IN THE COURT OF APPEALS OF IOWA

No. 0-314 / 09-1310
Filed August 11, 2010

POLK COUNTY BOARD OF REVIEW,
Petitioner-Appellant,

vs.

PROPERTY ASSESSMENT APPEAL BOARD,
Respondent-Appellee

and

ANNE SCHLIEMAN and MICHAEL SCHLIEMAN,
Intervenor.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson, Judge.

The Polk County Board of Review appeals the district court's decision affirming the ruling of the Property Assessment Appeal Board that certain property should be classified as agricultural for tax assessment purposes. **AFFIRMED.**

John P. Sarcone, County Attorney, and David W. Hibbard, Assistant County Attorney, for appellant.

Curtis Swain and Jessica Braunschweig-Norris, Des Moines, for appellee.

Thomas Tarbox of The Law Office of Thomas T. Tarbox, Des Moines, for intervenors.

Considered by Vaitheswaran, P.J., Doyle, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MAHAN, S.J.

I. Background Facts & Proceedings

In August 2006, Michael and Anne Schlieman purchased on contract for $260,000 a triangular piece of land of about four acres in rural Polk County from Anne's parents. The property contains a residence, hay barn, and sheep barn. About one to one and one-half acres of the property are used to grow alfalfa. The Schliemans keep a horse and a ram on the property and use the alfalfa to feed these animals.

Anne stated she intended to operate a business breeding sheep that would consistently give birth to triplets. The Schliemans put in a new water line and some new fencing to create a sheep pen. They own a hay rack and manure spreader. Anne stated they intended to put in another sheep pen in the future. They have three ewes that were kept elsewhere. Anne estimated "[p]robably about [eighty] percent" of the property was used for sheep pen enclosures and hay barns. Both of the Schliemans have non-farming jobs. They live in the residence on the property.

The property was assessed for property tax purposes on January 1, 2007. The sale of the property for $260,000 triggered a review by the Polk County Assessor because the price was in excess of the general price per acre for agricultural property. The assessor's office sent a letter to the Schliemans asking for documentation to support a finding that the property was being used for

agricultural purposes. The Schliemans did not respond to the letter.[1] The assessor's office classified the property as "residential."

The Schliemans filed a protest with the Polk County Board of Review (Board). Randy Ripperger, the chief deputy assessor for Polk County, prepared a recommendation that the property be classified "residential." He received information from the Schliemans that there was no agricultural income from the property. The Schliemans did not present any contrary information regarding income before the Board. After a hearing, the Board determined the property should be classified "residential," and it also reduced the assessed value of the property.

The Schliemans filed an appeal with the Property Assessment Appeal Board (PAAB).[2] While the Schliemans' appeal before the PAAB was pending, they filed an amended federal tax return for 2006 showing they received income of $320 from farming, but had expenses of $3145, giving them a net loss of $2825.

A hearing was held before the PAAB on February 26, 2008. Anne and Ripperger testified, and documentary evidence was admitted. *See* Iowa Code § 441.37A(1) (2007) (providing additional evidence may be introduced before the PAAB). The PAAB determined the classification for the property should be

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[1] The parties to the real estate contract later entered into a second contract reducing the purchase price to $130,000. The assessor's office sent out a second letter asking for information regarding agricultural use of the property, and again received no response.

[2] The PAAB was created by the legislature in 2005 to begin considering appeals of local board of review decisions effective January 1, 2007. 2005 Iowa Acts ch. 150, § 128; *Compiano v. Bd. of Review*, 771 N.W.2d 392, 396 n.2 (Iowa 2009). The legislation contains a sunset provision repealing the statute creating the PAAB effective July 1, 2013. *See* 2005 Iowa Acts ch. 150, § 134.

"agricultural," "as it in good faith is used primarily for the rearing and breeding of genetically unique rams and ewes for intended profit."

The Board filed a petition for judicial review. The district court concluded there was substantial evidence in the record to support the decision of the PAAB. The court found, "[t]he evidence articulated in the record supports the contention that the good faith principle use of the acreage is devoted to raising alfalfa and breeding sheep." The court also concluded PAAB's determination did not constitute an irrational, illogical, or wholly unjustifiable abuse of discretion. The Board appeals the decision of the district court.

II. PAAB

The PAAB, established within the Iowa Department of Revenue, was created in Iowa Code section 421.1A(1) "for the purpose of establishing a consistent, fair, and equitable property assessment appeal process." The PAAB was given the power to adopt rules for the administration and implementation of its powers, including rules "for the determination of the correct assessment of property which is the subject of an appeal." Iowa Code § 421.1A(4)(e). The PAAB is an agency for purposes of Iowa Code chapter 17A. *See id*. § 17A.2(1) ("'Agency' means each board, commission, department, officer or other administrative office or unit of the state.").

III. Standard of Review

Review of a decision of the PAAB is for the correction of errors at law. *Id*. § 441.39. Judicial review of a decision of the PAAB is governed by chapter 17A and section 441.38. *Id*. § 441.38B. In reviewing a decision by the district court on a petition for judicial review we review the court's decision by applying the

standards of section 17A.19 to the agency decision to determine if our conclusions are the same as those reached by the district court. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 463-64 (Iowa 2004).

IV. Discussion

An assessor determines the value of property for taxation purposes. Iowa Code §§ 441.17(2), .21(1)(a). Agricultural property is valued by a formula separate than that for other property. *Id*. § 441.21(1)(e). The statute notes the types of property as residential, agricultural, commercial, industrial, and other. *See id*. § 441.21(9). The classification of property is governed by Iowa Administrative Code rule 701-71.1. The classification is "based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made." Iowa Admin. Code r. 701-71.1(1). Property should be assessed "according to its present use and not according to its highest and best use." *Id*.; *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 779 (Iowa 2009).

The rule regarding agricultural real estate provides:

> 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 principle 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.

Iowa Admin. Code r. 701-71.1(3). Thus, in determining whether property should be classified as agricultural, the assessor looks to the primary use of the property. *Sevde v. Bd. of Review*, 434 N.W.2d 878, 880 (Iowa 1989).

The rules do not define "good faith" as stated in rule 701-71.1(3). In *Colvin v. Story County Board of Review*, 653 N.W.2d 345, 350 (Iowa 2002), the Iowa Supreme Court stated:

> When the assessor reclassified Colvins' property as residential, he considered a number of factors regarding the character and use of the property. *See* Iowa Admin. Code r. 701-71.1(1). . . . Agricultural real estate is land that is "in good faith primarily used for agricultural purposes." [Iowa Admin. Code]. r. 701-71.1(3). The county assessor is guided by other factors in determining whether a taxpayer is using the property agriculturally in good faith. In addition to actual use of the property, "good faith" may also include the following: (1) is the parcel set off and awaiting development; (2) what permitted uses does current zoning allow; (3) if the parcel is being offered for sale, or if it were, would it be viewed by the marketplace as other than agricultural; (4) how does the land conform to other surrounding properties; (5) what is the actual amount of income produced and from what sources; and (6) what is the highest and best use of the property.

(Internal citations and footnote omitted.) However, in *Colvin*, the court acknowledged it did not reach the issue of whether the additional six factors it set forth were within the contemplation of rule 701-71.1(1). *See Colvin*, 653 N.W.2d at 350 n.3.

A. Interpretation of the Law

The Board contends the PAAB's decision was "based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the [agency]." *See* Iowa Code § 17A.19(10)(c). In the alternative, the Board contends if PAAB is vested by a provision of the law in the discretion of the agency to interpret the law, its "decision is based upon an irrational, illogical, or wholly unjustifiable interpretation of the law." *See id*. § 17A.19(10)(*l*). The Board claims the PAAB

misinterpreted the law regarding the standards to be applied in determining the proper classification of a property for tax assessment purposes.[3]

> "When an agency has not clearly been vested with the discretion to interpret the pertinent statute, the court gives no deference to the agency's interpretation of the statute." *Iowa Ass'n of Sch. Bds. v. Iowa Dep't of Educ.*, 739 N.W.2d 303, 306 (Iowa 2007). In that situation, we will reverse where the interpretation is based on "an erroneous interpretation" of the law. Iowa Code § 17A.19(10)(c). However, if the legislature has clearly vested the agency with the authority to interpret its rules and regulations, then we grant the agency's interpretation "appropriate deference," and we will only reverse when the interpretation is "irrational, illogical, or wholly unjustifiable." *Id*. § 17A.19(11)(c), (10)(*l*).

American Eyecare v. Dep't of Human Servs., 770 N.W.2d 832, 835 (Iowa 2009).

Without deciding whether the PAAB is an agency with the power to interpret the pertinent statutes and rules, we find no error in the district court's decision. Here, it is true the PAAB declined to "rely solely on those factors [set forth in *Colvin*] in the absence of a finding of their validity and in light of 'primary present use' being the guidepost in our statutes, case law, and rules for land classification." Nevertheless, it expressly stated that, even if it were to consider the *Colvin* factors, it would still find that Schliemans were using the property for agricultural purposes in "good faith." It applied the facts to five of the six *Colvin* factors and again concluded "[b]ased on these factors, [our] determination that the property is classified as agricultural does not change." Although one might apply the facts to the factors differently, the PAAB clearly considered *Colvin*'s

[3] The Board also states the PAAB acted "[b]eyond the authority delegated to the agency by any provision of law or in violation of any provision of law." *See* Iowa Code § 17A.19(10)(b). The Board makes no further argument, however, that the PAAB acted beyond its authority. Therefore, we do not address this issue.

factors despite its disagreement with the case. Therefore, it cannot be said to have erroneously interpreted the law.

The Board also asserts the PAAB misapplied the law because it cited and relied upon district court cases, which are not binding precedent. "Unpublished opinions or decisions shall not constitute controlling legal authority." Iowa R. App. P. 6.904(2)(*c*). While unpublished decisions may be cited, they have no binding authority in other cases. *Id*.

However, PAAB did not simply rely on the unpublished decision. PAAB found "that consideration of the income potential for the property based on its residential improvements is an improper way to determine its classification." As PAAB noted in its decision, this finding is consistent with the Iowa Supreme Court's statement in *Sevde* that "an activity which is not a primary use of the property does not become such because it produces more revenue in a particular year than the dominant activity." *See Sevde*, 434 N.W.2d at 881. Because PAAB also cited *Sevde*, we conclude PAAB did not improperly rely on unpublished decisions. We further conclude PAAB correctly applied the published law set forth in *Sevde*.

We find no error in the district court's review of this issue.

B. Application of Law to Facts and Substantial Evidence

The Board also claims the PAAB's decision is based upon an irrational, illogical, or wholly unjustifiable application of the law to the facts. Additionally, the Board claims PAAB's factual findings were not supported by substantial evidence. We conclude otherwise.

The factual findings of the PAAB are reversed only if they are not supported by substantial evidence. Iowa Code § 17A.19(10)(f).

> "Substantial evidence" means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

Id. § 17A.19(10)(f)(1).

In its order reviewing the decision of the Board, the PAAB concluded the property should be classified as agricultural. It explained:

> [T]he exhibits, as well as hearing testimony, clearly establish that the acreage was used for breeding sheep and raising alfalfa as of the January 1, 2007, assessment date and supports the agricultural classification of this property. Although the Schliemans incurred a farming loss for 2006 after only five months of operation, considering startup expenses and nature of genetic sheep breeding, this does not negate their good faith effort or expressed intention of profitability.
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> . . . We . . . decline to rely solely on those factors [set forth in *Colvin*] in the absence of a finding of their validity and in light of "primary present use" being the guidepost in our statutes, case law and rules for land classification.
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> However, even if [we] were to consider those factors to determine whether the [Schliemans] in "good faith" were using the property for agricultural purposes, [our] finding would be the same: the parcel is not awaiting development, rather it is being used for agricultural purposes and has a homestead on it; zoning allows agricultural and/or residential use; the property may be viewed in the marketplace either as an agricultural or residential property; the land surrounding the property is used primarily for agricultural purposes; and a net agricultural loss was realized for the five months preceding the 2007 assessment and the property owners are also engaged in other off-property employment as is typical of many modern-day farming operations. Based on these factors, [our] determination that the property is properly classified as agricultural does not change.

(Citations and footnotes omitted).

The Board sought judicial review. Following a hearing, the district court affirmed the PAAB's decision concluding the PAAB's determination was supported by substantial evidence and did not otherwise constitute an irrational, illogical or wholly unjustifiable abuse of discretion. In so concluding, the court stated:

> [S]ubstantial evidence supports PAAB's decision that the subject property is properly classified as agricultural, pursuant to Iowa Administrative Code [rule] 701-71.1(3) and pursuant to the factors articulated in *Colvin*. PAAB's conclusion that the subject property is properly classified as agricultural is likewise not a product of irrational, illogical or wholly unjustifiable application of law to fact. The evidence articulated in the record supports the contention that the good faith principal use of the acreage is devoted to raising alfalfa and breeding sheep. As noted above, PAAB also made explicit factual findings in applying the *Colvin* factors with regard to "good faith", that the parcel was not awaiting redevelopment, was being used for agricultural purposes, zoning allowed for agricultural or residential use, the land surrounded the property is primarily agricultural, a net agricultural loss was realized for the five months preceding the 2007 assessment and the property owners were engaged in other off-property employment. PAAB also made several explicit credibility determinations which will remain undisturbed by this court. *See* Iowa Code § 17A.19(10)(f)(3). PAAB, upon viewing the demeanor of the witnesses, found Ms. Schlieman to be forthright and truthful with regard to her testimony that the subject property's primary use was agricultural.

Viewing the record as a whole, we agree substantial evidence existed upon which the PAAB based its decision, and we do not find it to be an irrational, illogical, or wholly unjustifiable application of law to fact. We therefore find no error in the district court's conclusion.

V. Conclusion

Because we find no error in the district court's affirmance of the PAAB's decision, we accordingly affirm the district court's judicial review.

AFFIRMED.