

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>DEBORAH A. MCHOSE, Petitioner, v. PROPERTY ASSESSMENT APPEAL BOARD, Respondent.</p>	<p>CASE NO. CVCV047001 ORDER RE: PETITION FOR JUDICIAL REVIEW</p>
--	---

The court has before it the petition for judicial review filed by petitioner Deborah McHose (“McHose”) regarding an administrative decision entered by the Property Assessment Appeal Board (“PAAB”) on January 7, 2014. A hearing was held on August 22, 2014. Appearing at the hearing were McHose and her counsel Thomas Ross. Appearing on behalf of PAAB was its counsel Bradley Hopkins. Having reviewed the certified record, the briefs filed by the parties and having heard arguments of counsel the court finds as orders as follows:

The record established that McHose purchased condominium unit number 4A located at 3100 Grand Avenue, Des Moines, Iowa. She purchased this unit on January 6, 2013 for \$71,900.00. The property was assessed by the Polk County assessor at \$106,800 on January 1, 2013. McHose protested this assessed value to the Board of Review and the Board reduced the assessed value to \$103,000. McHose then appealed that decision to PAAB. PAAB issued its ruling on January 7, 2014 affirming the Board of Review’s assessed value.

McHose argues that under Iowa law the market value of the property for assessment purposes is the sales price she paid on January 6, 2013. McHose relies on the statutory language which provides:

The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. “*Market value*” is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property.¹

Since she paid \$71,900 on January 6, 2013 the assessed value should have been that price.

PAAB argues that it was not limited to the purchase price in affirming the Board of Review decision. The purchase price is only one factor to consider and their review of comparable sales was appropriate in deciding whether the property was properly assessed.

PAAB argues that McHose failed to carry her burden of proof that the property was over assessed.²

There was no dispute that the property sold was listed by a licensed real estate agent. The unit was on the market for 19 1/2 months prior to McHose’s offer and ultimate purchase. In addition, PAAB found that the transaction between McHose and the seller was arm’s length.³

McHose argues that the standard of review of PAAB’s decision is for corrections of errors of law. At the hearing McHose’s counsel argued that review was also proper under 17A.19(10)(l) or (m). PAAB argues that McHose failed to establish in her initial pleading the basis for review as required under section 17A.19(4) and as a result she is limited to the errors of law standard she asserted.

¹ Iowa Code § 441.21(b)(1)

² McHose agreed that the burden to prove that the property was over assessed rested with her since she did not produce two disinterested individuals who contested the county’s assessed value.

³ Certified Record at 110 (“While the arm’s-length sale price of the subject property may suggest over-assessment,”)

The court finds that section 17A.19(4) requires that the petitioner set forth the grounds upon which relief is sought and the relief sought.⁴ This standard is met when “an opponent is apprised of the alleged error so as to allow for adequate preparation and response.”⁵

McHose in her petition for judicial review requested the following relief:

A. Find and enter judgment that the Property Assessment Appeal Board committed reversible error in failing to conclude that the actual price of \$71,900.00 paid by Deb MchHose on the 1/6/2013 purchase of the subject property was the fair market value as of 1/1/2013, and the proper assessed value for the present taz assessment.

B. Find and enter judgment that the Property Assessment Appeal Board committed reversible error in its order affirming the property’s assessment of \$103,000.00.

C. Enter Judgment reversing the Property Assessment Appeal Board order affirming the property’s assessment of \$103,000.00, and establishing the property’s assessed value at \$71,900.00 and Order that the property be taxed based upon that assessed value for the 1/1/2013 valuation; or, in the alternative, remand the case to the Property Assessment Appeal Board for reconsideration consistent with the above proposed findings.

McHose further asserted that:

4. The Property Assessment Appeal Board erred in its conclusions of law, that the actual purchase price of \$71,900.00 paid by Deb MchHose on the 1/6/2013 purchase of the subject property was not reflective of its fair market value, and that the \$103,000 assessment was not an overassessment, even though the \$71,900.00 purchase price was in [sic] arms-length purchase on a piece of real estate that had been professionally marketed through traditional real estate marketing channels for 19 ½ months; and, the Property Assessment Appeal Board correctly found that, “McHose’s purchase was a normal transaction.”

The court finds that MchHose’s petition adequately sets forth the grounds upon which relief was sought and the relief she sought such that PAAB was aware of the claim she was making. The petition notes that MchHose believes that PAAB’s decision was based upon an erroneous interpretation of a provision of law, specifically section 441.21. Paragraph four above specially indicates that MchHose believed the purchase price was the fair market value. PAAB in

⁴ Iowa Code § 17A.19(4)(d & e)

⁵ *Second Injury Fund of Iowa v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995) (citations omitted)

its ruling acknowledged that McHose's argument was that the purchase price was the determinative factor under section 441.21(1)(b).⁶ Likewise, the petition indicates that McHose did not believe that PAAB's decision was supported by substantial evidence in the record, specifically as set forth in paragraph 4 of the petition.

PAAB is correct that the purchase price is a factor that PAAB could utilize in determining fair market value. Likewise, PAAB is correct that they could utilize comparable sales as a factor in determining fair market value. Purchase price alone is not necessarily determinative of fair market value.⁷

However, the court does not find the analysis stops at this point. McHose also challenged PAAB's decision asserting that it was not supported by substantial evidence when that record is viewed as a whole. PAAB determined that McHose failed to meet her burden of proof because "three other recent sales of comparable properties suggest her purchase price may not have been reflective of its fair market value."

The evidence of the comparable sales was presented by Jim Willett, Deputy Polk County Assessor. His evidence that the assessed value was proper was premised upon the MLS listing that stated the unit purchased by McHose was "in very good condition."⁸ He also presented three properties with the exact square footage that McHose's unit had whose sales ranged from \$103,000 to \$106,000.⁹ The square footage range for these units was from \$93.64 to \$90.99. Willett testified the assessor used \$90.00 per square foot to assess McHose's property at \$103,000. During cross-examination of the comparable units Willett testified that he had not

⁶ Certified Record at 110

⁷ *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996)

⁸ Certified Record at 110

⁹ *Id.*

viewed these units.¹⁰ He confirmed the fact that he had not viewed the comparable sales nor had anyone in the assessor's office when asked a similar question by a member of PAAB.¹¹

A review of the whole record demonstrates the following. The seller had the unit on the market for 19 ½ months before it sold.¹² The property was listed with a real estate agent.¹³ The agent who listed the unit McHose purchased had many open houses during this time.¹⁴ In addition, the listing agent for the unit McHose purchased also listed many of the units that sold in the building including the ones utilized in the comparable sales.¹⁵ McHose's offer was the first acceptable offer that the seller received.¹⁶ PAAB found the transaction between the seller and McHose to be a "normal transaction"¹⁷ and "arm's-length."¹⁸ The sales price was \$71,900.00. McHose, as a real estate agent, had viewed the units consisting of the comparable sales that the assessor used and testified they were in better condition than the unit she purchased.¹⁹ She lived in the building as a tenant for more than 2 years prior to the purchase and was familiar with what the comparable units looked like.²⁰ She testified that the unit she purchased had electrical code compliance issues, lighting was outdated, outdated refrigerator, carpet needed replacing because of being worn and with spills and stains, sliding doors to balcony were difficult to operate, countertops were chipped and consisted of formica which was outdated, there was asbestos tile on the floor, the toilet in the master bath was inoperable, the toilet in the hallway leaked, there

¹⁰ Transcript at 20:2-5

¹¹ *Id.* at 20:7-12

¹² Certified Record at 29 (Purchase Date – 1/6/13) and 38 (Listing Date – 5/6/11)

¹³ Certified Record at 38

¹⁴ Transcript 4:18-25

¹⁵ Transcript at 6:22-7:2

¹⁶ Transcript 5:1-4

¹⁷ Certified Record at 112

¹⁸ Certified Record at 110

¹⁹ Transcript at 4:7-17, 5:25-6:5, 13:22-25

²⁰ Transcript at 4:7-10; 12:25-13:5

was no hot water in the sink, the finish on the ceramic tub in the master bath was gone, grout lines were moldy, and the exhaust fan in hallway bath was inoperable.²¹ These conditions did not exist in the other units that had sold in the building.²² She testified she spent approximately \$20,000 remedying these deficiencies after the purchase and many of the deficiencies still exist.²³

The court's role when confronted with a question of whether substantial evidence supports the agency decision must review the "record proof that detracts from any challenged finding as well as evidence that supports it."²⁴ In addition, the court must remember "that evidence is not insubstantial merely because it would have supported contrary inferences."²⁵

PAAB found that McHose did not meet her burden to establish the unit was overassessed because while her "purchase was a normal transaction; . . . , three other recent sales of comparable properties suggest her purchase price may not have been reflective of its fair market value." This conclusion is premised entirely upon the assessor's use of the MLS listing where the listing agent stated "the property was in very good condition" and the assessor's use of three comparables which were never viewed nor was the subject property viewed. Likewise, the assessor's exhibit demonstrated that one of the comparable properties utilized only had a 2013 assessed value of \$94,600 after selling for \$103,000 on June 3, 2012.²⁶

Accordingly, while comparable sales may be utilized the court finds when the whole record is viewed the more persuasive measure of the fair market value of McHose's unit is the

²¹ Transcript at 7:3-26

²² Transcript at 8:1-3

²³ Transcript at 9:19 to 10:19

²⁴ *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)

²⁵ *Id.*

²⁶ Certified Record at 91

sales price.²⁷ The court finds that the assessor attempted “to discredit the value reflected from an arms-length sales transaction by drawing comparisons from the general characteristics of other properties.”²⁸ Consequently, the court finds this type of evidence less convincing than the arms-length sales price.²⁹

IT IS THEREFORE ORDERED that the Property Assessment Appeal Board’s decision is reversed and the matter is remanded to the Board for entry of an order setting the assessed value of the petitioner’s property at \$71,900.00 for the 2013 assessment.

IT IS FURTHER ORDERED that costs of this action are assessed against the Property Assessment Appeal Board.

²⁷ *Riley v. Iowa City Bd. of Review*, 549 N.W.2d at 291

²⁸ *Id.*

²⁹ *Id.*



State of Iowa Courts

Case Number
CVCV047001

Case Title
DEBORAH MCHOSE VS. PROPERTY ASSESSMENT

Type:

APPEAL BO
OTHER ORDER

So Ordered

Lawrence P. McLellan, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2014-08-29 15:23:23