county director of equalization the appropriate calculations needed for their assessments.⁷

In Part II.A, this Essay discusses the current productivity valuation model of assessing agricultural land in South Dakota.⁸ In Part II.B, there is a brief description of the former market valuation model.⁹ Part II.C provides information on how the productivity model is used as a practical matter.¹⁰ Part II.D shows how the directors of equalization may provide adjustments.¹¹ Part III.A discusses the case law that arose under the old market valuation model.¹² Part III.B discusses a settled case arising under the current productivity model and a brief discussion regarding legislative history.¹³ In Part IV, there is a review of the legislation that happened after the implementation of the productivity valuation model.¹⁴ Part V provides suggestions for the South Dakota Legislature on how to improve the agricultural land assessment and lack of guidance given to directors of equalization.¹⁵ The challenges associated with cash rent systems are outside the scope of this Essay.

2. See S.D. CODIFIED LAWS § 10-6-33.28 (2020).

3. *Id.*

4. S.D. CODIFIED LAWS § 10-6-33.29 (2020).

5. S.D. CODIFIED LAWS § 10-6-33.28 (2020).

6. 1998 S.D. Sess. Laws ch. 52 § 10-6-33.1 (repealed 2008).

7. *Id.*

8. See *infra* Part II.A.

9. See *infra* Part II.B.

10. See *infra* Part II.C.

11. See *infra* Part II.D.

12. See *infra* Part III.A.

13. See *infra* Part III.B.

14. See *infra* Part IV.

15. See *infra* Part V.

II. BACKGROUND

A. Creation of the Productivity Model

In 2008, the 83rd South Dakota State Legislature passed House Bill 1005 (HB 1005), establishing the productivity model of assessing agricultural land.¹⁶ With the enactment of HB 1005, agricultural land is now assessed on its ability to produce agricultural income on a per acre basis.¹⁷ The agricultural income value is calculated using the productivity and annual earning capacity of the land.¹⁸ The values used in this calculation depend on the classification of the land.¹⁹ For cropland, the earning capacity is calculated based on income from crops produced on the land.²⁰ For non-cropland, the earning capacity is “based on cash rents or the animal unit carrying capacity of the land, or a combination of both.”²¹ The director of equalization determines the category of land, cropland or non-cropland, based on the classification standards developed by the United States Department of Agriculture Natural Resources Conservation Service (NRCS).²² This determination of cropland or non-cropland is also known as the land’s highest and best use (HBU).²³ “HBU is defined as the reasonably probable use of property that results in the highest value.”²⁴ The classification standards are the land capability classification (LCC) from the NRCS soil database.²⁵ Soils in LCC Class I-IV are classified as cropland, and soils in LCC Class V-VII are classified as non-cropland.²⁶ The productivity model went into effect on July 1, 2009.²⁷ The first year the productivity model was used in assessing agricultural land was in 2010 for taxes payable in 2011.²⁸

Since 1957, each organized county in South Dakota has had a director of

16. H.B. 1005, 83rd Leg. Assemb., Reg. Sess. (S.D. 2008).

17. *Id.*

18. S.D. CODIFIED LAWS § 10-6-33.28 (2020).

19. *Id.*

20. *Id.*

21. *Id.*

22. S.D. CODIFIED LAWS § 10-6-33.32 (2020).

23. Matthew S. Elliot, et al., *A Change in Highest and Best Use Policy in South Dakota Has a Sizable Impact on Agricultural Land Assessments*, CHOICES, <https://perma.cc/N8JW-SSZQ> (archived April 22, 2020).

24. *Id.*

25. *Id.*

26. *Id.*

27. See S.D. CODIFIED LAWS § 2-14-16 (2020).

28. Elliot, et al., *supra* note 23.

equalization.²⁹ Directors of equalization must “possess knowledge and training in the field of property taxation” and have a certificate issued by the Department of Revenue or obtain one within one year.³⁰ Directors of equalization are appointed by the Board of County Commissioners.³¹ If a municipality contains 50% or more of the population in a county, the mayor may also vote with county commissioners on appointing the director of equalization.³² Directors of equalization are the only people in each county who perform assessments of land for tax purposes.³³ The South Dakota Department of Revenue provides each county director of equalization the appropriate calculations needed for assessments.³⁴

B. Old Market Valuation System

The enactment of the productivity model in 2008 was a major change from the market valuation system originally established by the South Dakota Legislature in 1970.³⁵ The market valuation system relied heavily on comparable sales and market value.³⁶ Market value for each county was determined through the use of comparable sales of agricultural land.³⁷ However, due to statutory constraints, the number of useable comparable sales was dwindling.³⁸ First, an arms-length transaction must have occurred.³⁹ With so many land sales and transfers occurring between family members, only about 25% of the land sales were considered as

29. S.D. CODIFIED LAWS § 10-3-1 (2020).

30. S.D. CODIFIED LAWS § 10-3-2 (2020).

31. S.D. CODIFIED LAWS § 10-3-3 (2020).

32. *Id.*

33. S.D. CODIFIED LAWS § 10-6-33.31 (2020).

34. *Id.*

35. *Id.*; S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 3 (July 28, 2008).

36. *See* 1998 S.D. Sess. Laws ch. 52 § 10-6-33.1 (repealed 2008).

37. S.D. CODIFIED LAWS § 10-6-33.31 (2020).

38. S.D. LEGIS. RESEARCH COUNCIL, PROPERTY TAX ASSESSMENT STUDY COMMITTEE MEETING MINUTES 2 (July 12, 2007) (noting that in 1998, there were 1,426 usable sales statewide. Statewide usable sales had decreased to 340 sales in 2005 and 200 sales in 2006. By 2007, there were 121 usable sales statewide compared to 1,451 unusable sales); Lisa Hare, *Tax Assessments Change For South Dakota Agriculture Property*, YANKTON DAILY PRESS & DAKOTAN (July 15, 2009), <https://perma.cc/9LLX-5X7W>.

39. S.D. LEGIS. RESEARCH COUNCIL, PROPERTY TAX ASSESSMENT STUDY COMMITTEE MEETING MINUTES 2 (July 12, 2007); S.D. CODIFIED LAWS § 10-11-56 (2020) (defining an arms-length transaction as “the transfer of property offered on the open market for a reasonable period of time between a willing seller and a willing buyer with no coercion or advantage taken by either party”).

possible comparable sales.⁴⁰ Of the 25% arms-length transactions, even fewer sales were available as comparable sales because of statutes that did not allow (1) sales under seventy acres; (2) “sales of agricultural land for more than 150% of the agricultural income value;” or (3) “sales of agricultural or nonagricultural land for more than 150% of the assessed value” to be used in the assessment process.⁴¹ Due to the reduced number of available sales, the Legislature was at a crossroads, which is further evidenced by two different bills introduced in 2007—one to switch to an income value assessment model, and one to make changes to the market valuation assessment model.⁴² Neither of the bills passed, and the market valuation lived on for one more year before the enactment of HB 1005.⁴³

When the directors of equalization used comparable sales in determining assessment value, there were multiple factors considered.⁴⁴ These factors include “the capacity of the land to produce agricultural products . . . and the location, size, soil, terrain and topographical condition of property including but not limited to capability, the land’s use, climate, accessibility, and surface obstructions which can be documented through an analysis of land selling prices.”⁴⁵ The comparable sales used in evaluating market value must be “recorded with the register of deeds of the county in which the land is located” and not recorded more than two years prior to the assessment.⁴⁶

C. Productivity Valuation of Agricultural Land

When the productivity model was enacted, the Legislature determined that a contract with South Dakota State University (SDSU) was necessary to calculate the required data for the new model.⁴⁷ Therefore, the South Dakota Department of Revenue contracts with SDSU to maintain this database.⁴⁸ The Economics Department of SDSU uses data published by the USDA’s National Agricultural

40. S.D. LEGIS. RESEARCH COUNCIL, PROPERTY TAX ASSESSMENT STUDY COMMITTEE MEETING MINUTES 2 (July 12, 2007).

41. *Id.* at 2-3.

42. *Id.* at 4; H.B. 1308, 82nd Leg. Assemb., Reg. Sess. (S.D. 2007) (explaining that House Bill 173 would have allowed more sales to be considered in the assessment process by only excluding sales where property sold for more than 75% of its assessed value rather than 150%); S.B. 173, 82nd Leg. Assemb., Reg. Sess. (S.D. 2007).

43. H.B. 1005, 83rd Leg. Assemb., Reg. Sess. (S.D. 2008).

44. *See* 1998 S.D. Sess. Laws ch. 52 § 10-6-33.1 (repealed 2008).

45. *Id.* at (1), (2).

46. *Id.*

47. H.B. 1005, 83rd Leg. Assemb., Reg. Sess. (S.D. 2008).

48. S.D. CODIFIED LAWS § 10-6-33.29 (2008), *amended by* S.D. CODIFIED LAWS § 10-6-33.29 (2020).

Statistics Services (NASS) for this database.⁴⁹ The starting point of the data collection was 2001.⁵⁰ The 2010 assessments, for taxes payable in 2011, used data from 2001 to 2008.⁵¹

The SDSU Economics Department uses the database to aid in the calculation of the productivity value, which is the average assessed value per acre by county.⁵² A separate productivity value for cropland and non-cropland are calculated.⁵³ This productivity value is what makes the new productivity model different from the old market valuation system.⁵⁴ After determining the productivity value, the calculations to reach the top-dollar value are the same as previously used in the market valuation system.⁵⁵ The productivity value is used in place of the sales used in the market valuation system.⁵⁶

The productivity value is calculated by multiplying the gross revenue per acre by the landlord share percentage and dividing the total by the capitalization rate.⁵⁷ The gross revenue for each county is calculated using an eight-year Olympic average.⁵⁸ An eight-year Olympic average discards the lowest year and the highest year, and then averages the remaining six years.⁵⁹ An Olympic average for each county is calculated each year by adding the newest year and discarding the oldest year.⁶⁰

The gross revenue is calculated using different data for cropland and non-cropland.⁶¹ For cropland, the actual production of each crop planted in the county is multiplied by the statewide commodity price to determine the gross revenue for individual crops.⁶² The commodity price is the USDA/NASS state level marketing year average price, which is weighted based on the quantity of the commodity sold

49. S.D. DEP'T OF REVENUE, AGRICULTURAL LAND PRODUCTIVITY FORMULA 1 (Sept. 2019), <https://perma.cc/Y3U5-WZ62>.

50. S.D. CODIFIED LAWS § 10-6-33.29 (2008), *amended by* S.D. CODIFIED LAWS § 10-6-33.29 (2020).

51. *Id.*

52. AGRICULTURAL LAND PRODUCTIVITY FORMULA, *supra* note 49, at 1.

53. *Id.*

54. *See generally id.*

55. *See id.*

56. *Id.*

57. *Id.* (The productivity value calculation is also labeled the "Productivity Formula").

58. *Id.* at 2.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

each month throughout the marketing year.⁶³ The gross revenue of individual crops is added together and divided by the number of acres planted in the county.⁶⁴ The resulting number is the gross revenue per acre in the county.⁶⁵ The gross revenue for each county is calculated separately using individual county data.⁶⁶

Cash rent data determines the gross revenue for non-cropland.⁶⁷ USDA/NASS conducts a survey of landowners every other year to establish the cash rent data.⁶⁸ During years where the survey is not conducted, SDSU calculates the cash rent for each county using past rents or other rental information.⁶⁹ The landowner's share of the gross revenue adjusts the agricultural income value by adjusting the gross revenue per acre before it is capitalized to reflect the percentage the owner would expect to receive from owning the land.⁷⁰ The landowner's share for cropland is 35% and 100% for non-cropland.⁷¹

After determination of the productivity value for cropland and non-cropland, the previously used process under the market system is used to calculate the top-dollar value per acre.⁷² However, instead of comparable sales data, the productivity value is used.⁷³ First, every soil type in the county is rated on a scale of 1.0 to .1, with 1.0 being the highest value and .1 being the lowest value.⁷⁴ Then, to calculate the top-dollar for cropland in the county, the productivity value per acre for cropland is divided by the weighted average of the crop rated soils in the county.⁷⁵ The parallel calculation is made for the non-cropland using the non-cropland data.⁷⁶ The weighted average of the soils is determined by multiplying the soil rating by the number of acres in the county and then dividing the total by the number of acres in the county.⁷⁷

63. *Id.*

64. *Id.*

65. *Id.*

66. *See id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* at 3.

71. S.D. CODIFIED LAWS § 10-6-33.28 (2020).

72. *See* AGRICULTURAL LAND PRODUCTIVITY FORMULA, *supra* note 49, at 3.

73. *See id.*

74. *Id.*

75. E-mail from Gene Loescke, Brown Cty. Dir. of Equalization (Jan. 4, 2019) (on file with author).

76. *Id.*

77. *Id.*

It is common for tracts of land to contain multiple soils with different soil ratings.⁷⁸ Each soil rating is multiplied by the top-dollar value to determine the value of the soil as compared to the top-rated soil.⁷⁹ The cropland soil ratings are multiplied by the top-dollar cropland and the same is calculated for non-cropland soil.⁸⁰ Thus, a cropland soil with a rating of .85 is valued at 85% of the top-dollar cropland.⁸¹ To determine the total value of individual parcels, the value of each soil is multiplied by the number of acres of that soil in the parcel and added together.⁸²

D. Adjustments of Assessed Value

The agricultural income value is the starting point for each county and must be annually provided by the Department of Revenue.⁸³ Each county director of equalization may adjust this value to determine the assessed value of the agricultural land in their county.⁸⁴ In determining the assessed value of each parcel, directors are allowed to use various statutory factors to adjust the agricultural income value.⁸⁵ Under the productivity model, the director of equalization uses almost the same factors as previously used in the market valuation system.⁸⁶ The factors are “(1) [t]he capacity of the land to produce agricultural products as defined in § 10-6-33.2; and (2) [t]he location, [s]ize, [s]oil survey statistics, [t]errain, [t]opographical condition, [c]limate, [a]ccessibility, and [s]urface obstructions.”⁸⁷ The adjustments must be documented by the director of equalization.⁸⁸ An adjustment must be documented using data from reasonably related sources and may be documented using comparable sales.⁸⁹

E. Continuity Concerns

When trying to interpret statutes that govern this area of law, care must be taken due to the lack of continuity. Terms used to describe this area of the law differ depending on the source and author of the information. Per statute,

78. AGRICULTURAL LAND PRODUCTIVITY FORMULA, *supra* note 49, at 3.

79. *Id.*

80. *Id.*

81. *See id.*

82. *Id.*

83. *Id.*; S.D. CODIFIED LAWS § 10-6-33.31 (2020).

84. S.D. CODIFIED LAWS § 10-6-33.31 (2020).

85. *Id.* at (1)-(2).

86. *Id.*; 1998 S.D. Sess. Laws ch. 52 § 10-6-33.1 (repealed 2008).

87. S.D. CODIFIED LAWS § 10-6-33.31 (2020).

88. *Id.*

89. *Id.*

“[a]gricultural income value is defined as the capitalized annual earning capacity on a per acre basis which has been adjusted by an amount that reflects the landowner’s share of the gross return.”⁹⁰ Under the Department of Revenue’s brief explanation of the productivity valuation system, this calculation is termed the productivity value.⁹¹ Furthermore, this calculation is also labeled an additional term of the “assessed value per acre of the average cropland[/noncropland] in the county.”⁹²

Nowhere in the statute is the term “productivity value” used with respect to governing the productivity model.⁹³ The term “assessed value” is only used in the statute enumerating the factors used by directors of equalization in adjustments.⁹⁴ In this statute, it states that “the secretary of revenue shall annually provide each director of equalization the *agricultural income value* for each county as computed pursuant to § 10-6-33.28.”⁹⁵ Using the Department of Revenue’s interpretation, this could also be termed the productivity value, as well as the assessed value per acre.⁹⁶ The statute goes on to state that “[t]he director of equalization shall annually determine the assessed value of agricultural land.”⁹⁷ By looking at this statute, it could be presumed that the assessed value can *only* be determined by directors of equalization, and any value prior to this determination would be considered the agricultural income value.⁹⁸ Therefore, based on the statute, the assessed value is the agricultural income value *after* distributed to the directors of equalization.⁹⁹ The directors of equalization have discretion to make any adjustments to this value.¹⁰⁰ Therefore, for practical purposes, the agricultural income value could be the same as the assessed value if no adjustments are made by the director of equalization.¹⁰¹

90. S.D. CODIFIED LAWS § 10-6-33.28 (2020).

91. *See* AGRICULTURAL LAND PRODUCTIVITY FORMULA, *supra* note 49, at 1.

92. *See id.* at 3.

93. *See* S.D. CODIFIED LAWS § 10-6-33.28-31 (2020).

94. S.D. CODIFIED LAWS § 10-6-33.31 (2020).

95. *See id.* (emphasis added).

96. *See* AGRICULTURAL LAND PRODUCTIVITY FORMULA, *supra* note 49, at 4.

97. S.D. CODIFIED LAWS § 10-6-33.31 (2020).

98. *See id.*

99. *See id.*

100. *Id.*

101. *See id.*

III. IMPACT OF DECISIONS BY DIRECTORS OF EQUALIZATION

The decisions made by the county directors of equalization have a direct impact on the outcome of a landowners' assessment value. These decisions involve whether to make adjustments to assessment values, as well as implementing specific subdivision systems that the director deems necessary or correct. When landowners feel these decisions are incorrect, they seek a remedy through the court system.

A. Case law

Even though the process of using the productivity valuation approach and the former market value approach is different, under both systems an individual director of equalization can have a large impact on assessed value. The South Dakota Supreme Court decided two cases that challenged the valuation assigned by directors of equalization, and both cases demonstrate how individual decisions on the value of property can greatly impact landowners.¹⁰² These cases use the prior market valuation system, but the new productivity model also raises the same concerns. In *Kocer v. Bon Homme County Commissioners*, the Bon Homme Director of Equalization at the time of the case:

testified that she used a computer to calculate the assessment based exclusively upon the soil survey manual and sales date. In fact, [the] Director stated that to complete a mass appraisal, she never has to leave her office because all she needs is the computer and records to assess the fair market value of the property.¹⁰³

This was a change from the previous director of equalization who "made valuation adjustments based upon [physical] factors present on the Kocers' property."¹⁰⁴ The result of a reassessment by the new Bon Homme Director was an average increase of 48% in property valuations for the Kocers' nine parcels, with a range of 37% to 87% increase.¹⁰⁵

Even if a director of equalization uses the statutory guidelines and makes adjustments as they see fit, the court can still determine that appropriate considerations were not taken.¹⁰⁶ In *Kocer*, the Bon Homme Director used the statutory guidelines in place at the time "to consider the capacity of the land to

102. See generally *W. Two Rivers Ranch v. Pennington Cty.*, 549 N.W.2d 683, 687 (S.D. 1996); see also *Kocer v. Bon Homme Cty. Comm'rs*, 604 N.W.2d 1, 2 (S.D. 1999).

103. *Kocer*, 604 N.W.2d at 2.

104. *Id.*

105. *Id.*

106. *Id.*

produce and the location, size, soil, terrain, and topographical condition of property by relying on comparable sales of agricultural property.”¹⁰⁷ The Bon Homme Director used the statutory guidelines in determining the assessment figures and, ultimately, the trial court disagreed with her valuation method.¹⁰⁸ The trial court “found that the valuation method used did not adequately take into consideration the physical features on Kocers’ property which limit its productivity.”¹⁰⁹

Even when using the same parameters, two different directors of equalization could calculate dramatically different valuations under the old market valuation system. The culmination of *West Two River Ranch v. Pennington County (West Two I)* and *West Two River Ranch v. Pennington County (West Two II)* serves as an example of how two different directors of equalization can come up with substantially different valuations based on the same set of ambiguous statutes.¹¹⁰ In *West Two I*, the court affirmed the lower court’s decision to uphold the Meade County Director of Equalization’s valuation.¹¹¹ The Meade Director found “a true and full value of \$41.25 per acre.”¹¹² According to the facts of the case, “[t]he [Meade] Director used a formula utilizing cash rent values, soil surveys, and comparable sales to arrive at this valuation.”¹¹³ The comparable sales included six sales with similar soil ratings as the Ranch’s land.¹¹⁴ The sales averaged \$57.66 per acre and occurred in 1992 and 1993.¹¹⁵ “[T]he extreme isolation and inaccessibility of the property” was also considered in the valuation.¹¹⁶

The court did not affirm the initial valuation made by the Pennington County Director of Equalization and remanded for further consideration of the valuation.¹¹⁷ The Pennington Director used a similar method of comparing the Ranch’s property with soil surveys and comparable sales.¹¹⁸ The comparable sales consisted of twenty sales between 1992 and 1993 with an average selling price of \$164.10 per acre.¹¹⁹ However, due to the inaccessibility of the land, it cannot be

107. *Id.*

108. *See id.* at 2-3.

109. *Id.* at 3.

110. *See generally* *W. Two Rivers Ranch v. Pennington Cty.*, 549 N.W.2d 683 (S.D. 1996); *W. Two Rivers Ranch v. Pennington Cty.*, 650 N.W.2d 825 (S.D. 2002).

111. *W. Two Rivers Ranch*, 1996 SD 70, 549 N.W.2d at 685, 687.

112. *Id.* at 685.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* at 689.

118. *Id.* at 685.

119. *Id.*

used as cropland, and the court determined “there were not sufficient sales in Pennington County which were comparable with the subject property as regards accessibility.”¹²⁰ The Pennington Director did not make any adjustment for the “Ranch’s landlocked situs.”¹²¹ The court determined that the Pennington Director did not substantially comply with the statute because he did not go far enough in searching for comparable sales, which resulted in an unjust assessment.¹²²

Using the implications of the remand, the Pennington Director then calculated a valuation which decreased by \$1.69.¹²³ The trial court upheld this valuation and the landowners subsequently appealed the only slightly lower valuation for a second time.¹²⁴ The Pennington Director testified that he did not use comparable sales from adjoining counties due to the differences in soil ratings.¹²⁵ Instead, the Pennington Director used sales from previous years within the same county as the Ranch’s land.¹²⁶ Ultimately, the Court upheld the Pennington Director of Equalization’s approach to the second valuation.¹²⁷

The South Dakota Supreme Court has not allowed a comparison of assessed valuation between multiple counties.¹²⁸ Instead, the court follows principles that only consider the equality and uniformity in taxation issues within a particular county.¹²⁹ In *West Two II*, the Court held that the inconsistent valuation of landowners’ property in two different counties did not violate the principles of equality and uniformity in taxation.¹³⁰ Rather, the approach used by the directors of equalization in their respective counties were eventually fully accepted by the Court.¹³¹ The plaintiffs’ land happened to stretch over two counties.¹³² Due to two different directors of equalization, their land was assessed at \$41.25 in one county and \$83.31 in the adjoining county.¹³³ Since the Court does not consider the equality and uniformity in taxation in comparison of counties, this is the only

120. *Id.* at 688.

121. *Id.*

122. *Id.* at 689.

123. *See* *W. Two Rivers Ranch v. Pennington Cty.*, 650 N.W.2d 825, 826 (S.D. 2002).

124. *Id.*

125. *Id.* at 828-29.

126. *Id.*

127. *Id.* at 829.

128. *Id.* at 828.

129. *Id.*

130. *Id.* at 828-29.

131. *Id.*; *W. Two Rivers Ranch v. Pennington Cty.*, 549 N.W.2d 683, 687 (S.D. 1996).

132. *W. Two Rivers Ranch v. Pennington Cty.*, 650 N.W.2d 825, 825 (S.D. 2002).

133. *Id.* at 826.

conclusion the Court could come to.¹³⁴

B. Brown County

Another way county directors of equalization can influence the valuation of land is through implementing a neighborhood system.¹³⁵ A neighborhood system is a way that a county can be subdivided for purposes of valuation.¹³⁶ This, in turn, impacts the valuation for individual property owners. For example, after the enactment of the productivity model, the Brown County Director of Equalization implemented a neighborhood system.¹³⁷ A neighborhood is a collection of townships.¹³⁸ In 2010, Brown County divided the county's townships into two neighborhoods.¹³⁹ The northern neighborhood's county top-dollar value was adjusted down by 10% while the southern neighborhood was adjusted up by 10%.¹⁴⁰ The county justified this adjustment with an analysis of sales data from 2004 to 2009.¹⁴¹ In 2011, the Director of Equalization divided the townships into three neighborhoods based on the likelihood that the land would sell at a higher price.¹⁴² Agricultural land in fifteen townships were assessed at 118% of the top-dollar production value.¹⁴³ Twelve townships were assessed at 95% of the top-dollar production value.¹⁴⁴ Sixteen townships were assessed at 85% of the top-dollar production value.¹⁴⁵ The proposed neighborhoods for 2018 were 118%, 97%, and 85%.¹⁴⁶ However, these percentages were never used, and the 2018 assessments were sent out with multipliers of 80%, 87%, and 100%.¹⁴⁷ Brown

134. *Id.* at 827.

135. Brief in Opposition to Defendant's Motion for Summary Judgment at 2, *Swishers, Inc. v. Enderson*, No. 06CIV18-000387 (5th Cir. Sept. 17, 2018).

136. *Id.*

137. Letter from Michael Houdyshell, Dir., S.D. Dep't of Revenue Prop. & Special Taxes Div., to Brown County Board of Commissioners (Feb. 7, 2018) (on file with author).

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. Shannon Marvel, *Commissioners claim they were unaware of Hauke's concerns of illegal assessing practices*, ABERDEEN NEWS (Jan. 10, 2018), <https://perma.cc/E273-H6F6>.

143. Shannon Marvel, *Brown County asks for state ruling on ag land assessments*, ABERDEEN NEWS (Jan. 17, 2018), <https://perma.cc/7TLW-96WZ>.

144. Brief in Opposition to Defendant's Motion for Summary Judgment at 2, *Swishers, Inc. v. Enderson*, No. 06CIV18-000387 (5th Cir. Sept. 17, 2018).

145. E-mail from Gene Loescke, Brown Cty. Dir. of Equalization, to author (Jan. 14, 2019) (on file with author).

146. *Id.*

147. *Id.*

County Director of Equalization, Gene Loescke, stated that the neighborhoods allow the county to take the diversity of the soil types and market value into account in their assessment values.¹⁴⁸

The South Dakota Department of Revenue claims it did not know that the county was applying a neighborhood system because its audits only look at a macro view, verifying the total assessment value of the whole county matches what was handed down from the state.¹⁴⁹ As long as the top dollar-per-acre assessment value for the whole county is close to what is dispersed from the state, no red flags are raised.¹⁵⁰

On January 17, 2018, Brown County commissioners sent a letter to the South Dakota Department of Revenue requesting a review of its neighborhood system in the county's agricultural land assessment plant.¹⁵¹ After the review, the South Dakota Department of Revenue interpreted that the "statute allows adjustments for factors affecting productivity and gives the director of equalization the ability to use comparable sales of agricultural land 'to document the adjustment concerning productivity.'" ¹⁵² The Department of Revenue stated that sales data could be used to make adjustments "but only to the extent of documenting a productivity adjustment." ¹⁵³ Furthermore, the Department determined that "[s]ales data alone is insufficient to make a productivity adjustment."¹⁵⁴ The Department also determined that this was similar to location where "location, in and of itself, does not justify an adjustment unless it can be shown that the location of the agricultural land impacts productivity of the land."¹⁵⁵

IV. FOLLOWING THE IMPLEMENTATION OF THE PRODUCTIVITY MODEL

When the changes in the assessment process occurred through HB 1005 in 2008, the Legislature also established the Agricultural Land Assessment Implementation and Oversight Advisory Task Force.¹⁵⁶ Through this task force, members of the Legislature, members of academia, members of the general public,

148. Shannon Marvel, *Some ag land overtaxed millions, ex-county official claims*, ABERDEEN NEWS (Jan. 9, 2018), <https://perma.cc/3EP8-WHG3>.

149. *Id.*

150. *Id.*

151. Marvel, *supra* note 142.

152. Letter from Michael Houdyshell, Director, SD Dept. of Revenue Property and Special Taxes Division, to Brown County Board of Commissioners (Feb. 7, 2018) (on file with author).

153. *Id.*

154. *Id.*

155. *Id.*

156. H.B. 1005, 83rd Leg. Assemb., Reg. Sess. (S.D. 2008).

and Department of Revenue staff worked together to make recommendations regarding the assessment process.¹⁵⁷ Crafting the formula that is in use today was a lengthy process.¹⁵⁸ The specifics of the formula, where the data comes from, and how to improve the data has been an on-going conversation among task force members.¹⁵⁹ Since the inception of the task force, the issue of adjustments made by county directors of equalization has come up in meetings every single year.¹⁶⁰

During the 2011 Legislative Session, at the request of the task force, a bill was introduced to add additional requirements to the documentation of adjustments.¹⁶¹ The statute requires each adjustment be documented by the director of equalization and the “director of equalization shall document an adjustment by using data from sources reasonably related to the adjustment being made. In addition, the director of equalization may use data from comparable sales of agricultural land to document the adjustment concerning productivity for any of the factors listed in this section.”¹⁶² The task force opined that this legislation “clarifies and places in law that the local directors of equalization are allowed to use market sales to determine the amount of the local adjustments for factors t[h]at affect capacity of the land to produce agricultural products.”¹⁶³ The Legislature passed this bill, and it went into effect on July 1, 2011.¹⁶⁴

In 2018, the task force discussed the results of a study completed by SDSU over the previous few years to look at options for improving the agricultural land

157. S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 3 (July 28, 2008).

158. *See generally id.*

159. *Id.*

160. *Id.*; S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES (Aug. 25, 2010); S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES (Aug. 29, 2011); S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES (June 18, 2012); S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES (July 25, 2013).

161. H.B. 1009, 85th Leg. Assemb., Reg. Sess. (S.D. 2010) (noting that this bill was introduced in the prior legislative session in 2011 but failed in the House Taxation Committee); H.B. 1002, 86th Leg. Assemb., Reg. Sess. (S.D. 2011).

162. S.D. CODIFIED LAWS § 10-6-33.31 (2020).

163. S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 3 (Nov. 8, 2010).

164. S.D. CODIFIED LAWS § 2-14-16 (2020).

assessments.¹⁶⁵ As a result of this study, SDSU and the task force came to the conclusion that a pilot program would be beneficial to see the methodology in action.¹⁶⁶ The methodology adds additional data and alters the formula to consider additional patterns and data points not currently being used in the assessment process.¹⁶⁷ During the 2019 Legislative Session, the Legislature passed a bill that enacted the pilot program to “study the impact of changes to the methodology of rating soils for purposes of assessing agricultural land.”¹⁶⁸

For the pilot program, members of the Economics Department at SDSU conducted a study that simulated the effects of two different policy changes on the valuation of agricultural land.¹⁶⁹ The two different policy changes studied were Actual Use (AU) and Most Probable Use (MPU).¹⁷⁰ The MPU determines the “HBU based on an economic model that estimates the *probability* of a particular use for agricultural land, given various attributes of the property and observed use patterns in the area.”¹⁷¹ With the AU, the land is assessed as crop or non-crop based on how the property is being used and predicts the value of the land based on the management decisions made by the land owners.¹⁷²

During the study, it was also determined that a large number of acres in South Dakota are currently being valued under the cropland formula while being used as non-cropland.¹⁷³ Furthermore, there are acres that are being used as cropland and are being valued under the non-cropland formula.¹⁷⁴ The study indicated that the current legislation, which uses NRCS soil ratings in predicting whether land is being used as cropland or non-cropland, is less accurate, especially in western South Dakota.¹⁷⁵ Furthermore, the current legislation “differ[s] from methods defined by appraisal accreditation organizations” because it does not employ

165. S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 1 (Nov. 13, 2018) (explaining that the 2016 Legislature appropriated funds for SDSU “to conduct research concerning the methods used to determine agricultural land production capacity, and update the data used in the soil table.”).

166. S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 1-5 (Nov. 13, 2018).

167. *Id.*

168. S.B. 4, 94th Leg. Assemb., Reg. Sess. (S.D. 2019).

169. Elliot et al., *supra* note 23.

170. *Id.*

171. *Id.*

172. *See id.*

173. *Id.*

174. *Id.*

175. *Id.*

common data, a standard method, and is not conducive to statistical testing.¹⁷⁶

Following the interim meetings of the 2019 task force, two bills were introduced on behalf of the task force at the 2020 Legislative Session.¹⁷⁷ House Bill 1006 amends South Dakota Codified Law section 10-6-33.29 so that “one or more qualified entities” may maintain the database containing the information used to calculate the productivity model and removes the requirement to enter into a contract with SDSU for this database.¹⁷⁸ The enrolled bill defines a qualified entity as “a federal or state agency, instrumentality, institution of higher learning, other federal or state authority, or private entity with expertise in researching or evaluating land production capacity.”¹⁷⁹ This bill removes the exclusiveness of contracting with SDSU on an annual basis, and instead, expands the pool for available data.¹⁸⁰ House Bill 1007 (HB 1007) amends South Dakota Codified Law section 10-6-33.31 to explicitly require that directors of equalization document an adjustment by changing the statute from “may” to “shall.”¹⁸¹ To further enhance this, an additional paragraph was added that requires directors of equalization to “document all supporting evidence for the adjustment determination . . . [and] provide any adjustment documentation to the department upon request.”¹⁸² The bill also expands the reasons a landowner may request the director of equalization to examine their land for a possible adjustment to include specific factors affecting the productivity of the land.¹⁸³ Both bills are effective July 1, 2020.¹⁸⁴

V. LEGISLATIVE SUGGESTIONS

Currently, there are no statutes that require county directors of equalization to make adjustments to the assessed value.¹⁸⁵ Each director decides whether to make adjustments, as well as to what extent an adjustment is made.¹⁸⁶ Some

176. *Id.*

177. *See generally* H.B. 1006, 95th Leg. Assemb., Reg. Sess. (S.D. 2020); H.B. 1007, 95th Leg. Assemb., Reg. Sess. (S.D. 2020); S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 3 (Nov. 15, 2019).

178. H.B. 1006, 95th Leg. Assemb., Reg. Sess. (S.D. 2020).

179. S.D. CODIFIED LAWS § 10-6-33.29 (2020).

180. *Id.*

181. *Id.*

182. S.D. CODIFIED LAWS § 10-6-33.31 (2020).

183. *Id.*

184. S.D. CODIFIED LAWS § 2-14-16 (2020).

185. *See* S.D. CODIFIED LAWS § 10-6-33.31 (2020) (“The assessed value of agricultural may be adjusted . . .”).

186. *See* E-mail from Gene Loescke, Brown Cty. Dir. of Equalization (July 15, 2019) (on

directors may not feel confident or experienced enough to make adjustments.¹⁸⁷ Others may simply feel it is not necessary.¹⁸⁸ The adjustment process has been characterized by determining “what works for them.”¹⁸⁹ As individuals are getting further and further removed from having any kind of agricultural experience, “what works for them” might mean simply sitting on a computer and crunching numbers. However, that is not always accurate, as was evident in *Kocer*.¹⁹⁰ Equipment is getting bigger, technology is advancing, and agriculture is constantly changing. This means the adjustments made to assessments needs to change in South Dakota as well.

In the past, there have been times where the Department of Revenue provided guidelines to the county directors of equalization.¹⁹¹ However, nothing has been written in statute to provide further guidance on making adjustments. There is a misconception that if directors of equalization are not fairly applying adjustments using the statutes in place today, enacting further legislation will not change the unfair application.¹⁹² This misguided sentiment is similar to the argument that laws do not stop people from committing crimes, so there is no point in having them. Statutes allow there to be repercussions for actions. Statutes hold people accountable. Furthermore, the directors of equalization are not the only ones relying on legislation. When a landowner has to take their assessment issue to court, the courts rely on these statutes to guide their decisions.

file with author).

187. *Id.*

188. *Id.*

189. S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 4 (Sept. 15, 2014).

190. *Kocer v. Bon Homme Cty. Comm’rs*, 604 N.W.2d 1, 2-3 (S.D. 1999).

191. *See generally* S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES (July 8, 2009); S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES (Aug. 25, 2010); S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES (Aug. 29, 2011); S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES (June 18, 2012); S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES (July 25, 2013); S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES (Sept. 15, 2014).

192. S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 7 (June 18, 2012).

The South Dakota Legislature should take some pointers from their neighbors to the north in drafting clearer legislation to give more guidance to the county directors of equalization. North Dakota's statute lays out the order in which local assessors should apply certain factors in determining the relative value of each assessment parcel.¹⁹³ The statute lists the factors "in descending order of significance to the assessment determination."¹⁹⁴ This same technique could be applied to the current South Dakota statutes by listing the factors in order of importance for adjusting the assessment value. By listing the factors in order of importance, it allows directors of equalization to have more definitive guidance on making adjustments to the assessed value of agricultural land. The 2020 Legislature took a step in the right direction by enacting HB 1007, which lists out the factors, but there is still no guidance on how to apply these factors.¹⁹⁵

Another possible solution would be to have more people involved in the assessment process. North Dakota has more individuals in their chain of command for the assessment process.¹⁹⁶ There is a State Tax Commissioner who provides the county directors of equalization with the estimates of agricultural value.¹⁹⁷ Then, the county directors of tax equalization provide local assessors with an estimate of the agricultural value of agricultural lands within each assessment district.¹⁹⁸ Each local assessor has a jurisdiction and must determine the agricultural value of each parcel in their jurisdiction.¹⁹⁹ There are also state supervisors of local assessors.²⁰⁰ Currently, South Dakota only has the Secretary of Revenue provide the county directors of equalization with the agricultural income valuation for their county.²⁰¹ The directors of equalization are then the only people who perform assessments in their county.²⁰² While it may not be feasible for South Dakota to add additional positions for local assessor roles now, it may be a possibility in the future as familiarity with agricultural land becomes a specialty. In the short term, it may be beneficial to follow North Dakota's lead and have additional steps in the process so more people are looking at the assessment process on an annual basis. With more people contemplating the specifics of the assessment process, it may help flush out any discrepancies or problems before the

193. N.D. CENT. CODE § 57-02-27.2(8) (2020).

194. *Id.*

195. S.D. CODIFIED LAWS § 10-6-33.29 (2020).

196. N.D. CENT. CODE § 57-02-27.2.

197. N.D. CENT. CODE § 57-02-27.2(5).

198. N.D. CENT. CODE § 57-02-27.2(7).

199. N.D. CENT. CODE § 57-02-27.2(8).

200. N.D. CENT. CODE § 57-02-27.2(9).

201. S.D. CODIFIED LAWS § 10-6-33.31 (2020).

202. *Id.*

assessment is made on the property and sent out to the taxpayer.

As staff changes, interpretations and ideas change as well. By the time the Department of Revenue interpreted the statute following the Brown County neighborhood issue, the Department of Revenue had a change in the position of Director of the Division of Property and Special Taxes Division.²⁰³ The new director interpreted the statute to mean something that may not have been the same interpretation as the previous director. Furthermore, a majority of county directors of equalization have less than five years of experience—most directors not staying longer than five years.²⁰⁴ With such high turnover rates for directors of equalization, continuity is necessary between statutes and informational documents put out by the Department of Revenue.²⁰⁵

Today, there are statutes in place that would not allow such a large change in assessment value, as seen in *Kocer*, but that still does not resolve the problem of the wide discretion given to directors of equalization.²⁰⁶ The factors provided to the director of equalization in *Kocer* are essentially the same as what is in place today, even though there has been an overhaul in the assessment process. The Legislature should look at the factors again and update them to reflect the current assessment model.

The neighborhood system created by Brown County led the Department of Revenue to take a closer look.²⁰⁷ The Department determined that sales data and location were not enough to justify an adjustment, while the Brown County Director of Equalization obviously interpreted the statute differently.²⁰⁸ Since the statutes are ambiguous, it is difficult for the Department of Revenue to determine the intention of the Legislature in drafting these statutes surrounding the assessment process. It can be difficult for the directors of equalization to know what interpretation the Department will use in any given year without the

203. S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 1 (Oct. 12, 2011).

204. Bob Mercer, *S.D. House wants county officials to document adjustments made to ag-property values*, KELOLAND (Feb. 5, 2020), <https://perma.cc/F2NX-D2FN> [hereinafter *S.D. House wants county officials to document adjustments*]; Bob Mercer, *S.D. Senate decides county assessors should record reasons for reducing values of ag lands*, KELOLAND (Feb. 20, 2020), <https://perma.cc/9D75-XRHA>.

205. *S.D. House wants county officials to document adjustments*, *supra* note 204.

206. S.D. CODIFIED LAWS § 10-6-77 (2020).

207. See Letter from Michael Houdyshell, Director, SD Dept. of Revenue Property and Special Taxes Division, to Brown County Board of Commissioners (Feb. 7, 2018) (on file with author).

208. *Id.*

Legislature expressing their specific intentions through their drafting. The Department's goals, ideas, and interpretations may change with different administrations and staff turnover. This is not a stable way for landowners and directors to anticipate and determine property taxes.

Even with more research and better data available, adjustments will almost certainly be necessary. The research conducted by SDSU has provided the Department of Revenue with "objective data and greater transparency in determining the HBU for each soil type in the state."²⁰⁹ If implemented, it will "[create] a consistent model of methodology that is consistent with the definitions by the appraisal institute for finding highest and best use and is consistent with standards for developing a mass appraisal model and standards for coming up with the highest and best use supportable and replicable determination method."²¹⁰ These potential changes to the methodology is a step in making the assessment process more accurate and up to date. However, if the pilot program were to be implemented across the state, it still would not eliminate the need for local adjustments.²¹¹ Most likely, the need for local adjustments will never be eliminated.²¹²

The Department of Revenue should work with the task force to establish consistent state-wide protocols available for directors of equalization. When HB 1007 was introduced, there was an additional requirement that adjustments made by the director of equalization be "consistent with the county's established protocol for documenting an adjustment."²¹³ Following an amendment in the House Taxation Committee, this language was stripped from the bill.²¹⁴ In Committee, there was no discussion surrounding this change.²¹⁵ Counties with directors of

209. Elliot et al., *supra* note 23.

210. S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 2 (Nov. 13, 2018).

211. S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 4 (Nov. 13, 2018); S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 4 (Oct. 24, 2019).

212. S.D. LEGIS. RESEARCH COUNCIL, AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE MEETING MINUTES 4 (Nov. 13, 2018).

213. H.B. 1007, 95th Leg. Assmb., Reg. Sess. (S.D. 2020).

214. *See id.*

215. *See Require certain adjustments to the assessed value of agricultural land: Hearing on H.B. 1007 Before the H. Taxation Comm.*, 2020 Leg., 95th Sess. (S.D. 2020) (discussing aspects of the bill with no specific mentions of changes).

equalization that have not made adjustments do not have established protocols.²¹⁶ However, even if this verbiage would have passed, it still would have allowed counties to freely establish their own protocols. Presumably, these protocols would have been established by the county directors of equalization for their specific county. Therefore, the protocols would have been based on their own interpretations of the assessment process and the necessity of adjustment, which may or may not be consistent with statutes or guidelines by the South Dakota Department of Revenue. This process, if considered again in future legislation, will continue to create more disparity between counties and push the assessment process away from establishing continuity.

VI. CONCLUSION

Directors of equalization are faced with the important task of assessing agricultural land with very little guidance from the Legislature. A few lines listing potential factors to consider is all that is provided by the Legislature in guiding their decision to adjust taxpayers' agricultural land valuations.

Determining agricultural land valuation is a complex issue with many moving parts. There continues to be work done to improve the valuation process, but there is still very little change in statutes. As directors of equalization, members of the Legislature, and staffing of the Department of Revenue change, it becomes imperative to provide more guidance for the future. To solidify the intent of the Legislature, there needs to be better drafting so interpretations can be minimized and intent can be realized. Using North Dakota as a guide, the South Dakota Legislature should consider providing more guidance on the factors used for adjustments. Furthermore, additional roles in the process may be necessary to provide adequate attention to the valuations.

216. E-mail from Gene Loescke, Brown Cty. Dir. of Equalization (Mar. 31, 2020) (on file with author).