

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

PAAB Docket No. 2015-086-01135A--01155A

Parcel Nos. 270-20-01-100-001, 270-20-01-100-002, 270-20-01-202-002,
270-20-02-200-003, 270-20-25-100-001, 270-20-25-100-002, 270-20-25-100-003,
270-20-25-100-004, 270-20-25-300-001, 270-20-25-300-002, 270-20-26-200-001,
270-20-26-200-002, 270-20-26-200-003, 270-20-26-200-004, 270-20-26-300-006,
270-20-26-300-011, 270-20-26-400-002, 270-20-26-400-006, 270-20-26-400-008,
270-20-27-400-010, 270-20-35-200-008, and 270-20-36-400-012

Milo Dale and JoAnn Fisher,
Appellants,

v.

Tama County Board of Review,
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on October 17, 2016. The Fishers were self-represented. Tama County Assessor Jerry Witt represented the Board of Review.

Fishers own twenty-two parcels of land located in Salt Creek Township, Tama County. The subject properties are classified agricultural and total 872.50 acres, of which 70.46 acres are designated cropland and 802.04 acres as non-cropland. The January 1, 2015 total assessed value for the twenty-two parcels was set at \$963,010. (Ex. C).

On protest to the Board of Review, the Fishers claimed the property is misclassified under Iowa Code section 441.37(1)(a)(1)(c). They argued the subject properties should not be classified agricultural land as the majority of it is wetlands that floods often or is in timber. The Board of Review denied the petition. The Fishers appealed to PAAB, reasserting their claim.

General Principles of Assessment 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). There is no presumption that the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

Misclassification

i. Applicable Law

The Iowa Department of Revenue (IDR) has promulgated rules for the classification and valuation of real estate. See Iowa Admin. Code Ch. 701-71.1. Assessors are to classify property according to its present use and not according to its highest and best use. *Id.* Classifications are based on the best judgment of the assessor exercised by 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. R. 701-71.1(2). “There can be only one classification per property, except as provided for in paragraph 71.1(5) “b”. R. 701-71.1(1).

Generally, assessors may classify property into one of the following categories: agricultural, residential, multi-residential, commercial and industrial. In limited circumstances, property may have a dual-classification. R. 701-71.1(3-7). No other classifications exist under Iowa law.

Agricultural real estate includes all tracts of land primarily used in good faith for agricultural purposes. R. 701-71.1(3). It also includes woodland, wasteland and pastureland, but only if held or operated in conjunction with agricultural real estate. *Id.*

When property is classified as agricultural realty, it is valued by giving exclusive consideration to its productivity and net earning capacity. § 441.21(1)(e). In making this determination, the assessor is required to use available data from Iowa State University, the Iowa Crop and Livestock Reporting Service, the Department of Revenue, the IOWA REAL PROPERTY APPRAISAL MANUAL, and to consider the results of a modern soil survey, if completed. § 441.21(1)(f); Iowa Admin. Code r. 701-71.3.

One part of the productivity and net earning capacity formula includes corn suitability ratings (CSR). CSRs are a measure of a given soil's productivity and have been used to provide an equitable basis for farmland assessment. IOWA REAL PROPERTY APPRAISAL MANUAL, 2-25 (2008). The CSR considers the soil type, particle size, water holding capacity, field condition, soil depth and rate of erosion. *Id.* The CSR2 formula, implemented by the Iowa County Assessor for the 2015 assessment, requires the assessor to determine the portion of land that qualifies as non-cropland. R. 701-71.3(1)(b). Non-cropland is adjusted if it has a CSR greater than 50% of the average CSR for cropland in the county. *Id.* Only in unusual or limited, unique circumstances may land require an additional adjustment. MANUAL, 2-27.

ii. Findings of Fact

The Fishers believe the subject properties should not be classified agricultural because it consists of wetlands that cannot be farmed. They testified that the dramatic increase in the subject's 2015 assessed value raised their taxes by more than \$5000 over 2014. The following table details the increase in each parcel's assessment from the previous year.

Ref No	Parcel Number	Total Acres	Assessed Value		Percent Change
			2015	2014	
1	270-20-01-100-001	40.61	\$ 88,210	\$ 56,840	55.19%
2	270-20-01-100-002	39.70	\$ 76,600	\$ 56,960	34.48%
3	270-20-01-202-002	37.70	\$ 18,210	\$ 13,240	37.54%
4	270-20-02-200-003	14.62	\$ 27,900	\$ 17,830	56.48%
5	270-20-25-100-001	38.00	\$ 54,100	\$ 38,570	40.26%
6	270-20-25-100-002	39.00	\$ 29,590	\$ 20,200	46.49%
7	270-20-25-100-003	39.00	\$ 53,140	\$ 41,760	27.25%
8	270-20-25-100-004	40.00	\$ 24,730	\$ 18,090	36.71%
9	270-20-25-300-001	39.00	\$ 49,710	\$ 30,370	63.68%
10	270-20-25-300-002	40.00	\$ 15,810	\$ 12,890	22.65%
11	270-20-26-200-001	40.00	\$ 56,470	\$ 33,160	70.30%
12	270-20-26-200-002	39.00	\$ 55,110	\$ 32,600	69.05%
13	270-20-26-200-003	39.00	\$ 57,630	\$ 34,990	64.70%
14	270-20-26-200-004	38.03	\$ 54,710	\$ 33,590	62.88%
15	270-20-26-300-006	40.00	\$ 21,750	\$ 14,430	50.73%
16	270-20-26-300-011	17.71	\$ 12,210	\$ 3,460	252.89%
17	270-20-26-400-002	38.00	\$ 54,440	\$ 38,950	39.77%
18	270-20-26-400-006	39.00	\$ 49,990	\$ 31,890	56.76%
19	270-20-26-400-008	39.00	\$ 34,360	\$ 23,560	45.84%
20	270-20-27-400-010	21.67	\$ 15,910	\$ 10,510	51.38%
21	270-20-35-200-008	39.00	\$ 36,090	\$ 25,440	41.86%
22	270-20-36-400-012	114.46	\$ 76,340	\$ 43,250	76.51%
		872.50	\$963,010	\$ 632,580	52.24%

The Fishers acknowledge the land contains good soils but contend it is often flooded by the Iowa River and Salt Creek. They noted that just a couple weeks prior the subject properties not only flooded but all roads leading up to it were inundated. They also testified the prior owners tried to farm the subject properties but only got a crop once in 5-years. When the opportunity presented itself, the prior owners accepted a per-acre one-time payment from the federal government in exchange for restrictions on how the land may be used in the future.

Fishers acknowledged they do use the land for hunting and have a hunting operation, but all it has done is pay the taxes.

County Assessor Witt testified that there are five property classifications in Iowa: residential, multi-residential, commercial, industrial, and agricultural. He noted

agricultural is the correct classification for the subject properties, as it encompasses anything that is not included in the first four classifications. Agricultural land includes both cropland and non-crop land. Non-cropland is made up of such things as wetlands, building sites, permanent pasture, and ditches.

Witt explained the Fishers assessments increased largely due to application of IDR's new rules in 2015 for valuing agricultural land, particularly as it relates to non-crop land.

Witt stated the increases in the Fishers' assessments are the result of the difference between the previous adjustments and the application of the new rule. Witt testified that the new rules required him to discontinue use of several adjustments previously applied to these properties. Things like flooding, timber, and wetlands are now already factored into the new formula with the intent of creating uniformity across the State. Under the new rules, fifteen of the subject's twenty-two parcels no longer receive a wetland adjustment, three parcels lost a timber adjustment, and four parcels lost a flood adjustment. (Ex. C).

Witt further stated that all agricultural land (cropland & non-cropland) is valued based on dollars per CSR unit in order to arrive at each parcel's valuation. He further noted agricultural cropland receives no adjustment and non-cropland in Tama County now receives an adjustment only if its soils have a CSR of 36 or higher. A total of 325.15 acres or 40.54% of the Fishers' non-crop agricultural acres now receive no adjustment because they contain soils with a CSR below 36.

Witt acknowledged the subject properties flood often. He noted that under the federal government's wetland easement program a landowner maintains the obligation to pay the taxes and is prohibited from farming, grazing or building upon the land. The only uses allowed are recreational and hunting. This federal governmental program placed 520.27 acres of the subject properties into a permanent wetland easement. (Ex. D).

When queried as to whether they had applied to have their permanent wetland easement qualified as a wetland exemption, the Fishers expressed uncertainty. Witt testified that at present no one in Tama County has received a wetland exemption.

Conclusions of Law

As a result of the substantial increase in the assessments of their properties and based on their belief that significant portions of the properties cannot be used for agricultural purposes, the Fishers assert their properties are misclassified under Iowa Code section 441.37(1)(a)(1)(c). Under Iowa law an appellant is required to prove the subject property qualifies for a different assessment classification in order for it to be changed. § 441.21(3). No evidence in the record supports a conclusion that the subject properties are misclassified and should be classified under one of the other existing classifications. Moreover, PAAB is without authority to create any new classification as only IDR possesses this authority.

Acknowledging the Fishers' concern regarding the properties' valuations, we suggest they may wish to review the requirements for a Native Prairie/Wetlands Property Tax Exemption to determine whether it would be beneficial for them to pursue such an exemption. Iowa Code § 427.1(23). Part of this process requires the Iowa Department of Natural Resources (DNR) to designate the land as a native prairie or protected wetland. § 456B.12. Any application for a wetlands exemption must be filed with the county assessor no later than February 1 of the year for which the exemption is sought. § 427.1(23)(a). The first application for this exemption must be accompanied by a DNR certification indicating the land is native prairie or protected wetland. *Id.*

Based on the foregoing, and by a preponderance of all evidence in the record, we find the Fishers failed to show the subject properties are misclassified.

Order

PAAB ORDERS the Tama 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.

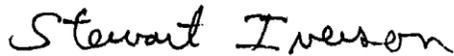
Dated this 22nd day of December, 2016.



Camille Valley, Presiding Officer



Karen Oberman, Board Member



Stewart Iverson, Board Chair

Copies to:

Milo Dale and JoAnn Fisher
1704 8th Ave
Belle Plaine, IA 52208

Eric Fisher
1813 8th Ave
Belle Plaine, IA 52208

Jerry Witt, Tama County Assessor by eFile