

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

WAL-MART STORES, INC.,	Case No. CVCV047670
Petitioner,	
v.	
IOWA PROPERTY ASSESSMENT APPEAL BOARD,	RULING ON JUDICIAL REVIEW
Respondent,	
and CITY OF AMES BOARD OF REVIEW,	
Intervenor.	

This matter came before the Court on March 27, 2013, on petitioner's request for judicial review of the Property Assessment Appeal Board's (hereafter "PAAB") June 22, 2012 decision. The petitioner appeared via phone through counsel, Paul D. Burns. The respondent also appeared through the phone, represented by attorney Jessica Braunschweig-Norris. The City of Ames appeared as an intervenor in this matter, represented by Acting City Attorney Judy Parks. The Court, having considered the oral arguments presented by the parties, the record, and the applicable case law, hereby finds and orders the following.

FACTS

The petitioner in this matter is the Wal-Mart Super Center located at 234 South Duff Avenue, Ames, Iowa. On January 1, 2011, the City of Ames Board of Review assessed the property herein at a value of \$20,300,000 per Iowa Code chapter 441.¹ The petitioner protested this assessment with the Board of Review, claiming the assessment was inequitable and for more than the value authorized by law under section 441.37(1)(b). The Board of Review denied the

¹ \$6,880,000 in land value, \$13,420,000 in improvement value.

protest, and the petitioner subsequently appealed to PAAB via Iowa Code § 441.38 and Chapter 17A.19.

PAAB held the contested case hearing in this matter on April 25, 2012, and entered an order on June 22, 2012, in petitioner's favor. After reviewing two different appraisal reports, one by Patrick Schulte for the Board of Review and another by Dane Anderson for Wal-Mart, PAAB concluded that the property was over-assessed in January of 2011. PAAB held that the correct assessment as of that date was \$19,000,000—not \$20,300,000. PAAB rejected Anderson's appraisal value of \$10,800,000, adopting Schulte's cost-approach value of \$19,000,000. The petitioner then filed this petition for judicial review with this Court, pursuant to chapter 17A.19, and the City of Ames Board of Review intervened.

CONCLUSIONS OF LAW

I. Judicial Review of Agency Decision Under Chapter 17A

Under Iowa Code § 17A.19(10), the district court reviews agency decisions for errors of law, errors in decision-making, or conclusions unsupported by substantial evidence. The court exercises statutory appellate jurisdiction, not original jurisdiction. *Iowa Public Service Co. v. Iowa State Commerce Comm'n*, 263 N.W.2d 766, 769 (Iowa 1978). A court must grant relief from agency actions where substantial rights of those seeking review have been prejudiced by “an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency” or by “an irrational, illogical, or wholly unjustifiable interpretation of a provision of law.” Iowa Code § 17A.19(10)(c) & (l), *et seq.* (the petitioner herein seeks judicial review under Iowa Code §§ 17A.19(c), (i), (j), (l), (m), & (n)).

For the purposes of judicial review, substantial evidence is defined as evidence which “would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from . . . that fact are understood to be serious and of great importance.” Iowa Code § 17A.19(10)(f)(1) (2009). The question before the court “is not whether the evidence supports a different finding than the finding made by the [agency], but whether the evidence ‘supports the findings actually made.’” *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (quoting *St. Luke’s Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000)). This Court may reverse PAAB’s holding only if it determines PAAB’s application of law to fact was “irrational, illogical, or wholly unjustifiable.” *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 331 (Iowa 2005).

Judicial review of agency action is at law and not de novo. *Terwilliger v. Snap-on Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995). “Weight of evidence remains within the agency’s exclusive domain.” *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993). Public policy demands that final agency decisions be left undisturbed when they are based on accurate application of legal principles and when they are made within the scope of the expertise assigned to that particular agency. *Office of Consumer Advocate v. Utilities Bd.*, 449 N.W.2d 383, 385 (Iowa 1989). However, deference to an agency’s decision is not unqualified. *Woodbury County v. Iowa Civil Rights Comm’n*, 335 N.W.2d 161, 164 (Iowa 1983).

II. Judicial Review of PAAB’s Order Under Chapter 441

Once PAAB has made a decision regarding the taxpayer’s assessment protest, the taxpayer may appeal to the district court. Iowa Code § 441.38. The district court then hears the case in equity, limited to review of the issues presented to PAAB for correction of errors at law. Iowa Code § 441.39. The appealing taxpayer bears the burden of proving—by a preponderance

of evidence—that at least one statutory ground for protest exists. *Compiano v. Bd. of Review of Polk Cnty*, 771 N.W.2d 392, 396 (Iowa 2007).

If the taxpayer offers “competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor,” the burden will shift to the Board to prove that their assessment is correct. Iowa Code § 441.21(3). In the matter at hand, the petitioner did not present such evidence; therefore, the burden of proof has not shifted, and remains with the petitioner. The law places makes no presumption as to the correctness of the value assessment, but the burden of proof—remaining with the petitioner—is a heavy one. *James Black Dry Goods Co. v. Bd. of Review for City of Waterloo*, 151 N.W.2d 534, 538 (1967).

When the burden remains with the taxpayer on judicial review, it should be noted that this burden is “not met merely by showing a difference of opinion between his witnesses and the assessor, unless it is manifest that the assessment is grossly excessive and is a result of the exercise of the will and not of the judgment.” *Union Cnty. Bd. of Review v. Hotel Inv. Co.*, 92 N.W.2d 397, 400 (Iowa 1958). The Iowa Supreme Court has noted that unless an assessment is “arbitrary or capricious or so wholly out of line with actual values as to give rise to the inference that [the assessor] has not properly discharged his duty,” the valuation should be upheld. *In re Appeal of Dubuque-Wisc. Bridge Co.*, 25 N.W.2d 327, 328 (Iowa 1946). No new ground may be pleaded in addition to that set out in the appeal to PAAB. Iowa Code § 441.38. Further, no new evidence may be introduced to sustain this appeal. *Id.*

On judicial review, this district court has no original jurisdiction to make findings of fact or declarations of the party’s rights. See *Taylor v. Iowa Dept. of Job Service*, 362 N.W.2d 534, 537 (Iowa 1985). Therefore, when an agency’s ruling does not clearly disclose a “sound factual

and legal basis for its decision,” it is typically within the district court’s ability to remand the case back to the agency for further specific findings. *Id.*; see also *Loeb v. Emp’t Appeal Bd.*, 530 N.W.2d 450, 452 (Iowa 1995) (concluding that if “the administrative decision was based on error, the district court should . . . remand the case to the agency for redetermination in accordance with the proper rule of law.”) However, in considering an appeal from PAAB that fixed the amount of an assessment on property, the district court may *only* “increase, decrease, or affirm the amount of the assessment appealed from.” Iowa Code § 441.43. Therefore, this Court may not remand the decision back to the PAAB, but instead must rule to either increase, decrease, or affirm the appraisal.

III. Actual, Assessed, and Taxable Value

All property subject to taxation in the state of Iowa shall be assessed—for tax purposes—as of January 1 of each year under the guidance of Iowa Code § 441.21. See Iowa Code § 428.4. The Code requires that property be assessed at its “actual” or “fair market value.” See Iowa Code §§ 441.21(1)(a) & (1)(b). In making a proper determination of market value, “sales prices of the property *or comparable property* in normal transactions reflecting market value, and the probably availability or unavailability of persons interested in purchasing the property, shall be taken into consideration.” Iowa Code § 441.21(1)(b)(1) (emphasis added). In determining such value, an assessor must “classify and value property according to its present use and not according to its highest and best use.” IOWA ADMIN. CODE r. 701-71.1(1).

The Iowa Legislature has expressed strong preference for valuations of property based upon comparable sales. IOWA ADMIN. CODE r. 701-71.5 (requiring county assessor to use comparable sales to determine the actual value of commercial real estate). This requires that the comparable sales used are adjusted in consideration of the relative nature and condition of the

assessed property. *Homemakers Plaza, Inc. v. Polk Cnty. Bd. of Review*, 828 N.W.2d 326 (Iowa Ct. App. 2013). That said, the law recognizes that “in the event market value of the property being assessed cannot be readily established [through comparable sales], then the assessor may determine the value of the property using the other uniform and recognized appraisal methods.” Iowa Code § 441.21(2). This includes both the cost and income approaches employed by both party’s assessors. *Id*; see also *Bartlett & Co. Grain b. Bd. of Review of City of Sioux City*, 253 N.W.2d 86, 87-88 (Iowa 1977).

When an assessor is valuing property, they may not consider the property’s special value or use to the present owner, nor may they consider the goodwill or value of the business using the property. Iowa Code § 441.21(2). In the case at hand, this means that neither assessor may give the property special value because it is owned and operated by Wal-Mart; however, the assessor may value the property as a going concern (I.E. according to its present use, and that it is reasonably being occupied in a like marketplace). IOWA ADMIN. CODE r. 701-71.1(1); see also *Soifer v. Floyd Cnty Bd. of Review*, 759 N.W.2d 775, 788 (Iowa 2009).

ANALYSIS: APPLICATION OF LAW TO FACT

The petitioner in the present matter argues that the property in question was assessed for a higher value than authorized by law. To prevail on such a claim, the petitioner must show two things: first, the record of proceeding must show the property was actually over-assessed; and, second, they must show what the fair market value of the property should be. *Heritage Cablevision v. Bd. of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). Here, PAAB made a finding that the property was in fact over-assessed, and then made “its independent determination of the value based on all the evidence.” *Compiano v. Polk Cnty Bd. of Review*, 771 N.W.2d 392, 396 (Iowa 2009).

The property was clearly over-assessed in January of 2011; that fact has been established. The petitioner's problem, however, is that it has not met their burden to prove what the actual fair market value should be. Instead, the Board's assessor Schulte proved to PAAB that the actual fair market value as of January 1, 2011, was \$19,000,000. Given the evidence and reasoning that Schulte provided to support this conclusion, combined with the assessments from years prior that were at or around the same figure, this Court does not find the assessment to be "arbitrary or capricious or so wholly out of line with actual values." *Dubuque-Wisc. Bridge Co.*, 25 N.W.2d at 328. Therefore, this valuation should be upheld based on the following reasoning.

Both assessors in this matter completed a comparable sales approach analysis. They both located sales, applied necessary adjustments, and completed a value analysis under such approach. Ultimately PAAB concluded that Wal-Mart's assessor was wholly unreliable in each of his approaches as Anderson did not value the property as a going concern and gave a three year old "big box" retail building 77 percent depreciation. See the Record of Agency Proceeding, Agency Order, p. 465. PAAB did not find Anderson's comparable sales approach accurate, as he valued the sales as secondary tenants, with a limited number of buyers because of restrictions the petitioner places on sales. See Record of Agency Proceeding, Order, p. 465. Of Anderson's appraisal's, PAAB held "We find the value of the subject property must consider the property as a going concern. By failing to consider this, the property is undervalued and fails to capture the market value as considered by the Code." *Id.* at 463.

Moreover, PAAB agreed with Schulte's conclusion that neither cost approach represents reliable appraisals of the property's value. *Id.* Schulte testified that in his opinion the comparable sales approach was not an accurate appraisal method for this particular property,

given its age, size, and location. See the Record of Agency Proceeding, Transcript of Agency Hearing, p. 523.

This Court finds PAAB's conclusion—that the cost approach was not a readily available method in this valuation—is supported by sound evidence and reasoning. Part of that support comes from Schulte's conclusion that, with the age of the building, comparable sales do not exist in this marketplace. Additional support comes from his analysis of why the cost approach is the most sound, and why Anderson's entire appraisal is wholly unreliable.

When asked why he even completed a comparable sales approach if it is not reliable, Schulte testified that he would not have included the comparable sales valuation he completed if the report was not for an assessment appeal. Record of Agency Proceeding, Transcript of Agency Hearing, p. 535. Schulte noted that, because the property in question, is in a good location, and is only three years old, reliably comparable sales simply do not exist. *Id.* at 537-38.² This very reason is also why Schulte dismissed Anderson's 77 percent depreciation; Wal-Mart would not realistically have invested into building a brand new superstore knowing that just two years later it would be nearly 80 percent obsolete.

The cost approach is an estimate of what it would cost to build a brand new property similar to the one at hand, minus any depreciation of the standing property. In Schulte's cost approach, he first estimated the value of the land upon which the property sits. See Record of Agency Proceeding, Schulte's Final Report, starting at p. 395. In order to do this, Schulte compiled 6 comparable land sales (different from the 4 comparable sales listed above). After making proper adjustments to the comparable land sales, Schulte then calculated the cost of

² There are additional factors in the record which support Schulte's conclusion that neither his, nor Anderson's comparable sales are reliable. However, this Court does not need to delve into a discussion of each factor; rather, what is important is to note that substantial evidence exists in the record to uphold PAAB's conclusion that comparable sales were not available.

improvements to the building based on cost information provided by Wal-Mart. *Id.* Because this was a brand new, functional big box store, Schulte stated that he deducted no functional obsolescence from its value. He included 10 percent external obsolescence, from a combination of the poor economic condition as well as the large size of big box stores generally.

Schulte noted that standard appraisal methods estimate between 20 and 30 percent external obsolescence in 10 to 30 year old buildings; because this property is only 3 years old, given the above listed factors, Schulte gave it external obsolescence of 10 percent (which this Court finds to be, if anything, generous to Wal-Mart). Schulte's final, reconciled value under the cost approach was \$19,300,000. See Record of Agency Proceeding, Schulte's Final Report, p. 395.

Because it had the most quality, reliable inputs, Schulte gave primary consideration to his cost approach—and secondary consideration to both the comparable sales and the income approach—in reaching a final reconciled appraisal of \$19,000,000 for the property in question. See Record of Agency Proceeding, Schulte's Final Report, p. 408. This valuation is, indeed, less than the \$20,300,000 original value given to the property by the City of Ames Board of Review on January 1, 2011. Therefore, PAAB agreed with Wal-Mart that the property was over-valued; but, in return found that the Board, and not Wal-Mart, had proven the proper value.

This Court, in reviewing the entire record, finds substantial evidence and support for the agency's determination of value, and finds no error of law in PAAB's ultimate conclusion. PAAB's final adopted assessment value is not "grossly excessive," (see *Union Cnty. Bd. of Review*, 92 N.W.2d at 328) nor is it wholly out of line with actual fair market value. The record made clear that Schulte properly discharged his duty. Therefore, PAAB's determination of value at \$19,000,000 shall be undisturbed by this Court.

IT IS THEREFORE THE ORDER OF THE COURT that upon judicial review the Property Assessment Appeal Board's decision shall be AFFIRMED.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
CVCV047670 WAL-MART VS IOWA PROPERTY ASSESSMENT APPEAL
BOARD

So Ordered

/S/ Timothy J. Finn