

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

<p>KOHL'S DEPARTMENT STORES INC., Petitioner,</p> <p>vs.</p> <p>STATE OF IOWA PROPERTY ASSESSMENT APPEAL BOARD, Respondent.</p>	<p>Case No. CVCV104756</p> <p>RULING</p>
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Now on this 27th day of July, 2012, this Appeal comes before the Court for oral argument. Petitioner appears by counsel, Douglas R. Oelschlaeger. Respondent appears by counsel, Jessica Braunschweig-Norris. Also appearing was the Pottawattamie County Board of Review by its attorney of record, Leanne Gifford.

The Court having heard the arguments of counsel, and examined the file makes the following:

**Background**

Petitioner (herein after referred to as "Kohl's") is the owner of real estate located at 3626 Metro Dr., Council Bluffs, Iowa. Kohl's filed a timely appeal of the tax assessment on January 1, 2009, to the Pottawattamie County Board of Review (hereinafter referred to as "Board"). Kohl's was protesting its assessment of \$9,000,000.00 on said real estate. The Board reduced the assessment to \$6,100,000. Kohl's then appealed the Board's decision to Respondent (hereinafter referred to as "PAAB"). Subsequent to the Board appeal but prior to PAAB's hearing or determination; the Director of the Iowa Dept. of Revenue issued an equalization order for commercial property in Pottawattamie County, Iowa. This equalization order required a 15% increase in assessments for the subject property, as well as all other commercial property located in Pottawattamie County, Iowa. This November 2010 equalization order was applied retroactively to the January 1, 2009, assessment. This resulted in the assessed value of the subject property to be in the sum of \$7,015,000 prior to the PAAB hearing.

PAAB held the contested case hearing on December 5, 2010. At this hearing, one witness testified on behalf of Kohl's, to wit: Tom Scaletty, an MAI appraiser. Mr. Scaletty opined the value of the property in question was \$4,350,000. The Board called Chief Deputy Assessor Penny Ravlin as a witness. Ms. Ravlin's testimony supported the Board's valuation. PAAB entered its order on February 24, 2011. As set forth in said order, PAAB found that Kohl's' property was over assessed at \$7,015,000 and that the correct assessment was \$6,634,941. Kohl's then filed a petition for judicial review in this District Court. The Board has intervened and filed a cross-appeal.

## Issues

Three primary issues are presented to this Court on appeal. The first issue concerns the scope and standard of review. The Court's conclusion on the first issue affects the second issue presented herein. The second issue is an evidentiary issue wherein the valuation opinion of Mr. Scaletty was rejected. The third issue is whether or not it was proper to increase the assessment pursuant to the equalization order prior to the PAAB hearing.

## Conclusions

### (a) scope of review

PAAB was established within the Iowa Dept. of Revenue “for the purpose of establishing a consistent, fair, and equitable property assessment appeal process.” See Section 421. 1A(1), Code. PAAB is an agency for purposes of Chapter 17 A of the Code. Therefore, judicial review of its decision is governed by said chapter. Review of a decision of the PAAB is for the corrections of errors of law. Where substantial evidence supports a finding by an agency, the Court may not substitute its interpretation of the evidence. Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. The determining factor is not whether the evidence supports a different finding but whether the evidence supports the finding actually made. *City of Hampton v. Iowa Civil Rights Commission*, 554 N.W.2d 532, 536 (Iowa 1996).

### (b) valuation

In the case at hand, PAAB did find Kohl's real property was over assessed, it just did not agree with the value Mr. Scaletty opined. A thorough reading of the entire decision establishes that the agency's findings are supported by substantial evidence. This is the only requirement of the factfinder, PAAB. In essence, on this appeal Kohl's is asking this Court to reject the agency findings, try the matter de nova, and substitute its own findings of fact. This invitation is declined. It was within PAAB's discretion to accept or reject the comparable sales Scaletty used in his appraisal, as well as his conclusion of value. Instead, PAAB found the best indicator of market value was produced by the evidence from the Board. PAAB clearly articulated its reasons for rejecting Scaletty's valuation. Those reasons and findings will not be disturbed upon appeal.

### (c) equalization

Kohl's asserts that PAAB failed to follow Iowa law by increasing the assessment when no cross-appeal had been filed by the Board. In fact, an equalization order issued by the Director of the Iowa Dept. of Revenue increased the assessment by 15% prior to the PAAB hearing. Thus, the assessed value challenged before PAAB was \$7,015,000. This Court notes that the equalization order was not challenged by Kohl's. In its decision, PAAB modified the assessment and reduced it to \$6,634,941. Therefore, this assertion is without merit.

**It Is Therefore Ruled** that the February 24, 2011, decision of the State of Iowa Property Assessment Appeal Board is affirmed and ratified; that the 2010 assessment shall be the same as the 2009 assessment. All costs are taxed to the Petitioner

Dated this 2nd day of August, 2012

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James M Richardson, Judge  
4<sup>th</sup> Judicial District, State of Iowa