

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Hy-Vee Food Stores, Inc,
Petitioner-Appellant,

v.

Union County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-88-0023
Parcel No. 24010-370-005-00

On March 15, 2011, 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, Hy-Vee Food Stores, Inc., designated Jerry Chatam of J.W. Chatam and Associates, Overland Park, Kansas, as its legal representative. Chatam did not attend the hearing. County Assessor Gene Haner represented the Union County Board of Review. Neither party submitted any new evidence. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Hy-Vee Food Stores, Inc. (Hy-Vee) protested to the Union County Board of Review regarding the assessment of the property located at 600 Sheldon Street, Creston, Iowa. The 2009 commercial assessment was \$1,283,890, representing \$110,870 in land value and \$1,173,020 in improvement value.

HyVee's petition was based on a single ground, that the subject property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b). Hy-Vee asserted the total

value of the property was \$770,334. The Board of Review denied the petition citing the “tax payer failed to substantiate (its) burden of proof.”

Hy-Vee then appealed to this Board and reasserted its claim that the subject property is assessed for more than authorized by law; however, it claimed the correct value of the property was \$600,000.

The subject site is 3.06 acres, according to the property-record card. The site is improved with a one-story, big-box retail building with 34,464 square feet of gross building area built in 1981 and remodeled in 1995. There is a 420 square-foot canopy on the front of the building. The site is further improved with 45,000 square feet of concrete parking.

Hy-Vee requested an oral hearing at the Board of Review. A twenty-two page exhibit (Summary) was prepared by J.W. Chatam and Associates and submitted with its petition. The Summary provides a list of properties for lease, listings, and sales of other properties Chatham considered as comparable to the subject property; a brief income and expense analysis; and listing sheets of the properties presented as the comparable leases and listings. There is no narrative analysis or explanation of the data provided, and the minutes of the Board of Review hearing do not provide any transcripts of oral testimony, which would further explain the information contained in the Summary.

The Summary lists six properties considered to be comparable leases. The property name, address (including city, state, and county), year built, building size, least rate per square foot, and lease terms are noted. All six are reported as triple-net leases. The properties range in size from roughly 7,000 square feet to 87,000 square feet. The lease rates per square foot range from \$4.00 to \$6.50.

Listing sheets from LoopNet, a commercial multiple listing service, were provided for all the comparable leases. We note the first property listed is a Toys R Us located in Sioux City, Iowa, which is reported to have 28,963 square feet for lease. This is true based upon the attached listing sheet;

however, it is part of a larger 72,000 square foot strip shopping center, and it is noted that up to 40,000 square feet of space is available. The other five leases are all free-standing structures similar to the subject property. No adjustments were made to the leases for the differences between the subject the comparables. Additionally, there was no analysis of the data.

The Summary also lists eight properties currently listed for sale, again providing the property name, address, year built, size, list price, and list price per square foot. Only one property is noted as being fully leased. Five of the properties are former big box stores such as Target, Wal-Mart, or Hy-Vee. There is no narrative analysis or information regarding restrictions which may impact the marketability or value of the properties, nor any adjustments or analysis of the properties individually compared to the subject property.

The Summary lists four recent market sales providing the property name, address, year built, size, sale date, sale price, and price per square foot. All four sales occurred in 2007 and ranged in price from \$600,000 to \$3,250,000. The price per square foot of these four sales ranges from \$15.00 per square foot to \$48.08 per square foot. No other documentation of these sales was presented in the Summary. There are no adjustments to the sales and no analysis of the data. There is no value conclusion based upon these sales or any of the other previously presented data. We note the January 1, 2009, assessed value of the subject property, as well as the corresponding assessed value per square foot, falls within the range of the unadjusted sales provided by Hy-Vee.

Lastly, the Summary includes a one-page income and expense analysis. The potential gross income is estimated at \$3.00 per square foot. It is unclear how this was determined when the six previously noted unadjusted leases have a range of \$4.00 to \$6.50 per square foot, with a median of \$5.00 and an average of \$4.92. Operating expenses are estimated at \$0.50 per square foot with no explanation or breakdown. A capitalization rate of 10% was used, again without explanation or

support. Based upon this limited presentation, the value by the income approach is estimated to be \$757,300.

The cost approach was not developed. The Summary indicates the cost approach was considered, but is believed to be unreliable. Nothing in the record leads us to believe this statement is reliable as there are no land sales or other information related to the cost approach.

We hesitate to refer to the Summary as an appraisal because it only provides lists of properties, there is no analysis or explanation of the data presented, and most importantly there are no value conclusions associated with a sales comparison approach. Additionally, while listings and sales were presented, there was no actual development of a sales comparison approach. While there is an equation of income and expenses resulting in a value conclusion, there is no support for or analysis of the numbers presented and there is no reconciliation of this approach to the market data. Therefore, we give the Summary limited weight in our consideration.

Finally, we note this appeal was originally scheduled for October 25, 2010, at 1:30 p.m. On October 8, 2010, the appellant requested a continuance stating "the taxpayer is hav(ing) two narrative appraisals completed and they will not be completed in time for this hearing date." The continuance was granted. However, no appraisals were submitted for the rescheduled hearing.

Union County Assessor Gene Haner testified on behalf of the Board of Review. Haner commented that he considered the subject property to be similarly assessed to other commercial properties in the county.

The record includes a list prepared by the assessor's office of eighteen Hy-Vee properties in the state of Iowa. It is not known what the selection factors were for this "comparable" list other than all the properties are existing Hy-Vee's. The list identifies a "comp ID", assessment year, total assessment, building assessment, total assessment per square foot, building assessment per square foot, main building size, year built, land assessment, land area, paved parking size, paved parking assessment,

jurisdiction, and company. Ten properties are high-lighted; however the rationale for them being high-lighted is unknown. Similar to Chatam's Summary, this data was not explained, and we give it limited weight in our consideration.

In this case there was no evidence to establish the value of the subject property using the sales comparison approach. The Summary provided by Hy-Vee did not show detail and did not amount to reliable, supported value conclusions.

Based upon the foregoing, we find insufficient evidence has been presented to support an assertion that the subject property is assessed at greater than market value.

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).

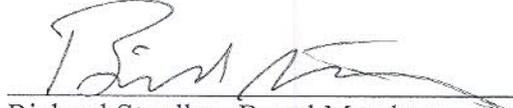
Hy-Vee has failed to show the subject is assessed for more than law and the correct value of the property using the preferred method, the sale comparison approach. *Soifer v. Floyd County Bd. of Review*, 759 N.W. 2d 775, 779 (Iowa 2009). Nor has Hy-Vee convinced this Board that sales cannot readily establish the value in order to turn to other factors. *Id.*; *Compiano v. Polk County Bd. of Review*, 771 N.W. 2d 392, 398 (Iowa 2009). Hy-Vee asserted three different values of the subject property. To the Board of Review, Hy-Vee asserted the value was \$770,304; to this Board, Hy-Vee asserted the value was \$600,000; and in the income and expense analysis a \$757,300 value conclusion is presented. There is no reconciliation to an actual asserted correct value.

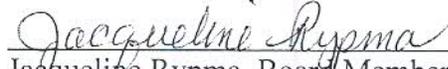
Hy-Vee offered a Summary prepared by J.W. Chatam and Associates, but the information contained therein was limited and not explained, which therefore rendered it unpersuasive to this Board.

THE APPEAL BOARD ORDERS the January 1, 2009, assessment of the subject property Hy-Vee Food Stores, Inc., located at 600 Sheldon Street, Creston, Iowa, be affirmed.

Dated this 13 day of April, 2011


Karen Oberman, Presiding Officer


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

Cc:

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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 <u>4-13</u> , 2011	
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	