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PAAB

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2021-078-10020C

Parcel No. 744317300001

Jane Morris,

Appellant,

vs.

Pottawattamie County Board of Review,

Appellee.

Introduction

This appeal came on for written consideration by the Property Assessment Appeal Board (PAAB) on November 19, 2021. Jane Morris was self-represented and asked that the appeal proceed without a hearing. Assistant Pottawattamie County Attorney Leanne Gifford represented the Board of Review.

Jane and Steven Morris own a commercially classified property located at 13500 192nd Street, Council Bluffs, Iowa. The property's January 1, 2021, assessment was set at $456,800, allocated as $386,100 in land value and $70,700 in improvement value. (Ex. A).

Morris petitioned the Board of Review and claimed the property was misclassified as commercial. She also claimed the property's assessment was not equitable, was assessed for more than the value authorized by law, that there was an error in the assessment, and fraud or misconduct in the assessment. Iowa Code § 441.37(1)(a)(1)(a, b, c, d, & e). Her main claim asserts the property was misclassified as commercial under Iowa Code § 441.37(1)(a)(1)(c). (Ex. C).

The Board of Review denied the petition. (Ex. B).

Morris appealed to PAAB reasserting her claim that the property is misclassified and that there is an error in the assessment. She believes it should be classified agricultural.

General Legal Principles of PAAB Appeals

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Findings of Fact

The subject property is a 34.610-acre site improved with 17,500 square feet of concrete paving. (Exs. A, D-G). The property record card reflects the Morrises purchased the subject property in December 2017 for $1,115,310 and the sale was identified as a normal transaction. Thus, they have owned the subject property for four years.

The Morrises own Morris Excavating Company and use the site in conjunction with that business. A sign advertising Morris Excavating is located on the property. (Ex. D, F). The notes on the property record card indicate the site also has a power pole and a mobile office, which is corroborated by other evidence in the record. (Exs. A, D-G). Neither of these items are assessed. The classification of the subject property was changed from agricultural to commercial for the January 1, 2021 assessment. (Exs. A & 4).

Jane Morris, the president and secretary of Morris Excavating Company, submitted an affidavit, a statement of written consideration, and multiple exhibits in

support of the appeal. (Affidavit, Statement and Exs. 1-19). The Board of Review submitted multiple exhibits and a brief in support of its position. (Brief and Exs. A-G).

In support of the property's commercial classification, the Board of Review submitted a photograph of the Morris Excavating sign on the subject property, several web pages detailing the business of Morris Excavating, and the Iowa Secretary of State Biennial report for the corporation. (Exs. E-G). The Biennial Report indicates the Corporation does not hold an interest in agricultural land in Iowa and is not a family farm corporation. The website states Morris Excavating Co., Inc. was established in 1990 in Omaha, Nebraska by Steve and Jane Morris. It indicates Morris Excavating has been providing quality construction services throughout Iowa, Nebraska, Kansas, and Missouri, specializing in underground storage tank removal. The website identifies the subject property as Morris Excavating's recycling yard, which operates from 7am to 5pm Monday thru Friday and where concrete can be dumped for free but other materials can also be purchased. (Ex. E, p. 5).

The Board of Review also submitted the affidavit of Mary Carter, an Appraiser III for the Pottawattamie County Assessor. (Ex. D). She states that prior to the January 2021 assessment, the subject property had been classified as agricultural. According to Carter, at that time a portion of the property was being used for Morris Excavating, but the primary use appeared to be agricultural. For the January 2021 assessment, an appraiser in the Assessor's office noted the property had been improved with a concrete driveway, a power pole, and a mobile office. Moreover, the area used by Morris Excavating appeared to be increasing and the area used for crops was decreasing. Based on these observations, the assessor's office determined the primary use was commercial and changed the classification.

Morris was critical of the Carter affidavit. (Notice of Default for Failure of Discovery Request). She questions Carter's involvement and knowledge of this dispute. She also asserts the statements in the affidavit are either false or fraudulent and do not support the change in classification.

Photographs on the property record card reflect excavating and/or demolition equipment, and piles of earth or concrete and other materials. (Ex. A). An undated aerial photograph of the subject indicates a little more than one quarter of the site is actively utilized by Morris Excavating Company. (Ex. 3). Carter admits some crops are planted on the property, but we are unable to deduce the amount of crop acreage based on the aerial photograph. In fact, we note what appear to be numerous vehicle tracks on the southern half of the property running to the adjoining parcel that are not consistent with normal agricultural use. Nonetheless, the Board of Review seemingly concedes the remaining balance is cropped. (BOR Brief p. 2).

Morris makes a myriad of legal and factual arguments in support of her claim that the property is misclassified, but the crux of her position is that there is agricultural activity taking place on the subject and the Assessor had no authority to change the classification to commercial. She cites various errors she believes support her contention. (Ex. 7). Each will be addressed in turn.

Morris indicated the City of Council Bluffs and Pottawattamie County have granted her a permit to recycle concrete. She contends this activity qualifies the property for an exemption or credit from property taxes. (Ex. 2). Morris submitted a letter dated April 12, 2019 from a Taxpayer Service Specialist with the Iowa Department of Revenue confirming her excavating and recycling business is exempt from sales tax. (Ex. 13). Iowa Code section 427.1(19) provides a property tax exemption for recycling property "used primarily in the manufacturing process and resulting directly in the conversion of waste glass, waste plastic, wastepaper products, waste paperboard, or waste wood products into new raw materials or products composed primarily of recycled material." The evidence indicates Morris Excavating is engaged in concrete recycling, which does not clearly fall within the definition of exempt recycling property. Moreover, that section establishes a specific process for applying for the exemption, including certification by the department of natural resources. There is no evidence or argument suggesting Morris attempted to follow the statutory application process to obtain the exemption.

Relative to her misclassification claim, Morris asserts the subject property has always been cultivated, and noted soybeans have been raised. She claims the Assessor is required to use data obtained from the USDA regarding the crops harvested and value the land based on productivity. We note the record is devoid of evidence concerning the number of acres cultivated, the contract, if any, for planting and harvesting, or the compensation, if any, received by the Morrises for this activity. The only references in the record is the statement by Morris that of the acres, “most can be farmed” and “over 23 acres of crops [are] planted”. (Written Consideration para. 14; Notice of Default para. 12, 19).

Morris asserts Iowa law puts the burden on the Assessor to justify a change in classification. (Written Consideration para. 12; Notice of Default para. 13). She appears to also rely on a presumption that states if the classification of a property has been previously adjudicated, it is presumed the classification has not changed, and the burden of demonstrating a change is on the Assessor. Morris asserts the Board of Review, after her protest in 2019, left the classification as agricultural. The record does not reflect any previous appeal to PAAB or to District Court.

Morris contends the Iowa Administrative Code relative to the rules regarding classification of real estate is contrary to the Iowa Code, is applicable only to local County employees, and may not be relied upon by PAAB. (Written Consideration para. 14; Notice of Default para. 14-15). Specifically, she contends the terms “primary use” are not found in the Iowa Code. In the absence of a statutory definition, Morris argues PAAB should rely on the definition of principal use from a Pottawattamie County Ordinance. (See Ex. 2).

Finally, Morris asserts the addition of the concrete driveway to the subject property improperly resulted in the change of classification. (Written Consideration para. 4; Notice of Default para. 6, 7). She believes a “building” is required for commercial classification and the driveway does not constitute a building. Morris also appears to contend some form of collusion between the City and the County relative to the driveway.

As for her error claims, Morris cites at least nineteen. (Ex. 7). We shall identify them in the manner and order detailed by Morris.

The first, second, and third error cited by Morris is that the Assessor incorrectly referred to the driveway on the subject property as a "structure" and contends it was the Assessor's basis for changing the classification. She relies upon the Iowa State Building Code defining a building as a structure designed to provide shelter and the County ordinance which defines "structure" as "anything constructed or erected with a fixed location on the ground… but excludes driveways, parking." (Ex. 6). She submitted the Notice of Assessed Value which states the total assessed value and an allocation to land and buildings. (Ex. 4).

We note the Property Record Card for the subject property identifies the driveway as an "improvement", which is priced as a yard item.[1] (Ex. A). Additionally, section 427A.1 provides "[b]uildings, structures, or *improvements*, any of which are constructed on or in the land" are subject to property taxation unless otherwise qualifying for exemption. (emphasis added). Paving is generally considered a site improvement. Appraisal Institute, The Dictionary of Real Estate Appraisal, *Site Improvements* 215 (6th ed. 2015) ("Improvements on and off a site that make it suitable for its intended use or development. On-site improvements include grading, landscaping, *paving*, and utility hookups, off-site improvements include streets, curbs, sidewalks, drains, and connecting utility lines.")

The fourth error cited relates to a comment apparently made by Joe Casson, the Chief Deputy Assessor, regarding the amount paid for the subject and the money made on the property. How this constitutes an error is not described.

The fifth error cited asserts the Assessor did not provide any comparison properties to Morris. She contends this is required by law.

[1] The Iowa Real Property Appraisal Manual provides the guidelines for pricing paving at page 4-30. 2020 Iowa Real Property Appraisal Manual, https://tax.iowa.gov/sites/default/files/2020-01/Analyzed%20Unit%20Cost.pdf.

The sixth error cited relates to the Morris' assertion that the present use of the property is cultivating crops, and no building exists on the site, thus Morris contends it cannot be classified as commercial.

The seventh error cited is that the Assessor did not disclose information of any formula or method used to determine the actual value of the subject property as requested by Morris. Similarly, the eighth error asserts the Assessor did not obtain the USDA Farm Service Agency documentation relative to the subject. Morris asserts these matters are required by law. The record includes a Motion for Discovery filed by Morris on October 21, 2021. PAAB interpreted the Motion as a Motion to Compel Discovery, which it denied on November 8, 2021.[2]

The ninth and tenth errors cited by Morris refers to the terms "primarily used" and "principal use". She contends primary use is only mentioned in Section 441.21 with reference to properties other than agricultural land. She notes principal use is defined by a County ordinance as the main use of the premises permitted in a particular zoning district as opposed to a conditional use.

The eleventh error refers to an Iowa Supreme Court case involving the definition of agricultural purposes found in an exemption from zoning statute (Iowa Code Section 335.2) which includes cultivating the ground. Morris asserts the assessor failed to consider this definition when changing the classification.

The twelfth and thirteenth errors cited rely on Iowa Code Chapter 303 and land use restrictions, precluding the formulation of ordinances and the levy of taxes relating to tillable farmland. The subsections of Chapter 303 to which Morris cites relate to land use districts created to "conserve the distinctive historical and cultural character and peculiar suitability of the area for particular uses with a view to conserving the value of all existing and proposed structures and land and to preserve the quality of life of those citizens residing within the boundaries of the contiguous area by preserving its historical

[2] Morris submitted a similar document entitled Notice of Default for Failure of Discovery Request on November 10, 2021. The document does not appear to request any specific relief from PAAB, other than to suggest PAAB will need to obtain the USDA report, method of calculating value, and comparison property documents, to make a fair decision on the appeal.

and cultural quality." § 303.41. We have no reason to believe the subject is part of such a land use district.

The fourteenth error cites the definition of "road" in Iowa Code section 306.3 and contends the assessor should have considered the driveway on the subject property as a private road and not a structure.

For her fifteenth error Morris cites to county ordinance defining a Class "A" District as any agricultural district. She contends the assessor ignored this definition in changing the subject's classification.

The sixteenth and seventeenth errors cited refers to Iowa Code section 441.21(1)(e) which requires the actual value of agricultural land be determined on the basis of productivity and the assessor must report the aggregate taxable value of agricultural land. Morris contends the assessor did not calculate the soybean crop produced in 2020.

The eighteenth error cites to Iowa Code section 331.301, again for the purposes of asserting the Assessor misclassified the "road" as a building.

The nineteenth error cites to an article entitled "Two bills bring significant changes to county zoning in Iowa." The article is not in the record. According to Morris, it confirms that county zoning officials have problems interpreting the agricultural exemption to county zoning.

Throughout her listing of errors, Morris seems to contend that the assessor and/or county employees are making decisions which contradict Iowa law which she believes require them to protect land that is farmed which results in an unconstitutional taking of her property and may even constitute a crime.

Analysis & Conclusions of Law

Morris asserts the subject property is misclassified as commercial and should instead be classified agricultural. In doing so, Morris makes numerous legal arguments, and cites to various Iowa Code provisions, which we have reviewed. Unless discussed below, we find the majority of Morris' arguments and cited Code provisions are irrelevant and do not address them in the analysis below.

Contrary to Morris' belief, she bears the burden of proof. § 441.21(3). Section 441.21(3) clearly states the burden of proof is upon the complainant in any protest or appeal of an assessment. The one exception to this burden is when the classification of the property has been previously adjudicated by the property assessment appeal board or a court as part of an appeal under sections 441.37, 441.37A, and 441.38. In such a situation, the burden of demonstrating a change in use shall be upon the party asserting a change to the property's classification. *Id*. In this case, since the classification of Morris' property has not been previously adjudicated by PAAB or a court, its prior classification is not conclusive and binding in subsequent years because each "tax year is an individual assessment which does not grow out of the same transaction." *Cott v. Bd. of Review of City of Ames*, 442 N.W.2d 78, 81 (1989). See also § 441.21(3)(b)(3). Because the subject property's classification has not been previously adjudicated, there is no presumption that the previous classification is correct. Rather, Morris bears the burden to prove her property is misclassified. § 441.21(3). *See also Miller v. Property Assessment Appeal Bd*., 2019 WL 3714977 at *2 (Iowa Ct. App. Aug. 7, 2019).

Iowa assessors are to classify and value property following the provisions of the Iowa Code and administrative rules adopted by the Iowa Department of Revenue (IDR) and must also rely on other directives or manuals IDR issues. Iowa Code §§ 441.17(4), 441.21(1)(h). IDR has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code r. 701-71.1. The assessor shall classify property according to its present use. *Id*. Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id*. Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id*. There can be only one classification per property, except as provided for in paragraph 71.1(5) "b". *Id*. The determination of a property's classification "is to be decided on the basis of its primary use." *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). The assessment is determined as of January 1 of the year of the assessment. §§ 428.4, 441.46; Iowa Admin. Code R. 701-71.2.

Iowa Code section 441.17(2) requires that assessors assess properties in accordance with section 441.21 and specifically gives authority to the IDR's Director to "adopt rules pursuant to Chapter 17A to implement and administer this subsection." Iowa district courts, the Court of Appeals, and the Iowa Supreme Court have long considered the classification rules set forth in the Iowa Administrative Code as controlling on the issue of appropriate classification of real property. Morris' assertion that PAAB may not utilize these rules in its review of the Board of Review's decision is not supported. In the interest of consistent application of assessment classification requirements, it is imperative that assessors, boards of review, PAAB, and courts hearing assessment appeals all utilize the same requirements. Those requirements are dictated in rule 701-71.1, which was enacted pursuant to authority the legislature gave to IDR. Each classification case must be analyzed against these rules; classification determinations are fact intensive.

Rule 701-71.1(5) states: Commercial property "shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail."

Agricultural property includes land and improvements used in good faith primarily for agricultural purposes. R. 701-71.1(3). Land and nonresidential improvements

> shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest and fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit." Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in the subrule.

Id.

A significant focus of Morris' argument is on her belief the assessor has misidentified the concrete driveway as a building and used that identification to change the subject's assessment classification to commercial. First, the driveway or paving is identified as an improvement on the property record card and we agree with that description. Additionally, while the law sometimes concerns itself with semantic

distinctions, we find the concern Morris raises of little import. Iowa law dictates a property's classification is to be determined by its present use. R. 701-71.1. While improvements of any sort can be indicative of a property's use, it is *use*, not the existence or absence of improvements, that guide the assessment classification determination. In this case, Morris does not contest the fact that the subject property is presently used, at least in part, for commercial purposes. The record clearly reflects a portion of the property is used by Morris Excavating.

We consider the subject property's use against the classification rules and the evidence provided. Turning to the evidence in the record, we begin by noting what is absent. Although Morris strongly believes her property should be classified agricultural, she has provided no information about the agricultural activity taking place, other than her assertion that crops are and have been cultivated on approximately 23 acres. She indicates soybeans have been grown and apparently harvested, but the record discloses no other evidence from which we can determine whether these activities are being done with a good faith intent to profit as required by rule 701-71.1(3). The record includes virtually no details about the agricultural use typically offered in a classification dispute, such as who farms the land, how long it has been farmed, production yields, to whom the product is sold, or what, if any, income or profit the Morrises may have received from this activity. We don't know whether the Morrises perform any agricultural duties or whether they own any agricultural equipment. In short, the lack of corroborating evidence about the agricultural activity leaves doubt in our minds about whether any portion of the property qualifies as agricultural real estate under the classification rule. Contrary to Morris' belief, neither the Assessor nor PAAB is required to search out this information from the USDA or any other source.

In contrast, the record contains photographs of a significant excavating operation on the parcel. The website information and photographs of Morris Excavating Company reflect a thirty plus year business operating throughout the Midwest, offering a variety of services, with employees and large-scale equipment. This evidence demonstrates a commercial operation is taking place on the subject property and open to customers five days a week.

Where, as here, there are two uses taking place on a property, we must determine the primary use of the property. We may consider "the relative economic effect of the differing uses made of the property." *Sevde*, 434 N.W.2d at 881. However, "an activity which is not a primary use of the property does not become such because it produces more revenue in a particular year than the dominant activity." *Id*. Based on the record before us, we conclude Morris has failed to demonstrate the primary use of the subject property is agricultural. The subject is used for regular business activities of the Morrises' commercial enterprise, and that use constitutes at least a quarter of the subject's site. In contrast, the record lacks sufficient and persuasive evidence about the agricultural use. Accordingly, her misclassification claim must fail.

Although Morris cites error as another ground for her appeal, her specific points of error ultimately speak to her claim of misclassification. Thus, we need not address them individually. We have considered all of her arguments and evidence, even if not specifically identified. Ultimately, we find Morris did not demonstrate an error has been made in her assessment.

Order

PAAB HEREBY AFFIRMS the Pottawattamie County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.19 (2021).

Elizabeth Goodman, Board Member

Dennis Loll, Board Member

Karen Oberman, Board Member

Copies to:

Jane Morris
10566 Woodland Trail
Council Bluffs, IA 51503

Pottawattamie County Board of Review by eFile