

IN THE IOWA DISTRICT COURT, IN AND FOR DUBUQUE COUNTY

4800 ASBURY ROAD DUBUQUE-IA LLC, Petitioner, Vs. STATE OF IOWA PROPERTY ASSESSMENT APPEAL BOARD, Respondent.	Case No. CVCV 99198 ORDER ON JUDICIAL REVIEW
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This matter comes before the Court for judicial review of an administrative decision rendered by the State of Iowa Property Assessment Appeal Board (PAAB). The Petitioner appeared through Attorney Douglas Oelschlaeger. The Respondent appeared through Attorneys William Stiles and Joseph Borg.

An assessment of property located at 2395 Northwest Arterial was made on January 1, 2009, establishing the value of the property at \$5,061,500. Petitioner sought review of this value by PAAB. Petitioner asserts that the Board of Review assessed the property for more than which is authorized under Iowa Code Section 441.37(1)(b). The relief requested before PAAB was a reduction in the value by \$1,561,500. After evidentiary hearing and review of two independent appraisals, PAAB entered an order on September 23, 2010 affirming the assessment by the Board of Review. Petition for Judicial Review was timely filed in this matter on October 12, 2010. The Petitioner asserts numerous grounds for reversal in its petition. Petitioner contends there was a lack of substantial evidence to support the decision. Petitioner also alleges the decision was a product of illogical reasoning based on irrational, illogical, or fully unjustifiable interpretations of applicable law. Finally, Petitioner asserts the agency's actions were unreasonable, arbitrary, capricious, and an abuse of discretion. Oral argument was presented to the Court.

An appeal of an agency decision such as the PAAB is governed by the provisions of Iowa Code Chapter 17A and Sections 441.38 and 441.39 of the Code of Iowa. In order to successfully challenge the agency action, a party must demonstrate prejudice to substantial rights arising from agency action which falls within one of the grounds designated in Section 17A.19(10). The Court may affirm the agency action or remand to the agency for further proceeding. Iowa Code Section 17A.19(10). Only where the Court finds that substantial rights of the person seeking judicial relief have been prejudiced by agency action may the Court reverse, modify, or grant other appropriate relief. Iowa Code Section 17A.19(10). When a case calls for the exercise of judgment on a matter within the expertise of the agency, the Courts generally leave such decisions to the informed judgment of the agency. *Dico, Inc., vs. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 354 (Iowa 1998). If the agency error is one of fact, the Court must determine whether the agency's findings are supported by substantial evidence. Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. Conversely, evidence is not insubstantial merely because it would have supported contrary inference. *Gaskey vs. Iowa Dep't of Transp. Motor Vehicle Div.*, 537 N.W.2d 695, 698 (Iowa 1995). Agency

action is considered arbitrary or capricious when the decision is made “without regard to law or facts”. Doe v. Iowa Bd. Of Med. Examiners, 733 N.W.2d 705, 707 (Iowa 2007).

Iowa Code sec. 441.21 provides the methods to be used in assessing property. It states: “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.” The code section goes on to define the “market” value 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. There are issues to be taken into consideration in assessing market value including probability of available and unavailable purchasers, sale prices of abnormal transactions, sales to immediate family or seller, foreclosure, forced sale, contract sales, discounted purchase transactions or purchase of adjoining land to be operated as a unit. The latter factors may require adjustments to value to avoid distortion of market value.

In determining the value of property under the foregoing statute, consideration must first be given to the sale prices of the property in question or of comparable property. Office of the Assessor, Pottawattamie County v. Iowa Dep’t of Revenue, 417 N.W.2d 214, 218 (Iowa 1987) (citation omitted). If and only if this approach cannot readily establish a market value because there have been no comparable sales, the “other factors” approach of section 441.21 must be used. Id. This approach arrives at market value by considering earning capacity, industrial conditions, cost, depreciation, replacement costs and “all other factors which would assist in determining the fair and reasonable market value. Id.

ANALYSIS

Assessed value of the subject property for tax years 2005, 2006, 2007 was established by negotiation between the property owners and the Dubuque City Assessor at the amount of \$4,700,000.00. A new assessment was rendered in 2009. The property has been classified as commercial for the January 1, 2009, assessment and has been valued at \$5,061,500, which is broken down as \$1,161,700 for land value and \$3,899,800 for the improvement on the property. The property is commonly known as a Hy-Vee grocery store located at a busy intersection of the Northwest Arterial and Asbury Road in Dubuque County, Iowa. The property has always operated as a grocery store. It was built to suit this business. It is what is commonly known as a “sale – lease back” transaction.

Two appraisals were performed on the property. Each of the appraisers testified in front of the board. Based on the testimony, PAAB’s findings were that the subject property is a 77,393-square foot retail type store built in 1999 and expanded in 2006. It is currently occupied by a Hy-Vee grocery store. It is located on 9.560 acres containing approximately 371 parking spaces.

Plaintiff’s appraiser used the commonly recognized appraisal methods, to wit: cost

approach, sales comparison approach and income approach to reach his value conclusions. The cost approach was accorded moderate consideration and concluded the value to be \$2,540,000.00. The sales comparison approach was accorded thorough consideration and yielded a value of \$2,710,000.00. Finally, the income approach was accorded significant consideration and concluded the property value to be \$2,670,000.00. Deficits in his report relate to his lack of consideration of the expansion completed on the property in 2006. He also considered the sale-lease back an abnormal sale and discounted the value for this classification as recognized by the Iowa Department of Revenue. Additionally, he did not consider two local properties that would be considered solid comparables to the subject property. Based upon sales data, the appraiser found the property to be valued at the \$2,710,000 based on square footage prices between \$16.67 and \$49.37.

The City of Dubuque's retained appraiser used the same three methods of acceptable appraisal practices to arrive at his conclusions. The cost approach led to a conclusion of the value at \$6,050,000. He used the market land sales and replacement cost of the improvements minus depreciation to reach this figure. In analyzing the property on a sales comparison or market approach, the appraiser determined the value to be \$5,500,000 using five sales that range in size from 30,836 square feet to 85,337 square feet with overall sales pricing ranging between \$7,750,000 and \$13,058,230. Referring to one of the most recent sales as an excellent comparison, the appraiser utilized a square foot price of \$71.60 to be a fair adjustment and applied that to the square footage of the subject property, coming to a value of \$5,500,000.

PAAB took all of this information and the findings into consideration. PAAB also received testimony from Dubuque City Assessor Rick Engelken's. He testified according to his findings and raised some errors as to both of the appraisals. His most prominent criticism was not taking into consideration of a recent sale of a local grocery store in 2010 that yielded \$55.00 per square foot. However, the subject property is superior to that which was sold for this price. Although no weight was given to the City Assessor's testimony, PAAB found the testimony to be honest and credible.

Based on the different values determined by each of the qualified appraisers, PAAB considered which of the two to give more weight. In determining which of the reports was more reliable, PAAB analyzed each in terms of its deficits and strengths. PAAB also took into consideration that Iowa Code Section 441.21(1)(b) requires comparable sales to be used as the primary method for valuing properties. PAAB determined that the subject property is a first generation sales leaseback, which means that the contractor built the structure for the tenant and leases to that tenant. The subject property has never been vacant, nor did it require modifications to meet the current tenant's needs. The subject property operates as an ongoing concern. Only one of the qualified appraisers analyzed the subject property with this in mind.

The Court hereby finds that the Respondent rendered its decision based on appropriate delineations of the deficiencies and strengths of the offered appraiser's values. The decision was

well thought out and supported by case law and administrative rules. Appropriate valuations were also considered as required by applicable code sections. Substantial evidence therefore supports that a reasonable person could have reached the same conclusion from the evidence presented. The Court therefore finds no abuse of discretion and therefore makes a determination that the conclusions reached are reasonable.

For the reasons stated herein, the Court finds that the decision was not arbitrary, capricious and illogical. Proper legal conclusions were made. Proper parameters of customary appraisal practices were analyzed under the expertise afforded PAAB. Substantial evidence in the records exists to support the findings of PAAB. Therefore, the decision of PAAB, the Respondent, is AFFIRMED.

Costs associated with this proceeding are assessed to the Petitioner.

Done and Ordered this November 18, 2011.

MONICA L. ACKLEY
Electronically Submitted X
JUDGE OF THE DISTRICT COURT
FIRST JUDICIAL DISTRICT OF IOWA

On _____
Copies Mailed to: _____

By: _____

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