

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

MB Sioux City Lakeport, LLC,
Appellant,

v.

Sioux City Board of Review,
Appellee.

ORDER

Docket No. 12-107-0029
Parcel No. 8847-08-376-016

Docket No. 12-107-0030
Parcel No. 8847-08-376-011

Docket No. 12-107-0031
Parcel No. 8847-08-376-012

Docket No. 12-107-0032
Parcel No. 8847-08-452-011

Docket No. 12-107-0033
Parcel No. 8847-08-451-003

On November 4, 2013, the above captioned appeals came on for hearing before the Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Attorney Richard Dvorak of Tomes & Dvorak, Overland Park, Kansas represented the Appellant MB Sioux City Lakeport, LLC. Attorney Jack Faith represented the Board of Review at hearing. The Appeal Board, having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

MB Sioux City Lakeport, LLC (Lakeport) is the owner of commercially classified properties located at the junction of Lakeport Street and Sergeant Road, north of Highway 20 in Sioux City, Iowa. The properties are part of a multi-tenant retail center.

The following chart briefly outlines the appealed parcels.

Docket #	Parcel #	Address	2012 Assessed Value	Tenancy	Sale Date	Sale Price
12-107-0029	8847-08-376-016	4701 Sergeant Road	\$11,185,900	Multiple	Sep-07	\$17,086,600
12-107-0030	8847-08-376-011	4735 Sergeant Road	\$524,700	Single	Sep-07	\$919,200
12-107-0031	8847-08-376-012	4801 Sergeant Road	\$4,737,000	Multiple	Sep-07	\$6,326,400
12-107-0032	8847-08-452-011	5100 Sergeant Road	\$1,183,800	Single	Sep-07	\$2,054,700
12-107-0033	8847-08-451-003	5101 Sergeant Road	\$15,322,600	Multiple	Sep-07	\$19,628,047
Total			\$32,954,000			

There was no change in the assessments from 2011 to 2012.

Lakeport protested the assessments to the Sioux City Board of Review on the grounds that the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2); and that there was a change downward in the value since the last assessment under sections 441.37(1)(b) and 441.35(2). Because there was no change in value from the 2011 assessment, the only ground this Board can consider on appeal is whether there has been a change in value since the last reassessment. Iowa Code §§ 441.35(2), 441.37(1)(b); *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). This is the only ground available in an “interim year,” like 2012, when the assessor has not changed the property’s value from the previous year. *Id.* The Board of Review denied all of Lakeport’s appeals.

Lakeport reasserted its claims with this Board. It asserts the correct value of each parcel is as follows:

Docket #	Address	Lakeport’s Opinion of Correct Value
12-107-0029	4701 Sergeant Road	\$8,451,057
12-107-0030	4735 Sergeant Road	\$375,000
12-107-0031	4801 Sergeant Road	\$3,578,850
12-107-0032	5100 Sergeant Road	\$800,000
12-107-0033	5101 Sergeant Road	\$11,576,374
Total		\$24,781,281

4701 Sergeant Road, also known as the West Wing of Lakeport Commons, is a brick and steel frame shopping center built in 2005. It has 92,274 square feet of gross building area (GBA). According to the property record card, as of October 2012, the West Wing is 100% occupied and has twelve tenants.

4735 Sergeant Road is a brick veneer, wood-frame fast-food restaurant built in 2005. It has a GBA of 1965 square feet and has a single-tenant occupant, Starbucks.

4801 Sergeant Road, also known as the Y Building, is a brick, block, and steel frame, shopping center built in 2005. It has 37,775 square-feet of GBA. According to the property record card, as of October 2012, the Y Building has eight tenants and three vacant units.

5100 Sergeant Road is a brick veneer, stand-alone, wood-frame restaurant built in 2006. It has 4518 square feet of GBA and has a single-tenant occupant, Black Bear Diner.

5101 Sergeant Road, also known as the East Wing of Lakeport Commons, is a brick, block and steel frame shopping center built in 2005. It has 113,498 square feet of GBA. According to the property record card, it is 100% occupied and has five tenants.

Richard Millspaugh, a property tax representative for Savage and Browning, Overland Park, Kansas, testified on behalf of Lakeport. He has expertise in developing list or purchase prices of commercial properties, as well as having a real estate and construction finance background. However, he admits he is not a real estate appraiser. When the Board of Review questioned Millspaugh he admitted the taxpayer compensates Savage and Browning on a “reward basis.” Although he testified he is a salaried employee, his employer’s compensation is determined on its ability to reduce their client’s tax burden. We find this fact limits Millspaugh’s credibility as an unbiased, disinterested witness.

Millspaugh testified he inspected the subject properties in 2007, which was prior to its full completion. He explained the owner, Inland American Real Estate Trust, Inc., (Inland American) had

purchased the properties prior to completion. He looked at the 2007-2012 income statements; reviewed the owner's lease analysis notes; looked at the immediate market place because he believes it would have an impact on the subject properties; and he used a real estate website, Loopnet.com, and other real estate sites for sales. He testified his search included all of the United States for sales of community shopping centers over 200,000 square feet but less than 400,000 square feet that occurred since 2002. His search resulted in three sales of community size shopping centers; however, he does not believe any of them would be comparable because of the time they sold, their location, age, condition, or size. Further, he stated he was not an appraiser, so he was not qualified and did not have the expertise to make adjustments or perform any analysis of these sales. He also referenced sales in Iowa, but they were much smaller and he did not consider them comparable to the subject property. Exhibit 5 identifies the three national sales and a few of the Iowa sales. Because these sales are unadjusted for differences and Millspaugh identified he is not qualified to conduct a sales analysis to determine a market value, we give this evidence no consideration.

Millspaugh testified the subject properties are located at a significant interchange off the interstate in Sioux City. Southern Hills, a large enclosed mall is located immediately adjacent and west of the subject properties. He asserts Southern Hills is stiff competition for the subject properties. Other competing properties include Southern Hills Square immediately southwest and Regency Plaza, which is further west along Sergeant Road. He referenced page 8 of Exhibit 4, which was a map of the immediate area to explain the proximity of the competing developments.

Millspaugh identifies a document entitled "Guide Note 12: Analyzing Market Trends" authored by the Appraisal Institute, as an example of defining downward market. (Exhibit 1). He specifically references page 4, which lists a six-step process for market analysis. Millspaugh asserts that although he is not an appraiser, he followed the market analysis process outlined in this Guide Note. Based on this analysis, he asserts the nearby Southern Hills Mall has similar and identical space

to the subject but has \$13.00-\$15.00 per square-foot rents. Whereas, he asserts the subject properties were built on a pro-forma based on \$25.00 per square-foot rents, which is what the original tenants are paying. Millspaugh reported tenants have struggled with the original rental rates and are either negotiating rents down with incentives or the landlord is foregoing rent step increases. Ultimately, Millspaugh believes when the leases are ready for renewal three to five years from now (November 2013), the market driven rental rates will reduce the income of the subject properties. Essentially, Millspaugh is forecasting a decline in *future* income and we do not find that relevant to the 2012 claim.

Millspaugh also testified that he considered supply and demand and based on his analysis, he believes there is a limited marketplace for property like the subject properties. He also points to Exhibit 2 as evidence of his opinion that the Midwest was not exempt from the slowing economy. However, we find his market trend analysis is general and anecdotal, and we find the article (Exhibit 2) broadly suggests a slowing economy but does not provide specific evidence of a decline in value of the subject properties. For these reasons, we give this evidence no consideration.

Exhibit 3 is a seven-page document. The first page is a spreadsheet of the tenants with notes from the owners along the left side of the spreadsheet. After much testimony, Millspaugh ultimately explains he did not create the spreadsheet. Rather, he interpreted the information and asserts it equates to a loss of property value. We do not find it necessary to recite his testimony regarding Exhibit 3, because we do not find it relevant. The document does not include all of the properties/tenants involved in the parcels under appeal; some properties/tenants are included in the spreadsheet that are not before this Board; and, most importantly, it does not establish a market value for the individual parcels under appeal.

Exhibit 4 is a Broker Opinion of Value (BOV) authored by Colleen G. Johnson with CBRE Hubbell. According to Millspaugh, the BOV was developed in June 2011 and was commissioned by Inland American for the purpose of letting the owner know how to value the property for its fund

portfolio and possibly listing the property. Johnson concludes an opinion of value (page 9 of Exhibit 5) between \$28,200,000 and \$32,500,000. However, this conclusion includes the property occupied by Best Buy, which is not part of the appeals before this Board. Millspaugh estimates the value of Best Buy that should be deducted from Johnson's opinion is \$3,400,000 to \$3,500,000, based on a pro-rata basis using square-footage. Johnson provided a "summary of sales" (page 10, Exhibit 5) but did not adjust the sales for differences that may exist. Further, it is not clear if Johnson developed an income approach to value, but there is no evidence she developed a cost approach to value.

The Board of Review questioned Millspaugh about what weight he gave to Johnson's opinion. He testified that he gave Johnson's opinion "great consideration" and relied on the BOV to determine the appropriate total value of the subject properties. The Board of Review pointed out that Johnson explained in her report (Exhibit 5, page 3) that her analysis and opinion "is not an appraisal." Further, on page 9 of Exhibit 5, Johnson states "please know that the only information we were provided in order to complete our value opinions were rent rolls." Ultimately, her analysis indicates that she did not consider market rents, but only actual rents.

Johnson clearly identifies she did not develop an appraisal. She did not adjust the sales in determining her opinion of value. It is not clear if she developed any other approaches to value; but if the income approach was developed, it appears she only considered actual rents rather than market rents. Moreover, her opinion includes a property not part of this appeal. For these reasons, we give her opinion no consideration.

Sioux City Assessor Al Jordan explained the assessed values of the parcels under appeal were determined by the cost approach using the Department of Revenue's *Real Property Appraisal Manual*, as well as the income approach using the rent rolls and income/expense statement provided by the property owner. He did not develop the sales comparison approach due to a lack of properties for analysis.

Jordan testified the assessor's office relied on 2009 to 2011 rent rolls received from the owner of the subject parcels. Further, Jordan testified the actual contract rents for the East Wing, West Wing, and the Y Building increased from \$3,512,871 in 2011 to \$3,580,227 in 2012. Moreover, the vacancy in 2011 was 9.94% compared to 6.25% in 2012. The effective gross income for 2011 was \$2,986,434 compared to 2012, which had an effective gross income of \$3,256,541. Lastly, Jordan explained he used an overall capitalization rate of 14.37%. Like Johnson, Jordan testified he relied on actual rents of the subject parcels and not market rents. Under Iowa law, however, "the proper measure of the value of property is what the property would bring if sold in *fee simple*, free and clear of any leases." *I.C.M. Realty v. Woodward*, 433 N.W.2d 760, 762 (Iowa Ct. App. 1988) (emphasis added); see *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d 419, 423 (Iowa 1997) (stating that "the assessor properly used the objective rental income value . . . rather than the actual lease amount, to establish a valuation.").

Jordan also reported he analyzed Sioux City retail sales tax data and it shows a minor increase in local option sales tax collected from 2011 to 2012. However, this data was not presented as evidence.

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. 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, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). 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 the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

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. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Alternatively, a sales price in an abnormal transaction is not to be taken into account unless the distorting factors can be clearly accounted for. *Id.*

In a non-reassessment or "interim" year, when the property's assessment has not changed, a taxpayer may challenge its assessment on the basis that there has been a change in value from the immediately preceding assessment year. Iowa Code §§ 441.35(2), 441.37(1)(b); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). For Lakeport to be successful in its claim of change in value, it must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co.*, 252 N.W.2d at 450. The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for Lakeport to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

Although Lakeport offered a significant amount of evidence and testimony, it did not provide sufficient evidence of the subject's fair market value as of January 1, 2011, or as of January 1, 2012. Both the 2011 and 2012 values are necessary to establish a change in value since the last assessment. *Equitable Life Ins. Co.*, 252 N.W.2d at 450. For this reason, we find that Lakeport failed to show the subject properties suffered a downward change in value from 2011 to 2012.

The APPEAL BOARD ORDERS the January 1, 2012 assessments of the parcels owned by MB Sioux City Lakeport, LLC, located at the junction of Lakeport and Sergeant Roads north of Highway 20 in Sioux City, Iowa, as set by the Sioux City Board of Review, are affirmed.

Dated this 30th day of December, 2013.



Karen Oberman, Presiding Officer



Jacqueline Rypma, Board Member

Cc:

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