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

PAAB Docket Nos. 2016-077-00262A

Wilbur E Goodhue Inc. (Carroll Hunter),
Appellant,
vs.
Polk County Board of Review,
Appellee.

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## Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on July 21, 2017. Carroll Hunter, secretary-treasurer of Wilbur E Goodhue Inc., represented the Appellant (Goodhue). Polk County Assistant Attorney Mark Taylor represented the Board of Review.

Goodhue owns a farm in Polk County and appealed twenty-six of its agricultural parcels. Table 1 below sets forth each individual parcel's January 1, 2016 assessed value. (Exs. A, D, G, J, M, P, S, V, Y, BB, EE, HH, KK, NN, QQ, TT, WW, ZZ, CCC, FFF, III, LLL, OOO, RRR, UUU, XXX). The total assessed value for all twenty-six parcels is $1,577,550. The 2016 assessed values remained unchanged from the 2015 assessments. (BOR Certification).

Goodhue protested to the Board of Review and the Board of Review denied the protests. Goodhue then appealed to PAAB claiming inequity, over assessment, and error, as provided under Iowa Code sections 441.37(1)(a)(1)(a-b) and (d). The Board of Review filed a motion to dismiss. PAAB denied the motion and concluded Goodhue had properly raised a downward change in value claim under Iowa Code section 441.37(1)(a)(2) for the 2016 assessments, and held Goodhue raised error claims under section 441.37(2) for its 2015 and 2016 assessments. Those are the only claims PAAB will consider in this appeal.

## Standard of Review and 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).

## Findings of Fact

The subject property consists of twenty-six agricultural parcels totaling 1134.90 acres; with 952.02 acres classified as cropland and 175.90 acres as noncropland. The table below provides a summary of each subject parcel's size, average CSR2 rating, total CSR2 points, and 2016 assessed value.

**Table 1**

| Parcel # | Acres | Average CSR2 | Total CSR2 Points | 2016 Assessed Value |
|---|---|---|---|---|
| 00004-000-000 | 40.00 | 89.0892 | 3563.56 | $69,200 |
| 00006-000-000 | 40.00 | 75.3529 | 3014.11 | $58,530 |
| 00007-000-000 | 40.00 | 57.9851 | 2319.41 | $45,040 |
| 00008-000-000 | 59.50 | 82.7778 | 4925.27 | $95,650 |
| 00009-000-000 | 19.38 | 66.0645 | 1280.33 | $24,860 |
| 00011-000-000 | 19.50 | 71.8841 | 1401.74 | $27,220 |
| 00014-100-000 | 42.00 | 80.7826 | 3392.87 | $65,890 |
| 00014-101-000 | 15.75 | 82.1263 | 1293.49 | $25,120 |
| 00014-205-000 | 4.738 | 90.6585 | 429.54 | $7,270 |
| 00015-000-000 | 30.38 | 67.3181 | 2045.13 | $39,720 |

| | | | | |
|---|---|---|---|---|
| 00016-000-000 | 38.50 | 75.8088 | 2918.64 | $56,680 |
| 00016-002-000 | 48.60 | 84.6096 | 4112.02 | $79,860 |
| 00016-003-000 | 20.90 | 74.0702 | 1548.06 | $30,060 |
| 00022-002-000 | 48.67 | 86.4479 | 4207.42 | $81,710 |
| 00022-003-000 | 1.64 | 88.6913 | 145.64 | $2,830 |
| 00065-000-000 | 40.50 | 73.7350 | 2986.26 | $57,990 |
| 00067-000-000 | 9.75 | 82.0000 | 799.50 | $15,530 |
| 00081-003-000 | 70.25 | 73.5811 | 5169.00 | $100,380 |
| 00085-000-000 | 18.91 | 73.6155 | 1392.07 | $27,030 |
| 00087-000-000 | 19.61 | 76.5464 | 1500.70 | $29,140 |
| 00088-000-000 | 38.32 | 75.1427 | 2879.47 | $55,920 |
| 00091-002-000 | 151.37 | 54.2001 | 8204.28 | $159,330 |
| 00094-003-001 | 159.84 | 68.1635 | 10895.12 | $211,580 |
| 00096-000-000 | 39.40 | 69.0083 | 2718.92 | $52,800 |
| 00097-000-000 | 38.40 | 72.4775 | 2783.13 | $54,050 |
| 00122-000-000 | 79.00 | 67.8922 | 5363.49 | $104,160 |

Exhibit 1 and the subject property record cards (PRCs) indicate 311.21 acres or 27.4% of the subject directly abuts the Des Moines River. Four of the southernmost subject parcels appear to lie adjacent to the North River, a Des Moines River tributary. (Ex. 5, pp. 1-2).

Carroll Hunter testified that the subject parcels are located a short distance downstream from the confluence of the Des Moines and Raccoon Rivers. (Ex. 5). Hunter asserts floodwater used to dissipate quickly from the property before the US Army Corps of Engineers (Corps) constructed the Red Rock dam south of the subject parcels and the Saylorville dam to its north. He explained that the subject parcels are flooded by the Raccoon River, which has an uncontrolled river flow. When this happens, the Corps will hold back the Des Moines River floodwaters at Saylorville until the Raccoon River subsides. Then the Corps releases the Des Moines River floodwaters thereby keeping the river elevation high and the subject parcels' fields saturated. The situation is exacerbated by floodwater in Red Rock's dam flood pool, which includes the subject parcels. He noted the subject parcels now experience frequent flooding, which often leaves the ground saturated throughout the entire growing season.

Goodhue was compensated by the Corps for a Red Rock Reservoir flood pool easement, but Hunter asserts they were told flooding would only occur approximately every eighteen years. Goodhue assumed that if the funds were invested at a reasonable rate of interest there would be sufficient funds to cover any future crop loss caused by flooding. However, the funds were exhausted within five years due to increased frequency of heavy rains and increased duration of flooding. Hunter contends more often than not the soils remain saturated throughout the summer preventing crops from being replanted.

Hunter testified that when floodwaters reach an elevation of 760 feet it starts to encroach onto Goodhue's property. He offered data of the floodwater high point elevations or feet above flood stage at nearby stream gaging stations. (Ex. 2). The Red Rock Reservoir and the SE 6th Street gaging stations' data indicates flooding occurred eleven years out of the past sixteen years, with an average maximum floodwater depth of over seven feet for these recorded events. Hunter testified that during this decade alone the subject parcels have been entirely inundated by floodwaters during five growing seasons, as delineated on the following table. (Ex 2, p. 1).

| Year | Floodwater Elevation |
|---|---|
| 2010 | 778.81 ft |
| 2011 | 775.84 ft |
| 2013 | 776.64 ft |
| 2014 | 766.66 ft |
| 2015 | 769.96 ft |

On cross-examination, Hunter acknowledged he did not offer any evidence demonstrating the production levels for all twenty-six subject parcels for January 1, 2015, and January 1, 2016. He further acknowledged there has not been a downward change in value, noting the value has been down and has not changed since 2012. He contends the parcels were more accurately assessed prior to implementation of the new CSR2 formula.

Hunter argues it was a clerical procedural error on the Assessor's part for not considering all "other relevant data" available as provided under the Iowa Administrative Code. Hunter points to several sources he considers to be relevant. He first referenced

an appraisal developed by Southern Iowa Ag Service, which opined a market value of $140,000 or $921 per acre for parcel 00091-002-000. (Ex. 3). Only the appraisal's cover letter was submitted, so we are unable to evaluate the methodology and data the appraiser used to arrive at a value conclusion. Moreover, the appraisal only valued one of the twenty-six subject parcels.

Hunter next pointed to the 2016 ISU Farmland Value Survey--with a reported average value of $5158 per acre and an estimated average CSR2 of sixty-one, or $84.60 per CSR2 point for low grade central Iowa land like the subject parcels. (Ex. 3).

Hunter also provided details from a 2012 condemnation, in which the Iowa Department of Transportation (IDOT) acquired a portion of subject parcel 00081-003-000 for a highway improvement project. (Ex. 4). He argues the IDOT determined the value is only 48% of the ISU Farmland Value for that year, so the subject parcel's assessed value should only be $512 per acre or 48% of the $1066 value per acre noted on its PRC. (Ex. 4).

Hunter next testified regarding the subject parcels' "BBB high risk land" rating by USDA Risk Management Agency (USDA-RMA). He noted the cost of crop insurance is 31.25 times higher than for most crop farmland. (Ex. 8). He further reported the 10-year average Polk County yield for BBB high risk land was 130 bushels per acre, which he concluded is equivalent to a CSR2 of 58.82 per acre. Hunter then applied this CSR2 rating uniformly to each and every subject parcel cropland acres, regardless of the varying soil types, to arrive at a lower value he believed more accurately reflected the subject parcels' actual value. (Ex. 7).

Lastly, Hunter argued substantial increases in the subject parcels' 2016 and 2017 property taxes, with one parcel's taxes allegedly increasing by 1300%. In his opinion this should not have occurred given the increased frequency of flooding and longer duration the soils remain saturated. However, looking back at the historical record on the subject parcels' PRCs reveal the largest assessed value increases occurred between 2013 and 2014, ranging from 22.8% to 61.3% with an average and median increase of 38.7% and 35.9% respectively. Assessed values decreased 1.4% to 2.1% between 2014 and 2015, and remained unchanged for 2016.

Tammy Berenguel, a Polk County agricultural assessor, testified for the Board of Review. She noted the Assessor's Office implemented CSR2 starting with the 2014 assessments. She explained the old CSR system allowed assessors to make adjustments for such things as flooding. Now, however, flood conditions are already built into the formula and assessors are restricted from making adjustments in this regard. Berenguel noted the only exception to strict adherence to Iowa Department of Revenue (IDR) rules involves limited, unique, and unusual circumstances. She testified that she does not consider Goodhue's circumstances unusual. Berenguel noted it would most likely take an event similar to the flood of 1993 to qualify for such an adjustment. Other examples of unusual or limited circumstances are noted in the MANUAL. IOWA DEP'T OF REVENUE, IOWA REAL PROPERTY APPRAISAL MANUAL 2-27 (2008).

Berenguel explained that agricultural land is valued by giving exclusive consideration to its productivity and net earning capacity. She testified that the only data assessors may use in determining a parcel's value consists of the CSR2 rating issued by ISU regarding each soil's productivity and the net earning capacity figure set by the IDR, which was $1,571.14 per acre for 2015. She further indicated she found no calculation errors in the subject parcels' assessments.

Dr. Lee Burras, an agronomy professor at Iowa State University and primary author of the CSR2 equation, testified on behalf of the Board of Review. He noted the Natural Resource Conservation Service (NRCS) now creates the Web Soil Survey (WSS) in behalf of the National Cooperative Soil Survey, which formerly produced the printed form of the modern soil survey. Burras noted CSR was developed to treat all land based on its productivity alone versus its market value or yield. However, it was discovered that the old CSR formula no longer worked because the science had changed in how soils were classified. Problems also arose in getting the data to match across county lines during the conversion from printed county specific soil survey reports to a statewide electronic based system. Therefore, CSR2 was created to resolve these issues.

Burras noted the CSR2 formula specifically looks at taxonomic subgroup (e.g., color of horizons), texture (e.g., sandy, silty, clay), water availability (e.g., whether it will be droughty or not in a dry year), and field properties (e.g., slope, depth, erosion

tolerance, how quickly it responds to good things). Expert judgment may also be used on specific soil series, but is not used on any of the subject parcels' soils. In addition, flooding frequency, duration and how quickly the soils drain is factored in based on the data in the WSS from the most recent soil survey performed by NRCS.

According to Burras, CSR2 is a quantitative and inductive rating. Quantitative in that you get a number; inductive in that soil properties are used, not yield, to arrive at the soil's inherent productivity. He argued that yield can be influenced by management, where a really bad manager could achieve zero yield on the best soil.

Burras asserts he is not allowed to take into consideration a Corps flood easement because of National Cooperative Soil Survey rules and Iowa law. He noted the CSR2 does not consider other factors that may come into play if one were buying property. His responsibility under the CSR2 is to rate soils based solely on what the plant root is interacting with.

Burras noted if weather patterns change or a dam is built it will impact the soil rating. However, changing the data based on those factors is reliant on NRCS updating the WSS. Burras testified that occasional flooding is thought to occur once every 20 years and would not require an update, but more frequent flooding may require an update. He noted flood duration is also an issue as crop loss will occur if the soils remain flooded for 7-days. Burras testified that WSS classified the Goodhue parcels as suffering from "frequent brief flooding."

Burras noted that officially the maps are updated annually, but he believes it has been a while since Polk County's flood data has been updated. He indicated that until the data is changed everyone is to assume the WSS database is accurate.

## Analysis and Conclusions of Law

The record shows that Goodhue's agricultural parcels were not reassessed from 2015 to 2016. Nonetheless, the Goodhue appeal asserts the subject parcels' value has declined due to increased frequency of heavy rains and increased duration its soils remain saturated.

In a year when the property has not been reassessed, a taxpayer may challenge its assessment on the basis that there has been a downward change in value from the

immediately preceding assessment year under Iowa Code section 441.37(1)(a)(2). *Equitable Life Ins. Co. v. Bd. of Review of Des* Moines, 252 N.W.2d 449 (Iowa 1977). Under this claim, it is not enough for a taxpayer to prove the last regular assessment was wrong. *Id.* at 451.

Hunter acknowledged he did not submit evidence demonstrating the production levels for each of the twenty-six subject parcels for both January 1, 2015, and January 1, 2016. He further conceded the values had not changed since 2012. The record contains no evidence attempting to establish the properties' value as of each of the relevant dates. Therefore, we find Goodhue failed to prove the subject parcels suffered a downward change in value between their 2015 and 2016 assessments.

Goodhue also claimed there was a clerical error in the 2015 and 2016 assessments under section 441.37(2). Hunter contends the Assessor erred by not considering other available resources which result in lower value outcomes than the CSR2 formula, and the frequency and lengthy duration that the subject parcels' soils remain saturated is not factored into the formulation.

A property owner may challenge an assessment made in a previous year on the ground that a "clerical or mathematical error has been made in the assessment." Iowa Code § 441.37(2)(a). This claim may only be made for a year "in which the taxes have not been fully paid or otherwise legally discharged." *Id*.

> A clerical or mathematical error, is one of writing or copying. Such an error results in the recording of an assessment figure that was not intended by the assessor. In contrast, an assessment entered in an amount intended by the assessor is not the result of clerical error even though an error of judgment or law affected the assessor's determination of the property assessment. That is because an error in judgment or a mistake of law is an error of substance; it is not a *clerical* error.

*American Legion, Hanford Post 5 v. Cedar Rapids Board of Review*, 646 N.W.2d 433, 439 (Iowa 2002) (emphasis in original).

In support of this claim, Hunter provided information on average yields and average farmland values from a variety of sources, arguing these indicate a lower value than the CSR2 formulation and therefore should have been taken into consideration by the assessor when setting the subject parcels' assessed values.

The subject property is classified agricultural. Iowa Code section 441.21(1)(e) requires agricultural property be assessed by giving exclusive consideration to its productivity and net earning capacity. Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule. § 441.21(1)(e); Iowa Admin. R. 701-71.3. Assessors are to consider the results of a modern soil survey, if completed. § 441.21(1)(f); Iowa Admin. R. 701-71.3.

The Department of Revenue has adopted rules to determine productivity and net earning capacity. In making a determination of value, assessors "shall also use available data from Iowa State University, the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), USDA Farm Service Agency (FSA), the Iowa department of revenue, or other reliable sources." Iowa Admin. Code r. 701-71.3(1)(a). The IOWA REAL PROPERTY APPRAISAL MANUAL shall be used, as well as any other IDR guidelines. R. 701-71.3(1)(a).

One part of the productivity and net earning capacity formula includes the corn suitability ratings (CSR). The CSR reflects a given soil type's potential productivity and serves to provide an equitable basis for farmland assessment. MANUAL, 2-25 (2008). The CSR2 formula considers the soil type, particle size, water holding capacity, field condition (including slope, flooding, ponding, erosion class, and topsoil thickness), soil depth and rate of erosion. *Id.* at 2-26.

Dr. Burras testified that NRCS creates the WSS, which is the modern soil survey. He noted National Cooperative Soil Survey rules and Iowa law govern what data may be considered in the CSR2 formula and mandate its use in setting assessed values. While he believes it has been a while since the WSS has been updated for flooding in Polk County, Burras made it clear everyone is required to assume the WSS database is accurate.

Goodhue's arguments appear to focus on errors of judgment in the choice of data used for determining the soils productivity as well as in methodology for calculating assessed values. However, Goodhue neither provided testimony nor evidence regarding the existence of a clerical or mathematical error upon which we may find an error under Iowa Code section 441.37(2)(a).

Hunter's frustration is apparent, as it appears he keeps bumping up against the mandated agricultural assessment formulation, which provides very little wiggle room for making adjustments. Currently the WSS is the mandated database for establishing a soil's productivity. Burras testified the subject parcels' frequent flooding is already factored in, but if the soils remain flooded or totally saturated throughout the growing season, it will diminish the soils' productivity. Moving forward, however, relief might be possible if NRCS is convinced to update the WSS, provided if it has access to sufficient documentation demonstrating an ongoing significant change in the duration the soils remain saturated during the growing season.

By a preponderance of all evidence in the record, we find Goodhue failed to prove there was a mathematical or clerical error in either its 2015 or 2016 assessments.

## Order

PAAB HEREBY AFFIRMS the Polk County Board of Review ruling upholding the assessed values for Goodhue's twenty-six subject parcels.

This Order is the 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.

Camille Valley, Presiding Officer

Karen Oberman, Board Member

Stewart Iverson, Board Chair

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