

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Chad Miller,
Appellant,

v.

Scott County Board of Review,
Appellee.

ORDER

Docket No. 13-82-0919
Parcel No. 8414172032

On July 22, 2014, 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 Chad Miller was self-represented. County Attorney Robert Cusack is counsel for the Board of Review. Chief Deputy Assessor Lew Zabel represented it at hearing. Both parties submitted evidence and testimony in support of their positions. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Chad Miller is the owner property located at 4340 Tanglewood Road, Bettendorf, Iowa. According to the property record card, the 10.22 acre parcel is improved with a two-story, frame dwelling built in 2008 with 4915 square feet of total living area and a full, walkout basement with 1640 square feet of living quarters finish. It also has a 1935 square-foot, attached garage; a deck; a patio; and an open porch. The dwelling is listed as superior quality grade (1-10) and normal condition.

Miller protested his 2013 assessment of \$867,150, allocated as \$221,800 in land value and \$645,350 in dwelling value, to the Board of Review. Miller claimed the assessment was not equitable with other like properties in the county; that the property was assessed for more than authorized by law; that the subject property was misclassified; and that there was an error in the assessment under

Iowa Code sections 441.37(1)(a-d). Miller's error claim essentially restated his misclassification claim. The Board of Review denied the protest.

Miller then appealed to this Board reasserting only that the parcel should be reclassified as agricultural. He seeks an assessment of \$662,437, allocated \$17,087 to land value and \$645,350 to improvement value. We note, since agricultural property is valued differently than residential property, a classification change would necessitate a revaluation of the land, as well.

Miller contends the primary use of his property is for an agricultural purpose and that he intends to profit from the endeavor. Miller explained he and his wife purchased the property in 2008 and demolished the 102-year-old house on the property shortly thereafter. They then built a new house and completed construction on it in 2009.

Miller testified after receiving their tax bill, which included the new improvements, he and his wife started looking for ways to reduce their tax burden. Miller explained that eight of the property's 10.22 acres are in the 100-year flood plain; there is also an electrical easement that runs along the back of the property that limits the use of the area and makes it unbuildable. (Exhibits 5, 7, 9 & 15). The area he designates as homestead encompasses 1.72 acres, which also has a severe slope. (Exhibit 6).

Miller initially applied to have at least 8.21 acres of the property to be exempt under the slough bill, but USDA denied the request because they expected at least some of the property to be farmed. Ultimately, 4.9 acres was eligible for the exemption.

The Millers then went to work turning the over-grown land (approximately 3.6 acres) into two fields. He testified they began removing rocks from a portion of the property they intended to use as a field. Miller testified he did not plant crops from 2009 to 2011. During that time, he groomed existing wild grass into hay, removed rocks, downed timber, and sprayed noxious weeds. In 2011, they drilled a well to water the yard and for the fields. (Exhibit 23 & 42). Beginning in 2012, Miller diligently prepared the field with the purpose of getting it ready to farm on a consistent basis. In the same year,

Miller planted organic sweet corn that was handpicked and sold at a roadside sweet corn operation. (Exhibit 50). In the future they plan to plant organic corn, watermelon, pumpkins and sweet corn, for, what he claims, is a growing local market. Miller also tilled the land and spent a significant amount of money purchasing equipment.

Miller supplied documents including a USDA Farm and Commodities Report designating his property as Farm #5870 in 2010. (Exhibit 21). The report for 2012 indicates 3.6 acres of cropland in corn. (Exhibits 36, 38, & 40). He obtained a Farm Service Administration (FSA)/USDA/Natural Resources Conservation Service Resources) highly erodible and wetland determination in 2012 (Exhibit 24 & 33).

Miller also provided his 2012 Schedule F showing a loss of \$13,949 and Form 4562 reporting the purchase of \$65,519 in farm equipment and a \$21,000 truck in 2012. (Exhibits 27-32, & 39). The depreciation schedule and section 179 expenses totaled roughly \$9000 and accounted for a substantial amount of the farm loss that year. Miller's dwelling and farm personal property are insured under a farm liability policy by Farm Bureau. (Exhibits 37 & 57).

When asked about his expectation or intent to profit, Miller stated he hopes to eventually raise non-genetically modified corn without pesticides. They would also like to have pigs and chickens when they build a pole-building, but that it will take a few years to get there.

Chief Deputy Assessor Lew Zabel testified on behalf of the Board of Review. Zabel stressed that Miller purchased the subject property for nearly \$400,000 in 2008. Shortly after purchase, Miller demolished the existing dwelling and built a \$600,000 house that was twice as big as the former homestead on the site. In Zabel's opinion, Miller paid more for the land than a buyer would pay for farm ground. Zabel felt this indicated Miller purchased it for residential use, not for agricultural use. He also noted this ground can only be farmed periodically depending on how wet it is/due to location, essentially indicating it is not prime farm ground and would not be purchased for that purpose.

Zabel acknowledged that Miller was routinely buying more farm equipment and has had one or two years of crop production, but believed the primary use was still residential as of January 1, 2013.

Zabel reported the slough bill USDA designation of 4.9 acres in forest cover does not make the land agricultural. He believes it will take Miller “forever to make a profit” and noted only a small portion of the parcel is planted.

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 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. *Id.* “Market value” essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). However, if property is classified agricultural it is to be assessed and valued based on its productivity and net earning capacity. Iowa Code § 441.21(1)(e).

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. (Exhibit D). Classifications are based on the best judgment of the assessor exercised 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.” *Sevde 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).

By administrative rule, residential property

shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Building used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a 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 shed for household goods. Residential real estate located on agricultural land shall include only buildings as defined in this subrule.

...

Iowa Admin. Code r. 701-71.1(5).

Conversely, 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.

...

Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule.

Iowa Admin. Code r. 701-71.1(3) (Exhibit A).

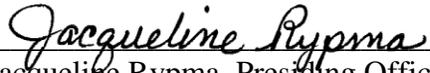
Miller seeks to have his property reclassified from residential to agricultural. The Board of Review primarily challenges that Miller’s agricultural use is not the property’s primary use and questions whether Miller’s agricultural use is in good faith with intent to profit.

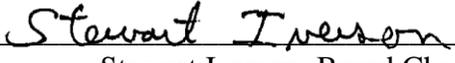
Miller has obviously spent considerable time, money, and energy to develop a portion of land suitable for farming on the subject property. Nonetheless, given the short income-producing history of the property prior to the assessment date at issue, the small size of the farmable area and minimal income-producing capacity, the large upfront capital expenditures, and the lack of a defined business plan designed to bring the operation into profitability, we are not convinced the subject property is being operated with an intent to profit from the agricultural use at this juncture. As a result, we find Miller has not established that the property meets the requirements for an agricultural classification.

Secondarily, we note that the subject property is used as a residence and it also houses Miller's commercial business. Because of the short-period of agricultural use prior to the assessment date and the other uses made of the property, we find Miller has not demonstrated that the property's primary use as of January 1, 2013, was agricultural. *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989).

THE APPEAL BOARD ORDERS the January 1, 2013, assessment of the Miller property located at 4340 Tanglewood Road, Bettendorf, Iowa, is affirmed.

Dated this 26th day of September, 2014.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

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