

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

PAAB Docket No. 2015-082-01024R

Parcel No. 8414172032

Chad Miller,
Appellant,

v.

Scott County Board of Review,
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on May 17, 2016. Chad Miller was self-represented. Scott County Chief Deputy Assessor Edward Vieth represented the Board of Review.

Chad Miller is the owner of a two-story home located at 4340 Tanglewood Road, Bettendorf. The improvements, with the exception of the foundation, were built in 2009. The dwelling has 4915 square feet of above-grade finish. It also has 1640 square-feet of living-quality basement finish, an open porch, deck, patio, and an attached garage. The site is 10.22 acres and is currently classified residential. (Ex. D).

The property's January 1, 2015, assessment was \$901,120, allocated as \$221,800 in land value, \$679,320 in improvement value. The property has a \$27,900 forest cover exemption, resulting in a total taxable value of \$873,220. (Ex. A).

Miller asserted the property was misclassified under Iowa Code section 441.37(1)(a)(1)(c). He believes the correct classification is agricultural. Miller also claimed the property was inequitably assessed and was assessed for more than the value authorized by law under Iowa Code sections 441.37(1)(a)(1)(a-b). The Board of Review denied the petition.

Miller then appealed to PAAB. His primary claim is that the property is misclassified. However, he also preserved his claims of inequity and over-assessment should he not prevail on misclassification.

Findings of Fact

Miller submitted numerous exhibits that he believes demonstrate his property should have an agricultural classification. We do not find all the exhibits relevant in determining classification, and do not find it necessary to analyze each document individually; but we have considered all of the evidence Miller presented.

Miller testified about the history and use of the subject property. In July 2008, Miller and his wife purchased the subject property for \$395,000. At that time, an older farmhouse was on the site, which they intended to renovate. (Ex. 85). During the early renovation process, they determined the extent of existing deterioration and other issues, such as mold, would be too costly to repair. (Ex. 65). They chose to raze the existing improvements, (Ex. 86-87, & 89) saving the existing foundation and a basement garage that had been constructed in the early 1980's. They built their new home in 2009.

Miller testified about the history of the farming operation he has conducted on the subject site. He acknowledged that a few years prior to his purchase of the property, there had been no active farming on the site; and it was classified residential when he purchased it. However, because it was zoned agricultural, he was aware he could have a few horses, chickens, and raise crops.

He contends that an aerial photographic history of the subject site, demonstrates it has always been used for agricultural production. (Ex. 50). We note that at least from the 1930's to the 1970's it appears the subject parcel was farmed in conjunction with adjoining land and a larger overall farming operation. Beginning in the 1970's it is apparent the neighboring parcels were converted from farming activity to residential development. The 1990's do not appear to indicate any agricultural activity on the subject site, but rather conforming residential use to the surrounding parcels.

Miller provided several maps. (Exs. 6-14, 49-50). The maps included provide information on slope, flood plain, electrical lines, wetlands, and tree coverage to name a few. Essentially, Miller submits that based on these maps and other factors, the subject site cannot be subdivided to allow for additional residential improvements and therefore its only reasonable remaining use is agricultural.

Miller explained that after purchasing the site and building his home, he grew hay in 2009 through 2011. In 2012 and 2013, he grew corn. In 2014, he prepared the ground for planting but it was an unusually wet spring, which prevented planting. In 2015, he planted a crop of pumpkins and corn. He also submitted a lease for an acre of land that he will cash-rent for \$30 per year. (Ex. 78-79).

Miller also submitted documents that he believes demonstrate he is operating a farm. The first document is the registration of MillerWorks, LLC with the Secretary of State (Ex. 20). He asserts this, along with the US Department of Agriculture (USDA) assigning him a farm number (Ex. 21) demonstrate he is eligible for agricultural classification. He also notes, however, that the USDA would prefer to see tree production and forest coverage rather than row-crop production on the subject site. (Ex. 26).

Currently, roughly 5 of the 10.2 acres of the subject site is in a slough bill area (streams, stream banks, and forest cover) (Ex. 25 & 48) and 3.6 acres is identified as cropland (Ex. 21 & 48), with the remainder of the site, just under 2 acres, allocated as the homestead area on which the improvements are located. The cropland area is located in a 100-year floodplain. (Ex. 49).

Miller owns several pieces of equipment that he uses on his site to harvest the crops he plants; and he submitted receipts showing the purchase of the equipment and chemicals, as well as photos of that equipment, and photos of his crop. (Ex 27-31, 34, 39-40, 46, 55-56, 58 & 71). Moreover, he is trying to grow the crops free of chemicals, which is more manually intensive.

He submitted a Schedule F for 2012 through 2015, identifying corn as the principal crop. (Ex. 32, 45, 109-110). The following chart is a brief summary of the profit/loss. We recognize the Schedule Fs depreciation expense is a non-cash flow

item. To better understand the cash flow of Miller's agricultural use, we examine the Schedule Fs with and without the depreciation expense.

Year of Schedule F	Sales of Product	Gross Income	Total Expenses	Total Expenses Excluding Depreciation	Net Profit	Net Cash Flow
2012	\$83	\$143	\$14,889	\$5,207	-\$14,746	-\$5,064
2013	\$1,077	\$1,577	\$35,733	\$15,912	-\$34,156	-\$14,335
2014	\$0	\$300	\$26,639	\$4,624	-\$26,339	-\$4,324
2015	\$1,008	\$1,008	\$13,098	\$670	-\$12,090	\$338
Total	\$2,168	\$3,028	\$90,359	\$26,413	-\$87,331	-\$23,385

He spent \$273 on seeds and plants in 2012, and \$145 in 2013. (Ex. 32 & 45). There was no expense for seeds or plants in either 2014 or 2015. The four-year summary shows a total gross income of just over \$3000, and over \$26,000 in expenses, excluding depreciation. Miller testified that \$83,004 of the expenses is for farm equipment, which he is depreciating. His total expenses of more than \$90,000 over the four-year period is thirty-times his gross income.

From a cash flow perspective, Miller's operation was in a negative cash flow position for three out of the four years. Over this time, the operation had a total negative net cash flow of \$23,385.

When PAAB asked Miller what he could expect in total potential profit on his 3.5 acres, he was unable to answer. When PAAB questioned Miller about what his profit was in 2015, he testified that it probably was not much, but that he had about \$700 in pumpkin sales and a few hundred dollars in corn. He testified that he donates sweet corn to church picnics, he gives portions of his crop to people who are unable to pay, and his family uses it for their own enjoyment and health benefits of having produce that they know is chemical free. He trades much of the crop with other people to reduce his grocery bill and believes this is equivalent to profiting from the farming activity. However, no evidence was presented to demonstrate what, if any, savings were accomplished by Miller's agricultural use.

Miller also applied and was approved for a grant to install a wind tunnel (Ex. 54), which he testified would extend the growing season by warming up the soil earlier in the year. He received a \$9000 grant in 2015 to install the wind tunnel. (Ex. 64). In his opinion, receiving this grant further demonstrates he is actively engaged in farming for a profit. Scott County Chief Deputy Assessor Ed Vieth testified for the Board of Review and explained that the City of Bettendorf is requiring the wind tunnel be removed; it is not being assessed.

Additionally, Miller also intends to build a barn, and asserts that typically in a residential setting, this would not be allowed under zoning. However, he asserts that the City of Bettendorf “recognizes he is a farm” and therefore has allowed for the construction of a barn on his site. (Ex. 63). His site is zoned A-1: Agricultural District. The City granted a waiver to allow Miller to build his barn with a 25-foot setback rather than the required 50-foot setback. The rationale was simply that “none of the other properties that are zoned A-1, Agriculture District surrounding this site have observed the required 50-foot setback.”

Turning to Miller’s claim of inequity and over-assessment, he submitted five properties that he asserts had lower land rates than the subject. (Exs. 104-108). He claims he is using the comparable properties for both an equity claim and market value claim.

The property located at 3839 Tanglewood (Ex. 106) is a commercially classified property. The properties at 29217 Lansing Road, Dyersville (Ex. 105) and Parcel No. 841437001 (Ex. 107) are agriculturally classified.

We recognize Miller’s concern that the property at 24118 270th Avenue (Ex. 107) is currently classified agricultural, despite its 2012 purchase price of \$600,000, or \$15,000 per acre. We note that this site had been used for agricultural purposes, but since its purchase is being developed into a residential subdivision. (Ex. E, F & 61). According to Deputy Assessor Edward Vieth, that property is subject to the plat law. Vieth explained that once the subdivision was completed, the individual parcels would be reclassified to residential.

The property at 8972 Wells Ferry Road (Ex. 104) is a residentially classified property, like Miller's. He asserts it has a lower land rate than the subject, but acknowledges there are two parcels associated with this property that may have affected the assessment. Together the two parcels total 9.55 acres, but we note that Parcel No. 943607101 appears to be wholly exempt from taxation. The Board of Review asserts it is located several miles from the subject and not in a comparable area.

4255 Middle Road (Ex. 108) has 15.47 acres, is residentially classified, and has a land value assessment of \$109,470. It is the most recent sale in the record, having sold in April 2013 for \$647,000. Although we have limited information about the property's characteristics, it facially appears to be the most comparable to the subject.

Vieth explained the pricing of the land for the subject property's 2015 assessment. The following chart summarizes how the site was assessed. (Ex. D).

	Site Area (SF)	Acres	Qual/Land	Unit Price	Total
	43560.00	1.00	R-270	\$100,000	\$100,000
	43560.00	1.00	R-225	\$60,000	\$60,000
	174240.00	4.00	R-125	\$10,000	\$40,000
	183823.20	4.22	R-75	\$5,000	\$21,100
Total	445183.20	10.22			\$221,100

At PAAB's request, the Board submitted two property record cards of neighboring residential properties to demonstrate the same pricing was uniformly applied in the area. (Ex. J & K). We find the pricing has been uniformly applied to similarly situated and comparable property.

Vieth explained that the subject property is priced as being built in 2008, despite the foundation having been constructed in the early 1980's. He said that unless there is an issue with the foundation they price the entire improvements as built in the same year. If he felt there was an adjustment warranted, he could make a functional adjustment; however he believes the basement is structurally sound and does not

require an adjustment. Moreover, Vieth notes that Miller had not previously disputed the value of the improvements.

Miller questioned Vieth about the coding of the land and asked for a definition of the quality/land ratings. Vieth explained it was in the assessor software program and that there are numerous coding and pricings in the program.

Miller questioned Vieth about the street reported as “paved” on the first page of the property record card (Ex. D). Miller asserts that paved requires the street to have curb and gutter according to the Iowa Department of Revenue Appraisal Manual, p. 7-37. Vieth explained this was a descriptor on the property record card and it does not affect the unit pricing that was applied to the land.

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). 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).

A. Misclassification Claim

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. The assessor shall classify property according to its present use. *Id.* 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).

Miller asserts his property should be classified agricultural. By administrative rule 71.1(3)(a) 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. . . .

The parties dispute whether the property is being operated for intended profit and whether the property is being primarily used for agricultural purposes.

PAAB previously adjudicated the assessment classification of this property in 2013. (Exs. I & 70). In that case, PAAB concluded that Miller had not shown his property was primarily used for agricultural purposes consistent with rule 71.1(3) and affirmed the residential classification. Miller did not attempt to challenge that decision through a judicial review action under Iowa Code Chapter 17A.

Wherein an assessment classification has been previously adjudicated, the courts apply a presumption of continuity of use. *Cott v. Bd. of Review of Ames*, 442 N.W.2d 78 (Iowa 1989); *Colvin v. Story County Bd. of Review*, 653 N.W.2d 345 (Iowa 2002). In *Colvin*, the property owners protested their 1999 reclassification of their

property from agricultural to residential. *Id.* The district court affirmed the residential classification and the Colvins appealed. *Id.* While the appeal of the district court decision affecting the 1999 classification was pending, the Colvins protested their 2000 residential assessment classification. *Id.* In that case, the district court modified the 2000 assessment and classified the property agricultural. *Id.* Satisfied with that decision, the Colvins voluntarily dismissed the pending appeal challenging the 1999 district court ruling. *Id.* The Board of Review then appealed the district court ruling affecting the 2000 assessment. *Id.*

The Iowa Supreme Court presumed the use of the Colvins' property had not changed since the 1999 reclassification. *Id.* at 349. In order to rebut this presumption, the Colvins would need to prove "the use of their property has changed since 1999 and, as such, the property should now be classified as agricultural." *Id.* at 349-50). The Court concluded that the use and condition of the Colvins' property "remained substantially static" and concluded the Colvins had not rebutted the presumption. *Id.* at 351. Accordingly, the Court affirmed the residential classification. *Id.*

Here, we find that Miller has not overcome the presumption of continuity of use. The evidence indicates Miller's use of the property has not substantially changed since our prior consideration of the property's correct assessment classification. Accordingly, we affirm the residential classification of the property.

Even if we did not apply the continuity of use presumption, we would come to the same conclusion as our 2013 ruling for the following reasons. Miller asserts he is using the property primarily for agricultural purposes and bases this opinion partly on the fact that the majority of the site cannot be developed with additional residential improvements because of the topography or flood plain. We are required, however, to examine the property in its current status as a whole unit. *Sevde* at 880. As it sits, the property is clearly used for some residential purposes and the fact that a portion of it is not suitable for residential development does not preclude a residential classification.

In Miller's opinion, no one would purchase a ten-acre site for a single residential property, further supporting his opinion it must therefore be classified agricultural. We reject this argument. Belying Miller's argument is that prior to his purchase, the subject

was a 10.2-acre site with a lone residential structure. (Ex. 59). In our experience, it is not uncommon for residential sites to have excess land, which is preferred to ensure privacy or personal use. Just as there is no minimum acreage requirement for a property to be considered agricultural, there is not a site-size cap for a property to be classified residential.

Turning to intended profit, we do not deny that Miller is engaged in growing produce and he has spent considerable time, money, and energy to develop a portion of the site for farming. However, Miller testified that he was unable to determine what his profit may be in the future and that the crop he does produce is primarily for personal use, bartered, or given away. Miller's ambiguity about potential future profits causes us to seriously question whether this agricultural use is being done with any intent to profit.

Miller testified to his subjective intent that the property will become profitable at some point in the future. Under the current circumstances, however, we do not find this to be objectively reasonable. Given the small size of the farmable area, its minimal income-producing capacity, the large upfront capital expenditures, and the lack of any apparent 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. Indeed, the figures provided on the Schedule Fs indicate the agricultural operation has a negative net cash flow and consistently shows losses.

Aside from this, Miller also argues that by growing crops for his family's use, he is reducing his grocery expenses and this evidences intent to profit. We decline to address the substance of this argument because there is an absence of any evidence to demonstrate the amount of savings Miller has achieved through his crop production. Even if grocery savings was a factor to be considered in evaluating intended profit, those savings would need to be weighed against the expenditures.

Miller also believes the woodland portion of his property counts as agricultural real estate. We agree that woodland can be counted as agricultural real estate but only if the woodland is held or operated in conjunction with agricultural land that meets the definition in rule 71.1(3)(a) or (b). Here, we find that Miller's agricultural use does not

meet either definition. Therefore, his woodland area is not considered agricultural real estate.

The evidence presented before PAAB does not demonstrate that the property is primarily and substantially used for agricultural purposes with an intent to profit. We recognize Miller's efforts, but we find his activity to be hobby based with primarily personal use of the crop that is grown. Accordingly, we find the property's primary use to be residential and turn to Miller's other claims.

B. Equity Claim

Alternatively, Miller asserts that his property is inequitably assessed under Iowa Code section 441.37(1)(a)(1)(a). Section 441.37(1)(a)(1)(a) permits an aggrieved taxpayer to protest their assessment on the basis that their assessment is not equitable as compared with assessments of other like property in the taxing district. To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993).

In support of this claim, Miller submitted five properties as comparables. He asserts that the Assessor is not applying a uniform land rate to his property. The property at 29217 Lansing Road, Dyersville is clearly not located in the subject's taxing district and we give it no consideration. (Ex. 105). *Maytag Co. v. Partridge*, 210 N.W.2d 584 (Iowa 1973) (describing the meaning of 'taxing district'). The property at 3839 Tanglewood is commercially classified, for that reason we do not find it comparable to the subject. (Ex. 106). The LJ Leasing LC property is agriculturally classified and, according to testimony, is covered by the plat law. (Ex. 107). See § 441.72 and Iowa Admin. R. 701-71.1(9). We also conclude this property is not comparable to the subject.

8972 Wells Ferry Road (Ex 104) and 4255 Middle Road (Ex. 108) are classified residential like the subject. 8972 Wells Ferry Road is owned by Ms. Leonard and it is a 5 acre parcel with a land value assessment of \$80,500. Ms. Leonard owns an additional 4.55-acre lot that appears to be wholly exempt from taxation. Although

together the properties would be similar in size to Miller's, they are not similarly situated or comparable to his because they are separate parcels with one of them being wholly exempt from taxation.

4255 Middle Road is 15.47 acres and is residentially classified like the subject with a land value assessment of \$109,470. Based on the limited information in the record regarding this property, we found that it facially appears to be most comparable to the subject. However, the plain language of Iowa Code section 441.37(1)(a)(1) requires more than one comparable to establish inequity. *Montgomery Ward Dev. Corp. v. Cedar Rapids Bd. of Review*, 488 N.W.2d 436, 441 (Iowa 1992), *overruled on other grounds by Transform, Ltd. v. Assessor of Polk County*, 543 N.W.2d 614 (Iowa 1996). This "statutory requirement is both a jurisdictional prerequisite and an evidentiary requirement for bringing a claim of inequitable or discriminatory assessment before the board." *Id.* Accordingly, we find that Miller has not shown his property is inequitably assessed.

C. Overassessment Claim

In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2), 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).

In Iowa, property is to be valued at its actual value. § 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 to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

Miller was concerned that the Assessor did not account for the fact the dwelling's foundation and garage basement are original and were not rebuilt with the remainder of

the subject's improvements in 2008/2009. We recognize the Assessor's valuation of the subject's improvements, as shown by the property record card, treats the foundation and garage basement as if they were built in 2008 and does not apply depreciation based on the original construction date. Vieth testified that the foundation was in good condition and he felt that no additional depreciation was necessary. While this may amount to a listing error, which is not properly before this Board, there is no indication what impact, if any, this would have on the subject's fair market value.

Miller had similar concerns about the fact that the property record card indicates the street is paved, when it is, in fact, rock-chip and oil. (Ex. 120). He also contends that his property is not of superior grade, as listed on the property record card, because of inferior finish materials and construction defects. Again, no evidence was provided to show what impact, if any, these issues would have on the subject's fair market value.

Of the properties Miller submitted, the most recent sale was of 4225 Miller Road. (Ex. 108). That property sold in April 2013 for \$647,000. No adjustments have been made for comparison with the subject. Miller did not provide any other relevant sales data or evidence of the subject's market value as of January 1, 2015, such as an appraisal, comprehensive market analysis, or adjusted comparable sales. Therefore, we find Miller has not demonstrated the subject is overassessed.

Order

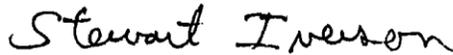
IT IS THEREFORE ORDERED that the Scott County Board of Review's action is affirmed.

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 8th day of July, 2016.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

CC:

Chad Miller
Edward Vieth