

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 14-77-0234

Parcel No. 030/01953-000-000

24th Express Corp.,

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board on April 27, 2015. Attorney Douglas A. Fulton, of Brick Gentry, PC, West Des Moines, represented 24th Express Corp. Assistant Polk County Attorney Ralph Marasco, Jr. represented the Board of Review.

24th Express Corp. is the owner of a commercially classified property located at 841 6th Avenue, Des Moines, Iowa. It is a 0.177-acre site (7722 square feet) improved with 7260 square feet of asphalt parking.

The property's January 1, 2014, assessment was \$147,500, allocated as \$138,000 in land value and \$9,500 in improvement value. This value did not change from the prior year's assessment; and therefore, 24th Express was limited to a claim of change in value under Iowa Code section 441.37(1)(a)(2).

The Board of Review, acting on a recommendation from the Polk County Assessor's Office, lowered the assessment to \$129,000, allocated as \$117,000 in land value and \$12,000 in improvement value. 24th Express then appealed to this Board. It asserts the property's correct fair market value is \$75,000.

PAAB stated on the record at hearing that the only ground before it was a claim based on market value. PAAB noted this because the Board of Review acted on the

protest and reduced the assessment. PAAB now acknowledges this statement was made in error. The only statutory ground available for protest, appeal, and review where the property's value has not changed from the previous year (an interim year) is whether the property suffered a change in assessment under section 441.37(1)(a)(2). We, therefore, review the record with this in mind.

Findings of Fact

Robert Conley is the owner of 24th Express. Conley testified 24th Express purchased the subject property in September 2013 for \$75,000. The motivating factor behind the purchase was to control the appearance of the property and for the property to serve as a staging site for when 24th Express tears down a warehouse located on an adjacent parcel at 845 6th Avenue.

Conley testified 24th Express purchased the adjacent warehouse property several years ago for \$75,000. He noted the subject property had been for sale since he purchased the warehouse. He stated he used the warehouse's purchase price as the basis of his offer for the subject property. When he purchased the warehouse, he was told the improvements had no value but the site was worth, \$75,000; therefore, he decided to offer this amount for the subject property. (Exs. 1 & 2). In Conley's opinion, there were no other potential buyers for the subject property and the previous owners had held it for years. In Conley's opinion, the subject property, which could be used for parking, was revenue negative because of the competition of a 600-car parking garage across the street that was built by the federal government.

According to Conley, he was only mildly interested in purchasing the property and thinks he paid a fair price. When he purchased the subject property, Conley admits that he did not perform any market studies or have an appraisal because he did not feel the need to, since the sellers approached him.

Lastly, Conley asserts the subject site is unbuildable due to setbacks. 24th Express did not submit any documentary evidence to support this assertion. The Board of Review noted it was not aware of the claim that the subject site was unbuildable until Conley asserted it at this hearing.

Amy Rasmussen, Director of Litigation in the Polk County Assessor's Office, testified for the Board of Review. In Rasmussen's opinion, the subject property's sale was not a normal transaction because it was a purchase by an adjoining land owner. Rasmussen further noted the Department of Revenue would consider the sale abnormal and it could not be used for a sales ratio study.

Rasmussen additionally believes the assessment is correct based on the sales her office analyzed for the Board of Review. The following properties' sales were provided in support of the assessment.

Sale #	Semi-Improved Properties	Date of Sale	Site Size (SF)	Sale Price	SP/SF
	Subject	Nov-13	7722	\$75,000	\$9.71
1	1424 Locust	Dec-12	10855	\$290,000	\$26.72
2	1710 High Street	Aug-11	28021	\$249,000	\$8.89
3	100 6th Avenue	Jun-11	25260	\$650,000	\$25.73
4	1314 Walnut	May-11	17424	\$385,000	\$22.10
5	836 5th Ave	May-12	11584	\$134,780	\$11.64
				Median	\$16.87

The median sale price of the properties, including the subject's sale, was \$16.87 per-square-foot. Rasmussen noted that because the subject property's sale was an abnormal transaction it should not have been used for determining the median. Despite Rasmussen's acknowledgement that the inclusion of the subject sale was improper in this case, the Board of Review relied on the \$16.87 per-square-foot value, and ultimately determined a total value of \$129,000 for the subject property. Had the subject property's sale not been included in the analysis, the median sales price would be \$22.10.

We also note several of these sales appear to be abnormal transactions based on their property record cards. Sale 3 sold from a lending institution to a government entity, which would indicate it was a foreclosed property at the time of purchase and sold to an entity that is often tax exempt. Additionally, Sales 4 and 5 included multiple parcels in one transaction.

Because the analysis includes multiple abnormal transactions, it does not provide a reliable indication of value.

Rasmussen also explained that after the Board of Review determined the total assessment, a land residual technique was then applied to allocate the \$129,000 value between the land and improvements. The depreciated cost of the improvements was determined to be \$12,000; which was then subtracted from the total value to arrive at the land value of \$117,000. Rasmussen explained the Board of Review increased the value of the improvements, based on the suggestion from the Assessor's Office, which had revalued the improvements using the cost approach.

Finally, on cross-examination, Rasmussen testified she did not know whether the appraiser who conducted the analysis for the Board of Review took into consideration the long listing history of the subject property.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB 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). PAAB considers only those grounds presented to or considered by the Board of Review, but 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(1)(a-b). New or additional evidence may be introduced, and PAAB 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).

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 reflecting market value are to be considered in arriving at market value. §441.21(1)(b). Conversely, sales of property in abnormal transactions not reflecting market value shall not be taken into account. *Id.*

“For even-numbered assessment years, when the property has not been reassessed” 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 § 441.37(1)(a)(2); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). “When this ground is relied upon, the protesting party shall show the decrease in value by comparing the market value of the property as of January 1 of the current assessment year and the actual value of the property for the previous assessment year.” *Id.*; see also *Equitable Life Ins. Co.*, 252 N.W.2d at 450 (holding for a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the beginning and final valuation). Essentially, it is not enough for a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

24th Express purchased the property and relies on the sale price to demonstrate the January 1, 2014, market value. First, we do not find the sales price alone, in this case, is sufficient evidence of the fair market value, in part because it was purchased by an adjoining land owner rendering the sale abnormal for assessment purposes. § 441.21(1)(b) (stating that purchase of adjoining land to be operated as a unit is an abnormal transaction and shall not be taken into account in setting market value, unless an adjustment is made). Moreover, 24th Express did not provide any evidence of the property’s value as of January 1, 2013. Both values are required to support a claim of change in value. *Id.* at 450. For the foregoing reasons, we find that 24th Express, Corp. has not shown a downward change in value for the subject property.

Finally, even if 24th Express were able to contend the property was assessed for more than authorized by law, PAAB would find it had failed to show the assessment is excessive. In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the

assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

In this case, the subject property's purchase price of \$75,000 in September 2013 constituted an abnormal transaction under Iowa law. Section 441.21(1)(b) states that abnormal transaction include "purchase of adjoining land or other land to be operated as a unit." Conley indicated he intended to use this land as a staging area for tearing down the warehouse and it was the purchase of adjoining land, as 24th Express owns the adjacent warehouse parcel. Thus, the purchase price alone is not a reliable indicator of value. 24th Express provided no other opinion of value for the subject property and did not shift the burden of proof to the Board of Review.

Order

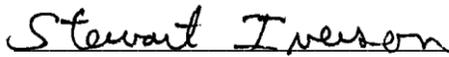
IT IS THEREFORE ORDERED the January 1, 2014, assessment of the subject property as set by the Board of Review is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 8th day of May, 2015.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:

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