

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

PAAB Docket No. 2017-046-00204C

Parcel No. 06-36-476-009

**Russell & Gary Jensen,**

Appellant,

vs.

**Humboldt County Board of Review,**

Appellee.

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**Introduction**

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on February 22, 2019. Attorney James Russell represented Russell and Gary Jensen. Attorney Brett Ryan represented the Humboldt County Board of Review.

The Jensens own a property located at 1008 1st Street North, Humboldt. Its January 1, 2017 assessment was set at \$106,580, allocated as \$29,100 in land value and \$77,480 in improvement value. (Ex. A, p. 3).

The Jensens petitioned the Board of Review contending the subject property was misclassified as commercial realty, contending it should be classified agricultural realty. Iowa Code § 441.37(1)(a)(1)(c). The Board of Review denied the petition. After the Board of Review decision, the subject's 2017 assessed land value was increased to \$31,950 due to a purchase of an additional 0.13-acres, which was added to the parcel.

The Jensens then reasserted their claim of misclassification to PAAB. The 2017 total assessment appealed to PAAB was \$109,430. (Ex. A, p. 3; Appeal).

**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. *Id.*; 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 Jensens purchased the original 1-acre subject site in December 2008 for \$14,000. They improved it with a 6000-square-foot steel (50' x 120') utility building. The original building (50' x 80') was built in 2009 with an addition (50' x 40') built in 2014. The Jensens then purchased a 0.13-acre adjoining sliver of land in April 2017 for \$3400. (Ex. A).

Gary Jensen testified about the history and use of the subject property, as well as his background. Jensen owns several commercial businesses and also farms. Jensen testified that he is a fourth-generation farmer.

Jensen and his father Russell Jensen built the subject property for increased storage capacity. Jensen asserted the subject property had been classified agricultural since the original building was constructed in 2009 until the 2017 assessment. However, the property record card indicates the classification was changed for the 2015 assessment. (Ex. A, p. 3).

The Board of Review acknowledged the subject was previously classified agricultural and explained that during that time it was contiguous to ground that was actively farmed. However, surrounding property began to be developed causing the Assessor to reconsider the use of the property and reclassify it as commercial. Despite

the change in classification, Jensen testified that the use of the subject property has not changed since it was built.

Jensen took over his father's farming operation in 1991 and is currently a grain farmer; growing corn, seed corn, and soybeans. He farms approximately 700 acres; he owns 15 acres and rents the remaining. His fields are located in Delana, Corinth, and Beaver Townships in Humboldt County. In addition to the subject property, Jensen has other machine sheds located at his residence (1667 Kentucky Avenue) that are used as shops and storage. These are classified agricultural.

Jensen also owns Jensen Drainage and Excavation, which completes general excavation, hauling, and field tiling. At times, the subject property may be used for staging the construction equipment when moving it from one job site to the next; and there was one small piece of equipment moved into the building due to weather. In general, there is no construction equipment regularly stored at the subject property. He explained it is typically stored at his homestead, noting that for the most part the construction equipment is moved to and stays on a job site and there are some pieces that never come home. Jensen also testified he owns a 24' x 24' garage in Humboldt that he uses for storage.

Lastly, Jensen testified he is a developer, and a part-owner of a hotel, a restaurant, and a concrete/asphalt recycling company. He does not use the subject building for any purposes related to these other business ventures.

Jensen testified that he did not have sufficient room on his homestead to store his equipment. When not in use, his implement equipment was sitting outside which he explained was hard on the paint and wiring. In his opinion, when equipment is exposed to the elements, it would depreciate by 10 to 20% more each year. He explained that he did not build an additional outbuilding on his homestead because he lacked room for one without compromising row-crop ground.

Jensen explained that after he took over the family farm, he moved to the homestead and his parents moved to town. At that time, his father wanted to build a shed and Jensen also needed more storage area. They decided to jointly purchase the site and develop it to meet their needs because it was conveniently located for both he

and his father. Prior to Jensen purchasing the subject site for his building, the land was used as hay ground. When he bought the property, the land to its south and north was pasture ground, to the west was timber, and across the road to the east was and continues to be row-crop ground.

After purchasing the subject site, Jensen graded the site and built the first portion of the existing improvements. An addition was completed later. He explained that the addition was necessary because he had picked up more land to farm and had more equipment to be stored. Jensen estimated that the total cost of construction for the subject property has been just over \$65,000. (Ex. D, p. 4). Including the site, the total cost is more than \$80,000.

Jensen testified the subject building is not insulated or lined; it is “cold-storage” with a gravel floor. His primary use is for the storage of farm equipment. The building has 16-foot side walls, which is necessary to get his farm equipment into the building. The chief equipment he stores there includes his John Deere combine and planter. He provided a list of equipment that has been stored at the subject property at various times. (Ex. 5, p. 2). He estimates the equipment stored in the building has a value of roughly \$180,000.

The Jensens submitted photographs of the subject property demonstrating it is used for storing farm equipment. (Ex. 4). In Gary Jensen’s opinion, this demonstrates the property has been used for storing his farming equipment exactly as he has described. Jensen identified a skid loader in one photograph that is used to help move his farm implements in and out of the building and to move pallets of seed or chemicals used in his farming operation. Other photographs show a 7130 Case tractor, a combine, a 16-row seed planter, and excess lumber that he uses for various projects that may come up. He testified this equipment is generally stored in the building. He acknowledged there are also some boats in the building that belong to his siblings, and an antique tractor owned by his father; he does not charge rent for the storage of the personal items. He estimates that only 75% of the building is utilized at any given time; with the remaining area purposefully left open to aid easier ingress and egress of the

equipment stored there. He further estimated that 75% of the items stored in the building are used for his farming operation.

Although he occasionally does some repair work at the subject property, he admitted it is limited because of the gravel floor. Jensen estimated that he personally does approximately 70 to 80 hours' worth of repairs and maintenance on his equipment per year at the subject property. He also testified that the subject property is closer to implement dealers which decreases his repair costs because it is a short distance to move equipment to them when repairs are needed; or the mechanics come directly to his shop to perform maintenance and repairs.

Jensen testified that because of the timeliness of the business, having well-kept equipment is vital to a successful farming operation. If equipment is not properly functioning it can cause delays that could affect whether crops are planted or not; or successful harvesting. He believes his use of this building is profitable to his farming operation because it reduces expenses. He estimates his costs savings and indirect gains to be between \$15,250 and \$18,750 each year. (Ex. D, p. 10). PAAB finds Jensen knowledgeable about farming operations and his testimony credible.

Jensen testified the location near town also provides easier access to equipment parts when he is completing repairs; and requires less time for professional mechanics to travel to his shop resulting in lower labor costs. Jensen testified the cost for professional mechanics is roughly \$100 an hour including transit. The Board of Review provided a map showing the location of the subject building relative to the Jensens' residence and farm ground. (Ex. F). According to the map, the building is roughly seven miles from the residence.

The Board of Review questioned Jensen about his estimate of cost savings resulting from the property's location near town. By the Board of Review's calculations, the building's near-town location saves \$25 to \$100 in mechanic travel time per service call. Jensen testified they have three to four service calls a year.

John Denton "JD" Myers owns a building directly south of the subject property. Jensen's property is bigger than Myers' and there are some differences in construction, but Myers testified both are used for similar purposes. Like Jensen, Myers is a farmer.

Myers has been inside Jensen's building and has observed Jensen completing maintenance on equipment in the building and storing equipment there. In addition to the equipment pictured in Exhibit 4, Myers has also seen wagons and seed carts in the building. He confirmed that the majority of the square footage of the building is used for agricultural related storage.

In Myers' experience having a similar building and being engaged in similar farming activities, it is his opinion that Jensen's building and its use is good farming practice. Myers agreed with Jensen that good maintenance of equipment and covered storage is important in maintaining the integrity of the equipment and vital to a farming operation. His research suggested the value of equipment left outside would decline an additional 20% over a five year period as compared to equipment stored inside. It was Myers' opinion that Jensen's activity is consistent with a profitable farming practice.

Humboldt County Assessor Linda Fallesen testified for the Board of Review. Fallesen explained the decision process that preceded the change in classification of the subject property. She stated Jensen's property was classified agricultural since the building was constructed. While she had contemplated changing the classification over the years, she determined it was necessary to do that when other properties were built, specifically the JD Myers property. We again note the property record card shows the subject property was reclassified as agricultural in 2015, which was prior to Myers purchase and construction on the adjoining property.

Fallesen agreed with Jensen's description of the subject property's immediate area, noting it is on a gravel road on the edge of Humboldt but within the city limits. In her opinion, the use of the Jensen and Myers buildings is not for agricultural purposes although she did not provide any specific examples of what had changed to cause her to change her opinion. When questioned if there were any specific changes in use of the subject property since it was built, Fallesen testified she was not aware of any.

Fallesen testified that she inspected Jensen's property in February 2018, but she had not inspected the property prior to that. At that time, she observed personal property such as boats, trailers, a classic car, an antique tractor, and a motor home. She stated she saw "very little farm equipment." She confirmed Jensen's estimate that

roughly 25% of the building space was “open” to allow for the maneuvering of items being stored. But, she disagreed that the majority of the space was used for farming equipment. Based on her observation, she asserts only 30% of the items in the building were agriculturally related with the remaining 70% being personal or hobby related items.<sup>1</sup>

Fallesen also described an incident when a contractor was building a barn on her own property and needed a piece of construction equipment to compact the ground. The contractor went to the subject property to obtain the equipment.

Fallesen acknowledged Jensen’s building is similar to other buildings located in the country that are used as machine sheds. She did not conduct an interior inspection in 2017 of the property before changing the classification to commercial, but she testified she drives by the building every day.

Fallesen testified that in April 2017, she communicated by phone and email with Julie Roisen, Administrator of the Property Tax Division of the Department of Revenue. (Ex. H). According to Fallesen, Roisen looked at aerial photographs and map similar to Exhibit F, but without the notations. Fallesen testified she explained to Roisen that farm machinery was stored in the building. She explained Roisen told her that it did not matter what was stored in the building, it was commercial. Roisen purportedly sent Exhibit H as a follow up to their phone conversation. In part, it is believed this hearsay was based on the fact that the subject property is small, located within the city limits, and far from the farming operations it purportedly supports. Fallesen testified the subject property is zoned heavy industrial. Based on the foregoing, in Fallesen’s opinion, the subject property is used for commercial storage regardless of whether rent is being charged.

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<sup>1</sup> At the PAAB hearing, Jensen sought to impeach Fallesen’s recollection of the subject property’s contents by showing a disparity between her deposition testimony about contents of JD Myers’ property as of February 2018 (Ex. 15, Tr. p. 115, ln. 14-25) and photographs showing the contents of the Myers property as of that date. (PAAB Docket No. 2017-046-00199C, Ex. 14). We acknowledge both the ambiguity of the deposition questioning on which Jensen relies and the fallibility of memory. In the end, we are inclined to give more weight to Jensen’s and Myers’ testimony regarding the subject property’s contents because they have a greater familiarity with the property in general and its contents.

## Analysis & Conclusions of Law

The Jensens assert the correct classification of the subject property is agricultural. § 441.37(1)(a)(1)(c).

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

Agricultural property includes land and improvements used in good faith primarily for agricultural purposes in good faith. R. 701-71.1(3). Land and nonresidential improvements 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 and fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. *Id.*

The subject property is currently classified as commercial real estate. By definition, this includes “all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail.” R. 701-71.1(6).

The Board of Review does not contest the property is used for some agricultural purposes. It asserts that the property does not qualify for agricultural classification because the use is not in good faith for intended profit. (Board of Review Brf. p. 4-5).

The Board of Review believes the subject property does not meet the good faith requirement based on its application of factors discussed in *Colvin v. Story Cnty. Bd. of Review*, 653 N.W.2d 345, 350 (Iowa 2002). PAAB has previously rejected the application of these factors to agricultural classification determinations. *Stephen R. Grubb 2003 Revocable Trust v. Dallas Cnty. Bd. of Review*, PAAB Docket Nos. 11-25-0338, 0339, 0340; 12-25-0043, 0044, 0042 (Nov. 8, 2012) (affirmed in *Stephen R.*

*Grubb 2003 Revocable Trust v. Dallas Cnty. Bd. of Review*, CVCV03798 (Dallas County Dist. Ct., June 10, 2014).

Our rejection of the factors discussed in *Colvin* is primarily because many of the factors directly or indirectly violate Rule 701-71.1's prohibition against consideration of the property's highest and best use. Moreover, the factors discussed in *Colvin* were not adopted by the *Colvin* Court and have not been adopted by an Iowa court since. *Colvin*, 653 N.W.2d 345 n. 3; *Polk County Bd. of Review v. Property Assessment Appeal Bd.*, 2010 WL 3155049 (Iowa Ct. App. Aug. 11, 2010) (unpublished); *Polk County Bd. of Review v. Property Assessment Appeal Bd.*, 2010 WL 3155273 (Iowa Ct. App. Aug. 11, 2010) (unpublished). Rather the factors discussed in *Colvin* were mentioned in detailing the facts considered by the Assessor in classifying the property in that case. *Colvin*, 653 N.W.2d 345 ("When the assessor reclassified Colvins' property as residential, he considered a number of factors regarding the character and use of the property.").

The Board of Review also relies on *Farwell v. Des Moines Brick Mfg. Co.*, 66 N.W. 176 (Iowa 1896), to support its assertion the Jensens are not using the property for agricultural purposes in good faith. *Farwell* involved the application of the Annexation Act to parcels of land which had been improved with paving and curbing. *Id.* at 177. The plaintiff-landowner asserted that his land could not be assessed for the cost of the improvements because it was being used in good faith for agricultural purposes and was exempted by the Act. *Id.*

The Iowa Supreme Court indicated it was important to consider the landowner's intent in deciding whether he was using his land in good faith for agricultural purposes. That Court indicated the owner's intent can be:

"gathered from what he has done and said, if anything; from the circumstances surrounding the purchase; the amount paid, in view of what might reasonably be expected to be realized from its use for agricultural purposes; and other facts and circumstances which may go to show the situation, surroundings, and peculiar adaptability of the property for certain purposes or uses, and tending to show the purpose for which it was purchased and is held."

*Id.* at 178.

The Court suggested a mere temporary occupation and use of land for agricultural purposes would not be a good faith, agricultural use. *Id.* at 177-78. If, however, the owner's purpose in purchasing the land was to use it for ordinary agricultural purposes and it is thus and still used in that manner, then the use is in good faith. *Id.* at 178. The *Farwell* Court ultimately concluded the plaintiff owner's intention in purchasing the property was to hold the land until sold in small tracts for urban purposes and the agricultural use was a mere temporary incident from the purchase. *Id.* at 179.<sup>2</sup>

Here, we believe Jensen's credible testimony indicates his intention in purchasing the property was for ordinary agricultural purposes and there is every indication he will continue to use it for agricultural purposes indefinitely.

The Board of Review points to PAAB's decision in *Krogh, et. al v. Cerro Gordo Cnty. Bd. of Review*, PAAB Docket No. 13-17-0225 (August 15, 2014) in support of its position. Like the present matter, *Krogh* required PAAB to determine the proper classification of a structure primarily used for storage. However, that is where the similarities end.

The properties considered in *Krogh* included units in a multi-unit storage structure and a stand-alone storage building. The operative legal question was whether these storage units and building qualified as residential real estate under IDR rules. In that regard, PAAB relied on IDR's interpretation of the phrase "used in conjunction with" in Iowa Admin. Code R. 701-71.1(4).

PAAB ultimately determined the properties at-issue in *Krogh* should be classified commercial real estate. Giving deference to IDR's legal interpretation, PAAB noted that the storage units were freely alienable parcels, storage units are generally regarded as profit-motivated enterprises, and indicated our opinion the contents of the unit cannot dictate its classification.

A primary distinction between *Krogh* and this matter is the requirements for residential classification versus agricultural classification. In order for the *Krogh* properties to be residentially classified, the storage units must have been "used in

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<sup>2</sup> We find *Farwell* only instructive insofar as it does not conflict with the highest and best use prohibition in Rule 701-71.1(1).

conjunction with” a residence. Thus, the classification determination was dependent on and related to the use of another property. Here, the agricultural classification rules contain no such language and some of the considerations we made in *Krogh* may be inapplicable.

As was required by fundamental principles of administrative law, we deferred to IDR’s interpretation of its administrative rules in *Krogh* and such deference was important to the final resolution. Here, IDR has not offered a legal interpretation of its rules and we owe no such deference. The Board of Review notes IDR’s Property Tax Division Administrator, Julie Roisen, has indicated the subject property should be classified commercial. (Board of Review brf. p. 10; Exhibit H). First, we believe the Board of Review overstates the conclusions arrived at in Exhibit H. Second, it is unclear to PAAB what information Roisen had available to her prior to drafting Exhibit H. We doubt she had the same information that has been made available to this Board – sworn testimony of witnesses and numerous exhibits. Moreover, she was ultimately engaging in the application of law to fact, based on limited information, in an oversight capacity. For these reasons, we do not believe Roisen’s opinion is binding or entitled to deference.

We believe a building primarily used for storage and repair of agricultural machinery and equipment, as part of a farming operation, qualifies as an agricultural use. Having found the property is in good faith used for agricultural purposes, we believe the determination of whether this property classifies as agricultural real estate turns on whether it is used with an intent to profit.

The Board of Review suggests PAAB use a profit/cost analysis it adapts from *DFCA Inc. v. Downing ex. rel. Scott Cnty.*, 2008 WL 4877049 (Iowa Ct. App. Nov. 13, 2008). That case considered the classification of ten acres of unimproved land purchased for \$950,000 for the purpose of building a muffler shop. *Id.* at \*1. Upon discovering construction of the shop would not be feasible, the property was rented out to a farmer for hay and corn production. *Id.* The *DFCA* Court applied the Colvin factors<sup>3</sup>

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<sup>3</sup> The *DFCA* case involved the assessment classification determination for the property as of January 1, 2006 and January 1, 2007. As of those dates, IDR’s administrative rules did not prohibit the consideration

and concluded the property should be classified commercial, not agricultural. *Id.* Along with the other Colvin factors, the Court acknowledged that the property could not be profitably used for agricultural purposes considering the mortgage payments on it. *Id.*

The Board of Review argues the Jensens' property cannot generate a profit given the cost to acquire the land and construct the building. (Board of Review brf. p. 7-8). We note that, in comparison to the cost and revenue analysis contemplated in *DFCA*, it is likely the Jensens' building will provide a quicker return on investment.

Further, we think the Board of Review's analysis takes a somewhat narrow view of the subject property, which is indisputably used as part of a larger farming operation.

We find Jensen's testimony regarding his intent to profit from the use of this building credible and persuasive. Jensen and JD Myers both testified the use of the building is consistent with profitable farming practices. The agricultural use being made of the property is the only present use that is providing a return on the investment. The resolution of this matter is made more complicated because several personal items of substantial value are also stored in the building, and the property is apparently used occasionally by Jensen's other businesses. In considering the whole scope of the record and the credibility of the witnesses' testimony, however, we find the subject property is being used with an intent to profit.

Viewing the record as a whole, we find the Jensens supported their claim that the subject property is misclassified.

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of highest and best use in classification. IDR issued a Notice of Intended Action on November 22, 2006, modifying R. 701-71.1 and specifically prohibiting consideration of highest and best use in classification. IAB Vol. XXIX, No. 11 (11/22/06) p. 684 ,ARC 5545B, *available at* <https://www.legis.iowa.gov/docs/publications/IACB/854394.pdf>. The rule amendment became effective March 7, 2007. IAB Vol. XXIX, No. 16 (1/31/07) p. 1056, ARC 5685B, *available at* <https://www.legis.iowa.gov/docs/publications/IACB/854399.pdf>. As the rule amendment was not effective as of the assessment date at issue in the *DFCA* case, the *DFCA* Court's consideration of the Colvin factors may have been appropriate at the time. Now, it would not be appropriate for PAAB or any court to consider the Colvin factors in light of the rule amendment.

## Order

PAAB HEREBY MODIFIES the Humboldt County Board of Review's action and ORDERS the subject property should be classified as agricultural real estate as of the January 1, 2017 assessment date.

PAAB ORDERS the Assessor to revalue the subject property as agricultural real estate as of January 1, 2017 and file the modified assessed value to PAAB within 15 days of the date this Order. The Jensens then have 10 days to file an objection, if any. Subsequently, PAAB will issue its final agency action setting the property's assessed value as of January 1, 2017.



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Karen Oberman, Presiding Officer



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Dennis Loll, Board Member

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