

IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

STEPHEN R. GRUBB 2003 REVOCABLE TRUST, Petitioner-Appellant, vs. DALLAS COUNTY BOARD OF REVIEW, Respondent-Appellee.	Case No. CVCV037978 RULING ON APPEAL
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This matter is before the court on appeal from the decision of the Property Assessment Appeal Board decided adversely to the Dallas County Board of Review. At the oral arguments, conducted by telephone, all parties were represented by counsel. Brett Ryan represented the Dallas County Board of Review. James Nervig represented the Stephen R Grubb 2003 Revocable Trust. Brad Hopkins represented the Iowa Property Assessment Appeal Board. For convenience, the court refers to the Property Assessment Appeal Board as “the PAAB,” the Stephen R. Grubb 2003 Revocable Trust as “the trust,” and the Dallas County Board of Review as “the Board.” Generally, except where the context indicates otherwise, references to Grubb include the trust and vice versa.

The court having considered the arguments of counsel, the applicable law, and the record, including the transcript of the proceedings, affirms the decision of the Property Assessment Appeal Board. This court finds the decision of the PAAB is well reasoned and supported by substantial evidence. Therefore, the court affirms the PAAB’s decision.

I. FACTUAL BACKGROUND

At issue here, are three parcels of land located in Dallas County owned by the Stephen R Grubb 2003 Revocable Trust. Parcel 12-26-453-002, locally known as 2315 NW 161st Street, Clive, Iowa, consists of approximately 3.29 acres. Grubb purchased this property in 1998. Parcel 12-26-453-003 and locally known as 15935 Hickman Road in Clive, Iowa is adjacent to the parcel on 161st Street. This property consists of 2.58 acres, more or less. Grubb purchased this property in 1999. Parcel 12-35-477-010 does not have a local address, but consists of approximately 5.28 acres near the northwest corner of University Avenue and Boone Drive in Waukee, Iowa. Stephen R. Grubb originally purchased this property in 1992. Grubb transferred all three parcels to the Stephen R Grubb 2003 Revocable Trust in 2004.

The parties agree the trust leases all three parcels to a farm tenant, but neither the trust nor Grubb receives any rent under the terms of the lease for these particular parcels. The farm tenant, Michael Ellis, has several farm leases with Grubb, as well as other landowners. He is a farmer by trade. Ellis pays cash rent for the other land he leases from Grubb and/or the trust, but not these three parcels. The tracts in question are small and, while Ellis makes a net profit from the growing of crops on the combined three parcels, he views farming these small areas in inconvenient locations as more trouble than it is worth.

However, the farm tenant's ability to lease other Grubb property is dependent on his willingness to farm these parcels, so the tenant continues to farm the property in question, despite the difficulties attendant to doing so. In 2010, Ellis grew and harvested corn on the properties. He maintains crop insurance on the three parcels and filed insurance claims in the past related to these properties. Hence, little question exists as to the current use of the property as farmland.

The current use of the parcels as farmland is consistent with the historical use of the land, with one exception. In 1998, Grubb sold slightly over an acre of land from Parcel 12-35-477-010 to Casey's. As a result of that transaction, a Casey's convenience store now stands at the corner of University Avenue and Boone Drive in Waukee.

Other than the sale to Casey's more than a decade ago, the parcels in question have been consistently farmed. Although signs on the properties indicate the land is available for development, the parcels are not currently listed for sale. According to Grubb's Office Manager, there are no existing mortgages on any of the parcels.

II. PROCEDURAL HISTORY

Despite this use as farmland, the Dallas County Assessor classified all three parcels as commercial, which neither the trust nor Grubb contested until the 2011 and 2012 assessments. At that time, the trust protested on the grounds the property was assessed for more than authorized by law and the property was misclassified under Iowa Code section 441.37. The Dallas County Board of Review denied the trust's protest.

After the Dallas County Board of Review denied the protest, the trust successfully appealed to the Property Assessment Appeal Board. The PAAB conducted a contested hearing and, later, issued a written decision and order. The PAAB reversed the Dallas

County Board of Review, concluding the land should be classified as agricultural. The PAAB's order directed the Board of Review to determine the agricultural land value based on the appropriate method required by law and to report those values to the PAAB. Apparently, the Board of Review has yet to comply with the PAAB's order, although no stay is in effect, which would justify such noncompliance.

Subsequent to the adverse decision from Property Assessment Appeal Board, the Dallas County Board of Review sought judicial review by the district court. As presented to this court during oral arguments, the fighting issue is whether the trust is in good faith actively engaged in farming for profit. The trust asserts it is, but the Board maintains the parcels at issue are really development land and, therefore, properly classified as commercial.

The court recites additional facts below when relevant to the issues.

III. LEGAL ANALYSIS

No dispute exists between these parties that a tenant currently farms the property, or, that, historically, these parcels were continuously farmed since the date of purchase, with one caveat, the Casey's sale. The trust argues the facts support the PAAB's decision and mandate against classification as commercial property. The Board of Review, however, asserts the facts support the commercial classification. The Board points out the trust receives no income from these parcels, the amount of the purchase price for each parcel was substantial, and signs on the property indicate it is available for development. When coupled with the fact that Grubb, sold a portion of the land to Casey's for commercial development, the Board maintains the facts support the current classification. The Board also emphasizes the trust did not protest the commercial classification until the 2011 assessment, so a presumption exists in favor of the existing classification as correct. The Board claims these facts militate against a finding this is agricultural land.

A. Standard of Review

The parties agree on the applicable standard of review. In an administrative appeal such as this, the district court reviews the decision of the PAAB for errors of law only. However, substantial evidence must support the PAAB's factual findings. Iowa Code § 441.39. If not, the district court should reverse. See Iowa Code § 17A.19 (10) (f).

B. Applicable Law

Chapter 441 of the Iowa Code governs the assessment and valuation of property. Section 441.1 creates the office of the assessor. Assessors may be either city assessors, responsible for assessing property within the city, or, county assessors, responsible for assessing the value of property in the county, with certain exceptions not applicable here. Iowa Code § 441.1. Iowa Code section 441.17 imposes upon assessors the duty to assess all property in accordance with Iowa Code section 441.21 unless the property is exempt from taxation or the law otherwise provides for the assessment. Section 441.21 (h) requires the assessor to determine the value of real property in accordance with rules adopted by the department of revenue.

The administrative rules adopted by the department of revenue pursuant to chapter 441 set out specifically how the assessor should classify and assess property. Initially, the assessor must classify all real estate that is subject to assessment in the city or county. Iowa Admin. Code r. 701-71.1 (1). There can only be one classification per property. *Id.* The same administrative rule requires the assessor to “classify property according to its present use and not according to its highest and best use.” *Id.* See also *Sevde v. Bd. of Review*, 434 N.W.2d 878, 880 (Iowa 1989) (in determining whether property should be classified as agricultural, the assessor looks to the primary use of the property).

Administrative Rule 701-71.1 (2) directs boards of review, among others, when assessing property to classify the property in accordance with rule 701-71.1. Rule 701-71.1(3) addresses agricultural real estate. That rule, provides in relevant part, “agricultural real estate includes all tracts of land ... which are in good faith used primarily for agricultural purposes.” Iowa Admin. Code r. 701-71.1 (3). Land is considered to be used primarily for agricultural purposes if “its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.” *Id.*

C. Application of the Law

Here, the Board of Review strenuously argues that the trust is not farming the land in good faith for profit as required by Iowa Administrative Rule 701-71.1 (3). The signs indicating the land is available for development, the 1998 sale to Casey’s of approximately

one acre, and the lack of rental income from the property are facts the Board asserts supports its position the land is commercial. The PAAB, however, reached a different conclusion based on these same facts.

1. The Profit Argument. The Property Assessment Appeal Board concluded Grubb was farming the land in good faith. The PAAB was unmoved by the argument that the trust receives no income from the property. The PAAB reasoned that because this land is included with other land in the farm tenancy, the trust does intend to make a profit. The trust, while not receiving income on these individual parcels due to their small size and location, does receive cash rent from total land leased to the farm tenant. Since farming these smaller parcels is a condition to lease the larger tracts of land, the PAAB concluded the trust intends to make a profit from the overall operation and these parcels are part of the overall operation.

This court agrees with the PAAB's analysis regarding the farm tenancy. These three smaller tracts do not exist in a vacuum. They are directly associated with the remaining leased land. Unless the farm tenant is willing to farm these smaller parcels, the tenant cannot lease the larger parcels. A number of good reasons exist for conditioning the lease of larger parcels on the farming of the smaller parcels. If the trust is leasing other ground to a farm tenant, the trust might as well keep these parcels, too, cultivated and, thereby, avoid overgrowth by weeds and wild brush. Further, the trust avoids the time and expense associated with mowing the property if left barren. The trust, knowing the farming of these small parcels does not appeal to a farm tenant, charges no rent for this approximately eleven acres of land. However, the trust receives cash rent from the overall farm operation, indicating the trust intends to make a profit from the farm tenancy as a whole. While the trust may not receive rent for these three parcels, there is an indirect benefit to the trust.

This court further concurs in the PAAB's decision based on the application of the law to the facts. Grubb and/or the trust owned the properties in question now for 15-20 years, depending on the parcel. During that time neither Grubb nor the trust used the land for any commercial purpose, except the sole sale to Casey's. The land has always been farmed as part of other farmland Grubb and the trust own and rent. This is not a temporary situation where the owner is simply waiting for the land to increase in value before

disposing of it. This is a situation where the present use of the property is consistent with the use of the property since its initial purchase. The fact that the trust could sell the land or would be willing to develop the land does not change this historical context. Based on over 15-20 years of farming, this court cannot conclude the owner did not farm the land in good faith. To the contrary, the consistent use of these parcels for farming tends to establish the land as agricultural, not commercial.

2. "Good Faith" Factors. The administrative rule that instructs the assessor to assess the land based on its present use and not its highest and best use applies to the Board of Review, as well. The Board of Review, however, asks the court to apply six factors referenced in some of the case law. *See e.g., Colvin v. Story County Bd. of Review*, 653 N.W.2d 345 (Iowa 2002). The board argues that, applying these factors, the court can conclude Grubb does not farm the land in good faith. The court however, finds it unnecessary to resort to these factors when the history of this land for 15-20 years is its primary use is as farmland. The rule is clear. The assessor must assess the land based on its present use and not its highest and best use. Iowa Admin. Code r. 701-71.1 (1). If, at some point, the trust sells the land, then the Dallas County Assessor will be in a position to reevaluate the situation. However, in view of the historical use of the land which is consistent with its present use, the court, like the PAAB, concludes that under Iowa administrative rule 701 – 71.1 this land is clearly agricultural.

Further, it is virtually impossible to classify the parcels in question as commercial without using the properties' highest and best use as the basis for the classification, which is directly contrary to the relevant administrative rule. Other than a sign or two and an old sale to Casey's in 1998, the facts simply do not suggest the current use of this land is as commercial development land. If that was the intent of Grubb or the trust, they have done a poor job of pursuing that goal. Grubb purchased the land in 1992 from which he sold a little more than an acre to Casey's in 1998. He owned the land for six years before there was any sale. Moreover, there have been no sales since then, not from the parcel purchased in 1992 or the parcels purchased in 1998 and 1999. Thus, there has only been one sale, ever, and more than twelve years have elapsed since that sale. Throughout this time, however, all three parcels were farmed, which remains the present use of the land.

The PAAB concluded the proper classification of the three parcels is as agricultural land. The PAAB's decision rests not only on the present use of the land, but also on the historical use of the land by Grubb and the trust. That use has not significantly changed, which brings the court to the Board's the rebuttable presumption argument.

3. *The Rebuttable Presumption Argument.* The Board also argues that because neither Grubb nor the trust earlier protested the properties' classification as commercial, a rebuttable presumption exists the use of the land has not changed and the land's prior classification is correct. *See Colvin*, 653 N.W.2d at 349-350. While this is a correct statement of the law, it presumes the trust did not overcome the presumption. In the case at bar, the trust clearly established the primary use of this land for the past fifteen to twenty years, is as farmland. Hence, the trust rebutted the presumption, not because the use of the land has changed, but because the classification by the Dallas County Assessor was wrong. The court does not believe the presumption operates to perpetuate an erroneous classification of property, simply because the landowner did not protest sooner. The court rejects this argument.

D. Conclusion

This court concludes the Property Assessment Appeal Board correctly decided the proper classification of these three parcels is as agricultural realty. Substantial evidence supports the PAAB's factual findings and this court finds no errors of law in the PAAB's conclusions. Therefore, the court affirms the decision and order of the Property Assessment Appeal Board.

IV. RULING AND ORDER

IT IS THEREFORE THE RULING AND ORDER of the court that the decision of the Property Assessment Appeal Board is affirmed. The Dallas County Board of Review shall comply with the order of the Property Assessment Appeal Board as originally directed, absent an order staying this court's order or the order of the Property Assessment Appeal Board.

IT IS THE FURTHER ORDER of the court that costs are taxed to the Dallas County Board of Review.

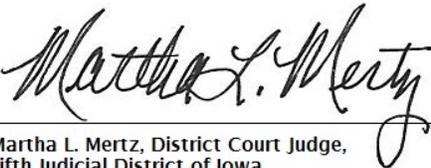


State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV037978
Case Title DALLAS CO BOARD OF REVIEW VS IOWA PROPERTY ASSESSMENT

So Ordered


Martha L. Mertz, District Court Judge,
Fifth Judicial District of Iowa