STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Leiner Davis Gelatin, Petitioner-Appellant, **v.** **Davenport City Board of Review,** Respondent-Appellee.	**ORDER** **Docket Nos. 09-103-1153** **10-103-0340** **Parcel No. X0117-35**

On December 3, 2010, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Prior to the hearing, the parties agreed to consolidate the two dockets and create one record of hearing. The Petitioner-Appellant, Leiner Davis Gelatin, was represented by Deborah M. Tharnish, of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, Iowa and submitted evidence in support its appeals. The Board of Review designated Attorney William Stiles, of Schneider, Stiles, Serangeli & Mountsier, P.C., Des Moines, Iowa, as its legal representative. It submitted new evidence in addition to the certified record. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds.

Findings of Fact

Leiner Davis Gelatin (Leiner), owner of property located at 7001 Brady Street, Davenport, Iowa, appeals from the Davenport City Board of Review decisions reassessing its property. The real estate was classified industrial for the January 1, 2009, assessment and valued at $3,890,000; representing $1,007,600 in land value and $2,882,400 in improvement value. The January 1, 2010, assessment was $3,991,700; representing $1,050,500 in land value and $2,941,200 in improvement value. Leiner protested to the Board of Review both years on the grounds that the property was

assessed for more than authorized by law under Iowa Code section 441.37(1)(b) and that there was a downward change in the assessed value since the last assessment under sections 441.37(1) and 441.35(3). The Board of Review denied Leiner's protests.

Leiner then filed appeals with this Board on the same grounds. We note that typically in a re-assessment year a challenge based on downward change in value is akin to a market claim. *See Dedham Co-op Ass'n. v. Carroll County Board of Review,* 2006 WL 175030 (Iowa Ct. App. 2006). In this case, Leiner's property was revalued and increased in the interim year (2010). For this reason, all grounds typically available for protest in an assessment year are also available in the interim year. *Eagle Food Ctrs., Inc. v. Bd. of Review of City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). Leiner valued the property at $2,200,000 for January 1, 2009, and at $2,300,000 for January 1, 2010. At hearing, Leiner indicated it seeks a value of $2,300,000 for both years.

The subject property is a food processing manufacturing plant with a ground floor gross building area of 135,891 square feet, according to the appraisal submitted by Leiner. The Board of Review disputed the total square feet of the improvements at hearing. The structure is concrete tilt-up walls with a steel and concrete frame. The office area is concrete block with a flat roof. The structure was built in 1969 and remodeled in 2001-02 and 2006-07. The subject site consists of 31.10 acres, with 10,250 square-feet of concrete paving and 96,100 square feet of asphalt paving.

At hearing, Leiner submitted an appraisal by Ted R. Frandson, of Frandson & Associates, Des Moines, Iowa. Frandson, who has been appraising property since 1987, valued the subject property for January 2009 and 2010, at $2,300,000. Frandson testified he did not find any conclusive data to justify a difference between the 2009 and 2010 values. Frandson only completed the sales comparison approach to value. He testified the cost approach would be "weak at best" since the subject property is old, therefore making it difficult to determine replacement cost and depreciation. He also did not do an income approach since manufacturing plants very seldom rent. In Frandson's opinion, only doing the

sales comparison approach did not impact the integrity of his appraisal. Regarding the subject property, Frandson's explanations for not doing the cost and income approaches seems reasonable to this Board; this is an older property and typically industrial properties like the subject would be owner-occupied and not have leases/rent.

To do his sales approach, Frandson testified he first viewed the property. He then turned to sales information that his firm is constantly accumulating. He noted sales of this type of facility are typically few and far between; therefore, he looked throughout the Midwest because these can also be considered comparable sales. Frandson said he first determined the sales were arms-length transactions; he then looked at the most physically comparable to the subject property and the most current or recent transactions. All sales he selected were of food processing facilities, despite some being located outside of Iowa. The five sales were located in Sussex, Wisconsin; West Point, Nebraska; Britt, Iowa; Oelwein, Iowa; and Greeley, Colorado. Four of the five sales occurred between August 2007 and December 2008; the one other sale occurred in May 2006. The gross unadjusted sales price per square foot range from $9.64 per square foot to $19.51 per square foot.

Frandson made adjustments to the sales for location, size, age/condition, quality/functional utility, site improvements, waste water pretreatment, and an additional "other" adjustment. Frandson does not believe the vacancy time period impacts the reduction of sales price since manufacturing plants usually sit vacant for a period until the time of sale. Therefore, he made no adjustment for a long exposure period. Net adjustments ranged from -12% to 60%. The adjusted square-foot price ranges from $14.15 to $17.49 per square foot. Frandson used $17.00 per square foot to determine his estimate of value. Frandson also determined the building was 135,891 square feet. This resulted in a valuation of $2,310,147 (rounded $2,300,000). As we previously noted, there was a discrepancy alleged at the hearing regarding the correct square footage of the subject property. The Board of Review questioned the square footage used by Frandson, but it did not measure the building. Actually,

neither witness measured the building for this particular appeal. Frandson, however, relied on a previous appraisal of the property done by his firm where the square footage was determined using blue prints and other documents from the owner. We will rely on the square footage Frandson reports based on his prior experience appraising the property and lack of evidence from the Board of Review to show otherwise.

Tom McManus, an appraiser with the Davenport City Assessor's Office, testified on behalf of the Board of Review. McManus testified he has been an appraiser for six years and his experience includes in-house training and course work. McManus stated the subject property was assessed by other office staff, and not him. McManus provided a valuation analysis (Exhibit A) that he prepared, which included a sales analysis and a cost analysis.

McManus's market approach makes adjustments that lack explanation. Essentially, there was no qualitative information on any of the sales in his exhibit. We also question his selection and knowledge of the sales. For example, McManus used a sale in Iowa City that was abnormal, which he did not adjust. He testified that the property was, in fact, purchased by the adjoining landowner. A purchase by an adjoining landowner is an abnormal sale under Iowa Code section 441.21(1)(b). His market analysis valued the subject property at $3,900,000.

To determine value using cost, McManus testified he used the *Iowa Real Property Appraisal Manual*. For cost purposes, McManus believes the subject property is closer to a heavy manufacturing facility rather than a light manufacturing plant. Frandson disagreed and believed the property is best described as being more akin to a light manufacturing facility. Despite McManus's belief that the property could be considered heavy manufacturing, it appears in an effort to be thorough, he valued the subject property as both heavy manufacturing at $5,390,000 and as light manufacturing at $4,840,000. Additionally, he also valued the property applying the in-house CAMA (Computer Assisted Mass Appraisal) system at $3,991,600.

Finally, McManus's chart also includes a value from PVM Consulting. The Board of Review requested PVM value the property using the taxpayer's comparable sales. It concluded a value of $2,671,000 for the property. No representative from PVM testified regarding the value or submitted supporting evidence for that valuation.

Frandson's appraisal had two properties with adjustments of 40% to 60%. Frandson noted he placed little weight on the Colorado sale (the sale with 60% adjustment) and could have used a 2004 sale of a property in Fredricksburg, Iowa, but chose not to due to the age of the sale. He also used sales of properties outside Iowa, which is permissible. *Bartlett & Co. Grain v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997) (holding that sales of grain elevators both in-state and outside the state were comparable to the subject property); *see also Soifer v. Flloyd County Bd. of Review*, 759 N.W.2d 775, 792 (Iowa 2009) (citing *Maytag Co. v. Partridge,* 210 N.W.2d 584, 591 (Iowa 1973)). Frandson chose to limit his appraisal to only the sales approach, but he adequately explained his reasons for doing so in this particular situation. Despite these perceived particularities in Frandson's appraisal, the Iowa Code requires use of the sales approach before other methods, and Frandson completed an appraisal that uses this method and details his reasoning and conclusion. *See* Iowa Code § 441.21(1)(b).

McManus, on the other hand, submitted evidence of the sales analysis and several cost values. We note McManus does not consider his exhibit to be an appraisal, but rather support data for the assessment. McManus also testified that he did not take part in the 2009 assessment and was only generally involved in the 2010 assessment. Further, while McManus testified the 2008 *Iowa Appraisal Manual* was used for the 2010 assessment and an older manual was used for the 2009 assessment, the actual assessment appears to be based on the assessor's office's CLT CAMA system for both years. McManus testified using the two manuals should result in a difference between replacement cost data from the 2008 manual and the old manual, but we see no correlation between the *Iowa Manual* data for

either light manufacturing or heavy manufacturing that ties back to the actual CLT assessment. This is because the base rates were the same on the property record cards in the certified records for the two assessment years at issue. Further, the only significant difference between the two assessments appears to be in the land value, not due to a manual change.

We find the Frandson appraisal is a complete appraisal and the sales used are sufficiently comparable properties to the subject. Therefore, we do not address the issue of light or heavy manufacturing. The Board of Review has a range of value in their analysis that ranges from the PVM Consulting of $2,671,000 to $5,390,000 for heavy manufacturing. The analysis gives the most weight to PVM at 40%.

We find that McManus lacked experience and knowledge to value this particular property. Frandson, however, had more knowledge and experience to value the property and his appraisal is reliable. We find the best evidence in the record of market value is the Frandson appraisal of $2,300,000. Therefore, we modify the assessments for both 2009 and 2010 to reflect the appraisal value of $2,300,000.

Conclusions of Law

The Appeal Board based its decision on 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 determined 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. Iowa Code section 441.37A(3)(a).

Property is to be valued at one hundred percent of its actual value. § 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). Sales 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. Board of Review of City of Mason City,* 457 N.W.2d 594, 597 (Iowa 1990); Iowa Code § 441.21(2). "To determine whether other properties are sufficiently comparable to be used as a basis for ascertaining market value under the comparable-sales approach, [the Supreme Court] has adopted the rule that the conditions with respect to the other land must be 'similar' to the property being assessed." *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009). "Similar does not mean identical, but having a resemblance; and property may be similar . . . though each possess various points of difference." *Id.* Determining comparability of properties is left to the "sound discretion" of the trier of fact. *Id.* Consideration should be given to size, use, location, and character, as well as the nature and timing of the sale. *Id.* This Board is "free to give no weight to proffered evidence of comparable sales which it finds not to be reflective of market value" *Heritage Cablevision*, 457 N.W.2d at 598.

In an appeal that alleges the property is assessed for more than 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). Findings are "based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs." Iowa Code § 17A.12.

Leiner submitted an appraisal that analyzed sales of similar properties to conclude a market value as of January 1, 2009, and January 1, 2010. It was the only appraisal in the record as well as the most reliable evidence in the record. We find the preponderance of the evidence supports the claim that the property is over-assessed.

THE APPEAL BOARD ORDERS that the property located at 7001 Brady Street, Davenport, Iowa, assessment be modified to a total of $2,300,000; representing $1,050,000 in land value and $1,250,000 to the improvement as of January 1, 2009 and January 1, 2010.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Scott 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 3 day of February, 2011.

Richard Stradley, Presiding Officer

Karen Oberman, Board Chair

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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 2-3, 2011.

By: ✓ U.S. Mail ___ FAX
___ Hand Delivered ___ Overnight Courier
___ Certified Mail ___ Other

Signature