

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SAFARI II, L.L.C.,

Petitioner,

vs.

**PROPERTY ASSESSMENT APPEAL
BOARD,**

Respondent.

Case No. CVCV054974

**RULING ON PETITION FOR
JUDICIAL REVIEW**

On March 30, 2018, oral argument on this Petition for Judicial Review was held. David Hellstern appeared for the Petitioner. Bradley Hopkins appeared for the Property Assessment Appeal Board (PAAB). David Hibbard appeared for the Intervenor, Polk County Board of Review. The court, having reviewed the file herein, the administrative record, and considering the arguments of counsel, enters the following ruling.

Procedural History

Petitioner Safari II, LLC (Safari) owns the property located at 6157 S.E. 14th Street, Des Moines, Iowa (parcel number 120/0784-002-000). The Polk County Assessor assessed the property at \$3,930,000.00, allocated as \$1,630,000.00 in land value and \$2,300,000.00 to improvement value, for the year 2015. Safari timely protested the assessment to the Polk County Board of Review. Safari argued the property should be valued at \$3,000,000.00. On June 15, 2015, the Board of Review took action and modified the assessment to \$3,568,500.00. Safari timely appealed to the Iowa Property Assessment Appeal Board (PAAB). PAAB held a contested case hearing on July 17, 2017. PAAB issued its final decision on September 5, 2017. Safari timely filed its Petition for Judicial Review on September 25, 2017.

Findings of Fact

The property located at 6157 S.E. 14th Street, Des Moines, Iowa is a 19.501-acre commercial property that was once a Menards store. The property was built in 1985. Safari purchased the property in 1999 for \$3,500,000.00 and converted it to multi-tenant use. The improvements include 90,000 square feet of retail space situated near the front of the site. The site also contains 40,000 square feet of unattached warehouse/storage buildings that sit behind the retail space. The site also has nearly 450,000 square feet of concrete paving, yard lights, and fencing. It is zoned C2: general retail and highway oriented commercial district. The site has approximately 660-675 front feet along S.E. 14th Street, a primary corridor on the south side of Des Moines.

There are two appraisals in the record, along with the Polk County Assessor's income analysis. The Board of Review submitted an appraisal completed by Gene F. Nelsen and Ranney Ramsey from Nelsen Appraisal Associates, Inc. (Ramsey appraisal). This appraisal arrived at an opinion of value of \$4,225,00.00. Safari submitted an appraisal completed by Patrick J. Schulte from Commercial Appraisers of Iowa, Inc. (Schulte appraisal). This appraisal arrived at an opinion of value of \$3,340,000.00. Rodney Hervey, Chief Deputy Assessor in the Polk County Assessor's Office submitted an income analysis. Hervey concluded a market value for the property of \$3,788,000.00.

PAAB, in its Findings of Fact, accurately summarized (in both words and charts) the methods used, the information relied upon, the assumptions made, and the conclusions reached by each of the appraisers including Hervey's income analysis. After thorough review of the record and each appraisal, the court finds that those summaries are accurate and they are incorporated herein as though fully set forth and made a part of

the court's findings of fact. PAAB did not give any weight to Schulte's sales comparison approach because is relied on dated and distressed sales and the comparability of the other properties was questionable. PAAB found that fair market value could not be readily established by the sales comparison approach and looked to other value indicators. PAAB also declined to give weight to Ramsey's cost approach finding it was not a reliable indicator of the property's value. PAAB then considered the income approach performed by each appraiser. PAAB found error with each appraiser on how they determined the annual income for the warehouse improvements. PAAB focused only on Schulte and Hervey's analysis because each valued the property in its entirety. PAAB found both Schulte and Hervey applied proper methodology based on their respective testimony on how their capitalization rates were derived. Finding both conclusions credible, PAAB gave them equal consideration and concluded that together they indicated the property's fair market value was \$3,568,500.00, and affirmed the Polk County Board of Review's action.

Standard of Review

The provisions of Iowa Code Chapters 17A and 441 govern this appeal. *See* IOWA CODE §§ 17A.19, 441.38, 441.38B, and 441.39 (2015). Safari bears the burden of proof in this judicial review action. IOWA CODE § 17A.19(8)(a). Safari does not set forth any standard of review or grounds under section 17A.19(10) on which it bases its petition for judicial review. Based on the claims made by Safari, the court finds that it challenges the PAAB decision under sections 17A.19(10)(f) (not support by substantial evidence); (i) (the product of reasoning that is so illogical as to render it wholly irrational); and (n) (otherwise unreasonable, arbitrary, capricious, or an abuse of discretion). The court may

affirm PAAB or remand the case for further agency action. IOWA CODE § 17A.19(10). The court shall reverse, modify, or grant other appropriate relief if it determines that substantial rights of Safari have been prejudiced. *Id.* The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006); IOWA CODE § 441.39 (court's review on appeal from PAAB is limited to the correction of errors at law). Where an agency has been "clearly vested" with a fact-finding function, the appropriate "standard of review [on appeal] depends on the aspect of the agency's decision that forms the basis of the petition for judicial review"—that is, whether it involves an issue of (1) findings of fact, (2) interpretation of law, or (3) application of law to fact. *Burton v. Hilltop Care Cntr.*, 813 N.W.2d 250, 256 (Iowa 2012).

"If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact." *Meyer*, 710 N.W.2d at 219. "[A] reviewing court can only disturb those factual findings if they are 'not supported by substantial evidence in the record before the court when that record is reviewed as a whole.'" *Burton*, 813 N.W.2d at 256 (quoting IOWA CODE § 17A.19(10) (f)). A district court's review "is limited to the findings that were actually made by the agency and not other findings that the agency could have made." *Id.* "Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. Conversely, evidence is not insubstantial merely because it would have supported contrary inferences." *Gaskey v. Iowa Dep't of Transp., Motor Vehicle Div.*, 537 N.W.2d 695, 698 (Iowa 1995). "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). “Making a determination as to whether evidence ‘trumps’ other evidence or whether one piece of evidence is ‘qualitatively weaker’ than another piece of evidence is not an assessment for the district court ... to make when it conducts a substantial evidence review of an agency decision.” *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394 (Iowa 2007) (citation omitted); *McHose v Property Assessment Appeal Bd.*, No. 14-1584, 2015 WL 4488252, *3 (Iowa Ct. App., July 22, 2015).

The Court must grant appropriate relief from agency action if such action was “[b]ased upon 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.” IOWA CODE § 17A.19(10)(c). With respect to such provisions of law, the Court is not required to defer to the agency’s interpretation. *Id.* § 17A.19(11)(b). Additionally, the Court must grant relief from agency action that is “[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law,” based upon a misapplication of law to the facts, or “[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion.” *Id.* § 17A.19(10)(l–n).

If “the claim of error lies with the ultimate conclusion reached, then the challenge is to the agency’s application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence.” *Meyer*, 710 N.W.2d at 219. In other words, the Court will only reverse the agency’s application of law to the facts if “it is ‘irrational, illogical, or wholly unjustifiable.’” *Neal*, 814 N.W.2d at 518 (quoting

Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007); *see also Burton*, 813 N.W.2d at 256 (“When the application of law to fact has been clearly vested in the discretion of an agency, a reviewing court may only disturb the agency's application of the law to the facts of the particular case if that application is ‘irrational, illogical, or wholly unjustifiable.’”).

“Agency action is considered arbitrary or capricious when the decision was made ‘without regard to the law or facts.’” *Doe v. Iowa Bd. Of Med. Exam’r*, 733 N.W.2d 705, 707 (Iowa 2007). Action is “unreasonable if the agency acted ‘in the face of evidence as to which there is no room for difference of opinion among reasonable minds ... or not based on substantial evidence.” *Id.* Essentially, the court must determine whether there is a basis in law and fact for the agency’s decision. *See Dico, Inc. v. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998).

Analysis

In Iowa, property is assessed for taxation purposes pursuant to Iowa Code section 441.21. Iowa Code sections 441.21(1)(a) and (b) require property subject to taxation to be assessed at its actual value, or fair market value. *Soifer v. Floyd County Bd. Of Review*, 759 N.W.2d 775, 778 (Iowa 2009). Market value is a defined term:

“*Market value*” is 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 § 441.21(1)(b)(1). In determining market value, “[s]ales prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration.” *Id.* The statute also provides that “abnormal

transactions not reflecting market value shall not be taken into account or shall be adjusted to eliminate the effect of factors which distort market value.” *Id.* However, when the market value cannot be readily established using comparable sales, the value can be determined by using other uniform and recognized appraisal methods. IOWA CODE § 441.21(2).

A taxpayer who is dissatisfied with an assessment may protest pursuant to Iowa Code section 441.37. If the taxpayer is not satisfied with the results of the protest to the board of review, it may appeal to PAAB under Iowa code section 441.37A, or appeal directly to district court under section 441.38. In an appeal to PAAB, the taxpayer is limited to the grounds of protest made to the board of review, but additional evidence to support those grounds may be introduced. IOWA CODE § 441.37A(1)(b). If the taxpayer appeals to PAAB and is dissatisfied with the decision of PAAB, it may appeal to the district court under section 441.38. No new grounds can be pleaded, and no new evidence to sustain those grounds may be introduced in an appeal from PAAB to district court. IOWA CODE § 441.38(1). The decision of PAAB is final agency action and the appeal to district court is for judicial review governed by Iowa Code Chapter 17A and section 441.38B.

In this case, Safari’s protest was based on the ground that the property was assessed for more than the value authorized by law. IOWA CODE § 441.37(1)(a)(1)(b). PAAB determined anew all questions arising before the board of review with no presumption that the assessed value by the board of review was correct. IOWA CODE § 441.37(3)(a). PAAB considered all of the evidence in the record, determined Safari had not shown the property was assessed for more than authorized by law, and affirmed the

board of review. The issue before this court on judicial review is whether that decision is support by substantial evidence in the record.

Safari makes two arguments in its challenge to the PAAB decision: (1) PAAB's finding that Schulte's comparable sales approach was not reliable is error; and (2) PAAB's reliance on Hervey's analysis of the income approach was error. PAAB concluded that Schulte's sales comparison analysis relied on "dated, distress sales" and the sales he found were all superior to Safari's property which made their comparability questionable. This court carefully reviewed the transcript of the hearing and Schulte's appraisal with particular attention to the sales comparison and finds the conclusion of PAAB is supported by substantial evidence in the record. The parties agree on the applicable law in this matter, so the issue is whether the record as a whole contains substantial evidence to support PAAB's findings. The issue of comparability has two components: (1) the property offered for comparison must be "comparable," and (2) the sale of the property must be a normal transaction. *Soifer v Floyd County Bd. Of Review*, 759 N.W.2d at 782. To be comparable the properties must be similar although not identical. *Id.* at 783. Whether a property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of PAAB (the fact finder). *Id.*

Safari agrees with PAAB's conclusion that Ramsey's sales comparison approach was not a reliable indicator of value of the subject property and should be rejected. Safari argues Schulte's sales comparison approach was accurate and should be relied upon. PAAB found Schulte's sales lacked sufficient comparability to determine an accurate reflection of the subject property's fair market value. Sales 1 and 2 were dated (having

sold in 2009 and 2010), and those sales along with Sale 4 were foreclosure or distressed sales. It is significant that Schulte himself noted the sales comparison approach was weakened by the lack of comparable properties in the neighborhood of the subject property. As well as by the large downward adjustments needed for comparables in superior locations. Furthermore, Schulte testified he believed the income approach was the most reliable in this case. PAAB's determination that the subject property's fair market value could not be readily established by the sales comparison approach alone is support by substantial evidence in the record.

Safari next argues PAAB erred in relying on Hervey's income approach analysis. PAAB discussed the appraisers' income approach analyses on pages 14-15 of its decision. PAAB found error with each appraiser on how they determined the annual income for the warehouse improvements. PAAB focused on Schulte and Hervey's analyses because they each valued the property in its entirety. Schulte and Hervey differed in their warehouse rent and vacancy calculations with Schulte underestimating the market rent for the warehouse portion and Hervey underestimating the vacancy, according to PAAB. However, their conclusion of effective gross income (EGI) were relatively similar with PAAB noting the difference "relatively negligible."

Safari's argument focused on what it describes as errors in how the reserves were handled and the capitalization rate applied by Hervey. Schulte included \$45,265 for tenant improvements in his reserve for replacement expenses; Hervey did not include this expense but accounted for it in the capitalization rate. Schulte included reserves for replacement of the HVAC, pavement and roof; Hervey did not included any reserves for replacement, but deducted \$77,000 from his income conclusion to account for deferred

maintenance. Based upon Schulte and Hervey's testimony, PAAB concluded that each applied proper methodology in arriving at their conclusions. PAAB found both credible and gave the two opinions equal consideration. In doing so, PAAB concluded the property's fair market value was \$3,568,500.00.

After carefully reviewing the testimony of the appraisers and their written analyses regarding the income approach, the court finds that PAAB's decision is supported by substantial evidence in the record. PAAB relied upon THE APPRAISAL OF REAL ESTATE from the Appraisal Institute as authority for its conclusions that both Schulte and Hervey applied proper methodology in their income approach analysis. Certain pages of that reference were attached to the Respondent's brief and the court has reviewed those references. Tenant improvements in some circumstances are considered above-the line expenses; however, "[m]ore often, they are treated as below-the line expenses." THE APPRAISAL OF REAL ESTATE 475. Schulte treated tenant improvements as above-the-line expenses; Hervey treated them as below-the-line expenses. Reserves for replacement "may be reflected explicitly as an expense or implicitly in the capitalization or discount rate." *Id.* at 485. Again, Schulte handled these as an expense; Hervey considered them in determining his capitalization rate.

The court finds that both Schulte and Hervey applied proper, although different, methodology in their income approach appraisals. PAAB's decision to give each equal consideration is not only supported by substantial evidence in the record but is entirely logical and rational. Further, PAAB's conclusion that the fair market value of the property is \$3,568,500.00 is not unreasonable, arbitrary, capricious, or an abuse of

discretion. The court finds that the decision of the agency should be affirmed and the petition for judicial review should be dismissed.

Order

IT IS ORDERED that the decision of the Property Assessment Appeal Board is AFFIRMED and this matter DISMISSED with costs to the Petitioner.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV054974
Case Title SAFARI II LLC VS PROPERTY ASSESSMENT APPEAL BOARD
ET AL

So Ordered

A handwritten signature in black ink that reads 'Karen A. Romano'. The signature is written in a cursive style.

Karen A. Romano, District Court Judge,
Fifth Judicial District of Iowa