

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

William J. and Lorene F. Richmond,
Petitioner-Appellants,

v.

City of Cedar Rapids Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-101-1270
Parcel No. 19061-77006-00000

On February 3, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellants, William J. and Lorene F. Richmond, were represented by Clifford Richmond and submitted evidence in support of their petition. The City of Cedar Rapids Board of Review designated Assistant City Attorney William Wright as its legal representative. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

William J. and Lorene F. Richmond, owners of property located at 1895 33rd Avenue, SW, Cedar Rapids, Iowa, appeal from the City of Cedar Rapids Board of Review decision reassessing their property. The real estate was classified residential for the January 1, 2009, assessment and valued at \$208,731; representing \$107,600 in land value and \$101,131 in the improvement value. The Richmonds protested to the Board of Review on the ground that the property is misclassified under Iowa Code section 441.37(1)(d). This was a change from the 2008 assessment as the property was previously classified agricultural and valued accordingly. The Richmonds asserted they have farmed the land since 1984, and the property had been classified agricultural realty until the 2009 reassessment.

The Board of Review determined the property was not misclassified. It notified the Richmonds the January 1, 2009, assessment would not be changed. The Richmonds then appealed to this Board and reasserted their claim that the property is misclassified. The Richmonds request the classification be returned to agricultural since they are raising nursery stock on the property.

The subject property is about 10.52 acres. The property is improved with an 864 square-foot family dwelling and four outbuildings. The outbuildings consist of one barn used for the nursery operation, two machine sheds, and one small 12 foot by 14 foot shed. One of the machine sheds is used for the nursery and the other for personal use. The shed used for personal use was referred to at hearing as the "garage." The garage stores a truck, mower, tools, and other miscellaneous items. Some of these tools and items were also used for the nursery operation. There is also a pond filled by run-off water from tiled area and installed for irrigation.

Clifford Richmond testified regarding the history of his parents' farm. The Richmond family has farmed this property for almost twenty-five years. Richmond testified that currently he is not living in the property's dwelling due to his health problems the last few years. He testified that he has had serious medical issues and lives, for the most part, with his parents. Richmond does not pay rent to live in the dwelling. However, he does pay his parents \$500 a month for the use of the land and outbuildings.

Richmond testified that they raised livestock until 2006 on the property. Also, over the years they have grown and sold nursery stock, grain, and vegetables. In 2007, the Richmonds changed the pasture over to nursery stock. They removed fences, graded the land, and reseeded the pasture. In 2008, the Richmonds had the upper nursery area planted and installed an irrigation system for the nursery. The lower nursery, however, was not planted because of the 2008 flood and Clifford's medical issues. Clifford Richmond planted the lower nursery in 2009.

Richmond testified that he has plans to continue to expand the nursery year by year, and it will take time to grow the operation. In Richmond's opinion, if you include the outbuilding, the nursery, the pond (which is used for both personal use and irrigation for the nursery), and the drive and path to access the nursery stock this would amount to about 5.5 acres of the property being used for the nursery operation.

He also stated he is simply trying to be a good neighbor to the residential property owners nearby. He testified to the east and west of his property is residential and the area north and south is agricultural. Richmond also testified that he maintains his property because of the residential area surrounding the subject property. He noted it would be much cheaper for him to let the seeded area grow and not maintain it, if the property's manicured appearance is a primary reason for the City to preclude it from being classified as agricultural realty.

Richmond has never offered the property for sale and does not intend to sell the property in the near future. Richmond did mention that at one time the farmer who farms to the south of the property offered to purchase three acres to add to his farm operation, but they did not have a conversation as to a possible purchase price. He testified at least for the next ten years he intends to use the property for agricultural purposes. However, he did admit that someday it will probably be used as residential. It is Richmond's intent to continue the nursery operation into the future and to make a profit. As he noted, the property is in transition from an animal agriculture operation to a nursery operation and the reassessment review for 2009 came at possibly the worst time due to his health and the flood in the summer of 2008. We find his testimony to be very honest and forthright and further demonstrated a "good faith" use of the property.

Beth Weeks, Chief Deputy Assessor, testified that the City did a complete agricultural revaluation for the 2009 assessment year. As part of that revaluation, Richmonds' classification was considered. It was the City's belief that as of January 1, 2009, less than an acre of the property was

used as a nursery, and the dwelling was occupied by the property owners' son at no charge. However, Weeks now knows Clifford Richmond pays \$500 per month for the use of the outbuildings and land. Weeks stated it is her understanding that the property owner plans to increase the nursery's planted area to 1.5 acres and when in full production, have approximately two acres of nursery stock. At the time of the assessment, the City was of the opinion that, due to the small percentage of acres used for nursery stock, the property was not in good faith used primarily for an agricultural purpose and should be classified as residential.

Weeks testified the property is currently zoned agricultural, which could allow for low-density single-family areas and agricultural use. She noted, in her opinion, the property would be purchased for residential use. Weeks stated that the surrounding property is used for residential purposes, with some agricultural property next to the subject property. She also believes the highest and best use is for residential purposes, but she stated a highest and best use analysis was not conducted. The City also noted that the owners' income is not from an agricultural source, but the son's income is from agricultural use.

When questioned by this Board if the City had a threshold for acres, Weeks stated she believed that primary use means a majority of the property. Although Weeks testified that no formal guidelines exist, she believes it should be 50% or more of the property devoted to agricultural use to be classified agricultural realty. Also, when questioned by this Board, Weeks stated if no dwelling existed, the property would be agricultural. She further indicated that if the Richmonds had sold off the lower three acres to the south and had only seven acres of property remaining, it would be agricultural (if the remaining five acres were used for the nursery operation.)

The main area of contention in this case appears to be with the amount of land used for the nursery and whether that use amounts to the primary use of the property being for agricultural purposes. The answer to this issue is not very clear. The city believed only 0.04 acres of the property

were used for the nursery for the January 1, 2009, assessment. Their figure did not include the building site, the pond, or any land allowance to reach the pond and nursery area. We disagree with the City's estimates. At least three of the outbuildings are used solely for nursery purposes according to Richmond's testimony. The City attempts to exclude the land under these buildings from being considered as part of the acreage area, but that is nonsensical. If the buildings are being used as part of the nursery, the land under those buildings should be attributed to the nursery operation. Further, at least part, if not all, of the pond's area should be attributed to the nursery's use, even if Richmond occasionally enjoys personal use of it by relaxing on a platform or dock near it. Finally, the access roads and paths through the nursery and to the pond cannot be excluded because their purpose is to serve the operation. In contradiction to the City's calculation of area used for the nursery, Mr. Richmond believes it could be five to five-and-one-half acres. We find that definitely more than the 0.04 acres of the property claimed by the City, and likely closer to the five to five-and-one-half acres of the property claimed by Mr. Richmond, are in agricultural production. It is clear to this Board, however, that by 2012 Richmond intends to have the total acreage of the nursery be greater than the five to five and one-half acre estimate.

Chief Deputy Weeks was very honest and respectful in her testimony. She noted that she sees no black and white answer in the area of classification law. At the time of the January 1, 2009, assessment, based on the information the City had, it believed that only a small portion was used for the nursery operation, and the primary use was residential. Weeks did state that she had no reason to believe that the Richmonds will not try and expand the nursery operation into the future.

Classification cases can be particularly difficult because they are very fact specific. We find that the Richmonds' case is a close call, but they have met the burden to show that their property for January 1, 2009, was misclassified. Richmond is in good faith using the property primarily for agricultural purposes with his nursery operation. While the nursery operation is in transition, and may

not have realized a profit the immediate year preceding the assessment date, it is clear to this Board that Richmond intends to profit from the operation. Furthermore, while there is no specific figure for the amount of the property that must be put to agricultural uses, we find the property is planted with nursery stock, the outbuildings, the pond (or at least a portion of it), the access roads and paths, and areas that were planted following the assessment date, as well as additional land that will be planted in the next few years, demonstrates the primary use of the property is for agricultural purposes.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board 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). There is no presumption that the assessed value is correct. Iowa Code § 441.37A(3)(a).

The Richmonds assert the property is misclassified residential and its actual classification should be agricultural. The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code r. 701-71.1. Classifications are based on the assessor's best judgment 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.* r. 701-71.1(2). Property is to be classified “according to its present use and not according to any highest and best use.” *Id.* r. 701-71.1(1).

“Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes” except buildings which are primarily used or intended for human habitation. *Id.* r. 701-71.1(3).

“Land and the nonresidential improvements and structures located on it 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 or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.”

Id. r. 701-71.1(4).

If the Richmonds’ property is not classified agricultural, it must be classified residential.

Residential realty is defined as the following:

Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings are used primarily or intended for human habitation shall include the dwelling as well as the structures and improvements used primarily as part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. Residential real estate on agricultural land shall include only buildings as defined by this subrule.

At hearing, the Board of Review referred to *Colvin v. Story County Board of Review*, 653 N.W. 2d 345 (Iowa 2002), and factors mentioned by the Court in that case. The Board of Review referenced these factors and had its witness testify to them as they relate to the issue of “good faith.” The Supreme Court, however, said in *Colvin* that it did not reach the issue of whether these “factors” were within the contemplation of 701 IAC 71.1(1). *Id.* at FN3. Absent a finding of those factors’ validity, we are guided by the language of 701-71.1 and its subparts. The rule specifically states that assessors and boards of review are to classify real property “following the guidelines set out in this rule.” Iowa Admin. Code r. 701-71.1(1). We also note that while the term “good faith” is not defined in 701 IAC 71.1(3), Iowa courts have defined the term to include “honesty of intention” or “subjective honest

belief.” *Haberer v. Woodbury County*, 560 N.W.2d 571, 575 (Iowa 1997); *Garvis v. Scholten*, 492 N.W.2d 402, 404 (Iowa 1992).

Even if this Board considers those factors to determine “good faith,” we would ultimately reach the same conclusion regarding the classification of Richmonds' property. The subject property is zoned agricultural realty; the property is not for sale for the near future, although it could be, and then the market may view it as either agricultural or residential; the surrounding area is both residential and agricultural; there was no income from the nursery but Richmond pays \$500 a month to rent the land and outbuildings to use for the nursery; and the highest and best use is not a factor since a study was not completed. Furthermore, 701 IAC 71.1(1) specifically states that property is to be classified based on its present use and not highest and best use. To consider highest and best use for classification would be in conflict with 701 IAC 71.1(1).

While the subject property currently has a residential dwelling on it, it is also presently being used for agricultural purposes. Richmond’s testimony before this Board indicated that use of the property as a nursery was being undertaken in good faith. It is clear to us that Richmond is not using his property in this way in an effort to avoid any tax liability that may come with not having an agricultural classification. Richmond also appeared honest in his testimony that the nursery operation is being undertaken with intent to profit, even though its operation is currently in transition. Further, even though he also enjoys the pleasure of having a pond on the property, the pond serves as an irrigation source for the nursery.

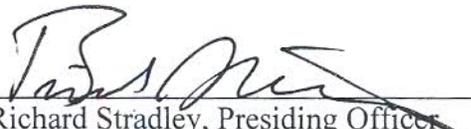
Although the amount of land being used for the nursery operation was in contention, we note another case where only a relatively small portion of a property was being used for raspberries. *See Cott v. Bd. of Review of City of Ames*, 442 N.W.2d 78, 79 (Iowa 1989). In *Cott*, the district court found property was properly classified agricultural where only approximately one acre of an eight-and-one-half acre parcel was being used to raise raspberries and brome grass; this decision was affirmed on

appeal on the issue of continuity of use. *Id.* In the twenty plus years the Richmonds have owned the property they have raised livestock and vegetables on it. The property's agricultural use appeared to be profitable up until the transition period from animal agriculture to nursery stock in approximately 2007. Agricultural realty classification is determined based on its primary use and good faith effort for intended profits. In this factual situation the Richmonds are making a good faith effort with their nursery, and past history would indicate while they are currently transition, they also currently intend to make a profit and will realize profit once the transition is complete and nursery stock can be sold.

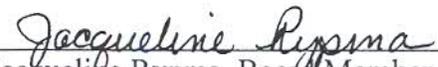
In the opinion of the Appeal Board, the evidence supports the claims that the property is misclassified. We, therefore, modify the assessment of the Richmond property as determined by the Cedar Rapids City Board of Review as of January 1, 2009. The property is classified as agricultural with an assessed value of \$77,130.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Cedar Rapids City Board of Review is modified to reflect the 2008 assessment of \$77,130; representing \$9101 for land, \$56,245 for dwelling, and \$22,833 for improvements.

Dated this 26 day of March, 2010.


Richard Stradley, Presiding Officer


Karen Oberman, Board Chair


Jacqueline Rypma, Board Member

Copies to:

William J. and Lorene F. Richmond
2107 Lauren Dr SW
Cedar Rapids, IA 52404
APPELLANTS

William Wright
Cedar Rapids, Assistant City Attorney
3851 River Ridge Dr., NE
Cedar Rapids, IA 52402
ATTORNEY FOR APPELLEE

Joel Miller
Linn County Auditor
930 1st Street SW
Cedar Rapids, IA 52404

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>3-24</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u><i>Joel Miller</i></u>