

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

PAAB Docket No. 2017-070-10175R

Parcel No. 03-25-100-011

Mark and Rita Mays

Appellants,

vs.

Muscatine County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on January 17, 2018. Mark and Rita Mays were self-represented. Muscatine County Chief Deputy Assessor Randy Spies represented the Board of Review.

The Mays own a property located at 1423 Highway 38, Wilton. The property's January 1, 2017 assessment was set at \$119,720, allocated as \$46,000 in land value and \$73,720 to improvement value. The property was re-classified from Agricultural to Residential for the 2017 assessment. (Ex. A).

The Mays petitioned the Board of Review and claimed their property was misclassified under section 441.37(1)(a)(1)(c). The Board of Review denied the petition.

They reassert their claim to PAAB.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2017). 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 is 2.20 acres. It is improved with a two-story home built in 1888. The home has 1776 square feet of gross living area, a half basement, an open porch, and two enclosed porches. Other improvements on the property include a 1512 square foot utility building built in 1998 and two small outbuildings. (Ex. A).

Mrs. Mays testified about the history of their use of the subject property since they purchased it in 2007, as well as her conversations with the Assessor's Office and petitions to the Board of Review over the last decade. Beginning in 2009, the Mayses' property classification was repeatedly changed from agricultural to residential by the Assessor. The Mayses protested each of those assessments to the Board of Review. It appears the Board of Review visited the Mayses' property in 2009, 2011, and 2014, with the property's classification subsequently reverted to agricultural in 2009 and 2011. The Mayses submitted evidence to support the timeline of changes, as well as documentation of their use of the property for agricultural purposes during this period. Included in Mayses' exhibits are "Assessor Guidelines" for classifying property in the jurisdiction. These guidelines changed from year-to-year, including 2017. (See Ex. D).

Mrs. Mays provided detailed testimony relating to her agricultural activities on the property beginning in 2009 and continuing to the present including planting blueberries,

raspberries, and strawberries; purchasing chickens and chicken feed; and also farrowing hogs for the Mayses' children's 4-H and FFA projects and raising and selling cattle. The Mayses submitted receipts for these expenses, as well as a list of farm equipment they own and use to care for the livestock and crops. (Ex. 2).

Mrs. Mays testified and submitted evidence about changes and subsequent increases in their 2014 dwelling assessed value. (Ex. 3). PAAB declines to dwell on this testimony and instead focuses on issues pertinent to the classification claim and the 2017 assessment under appeal.

In 2017, Mrs. Mays testified her property was again re-classified as residential. Mrs. Mays reports the following agricultural activity was taking place on their property for the relevant time period: raising and harvesting strawberries, raspberries, asparagus, assorted vegetables, fruit trees, and aronia berries; as well as raising cattle, hogs, butcher chickens, laying hens, and turkeys. The Mayses also rent 2.5 acres of adjoining pasture for their livestock for \$300 annually. (Ex. 4).

The Mayses assert they have been involved in agricultural activity for several decades. To support their position that these activities have continued through 2017, they submitted the following evidence: a flyer advertising their berry farm; photos of the various gardens used to raise berries and vegetables; receipts for veterinarian bills and feed; photos of the cattle and the adjoining pasture they rent; newspaper clippings of prized swine, and a pricing report of its subsequent sale; photos of chickens in the hen house, the butcher chickens, egg collection, and farm equipment; photos of their compost pile; their farm service agency number; and several letters from customers. (Exs. 5-11).

Mrs. Mays explained their income varies year-to-year because it depends on how many cattle they sell, how many hogs they have, or how many chickens they raise in any given season. They sell fresh seasonal produce and meat and eggs throughout the year. Based on a quick analysis, Mrs. Mays testified she sells approximately \$2500 in eggs and \$2000-\$2500 in broiler chickens on an annual basis. They sold some hogs and cattle, which may result in \$1600 in income for the hogs and \$2000 to \$7000 for the cattle. She estimated that they sold roughly \$10,000 worth of product in the last year.

The Mayses' book of business includes a list of 500 customers that have purchased from their farm in the past and continue to buy produce and meat/eggs products from them.

The Board of Review submitted a memorandum from the Iowa Department of Revenue. (Ex. H). Spies notes the memorandum specifically states “the assessor shall classify property according to its present use and not according to its highest and best use.’ Rule 71.1(1).” In its attempt to adhere to the directions outlined in the memorandum, Spies explained the Assessor’s Office classified the subject property based on its belief of the primary use as residential property.

The Board of Review identified all rural residential acreages in the Wilton Township where the subject is located. (Ex. E-F). The median site size for rural residential acreages is 3.70 acres. The subject site is 2.20 acres, and Spies noted the Mays’ strawberry patch is roughly 0.10-acres. The Board of Review provided no information regarding whether the owners of any of these other parcels undertake endeavors similar to the Mayses.

The Board of Review believes the subject property’s primary use is residential with a secondary use of commercial because Mr. Mayes has a welding business. It acknowledged the Mayses have poultry and gardens, but like the welding business, the Board of Review believes this is incidental to the overall use of the subject property. (Ex. I).

Analysis & Conclusions of Law

The Mayses assert the subject property should be classified agricultural.

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. See Iowa Admin. Code R. 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.* (emphasis added). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. Iowa Admin. r. 701-71.1(2). 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). The determination of a property’s classification “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).

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. . . .

In contrast, residential property “shall include all land and buildings which are primarily used or intended for human habitation.” R. 701-71.1(4). This includes the dwelling as well as structures used in conjunction with the dwelling, such as garages and sheds. *Id.*

First, we note the Assessor’s treatment of Mayses’ classification and the consistently changing requirements for agricultural classification has a Charlie Brown, Lucy, and the football quality. The Assessor repeatedly changed the Mayses’ classification and created new guidelines year after year despite the Board of Review reverting the property’s classification to agricultural. It appears this property has been reclassified at least three times in less than a decade. Moreover, previous versions of the Assessor’s guidelines and the 2017 guidelines contemplate criteria or tests found nowhere in Iowa law. (See Exs. D; H). As previously noted, the administrative rule requires assessors follow the guidelines set forth *in the rule*. While it may be useful for assessors to develop guidelines for consistency within their office and for the taxpayers in their jurisdiction, the guidelines cannot exceed the scope of the administrative rules. Accordingly, our focus here is on the property’s present and primary use considering the aforementioned assessment classification rules.

Here, the record indicates the subject property has been historically used for agricultural purposes in raising fresh produce, eggs, and meat from chickens, pigs, and cattle. The Mayses have an established clientele and estimate an annual income of roughly \$10,000. The Board of Review asserts the strawberry patch is roughly 0.10 acres and therefore incidental to the use of the property. PAAB notes the strawberry patch is but one of the Mayses endeavors, which also include fruit trees, berries, egg-laying hens, broilers, and pigs/cattle. They also rent an adjoining pasture parcel to graze their cattle. On this record, we find the undisputed agricultural use is done in good faith with an intent to profit.

While these activities take place on a relatively small parcel of land, which also contains the Mayses' home, we nonetheless conclude the property's primary use is agricultural. The Mayses are intensively using the subject property for diverse agricultural purposes. Not only do they have the strawberry patch, but a substantial portion of the property is also used for other agricultural purposes, including raising pigs, cattle, broiler chickens, and laying hens. Having concluded the property's primary use is agricultural; we find the properties' correct classification is agricultural.

Order

PAAB HEREBY MODIFIES the Muscatine County Board of Review's action and orders the subject parcels' assessment classification be changed from residential to agricultural. The Board of Review shall submit a revised valuation of the subject property based on an agricultural classification to PAAB and the Muscatine County Auditor within fourteen (14) days of the date of this Order.

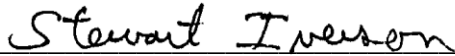
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2017).

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.

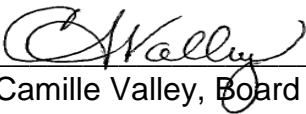
Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Camille Valley, Board Member

Copies to:

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Muscatine County Board of Review by eFile

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