

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Sears Holding Corp.
d/b/a K Mart,

Petitioner-Appellant,

v.

City of Ames Board of Review,

Respondent-Appellee.

ORDER

Docket No. 09-100-0248

Parcel No. 09-11-257-150

On April 7, 2010, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Sears Holding Corp., d/b/a K Mart (K Mart), was represented by attorney Deborah Tharnish of Davis, Brown, Koehn, Shors and Roberts, P.C., Des Moines, and submitted evidence in support of its petition. The City of Ames Board of Review designated City Attorney Douglas Marek as its legal representative and submitted evidence in support of its decision. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Richard Hermes, a tax consultant for Sears Holding Corp, represented K Mart at the Board of Review. K Mart protested to the City of Ames Board of Review regarding the assessment of the property located at 1405 Buckeye Avenue, Ames, Iowa. The 2009 commercial assessment was \$8,235,000, representing \$3,448,800 in land value and \$4,786,200 in improvement value.

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K Mart's petition was based on a single ground, that there has been a change downward in the value since the last assessment under Iowa Code sections 441.37(1) and 441.35(3). K Mart asserted the total value of the property was \$5,600,000. The Board of Review granted relief of \$296,000 reducing the total assessment to \$7,939,000. The relief was applied solely to the improvements reducing the value to \$4,490,200, with the land value remaining at \$3,448,800.

K Mart then appealed to this Board and reasserted its claim there has been a change downward in value. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we consider the claim of whether the property is assessed for more than authorized by law.

The subject site is 12.22 acres (or 532,303 square feet) according to the property-record card. The bulk of the site is improved with a one-story, big-box retail building with approximately 120,000 square feet of gross building area built in 1993. The site is further improved, according to the assessment records, with 303,600 square feet of asphalt parking. Allowing for other improvements such as drives and other outdoor display areas; and after removing the improved areas from the total site size, the remaining unimproved site area is estimated, by K Mart and its appraiser, to be roughly 78,000 square feet (or 1.8 acres.) This unimproved area is rectangular in shape and concentrated in the southwest corner of the subject site. The issue of land value is a concern in this appeal, as there are varying opinions as to whether the subject has excess land or surplus land.

Richard Hermes, Senior Property Tax Manager for Sears Holding, testified regarding the decrease in retail sales for the subject property. He provided a graph and chart outlining the actual sales of the K Mart in Ames, Iowa, from 2002 to 2008. The data indicates a 38% decline in sales over this six-year period. Hermes asserts that this supports a change downward in value.

Hermes also developed an income approach which concludes a final value opinion of approximately \$5,600,000. Hermes supported the rental rate estimate of \$4.00 per square foot with other K Mart leases. He also provided data obtained from Loop Net, a commercial listing service, with sales of big-box retail that are all located in Iowa, which he believes support his income analysis.

Hermes concluded a market value of roughly \$4,800,000 from the income approach then proceeded to add an additional \$780,000 for "excess land," totaling his final rounded opinion of \$5,600,000. Hermes explained that he did not believe the inclusion of the "excess land" was correct methodology; however, he did so because this is the way the assessor calculated the value, and he was striving to be consistent.

K Mart retained Dane Anderson, a commercial appraiser with Iowa Appraisal and Research, Des Moines, to determine the fair market value of the subject property as of January 1, 2009. Anderson believes depreciation due to the age of the improvements would limit the reliability of a cost analysis. Additionally, due to the age of the improvements, he opines the cost approach would not be considered by a typical market participant when estimating value. Therefore, he did not develop the cost approach; however, he did develop the sales comparison and income approaches to value and gives most consideration to the latter of these methods.

Anderson provided six properties he considered as comparable to the subject property. While none of the comparable properties selected have a similar size building area to the subject, four of the properties have building areas over 100,000 square feet. Five of the six properties sold in the last half of 2007 or more recently in 2008. These are among the most recent sales presented and among the most similar in size than any of the other evidence presented before this Board. Anderson concludes an opinion of \$5,160,000 by the sales comparison approach

Anderson considered five comparable lease listings with market rents ranging from \$4.50 to \$6.25 per square foot of gross building area, with an average of \$4.35 per square foot. He estimated

market rent for the subject at \$5.50. Anderson concluded a 10% vacancy and collection loss was appropriate for a big-box property in this market. Using a 9.32% (rounded) capitalization rate, Anderson arrives at an income approach value of \$5,570,000. He reconciles the sales and income approaches into a final opinion of value, as of January 1, 2009, of \$5,500,000. We find Anderson to be knowledgeable and his testimony credible.

Anderson, unlike Hermes or the Board of Review's appraiser, did not make any adjustments for excess land value. In Anderson's opinion, the subject does not have excess land rather, but rather surplus land. Basic valuation terminology identifies excess land as land that can be parceled off and improved for a separate use, while defining surplus land as land that does not have, or could not have a separate use, but rather serves the larger site. Understanding the difference is paramount in this case, as it could impact value significantly if it is incorrectly determined.

The Ames City Board of Review consulted Kyran "Casey" Cook, a commercial appraiser with Cook Appraisal, Iowa City, to determine the fair market value of the subject, as of January 1, 2009. Cook believes all three approaches to value are relevant and developed each. Unlike Anderson, Cook believes the subject property has excess land. He values this portion of the site independently at \$700,000 and included it as a separate factor within each of the approaches to value. The conclusions from the three approaches developed, including the separately developed site value are as follows: cost approach, \$7,850,000; sales comparison approach, \$7,550,000; and, income approach \$7,550,000. We note it is atypical methodology to add what Cook believes is excess land as a separate factor to the income approach. This land is not separately parceled and would have been included within the income generated for the whole property. The addition of this factor, essentially considers a portion of the site twice.

Cook gives the greatest consideration to the sales comparison approach and concludes a final opinion of value, as of January 1, 2009, of \$7,600,000. Cook asserts the additional site area, which is

currently unimproved, could reasonably be parceled off and developed. We note the January 1, 2009, assessment does not have a separate value for this “additional site area.”

In the development of his sales comparison approach Cook offers five properties which he considered comparable. One of these properties is a recent sale which is larger than the subject’s improvements; however, three of the remaining four comparables have improvements less than 85,000 square feet compared to the subject’s 120,000 square-foot improvement. Additionally, while Cook offers two sales which occurred in 2008, of the remaining three, two sold in the first half of 2007 and the third sold in 2004.

Both Anderson and Cook offer zoning requirements in their reports. For the most part, they are the same. However, Anderson reports the current zoning requirements as having a 15% minimum landscaped area. While the 78,000 square feet of “unimproved” area is an estimate, both appraisers report this portion as being unimproved with the remainder of the site improved almost entirely with building and parking area. Recognizing that the 78,000 is only an estimate, it nonetheless equates to roughly the entire 15% minimum landscape zoning requirement.

Cook’s assertion that if this 78,000 unimproved area could be parceled off and developed for its own use would result in the remaining site being out of compliance with current zoning requirements. When questioned about this, Cook stated he has had experience on zoning boards, although not in this particular jurisdiction. Along with his past experience, he also believed because the requirement had been met at one point, the larger site would be “grandfathered” and precluded from meeting this requirement in the future. He did not however, verify this assumption with any zoning authority.

We are not convinced this portion of the property could indeed be separated from the whole site, as it appears to serve as required landscaping/bulk area for the improved property. Ad Valorem valuation requires the property to first be classified, then valued in its current use. *Iowa Admin. Code r. 701-71.1(1)*. In this factual situation the assessment is one parcel. Therefore, even if zoning would

allow for subdivision of the subject site, with each resulting site conforming to zoning requirements, the issue of doing so is not debatable, as it is not the current use of the subject parcel.

Cook's appraisal values the parcel as two independent sites then subsequently combines those values to a single reconciled conclusion. This is incorrect because the subject is a single platted site and can only be valued in its current use for ad valorem purposes. *Id.* While we find Cook to be honest in his belief that he appropriately valued the property, he did not apply appropriate methodology for ad valorem purposes.

The Board of Review submitted a second appraisal completed on the subject property, which was written by Patrick Schulte, a commercial appraiser with Commercial Appraisers of Iowa, Inc., West Des Moines. Schulte completed an appraisal on the subject property as part of a different appeal before this board and for a client other than the City of Ames Board of Review. The report has an effective date of January 1, 2009. Schulte developed all three approaches to value and concludes a final opinion of value of \$9,400,000.

Of the three appraisal reports presented in regards to the subject property, Schulte's is least credible and given limited consideration by this Board. At this hearing, Schulte acknowledged a math error to one comparable in the sales approach, which would alter his original range of roughly \$73 – \$88 per square foot to a corrected range of roughly \$42 – \$88 per square foot. Schulte testified that even after correcting this error, it would not alter his opinion that the subject has a value of \$80 per square foot. It seems unreasonable such a significant correction would not alter his final opinion.

Additionally, the comparable lease data Schulte considered as part of his income analysis was based upon fifteen properties. The subject's building area is roughly 120,000 square feet. The largest comparable lease considered by Schulte was roughly 85,000 square feet. Only two lease comparables were over 80,000 square feet, one was over 60,000 square feet, and the remaining twelve were roughly

32,000 or less. We do not believe this analysis adequately or accurately reflects actions of the market for the subject property.

Lastly, while Ames City Assessor Greg Lynch did not testify at this hearing in support of his value, he had prepared a summary appraisal report for the subject property, as of January 1, 2009. This report was prepared for the Board of Review and was part of its consideration process. The Board of Review minutes read as follows "Lynch said he inspected the store and completed a summary appraisal. This property was the subject of a court case in 2007. He used four closed sales of similar properties, made adjustments and came to a conclusion that the total value was \$7,939,000." From these minutes, it would appear that Lynch valued the property at the time of the court case in 2007. While the summary report indicates an inspection date of May 19, 2009, the comparables used within the report are all 2006 or first quarter 2007 sales. Anderson, Cook, and Schulte all offered some 2008 sales and more recent 2007 sales, as well as some other properties with older sale dates.

Lynch offered only one method of valuation, and the properties used for comparison were among the oldest sales available. Therefore, we give limited consideration to this report.

Based upon the foregoing, we find Anderson's appraisal is the most reliable as it values the subject property as one property which is its current classification and use. Further, we find K Mart has provided persuasive evidence to support their assertion that it is assessed at greater than market value, as well as demonstrating what the value should be.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal

Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, or market value "cannot be readily established in that manner," "other factors" may be considered in arriving at market value. *Heritage Cablevision v. Bd. of Review of City of Mason City*, 457 N.W.2d 594, 597 (1990). Iowa Code § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). A preponderance of the credible and reliable evidence, primarily Anderson's appraisal, demonstrates the property is over-assessed. We do not rely on the other two appraisals, because we are "free to give no weight to proffered evidence of comparable sales which it find not to be reflective of market value." *Heritage Cablevision*, 457 N.W. 2d at 598.

In the opinion of the Appeal Board, the evidence supports the claim that the property is assessed for more than the value authorized by Iowa Code section 441.21. Therefore, we modify the

January 1, 2009, assessment of the property located at 1405 Buckeye Avenue, Ames, Iowa, as determined by the City of Ames Board of Review.

THE APPEAL BOARD ORDERS the assessment of the subject property, K Mart, located at 1405 Buckeye Avenue, Ames, Iowa, be modified to a total value of \$5,500,000, representing \$2,541,000 in land value and \$2,959,000 in improvements as of January 1, 2009.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Story County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 17 day of May, 2010

Karen Oberman
Karen Oberman, Presiding Officer

Richard Stradley
Richard Stradley, Board Member

Jacqueline Rypma
Jacqueline Rypma, Board Member

Cc:

Deborah Tharnish
Davis, Brown, Koehn, Shors & Roberts, P.C.
The Financial Center
666 Walnut Street, Suite 2500
Des Moines, Iowa 50309-3993
ATTORNEY FOR APPELLANT

Douglas R. Marek
Ames City Attorney
515 Clark Avenue
PO Box 811
Ames, Iowa 50010
ATTORNEY FOR APPELLEE

Mary Mosiman
900 6th Street
Nevada, IA 50201
STORY COUNTY AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-17</u> , 2010	
By	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>