

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Stephen R. Grubb 2003 Revocable Trust,
Petitioner-Appellant,

v.

Dallas County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-25-0338
Docket No. 12-25-0043
Parcel No. 12-26-453-002

Docket No 11-25-0339
Docket No. 12-25-0044
Parcel No. 12-26-453-003

Docket No. 11-25-0340
Docket No. 12-25-0042
Parcel No. 12-35-477-010

On September 6, 2012, 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. The petitioner, the Stephen R. Grubb 2003 Revocable Trust, was represented by James E. Nervig, Brick Gentry, PC, and submitted evidence in support of its position. Brett Ryan, Watson & Ryan, PLC, was counsel for the Dallas County Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

The Stephen R. Grubb 2003 Revocable Trust (Grubb), owner of property located at 2315 NW 161st Street and 15935 Hickman Road in Clive, Iowa, as well as a third property located at the northwest corner of University Avenue and Boone Drive in Waukee, Iowa, appeals from the Dallas County Board of Review decision reassessing its property. The Dallas County Assessor classified the property as commercial for the January 1, 2011 and 2012 assessments. The

property was valued at \$573,250 for parcel 12-26-453-002 (002); \$449,540 for parcel 12-26-453-003 (003); and \$919,990 for parcel 12-35-477-010 (010). The subject sites consist of 3.290 acres for parcel 002; 2.580 acres for parcel 003; and 5.280 acres for parcel 010. None of the parcels have improvements on them.

Grubb protested to the Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2) (formerly § 441.37(2)(b)); and that the property was misclassified under section 441.37(1)(a)(5) (formerly § 441.37(1)(c)). The Board of Review denied the protest.

Grubb then appealed to this Board on the same grounds. Grubb requests the properties be classified agricultural realty and valued based on productivity.¹ This Board consolidated the appeals for 2011 and 2012 with respect to the separate parcels set forth in the caption.

Grubb asserts the three parcels were used for growing crops before Grubb purchased the parcels, and the parcels have been used for growing crops since it has owned the parcels. The parties entered a Joint Stipulation and Agreement regarding several facts. The parties agree that Grubb receives no rental income from the tenant, Michael Ellis, who is engaged in the farming activities on the properties, and that while the properties are leased, Grubb receives no compensation as part of the lease.

Michael Ellis, a professional farmer, testified that he has five or six leases for different tracts of land with Grubb and also farms for several other property owners. He testified he has farmed the subject properties since 2008. In 2010, corn was grown and harvested from the properties. Ellis pays and maintains crop insurance for the subject properties and has filed claims relating to these properties in the past. He stated he makes a net profit from the combined

¹ Since agricultural realty is valued differently than commercial property, a classification change would necessitate a revaluation of the land.

three parcels. He does not cash rent these parcels like the other Grubb leases because of the small size and location of the tracts as well as the high cost and the liability associated with farming these tracts. Ellis testified that he would not otherwise farm these properties, but does so because of his relationship with Grubb and the ability to farm Grubb's other properties.

Shirley Bolton, Grubb's Office Manager, testified on its behalf. She testified that Ellis farms all three properties for Grubb. Ellis farms several Grubb properties for cash rent, but does not pay rent for the subject properties due to their small size and location. Bolton indicated that in order for Ellis to be given the contract to farm Grubb's other properties, he also had to farm these parcels. Bolton also stated the properties do not have a mortgage. Grubb's current plan is to continue to farm the land in 2013. Bolton stated the properties are not currently listed for sale, but do have signs stating the properties are available for development. On cross-examination, Bolton testified that Grubb would allow commercial development of the property under the right conditions, and Grubb would expect the classification to change if that occurred.

Steve Helm, Dallas County Assessor, testified that, in his opinion, the property is commercial since the property will be developed for such use in the future. He also noted the properties have been classified commercial since at least 2002. Helm admitted the properties are currently being farmed. Further, he testified that adjacent property is classified agricultural, and that properties surrounding the subject are mostly residential and commercial. In his opinion, however, the property is development property and, therefore, commercial. He contends that a previous transaction, in which a portion of the property was sold and commercially developed as a "Casey's" convenience store, is proof that these properties are commercial.

Pamela Blessman, Clerk for the City of Clive, provided testimony specific to the properties in Clive. She testified that at one time Grubb submitted a development plan; however,

the property was not developed nor was the plan approved. If the property was to be improved, the development plan would likely have to be resubmitted. Blessman has no knowledge of assessment classification, and we give her testimony no weight.

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). 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 determined 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).

Grubb asserts the property is misclassified and that 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 et al.* (2011). Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2). Property is to be classified “according to its present use and not according to any highest and best use.” r. 701-71.1(1). “Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is ‘agricultural’ or [residential] is to be decided on the bases 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. r. 701-71.1(1).

By administrative rule, agricultural property

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 as defined in subrule 71.1(4). 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*.

...

r. 701-71.1(3).

Conversely, 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. Commercial realty shall also include hotels, motels, rest homes, structures, consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture.

r. 701-71.1(5).

To determine if the property should be classified agricultural versus commercial realty, we begin with the overarching principle that property is to be classified based on its *present use* and not its highest and best use. r. 701-71.1(3). Additionally, we must also consider: if it is being used in good faith, primarily for an agricultural purpose, and whether there is an intent to profit from the use. r. 701-71.1(3). Conversely, if the property is commercial it should be a place primarily used or intended as a place of business. r. 701-71.1(5).

I. Present Use

Turning first to the question of present use, it is undisputed that the subject property is being farmed. The property, in fact, has been farmed for many years. Grubb made clear that even though the property has previously been classified commercial it now seeks for it to be reclassified because it believes the January 31, 2007, amendment to rule 701-71.1(1) clarifies real property classification and requires an agricultural classification for the subject property. We believe the farming activities engaged in by Grubb, through its relationship with Ellis, are an agricultural use within the contemplation of the rule.

II. Intent to Profit

We next examine whether the agricultural use is being undertaken with an intent to profit. Here, Ellis realizes a net profit. Grubb, as the owner of the property, does not actually receive any rent for these particular properties. It does, however, receive rent from Ellis for the sum of the Grubb properties he farms. Thus, considering Grubb's overall operation, it appears they intend to profit from renting their properties rather than allowing them to remain vacant and unused if, and when, future development occurs.

III. Good Faith Use

Having determined the property is being presently used primarily for agricultural purposes with an intent to profit from the use, the ultimate issue of fact, and the dispute in this case, deals with the issue of good faith. Grubb asserts the property is being used in good faith for agricultural purposes. The Board of Review contends Grubb cannot possibly show good faith use because Grubb is holding the property for commercial development, receives no rent from the tenant, and its highest and best use is commercial. It would also appear we must consider "whose use" must be in good faith.

To support its interpretation of good faith, the Board of Review places its primary reliance on *Colvin v. Story County Board of Review*, 653 N.W.2d 345, 350 (Iowa 2002), and *DFCA, Inc. v. Downing*, 2008 WL 4877049 (Iowa Ct. App. 2008), an unpublished decision of the Iowa Court of Appeals. The Board of Review's reliance on *Colvin* as authority is incorrect. Despite the Board of Review's belief, the *Colvin* Court did not adopt *or* apply "factors" for determining good faith use. The six factors the Board of Review believes should be considered originated in the Story County Assessor's office. The assessor decided to create his own guidelines for classifying property under the rules. Two Story County district court cases subsequently examined the factors and two different conclusions were reached on whether the factors should be part of the analysis under the administrative rules.

The first case involved the Colvins' protest of their 1999 assessment. *Colvin v. Story County Bd. of Review*, No. EQCV038796 (Iowa District Court for Story County, May 25, 2000). The court applied the six factors and found the property should be classified residential. *Colvin*, No. EQCV038796 at 6. The Colvins appealed this decision to the Supreme Court, challenging the use of the six factors as not within the contemplation of rule 701-71.1(3).

With the 1999 case pending before the Supreme Court, the Colvins then appealed their 2000 assessment to the district court. *Colvin v. Story County Bd. of Review*, No. EQCV039280 (Iowa District Court for Story County, Aug. 3, 2001). The 2000 district court decision applied rule 701-71.1(3) as the legislature intended and found the six factors should not be considered under the rule. *Colvin*, No. EQCV039280 at 3-7. The court said that,

"to the extent that the Assessor's classification decision of the Colvins' property was based on factors not relevant to the Colvins' own subjective honesty as to the purpose for which they use their land, the Assessor failed to comply with 701 IAC 71.1(1)."

Id. at 6.

The 2000 court also specifically referred to and disagreed with the 1999 court. *Id.* at 5.

Because the Colvins prevailed in their 2000 district court appeal, they voluntarily dismissed their 1999 appeal pending in the Supreme Court. *Colvin*, 653 N.W. 2d at 347. The challenge to the factors' applicability was dismissed as a result.

The "*Colvin*" cited by the Board of Review is the Iowa Supreme Court's review of the 2000 district court case. *Colvin*, 653 N.W.2d 345. While *res judicata* was a main issue, the Court's *Colvin* was decided entirely on a continuity of use presumption. *Id.* at 349-51.

Although the Board of Review asserts *Colvin* held specific factors should be used to determine "good faith," the Courts own words show otherwise. The Court stated:

"Colvins challenged the county assessor's use of these factors in 1999 asserting they are not within the contemplation of Iowa Administrative Code r. 701-71.1(1). *We do not reach this issue because the Colvins did not appeal the 1999 assessment to our court.*" *Id.* at FN.3.

The plain language of the Court's order does not suggest that assessors can consider these six factors, or any other factors or guidelines developed by assessor's offices. Furthermore, the Iowa Court of Appeals has twice noted that the Iowa Supreme Court did not reach the issue of whether the factors were part of the rule. *See Polk County Bd. of Review v. Property Assessment Appeal Bd.*, 2010 WL 3155049 (Iowa Ct. App. 2010) (unpublished); *Polk County Bd. of Review v. Property Assessment Appeal Bd.*, 2010 WL 3155273 (Iowa Ct. App. 2010) (unpublished).

Additionally, the Iowa Supreme Court denied further review in both cases.

Still further proof of the *Colvin* factors' inapplicability to classifying agricultural property is the fact that the factors have not been adopted by the Iowa Department of Revenue in its administrative rules. If these factors were truly binding legal precedent, the Department of Revenue has had nearly a decade to amend their rules to include them but has thus far declined to do so.

Instead, the language referenced by the Board of Review as adopting the six factors merely sets forth the facts of the Colvin's case: what the assessor did, in that case, to classify the Colvins' land. "When the assessor reclassified Colvins' property as residential, he considered a number of other factors regarding the character and use of the property." *Id. at* 350. The Court stated, "The county assessor is guided by other factors in determining whether a taxpayer is using the property agriculturally in good faith," and in support of this statement, the Court cites Florida case law. *Id.* Unlike Iowa law, however, a Florida statute specifically enumerates factors that must be considered by assessors to determine agricultural classification. West's F.S.A. § 193.461. Iowa statutes and rules do not contain these or any other factors. Rule 71.1 references only guidelines *as set forth in the rule.*

Additionally, the Board of Review's reliance on *DFCA, Inc. v. Downing* is also misplaced. No. 07-1871, 2008 WL 4877049 (Iowa Ct. App. 2008). The *DFCA* court utilized the *Colvin* factors to interpret the good faith requirement of rule 701-71.1(3). The administrative rules the court interpreted were subsequently amended and rule 701-71.1(1) now clearly articulates that assessors classify property according to its *present* use and *not* its highest and best use. Therefore, the *DFCA* court's use of the *Colvin* factors, to any extent it was appropriate at the time, would be wholly inappropriate in this case. Further, the *Colvin* court and the Court of Appeals expressly declined to rule on the applicability of the factors to rule 701-71.1(1). Here, we likewise decline to apply the *Colvin* factors in light of the plain language of rule 701-71.1(1) that requires assessors and this Board to classify property according to its present use and the guidelines set out in the subparagraphs of the rule.

The Board of Review also relies on *Farwell v. Des Moines Brick Manufacturing Co.*, 66 N.W. 176 (Iowa 1896). *Farwell* examined an Iowa statute that is now void, as the Board of

Review admits. Although *Farwell* looks to the intent of the owner and the owner's greater purpose for the property, this draws into question the issue of highest and best use, which is strictly prohibited from consideration in classification.

Furthermore, there is no need to search for an alternative definition of good faith use. The Iowa Supreme Court has defined good faith as "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). Given the focus of rule 701-71.1(1) et al. on property usage as a means of classification, it seems appropriate to analyze the intent of the property's principal user in order to determine good faith.

Here, while Grubb is the property owner, Ellis is its principal user. Ellis testified that he maintains crop insurance on the property and has farmed the property since 2008. Ellis' profitable agricultural use of the property as part of his comprehensive farming operation indicates his subjective and honest intent.

The Board of Review asks this Board to affirm its commercial classification of the property because Grubb is holding the property for commercial development. However, we rely on the overarching principle of rule 701-71.1(1) that property is to be classified according to its present use. Here, while the property's anticipated future use may be for something other than agricultural purposes, the property has been and continues to be used for farming. In light of rule 701-71.1(1), this Board will not engage in speculation regarding the property owner's intended future use of the property in order to apply a commercial classification. Beyond marketing the property as commercial development and submitting a commercial development proposal that never materialized, Grubb has not engaged in any other activities to objectively demonstrate the property is presently used for commercial purposes. Rather, the evidence shows that the

property contains no improvements available for commercial use and Grubb intends to farm the land in 2013. Thus, the facts fail to demonstrate that the subject property is commercial within the meaning of rule 701-71.1(5), which requires that land be classified commercial if it is “primarily used or intended as a place of business.”

We find that the subject properties are, in good faith, being used for agricultural purposes with an intent to profit. We also recognize that the properties may be developed for another use other than agricultural realty at some time in the future. This has not happened, however, and may not happen for some time. When the property does sell and/or is developed, like other property that has been split off and classified commercial, then at that time the classification should change.

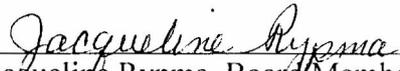
In the opinion of the Appeal Board, the evidence supports the claim that the properties are misclassified as authorized by Iowa Code section 441.21. The primary use of this property is as agricultural realty. Both parties agreed that if the Board determines the correct classification is agricultural, this Board shall remand the case to the Dallas County Board of Review for the purpose of determining the correct value based on productivity and net earning capacity for the years 2011 and 2012.

THE APPEAL BOARD ORDERS that the January 1, 2011 and 2012 classification of the Grubb property is agricultural realty. In order to properly value the property as agricultural realty, the Board of Review is ordered to determine the agricultural land value using the appropriate method prescribed by law and report those values to this Board within twenty days of the date of this Order. Once those values are provided, this Board will enter a valuation order accordingly.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Dallas County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected.

Dated this 8 day of November, 2012.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Member

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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>11-8</u> , 2012.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
Signature	