

IN THE IOWA DISTRICT COURT IN AND FOR DALLAS COUNTY

<p>DALLAS COUNTY BOARD OF REVIEW,</p> <p>Plaintiff-Appellant,</p> <p>vs.</p> <p>STATE OF IOWA PROPERTY ASSESSMENT APPEAL BOARD,</p> <p>Defendant-Appellee.</p>	<p>Case No. CV 12-37885</p> <p>RULING</p> <p>FILED DALLAS COUNTY IOWA 2013 JUL 15 AM 10:24 CLERK, DISTRICT COURT</p>
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The Dallas County Board of Review has appealed from an order entered by the State of Iowa Property Assessment Appeal Board on September 14, 2012, reducing the assessment of real estate owned by Westown Equity, LLC. The Court hereby enters its ruling affirming the PAAB order.

I.

COURSE OF PROCEEDINGS

This appeal involves a commercial office building located at 6000 Westown Parkway, West Des Moines. The Dallas County Assessor determined the fair market value of this property was \$14,912,930 as of January 1, 2011. The property owner, Westown Equities, LLC, protested

the assessment to the Dallas County Board of Review.¹ On June 13, 2011, the Board of Review notified the property owner that the original assessed value would not be changed.²

Westown Equity appealed to the Iowa Property Assessment Appeal Board on July 1, 2011.³ An evidentiary hearing was held on July 12, 2012.⁴ By order entered on September 14, 2012, PAAB modified the assessment downward to \$11,500,000.⁵ The Board of Review filed a notice of appeal from the PAAB order on October 1, 2012.⁶ The original PAAB record was certified and filed, both parties submitted briefs, and oral argument was held on June 4, 2013.

¹ PAAB Rec. pg. 3.

² PAAB Rec. pg. 4.

³ PAAB Rec. pgs. 1-2.

⁴ PAAB Rec. pg. 554.

⁵ PAAB Rec. pgs. 541-553.

⁶ The notice of appeal originally designated Westown Equity, LLC as the appellee. The notice of appeal was, however, served upon PAAB by certified mail. PAAB and Westown Equity moved to dismiss the appeal claiming noncompliance with Iowa Code section 17A.19(4), requiring an appellant to designate the agency as the respondent in an administrative appeal proceeding. Judge Brad McCall denied this motion by ruling filed on November 27, 2012. The question raised by the motion to dismiss appears to have been answered as anticipated by Judge McCall and consistent with his ruling denying the motion to dismiss. *Cooksey v. Cargill Meat Solutions Corporation*, 831 N.W.2d 94 (Iowa 2013). Judge McCall did require the case to be re-captioned consistent with chapter 17A.

II.

STANDARD OF REVIEW

Judicial review from the PAAB decision is governed by Iowa Code chapter 17A. Iowa Code section 441.38B (2013). Unlike an appeal from a local board of review, an appeal from a PAAB decision is “limited to the correction of errors at law.” Iowa Code section 441.39 (2013).

The parties agree that PAAB is not vested with discretion to interpret the statutes governing property tax assessments. The Board’s primary contention is that PAAB’s decision was unreasonable, arbitrary or capricious, and was not supported by substantial evidence. Iowa Code sections 17A.19(8)(n), (10)(f) (2013). In considering an appeal on these grounds, the determining factor is not whether the evidence would have supported 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).

III.

SUMMARY OF FACTS

This case involves the property tax assessment of a commercial office building located at 6000 Westown Parkway, West Des Moines. Westown Equity, LLC purchased this property in April 2010 for

\$15,500,000. As of that date, the property was assessed at \$14,912,930, and that was the assessed value as determined by the assessor effective January 1, 2011.

At the time of the sale, the building was occupied by two tenants with long-term leases, William Penn University and American Equity Investment Life Insurance Company. American Equity occupied approximately 77% of the gross building area under a 12-year triple net lease. William Penn occupied the remaining space under a 10-year triple net lease. Both lease terms commenced in 2009. Westown Equity's purchase in April 2010 included the lessor's interest in these two long-term leases.

At the PAAB hearing, two witnesses testified on behalf of Westown Equity—Thomas Knapp and Ted Frandson. Knapp testified that, in his opinion, Westown Equity would not have purchased the building had it not “been full” and likely would not have purchased it if the leases had included “more typical market terms.”⁷ The leases were “above average” both in terms of the quality of the tenants and the lease terms.⁸ In the area of this property, vacancy rates for comparable commercial

⁷ PAAB Rec. pgs. 560, 569.

⁸ PAAB Rec. pg. 568.

office buildings approximate 20%.⁹ This building was 100% occupied by strong tenants with favorable lease terms. Knapp estimated the market value of the fee interest in this property as of the relevant date at \$9 million.¹⁰

Frandsen testified "that the leases in place of the subject generated value over and above what the fee simple interest of the subject was. . . . In this case we have at or above market rent with a typical longer market term to a quality tenant and that is generating value over and above what the (unintelligible word) would be."¹¹ In Frandsen's view, the most important factor in assessing the effect of the leases on the 2010 purchase price was the quality of the tenants. The actual rent contracted was within normal range, though on the high side of that range.¹² Frandsen's opinion, based primarily upon an income capitalization methodology, was that the market value of the property was \$11,500,000 as of the relevant date.¹³ His testimony was consistent with an earlier appraisal he had done when Westown purchased the property.¹⁴

⁹ PAAB Rec. pg. 572.

¹⁰ PAAB Rec. pg. 577.

¹¹ PAAB Rec. pg. 600.

¹² PAAB Rec. pgs. 618-619.

¹³ PAAB Rec. pg. 612.

¹⁴ PAAB Rec. pg. 613.

Rich Hughes, testifying for the Board, opined that the value of the leasehold interests was approximately \$459,000.¹⁵ The Board thus asserted that the 2010 sale should be discounted by only this amount in arriving at market value for property tax purposes.

In its order, PAAB reviewed this appraisal testimony in some detail and found Mr. Frandson's testimony to be the most credible.¹⁶ The testimony of all three expert witnesses focused upon the extent to which the April 2010 sales price was affected by the two existing leases.

IV.

DISCUSSION

The fighting issue in this case is whether the evidence justified PAAB's conclusion that the April 2010 sale exceeded the fair market

¹⁵ PAAB Rec. pgs. 638-639.

¹⁶ In its ruling, PAAB stated that "Hughes appeared to be acting deceitful (sic) by not testifying on direct examination that he was involved with the assessment of the subject property." PAAB Rec. pg. 549. He testified on direct that after retiring from Principal Financial Group he performs appraisals for and consults with "appraisers, assessors, organizations." PAAB Rec. pg. 636. He answered questions he was asked. It is difficult to ascertain from this record how the PAAB concluded he was "deceitful". More troubling to me was Knapp's testimony, elicited on cross-examination, that he was being paid on a contingent fee basis. PAAB Rec. pgs. 578-579. Though Iowa apparently does not, some states prohibit such testimony by statute, ethical rule or common law. See e.g. *City and County of Denver v. Board of Assessment Appeals*, 947 P.2d 1373 (Col. 1997); *Harris County Appraisal District v. Houston Laureate Associates Ltd.*, 329 S.W.3d 52 (Tx.App. 2010). Nonetheless, this issue was not raised and PAAB's determination of credibility fell within its discretion.

value of the property, as defined by statute, because of the two long-term leases.

For property tax purposes, real estate is to be valued "at its actual value." Actual value is defined as "fair and reasonable market value." "Market value" is in turn 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." Iowa Code section 441.21 (2013).

Property subject to a lease is "taxed as a whole and measured by the value of its fee." *Soifer v. Floyd County Bd. of Rev.*, 759 N.W.2d 775, 779 (Iowa 2009); *Merle Hay Mall v. City of Des Moines Board of Review*, 564 N.W.2d 419, 423 (Iowa 1997). Although production and earning capacity of property may be considered in determining fair market value, this is different than actual income generated from current use of the property. *Merle Hay Mall*, 564 N.W.2d 423. Just as weaker-than-market leases were held not to require a discounted assessment in *Merle Hay Mall*, stronger-than-market leases do not require an enhanced assessment here.

The testimony at the hearing, and in particular the testimony accepted by PAAB as the most credible, established the April 2010 purchase price was substantially enhanced due to the existence of the long-term leases. In determining fair-market value of the fee simple interest in the real estate, PAAB was well within its discretion in determining the extent to which those leases enhanced fair market value of the fee simple interest.

PAAB did not abuse its discretion, act arbitrarily or capriciously, or render a decision contrary to substantial evidence in modifying the assessment to \$11,500,000 as of January 1, 2011.

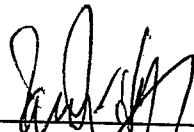
V.

RULING

The order of the State of Iowa Property Assessment Appeal Board dated September 14, 2012, is affirmed.

Costs of this proceeding are assessed to Plaintiff-Appellant, Dallas County Board of Review.

Dated July 12, 2013.



Randy Hefner
Judge, Fifth Judicial District of Iowa

cc : ATPL
ATDF

Copies to: