IN THE COURT OF APPEALS OF IOWA

No. 0-496 / 09-1542
Filed August 11, 2010

POLK COUNTY BOARD OF REVIEW,
Petitioner-Appellant,

vs.

PROPERTY ASSESSMENT APPEAL BOARD,
Respondent-Appellee

and

LAWRENCE JUNGBLUT,
Intervenor.

Appeal from the Iowa District Court for Polk County, Robert J. Hanson, 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 Ralph E. Marasco, Jr., Assistant County Attorney, for appellant.

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

Christopher R. Pose of Connolly, O'Malley, Lillis, Hansen, & Olson, L.L.P., Des Moines, for intervenor.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

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. We affirm.

***I. Background Facts and Proceedings*.**

In 2004, Lawrence Jungblut purchased approximately 10.55 acres of land in Runnells, Iowa. At that time, the property was classified and assessed as residential property for taxation purposes. The property was zoned for both residential and agricultural uses.

Jungblut built a residence on the land, financed through mortgages he obtained. Thereafter, on January 1, 2007, the property was assessed by the Polk County Assessor. The property continued to be classified as residential, and its valuation was found to be $417,000, including $330,400 for the building value and $86,000 for the land value.

On June 5, 2007, Jungblut filed a petition to the Polk County Board of Review (Board) protesting the property's classification. Jungblut requested the property be reclassified as agricultural property, explaining:

> The tax parcel consists of 10.55 acres. For the past 3 years, 6 acres has been devoted to alfalfa production, 2 acres are grazing for horses, and 2 acres are timberland. [Jungblut] has been using the land in good faith for agricultural purposes (except the house) all for an intended profit.

Attached to the petition were photos showing alfalfa being harvested in October 2006. Also attached to the petition was Jungblut's 2006 "Schedule F, Profit or Loss from Farming," showing a loss from farming operations in 2006. The

schedule stated Jungblut received $119 in agricultural program payments for that tax year. The schedule further showed $15,231 in farm expenses for the year, including, among other things, $904 for feed, $50 for veterinary fees, $350 for a farrier, and $150 for hay.

The assessor's office prepared an analysis for the Board, recommending the classification remain as residential property. Notes in the analysis suggested the office used an income analysis in determining the classification, remarking:

> The residential portion of the property could be expected to produce, at a minimum, $12,000 per year ($1000/month). Since the agricultural use of this property [after looking at Jungblut's Schedule F loss] cannot be expected to produce income in excess of the residential use's ability to produce income, the agricultural use is considered incidental to the primarily use (residential).

Ultimately, the Board denied Jungblut's request that the property be reclassified as agricultural. Additionally, the Board increased the property's assessed value to $425,000 after it learned that a barn had been built on the property.

Jungblut filed an appeal with the Property Assessment Appeal Board (PAAB). A hearing was subsequently held before the PAAB. Jungblut and the chief deputy assessor Randy Ripperger testified, and documentary evidence was admitted. *See* Iowa Code § 441.37A(1) (2007) (providing additional evidence may be introduced before the PAAB).

Jungblut testified he and his wife purchased several horses with the intent to start a horse breeding operation. Jungblut testified a barn was built for the horses and hay operation and that separate power and water lines were installed for the barn. Jungblut testified that in April 2006, he entered into an agreement

with a local farmer to plant, till, and fertilize the land for hay production. He testified he entered into a purchase agreement with another farmer in 2006 to cut, bale, stack, and purchase hay. Jungblut testified he put horses on his land in late 2005 or early 2006, and that under his agreement, he was able to keep up to fifty percent of the hay for his horses. He testified that approximately seventy percent of the parcel was used for hay, ten percent for horses and storage, ten percent for his residence, and ten percent was woodland. He testified that he and his wife should have revenue from the hay operation and possibly horse breeding in the future.

Rippenger testified that there were between 5900 and 6000 parcels of land in Polk County that were between one and eleven acres and had residential housing on them, of which approximately 350 were classified agricultural and the remainder classified as residential. He testified there were similarly-sized parcels in the area surrounding Jungblut's parcel that were classified as rural residential, and testified that Jungblut's parcel conformed to those properties. However, he testified he was unfamiliar with whether those parcels had horses or row crops on them.

On July 25, 2008, the PAAB issued its order finding there was substantial evidence to support a finding that the property should be classified as agricultural realty. Based upon the change in classification, the PAAB modified Jungblut's property assessment to $337,260, which included $330,260 for the dwelling and $7000 for the value of the agricultural land and barn.

Thereafter, the Board filed a petition for judicial review. Following a hearing, the district court affirmed the decision of the PAAB. The court

concluded substantial evidence existed to support the PAAB's decision. The court also found the PAAB's decision was not based on an erroneous interpretation of Iowa Code Administrative rules 707-71.1(1) and (3) (2007), and the PAAB did not engage in an irrational, illogical, or wholly unjustifiable abuse of discretion.

The Board now appeals.

II. PAAB.

The statewide PAAB, established within the Iowa Department of Revenue, was created by the legislature "for the purpose of establishing a consistent, fair, and equitable property assessment appeal process." Iowa Code § 421.1A(1). Among other things, the PAAB may "[a]ffirm, reverse, or modify a final decision, finding, ruling, determination, or order of a local board of review." *Id*. § 421.1A(4)(a). Additionally, the PAAB may "[a]dopt administrative rules pursuant to chapter 17A for the administration and implementation of its powers . . . ." *Id*. § 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.

"A person or party who is aggrieved or adversely affected by a decision of the [PAAB] may seek judicial review of the decision as provided in chapter 17A and section 441.38." *Id*. § 441.38B. Review of a decision of the PAAB is for the correction of errors at law. *Id*. § 441.39. "We review the district court decision by applying the standards of the [Iowa] Administrative Procedure Act to the agency action to determine if our conclusions are the same reached by the district court."

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

IV. Discussion.

All property subject to assessment for purposes of taxation is required to be classified by the assessor. Iowa Admin. Code r. 701-71.1(1). There are six possible classification categories: "agricultural; residential; commercial; industrial; utilities; or railroad." *Sperfslage v. Ames City Bd. of Review*, 480 N.W.2d 47, 48 (Iowa 1992) (citations omitted). Pursuant to the administrative rules, the classification "determination shall be 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). In making the determination, "[t]he assessor shall classify . . . property according to its present use and not according to its highest and best use." *Id*.

Iowa Administrative Code rule 701-71.1 defines both residential and agricultural real estate for purposes of classification. "Residential real estate shall include all lands and buildings which are *primarily used* or intended for human habitation, including those buildings located on agricultural land. . . ." Iowa Admin. Code r. 701-71.1(4) (emphasis added).

> 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 . . . . Land and the nonresidential improvements and structures located on it s*hall be considered to be used primarily for agricultural purposes if its principal 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*.

See Iowa Admin. Code r. 701-71.1(3) (emphasis added). Thus, under rules 701-71.1(3) and (4), a dwelling may exist on both agricultural and residential real estate; the key to resolving the classification determination under these rules is to determine the property's primary use. *See also 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:

> 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 Iowa Administrative rule 701-71.1(1). S*ee id*. at 350 n.3.

***A. Substantial Evidence*.**

The Board first contends the district court erred in concluding that the PAAB's determination that Jungblut's property was primarily used for agricultural purposes was supported by substantial evidence. The Board asserts Jungblut failed to prove his agricultural operation made a profit. Additionally, the Board

argues the PAAB failed to do any balancing test between the real estate's agricultural use and its residential use.

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:

> The exhibits and testimony clearly establish that the acreage was used for hay ground, pastureland, and a horse barn as of January 1, 2007, and supports the agricultural classification of this property, despite substantial improvements to the barn and the purchase of one of the three horses after the January 1, 2007, assessment date. Although the appellant incurred a farming loss for 2006, considering startup expenditures, crop loss, and the time necessary for developing breeding stock, this does not negate good faith effort or expressed intention of profitability at this early stage of operations. The fact that a residential dwelling is on the property does not disqualify the appellant from establishing the agricultural use of the parcel.
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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. However, even if [we] were to consider those factors to determine whether the appellants in "good faith" were using the property for agricultural purposes, [our] findings would be the same.

(Internal citations omitted.)

The Board sought judicial review. Following a hearing, the district court affirmed the PAAB's decision, finding that the decision was supported by substantial evidence. In so concluding, the district court stated:

> The Board's brief attempts to convince the court the facts should be reexamined—this is not the court's role in judicial review. Viewing the record as a whole, it is clear to the court substantial evidence existed upon which the PAAB based its decision. A reasonable person, when viewing such evidence, could accept the findings of the PAAB. A substantial portion of the property was dedicated to hay production and livestock use as of January 1, 2007, even without the horse breeding operation in place. One could draw the conclusion from these facts, even with the mortgages on the property, that Jungblut was using the property for agricultural purposes in good faith with the intent to profit. It does not matter a different conclusion may also have been reached—so long as the evidence supports the finding that was made, it is substantial. It is not the court's role to determine if one piece of evidence "trumps" another "weaker" piece of evidence.

(Internal citations omitted.)

Viewing the record as a whole, we agree substantial evidence existed upon which the PAAB based its decision. We therefore find no error in the district court's conclusion. Accordingly, we affirm on this issue.

B. Erroneous Interpretation of Iowa Case Law, Statutes, and Rules.

The Board next contends the district court erred in concluding the PAAB's determination was not based on an erroneous interpretation of Iowa law. Specifically, the Board maintains the PAAB failed to consider the *Colvin* factors in its determination of whether the property should be classified as agricultural property in error. PAAB argues it did not erroneously interpret a provision of law.

> "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, 770 N.W.2d at 835.

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 considered the *Colvin* factors, it would still find that Jungblut was using his property for agricultural purposes in "good faith." Although one might apply the facts to the factors differently, the PAAB clearly considered *Colvin*'s factors despite its disagreement with the case. Therefore, it cannot be said to have erroneously interpreted the law. Consequently, we find no error in the district court's review of this issue.

***C. PAAB Erred in its Conclusion*.**

Finally, the Board argues the PAAB's decision was (1) the product of reasoning that is so illogical as to render it wholly irrational; (2) the product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action; (3) irrational, illogical, or wholly unjustifiable; (4) or it was otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See* Iowa Code §§ 17A.19(10)(i), (j), (m), (n). Ultimately, the Board argues the

facts it cites in support of a finding of residential use outweighs those in support of an agricultural use.

In reviewing the PAAB's decision, the district court concluded:

> The court finds a very well thought-out determination, supported by case law and administrative rules. The decision follows the applicable law in a logical manner. A reasonable person could have reached the same conclusion from the evidence. There was no abuse of discretion and the determination is reasonable.

Under the facts of this case, we agree and find no error in the district court's decision on this issue.

***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.

Vogel, P.J., concurs; Mansfield, J., dissents.

MANSFIELD, J. (dissenting)

I respectfully dissent. Accepting the Board's definition of "good faith," I nonetheless do not believe there is substantial evidence to support its findings.

"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. . ." Iowa Administrative Rule 701-71.1(3). The fighting issue in this case is "good faith." As my colleagues point out, "good faith" is not defined in the rules. I also agree with my colleagues that we cannot view *Colvin v. Story County Board of Review*, 653 N.W.2d 345 (Iowa 2002), as a binding definition of "good faith," in light of footnote 3 of that opinion. Therefore, I turn to the Property Assessment Appeal Board's decision.

The Board found:

> The exhibits and testimony clearly establish that the acreage was used for hay ground, pastureland, and a horse barn as of January 1, 2007, and supports the agricultural classification of this property, despite substantial improvements to the barn and the purchase of one of the three horses occurring after the January 1, 2007, assessment date. Although the appellant incurred a farming loss for 2006, considering startup expenditures, crop loss and the time necessary for developing breeding stock, this does not negate good faith effort or expressed intention of profitability at this early stage of operations.

Although the Board does not state expressly what it meant by "good faith," I read this decision as implicitly equating "good faith" effort with "intention of profitability." That seems to me a reasonable definition. In other words, the property owner's agricultural operation does not actually have to be profitable, but there has to be a genuine intent to make a profit. The "intended profit"

standard is also a fair one because it was the one urged by the Jungbluts when they appealed to the Board.

With that standard in mind, I review the evidence before the Board. Historically, the ten-acre parcel in question has been classified as residential. In November 2004, the Jungbluts purchased the parcel for $75,900, or more than $7,000 per acre. They erected a new 2,500 square foot home. The mortgage amount, following construction of the home, was $424,000. The Jungbluts moved into their new home in August 2005. The surrounding parcels are also classified as residential and have substantial homes on them.

The Jungbluts owned two mares they rode for pleasure.[1] In late 2005/early 2006, a barn was completed on the property and the horses were moved from another boarding location onto the property. In the spring of 2006, hay was planted on the property. On April 30, 2006, Mr. Jungblut entered into a hay-cutting agreement with an individual. The agreement provided the individual, in return for cutting the hay, would receive fifty percent of each cutting and would pay market price for the other half. Mr. Jungblut, at his discretion, could keep ten to fifteen percent of the hay. Mr. Jungblut also entered a separate agreement with another individual to plant, till, and fertilize the land for hay.

In 2006, there was no revenue at all from hay or horses. The only revenue was $119 from the USDA Direct and Counter-Cyclical Program (DCP), in which the Jungbluts had registered their land. The Jungbluts reported a $15,000 loss on their Schedule F.

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[1] Mr. Jungblut's testimony was as follows:
Q. They're more like pets, aren't they? You ride them? A. They're ridden.

In 2007, after the relevant assessment date (January 1, 2007), the Jungbluts added stalls and a third horse—i.e., a colt that had just been foaled that spring. The colt is a Percheron, one mare is a half-Arabian, and the other mare is a Morgan. The Jungbluts claimed an eventual plan to engage in horse breeding. However, Mr. Jungblut admitted this is something they had never done before and there is no room for more than three horses on their property. Thus, Mr. Jungblut said his intent was to try to sell stud rights to the colt in a few years after he became full-grown. Yet he admitted, "The market for horses right now is bleak." He also admitted that he "can't speak to profit" from the potential sale of breeding rights.

Reviewing this record, I cannot say it contains substantial evidence that as of January 1, 2007, the Jungbluts planned to make a profit from their agricultural operation. I see not a glint of an actual profit motivation in this record. I would reverse and remand.