

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**SDB, LLC,**  
Petitioner-Appellant,

v.

**Fremont County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 09-36-0266**  
**Parcel No. 006+030030168000000 (3-168)**

**Docket No. 09-36-0267**  
**Parcel No. 006+030030188000000 (3-188)**

**Docket No. 09-36-0268**  
**Parcel No. 006+030030189000000 (3-189)**

**Docket No. 09-36-0269**  
**Parcel No. 006+030030191000000 (3-191)**

**Docket No. 09-36-0270**  
**Parcel No. 006+030030190000000 (3-190)**

**Docket No. 09-36-0271**  
**Parcel No. 006+030030194000000 (3-194)**

**Docket No. 09-36-0272**  
**Parcel No. 006+030030022000000 (3-22)**

On February 25, 2011, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.47A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant, SDB, LLC, designated William Sapp, General Manager as its representation. He participated by telephone. The Fremont County Board of Review designated Douglas Fulton of Brick Gentry P.C., West Des Moines, as its legal representation. The Board of Review submitted evidence in support of its position. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

### *Findings of Fact*

SDB, LLC, (SDB) is the owner of a large commercial development located in Percival, Iowa at the Exit of I-29 and Highway 2. SDB appeals from the Fremont County Board of Review regarding its 2009 property assessment on a portion of the larger development, specifically on seven commercially classified parcels. Six of the seven parcels are contiguous, with the exception of parcel 3-168. The seven parcels combined total thirty-nine acres and are mostly unimproved, with two lagoons (situated on parcels 3-168 and 3-194). The lagoons are exempt. Parcel 3-194 also has a water tower with an allocated improvement value of \$160,180. SDB did not challenge the water tower assessment.

The individual parcel and lot numbers, their assessments, site size, and improvements are as follows:

**Figure 1**

<b>Docket #</b>	<b>Parcel<sup>1</sup> and Lot #</b>	<b>Site Size (Acres)</b>	<b>Improvements</b>	<b>Assessed Value</b>
09-36-0266	3-168 (Lot 28)	1.94	Lagoon (Exempt)	\$82,560
09-36-0267	3-188 (Lot 8)	1.18	None	\$32,160
09-36-0268	3-189 (Lot 9)	1.73	None	\$38,760
09-36-0269	3-191 (Lot 11)	7.48	None	\$107,760
09-36-0270	3-190 (Lot 10)	3.64	None	\$61,680
09-36-0271	3-194 (Lot 14)	1.43	Lagoon (Exempt)/Water Tower	\$233,080
09-36-0272	3-22 (Parcel A)	21.6	None	\$91,800
	<b>Total</b>	<b>39</b>		<b>\$647,800</b>

Before the Board of Review, SDB essentially claimed in all seven appeals that the properties were not assessable, were exempt, or were misclassified under Iowa Code section 441.37(1)(c). For parcel 3-168 SDB claimed the site was used for the sewer system for the larger development area. It claimed the site contributes to the value of the larger development and should not be valued separately. For parcel 3-194 it claimed the property should be valued at farm price per acre because it has

<sup>1</sup> Parcel numbers have been truncated. Full parcel numbers can be found at the top of this Order.

contributory value to the rest of the development. For the remaining five parcels SDB claimed they were essentially misclassified and should be re-classified from commercial to agricultural.

The Board of Review left the value unchanged, citing for parcels 3-168 and 3-194 that the assertion the sites are not assessable is not provided for in the Iowa Code and that SDB did not provide sufficient proof for a change. Regarding the remaining five parcels, the Board of Review left the values unchanged citing that as of January 1, 2009, it considered the use to be commercial.

SDB then appealed to this Board, asserting on all seven properties that 1) the property is assessed for more than the value authorized by law under Iowa Code section § 441.37(1)(b), and 2) there has been a change downward in the value since the last assessment under sections 441.37(1) and 441.35(3). The claims of over-assessment and downward change were not made to the Board of Review and will not be considered by this Board. We will only consider the ground that the properties are not assessable, are exempt from taxes, or are misclassified.

William Sapp, General Manager for SDB, testified explaining that the “back lots” (all the parcels considered at hearing) of the larger Sapp Brothers Travel Center development are currently unimproved, and in some cases, cannot be improved. Sapp asserts that Parcel 3-22 (known as “Parcel A”) is not buildable due to being mostly “water and un-useable ground.” He indicated this parcel could not even be farmed because of the water on the site. Sapp also noted that dirt was moved from these rear lots to the front lots, which have been improved since the development began in 2001.

Sapp testified that “lots 8, 9, 10 and 11<sup>2</sup>” were being farmed and have been for the last three to four years since approximately 2006. He did not elaborate what farming activity had taken place. SDB did not provide any documentary evidence to further support its claims of the farming activity.

Alan Marsh, CFO for SDB, also testified. He essentially reiterated points already made by Sapp.

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<sup>2</sup> Corresponding parcels are as follows: 3-188, 3-189, 3-190 and 3-191.

Karen Berry, Fremont County Assessor, testified that she has viewed the subject parcels every year for the last several years and that she has not seen any agricultural activity. She indicated that she has seen dirt being moved on lots 8, 9, and 10; and that lot 11 was only recently noted as having some agricultural activity but not until the summer of 2009, after the January 1, 2009, assessment date.

Berry indicated she relied up comparable sales to determine the land valuations and the *Iowa Real Property Appraisal Manual* for the lagoon and water tower valuations. She noted the lagoons were exempted prior to the January 1, 2009, assessment. Berry noted that two parcels (3-168 and 3-194) are being used to service the entire development for sewage and water. The systems are privately held and maintained, and the services are “sold” by use to the adjoining land owners/commercial property owners in the development.

Lastly, Berry testified that while a large portion of Parcel 3-22 had a “lake” on it, she considered this an amenity to the site, which she believes could be improved. Berry also noted that all the individual parcels being considered do have road access, albeit gravel at this point in time.

Reviewing all the evidence, we find the preponderance of evidence does not support SDB’s contention the subject properties are either not assessable or misclassified.

### ***Conclusions of Law***

The Appeal Board applied 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. § 441.37A(3)(a).

SDB's sole claim is that the properties are either not assessable or misclassified and that their 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 Ch. 701-71.1. Classifications are based on the best judgment of the assessor 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). "Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is 'agricultural' or [residential] is to be decided on the basis of its primary use." *Svede v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. Iowa Admin. 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 . . . 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.* With respect to residential real estate, these regulations provide that this includes land and buildings primarily used or intended for human habitation, including those buildings located on agricultural land. *Id.* r. 701-71.1(4). SDB claimed part of the property was being farmed, but it provided no information to demonstrate what the farming activity was or an intent to profit from the activity.

Viewing the evidence as a whole, we determine the preponderance of evidence was lacking to support SDB's claims. Therefore, we affirm the SDB, LLC property assessments as determined by the Board of Review.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Fremont County Board of Review is affirmed.

Dated this 24 day of March 2011.

  
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Karen Oberman, Presiding Officer

  
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Richard Stradley, Board Member

Cc:

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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> , 2011	
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	