

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Glen Walker,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1317
Parcel No. 210/00304-000-000

On April 29, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Glen Walker was self-represented. Assistant County Attorney David Hibbard is counsel for the Board of Review and represented it at hearing. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Glen Walker is the owner of ten acres of unimproved land located in Elkhart township in Polk County, Iowa. In 2011, the assessor changed the property's classification from agricultural to residential. As a result, the assessment increased from \$5000 in 2010 to \$46,400.

Walker protested to the Polk County Board of Review stating the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2) and the property is misclassified under section 441.37(1)(a)(3). The Board of Review retained the residential classification but lowered the assessment to \$8,700.

Walker then appealed to this Board reasserting his claims. He seeks the following relief:
change the subject's classification to agricultural and return the assessment to the 2010 value of \$5000.

At hearing before this Board, Walker argued the site was misclassified and the proper classification is agricultural. He questioned the guidelines used by the assessor in determining whether or not property should be classified agricultural. Walker believes this property qualifies as agricultural as it is primarily used for the raising and harvesting of trees for intended profit. Aerial photographs of the site show the property consists almost entirely of trees.

Walker submitted evidence and offered testimony establishing there is an electrical transmission line running across the property on a diagonal. He testified it would be very difficult to build a home on this site with the power line and protective barrier restrictions and the fact that the property is landlocked. As further support, Walker offered Iowa code section 478.20, which provides that "No transmission line shall be constructed . . . within one hundred feet of any dwelling house . . ." Therefore, he believes the property should not be classified residential.

Walker testified this parcel was part of his original family farm, most of which had been sold years ago. His brother owned the subject property and willed it to him. Walker also owns twenty-eight acres of farmland in the county, twenty of which are rented out and farmed as row crop.

Walker also presented a letter from the Polk County Assessor James Maloney (Exhibit 6) which stated that Maloney has some doubt as to which would be the appropriate classification and suggested Walker apply for a forest reservation exemption. If the subject property qualified, there would be no property taxes. When asked at the hearing about this, Walker testified that he had not really looked to this option thoroughly and was concerned about the rules that would have to be followed, including limitations on the number of trees that can be removed and the potential for a penalty.

On cross-examination, Walker indicated he received no income from the property in 2010 and did not harvest any trees. He indicated he is letting the trees grow, but said that “they will be sold sometime.”

Here, the evidence demonstrates the subject property has no present, recent, or immediately foreseeable future use, either agricultural or residential. Although Walker stated the trees will be sold eventually, he does not appear to be engaged in any husbandry or objective actions to demonstrate the property is presently used for the harvesting of trees for intended profit. Rather, it appears Walker is allowing the trees to grow and may sell them at some unknown point in the future if the opportunity or need should arise. Further, just because the property may not be desirable for residential use does not also mean the property should be classified agricultural. Walker has not met his burden of establishing an agricultural use of the subject in contemplation of Iowa administrative rule 701-71.1(3).

This Board suggests that Walker consult with the assessor about applying for a forest reservation exemption on the property. The application of an exemption, not a modification of classification, is the proper avenue for Walker to seek relief.

Conclusion 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 (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 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).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). "Market value" essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property shall be one hundred percent of its actual value. § 441.21(1)(a).

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* IOWA ADMIN. CODE 701-71.1. Classifications are based on the best judgment of the assessor 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). 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).

The evidence established there is no present agricultural use on the subject property.

Additionally, there also has been no recent agricultural use nor is there an immediate intent to utilize

the property for agricultural purposes. Rather, Walker indicated he was allowing the trees to grow with the idea that he may harvest them at some point in the future.

Ultimately, Walker did not prove the property is presently used for agricultural purposes and therefore the Board finds the property's classification should remain residential. Having found the property's classification should remain residential, we do not reach Walker's over-assessment claim.

However, we suggest Walker consult with the Polk County Assessor's office regarding the forest reservation exemption. We note there are restrictions that go along with the exemption and that failure to comply may result in loss of the exemption and recapture tax. § 427C.4. However, the Iowa Code and administrative rules also provide exceptions to the recapture tax which may apply to Walker. § 427C.12; r. 701-80.9.

THE APPEAL BOARD ORDERS the January 1, 2011, assessment of Walker's property, parcel number 210/00304-000-000, in Elkhart Township is affirmed.

Dated this 22nd day of May, 2013.

Stewart Iverson
Stewart Iverson, Presiding Officer

Jacqueline Rypma
Jacqueline Rypma, Board Member

Karen Oberman
Karen Oberman, Board Member

Copies to:

Glen Walker
1717 Northwest Pine Road
Ankeny, Iowa 50023
APPELLANT

David Hibbard
111 Court Avenue, Room 340
Des Moines, Iowa 50309
ATTORNEY FOR APPELLEE

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>May 22, 2013</u> .	
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>Jean Casper</u>