

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

PAAB Docket No. 2015-077-00699C

Parcel No. 100/05468-001-000

CWP West Corp.,

Appellant,

v.

Polk County Board of Review,

Appellee.

Introduction

This appeal came on for consideration before the Property Assessment Appeal Board (PAAB) on November 12, 2015. Michael Byrnes with Paradigm Tax Group represented CWP West Corp. Assistant County Attorney Christina Gonzalez was counsel for the Polk County Board of Review.

CWP West, doing business as Mister Car Wash, is the owner of a commercial car wash located 3333 Merle Hay Road, Des Moines. The improvements consist of a seven-bay, full-service car wash built in 1990, with 9402 square feet of gross building area (GBA), including 2173 square feet of finished area. The site is 1.259 acres.

The property's January 1, 2015, assessment was \$1,030,000, allocated as \$441,000 in land value and \$589,000 to improvement value. CWP West's protest to the Board of Review claimed the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b).

The Board of Review denied the protest.

CWP West then appealed to PAAB reasserting its claim and asserting the correct fair market value is \$800,000.

Findings of Fact

Michael Byrnes with Paradigm Tax Group, LLC, submitted a letter to the Board of Review asserting the correct market value of the subject property is \$800,000. He bases his opinion on the income and sales approaches to value.

Byrnes submitted the income approach, in which he concluded a value of \$710,000 rounded. However, Byrnes states the actual lease terms and gross annual income stated in the lease were used in the development of the income approach. Byrnes did not provide any evidence that the actual subject lease terms are consistent with other market leases. Byrnes' Annual Gross Revenue (\$66,800) is based on the monthly base rent stated in the 20-year lease agreement from 2007. However, the lease also contains an escalation clause that provides for annual base rent increases. It does not appear Byrnes has accounted for the base rent increases in determining his Annual Gross Revenue.

Moreover, Byrnes relied on an investor survey to estimate the reserve for replacements, as well as the capitalization rates. He did not provide any market evidence of a capitalization rate to ensure the survey reflects local capitalization rates.

Byrnes submitted seven sales he considered comparable, which are summarized in the following chart.

	Sale Date	Sale Price	Gross Building Area	SP/SF	Year Built	Total Adjustments	Adjusted Price/SF
Subject	N/A	N/A	9402	N/A	1990	N/A	N/A
2310 W 1st St - ANK	Jun-14	\$200,000	4706	\$42.50	1993	-4%	\$40.86
565 NW 65th Ave - DM	Jun-14	\$120,000	2400	\$50.00	1987	3%	\$51.50
1325 N. Ankeny Blvd - ANK	Aug-14	\$1,380,000	7337	\$188.09	2004	-10%	\$170.99
8355 Birchwood Ct - JHN	Jun-12	\$600,000	4581	\$130.98	1968	22%	\$159.79
2340 Hubbell Ave - DM	May-14	\$100,000	3614	\$27.67	Unknown	10%	\$30.44
3104 Indianola Ave - DM	Nov-15	\$85,000	5000	\$17.00	1986	14%	\$19.38
8469 University Blvd - CV	Apr-13	\$182,500	3036	\$60.11	1987	13%	\$67.93

The average adjusted sale price is \$77.27 per-square-foot and the median is \$51.50 per-square-foot. Byrnes selects the average between these two numbers and concludes an opinion of value by the sales comparison approach of \$64.39 per-square-

foot, or \$605,000 rounded. There is no explanation of the individual adjustments to each sale; there is only a percentage of total adjustment. Without explanation of the adjustments made, this Board is unable to determine the reasonableness of the analysis.

Byrnes submitted a listing sheet for each of the properties he identified as comparable to the subject. Additionally, the Board of Review submitted a critique of the sales. (Ex. A). Foremost, the Board of Review notes none of the sales submitted were full-service car washes like the subject; rather they were all self-service.

The listing for the sale located at 2310 W 1st Street reports the sale price as \$200,000; however, it also notes \$965,000 in financing from Private Individual Fas Fiancial Inc. Byrnes did not report or analyze the financing, or if it had an effect on the sale price. The Board of Review notes this car wash closed in 2012 and sat vacant until it sold in 2014.

The listing sheet for 565 NW 65th Avenue reports the transaction was a redevelopment project with the sale reflecting the site value only. Notes on the listing sheet state the buyer intends to tear down the carwash and redevelop the property as a convenience store. The Board of Review confirms the listing information noting this property was vacant for six months prior to its sale, the adjoining landowner was the buyer, and the improvements razed immediately after the sale.

1325 N Ankeny Boulevard is reported as a 1031 exchange. Byrnes reports the sale price as \$1,380,000. The Board of Review notes the total purchase price was \$2,725,000, with \$1,345,000 listed as personal property. The Board of Review believes the personal property allocation is "high." It requested an itemized list of what was considered personal property, however this was not provided.

The property at 8355 Birchwood is the oldest improvement and the most dated transaction, occurring in 2012, according to Byrnes' listing. However, the Board of Review asserts Polk County records do not indicate this property transferred in 2012. It notes the property was purchased in 2010 after foreclosure. Moreover, it notes the property was built in 2004, not 1968; and its building size is 4054 square feet, not 4581 square feet as reported by Byrnes.

Lastly, the sales located at 2340 Hubbell Avenue, 3104 Indianola Avenue, and 8469 University Boulevard were all identified by Byrnes as Real Estate Owned (REO) properties, which are bank-owned real estate typically as the result of a foreclosure. This was confirmed on the listings provided in the record, as well as by the Board of Review, which identify these properties as bank-owned at the time they were sold.

Based on the foregoing, Byrnes concludes an opinion of value of no more than \$800,000. He provided no rationale for this reconciled opinion of value based on the conclusion of his income approach (\$710,000) and his sales comparison approach (\$605,000).

The Board of Review asserts the Assessor's cost approach supports the assessed value and there is insufficient data to develop the sales and income approaches.

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 are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code 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).

CWP submitted a sales comparison approach and income approach to value the property. The income approach was based solely on the actual lease data of the subject property and no information was submitted to ensure this data was reflective of actual market conditions. *See Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d 419, 422-23 (Iowa 1997) (stating that assessor properly used objective rental income of store, not actual lease amount, in setting valuation). Even if it were appropriate to rely on the actual lease, the Annual Gross Revenue figure used to develop the income approach in this case does not account for the lease's rent escalation clause. Accordingly, there is insufficient information to conclude CWP West's income approach accurately reflects the property's market value.

The sales comparison approach relied heavily on abnormal sales, such as properties purchased by adjoining property owners, 1031 exchanges, or foreclosures. § 441.21(1) ("In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to . . . foreclosure or other forced sales [and] discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit."). While adjustments were made to the properties, the specific factors that were adjusted were not reported or analyzed. Moreover, it is unknown if adjustments were made for the distorting sales conditions. Ultimately, it is not possible for this Board to determine the appropriateness of the adjustments made by Byrnes.

Based on the foregoing, we find CWP West Corp. has not submitted sufficient evidence to support its assertion the subject property is assessed for more than authorized by law.

Order

IT IS THEREFORE ORDERED the January 1, 2015, 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.

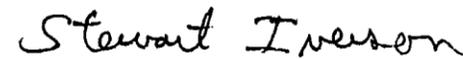
Dated this 25th day of November, 2015.



Karen Oberman, Presiding Officer



Jacqueline Rypma, Board Member



Stewart Iverson, Board Chair

Copies to:

Michael Byrnes

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