

**PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2015-069-00620R

Parcel No. 26-06-32-400-023

Scott Rolenc,
Appellant,

v.

Montgomery County Board of Review,
Appellee.

Introduction

This appeal came on for a consolidated hearing before the Property Assessment Appeal Board (PAAB) on October 15, 2015. Appellant Scott Rolenc is self-represented. Montgomery County Attorney Bruce Swanson is counsel for the Board of Review. County Assessor Stacey Von Dielingen represented it at hearing.

Scott Rolenc is the owner of two parcels of residentially classified property located at 1774 and 1786 215th Street, Red Oak, Iowa. The appeal for 1774 215th Street is docketed as 2015-069-00621R. The appeals were consolidated for hearing, but we issue a separate order for each appeal.

The subject property is located at 1786 215th Street. The total site is 14.96 acres and consists of 3.21 acres of hay ground, the dwelling improvements and appurtenant yard, a driveway, and a growth of trees. The improvements consist of a one-story, frame dwelling with 3057 total square feet of living area on the main level, a full walk-out basement with 92 square feet of finish, a 264 square-foot deck, and a 957 square-foot attached garage constructed in 2009. The dwelling is listed in normal condition and with a high quality construction quality (Grade 2). Rolenc purchased this property for \$425,000 in June 2013.

The property's January 1, 2015, assessment was \$424,660, allocated as \$59,900 in land value and \$364,760 to dwelling value. Rolenc's protest to the Board of Review claimed the property was inequitably assessed, that the property was assessed for more than authorized by law, that it is misclassified, and that there is an error in the assessment under Iowa Code sections 441.37(1)(a)(1) (a-d).

The Board of Review denied the protest. Rolenc then appealed to PAAB on the over-assessment and misclassification claims. He asserts the property should be classified agricultural and its correct value is \$355,824.

Findings of Fact

Rolenc testified that the dwelling on 1786 215th is currently vacant, and therefore he believes the parcel is not currently used for residential purposes. Rolenc's petition asserts that both of his adjoining parcels should be considered together as a 34.46-acre unit and classified agricultural. There is no evidence the parcels are used in conjunction with one another or operated as a unit. The United States Department of Agriculture (USDA) farm report indicates that each parcel is farmed by a different operator, which is consistent with Rolenc's testimony. Further, aerial photographs of the properties show the cropland areas do not overlap between the two parcels. (Ex. A). Because they are separately parceled and are not operated as a unit, we evaluate Rolenc's misclassification and market value claims on the properties individually.

I. Property Classification

A United States Department of Agriculture (USDA) - Abbreviated 156 Farm Record was issued for the 1786 215th Street parcel indicating 3.21-acres of cropland on the 14.96 acre site. The operator's name is listed as Johnson Farms & Livestock Inc. Rolenc testified he expects to add 5.84-acres of hay ground to the parcel; although we note the 5.84-acres Rolenc identifies includes the dwelling and site improvements and those areas would not be able to be cropped. (Ex. 9). He reported this parcel has had hay growing on it for the last ten years and nets \$1000 annually. However, the 2013

Form 4835 – Farm Rental Income and Expenses – shows gross farm rental income of \$250.

Parcel	Total Acres	Hay	Crop	Forest Reserve	Annual Income
1786 215th	14.96	3.21	N/A	N/A	\$250-\$1,000

Rolenc believes that, in aggregate, he has more than ten acres of agricultural land and therefore his property should be agriculturally classified. Assessor Stacey Von Dielingen testified that the size of the property is not determinative of its classification. As an example, she notes there are twenty-five properties in the county that are over 13-acres yet classified residential. Additionally, the Board of Review submitted a list of county properties with 10+ acres, which are classified residential. (Exhibit B). Von Dielingen testified she determines agricultural classification based on whether a property’s agricultural use is primarily and substantially for intended profit. In her opinion, Rolenc’s property is not used primarily for an agricultural purpose for profit and does not qualify for agricultural classification.

Rolenc cites Iowa Code Chapter 425A and 426 as support for agricultural classification of his property. Chapter 425A relates to the Family Farm Tax Credit. Under the statute, the assessor collects property owner claims and delivers them to the Board of Supervisors who allows or disallows the claim. § 425A. Appeal from the Board’s decision is made to the district court. *Id.* Iowa Code Chapter 426 concerns the Agricultural Land Tax Credit. The county auditor grants or denies the credit. § 426. Appeals of the auditor’s decision are taken to the Board of Supervisors. *Id.* An appeal of that Board’s decision is filed in the district court. *Id.* PAAB is not the correct forum for these tax credit decisions or their appeals. Further, both Chapters’ definition of “agricultural lands” is specifically limited to those Chapters and has no bearing on our determination of the subject property’s classification for assessment purposes. §§ 425A.2, 426.2. Rolenc’s reliance on these statutes for relief at PAAB is misplaced.

II. Market Value of 1786 215th Street

Appraiser Helen Grierson of Cramton Company Appraisal, Omaha, Nebraska, completed a Restricted Appraisal Report of the subject property with an effective date of September 22, 2015 by the comparable sales approach. (Ex. 12) The appraisal specifically states, “[T]his is a Restricted Appraisal Report, and is intended only for the sole use of the named client. There are no other intended users. The client must clearly understand that the appraiser’s opinions and conclusions may not be understood properly without additional information in the appraiser’s work file.” As such, the limited nature of Grierson’s report may impair its reliability.

Grierson valued the dwelling on a hypothetical 1.5-acre site, while the actual site is 14.96 acres. Grierson used three sales within 2.5 miles of the subject. Sale prices ranged from \$307,000 to \$350,000 or \$90.32 to \$163.02 per-square-foot. The comparable properties were between roughly 0.6-acres and 4-acres. Adjusted sale prices ranged from \$282,326 to \$318,468.

We note that two of the sales occurred well after the relevant assessment date. In addition, Comparable 1 (2029 Inglewood Drive) and Comparable 2 (100 Fairview Drive) were listed for 267 days and 665 days respectively prior to their sale; even as Grierson indicates average marketing times of two to three months. Without additional information regarding the sales, we question whether the extended time on the market negatively affected the sale prices.

Grierson adjusted the sales for site size, condition, gross living area, basement size and finish, garage size and other amenities. We note she adjusted all three comparable properties downward \$25,000 for condition, when the subject and all sales had condition listed as good. She explains this adjustment was necessary because of anticipated market reaction to the subject’s siding. Grierson concluded a value of \$300,000 for the dwelling and a hypothetical 1.5-acre site. She estimates the value of the 1.5-acre site is \$15,000.

Rolenc also offered an opinion letter written by realtor Dan Bullington of Your Real Estate Choice, Inc, in Red Oak. Bullington reports he considered the location and

condition of the exterior and interior of the subject property and estimated a fair market value of \$325,000, if the dwelling was located on a two-acre site.

Rolenc also submitted property record cards for properties he considered comparable and made adjustments to two properties to estimate what he believes is the correct value of his property. (Ex. 2-8 15). His methodology is not recognized appraisal practice and we give his conclusions no consideration. We note the Mcalpin, Barkman, Nealon, Dean, and two Flying J Farm properties are classified agricultural and valued accordingly, while Rolenc's property was classified and valued as residential.

Rolenc purchased the property in June 2013 for \$425,000, which is slightly below its 2015 assessment. He claims the transaction was abnormal because it was the purchase of an adjoining property under Iowa Code section 441.21(1)(b). Von Dielingen testified that the purchase of adjoining residential property is not considered abnormal under Iowa Department of Revenue guidelines. The Department's current sales conditions consider sales of adjoining or adjacent residential properties normal for equalization purposes. *Sales Condition Codes For Contract and Deed Sales Effective 8/3/15.*

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB 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). PAAB considers only those grounds presented to or considered by the Board of Review, but 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(1)(a-b). New or additional evidence may be introduced, and PAAB 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).

I. Burden of Proof

Initially, the burden of proof in an assessment protest rests with the taxpayer, who “must establish a ground for protest by a preponderance of the evidence.” *Compiano*, 771 N.W.2d at 396. However, if the taxpayer “offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden shifts to the board of review to uphold the assessed value.” *Id.* at 396-97; § 441.21(3). Failure to shift the burden of proof is not equivalent to failing to satisfy the burden of proof. *Id.* at 397.

“The statute not only requires two disinterested witness, it also specifically requires the evidence offered by a disinterested witness to be competent before the burden of proof shifts to the board.” *Id.* at 398. “Evidence is competent under the statute when it complies with the statutory scheme for property valuation for tax assessment purposes.” *Id.* “[M]arket-value testimony by a taxpayer’s witness under a comparable-sales approach is ‘competent’ only if the properties upon which the witnesses based their opinions were comparable.’ *Soifer*, 759 N.W.2d at 783 (noting “If the distorting sale factors or the points of difference between the assessed property and the other property are not quantifiable so as to permit the required adjustments, the other property will not be considered comparable.”); *Boekeloo v. Bd. of Review of City of Clinton*, 529 N.W.2d 275, 279 (Iowa 1995); *Bartlett & Co. Grain*, 253 N.W.2d at 88. If they are, an opinion would “constitute ‘competent evidence’ and the burden of persuasion” shifts, “otherwise it does not shift.” *Bartlett & Co. Grain*, 253 N.W.2d at 88; *Soifer*, 759 N.W.2d at 783. However, the *Soifer* Court also stated the approach followed in Iowa is “[W]here the properties are reasonably similar, and a qualified expert states his opinion that they are sufficiently comparable for appraisal purposes, it is better to leave the dissimilarities to examination and cross-examination than to exclude the testimony altogether.” *Id.* (internal citations omitted). Just because the evidence is competent, however, does not mean it is credible. *Homemakers Plaza, Inc. v. Polk Cnty. Bd. of Review*, 2013 WL 105220 (Iowa Ct. App. Jan. 9, 2013) (unpublished) (citing *Soifer*, 759 N.W.2d at 785). “Factors that bear on the competency of evidence of other

sales include, with respect to the property, its '[s]ize, use, location and character," and, with respect to the sale, its nature and timing. *Id.* at 783 (other citations omitted).

Rolenc contends he has shifted the burden based on an appraisal and realtor's opinion that shows the market value is less than the assessment. However, both opinions were based on only a portion of the subject site and did not determine the fair market value of the entire subject parcel. Moreover, the realtor's opinion is conclusory and provides no factual or analytical background describing how he reached his conclusions. It is altogether unclear whether the realtor's value opinion complies with the statutory scheme. Because we find Rolenc did not provide competent evidence from two disinterested witnesses that comply with the statutory scheme, we conclude he has not shifted the burden of proof.

II. Market Value Claim

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). 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). However, if property is classified agricultural property it is to be assessed and valued based on its productivity and net earning capacity. Iowa Code § 441.21(1)(e).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). While Rolenc submitted an appraisal, it was based on a hypothetical site size. Likewise, the realtor's opinion letter is based on a hypothetical site size and does not provide any comparable sales to support his conclusion. Both reports fail to value the property in its current status as a 14.96-acre site with a residential dwelling. As a result, we find that neither reflects the full, fair market value of the subject property. We give them no

consideration. Ultimately, Rolenc did not provide any useable or reliable evidence to establish his property was over-assessed or to establish its correct value.

III. Property Classification Issue

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 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, except as provided for in paragraph 71.1(5) “b”. Iowa Admin. r. 701-71.1(1).

By administrative rule 71.1(3) agricultural property, in pertinent part, is:

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 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 paragraph “a” or “b” of this subrule. . . .

By administrative rule, 71.1(4) residential property, in pertinent part, is:

Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation containing fewer than three dwelling units, as that term is defined in subparagraph 71.1(5) “a”(5), including those buildings located on agricultural land. Buildings 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 sheds for household goods. “Used in conjunction with” means that the structure or improvement is located on the same parcel, on contiguous parcels, or on a parcel directly across a street or alley as the building or structure containing the dwelling and when marketed for sale would be sold as a unit. Residential real estate located on agricultural land shall include only buildings as defined in this subrule.

Following Iowa law and administrative rules governing the classification of real estate, we find Rolenc has not shown the property is primarily used for agricultural purposes in good faith for intended profit. The parcel has a dwelling and the fact that the dwelling is currently vacant does not preclude a residential classification. While there is no minimum acre requirement for agricultural classification, the property’s principal use must be primarily for agricultural purposes. Rolenc uses roughly 3.21 of the 14.96 acres of the property for hay ground. Although Rolenc testified he intended on adding hay-crop acres, the record indicates that as of January 1, 2015, the majority of the property was not used for agricultural purposes. We find the present agricultural use of this parcel is incidental and the parcel should remain residentially classified.

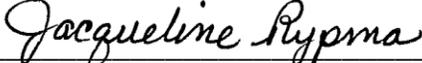
The preponderance of the evidence does not demonstrate Rolenc’s primary use of the property is for agricultural purposes in good faith for intended profit and does not support his claim that the property is misclassified.

Order

IT IS THEREFORE ORDERED that the Montgomery County Board of Review’s action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

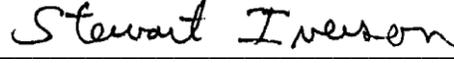
Dated this 9th day of December, 2015.



Jacqueline Rypma, Presiding Officer



Karen Oberman, Board Member



Stewart Iverson, Board Chair

Copies to:

Scott Rolenc

Bruce Swanson

Stacey Von Dielingen