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

PAAB Docket No. 2017-046-00199C

Parcel No. 06-36-476-010

Jennifer Jo and John Denton Myers,

Appellant,

vs.

Humboldt County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on February 22, 2019. Attorney James Russell represented Jennifer Jo and John Denton (JD) Myers. Attorney Brett Ryan represented the Humboldt County Board of Review.

The Myerses own a property located at 1006 1st Street North, Humboldt. Its January 1, 2017 assessment was set at $173,140, allocated as $28,200 in land value and $144,940 in improvement value. (Ex. A).

The Myerses petitioned the Board of Review contending the subject property is 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.

The Myerses then reasserted their claim of misclassification 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. *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 subject property is a 0.94-acre site improved with a 3600 square foot metal building built in 2016. (Ex. A).

JD Myers testified about the history and use of the subject property. Myers is a fourth generation farmer and is currently raising his family on the farm where he grew up. He currently farms approximately 560 acres of row crop producing corn and soybeans, and aspires to acquire more acres to farm. Myers and his wife own 80 acres, rent 80 acres, and the remaining is in a family corporation, Myers and Myers Farms, of which they have a 30% ownership interest. Myers testified that he has agricultural buildings located at his personal farmstead/residence and also owns the subject property that he uses for storage and maintenance of equipment used in his farming operation.

Myers explained the shop on his farmstead is small and inadequate for the purposes of conducting maintenance of his farm equipment. While he and his wife had considered constructing a new building on their farmstead, for a variety of reasons, they ultimately opted to purchase the subject site and build their maintenance shop closer to town. Myers testified their farmstead is a fifteen minute drive, one way, to Humboldt. Jennifer Myers confirmed this was a joint decision to build in this location. She

explained that while she initially had reservations about having the property near town, in hindsight it has been an ideal location.

JD Myers described the subject site, noting it is on a gravel road. It had no city sewer or water, and he had to have electricity brought in to the property. There are cornfields across the road to the east and timber to the west. The property directly north of the subject is another metal building, used for farm storage; and further north is CRP land and a large grain bin/grain storage area. To the south of his property is a commercial property, Humboldt Rent-all. Prior to construction of the Myerses' building, the site was planted in alfalfa.

Myers testified that prior to purchasing the site, in approximately June of 2016, he visited the Assessor's Office to explain his objective and ensure that after he improved the site it would remain classified as agricultural. He was told at that time, that if he was using it for agricultural purposes, that it would be classified agricultural. He later testified that near the completion of the improvements, the Assessor's Office requested to inspect and measure the property. Myers was out of town during this time. Upon his return, he checked in with the Assessor's Office and discovered the property had been classified commercial. After a conversation with the Assessor, he was told that it would be changed back to an agricultural classification. While he believes this was going to happen, he later received a letter dated March 31, 2017 from the Assessor noting the classification would remain commercial. (Ex. 20).

The Myerses made the decision to purchase the subject site in October 2016 and entered a purchase agreement on or about October 14, 2016. (Ex. 21). Ownership of the land did not transfer until the sale closed on March 17, 2017, but construction on the building began almost immediately. Cement was poured inside the building around Thanksgiving 2016, and Myers believes he began moving equipment in sometime in February or early March once the electrical was complete. The Myerses paid for all of the construction costs on the building from the outset. Myers estimated they invested roughly $170,000 to purchase the site and construct the improvements. Approximately $150,000 was for construction of the building. (Ex. D, p. 3).

Myers designed the construction of the improvements to include 18-foot ceilings to allow easier ingress/egress of his larger farming equipment. Additionally, he purposefully installed two overhead doors to allow for the addition or removal of equipment without disrupting other equipment that may be in the midst of repair. His building is insulated, has a concrete floor, adequate lighting, and a half bathroom. He explained these particular amenities were to add to his comfort when he is working on equipment.

The Myerses submitted photographs of the subject property demonstrating it is used for the storage and maintenance of farm equipment. (Exs. 9-14). JD Myers explained he also owns a used ambulance that he primarily uses as a service vehicle with his farming operation but at times has used it to help transport one of his children with special needs. (Ex. 13). He also submitted photos of the property when it was inspected by the Humboldt County Assessor's Office. (Ex. 14). In his opinion, this demonstrates the property has been used for his farming operation, exactly as he has described.

In his opinion, the property is a sound investment because it reduces his travel time to and from town for materials or parts and it allows him to take better care of his farm equipment and extend its useful life. Additionally, it reduced costs they previously incurred to hire a farm mechanic. He estimates that he can now perform about 150 hours of mechanic work himself, which he values at $90 an hour. He estimates his costs savings and indirect gains of $22,800 per year. (Ex. D, pp. 11-15). Myers was detailed in his explanations of the type of mechanical repairs he performs and PAAB found him knowledgeable about farm implement repair and his testimony credible.

The Board of Review questioned Myers about other employment he is engaged in outside of farming. Myers acknowledged that he is a sales manager and involved in the construction of hog facilities with QC Supply. He is also on the Board of Directors for an energy co-op and a grain/agronomy co-op. He testified that he does not perform any activities related to these jobs at the subject property.

Myers acknowledged that he had used the building for some personal endeavors and built some custom toy accessories for his special needs child. (Exs. M & N). The

effort was short-lived and a labor of love for his child, as well as other special needs children. This was not a profit motivated venture and he no longer makes the toys. Jennifer also testified about the short-lived production of toy accessories and confirmed her husband's testimony. In total, Myers made approximately 35 beds. The beds were sold for $120 each and took between 8-12 hours a piece to construct. PAAB finds her testimony honest and credible.

Gary Jensen owns a building immediately north of the subject property. It is similar in style and use to the Myerses' property. Like JD Myers, Jensen is a farmer. He confirmed that Myers primarily uses the subject improvements for storage and as a workshop for his farming operation and, in his opinion, it is a profitable part of his larger farming operation.

The Board of Review did not offer any testimony.

Analysis & Conclusions of Law

The Myerses assert their property is misclassified and 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).

Property is to be assessed as of January 1 of the year of assessment. § 441.46. The Board of Review asserts that because the Myerses did not own the property as of January 1, 2017, the property cannot be considered to have been used for agricultural purposes as of the assessment date. JD Myers testified he visited the Assessor's Office in 2016 to discuss the building and inquire as to its potential classification. The evidence indicates the Myerses paid for the construction of the building from the outset and the building was substantially completed as of January 1, 2017. The parties entered a purchase agreement in October 2016 but the land sale did not close until March 17. All of this occurred prior to issuance of the 2017 Real Estate Assessment Roll on March 30. The facts strongly suggest the Assessor was aware of the intended use of the property and the Meyers' equitable ownership as of the assessment date. Further, Fallesen's March 31 Memo to the Myerses does not imply the date of the land purchase had anything to do with the commercial classification assigned to the property. (Ex. 20). Thus, we find the Board of Review's argument on this point disingenuous and unconvincing.

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*., 20I0 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 Myerses 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.[1]

Here, we believe the Myerses' credible testimony indicates their intention in purchasing the property was for ordinary agricultural purposes and there is every indication they will continue to use it for agricultural purposes indefinitely. Although the building has been used incidentally for non-agricultural purposes, those uses have ceased and were never the principal use.

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 the IDR's rules. In that regard, PAAB relied on the IDR's interpretation of the phrase "used in conjunction with" in Iowa Admin. Code R. 701-71.1(4).[2]

PAAB ultimately determined the properties at-issue in Krogh should be classified commercial real estate. Giving deference to the 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.

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

[2] At the time, Rule 701-71.1(4) did not include a definition for "used in conjunction with." The now-existing definition was added to the Rule after PAAB issued its ruling in *Krogh*. IAB Vol. XXXVII No. 12 (12/10/14) p. 1144 , ARC 1765, *available at* https://www.legis.iowa.gov/docs/aco/bulletin/12-10-2014.pdf.

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 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 factors discussed in *Colvin*[3] 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 Myerses' 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 Myerses' building will provide a quicker return on investment.

Further, we think the Board's analysis takes a somewhat narrow view of the subject property, which is indisputably used as part of larger farming operation. We recognize the Myerses testified of their intent to build a new agricultural storage building and workshop. They considered constructing on land they already owned, but ultimately settled on the subject site. As the building would have been constructed regardless, the only additional costs borne by the Myerses was for the site.

We find the Myerses' testimony regarding their 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. We acknowledge the ready adaptability of the property to commercial uses, but its present use is for agricultural purposes. 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.

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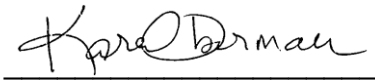
[3] The *DFCA* case involved the assessment classification determination for the property as of January 1, 2006 and January 1, 2007. As of those dates, IDR's administrative rules did not prohibit the consideration of highest and best use in classification. IDR issued a Notice of Intended Action on November 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.

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

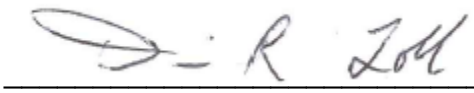
Order

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 Myerses 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.



Karen Oberman, Presiding Officer



Dennis Loll, Board Member

Copies to:
James Russell for the Myerses by eFile

Brett Ryan for the Humboldt County Board of Review by eFile