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PAAB

PROPERTY ASSESSMENT APPEAL BOARD

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket Nos. 2015-077-00726M thru 00728M

Parcel Nos. 090/02713-000-000; 090/08208-000-000; 090/07919-000-000

Edward Behrman (Lenox Properties, LLC),

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

These appeals came on for hearing before the Property Assessment Appeal Board (PAAB) on October 5, 2017. Lenox Properties, LLC was self-represented by its managing partner Edward Behrman. Assistant Polk County Attorney David Hibbard represented the Board of Review.

Lenox Properties owns three multi-residential properties in Des Moines Iowa. The following table summarizes the subject properties and their January 1, 2015 assessments. (Exs. A1-A3).

Docket	Parcel #	Address	Building Value	Land Value	2015 Total Assessment
2015-077-00726M	090/02713-000-000	527 40th St	$469,500	$34,500	$504,000
2015-077-00727M	090/08208-000-000	4215 Grand Ave	$494,500	$50,500	$545,000
2015-077-00728M	090/07919-000-000	3605 Grand Ave	$563,000	$44,000	$607,000

Lenox petitioned the Board of Review claiming the assessments were not equitable as compared to the assessments of other like property under Iowa Code sections 441.37(1)(a)(1)(a). The Board of Review denied the petitions.

Lenox reasserts its claim to PAAB.

General Principles of Assessment 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*. Conversely, sale prices of abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the factors that distort market value, including but not limited to foreclosure or other forced sales. *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).

Findings of Fact

The 527 40th Street property is improved with a brick three-story, 15-unit apartment building. Built in 1910, it has 13,128 square feet of gross building area

(GBA), which includes a full, partially finished basement. It also has twelve garage stalls and 4500 square feet of concrete paving. The site is 0.395 acres. (Ex. A1).

4215 Grand Avenue is improved with a brick three-story, 16-unit apartment building that was built in 1916 and remodeled in 1951. It has 14,372 square feet of GBA, which includes a full, unfinished basement. It also has a one-car garage and 6500 square feet of asphalt paving. The site is 0.574 acres. (Ex. A2).

There are 20 units located at 3605 Grand Avenue, which consists of two brick, three-story apartment buildings that were built in 1906. The combined improvements appear to total roughly 19,000 square feet of GBA. It also has 8000 square feet of asphalt paving. The site is 0.506 acres. (Ex. A3).

Behrman testified on behalf of Lenox and asserts the subject properties are inequitably assessed based on the six criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). He methodically contemplated and provided detailed testimony along with exhibits he believes support each of the six criteria required under *Maxwell*.

Behrman submitted five sales located in areas he considered to be competing with the subject properties' neighborhood. (Ex. 1). Behrman testified he searched for sales of multi-residential properties that were built from 1900-1930, in normal condition, and had between 10 and 40 units. (Ex. 5). The following table summarizes his comparable sales.

Comparable	Sale Price	Sale Date	Building Size	Units	Sale Price/SF
1 - 933 18th St	$300,000	Jun-14	7,788	12	$38.52
2 - 2500 Kingman	$390,000	Aug-13	10,578	15	$36.87
3 - 2600 Kingman	$560,000	Feb-13	18,156	19	$30.84
4 - 1314 22nd St	$280,000	Nov-13	5,822	11	$48.09
5 - 516 28th St	$260,000	Mar-13	5,632	13	$46.16

Typically, to establish inequity, sales from the prior year (2014) or the established actual values of similar properties, are compared to the current assessment (2015) to determine an assessment/sales ratio. This ratio is then applied to the market or actual

value of the subject property. Here, only one of Behrman's comparable sales occurred in 2014 and could be considered to develop a ratio analysis.

PAAB notes Behrman chose not to include the subject properties' recent sales in his attempt to prove their market value. The 3605 Grand Avenue property sold in August 2014 for $640,000; or $32,000 per unit. The indicated assessment/sale price ratio is 0.95. In September 2013, the 4215 Grand Ave and 527 40th Street properties, along with some other parcels totaling 61 units in all, sold in a multiple parcel transaction for $2,300,000; or $37,705 per unit. (Full Record Certification).

Behrman testified that he believes the ratio is a statistical analysis and therefore it is inappropriate to include the subject properties within the data set. Given that Behrman ultimately attempts to estimate the fair market value of the subject properties, it seems highly illogical to ignore the subjects' sales price. See § 441.21(1) (stating the sales price of the subject property in a normal, arm's length transaction shall be considered in determining market value).

Behrman relied on the comparable properties to establish an average sale price per-square-foot of $40.10. He uses this figure to establish an opinion of value for the subject properties, as well as other properties later in his analysis.

Behrman testified that Comparable 5 was a bank sale; and that Comparable 4's sale price included an adjoining second parcel. He could not recall if the reported building size of 5822 square feet or the reported unit count included the second parcel. Patrick Harmeyer, a commercial appraiser with the Polk County Assessor's Office, testified that the second parcel associated with Comparable 4 is a residentially classified duplex that sold along with the property that is classified multi-residential. Because there are different classifications involved in the transaction, he would not consider it for a ratio analysis. The sale of adjoining parcels and a bank sale would be considered abnormal transactions under § 441.21(2). Behrman did not adjust either sale for their abnormal conditions.

Behrman asserts investors analyze properties based on the rents they receive per-square-foot. He believes this is the best way to analyze sales. He acknowledges this would include areas of the building that are not rentable but believes there is an

underlying assumption that each building has a similar percentage of space that is not rentable. Despite this, he acknowledged unit size and unit mix (studio, one-bedroom, two-bedroom, etc.) would affect the amount of rents received.

It is unknown if the building size of the sales reported by Behrman is the GBA, which would include all areas of the property including the basement; or if it is above grade area only. Moreover, none of the sales were adjusted for differences that may exist between them and the subject properties, such as location, unit count, amenities, or quality of the improvements. Behrman generally testified that unit types can affect a property's income stream. He indicated that studio apartments, for example, generate more income per-square-foot than other unit types.

The only normal sales submitted are located in neighborhood 030 while the subjects are located in 090. We note the subject property sales indicate a per-square-foot sales price that is significantly higher than these comparables, suggesting an underlying lack of comparability. In Harmeyer's opinion, Comparable 1 is in an inferior location compared to the subject properties.

In the second stage of Behrman's analysis, he selected seven properties in the subject's tax district (090) that he identifies as "tax comparables." He relied on the same search criteria that he used to find his sales comparables. In this step of his analysis, Behrman uses his calculation of $40.10 to arrive at an opinion of actual value for each property. By establishing these values, Behrman believes he is meeting the third criterion of the *Maxwell* test.

Comparable	2015 Assessment	Indicated Actual Value	Ratio	Building Size	Units
1 - 3607 Ingersoll Ave	$765,000	$788,085	0.97	19,653	37
2 - 511 29th St	$540,000	$619,826	0.87	15,457	26
3 - 629 49th St	$709,000	$721,279	0.98	17,987	21
4 - 3007 Grand Ave	$446,000	$761,138	0.59	18,981	15
5 - 3831 Ingersoll Ave	$375,000	$399,075	0.94	9,952	15
6 - 2825 Center St	$230,000	$311,778	0.74	7,775	12
7 - 4024 Grand Ave	$981,000	$1,000,535	0.98	24,951	22

Again, it is unclear if the reported building size of each tax comparable property is the GBA or its above-grade finished area only. Using this data, Behrman then calculates a ratio for each comparable, the average of which is 0.87.

Behrman acknowledged he also needs to apply the ratio he developed to the actual value of the subject properties to ascertain the correct assessed value under *Maxwell*. In the same manner as opining an actual value for his tax comparables, Behrman multiplies $40.10 to the building size of each of his subject properties as seen in the following table. Thus, in his opinion, he has met the fourth criterion of the *Maxwell* test.

Address	Building Size	Indicated Actual Value
527 40th St	9,846	$394,825
4215 Grand Ave	10,779	$432,238
3605 Grand Ave	14,249	$571,385

None of Berhman's reported building sizes match the property record cards. For 3605 Grand Avenue, it appears Berhman may only be including one building. For the 40th Street and 4215 Grand Avenue property he appears to report the above-grade finish only.

Lastly, Behrman applied the average ratio of 0.87 that he concluded from his tax comparables to his opinion of the indicated actual value of the subject properties. (Ex. 3). His conclusions of the correct 2015 assessed values based on equity are summarized in the table below.

Address	Indicated Actual Value	Ratio	Correct 2015 Assessed Value
527 40th St	$394,825	0.87	$343,498
4215 Grand Ave	$432,238	0.87	$376,047
3605 Grand Ave	$571,385	0.87	$497,105

Harmeyer explained that multi-residential properties were re-valued in 2015. As part of the re-valuation process an equalization study was conducted. (Ex. B). The equalization study included 103 sales of properties that sold in 2014, which were then

compared to their 2014 assessments. This resulted in a median ratio of 92.8%[1], indicating that multi-residential properties were assessed for roughly 7% less than their actual market value. In an effort to reach a target median sales ratio of 99% for the 2015 assessment, this study concluded a recommendation to increase the 2014 dwelling assessment of multi-residential properties by 6.7%.

Reviewing Behrman's analysis, Harmeyer testified that he would not have attempted to develop an opinion of value for multi-residential properties based on the GBA, but rather would analyze the sale prices per unit.

The Board of Review provided an Appraiser Analysis conducted by the Assessor's Office that estimated the subject properties' actual value through the sales and income approaches, as described in the following table. (Full Record Certification).

Docket	Parcel #	Address	Income	Sales	2015 Total Assessment
2017-077-00726M	090/02713-000-000	527 40th St	$590,431	$532,497	$504,000
2017-077-00727M	090/08208-000-000	4215 Grand Ave	$552,943	$572,976	$545,000
2017-077-00728M	090/07919-000-000	3605 Grand Ave	$705,281	$696,762	$607,000

Behrman was critical of the Board of Review's comparables. Nonetheless, we note the subjects' assessments fall below the values indicated by the income and sales approaches.

Analysis & Conclusions of Law

Lenox asserts its properties are inequitably assessed. To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Lenox made no assertion that an assessing method had not been uniformly applied.

Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

[1] Exhibit 4 shows the median ratio as 88.1%. Harmeyer did not explain the discrepancy at the hearing.

> "(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

Id. at 711.

The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id*. It requires a showing of the comparables' and subjects' actual values. The actual value is the property's fair and reasonable market value. § 441.21(1)(b). For the following reasons, PAAB finds Lenox's analysis fails to reliably demonstrate the comparables' and subjects' market values. The failure to reliably prove these values also undermines the reliability of any ratios Lenox developed and the equity analysis.

First, Lenox ignored the subjects' sales prices in determining the market value of its comparables as well as the subject properties. Under Iowa law, the subjects' sales price should be considered in arriving at market value, assuming the sales are normal, arm's length transactions without market distortion. § 441.21(1)(b). The unreliability of Lenox's conclusions is shown by looking at the sale of the subject property at 3605 Grand Avenue. That property sold for $640,000 in August 2014; yet Lenox calculates its market value as $571,385 and provides no explanation for this difference.

In lieu of this, Lenox submitted five sales of multi-residential properties, which it believes are comparable to the subject in location, building size, age, and condition. Two of these properties were identified by Behrman as abnormal transactions, yet the sales were not adjusted to eliminate these factors. As a result, including these sales in the analysis would not result in reliable conclusions.

Lenox considered the sale price per-square-foot of each comparable property to arrive at an average sale price per-square-foot of $40.10. Three of these properties are not located in the same neighborhood as the subject. A comparison of the sales price

per-square-foot of the comparables and subjects indicates there may be a lack of comparability. In any event, including the subjects' sale prices in this calculation would increase the average. Thus, the actual values Lenox calculates in the next step are likely too low.

Lenox then applied this $40.10 per-square-foot figure to the subject properties and another set of comparable properties located in the subjects' neighborhood to estimate their actual values. (Ex. 2). This method of averaging the sale price per-square-foot of a universe of properties is not recognized appraisal methodology in determining the actual value of a single property. This straight-line analysis does not consider elements that may affect the market value of income-producing properties, such as the quality of the structures, the amenities provided, or the number of units and unit mix. For example, while the law of diminishing marginal returns is widely accepted and was acknowledged by Behrman, he applies the same indicated value per-square-foot to all of his comparables regardless of the fact they range in size from 7775 square feet to 24,951 square feet.

Because we find Lenox did not offer reliable evidence of the subjects' and comparables' actual values, its claim under *Maxwell* must fail. Viewing the record as a whole, we find Lenox failed to show the subject properties are inequitably assessed.

Order

PAAB AFFIRMS the Polk County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2017).

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.

Karen Oberman, Presiding Officer

Camille Valley, Board Member

Stewart Iverson, Board Chair

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