

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

PAAB Docket No. 2019-078-00237R

Parcel No. 7643 17 100 009

Kimberly and Nicholas McKenzie,

Appellants,

vs.

Pottawattamie County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on October 23, 2019. Kimberly and Nicholas McKenzie were represented by attorney Lindsay Lundholm. Assistant Pottawattamie County Attorney Leanne Gifford represented the Board of Review.

Kimberly and Nicholas McKenzie own property located at 25597 195th Street, Crescent, Iowa. The property's January 1, 2019, assessment was set at \$266,500, allocated as \$91,900 in land value and \$174,600 in dwelling value. The property was reclassified from agricultural to residential for the 2019 assessment. (Ex. A).

The McKenzies petitioned the Board of Review and claimed the property's assessment was not equitable compared with other like property, the property was assessed for more than authorized by law, the property was misclassified, and there was an error in the assessment. (Ex. C). The crux of their petition was that the property was misclassified under Iowa Code §441.37(1)(a)(3). The Board of Review denied the petition. (Ex. B).

The McKenzies appealed to PAAB reasserting their claim that the property is misclassified. They believe the property should be classified agricultural.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2019). PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-126.2(2-4). New or additional evidence may be introduced. *Id.* 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 the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Findings of Fact

Nick McKenzie has a farming background and currently works for a construction company. He married Kimberly in 2004 and they have a 13-year-old son. Nick testified about his desire to return to farming and his prior acreage in Harrison County. They did not engage in farming activity at their prior property due to its size, but each worked two jobs in order to save for a farmland purchase. The McKenzies looked for five years for suitable land before they found the subject property by word of mouth during a visit to Crescent.

The McKenzies bought the subject property in 2012. It consists of 18.33 acres with a split foyer home built in 1993. The home has 1616 square feet of gross living area with 800 square feet of average quality rec room finish in the lower level. There is a two-car basement garage, a covered concrete patio, and a wood deck. The exterior has two stories of brick veneer and the dwelling is listed in normal condition. (Ex. A).

According to the McKenzies 10 of the 18 acres are used for growing hay, and approximately 4 acres to the rear of the property is a wetland. (Ex. 6, p. 3, aerial photograph; Ex. 8, Attachment A).

Nick testified he convinced the seller to combine the parcel with another so he would have sufficient acres to develop a farming operation. Kimberly testified the land purchase drove their decision to buy, not the dwelling. She described the house as inferior to their prior home.

Nick testified very little has been invested in the home since its purchase other than a new geo-thermal heating and cooling system, some painting, and new flooring. However, he described the expenditures required to excavate and level the land and improve the soil quality on the site. Both he and Kimberly testified they spent \$15,000 for excavation and dirt to level what had been a very steep hill on the property. Nick testified this work has been ongoing and continuous in order to make the site more usable for crops and a future barn. With his construction job he has had access to the large equipment needed for these tasks which he largely does himself.

When they purchased the site, it contained only the dwelling and an old shed and corn was growing on the land. Nick described that since 2012, they have added two chicken coops/houses and two loafing sheds. They intend to add a barn by next spring. He stated \$20,000 has been saved to build the barn. They have also purchased multiple pieces of older farm equipment including a Farmall tractor, a hay rake, a John Deere mower, and a baler at an estimated cost of \$20,000 total. (Ex. 5). They also purchased two quarter horse mares at a cost of \$3,000 to \$5,000 each that they intend to breed.

Nick testified they currently have twenty laying chickens their son manages. They also have one rooster and sell chicks as well. Depending on weather, egg production averages 10 to 14 dozen per week and are sold for \$3.00 per dozen. They keep about one dozen eggs per week for personal use. Each dozen costs roughly \$1.25 to \$1.50 in feed costs. Nick stated they have plans to raise more chickens but need a bigger coop in order to increase their egg production.

Nick also testified they devote 10 of their 18 acres to hay production and pasture. Nick personally cuts, rakes, and bales the hay. He stated they have routinely produced

between 200 and 300 bales each year that are sold to local farmers at \$4 to \$5 per bale.¹ He also sells to friends with cattle operations and horse breeders. He estimated they keep approximately 100 bales per year for use in the chicken coops and for the horses. Nick testified he plans to switch to alfalfa grass to improve the yield to approximately 500 bales per year and also plant corn next year. He intends to level more ground for the horses and to look into acquiring additional land with an eye toward adding cattle to the operation. He also anticipates doing custom work in the future.

Kimberly McKenzie testified she mainly cares for the horses and their son in addition to her job as a financial director. They own two horses that were purchased with the intention of breeding. She stated stud fees for breeding can range from \$500 to \$1,000. She estimated a sale price range of \$2,000 to 3,000 per foal, depending on the mare and stud fee. She also indicated they only occasionally ride these horses.

Kimberly created a business plan for McKenzie Acres about a year ago in order to provide a blue print for their near term and long-term goals. (Ex. 9). The plans include planting corn, increasing hay and egg production, breeding quarter horses, and installing an additional hay and livestock barn to hold additional produce and livestock.

Both Nick and Kimberly testified they have self-financed their farming endeavors without the assistance of lenders or agricultural programs. They both cite to the way they were raised as a foundation for their frugality and cautious approach to growing their operation. Kimberly estimated expending \$40,000 to \$50,000 over the past seven years in order to slowly grow their business without the risk of borrowing. Nick testified their profits have been slim due to the start-up costs of machinery and equipment and the need to remove trees and improve the difficult Loess Hills soil. Both testified they work cooperatively with others in their community, often trade services, and have cultivated friends and customers with cattle operations, horse breeding, and veterinarian skills. Nick testified he works between 35 and 40 hours a week on the farm; mostly nights and weekends. His goal is to be positioned to leave his construction work and farm full time by the age of 55. He is currently 41.

¹ The McKenzies appeal statement indicates the property has produced 300-400 hay bales.

The McKenzies submitted their IRS Schedule F, Profit and Loss from Farming for years 2013 through 2018. The Schedule Fs report their principal activity is the sale of hay and eggs. They reflect gross farm income of \$389 for 2013, \$1,088 for 2014, \$0 for 2015, \$935 for 2016, \$875 for 2017, and \$1,051 for 2018. (Ex. 10). Nick testified he believed 2019 will show similar, but likely less, gross income than 2018. With farm expenses, including machinery purchases and depreciation, no net farm profit was reported in any of these years. Nick indicated they do make money, but put it back into the operation to grow it for the future.

The McKenzies assert their property has consistently been classified agricultural and there is no justification for the change to residential. Nick noted the statute requires intent to profit, not an actual profit. They argue the use of the property has not changed and they should receive a presumption of continued agricultural classification. They submitted the addresses and photographs of surrounding properties that are all classed agricultural. (Ex.1). They contend these properties are similar to theirs and yet remain agriculturally classified. (Exs.3 & 4). The Board of Review submitted the affidavit of Deputy Assessor Kevin Kreimeyer along with the property record cards of the parcels adjoining the parcels identified by the McKenzies. (Exs. G-L). According to this information, these parcels all have row crops or the owners also have adjacent parcels with row crops.

The Board of Review did not offer any witnesses. It asserts the subject property was likely misclassified as agricultural since 2012 and was just recently properly classified after a review of all sites smaller than 20 acres to verify agricultural classification.

Analysis & Conclusions of Law

The McKenzies assert the subject property is misclassified as residential and should instead be classified agricultural.

Iowa assessors are to classify and value property following the provisions of the Iowa Code and administrative rules adopted by the Iowa Department of Revenue (IDR) and must also rely on other directives or manuals IDR issues. Iowa Code §§ 441.17(4),

441.21(1)(h). IDR 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.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* There can be only one classification per property, except as provided for in paragraph 71.1(5) “b”. *Id.* 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). The assessment is determined as of January 1 of the year of the assessment. §§ 428.4, 441.46; Iowa Admin. Code R. 701-71.2.

Particularly when not previously adjudicated, a property’s prior classification is not conclusive and binding in subsequent years because each “tax year is an individual assessment which does not grow out of the same transaction.” *Cott v. Bd. of Review of City of Ames*, 442 N.W.2d 78, 81 (1989). See also § 441.21(3)(b)(3). Because the subject property’s classification has not been previously adjudicated, there is no presumption that the previous classification is correct. Rather, the McKenzies bear the burden to prove their property is misclassified. § 441.21(3). See also *Miller v. Property Assessment Appeal Bd.*, 2019 WL 3714977 at *2 (Iowa Ct. App. Aug. 7, 2019).

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.*

Agricultural property includes land and improvements used in good faith primarily for agricultural purposes. 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.” 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 the subrule.

Id.

The subject property is indisputably used for both residential and agricultural purposes. In such cases, the question of the correct property assessment classification can be difficult. Of course, in each case the resolution is dependent on the unique facts and circumstances of the case.

PAAB finds the McKenzies offered credible testimony indicating sincere desire to maintain good land stewardship principles, educate themselves in areas of livestock and poultry management, and develop a strong network in their farming community. The evidence presented to PAAB demonstrates the McKenzies have worked over the last seven years to develop their site into an agricultural farming operation. This includes financial outlays for excavation and grading of the site to improve its functionality for farming and such work is still ongoing. They have acquired older machinery and equipment to allow them to work their own land and assist others in their community, and eventually expand to doing custom work. These improvements and acquisitions have been done with their own savings. This is also true with their purchases of chickens and horses for breeding. The McKenzies seek to avoid additional debt and strive to make expenditures only when they are financially prudent. Thus, the development of McKenzie Acres has taken time. They have drafted a business plan describing their business objectives and functions necessary to accomplishing those objectives. (Ex. 9). In our view, these facts and others demonstrate the McKenzies are engaging in these agricultural endeavors in good faith.

Turning to the more complex issue of intent to profit, the McKenzies filed Schedule Fs since purchasing the property that report fairly small sums of gross income in five of the six years. They have never reported a net profit, but that can be largely attributed to machinery and equipment depreciation. In our experience, this is common in beginning farming operations. The existing egg production could produce an estimated 520 dozen eggs annually (10 dozen eggs/week x 52 weeks = 520 dozen) and a small portion is consumed by the family. The McKenzies intend to increase the number of hens and project increasing egg production 8-10% each year. They also produce 200-300 bales of hay per year and sell 100-200 of these bales at \$4 to \$5. They intend to improve the quality of soil by planting row crops next year, then switch to

alfalfa grass to boost production beyond the existing hay production. They plan to breed their two horses and anticipate \$2,000 to \$3,000 income per foal. The work on leveling more portions of the site is ongoing with an intention of placing the barn and moving the horses.

The Board of Review likened the McKenzie's operation to recent classification cases decided by PAAB wherein the taxpayers' evidence was insufficient to establish agricultural use with intent to profit. It acknowledges the McKenzie's dreams and plans, but asserts they are not sufficient to show the present primary use of the property is agricultural with intent to profit.

Reviewing our previous cases, and considering the facts of this case, PAAB believes this case is distinguishable from the cases wherein we found no intent to profit.

Most recently, in *Reinboldt v. Cedar County Board of Review*, Docket No. 2019-016-00042R (October 21, 2019), the taxpayer kept horses and donkeys for pleasure and kept most of his hay crop for their feeding. Unlike McKenzies he never filed a Schedule F until his protest to the Board of Review and provided no evidence of prior hay sales or any plan to develop a profitable agricultural operation.

The taxpayer in *Shaw v. Dallas County Board of Review*, Docket No. 2018-025-00091R (May 30, 2019), also kept horses for his family's enjoyment and professed a desire to start breeding one, but failed to present information or projections relative to any current or potential income from breeding. He too grew hay, which he either used for his own horses or donated. In both *Reinboldt* and *Shaw* there was lack of prior agricultural activity by the taxpayers, a general lack of specificity about future intentions, and most importantly, a lack of evidence showing an intent to profit.

Similarly in *Chapman v. Dallas County Board of Review*, Docket No. 2017-025-10178R (July 23, 2018), PAAB found the taxpayer's testimony about his horse breeding plans and hay production details lacked specificity. His lack of candor was also a factor in analyzing his alleged intent to profit. See also *Sandquist v. Dallas County Board of Review*, Docket No. 2016-025-00118R (February 2, 2016) (use of 10 acres of 15.17-acre site for hay production yielding a Schedule F net profit of \$290 was insufficient to establish the primary use of the property as agricultural or an intent to profit.) and *Miller*

v. PAAB, 2019 WL 3714977 (Iowa Ct. App. Aug 7, 2019)(affirming PAAB's Order that use of only 3.6 acres of taxpayer's property for agricultural purposes, the short period of such use, and a lack of any plan to bring the operation into profitability was insufficient to establish agricultural classification).

Finally, in *Franich v. Scott County Board of Review*, PAAB Docket No. 2017-082-00364R (March 19, 2019), PAAB considered the appropriate classification of a 12-acre parcel improved with a newer 3984-square-foot home and an outbuilding, where a few beef cattle and chickens were being raised. PAAB found the taxpayer offered no evidence that might demonstrate an intent to profit despite his contention that he sold some beef from cattle and eggs; he also admitted his family consumed the fruits of their labors. He produced no receipts from his sales or other corroborating evidence that sales had occurred. Ultimately, PAAB concluded the taxpayer "failed to provide records showing his operation [was] being conducted in a business-like, profit-motivated manner."

In contrast to the above taxpayers, the McKenzies presented credible testimony of their long held intentions to acquire and develop a sustainable and ultimately profitable farming operation. They described the process of grading the site to allow for the current and future use for crops and livestock. They self-financed the necessary equipment, livestock, and poultry purchases and have consistently shown farming revenue, if not a net profit. Their plan for McKenzie Acres is rational and specific and they are taking or have taken steps necessary to implement their goals. Thus, we find this case is more in line with those in which PAAB has changed property classifications from residential to agricultural.

PAAB changed the classification of a 10.55-acre parcel in Runnells that was used for alfalfa production and horse grazing, in addition to serving as the owner's primary residence. *Jungblut v. Polk County Board of Review*, Docket No. 07-77-0814 (July 24, 2008), *aff'd*, *Polk Cnty Bd. of Review v. Property Assessment Appeal Bd.*, 2010 WL 3155273 (Iowa Ct. App. Aug. 11, 2010). Jungblut had entered into leases with local farmers to plant and harvest hay, retaining half for his horses. He described plans and improvements (including a water line and fencing) made to the property to support

a horse breeding operation and had prior years of farming income and loss information and estimated future income for horse breeding. PAAB considered the evidence presented to be substantial and found that despite Jungblut's farming loss "...this does not negate good faith effort or expressed intention of profitability." *Id.* at 8. The McKenzies submitted evidence of similar and substantial quality and we find that the property is in good faith primarily used for agricultural purposes with an intent to profit.² See also *Reisz v. Harrison County Board of Review*, Docket No. 2015-043-00497R (July 8, 2016) (extensive research and detailed business plan along with sales contracts supported finding that 8 acres devoted to aronia berry production on a 15-acre parcel constituted agricultural use intended for profit.)

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

Order

PAAB HEREBY modifies the Pottawattamie County Board of Review's action. McKenzie's property located at 25597 195th Street, Crescent, shall be classified as agricultural real estate as of the January 1, 2019, assessment date.

PAAB ORDERS the assessed value of the subject property as agricultural real estate as of January 1, 2019, shall be \$191,300, representing \$16,700³ in agricultural land value and \$174,600 in ag dwelling value.

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

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.

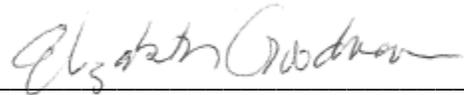
² Both McKenzie and the Board of Review submitted evidence of the classification of properties neighboring the subject property. However, evidence of the neighbors' use and classification of their land is not relevant to PAAB's decision of the proper classification of the subject.

³ At hearing, the Board of Review indicated that if the classification was changed, its preference was for the value to revert to the 2018 assessed value.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.19 (2019).



Karen Oberman, Board Member



Elizabeth Goodman, Board Member



Dennis Loll, Board Member

Copies to:

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