

PROPERTY ASSESSMENT APPEAL BOARD

RECONSIDERATION OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2017-082-00364R

Parcel No. 841439001

Gregory Franich,

Appellant,

vs.

Scott County Board of Review,

Appellee.

Introduction

This appeal came on for rehearing before the Property Assessment Appeal Board (PAAB) on August 15, 2018. Attorney Garth Carlson represented Gregory Franich. The Scott County Board of Review was represented by Assistant County Attorney Robert Cusack.

Gregory Olin Franich Joint Living Trust owns a residential property located at 5382 Clemons Road, Bettendorf, Iowa. (Ex. A). The subject property's January 1, 2017 assessed value was set at \$926,720, allocated as \$238,500 in land value and \$688,220 in dwelling value. The subject property receives a forest exemption of \$46,000, which reduces the assessment to \$880,720. (Assessment Notice).

On protest to the Board of Review, Gregory Franich claimed his property is assessed for more than authorized by law, is misclassified, and there is an error in the

assessment as provided under Iowa Code sections 441.37(1)(a)(1)(b-d) (2017). The Board of Review denied his claims. Franich reasserted his claims to PAAB.¹

Following a contested case hearing, PAAB issued an order November 22, 2017, changing the subject property's assessment classification from residential to agricultural realty. On December 11, the Scott County Board of Review filed an Application for Reconsideration and Rehearing as provided under Iowa Administrative Code Rule §701-126.9(2). The Board of Review specified in its brief the findings of fact and conclusions of law it claimed to be erroneous in PAAB's November Order. On December 23, Franich filed a Response addressing the arguments raised and cases cited in the Board of Review's Application. On January 25, 2018, PAAB ordered the record be reopened to allow for the introduction of additional evidence and the taking of testimony during a rehearing before PAAB. The issue presented at rehearing is whether, based on the entirety of the record, the subject property should be classified agricultural realty rather than residential for the January 1, 2017 assessment year.

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

¹ Franich provided no evidence to support his over assessment or error claims under Iowa Code section 441.37(1)(a)(1)(b, d). At the hearing, Franich conceded he was not challenging the assessment of the buildings. The essence of his claim is that the land is incorrectly classified, resulting in an excessive valuation. Due to the foregoing, we only consider Franich's misclassification claim under section 441.37(1)(a)(1)(c).

preponderance of the evidence. *Id.*, *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

Findings of Fact²

A. Background and Property Description

The subject property is a 12.0-acre site located near the center of Bettendorf. The northern portion of the site consists of roughly 4.6 acres of trees which receives a forest reserve exemption. (Exs. H & J). The southern portion of the parcel, approximately 4 acres, is a fenced pasture with an outbuilding, which Franich uses for raising grass-fed cattle and free-range chickens. (Ex. J). The principal residence sits near the center of the parcel. (Ex. J). There is also an old dilapidated residence located near the eastern property line within the fenced pasture area. (Exs. A & J).

Franich testified that he purchased the site for \$190,000 in August 2006; at that time it was agriculturally classified. He stated the reason for purchasing the property was so he could raise chickens and cattle as well as undertake other agricultural pursuits, such as cattle breeding. (Second Hearing). He also runs what sounds like a profitable mortgage lending business and a home construction company.

The principal residence was built in 2007. It has 3984 square feet of gross living area, 1200 square feet living-quarter-quality basement finish, 992 square feet of porch/deck area, and an attached 1222-square-foot garage. It is listed as superior quality construction (grade 1-05) and in normal condition. (Ex. H). Franich estimates he mows about one-and-a-half to two-acres of lawn around his home. (Second Hearing). He testified he spent \$12,000 to install a well, which is used for the residence and to provide water for cattle. (Second Hearing).

The second dwelling, built in 1912, is vacant and listed as obsolete. A note on the property record card states it was tagged for demolition, and set for a January 2018 follow up check. Franich confirmed the 1912 house still remains and is unused. (Ex. H; Second Hearing). Scott County Assessor Tom McManus testified that the old home is

² The Findings of Fact incorporates testimony and evidence from the hearing held on September 21, 2017 (First Hearing) and August 15, 2018 (Second Hearing). The Findings have been generally divided into sections consistent with the requirements for agricultural classification under Iowa Admin. Code R. 701-71.1(3)(a).

valued at \$3680 because of its hardwood floors, and its value will be removed once demolition occurs. (Ex. H).

The outbuilding is a 40-by-80-foot steel utility building (barn). It is not insulated but it does have electrical service, an overhead door, and a floor that is half dirt and half concrete. (Ex. H). According to Franich, the family constructed the barn beginning in 2011 and finished it in 2013. He contends it cost \$21,000 to build plus the cost for concrete. (Second Hearing). Its 2017 assessed value was set at \$37,900.

A fenced pasture lies to the south of the barn, which Franich indicated they cleared in 2008 and 2009. (Franich Resistance to Application for Reconsideration and Rehearing). Franich testified the fencing materials cost roughly \$6000 to \$7000 and the fence was completed in 2010.

The subject site is surrounded on three sides by agricultural land with residential development to its east. (Exs. 5, 8, E & F). Franich acknowledged the existing parcel is not big enough to do any kind of row crop production but believes he can raise cattle and chickens on the land. He testified that he has an option to buy an additional forty acres of land to the north, and also mentioned an interest in acquiring farmland to the south and west.

Following the completion of his new home, the subject property was reclassified residential for the January 1, 2008 assessment. (Ex. R). Franich testified that he has been trying to get the subject property back to an agricultural classification after he and his sons finished building the barn and clearing and fencing in the pasture because those actions permitted them to raise cattle and increase the size of their chicken flock. He argued that he engages in agricultural activity on the subject property as defined in Iowa Administrative rule 701-71.1(3), and asserts it has felt like dealing with a moving target when discussing the agricultural classification requirements with the County.

Franich stated he is not contesting the assessed value of the buildings but arguing the land is over assessed because it is classified residential when it should be classified as agricultural like similar properties in the area. Franich reviewed the land use, zoning, and tax classification of nearby properties (6178 Valley Dr, 6320 Valley Dr, 5541 Valley Dr, 5660 Valley Dr, and 4000 Moencks Rd). He noted they are all similarly used, zoned agriculture, and classified agricultural for assessment purposes. (Ex. 1-6).

Scott County Assessor Tom McManus noted Franich's comparable properties are dissimilar to the subject property, because those residences are under the same ownership with larger contiguous tracts of land being used for row crop farming.

The Board of Review submitted a copy of the Scott County Agricultural Class Questionnaire, which is regularly used by the Assessor's Office staff. (Ex. O). It highlights the key factors that must be met under rule 701—71.1(3)(a), but it also lists numerous questions used by the Office to ascertain whether the land should or should not be classed agricultural.

B. Agricultural Use

The parties do not dispute agricultural activities are taking place on the subject property. Franich testified that the southern half of the subject property is in pasture and used for raising free-range chickens and cattle. This represents approximately 4-acres of the subject site. (Exs. J & K). He testified that half of the barn is used for storage of equipment and feed, with the remaining half used for a chicken coop. He subsequently testified that half is used for storage and the other half used for chickens, cattle, hay storage, and water. (Second Hearing 7:28).

Franich testified that he began raising cattle in 2012 or 2013; keeping two to four cattle on the property at a time. (Second Hearing 16:50, 17:30). He testified they sold between two and four cattle over the last 3-4 years. (Second Hearing 6:30). He described the cattle as "non-certified organic." When asked for the specific head count he had in 2015, 2016 and 2017, he replied three, two and four head respectively. (Second Hearing).

In his response to the Board of Review's motion for reconsideration and rehearing, Franich indicated there are years when he only sells two head of cattle, and other years as many as four. He indicated he purchases calves in the spring, for \$1.50 per pound or about \$600 per calf. He raises them through one full winter and brings them to slaughter the following December. The cattle are grass-fed throughout the springs and summers, with supplementation of alfalfa and non-GMO corn during the fall and winter months, and other times as needed. He estimates his average feed cost per animal is about \$500. Target weight for each animal is 1300 pounds, which results in about 780 pounds hanging weight. He noted grass-fed, non-GMO beef commands a

retail price of \$4.00 per pound, resulting in an approximate gross profit of \$3120 per animal. Buyers pay the processing costs, and he purported to net \$2020 per animal, but noted the net does not account for the costs associated with his agricultural capital improvements (e.g., barn, fencing).

In addition to raising cattle, Franich testified he began raising chickens in 2008; starting with approximately 20 chickens. After construction of the barn, the number of chickens increased to 60-70, which produce 50-60 eggs per day. At times he stated he had up to 90 chickens. When questioned that the output seemed high, he clarified it depends on the day. (Second Hearing). He noted he gets high volumes per day in the spring but in the winter there may be only five eggs total some days (Second Hearing). He testified ten to twelve families purchase eggs from him. (Second Hearing).

Franich initially testified that he and his wife purchased the property with the intention of raising cattle and chickens. He later testified that they wanted to instill a sense of duty and work ethic in their nine children, noting family members provide all needed labor. (Second Hearing). He noted they are striving to mimic a mid-1900s family farm with each child assigned “arduous tasks” that must be done on a daily basis; morning and evening year-round, regardless of the weather, to ensure the animals are cared for. He estimated the family as a whole puts in twelve to fifteen total hours per week. Eggs are collected every day and the multi-wire electric fence around the pasture is checked every 3 days.³ Other chores he mentioned include: clearing trees and brush from the pasture and fence row; stacking bales of hay; buying and transporting livestock from Maquoketa; feeding and watering the livestock; transporting feed from Kalona; washing and cartoning eggs; scooping manure; and hauling livestock to DeWitt for slaughter and processing. He further added that the farm is intended to teach the children how to run a profitable business. He emphatically stated that “yes, yes we do make money,” noting losing money would not be a good lesson for the children.

C. Intent to Profit

Franich asserted he profits from his endeavors. (Second Hearing). As noted, he indicated they process roughly two to six head of Angus cattle a year. (First Hearing, 10:00). His family typically keeps the beef from one or two head of cattle for personal

³ During questioning by the Board, Franich suggested the fence was walked once a week.

consumption. (First Hearing, 10:00). In 2016 and 2017, he indicated the family kept the beef from 1.5 head for personal consumption. (Second Hearing 47:50). He testified he sold the beef from two to four head of cattle per year for the past three to four years, netting about \$2000 to \$3000 per year as organic beef has a strong market. (First Hearing, 10:00).

When asked what he does with the chickens, Franich testified that he sells eggs and feeds his family with them. (First Hearing, 9:00). He indicated they sell roughly half the eggs and eat some of the chickens. (First Hearing, 9:05). On a rare occasion he will get a request from a customer for a roasting chicken. Later he testified they keep 1/3 of the eggs for the family and sell the rest. (First Hearing, 9:15). He testified that he realizes roughly \$1000-\$1500 per year from his organic eggs, which he noted sell well at about \$4 per dozen. He acknowledged he barely breaks even some years as his organic chicken feed costs around \$1000 per year.

The Board of Review was critical of Franich for not having a USDA farm service number and for not filing an IRS Schedule F. (First Hearing, 12:00). Franich subsequently checked into the matter and discovered the farm service number is only needed if one is participating in a government farm subsidy program. He expressed he has no intention of doing so.

Franich testified that his 2015 and 2016 agricultural revenue was reported by Franich Property LLC on its IRS 1065 Form instead using a Schedule F. He acknowledged he had not developed an IRS Schedule F for farm income until 2017, because "it is always a headache and it raises red flags for a residential property with a home mortgage on it." (Second Hearing 19:30). He stated that if a Schedule F is filed he would not be eligible for Fannie Mae financing because the property would be considered agricultural. However, he decided to file a Schedule F for 2017 because he felt he had a substantial amount of farm income that should be reported. In his filing he reported a gross income of \$5580 and a net of \$4630. (Ex. 9). He testified that this reflects the sale of two head of cattle (Second Hearing 21:00), as well as his egg revenue.

The only expense listed on his Schedule F is \$950 for feed. Franich testified that he physically goes to Kalona and loads up a trailer with organic crushed corn for feed.

(Second Hearing). He also uses non-GMO alfalfa for feed, which he trailers in from Illinois. He buys livestock from the Maquoketa sale barn and hauls them himself. He also hauls the cattle to DeWitt for slaughter and picks up the processed beef. Yet, no transportation costs are reported on his Schedule F nor is the cost basis for livestock purchases, as is to be stated on line 1b. Moreover, we don't know what revenue is actually being reported on line 1a. This line is supposed to be dedicated to livestock income. Egg income should be included on Line 2. Kristine Tidgren, Iowa State Univ., Ctr. for Agricultural Law and Taxation, *Reporting Farm Income: Overview* (July 30, 2017), <https://www.calt.iastate.edu/article/reporting-farm-income-overview> (last visited March 18, 2019).

Franich noted the only equipment used for his farming activities are a skid-loader and a trailer, which he contends is sufficient for his agricultural operation. He stated the skid-loader cost \$22,000. But he did acknowledge both items are not used exclusively for his farming activities.

Franich testified that he has an established referral service for marketing his agricultural products, which is made up of friends, business acquaintances, and fellow members of an association of about 40 to 50 families interested in organic food. He stated he has about ten to twelve families drop by weekly to buy eggs exclusively from him. He noted there is a tremendous market for organic products.

While Franich states he sells organic agricultural products, he acknowledged he is not certified. He contends that getting certified is an arduous task and in most cases unnecessary. He believes it is only necessary when marketing to a grocery store chain or if he has printed marketing materials. He stated his buyers come and see how his livestock are being raised and know what they are being fed.

Franich acknowledged that being able to consume the beef he raises "is one of the fringe benefits of having cattle." (Second Hearing 48:00). In response to a query of how he would have any beef to market when he has eleven mouths to feed in his family and only two head of cattle are slaughtered for the year, he announced out of the blue that he also raises pigs. Again, we note he had testified that his family consumed a couple head of cattle with the others sold, and they also consumed about one-third or one-half of the organic eggs and some of the organic chicken. (First Hearing).

We note Franich’s Schedule F is the only evidence he submitted to document his agricultural activities and intent. (Ex. 9). Franich did not submit any receipts for production inputs or records detailing the sale of his agricultural products.

D. Primary Use / Good Faith

McManus testified that it was “obviously apparent” agricultural activities were being conducted on the subject property as of January 1, 2017. But he contends its primary use is residential. McManus believes the agricultural activity is a secondary use.

In support of his position, McManus conducted a weighted use and value analysis in which he considered the subject property under both a residential classification and an agricultural classification. He used the subject property’s total assessed value without application of the forest reserve exemption. The following tables summarize his analysis. (Ex. L).

Subject Property with Residential Classification

Land Use	Acres	Rate / Acre	Land Value	Improvem't Value-Res	Improvem't Value-Ag	Total Value	Value in Use
Main Dwelling	1.00	\$60,000	\$ 60,000	\$646,640		\$706,640	76% Res
1912 Dwelling	1.00	\$45,000	\$ 45,000	\$ 3,680		\$ 48,680	5% Res
Main Home Yard	1.00	\$30,000	\$ 30,000			\$ 30,000	3% Res
1912 Home Yard	1.00	\$15,000	\$ 15,000			\$ 15,000	2% Res
Excess Land	3.40	\$12,500	\$ 42,500		\$37,900	\$ 80,400	9% Ag
Forest Reserve	4.60	\$10,000	\$ 46,000			\$ 46,000	5% Res
Totals:	12.00		\$238,500	\$650,320	\$37,900	\$926,720	81% Res

Subject Property with Agricultural Classification

Land Use	Acres	Land Value	Improvem't Value-Res	Improvem't Value-Ag	Total Value	Value in Use
Main Dwelling			\$646,640		\$646,640	92% Res
1912 Dwelling			\$ 3,680		\$ 3,680	1% Res
Ag Building				\$37,900	\$ 37,900	5% Ag
Home sites, Non-crop	1.55	\$ 1,555			\$ 1,555	0% Res
Pasture, Tillable	5.85	\$ 8,434			\$ 8,434	1% Ag
Forest Reserve, Non-crop	4.60	\$ 3,987			\$ 3,987	1% Ag
Totals:	12.00	\$13,976	\$650,320	\$37,900	\$702,196	93% Res

Under this analysis, the residential land and improvements contribute more value to the property than the agricultural land and improvements, regardless of the classification.

A four part “weighted ag value in use” test was also developed, which is something the Scott County Assessor’s Office uses for cases like this. (Ex. M). Assuming the property was classified agricultural, it determined the percent of land used for agriculture would be 71.7% and 28.3% for non-agricultural. It then determined the percent of assessed value under an agricultural classification attributable to agricultural land and buildings (7.4%), and to non-agricultural improvements (92.6%). The use percentage was then multiplied by the assessed value percentage for each category, arriving at 5.31% “weighted value in use” for the agricultural components and 26.23% for the non-agricultural.

The administrative rules concerning property classification state that a property’s classification should be determined based on the guidelines in Iowa Administrative Code rule 701-71.1. We note the Assessor’s weighing formula is not a guideline discussed in the rule.

McManus acknowledged Franich uses more of the subject site for agricultural purposes than for his home, noting 4.00 acres is being used for livestock purposes. (Ex. J). (Second Hearing, 1:15:00). However, he testified that his interpretation of rule 701—71.1(3)(a) requires that pastures can only be considered agriculture land if held in conjunction with other land that is devoted in good faith to the raising and harvesting of crops or the rearing, feeding and management of livestock for intended profit. He argued this means Franich’s pasture acres cannot be factored into the pole barn site, which shelters the livestock, chickens and feed. He concluded that because the pole barn land alone does not satisfy the primary use requirement for the subject property’s 12 acres, the pasture acreage cannot be considered in the determination of primary use.

All parties agree 4.6 acres of the subject parcel are in forest reserve. McManus argued there are 3.4 acres in residential use, which includes not only the 2007 home and an area adjacent to it but also the 1912 dilapidated dwelling and an area surrounding it. However, the old house and area immediately adjacent to it are located

within the fenced in cattle pasture area. The extent of the cattle pasture was delineated by Franich during his testimony, and also noted on the subject's property record card as the inspector was unable to measure the old house because it was surround by cattle pasture. (Ex. H).

The Board of Review argues classifying the subject property as agricultural is not equitable to other Scott County taxpayers because Franich will be gaining a bigger property tax break than what he realizes in profit from his agricultural activities. McManus testified that Franich's 2017 tax bill is \$16,136 but would drop to about \$9200 if the subject property is reclassified agricultural.

Analysis and Conclusions of Law

Franich asserts his property is misclassified residential and should be classed agricultural realty instead.

The Iowa Department of Revenue promulgated rules for the classification and valuation of real estate. See Iowa Admin. R. 701-71.1. 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". 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," which is based on its present use and not its highest and best use. *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989); *Polk County Bd. Of Review v. Property Assessment Appeal Bd.*, No. 09-1542 (Iowa Court of Appeals, Aug 11, 2010).

Under administrative rule 701-71.1(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. . . .

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. *Id.*

The subject property is indisputably used for both residential and agricultural purposes. PAAB has decided a number of cases involving disputes about the proper classification of properties used for both residential and agricultural purposes. In each case, the resolution is dependent on the unique facts of that case. This one is no different.

The main dispute between the parties in this case is whether the primary use of subject property is agricultural with an intent to profit. While we acknowledge Franich testified that he subjectively intends to profit from his agricultural activities, we give more weight to objective facts that demonstrate his intent to profit.

As noted here and at points throughout this Order, we find there are some inconsistencies in the record and a general lack of specificity surrounding the amount of agricultural products produced and sold, and the costs and revenue associated with each agricultural commodity. Franich did not offer any witnesses or evidence to corroborate his testimony so as to provide a more complete picture of the agricultural activities on the subject property. Bearing the burden of proof, this lack of clarity is to Franich’s detriment.

Franich testified regarding his intent is to teach his children how to run a profitable business that focuses on organic production practices. He acknowledged, however, that a portion of the agricultural products are consumed by his family. We note that, after hearing the testimony and reviewing all of the evidence, it is still unclear to us how much of the agricultural products are sold and how much is consumed by the family. Franich also indicated that he generally breaks even selling eggs. Thus, any profit from his operation is likely derived from his cattle.

Franich stated he sold between two and four head of cattle for the past three years. He also testified that he decided to file a Schedule F for 2017 because of his

“substantial amount of farm income,” which suggests 2017 was his highest revenue producing year thus far. His Schedule F lists his gross income at \$5580. He noted this represents the sale of two head of cattle and his organic egg sales. But initially he indicated that he realizes roughly \$1000 to \$1500 in gross revenue from his eggs per year, and \$3120 per head of cattle sold, which would be at least \$7240 in gross receipts for two head of cattle and the eggs. The Schedule F also lists \$950 for feed costs, even though he testified that his organic chicken feed cost about \$1000 per year and his organic cattle feed cost \$500 per head. Further, Franich reported no other costs regardless of the fact that he described the significant distances he travels to buy livestock and organic feed, as well as to haul cattle to slaughter and to pick up his processed product.

As the Schedule F figures do not align with Franich’s testimony and do not appear to incorporate all expenses associated with the operation, we do not believe we have a clear picture of the ability of the property’s agricultural activities to operate profitably. We question whether Franich’s revenue stream is large enough to cover or provide a return on his costs: labor, mileage, capital improvements (e.g., barn & fence), maintenance, calves, chicks, egg cartons, and any other supplies needed to operate a viable organic grass-fed cattle and free-range chicken egg operation.

Somewhat surprisingly given his business background, Franich offered no evidence of records that might demonstrate an intent to profit, such as invoices from buying calves and chicks, copies of sales receipts, or even a projected cash flow. In contrast, we found such records to be indicative of an intent to profit in *Mays v. Muscatine Cnty. Bd. of Review*, PAAB Docket No. 2017-070-10175R (March 23, 2018), and *Reisz v. Harrison County Board of Review*, Docket No. 2015-043-00497R (PAAB July 8, 2016).

To support her misclassification claim, 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.” *Mays* at pp. 2-3, available at https://paab.iowa.gov/sites/default/files/decisions/2018/mays_2017-070-10175r.pdf.

Mays provided receipts for expenses and also submitted significant evidence showing their production activities and marketing efforts, including letters from customers. *Id.* at 3. They estimated they sold \$10,000 worth of products the prior year. *Id.* at 3-4.

Similarly, *Reisz* provided PAAB with a sales contract for his aronia berry production and detailed information about the revenue and expenses he anticipated in the near future.

Reisz at pp. 3-4, available at

https://paab.iowa.gov/sites/default/files/decisions/2016/reisz_2015-043-00497r.pdf.

Like this case, both *Mays* and *Reisz* involved properties with residential improvements on sites that were also used for agricultural purposes. But in those cases, the taxpayers provided substantial evidence supporting their misclassification claims, which specifically demonstrated their agricultural activities were being done with an intent to profit. Here, even after PAAB reopened the record and Franich was made aware of Board of Review's arguments, Franich failed to provide records showing his operation is being conducted in a business-like, profit-motivated manner.

Franich mentioned he developed a business plan in 2005 (Franich Resistance to Application for Rehearing and Reconsideration), but he neither offered it into evidence nor shared any of its details which might verify how he intends to realize a profit from his agricultural pursuits. The taxpayer in *Reisz* was similar to Franich in that he was starting a new agricultural use on a property with new residential construction. *Reisz* at p. 1. In that case, we noted the specific details of *Reisz*'s business plan indicated an intent to profit. *Reisz* at p. 7.

Franich alluded to acquiring more land in the future thereby enabling him to expand the size of his herd. He noted he already has an option on forty acres of land adjacent to the subject property on the north. In the absence of any agricultural business plan and without any information concerning permissible uses of the property, we give his option to purchase no consideration.

Although our prior Order noted differences between Franich's operation and the taxpayer's operation in *Miller*, it did not, in retrospect, give sufficient acknowledgement to their similarities. *Miller* concerned the property classification of 4340 Tanglewood Road, Bettendorf, Iowa, for the 2013 and 2015 assessment years. *Miller v. Scott Cnty. Bd. of Review*, PAAB Docket No. 13-82-0919 (Sept. 26, 2014); *Miller v. Scott Cnty. Bd.*

of Review, PAAB Docket No. 2015-082-01024R (July 8, 2016). Similar to the subject, the Miller property consisted of a 10.22-acre site improved by a dwelling with 4915 square feet of above grade-finish built in 2009. Approximately 5 acres were in the slough bill (streams, stream banks, and forest cover) and 3.6 acres were identified as cropland. Miller testified about substantial equipment purchases and agricultural activities on the property. The evidence, however, indicated his activity was resulting in a negative cash flow. Miller testified he made very little money from selling his produce, but donated his produce and uses it for household consumption. PAAB found a lack of intent to profit because of “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.” *Miller* at p. 10, available at https://paab.iowa.gov/sites/default/files/decisions/2016/miller_2015-082-01024r.pdf. PAAB stated “Miller’s ambiguity about potential profit causes us to seriously question whether [his] agricultural use is being done with any intent to profit.” *Id.*

Like *Miller*, Franich built substantial residential improvements after purchasing the property; he keeps a portion of the agricultural products for personal use; he did not provide a business plan, sales receipts, or other records envisaging an intent to profit; and the amount of revenue expected from his current operation is relatively low. While Franich, unlike Miller, has not made the amount of capital expenditures that would unduly impair his profitability, we believe this case necessitates a similar result in light of the new evidence and testimony. Ultimately, we find the agricultural activities on the property are not being done with an intent to profit.

We have some concerns with the weighting analysis used by the Board of Review,⁴ but acknowledge substantial residential improvements exist. We further find the agricultural use increases the family’s enjoyment of the property and provides the desired type of sustenance for family members. The agricultural activities also fulfill Franich and his wife’s goal of instilling a sense of duty and work ethic in their nine children by mimicking a mid-1900s family farm with each child assigned “arduous tasks” that must be done on a daily basis.

⁴ The administrative rules concerning property classification state that a property’s classification should be determined based on the guidelines in Iowa Admin. Code R. 701-71.1. The Assessor’s weighing formula is not a guideline discussed in R. 701-71.1.

Viewing the record as a whole we find Franich failed to prove his property should be agriculturally classified. We recognize this is a departure from our prior conclusion, but we believe such a change is necessary after further review. Franich's testimony was thought to be compelling in the first hearing but after consideration of his subsequent testimony and the evidence that has since come forth, that is no longer the case. Based on the Board of Review's Motion to Reconsider and the cases cited therein, we now find Franich's testimony begged for corroborating evidence, and the evidence offered fell short of the standards PAAB has applied in other classification disputes. Applying now, as best as we can, the standards delineated in our prior decisions and the aforementioned rules and case law applicable to assessment classification, we are not persuaded Franich's agricultural activities are being conducted with an intent to profit. Therefore, we find the subject property does not meet the requirements for agricultural classification.

Order

PAAB HEREBY REVERSES its November 22, 2017 Order and affirms the Board of Review action. The subject property's classification shall remain residential for the January 1, 2017 assessment.

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.



Camille Valley, Presiding Officer



Karen Oberman, Board Member

Copies to:

Garth Carlson for Gregory Franich by eFile

Robert Cusack for Scott County Board of Review by eFile