

IN THE IOWA DISTRICT COURT OF DICKINSON COUNTY

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| MAU FAMILY LIMITED PARTNERSHIP, Petitioner, v. PROPERTY ASSESSMENT APPEAL BOARD Respondent. | NO. CVCV027999 RULING ON PETITION FOR JUDICIAL REVIEW |
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On May 8, 2017, Petitioner Mau Family Limited Partnership filed a Petition for Judicial Review requesting judicial review of the March 20, 2017, Findings of Fact, Conclusions of Law and Order (the Order) of Respondent Property Assessment Appeal Board. A briefing schedule was established following which the court took the matter under submission for ruling on February 23, 2018.

After considering the parties' written arguments, after reviewing the administrative record, and after reviewing the applicable law, the court enters the following ruling.

ANALYSIS

A) Applicable Review Standards

On judicial review, this court exercises appellate jurisdiction. Christiansen v. Iowa Bd. of Educ. Exam'r, 831 N.W.2d 179, 186 (Iowa 2013). "[N]ew grounds in addition to those set out in the appeal to the [PAAB] shall not be pleaded." Iowa Code § 441.38(1) (2015). "[A]dditional evidence to sustain those grounds set out in the appeal to the [PAAB] may not be introduced in an appeal to the district court." Iowa Code § 441.38(1).

The reviewing court may affirm the agency action, remand to the agency for further proceedings, reverse, modify, or grant other appropriate relief. Iowa Code § 17A.19(10).

This court reviews the PAAB's findings of fact to determine if they are supported by substantial evidence; the court does not re-weigh the evidence to make its own findings. See Village Green Co-Op, Inc. v. Iowa Prop. Assessment Appeal Bd., 888 N.W.2d 683, 2016 WL 5930958 *3 (Iowa Ct. App. 2016); McHose v. Prop. Assessment Appeal Bd., 870 N.W.2d 688, 2015 WL 4488252 *3 (Iowa Ct. App. 2015). "Substantial evidence" is defined as "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). "Just because the interpretation of the evidence is open to a fair difference of opinion does not mean the [agency's] decision is not supported by substantial evidence. An appellate court should not consider evidence insubstantial merely because the court may draw different conclusions from the record." Arndt v. City of Le Claire, 728 N.W.2d 389, 393 (Iowa 2007).

The level of deference the reviewing court affords an agency's interpretation of law depends on whether the legislature has clearly vested the agency with the discretion to interpret that particular provision. Democko v. Iowa Dep't of Natural Resources, 840 N.W.2d 281, 287 (Iowa 2013). Where the legislature clearly vested the agency with authority to interpret the provision at issue, the court defers to the agency and only +reverses for an interpretation that is "irrational, illogical or wholly unjustifiable." Iowa Code § 17A.19(10)(l). If the legislature did not clearly vest the

agency with authority to interpret the particular statute, then this court reviews the agency action for correction of errors at law. Iowa Code § 17A.19(10)(c). A reviewing court reviews a decision of the PAAB for the correction of errors at law. Naumann v. Property Assessment Appeal Board, 791 NW2d 258, 260 (Iowa 2010) (finding Iowa Code Section 421.1A does not give explicit authority to the PAAB to interpret Iowa Code Section 441.21(1)(d)); see also Winslow v. Warren Cty. Bd. of Review, 810 N.W.2d 533, 2012 WL 170742 *3 (Iowa Ct. App. 2012).

FINDINGS OF FACT

Mau Family Limited Partnership (Mau) owns four (4) contiguous commercial parcels consisting of 1.453 acres of land with 256 feet of shoreline (the Property) near Highway 71 on East Okoboji Lake (East Lake) in Okoboji, Iowa. Immediately adjacent to the Property and under Highway 71 is the only route for boat traffic to pass from East Lake to West Okoboji Lake (West Lake).

During 2015, the Dickinson County Assessor (the Assessor) separately assessed the fair market value of each of the four (4) parcels comprising the Property. Mau disputes the values determined by the Assessor. The following table sets forth the number designation for each parcel, a brief description of the different uses of each parcel, and a comparison of the Assessor's value for each parcel, as well as the value

Mau claims each parcel should be assessed:

| Parcel# ASSESSOR | Address | Total Assessed Value (PAAB) | Land Value (PAAB) | Building Value (PAAB) | Contention of Correct Total Value (MAU) |
|--|-----------------|--------------------------------------|----------------------|-----------------------------|---|
| 07-20-304-001 ⁵ Parking | 1304 Hwy 71 S | \$ 131,000 | \$ 120,500 | \$ 10,500 | \$ 101,500 |
| 07-20-304-005 ⁶ (landlocked land – no direct access to road – w/ sm. structures) | 1509 Gordon Dr. | \$ 475,500 | \$ 472,700 | \$ 2,800 | \$ 368,400 |
| 07-20-304-006 ⁷ (Boat Bldg.) | 1507 Gordon Dr. | \$ 691,200 | \$ 334,400 | \$356,800 | \$ 535,600 |
| 07-20-304-007 ⁸ (Restaurant) | 1404 Hwy 71 S | \$ 896,300 | \$ 772,500 | \$123,800 | \$ 694,500 |
| Totals: | | \$2,194,000 | \$1,700,100 | \$493,900 | \$1,700,000 |

Mau timely appealed the assessment to the Dickinson County Board of Review (DCBR).

The DCBR affirmed the assessment. Mau then appealed to Respondent Property Assessment Appeal Board (the PAAB). Following a hearing held on December 6, 2016, the PAAB issued the Order affirming the DCBR in which it made the following findings of fact relevant to this judicial review action:

1. Parcels with frontage on West Lake tend to sell for far more per front foot than those with frontage on East Lake, and parcels on the lower (south) end of East Lake tend to sell for more than those on the upper portions.

2. Based on information contained in Mau's Exhibit 12, the following table provides assessment details of the East Lake shoreline commercial parcels including Parcels 005, 006, and 007 at issue in the present case. (Court's Note: EFF stands for "effective front foot"):

| Parcel # | Owner | Acres | EFF | Unit Price | Land Total |
|---------------|---------------------|-------|--------|------------|--------------|
| 07-20-386-017 | Triggs | 0.552 | 102.96 | \$5K/EFF | \$ 257,400 |
| 07-20-304-005 | Mau Family (SP) | 0.269 | 78.78 | \$12K/EFF | \$ 472,700 |
| 07-20-304-006 | Mau Family (SP) | 0.234 | 55.73 | \$12K/EFF | \$ 334,380 |
| 07-20-304-007 | Mau Family (SP) | 0.489 | 128.75 | \$12K/EFF | \$ 772,500 |
| 07-29-131-020 | Triggs | 1.580 | 380.00 | \$1M/Ac | \$ 558,000 |
| 07-16-326-035 | Parks Marina | 3.864 | 441.00 | \$1.25M/Ac | \$ 983,000 |
| 07-20-326-012 | Mau Family | 1.020 | 450.00 | \$2.5M/Ac | \$ 1,255,000 |
| 07-20-378-009 | Fidelity Properties | 1.380 | 300.00 | \$2.5M/Ac | \$ 1,345,000 |
| 07-16-200-006 | Parks Marina | 10.62 | 404.00 | Blended | \$ 1,174,175 |

3. No recent sales were listed for any of the East Lake parcels mentioned in 2 nor was any evidence concerning the location or use of the parcels provided.

3. Mau claimed that limited parking on the parcels, as well as riparian limitations created by dock restrictions imposed by the Iowa DNR, which reduce the value of the property should have been considered by the Assessor. Specifically, in regard to the riparian limitations, Mau contended that an 87% adjust should have been applied to the assessed value of the three (3) lakeshore parcels.

4. Mau offered two independent appraisals from James Vershchoor, Jr., of NAI Le Grand & Company (NAI) that were prepared for lending purposes.

5. The first of the NAI appraisals included Parcels 005, 006, and part of Parcel 001 and found a February 2, 2015, market value of \$900,000, based on demolishing current improvements, and replacing them with residential condominiums or expanding the existing restaurant, which was determined by the appraiser to be the highest and best use of the property.

6. The second of the NAI appraisals included Parcel 007 and a portion of Parcel 001 and found a February 2, 2015, market value of \$800,000, and \$975,000, if the current renovation project was completed.

7. Neither NAI appraisal opined as to the value for the individual parcels at issue.

The PAAB also reached the following conclusions of law:

1. Applying the assessment rate for another parcel is not an acceptable method for determining the proper assessment rate for the Property. (Court's note: This was stated as a finding of fact but is actually a legal conclusion).

2. The two appraisals by NAI were flawed because they (1) do not consider the value of improvements that existed as of January 1, 2015 and (2) neither appraisal states an opinion of value for each of the individual subject parcels, which must be determined to establish a claim of over-assessment.

3. No market data was provided to support Mau's proposed 87% riparian adjustment on grounds that it cannot secure sufficient dock space.

4. Mau failed to support its claim that the County Assessment was for more than the value authorized by law because the record lacks any fair market valuations for the individual subject parcels

5. Mau's inequity argument was not raised before the Board of Review, and therefore could not be considered by the PAAB.

The PAAB subsequently denied Mau's application for reconsideration, which resulted in Mau filing the judicial review action now before this court.

Having found the foregoing to be the relevant facts, the court turns now to its conclusions of law. Additional facts may be set forth below where relevant to the issues under consideration by the court.

CONCLUSIONS OF LAW

A) Whether Mau has shifted the burden of proof?

In a property tax assessment appeal, the burden of proof is initially upon the property owner challenging the valuation to demonstrate it is excessive. Iowa Code Section 441.21(3)(b). A property owner can then shift that burden during appeal proceedings by offering competent evidence by at least two (2) disinterested witnesses that the market value of the property is less than the market value determined by the assessor. Iowa Code § 441.21(3)(b). There is no presumption that the assessment at issue was correct. Compiano v. Bd. of Review of Polk Cty., 771 N.W.2d 392, 396 (Iowa 2009).

The Compiano Court defined a ‘disinterested witness’ to mean a person “who has no right, claim, title, or legal share in the cause or matter in issue, and who is lawfully competent to testify.” 771 N.W.2d at 397-98. Evidence is ‘competent’ within the meaning of Section 441.21(3)(b) when it complies “with the statutory scheme for property valuation for tax assessment purposes.” Id. at 398. If the property owner fails to shift the burden of proof to the board, the grounds for protest must be established by the property owner. Compiano, 771 N.W.2d at 397. The burden is ultimately one of persuasion and is by a preponderance of the evidence. Id. at 396.

In its brief, Mau argues that it offered competent evidence from two (2) disinterested witnesses that the market value of the Property was less than the market value determined by the Assessor, and thus Mau shifted the burden to the Assessor to show that the values she assessed for the parcels comprising the Property were correct. After reviewing the administrative record, however, the court finds and concludes there is no factual support for this contention. Rather, the record shows that the only witness who testified on behalf of Mau was clearly not a disinterested witness, and that the only evidence that could be construed as “testimony” from a disinterested witness came from the two appraisals prepared James J. Verschoor, Jr. of NAI. Therefore, in this judicial review proceeding, the burden of proof is upon Mau to show that the assessed values determined by the Assessor are excessive

B) Whether the PAAB’s conclusion that Mau failed to prove the County Assessment was excessive is supported by substantial evidence and is not based on errors of law?

The only ground for protest pled by Mau was that the Property was “assessed for more than the value authorized by law.” Iowa Code 441.37(1)(a)(1)(b) (2015). Where

the basis for a protest is that the assessed valuation is excessive, the property owner must prove (1) the assessed valuation was excessive, and (2) the correct valuation. (emphasis added). Iowa Code § 441.37(1)(a)(1)(b) (2015); Soifer v. Floyd Cty. Bd. of Review, 759 N.W.2d 775, 780 (Iowa 2009); Heritage Cablevision v. Bd. of Review of City of Mason City, 457 N.W.2d 594, 597-98 (Iowa 1990). This means that if a court finds that the property owner failed to prove the correct valuation by a preponderance of the evidence, the court can reject the protest without considering whether the property owner has demonstrated that the assessed value was excessive. Boekeloo v. Bd. of Review of City of Clinton, 529 N.W.2d 275, 280 (Iowa 1995) (concluding, after not ruling on whether county's assessment was excessive, that the property owner failed to establish the correct value of their property by competent evidence as defined in Section 441.21(3) and so did not carry their burden of proof).

Applying the foregoing legal principles to the record, the court concludes that the PAAB correctly found that Mau offered evidence regarding what it believed showed the Property was over-assessed based on the NAI appraisals, the 87% riparian adjustment, and the assessed value comparison with other commercial properties on East Lake and West Lake. The PAAB further correctly found that Mau offered evidence of what it believed to be the correct assessed value of the Property, again, based on the NAI appraisals, the riparian adjustment, and the value comparisons with other commercial properties on East Lake and West Lake.

The court further concludes, however, that the PAAB went on to correctly conclude as a matter of law that Mau failed to prove the Property was over-assessed because Mau failed to provide competent evidence of a correct valuation of the

Property. Specifically, the PAAB ruled against Mau on its over-assessment claim on the following grounds:

We find the record lacks any fair market valuations for the individual subject parcels, which must be established. For this reason, [Mau] failed to support its claim that its property is over assessed.

Based on the discussion that follows, the court concludes that substantial evidence and the law supports this conclusion.

Examining first the NAI appraisals, the court first notes that those appraisals use comparable sales, cost, and income capitalization in the two appraisals to arrive at a value for the Property, which are all recognized appraisal methods listed in Iowa Code Section 441.21(2) (2015). The court further finds, however, that the NAI appraisals do not constitute competent evidence of the correct value of the Property because they are not separate appraisals of each of the four (4) parcels comprising the property, which was the method properly used by the Assessor.

Instead, one of the NAI appraisals values approximately 2.5 of the four (4) parcels that make up the Property, while the other appraisal values approximately 1.5 of the four (4) parcels. This resulted in Mau offering only two (2) values for the four (4) parcels that make up the Property. Therefore, neither the PAAB nor this court can rely on either NAI appraisal as competent evidence to determine that the values advanced by Mau are the correct assessed values for the four (4) parcels. For this reason, the court concludes that substantial evidence supports the PAAB's legal conclusion that the NAI appraisals are not competent within the meaning of Iowa Code Section 441.21(3)(b) because they do not comply with the statutory scheme for property valuation for tax assessment purposes. Compiano, 771 N.W.2d at 398.

Secondly, the court concludes the PAAB's legal conclusion stated in its fact findings that Mau's assessment based on the other different locations on the same lake "is not an acceptable method for determining market value" (Order, pg.4) is correct as a matter of law because it is not a "uniform and recognized appraisal method" within the contemplation of Iowa Code Section 441.21(2). Using the assessed value of a nearby commercial property is not one of the named "other factors" under Iowa Code § 441.21(2). Moreover, the court has not found nor does Mau cite any Iowa statute or caselaw to support that this method falls within the catch-all "All other factors which would assist in determining the fair and reasonable market value of the property." More importantly, however, Mau failed to provide the PAAB with sufficient other information concerning the properties they were using for their comparisons that would allow the PAAB and this court to determine whether or not they were valid comparables. Riso v. Pottawattamie Bd. Of Review, 362 N.W.2d 513, 516 (Iowa 1985) (stating "other factors" assessment shall not be determined by use of only one of the permissible factors).

Finally, the PAAB concluded that a riparian adjustment of 87% was not supported by market data, and the court finds substantial evidence supports this conclusion. Mau argued before the PAAB that the riparian adjustment should apply to three (3) of the four (4) parcels comprising the Property even though their own evidence only supports that the lack of dock space affects Parcel 007 where the restaurant and store are located. There was no evidence presented or argument made that the lack of dock space has somehow affected the other business they conduct on the remaining parcels. Accordingly, there is substantial evidence supporting the PAAB's conclusion

that market data does not support a riparian adjustment to three (3) of the parcels in the Property, instead of just the parcel where the restaurant stands.

Furthermore, Mau failed to demonstrate that the extent of riparian adjustment sought was appropriate. The restaurant Mau operates on the Property is accessible by boat and car, even though car parking is limited. The 87% riparian adjustment Mau sought is based solely on dock space, and assumes that the value of the parcel where the restaurant is located is primarily based on the number of patrons who access the restaurant by boat without market data from Mau supporting this assumption. For these reasons, the court concludes that the riparian adjustment proposed is not backed by competent evidence within the meaning of Section 441.21(3)(b). Boekeloo, 529 N.W.2d at 280 (concluding that the property owner failed to establish the correct value of their property by competent evidence as defined in Section 441.21(3) and so did not carry their burden of proof).

C) Whether this court is able to consider Mau's challenge that the assessment of the Property is inequitable though that issue was raised for the first time before the PAAB?

Iowa law states that a property owner is not entitled to plead to the PAAB any grounds beyond those it set out in its protest to the local board of review. Iowa Code § 441.37A(1)(b) (2015). Iowa law further provides that a property owner is not entitled to plead to this court any grounds beyond those it set out in its protest to the PAAB. Iowa Code § 441.38(1) (2015).

Substantial evidence supports the PAAB's legal conclusion that the only ground for protest Mau raised before the DCRB was that the Property was over-assessed; there was no claim of inequitable assessment. Accordingly, this court lacks jurisdiction

pursuant to Sections 441.37A(1)(b) and 441.38(1)(b) to consider Mau's newly raised argument that the Property was assessed inequitably.

Even assuming *arguendo* that the court does have jurisdiction and that Iowa Rule of Civil Procedure 1.457 concerning amendment to conform to pleadings is consistent with Sections 441.37A(1)(b) and 441.38(1)(b), the court concludes that Mau's argument that its inequity ground was tried by consent lacks merit. Mau's argument is based on its contention that certain evidence was admitted into the record before the PAAB that was relevant to its inequitable assessment argument. However, even when parties proceed, without objection, to try an issue not presented, granting a motion to amend to conform is not appropriate where that evidence "was also admissible on a different issue that was raised by the pleadings. Dutcher v. Randall Foods, 546 N.W.2d 889, 893 (Iowa 1996). This is because a party cannot be expected to object to evidence on the basis that it goes to an issue not raised in the pleadings when the evidence is otherwise admissible on an issue properly raised. Id.

The evidence Mau now identifies as relevant to its unpled inequitable assessment claim was also relevant to its properly pled over-assessment claim. Accordingly, based on the authority just cited, the court concludes that Mau's request that it be allowed to amend its protest to assert a claim based on inequitable assessment must be denied.

ORDER

IT IS THEREFORE ORDERED AS FOLLOWS:

- 1) All of the above.

- 2) The Petition for Judicial Review filed by Petitioner Mau Family Limited Partnership on May 8, 2017, is DENIED.
- 3) The Findings of Fact, Conclusions of Law, and Order of Respondent Property Assessment Appeal Board filed on March 20, 2017 is AFFIRMED.
- 4) The costs of this action are taxed to Petitioner.
- 5) The Clerk of Court is directed to provide copies of this Ruling to attorneys of record and to the Office of the Dickinson County Assessor.

SO ORDERED



State of Iowa Courts

Type: OTHER ORDER

Case Number
CVCV027999

Case Title
MAU FAMILY LIMITED PARTNERSHIP VS PROPERTY
ASSESSMENT ET AL

So Ordered

A handwritten signature in black ink, appearing to read "David A. Lester".

David A. Lester, District Court Judge,
Third Judicial District of Iowa