

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

PAAB Docket No. 2016-007-00115R

Parcel No. 8914-24-477-015

Patrick Luensmann,

Appellant,

v.

Black Hawk County Board of Review,

Appellee.

Introduction

This appeal came on for consideration before the Property Assessment Appeal Board (PAAB) on December 29, 2016. Patrick Luensmann was self-represented and requested a written consideration of his appeal. Attorney David Mason represented the Board of Review.

Luensmann is the owner of a residential, two-story home located at 811 Stanwood Drive, Cedar Falls. Built in 1995, it has 2124 square feet of gross living area (GLA), an unfinished basement, an open porch, and a three-car attached garage. The site is 0.220 acres. (Ex. A).

The property's January 1, 2016 assessment was \$267,300, allocated as \$31,010 land value and \$236,290 to improvement value. Luensmann's protest to the Board of Review claimed the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). This value did not change from the prior year's assessment; therefore, Luensmann was limited to a claim of change in value under Iowa Code section 441.37(1)(a)(2). The Board of Review denied the petition.

Luensmann re-asserts his claim to PAAB and contends the subject property's correct assessed value is \$187,665. (Appeal 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 "is defined as the fair and reasonable exchange between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular 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

Luensmann made an offer on the subject property in January 2016 for \$187,665. (Ex. 3). The offer indicates the subject was a short sale from CitiMortgage. The

purchase was completed for the offered amount in March 2016. (Ex. A). A short sale is “the sale of real property in which the proceeds from the sale fall short of the balance owed on a loan secured by the property. Lenders may agree to a short sale to avoid lengthy and costly foreclosure proceedings...” APPRAISAL INSTITUTE, THE DICTIONARY OF REAL ESTATE APPRAISAL 181(5th ed. 2010).

Luensmann also submitted two appraisals into evidence. The appraisals were completed by Clinton Cota, Rally Appraisal, LLC, Cedar Falls. (Ex. 1); and Judy Kay Burr, Professional Real Estate Services, Inc., Denver, Iowa. (Ex. 2). Both appraisers relied solely on the sales comparison approach to value. Cota’s appraisal was completed for the Luensmann’s purchase and subsequent financing of the property. He concluded an opinion of value of \$190,000, as of February 2016. Burr’s appraisal was completed to aid in the liquidation pricing (listing) decision of the property for CitiMortgage and The Department of Veterans Affairs. (Ex. 2, p. 3). She concluded an opinion of value of \$206,000, as of December 2015.

We do not find it necessary to recite Cota or Burr’s appraisal in-depth because we do not find they concluded a fair market value (FMV), which requires typical motivations on the parts of both the seller and buyer. FMV is a term that is “similar to market value in general usage.” APPRAISAL INSTITUTE, THE DICTIONARY OF REAL ESTATE APPRAISAL 75 (5th ed. 2010). According to the UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) 3-4 (2016-2017 EDITION, THE APPRAISAL FOUNDATION), while the definition of market value and its authority [source] may vary, it has three key components:

1. The relationship, knowledge and motivation of the parties (i.e., seller and buyer)
2. The terms of the sale (e.g., cash, cash equivalent or other terms; and
3. The condition of sale (e.g., exposure in a competitive market for a reasonable time prior to sale

Reviewing Cota’s appraisal, we note he arrived at the value of the property with an atypically motivated seller. Cota relied on six sales in his analysis and adjusted each of them downward for financing. He states in his report that “all comps adjust[ed] for the subject’s (sic) being a short sale with atypically motivated seller...” (Ex. 1, p. 4). By

choosing to adjust all of his comparable properties downward by 5% to reflect the motivations of the seller, by definition, Cota is not concluding the subject property's FMV.

Turning to Burr's appraisal, she identifies the intended use of her appraisal is to aid in the liquidation pricing decision of the property by the current mortgage holder of the property. A liquidation price is a forced price obtained without reasonable market exposure to find a purchaser. APPRAISAL INSTITUTE, THE DICTIONARY OF REAL ESTATE APPRAISAL 115 (5th ed. 2010).

Moreover, with two appraisals in the record, PAAB is afforded the opinion of two professionals in determining the best comparable properties to the subject. We note Cota's sales range from \$176,000 to \$240,000, with three of the properties having sale prices under \$200,000. In contrast, Burr's comparable properties sold between \$238,000 and \$251,500. Reviewing the photos of the comparables in both reports, we find Burr's selected comparable properties bear more resemblance in quality to the subject than Cota's selected sales. Failing to select the appropriate comparable properties for analysis could result in an artificial undervaluation of the subject property.

Lastly, Burr notes the subject property has deferred maintenance with an estimated cost to cure of \$20,300; and a contributory value for those components of \$23,500. (Ex. 2, p. 10 – VA Liquidation Appraisal Addendum). Burr adjusted three of her four comparable sales downward by 10% for their updated conditions. These adjustments ranged from \$24,000 to \$25,150. After adjusting the properties for condition, she then adjusted every comparable downward by another \$23,500 as a repair adjustment. This appears to be a double-dipping for the condition of the subject property, resulting in an artificially low value conclusion.

Conclusions of Law

Iowa Code section 441.37(1)(a)(2) and its reference to section 441.35(2) give rise to the claim of downward trend in value. See *Security Mut. Ins. Ass'n of Iowa v. Bd. of Review of City of Fort Dodge*, 467 N.W. 2d 301, 304 (Iowa Ct. App. 1991). This ground may only be pled in a non-assessment or "interim" 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 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 the final valuation). The assessed value cannot be used to establish the beginning valuation. *Equitable Life Ins. Co.*, 252 N.W.2d at 450-51. 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.

Luensmann submitted his offer to purchase the subject property, as well as two appraisals to support his assertion the January 1, 2016 assessment is above market value. Luensmann purchased the property as the result of a short sale, which is not a normal transaction. “Sales 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...foreclosure or other forced sales.” § 441.21(1)(b). In this case, the subject’s sale is not a reliable indicator of the subject’s fair market value because it was an abnormal transaction. As a result, we give it no consideration.

Both appraisals arrive at conclusions of value that are not equivalent to the definition of FMV. The Cota appraisal adjusted all of the comparable properties downward to reflect the atypical motivations of the seller, CitiMortgage, that likely resulted in a conclusion of value below its FMV. The Burr appraisal was prepared for the purpose of aiding CitiMortgage in determining a liquidation price, which is a forced

price without reasonable market exposure. For these and the other aforementioned reasons, we find the appraisals do not reflect the subject's fair market value as of January 1, 2016.

Moreover, Luensmann did not submit any evidence of the actual value of his property as of January 1, 2015, to show a downward change in value from the prior assessment. As a result, his claim must necessarily fail.

Order

PAAB HEREBY AFFIRMS the Black Hawk County Board of Review's action.

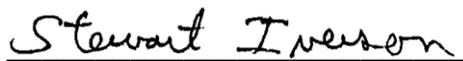
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015).

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.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Camille Valley, Board Member

Copies to:

Patrick Luensmann by eFile

David Mason by eFile