

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

PAAB Docket No. 2020-007-00179C

Parcel No. 8913-18-379-027

Ethos Hospitality, LLC,

Appellant,

vs.

Black Hawk County Board of Review,

Appellee.

Introduction

The appeal came on for consideration before the Property Assessment Appeal Board (PAAB) on June 9, 2021. Shedrick Lewis, a tax representative with O'Connor represented Ethos Hospitality, LLC. Assistant Black Hawk County Attorney Michael Treinen represented the Board of Review.

Ethos Hospitality, LLC (Ethos) owns a commercial property located at 5924 University Avenue, Cedar Falls. Its January 1, 2020 assessment was set at \$1,409,130, allocated as \$523,750 in land value and \$885,380 in improvement value. (Exs. A & B).

Ethos petitioned the Board of Review contending its property's assessment is not equitable as compared with assessment of other like property and that it is assessed for more than the value authorized by law. Iowa Code § 441.37(1)(a)(1)(a & b). (Ex. C).

Ethos then appealed to PAAB re-asserting its claim that the property is assessed for more than the value authorized by law.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. 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 R. 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

The subject property is a sixty-seven-unit, two-story hotel operating as a Days Inn. It was built in 1963 and remodeled in 2000. It has 29,696 square feet of gross building area, and six porches ranging from 64 square feet to 216 square feet. The improvements are listed in normal condition with a 4+00 Grade (average quality). The subject improvements have 30% physical depreciation and a 40% economic obsolescence applied to the assessment. The site is 1.095 acres and is also improved with 30,500 square feet of asphalt parking. (Ex. A).

Ethos purchased the hotel in July 2016 for \$1,199,630. (Ex. A). The property record card indicates the sale was normal. Iowa Dept. of Revenue, Sales Condition Codes, <https://tax.iowa.gov/sites/default/files/2021-01/NUTCSalesConditionCodes-v5.pdf> (stating a NUTC Code of '0' indicates a normal sale).

Ethos submitted an appraisal report completed by R. Ashton Rowles of Property Analytix, Houston, Texas. (Ex. 1). Rowles is qualified to appraise the property but did not testify at hearing. Rowles cites to portions of Iowa law which provides "special value or use value of the property to its present owner, and the goodwill or value of a business" shall not be taken into consideration when valuing property. Iowa Code § 421.21(2). (Ex. 1, p. 13). He also cites to an article authored by Patrick O'Connor which

implies hotel assessments often include personal property or business enterprise value (BEV) or going concern value which must be deducted to arrive at an “as is” Actual Value. (Ex.1, p. 23). Rowles applies this methodology in arriving at his conclusion of value of the subject. Ethos believes the subject’s current assessment improperly includes the value of its personal property and intangible property/goodwill.

Rowles did not inspect the subject property “but relied upon high-resolution aerial photographs, plat maps and Google street scenes.” (Ex. 1, pp. 2, 5 & 7). We note the appraisal only contains two exterior photographs of the subject property, and no interior photographs. (Ex. 1, pp. 44-45). Black Hawk County Assessor TJ Koenigsfeld testified for the Board of Review. Koenigsfeld questioned Rowles’ geographical competency, noting that Rowles misidentified all of the public schools near the subject property. (Ex. 1, p. 33). The public schools listed by Rowles are located in Bremer County, not Black Hawk County. Koenigsfeld explained Bremer County has a much smaller population than Black Hawk County.

Rowles developed the sales comparison and income approaches to value. In his opinion, the cost approach was not considered a reliable indicator of value and it is not an approach that would be considered by investors. (Ex. 1, p. 6 & 53).

Rowles reported the subject property was purchased by Ethos in July 2016 for \$1,425,000, but was unable to confirm this transaction. (Ex. 1, p. 8). The Board of Review submitted the deed and declaration of value for the subject property, both of which are publicly available. (Ex. D). These documents confirm the property sold for \$1,425,000, which included \$225,370 in personal property. Moreover, as previously noted, the subject’s 2016 sale price, reflecting an amount paid for real estate only of \$1,199,630, was reported on the property record as a normal transaction. (Ex. A).

Rowles determined a value of \$130,000 for the subject’s FF&E. (Ex. 1, p. 54). He based his conclusion on a replacement cost new of \$10,024 per room, then depreciated it by more than 80%. His replacement costs for the FF&E were obtained from a 2019 publication of HVS HOTEL DEVELOPMENT COST SURVEY. He provided no explanation for his determination of depreciation.

Despite not inspecting the subject property or surrounding area, Rowles reported “the overall appeal of the subject property is average when compared to the competing properties in the neighborhood.” (Ex. 1, p. 43). Further, he determined an “observed effective age of 43 years and a remaining useful life of 7 years.” (Ex. 1, p. 43). The Assessor’s records report that in 2000 the subject property had been remodeled “inside & out” converting two prior buildings into one stand-alone building. At that time, the building had all new vinyl siding, windows, and all the rooms were remodeled. (Ex. A, p. 7). Koenigsfeld testified all guest rooms had new plumbing, drywall, and floor coverings. In Koenigsfeld’s opinion, the effective age of the subject property would be substantially less than Rowles’ opinion of 43 years.

Rowles relied on four 2018 sales in his sales comparison analysis, which are summarized in the following table. (Ex. 1, pp. 56-62).

Address	Year Built	Sale Price	Gross Building Area (SF)	# of Rooms	SP/Room
Subject - 5924 University Ave, Cedar Falls	1963		29,696	67	
1 - 4025 Hammond Ave, Waterloo	1998	\$2,200,000	39,092	64	\$34,375
2 - 1700 Superior St, Webster City	1974	\$500,500	16,240	18	\$27,805
3 - 1416 Gilbert St, Charles City	1970	\$550,000	17,351	45	\$12,222
4 - 4743 Merle Hay Rd, Des Moines	1985	\$2,900,000	52,947	146	\$19,863

The table represents the data for each property as identified and reported by Rowles. However, the Board of Review submitted evidence indicating several factual errors that would ultimately affect Rowles final conclusions. (Exs. E-L). For instance, Rowles reported Comparable 2 as having 16,240 square feet of gross building area and 18 rooms, whereas the Board of Review asserts it has 19,794 square feet of gross building area and 38 rooms. (Exs. F & L). Comparable 3 is reported as having a sale price of \$550,000 but was not adjusted for personal property; the sale price for the real property only was \$520,000. (Ex. G, K, & L).

Rowles identified all of the sales as arm’s-length, cash transactions. (Ex. 1, pp. 56-57 & 59). He does not identify if the sale prices reflect real property only, or if FF&E was included, but evidence provided by the Board of Review indicates the sale prices

identified for Comparables 2 and 4 represents real estate value only.¹ (Exs. K & M). Contrary to Rowles reporting, Koenigsfeld testified that Comparables 1 and 3 were not normal transactions. Comparable 1 was a “package sale” that sold at auction due to foreclosure. (Ex. E). Iowa Dept. of Revenue, Sales Condition Codes, <https://tax.iowa.gov/sites/default/files/2021-01/NUTCSalesConditionCodes-v5.pdf> (stating a NUTC Code of ‘24’ indicates an auction sale). Our experience is that auction sales resulting from foreclosure tend to result in below market prices. Even so, the \$34,375 per room price of Comparable 1 does not indicate the subject’s assessed value (\$21,031 per room) is excessive. Comparable 3 sets the low end of the range, but was a contract sale and no adjustment was made for the nature of the sales transaction (Ex. J & K). We give Comparable 3 no consideration. (Exs. F, J, and L, p. 2). § 441.21(1); *Foreman & Clark of Iowa, Inc. v. Bd. of Review of City of Cedar Rapids*, 286 N.W.2d 169, 172-73 (Iowa 1979).

Rowles relied solely on qualitative adjustments. PAAB has routinely noted that qualitative analysis, alone, diminishes our ability to determine the credibility of adjustments that would aid in determining the comparability and resulting reliability of the sales. (See PAAB Docket No. 2017-100-00594C; 2017-101-10127C; 2015-102-00133C thru 00134C).

Rowles identified elements of comparison that he considered and provided a generic description of each element. Aside from explaining what the adjustment represented, he did not offer any support for his adjustments. For example, he explained the quality/appeal adjustment is warranted “when the construction quality and/or curb appeal of the comparable sales is either inferior or superior to the subject property. Also considered in this analysis is the credit worthiness of tenants and occupancy.” (Ex. 1, p. 60). He then identified Comparables 2 and 4 as inferior to the subject in quality/appeal but provided no explanation as to what specifically caused him to believe these properties were inferior in relation to the subject property. For example,

¹ Had Rowles given any weight to the sales comparison approach, we note making an additional deduction for personal property before coming to his final value conclusion would amount to double-dipping.

was it the quality of the construction, the curb appeal, the tenancy and occupancy, or a combination of these elements that distinguished these sales as inferior to the subject?

After analyzing the sales qualitatively, Rowles determined that overall, Comparable 1 and 2 were superior to the subject, Comparables 3 was inferior, and Comparables 4 was similar. Based on this but utilizing the unadjusted sales prices per room, he concluded a value per room of \$20,000; or a total value of \$1,340,000. (Ex. 1, p. 62).

Despite the noted concerns of Rowles' comparable sales, we find Comparable 1 is most similar to the subject in location and size. Considering the subject's 2000 renovation and without any evidence to the contrary, we assume they have more comparable effective ages than the other comparables. Comparable 1 does not support Ethos' claim that the subject's assessment is excessive.

Rowles acknowledged "there is sufficient market activity to adequately employ this approach [sales comparison] reliably." (Ex. 1, p. 71). Despite this, he gave the sales comparison approach "less consideration" because the subject is an income producing property. In fact, we note his value conclusion relies solely upon his income approach.

Ethos asserts the income approach should be the primary method of valuation for the subject property. In Rowles' income analysis, he stated he relied exclusively on the 2019 profit and loss statement. (Ex. 1, pp. 63 & 66). Rowles stated in his report "the subject expenses were considered to be aligned with typical market expenses" yet he did not provide any actual expenses or evidence of market driven expenses to support this claim. (Ex. 1, p. 63). Rowles reported his net operating income (NOI) was based on the subject's 2019 revenues² and average expenses per the North Central Hotels column in the Limited Service Hotel expense table. (Ex. 1, p. 63 & 65). Based on this analysis, Rowles reported an NOI of \$170,435. (Ex. 1, p. 63).

Rowles has a section of his report labeled "Estimate Market Rent" but it is limited to a short paragraph and a table of comparable hotels that lack data in two of three

² Rowles identified his data source as the "2019 Geographic Division Summary Operation Statement by CBRE Hotels," which relies on 2018 statistics. This appeal is for the 2020 assessment year. Therefore, the the 2020 summary data, which would have relied on 2019 statistics would have been more appropriate.

columns of comparison. (Ex. 1, p. 64). Rowles asserts the data he reports “supports the viability of the cash flow we have projected for the subject.” Further he asserts the “average subject occupancy was estimated per the North Central Hotels column...”. (Ex. 1, p. 64). However, his effective gross income (EGI) conclusions are based on a 44.10% actual occupancy, or roughly a 56% vacancy rate. Comparatively, the North Central division statistics indicate a market occupancy of 69.1%, or roughly at 31% vacancy. (Ex. 1, p. 65). Rowles reliance on the actual occupancy would result in an artificially low valuation.

Rowles notes the subject is a ‘branded/flagged hotel’ and reports two methods on making an adjustment to reflect a market value without the brand premium (business enterprise value): use non-branded hotels to support a market rental rate and exclude the franchise expense, or make the deduction after capitalization of the branded hotel. (Ex. 1, p. 64). We note he ultimately does not complete the latter approach. (Ex. 1, p. 70).

Rowles reports EGI for the subject property, as a branded hotel, of \$637,536; as a non-branded hotel he determined an EGI of \$541,906. (Ex. 1, pp. 63 & 66).

Rowles reports total expenses of \$460,300 for a branded hotel and \$374,233 for a non-branded hotel. (Ex. 1, p. 65). The appraisal states the expenses come from the North Central column of the Limited-Service Hotels table, but PAAB was unable to replicate Rowles’ calculations or determine how he estimated expenses. Based on the foregoing, Rowles concludes a NOI of \$177,236 for a branded hotel and \$167,673 for a non-branded hotel. (Ex. 1, p. 66).

In determining a capitalization rate, Rowles relied on rates published by RERC for the 4th Quarter, 2019, reflecting a 9.40% average going-in capitalization rate for Midwest Third-Tier hotels. (Ex. 1, p. 67). He also considers a “Hotel Class, Flag, Type, Franchise Fee, Cap Rate” Study (Study) derived from multiple sources, but which appears not to be specific to the subject’s market. (Ex. 1, p. 67 & 69). The RERC publication indicates. Without exception, every select service, limited service, and extended hotel in the Study indicates exactly a 10% capitalization rate. Rowles selected

a 10% capitalization rate, which he loaded for taxes to a loaded capitalization rate of 12.98%. (Ex. 1, p. 67).

Rowles capitalized his determination of the branded NOI and the non-branded NOI to arrive at conclusions, respectively, of \$1,370,000 and \$1,292,000 rounded. (Ex. 1, p. 68).

Rowles makes a Business Enterprise Value (BEV) deduction of \$125,000 even though his BEV calculation on page 70 indicates a BEV of \$250,000. Ultimately, however, Rowles suggests there is little brand premium here, stating “There is not a higher value to the brand for the subject, indicating a negative return to the brand *and/or poor management.*” [Emphasis added]. As a result, we question his use of a BEV deduction for the subject. Further, if the subject property is poorly managed, this would reasonably result in lower actual average daily rates, occupancy, and RevPAR. Because Rowles states he relied on the actual income of the subject property, this would further result in an artificially low opinion of value by the income approach. In Koenigsfeld’s opinion, developing a BEV conclusion is unnecessary because the assessment is valued as a going-concern.

Rowles relied on the branded NOI of \$1,370,000 for his final conclusions. Deducting a BEV of \$125,000 and deducting \$130,000 for FF&E. His final conclusion by this income analysis, as of January 2020, is \$1,115,000. (Ex. 1, p. 2 & 71). He gave all consideration to the income approach. The Board of Review noted Rowles’ January 2020 opinion of value is less than the value of the real property identified in the subject’s 2016 sale.

Black Hawk County Assessor TJ Koenigsfeld testified for the Board of Review. Koenigsfeld explained the Iowa Department of Revenue Cost Manual was used to assess the subject property. He testified that after a 2011 re-valuation project, all hotels in Black Hawk County have a 40% obsolescence applied to their assessments. Koenigsfeld testified personal property, such as FF&E, has not been included in the assessed value. Koenigsfeld further testified the total assessed value of \$1,409,130 does not include business value, business enterprise value, or any other intangible values.

Koenigsfeld was critical of Property Analytix and Rowles' appraisal. After researching Property Analytix, Koenigsfeld summarized it as a company that exists for the express purpose of generating appraisals that value the property for less than the assessment value for the purposes of appealing assessments. Koenigsfeld explained that Property Analytix relies in part on a prediction analytics program referred to as Commercial Assessment Reporting System (CARS). In addition to Rowles work for Property Analytix, Koenigsfeld noted his email address referenced Archstone Group. (Ex. 1, p. 2). This prompted Koenigsfeld to investigate Archstone. He notes that Archstone is partnered with Property Analytix, which is in the same building as O'Connor Tax Reduction Experts. Shedrick Lewis, who represents Ethos, works for O'Connor Tax Reduction Experts; and Rowles cites O'Connor in his appraisal report. (Ex. 1, p. 23). Effectively, the Board of Review asserts there is an improper relationship between the above entities that brings to question the impartiality of Rowles' analysis and conclusions. Based on the foregoing, the Board of Review does not believe Rowles' appraisal is competent.

Analysis & Conclusions of Law

Ethos asserts its property is assessed for more than the value authorized by law. Iowa Code § 441.37(1)(a)(1)(b). Ethos asserts the subject's assessment improperly includes personal and intangible property in violation of Iowa Code section 441.21(2). Ethos offered no evidence the assessor has improperly included any prohibited items in the assessment and the Board of Review denies the assertion. Rather, Ethos' claim hinges on the Rowles' appraisal that concludes a value below the current assessment. As such, we find the issue here is not about compliance with the special use prohibition of use section 441.21(2), but a disagreement regarding the market value of the subject's real estate. For its part, the Board of Review asserts Rowles' appraisal is "haphazard" at best, simply not competent, and should be given no consideration.

The burden of proof is upon the taxpayer, who "must establish a ground for protest by a preponderance of the evidence. *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009). But when the taxpayer "offers competent evidence

that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation.” Iowa Code § 441.21(3). To be competent evidence, it must “comply with the statutory scheme for property valuation for tax assessment purposes.” *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 782 (Iowa 2009) (citations omitted).

In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property’s fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm’s-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* “In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.” *Id.* Other factors and approaches to value, such as cost and income, can only be considered upon a showing that sales cannot readily establish the subject’s actual value, but “the actual value shall not be determined by use of only one such factor.” § 441.21(2).

The first step in this process is determining if comparable sales exist. *Soifer*, 759 N.W.2d at 783. “Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court.” *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977)). Similar does not mean identical and properties may be considered similar even if they possess various points of difference. *Id.* (other citations omitted). “Factors that bear on the competency of evidence of other sales include, with respect to the property, its ‘[s]ize, use, location and character,’ and, with respect to the sale, its nature and timing. *Id.* (other citations omitted). Sale prices must be adjusted “to account for differences between the comparable property and the assessed property to

the extent any differences would distort the market value of the assessed property in the absence of such adjustments”. *Id.* (other citations omitted).

Ethos submitted the Rowles appraisal. It is clear the report misidentifies the geographical area and locational factors that may have an effect on the subject’s value, and lacks details about the property’s interior condition to allow a third-party user like PAAB to have confidence in its conclusions.

While the sales comparison approach is the preferred method of valuation under Iowa law and Rowles admits sales can readily establish the subject’s value, Rowles’ conclusions ultimately place full reliance on his income approach to value.³ Among the sales, each with their own issues of concern, we find Comparable 1 most similar to the subject, find it the most persuasive (even if imperfect) evidence of value, and note its sales price significantly exceeds the subject’s assessed value. Despite some concerns about the reliability of the sale transaction, we find Comparable 1 to be the most physically similar location of the subject, with the most similar room count, and has a more similar effective age (considering the subject’s remodel in 2000). Aside from previously stated issues regarding Comparables 2-4, they vary in location, size, age, and room counts and we find them less persuasive.⁴

With regards to Rowles’ income approach, we find there are unexplained discrepancies in his approach, and his conclusions appear to be based on actual income. We find inadequate support was provided to show the subject’s actual income was consistent with the market, noting that the report lacked important details about the rent comparables. *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d

³ Section 441.21(2) states that when other factors are used, sole reliance cannot be placed on one factor. The Iowa Supreme Court has interpreted section 441.21(2) to mean the “ ‘other factors’ approach mandates consideration of two or more particular factors in determining value” but “does not require that market value be determined by the use of two or more methods of valuation.” *Office of Assessor, Pottawattamie Cnty. by Hastings v. Iowa Dept. of Revenue*, 417 N.W.2d 214, 218 (Iowa 1987). Here, Rowles did not complete a cost approach (or apparently consider any other factors) and ultimately gave no weight to his sales comparison approach. Aside from our belief that Ethos has failed to meet its burden to move to other factors in determining the subject’s value, we question whether Rowles’ report complies with section 441.21(2).

⁴ We note that while no issues were raised regarding the reliability of Comparable 4 and no errors were identified in the report regarding Comparable 4, we find using the \$/room figure from Rowles report to extrapolate a value for the subject would be misleading because of the significant disparity in room counts. All else being equal, a property with a greater number of rooms will have a lower value per room.

419, 423 (Iowa 1997) (finding the “assessor properly used the objective rental income...rather than the actual lease amount, to establish valuation.”). The expenses are estimates, are said to be based upon a general study of limited-service hotels, and there is no evidence indicating those expenses are consistent with the subject’s market. We do not believe the data or information used to be reliable or persuasive as it relates to a determination of the subject’s fair market value that is consistent with section 441.21.

Considering the foregoing, we find the Rowles appraisal does not comply with the statutory scheme, is not competent, and Ethos has not demonstrated the property is assessed for more than authorized by law. Even if we were to conclude the appraisal was sufficient enough to shift the burden of proof, we find the most persuasive sale in the record is Comparable 1 and its sales price exceeds the subject’s assessment and indicates the subject is not over assessed.

Viewing the record as a whole, we find Ethos has failed to support its claim that the subject property is over assessed.

Order

PAAB HEREBY AFFIRMS the Black Hawk County Board of Review’s action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2020). 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.

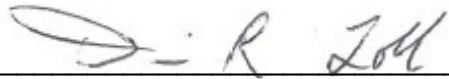
Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A (2020).



Karen Oberman, Board Member



Elizabeth Goodman, Board Member



Dennis Loll, Board Member

Copies to:

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Board of Review by efile