

IOWA DISTRICT COURT IN AND FOR GUTHRIE COUNTY

<p>GUTHRIE COUNTY BOARD OF REVIEW Petitioner</p> <p>vs.</p> <p>IOWA PROPERTY ASSESSMENT APPEAL BOARD CARE INITIATIVES</p> <p>Respondent</p>	<p>05391 CVCV082101</p> <p>ORDER</p> <p>2013 AUG 21 AM 9:58 CLERK OF DISTRICT COURT GUTHRIE COUNTY IOWA</p>
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BE IT REMEMBERED, the above matter came on for a telephone conference hearing before the undersigned, Judge of the Fifth Judicial District of Iowa, on the 12th day of August, 2013 on the appeal by the Guthrie County Board of Review ("Board of Review") from a ruling of the Property Assessment Appeal Board. The Petitioner appeared by its attorney, Brett Ryan, the Iowa Property Assessment Appeal Board ("PAAB") appeared by its attorney, Jessica Braunschweig-Norris, and Care Initiatives appeared by its attorney, Deborah M. Tharnish. The Court has fully reviewed the court file, including the record and transcript of the proceedings before the PAAB, and considered the arguments of counsel and enters the following Ruling.

This is an appeal from a decision by the PAAB that modified the assessment of Care Initiatives' property located in Guthrie County, Iowa by changing its classification to residential. At issue is real estate located in Panora, Iowa, operated by Care Initiatives as the Panora Nursing and Rehab Center and Assisted Living Facility. Care Initiatives initially sought review before the Board of Review, seeking to have the property reclassified as residential. The Board of Review denied the petition. Care Initiatives appealed that decision to the PAAB.

In ruling on the matter before it the PAAB was faced with a very limited issue. The Iowa Administrative Regulations provide that:

"regardless of the number of separate living quarters or any commercial use of the property . . . land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 42.33(1A), shall be classified as residential real estate."

The parties before the PAAB stipulated that Care Initiatives was a 501(c)(3) organization, and that the income it derived from the property was not taxed as "unrelated business income" under Iowa Code

section 42.33(1A). Accordingly, the only issue the PAAB had to decide was whether Care Initiative's land and buildings were "used primarily for human habitation".

After receiving evidence the PAAB rejected the arguments made by the Board of Review and concluded that the facility was "used primarily for human habitation". Accordingly, the PAAB directed that the property be reclassified as residential real estate. Petitioner appeals that determination.

In reviewing agency decisions, the district court functions in an appellate capacity, reviewing the agency decision to correct errors of law. Iowa Code §17A.19(8)(f). The record before the agency must be reviewed as a whole to determine whether there is substantial evidence to support the agency's action. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 627 (Iowa 2000) "Substantial evidence" means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code §17A.19(10)(f)(1) The findings of the agency must be upheld when there is a conflict in the evidence or when reasonable minds could differ regarding the inference to be drawn from certain evidence. *Id.*

Each party presented expert testimony before the PAAB. The Board of Review presented the testimony of appraiser Robert Ehlers. After inspecting the property Ehlers prepared a report analyzing the property from the standpoint of both its use and its income. In the use analysis, Ehlers determined that only 44.36% of the property was used for human habitation, with the balance of the property used for the care and treatment of the residents, and not for human habitation. In making this calculation, Ehlers, though acknowledging that eating is a necessary activity of human life, excluded the kitchen and dining room from the area he deemed used for human habitation. He also excluded all of the common hallways used by the residents to move about within the facility.

In his income analysis, which Ehlers undertook to determine the highest and best use for the property (an appraisal theory), Ehlers concluded that the rental of the bedroom and apartments within the facility at the going market rate would generate only about \$308,000 annually. Since the facility was actually generating more than \$3,000,000 in annual gross revenues, Ehlers concluded that the primary function of the facility was to provide skilled nursing and assisted living services, not to provide for human habitation.

Care Initiatives presented the testimony of appraiser Ted Frandson. He concluded that the portion of the facility used for human habitation makes up 83.5% of the total area of the facility. In his analysis Frandson specifically included areas Ehlers excluded, including the kitchen and common dining areas, the common baths, the common activity rooms and the hallways. Frandson testified that in his opinion an income analysis similar to that undertaken by Ehlers is of no benefit in accurately calculating the use of the facility.

Frandson's testimony as to the use of the facility was corroborated by one of the executives of Care Initiatives, who estimated that approximately 90% of the residents at the facility live the remainder of their life at the facility.

In comparing the testimony offered by each of the experts the PAAB noted that some of the data relied upon by Ehlers was over 20 years old. The PAAB also commented on Ehler's evasiveness and refusal to answer certain questions put to him. The PAAB specifically concluded that Ehlers was not credible.

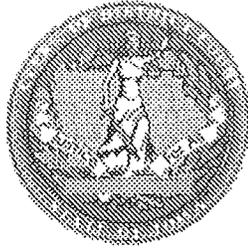
As noted by the PAAB in its brief, the decision of the PAAB is supported by case law. Evangelical Lutheran Good Samaritan Society v. Board of Review of City of Des Moines, 200 N.W.2d 509 (Iowa 1972) In Evangelical Lutheran the Iowa Court of Appeals considered a similar factual situation, and reached the same conclusion regarding the human habitation of a skilled nursing facility located in Red Oak, Iowa.

Based upon a complete review of the record before the PAAB, this Court finds that substantial evidence supports the conclusion that the Care Initiatives facility located in Panora is primarily used for human habitation. Accordingly, the decision of the PAAB must be affirmed.

IT IS THEREFORE ORDERED that decision of the Iowa Property Assessment Appeal Board is hereby affirmed. The appeal by the Guthrie County Board of Review is hereby dismissed. Costs are assessed against the Guthrie County Board of Review.

IT IS SO ORDERED this 20th day of August, 2013

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State of Iowa Courts

Case Number
CVCV082101

Case Title
GUTHRIE COUNTY BOARD OF REVIEW VS IOWA
PROPERTY ASSESSMENT

Type:

OTHER ORDER

So Ordered

A handwritten signature in black ink, appearing to read "Brad McCall".

Brad McCall, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2013-08-20 10:57:41

Ryan
BRAUNSCHEWEI NORRIS
Tharnish