

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Wild Rose Clinton, LLC,**  
Petitioner-Appellant,

v.

**City of Clinton Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-102-0419**  
**Parcel No. 80-63640010**

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On November 7, 2012, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Wild Rose Clinton, LLC, was represented by attorney Bruce W. Baker of Nyemaster Goode, PC in Des Moines, Iowa. It submitted evidence in support of its position. Attorney J. Drew Chambers of Holleran, Shaw, Murphy, and Stoutner of Clinton, Iowa, represented the City of Clinton Board of Review. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Wild Rose Clinton, LLC is the owner of property located at 777 Wild Rose Drive, Clinton, Iowa. It appeals from the City of Clinton Board of Review decision affirming the January 1, 2011, assessment of its property. The real estate was classified commercial for the January 1, 2011, assessment and valued at \$27,650,010; representing \$2,935,000 in land value and \$24,715,010 in improvement value. Wild Rose protested to the Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2); that there is an error in the assessment under section 441.37(1)(a)(4); and that there had been a downward change in value under sections 441.37(1)(b) and 441.35(2). The Board of Review denied the protest.

Wild Rose then appealed to this Board claiming the property was over-assessed. It valued the property at \$18,016,763.

The subject property is a one-story and two-story building with 111,652 square feet of gross floor area including a 57,082 square-foot casino; a 3600 square-foot sports bar; a 6000 square-foot buffet restaurant; and 18,400 square feet of administrative offices. The property also includes a 16,303 square-foot event center and ballroom, 3290 square feet of meeting rooms, a small retail shop, and a 36,240 square-foot, two-story hotel with 60 rooms. The gaming floor is 20,519 square feet. The property was constructed in 2008 and was given a construction grade of E+40 (executive quality) by the assessor's office. The property is also improved by 600,000 square feet of concrete paving, yard lighting, and landscaping. It is located on a 28.595-acre site.

At hearing, Wild Rose presented testimony of Timothy J. Bollman, General Manager of Wild Rose Clinton, LLC. Bollman testified that Wild Rose purchased the land from Valley Bluff Corporation in 2007 for \$1,200,000. Construction on the casino began in June 2007, and it opened in July 2008. He reported delays and challenges in the construction. In his opinion, construction costs might be lower today than at the time of Wild Rose's construction because of the greater demand for construction materials in 2007. He describes the finish as standard or above-standard at the time of construction, although some local and regional competitors in Iowa and Illinois now have superior finishes.

Bollman explained that Wild Rose is required to give 4% of its gross receipts to the local community development program for non-profit grants. Last year, that amounted to \$1.6 million. Wild Rose also pays 23% of its gross receipts in city, county, and state gaming taxes, in addition to property taxes to the City of Clinton. Total gross profits were about \$40 million last year.

Bollman explained that Wild Rose cannot be compared to stand-alone restaurants or hotels. It is a one-stop entertainment venue and is marketed in a unique way. Wild Rose gives away many

complimentary meals and hotel rooms to players club members. Many of these amenities exist mainly to serve the casino guests.

Bollman also discussed a minimum assessment agreement that exists for the property. Wild Rose, Valley Bluff Corporation, and the City of Clinton entered into a minimum assessment agreement in the initial phase of the project. The agreement is a means for Wild Rose to pay back the Tax Increment Financing (TIF) used for infrastructure. Under the terms of the agreement, Wild Rose agreed to a minimum assessment of \$24,000,000 beginning in 2008 and continuing until 2024.

In addition to Bollman's testimony, Wild Rose submitted an appraisal completed by Kryan J. Cook and Dennis G. Cronk, Cook Appraisal, LLC, in Iowa City. Cronk testified at hearing that a casino is a special use property and presents unique appraisal issues. Wild Rose is located in western Clinton off Highway 30 and Mill Creek Parkway. According to Cronk, competing facilities are located in the Quad Cities area and Dubuque, Iowa.

Cronk reported the subject property has three distinct areas: the casino, a limited-service hotel, and an event center. There is a shared kitchen area, offices in some of the meeting spaces, and a small fitness center. The facility does not have a pool, which is typically present in casino/hotel properties. He describes good to very good quality in construction and finish. The décor is in a Western theme, which he noted might need to be redone if rebranded by another operator.

Actual construction costs of the improvements were reportedly \$27,582,830. However, Cronk testified the construction costs are not equal to the property's value because casinos need to be "glamorous" to draw in customers. Compared to the casino area, however, the hotel has standard finish and is not as lavish. Cronk indicated the hotel rooms rent at a comparatively lower rate to fill rooms and support the casino operation. He notes some functional obsolescence because the facility does not have a pool or breakfast room, and has wood siding requiring repainting. In his opinion, the

facility is too large for the community; the gaming floor, buffet restaurant, and the 1000-seat event center are super-adequate and under-utilized.

To complete a cost approach to value, Cronk identified four land sales<sup>1</sup> in the same subdivision. The four parcels were considerably smaller than the subject property. After adjustment, he used a value of \$79,000 per acre and arrived at a market value of \$2,260,000 for the land. He reported the entire 120-acre tract had been in a flood zone and the original buyer added fill to elevate it. Wild Rose's purchase price of \$1,200,000 for the 28.595 acres included this completed site work.

Cronk valued the improvements using *Marshall Valuation Service* to calculate the base costs for each of the three parts of the complex. Including land, he arrived at a value of \$19,710,000, after applying 4% physical depreciation to the entire property, 15% function obsolescence to the hotel, and 30% functional obsolescence to the casino and the event center because these improvements are over-built for the market.

Cronk also noted that the property record card only listed 3% physical depreciation and did not recognize any external or functional obsolescence, which he believed, should have been applied.

Cronk completed a sales approach to value for the facility primarily as a check on the value derived under the cost approach. Because the sale of a combined casino and hotel would include business value and personal property, including the gaming license, Cronk reported that these sales have minimal reliability when attempting to determine the value of the property alone. To value the hotel portion of the property Cronk used five sales. He determined a \$65,000 per room value based on the sales, or a total value of \$3,900,000 for the subject property's hotel. To value the casino, restaurant, and event center, Cronk analyzed six sales involving various property types to reflect the diverse uses of the subject. He determined a value of \$180 per square feet for a total of \$13,200,000. Based on the sales approach, Cronk estimated the subject property's total value at \$17,100,000.

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<sup>1</sup> One sale took place in April 2011, after the January 1, 2011, assessment date; the sale, however, was negotiated before that date.

Cronk also completed a limited income approach on the hotel only, although he did not believe this approach was good on its own and did not find it useful. He used an \$80 average daily rate (ADR) indicated by Smith Travel Survey, a 69% expense ratio, and a 14% loaded capitalization rate. Cronk estimated a value for the hotel of \$3,000,000. No income approach was developed for the rest of the property.

Ultimately, Cronk found the cost approach the most reliable and gave it the most emphasis in determining a final reconciled value of \$19,000,000.

Appraiser Kevin M. Pollard, President of Roy R. Fisher, Inc. in Davenport also completed an appraisal of the property for Wild Rose. His appraisal also had an effective date of January 1, 2011. Pollard testified on behalf of Wild Rose at hearing.

Pollard stated Wild Rose competes with three area casinos. He reported the casino has a high level of finish and was in excellent condition.

Pollard first completed a cost approach to value for the subject property. He used four nearby land sales to arrive at a value of \$1 per square foot for the subject property's land, or \$1,245,598. Pollard verified the subject site was graded at the time of Wild Rose's purchase and the price was a good indication of the land value. In developing the cost approach for the improvements, Pollard used the actual owners' construction costs of \$22,551,898. He excluded the geo-piers, generator, furniture, fixtures, equipment, booths, and partitions, which he considered personal property. In his opinion all parts of the structure, including the gaming floor, restaurant, events center, and hotel were overbuilt. The hotel could not operate on the income it generates. He reported the subject property's revenue declined from 2009 to 2010, as did the revenue of all other state casinos except Diamond Joe in Dubuque. This is based on a revenue per square foot and a revenue per patron analyses. Pollard used this revenue decline as the basis for an external, or functional, obsolescence adjustment.

He applied a 15% obsolescence adjustment to the depreciated construction costs (\$22,551,898 – 6.25% = \$21,142,404) to arrive at \$17,971,043 in improvement value. Pollard estimated the property's total value by the cost approach at \$19,220,000.

Pollard did not complete a sales comparison approach because there were no arm's length casino transactions in the Midwest and generally, the casino operator and landowner are the same entity. Pollard testified that casino sales include the value of gaming licenses; business value; and furniture, fixtures, and equipment value. In his opinion, the sales are basically stock purchases and the real estate value alone cannot be extracted. Nor did he complete an income approach to value.

Both Cronk and Pollard valued the subject property using the legally prescribed methods. Both indicated that the sales approach was not a reliable indicator of value for the subject property, and was actually difficult to develop. We find both appraisers were credible witnesses that gave informed, concise, and intelligent explanations for the methods they applied to value the subject property.

Robert Ehler, of Vanguard Appraisals, Inc., Cedar Rapids, Iowa, testified on behalf of the Board of Review. Vanguard Appraisals conducts mass appraisal for assessors throughout the state. With regard to the subject property, Vanguard effectively operated as the assessor. In Ehler's opinion, Cronk and Pollard used a lower building class than they should have and this resulted in lower replacement costs. Ehler reported the assessor's land value includes site improvements, like landscaping. He testified he has forty casino sales in his database at his disposal for valuing similar properties; however, as pointed out on cross-examination, those sales include the business entity and business value. Ehler reported the assessment was developed using the *Iowa Real Property Appraisal Manual* cost data, which was adjusted for obsolescence. But there is no evidence in the record regarding the amount of the obsolescence applied to the property. This served as the sole basis for the January 1, 2011, assessment of Wild Rose's property. Ehler's testimony was quite limited and really contributed nothing for determining the value of the subject property.

### *Conclusions of Law*

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter pursuant to Iowa Code section 441.37A (2011). 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).

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. § 441.21(1)(b). "Market value" essentially is defined as the value established in an arm's-length sale of the property. *Id.* 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 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.

Wild Rose bears the burden to prove that its assessment is excessive. *Boekeloo* 529 N.W.2d at 277. If the property owner “offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor,” the burden shifts to the Board of Review. Iowa Code § 441.21(3). A disinterested witness is defined as, “[o]ne who has no right, claim, title, or legal share in the cause or matter in issue, and who is lawfully competent to testify.” *Post-Newsweek Cable, Inc. v. Bd. of Review of Woodbury County*, 497 N.W.2d 810, 813 (Iowa 1993). To be competent, the witness’s testimony “must comply with the statutory scheme for property valuation for tax assessment purposes.” *Boekeloo*, 529 N.W.2d at 279. In this case, Wild Rose casino called two witnesses, Cronk and Pollard, who also completed appraisals of the subject property. Both witnesses complied with the statutory requirements for valuing real property. Furthermore, both witnesses established a market value under section 441.21(1) less than the current assessed value of the subject property. Having offered competent evidence and testimony from two disinterested witnesses, Wild Rose has shifted the burden of proof to the Board of Review. The Board of Review now bears the burden to defend the assessment.

The Board of Review, however, failed to meet its burden of proof. It has not shown the assessment to be an accurate reflection of the subject property’s market value.

Both parties agree that the property’s market value could not be established through the “sales price” approach of section 441.21(1) alone. The market value must be determined by the use of the “other factors” approach of section 441.21(2). The appraisers all relied on the cost approach for

valuing the property. Cronk and Pollard's indicated market values, \$19,000,000 and \$19,220,000, are closely aligned but differ widely from the \$27,650,000 assessment.

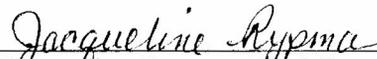
In this case, this Board previously issued a ruling regarding the difference between the language in sections 403.6(19) and 441.21(1). We ruled that sections 403.6(19) and 441.21(1) indicate the two provisions define the term "actual value" differently. Section 403.6(19) indicates actual value for minimum assessment agreements pertains to the value as defined by the agreement. Conversely, section 441.21(1) defines actual value as the property's market value. Market value is summarily defined as an arm's-length transaction between a willing buyer and willing seller. *Id.* Section 403.6(19) defines actual value as the value established in the minimum assessment agreement without reference to section 441.21(1) or market value. Reading the statutes in this manner also accomplishes the goals of both provisions. Minimum assessment agreements essentially contemplate that in any given year, due to the agreement, the parties can essentially ignore the market value (actual value) of a property in favor of a minimum assessment to gain favorable tax status for tax increment financing (TIF) purposes. This is particularly true where the market value of a property under 441.21(1) may be less than a previously agreed upon minimum assessment (actual value) under 403.6(19). Therefore, we find Wild Rose is permitted to present any evidence it possesses, including the herein referenced appraisals, to show the current assessment causes the property to be assessed for more than market value and what the actual value of the subject property is as contemplated by section 441.21(1). Even upon a finding that the property is over-assessed, however, PAAB cannot grant relief below the value set in the minimum assessment agreement.

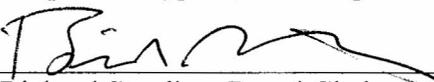
We modify the decision of the City of Clinton Board of Review. The January 1, 2011, fair market value of the subject property is \$19,220,000. However, based on the minimum assessment agreement, the January 1, 2011, assessment of the subject property is \$24,000,000.

IT IS ORDERED that the assessed value of Wild Rose Clinton's property is \$24,000,000, the value established by the minimum assessment agreement, as of January 1, 2011.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order and to the Clinton 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 28 day of November, 2012.

  
Jacqueline Rypma, Presiding Officer

  
Richard Stradley, Board Chair

  
Karen Oberman, Board Member

Copies to:

Bruce W. Baker  
Nyemaster Goode, PC  
700 Walnut, Suite 1600  
Des Moines, IA 50309  
ATTORNEY FOR APPELLANT

J. Drew Chambers  
Holleran, Shaw, Murphy & Stoutner  
86 ½ Main Avenue  
Clinton, IA 52732  
ATTORNEY FOR APPELLEE

Eric Van Lancker  
Clinton County Auditor  
P.O. Box 2957  
Clinton IA 52732  
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>11-28</u> , 201 <u>2</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
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