

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

PAAB Docket No. 2018-025-00091R

Parcel No. 14-25-400-012

Brendan Shaw,

Appellant,

vs.

Dallas County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on April 30, 2019. Brendan Shaw was self-represented and participated by telephone. Deputy Dallas County Assessor Brian Arnold represented the Board of Review.

Shaw owns a property located at 23623 360th Street, Desoto. The property's January 1, 2018 assessment was set at \$560,420, allocated as \$153,850 in land value and \$406,570 in improvement value. The property was reclassified from agricultural to residential for the 2018 assessment. (Ex. A).

Shaw petitioned the Board of Review and claimed his property's assessment was not equitable as compared with assessments of other like property, that it was assessed for more than the value authorized by law, that it was misclassified, and there was an error in the assessment under Iowa Code section 441.37(1)(a)(1)(a, b, c, & d). Based on the statements on his petition, it is clear that Shaw took issue with the property's reclassification. The Board of Review denied the petition. (Ex. B).

Shaw appealed to PAAB reasserting his claim that the property is misclassified. He believes the property should be classified agricultural. Although his appeal also

asserted that the assessment was not equitable, he abandoned that ground at the time of the hearing and all parties agreed the sole issue was classification.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2018). 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 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). PAAB determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

Findings of Fact

Shaw purchased the subject property in March of 2017 for \$610,000. His two-story home was built in 2010 with 2654 square feet of gross living area; a walk-out basement; a deck, patio, and porch; and a three-car attached garage. The site is 25.54 acres. The site is also improved with a machine shed. (Ex. A). In addition to the machine shed there are two livestock lean-to barns on the property.

Aerial photographs show a house, utility building, and baseball field are situated on the southwest corner of the parcel and occupy roughly 1.5 acres, the east border of the property consists of over 10 acres of creek and timber with fenced pastures, and hay ground occupying the remainder of the parcel. (Ex. D).

Shaw testified that he purchased the subject property to provide a larger home for his family and land for his livestock. His livestock consists of two draft horses; one described as retired at almost 20 years of age and one described as immature at less than 5 years of age. He expressed a desire to breed the younger horse when it reaches maturity, but due to the age of the older horse he believed that he would keep the first foal for his family. Shaw did not indicate what, if any, income he might expect from horse breeding. He conceded the horses were used for pleasure.

Shaw also testified that in the future he would like to purchase 3-4 cows and possibly other small livestock as potential 4-H projects for his children. He opined that he would likely acquire this livestock within the next year. He did not testify as to any other use of such livestock.

Shaw testified that of his 25.54-acre site, roughly half is in hay production. He owns equipment to maintain his property that he stores in the machine shed, including a tractor, skid loader, mower, brush cutters, sprayer, and four-wheeler. Shaw also testified that he planned to purchase his own hay equipment for future use.

The hay is currently cut by a third party and used for his horses. He stated eight round bales remain from last year's harvest and will be donated to individuals impacted by recent floods. He could potentially sell the hay for \$50- \$100 per bale. No information was provided regarding the cost of cutting hay or the cost of additional equipment.

In addition to hay production, Shaw has grown corn and other vegetables on his property in the past but no longer engages in this effort due to the damage done by area wildlife. He did not indicate whether such crop was for anything other than personal consumption.

Shaw testified that he did not know much about the prior owner's use of the subject property. He did indicate the prior owner had horses, but did not know how many. He stated the subject property had been classified as agricultural since 1989.

Shaw provided a listing of six parcels of property located within 1-2 miles of his property. His Exhibit list describes each as "Neighboring Property" and notes that each is "zoned AG". (Appellant's Exhibit List) Shaw testified that he was familiar with these

properties due to their proximity to his home, his drive-by observations, and a review of aerial maps found on the assessor's website. He provided the following descriptions of each property:

Ex. 1: 23213 360th Street - consists of 32 acres with a pond, a house and no livestock.

Ex 2: 22351 360th Street – consists of 21 acres, four of which are planted with crops, one shed, a house, and no livestock.

Ex 3: 22435 360th Street – consists of 12 acres, two or three of which are tillable acres, a couple of outbuildings, but otherwise no farming activity. This property also abuts larger agricultural ground.

Ex 4: 36001 M Avenue – consists of 27 acres with two buildings and no livestock or production activity.

Ex 5: 620 Cedar Street – consists of 38 acres, a pond, a couple of sheds, and mostly CRP type grassland.

Ex 6: 35389 Nome Court – consists of 19 acres with outbuildings, horses, and pastures.

Shaw testified that each of the above parcels is classified as agricultural and that in his perception the use of these parcels is similar to the subject property. Thus, he contends the subject property should likewise be classified as agricultural.

Brian Arnold testified for the Board of Review, and had no disagreement with Shaw's description of the subject property. Arnold stated classifications are reviewed after a sale and changed when necessary to reflect the current use of the property. He believed the subject property's classification had been wrong before it was sold to Shaw and thus it was changed to reflect the correct classification.

The Board of Review provided Exhibits D thru K which consisted of the property record cards and aerial photographs of the subject property and each of the properties identified by Shaw as Exhibits 1-6. Arnold testified that a review of each of these properties indicated the presence of either row crops or some other agricultural activity or that the parcel was a part of an ongoing farming operation that in some cases

included adjacent parcels. He provided the following comments regarding several of the properties:

Ex E: 23213 360th Street – over half of the site has row crop and the owner has adjacent property with crops.

Ex F: 22351 360th Street – significant row crop and adjacent to other family farm operations.

Ex G: 22435 360th Street – the property owner has five other parcels and half are planted in row crops.

Ex I: 620 Cedar Street – property within the city limits, planted with row crop, and the owner has neighboring property.

Based on his review of the subject property, Arnold testified that he concluded the principal use was to provide a home and not for agricultural use intended for profit.

At PAAB's request, the Board of Review submitted the property record card and an aerial photograph for 35389 Nome Court. (Ex. K). Like the other properties submitted by Shaw, Nome Court is classified agricultural, but also adjoins and is part of a larger farming operation.

Analysis & Conclusions of Law

Shaw asserts the subject property is misclassified as residential and should instead be classified agricultural.

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. See Iowa Admin. Code r. 701-71.1. The assessor shall classify property according to its present use. *Id.* Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* 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).

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. *Id.* 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.*

Here, the record indicates the subject property has been used as a residence since the home was built in 2011 and that Shaw (and perhaps the prior owner) also uses the site for keeping his horses and growing hay for those horses. While this indicates that some agricultural activity is occurring on the subject parcel, we believe the issue is whether Shaw has demonstrated a good faith effort of pursuing agricultural activity with an intent to profit.

PAAB was provided no evidence related to any income or profit motive for Shaw’s current use of the subject property. Based on his testimony, his present use of the property is primarily for his family’s enjoyment. The horses were described as pleasure animals and presently provide Shaw no economic benefit. That he would like to start breeding one of the two horses in the future does not satisfy the requirement that the property is presently used for intended profit where no information or projections relative to any current or potential future income from breeding was supplied to PAAB.

Similarly, Shaw’s intent to acquire 3-4 cows and other livestock does not change the analysis. His testimony was that this livestock would be used for future 4-H projects for his children. First, the livestock is not currently owned and there is no indication of when it would be procured. Additionally, Shaw did not provide any indication of potential income or profit motive based on the hypothetical future procurement of these animals.

Turning to the use of the property for hay production, the testimony was that Shaw uses it for his own horses. No evidence of current or future income from this activity was provided. That Shaw intends to purchase his own hay equipment in the future, without more, fails to demonstrate that this activity is intended for profit. No evidence was supplied concerning his arrangement with the third party who harvests the hay to demonstrate what, if any, profit could be attributed to this activity.

Shaw's reliance on the description and classification of six neighboring properties to support his appeal does not demonstrate that his property meets the requirements for agricultural classification under rule 701-71.1(3). That his neighbors' use of their land qualifies for agricultural classification does not support a conclusion that the subject property must also be classified as agricultural. Because the evidence presented failed to establish that the use of the subject property was intended for profit, the property fails to qualify as primarily used for agricultural purposes and thus PAAB need not decide whether Shaw has established "good faith" use.

PAAB has decided a number of cases that involve challenges to classification of properties as residential versus agricultural. A review of these decisions demonstrates the type of evidence that PAAB would consider relevant and persuasive to the resolution of this issue. See *Mays v. Muscatine Cnty. Bd. Of Review*, PAAB Docket No. 2017-070-010175R (March 23, 2019) (taxpayer provided detailed testimony relating to her agricultural activities, invoices for livestock and poultry purchases, receipts for expenses and proof of income from products sold); *Reisz v. Harrison County Board of Review*, Docket No. 2015-043-00497R (July 8, 2016) (taxpayer provided sales contract for berry production and detailed revenue and expense information). Each case is fact dependent and even evidence of farm income and agricultural activities may be insufficient to establish a misclassification claim. See *Franich v. Scott County Board of Review*, PAAB Docket No. 2017-082-00364R (March 19, 2019) (taxpayer failed to demonstrate an intent to profit where his revenue stream was insufficient to even cover costs).

Shaw failed to supply PAAB with any relevant evidence that the present use of the subject property is agricultural with an intent to profit and thus he has failed to

establish that the subject property is misclassified. We recommend, however, that Shaw investigate whether he may qualify and benefit from an exemption for Forest and Fruit Tree Reservations under Iowa Code Chapter 427C.

Order

PAAB HEREBY AFFIRMS the Dallas County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2018).

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 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.38B and Chapter 17A.



Dennis Loll, Board Member



Karen Oberman, Board Member



Elizabeth Goodman, Board Member

Copies to:

Brendan Shaw by eFile

Dallas County Board of Review by eFile