

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

PAAB Docket No. 2018-029-00156C

Parcel No. 16-05-405-015

Ben Brinck (Terri McGrath Brinck)

Appellant,

vs.

Des Moines County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on September 30, 2019. Benjamin Brinck represented Terri McGrath Brinck. Des Moines County Attorney Todd Chelf represented the Board of Review.

Terri McGrath Brinck owns commercial property located at 639 S Central Avenue, Burlington. Its January 1, 2018 assessment was set at \$176,100.

Brinck petitioned the Board of Review claiming the subject property's assessment was not equitable as compared with assessments of other like property and that it is assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(1 & 2). The Board of Review reduced the subject's assessment to \$136,000, allocated as \$27,500 in land value and \$108,500 in improvement value. Brinck appealed to PAAB asserting the same claims.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R.

701-126.2(2-4). New or additional evidence may be introduced. *Id.* 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 the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Findings of Fact

The subject property is a one-story building built in 1975 and operated as a child care center. It has 3570 square feet on the main level with a full basement, and two canopies. The improvements are listed in below-normal condition with a 4+00 grade (average quality). The site is also improved with 8500 square feet of parking area and 392 lineal feet of fencing. The site is 0.422 acres. In addition to 65% physical depreciation, the improvements were adjusted downward 20% for functional obsolescence and 20% for economic obsolescence. (Ex. A).

Benjamin Brinck testified on behalf of the subject property owner. He explained the subject property was purchased for \$55,000 in October 2015. (Ex. 1). The listing agent associated with the October 2015 sale of the subject property wrote a letter stating her opinion the sale price reflected its fair market value at that time. (Ex. 6). Line-items on the settlement statement indicate a portion of the sale proceeds were used to redeem the property from tax sale and to pay off the seller's federal tax lien. (Ex. 1).

Brinck also explained the purchase price included personal property associated with a day care business. (Ex. 3). Brinck did not know the value of the personal property.

In Brinck's opinion, the reason the sale price was so low was because of the subject property's location and significant structural issues. He testified the subject property is located in an impoverished and crime-ridden part of Burlington. He also spoke with the Burlington Police Department who confirmed the subject property is

located in an area with a high crime rate. He believes the subject's location negatively impacts its market value but did not provide any evidence of, or an opinion of, a monetary impact.

Brinck also testified the subject property suffers from significant structural issues that he also believes affect its value. He submitted several interior and exterior photographs illustrating numerous cracks along mortar joints, cracked drywall, uneven doors, cracked foundation floors and walls, and rafters that have shifted as a result of the chronic settlement. (Ex. 5). Brinck had conversations with Richard Keith, an engineer with Klingner and Associates, who explained the reason the improvements were shifting was because they were built on a site that had previously been a ravine and incorrect fill was used and not thoroughly compacted before construction. (Ex. 4).

Prior to the October 2015 purchase of the subject property, Brinck had the property inspected by a Bix Basement Systems (Bix). Bix's estimate to permanently stabilize the foundation was roughly \$59,000. (Ex. 2).

Approximately a month after purchasing the subject, Brinck entered into a lease with "I" Care Child Care, LLC. (Ex. 7). The current tenants pay \$865 per month in rent with an option to purchase after December 2017 for \$87,500. Iris and Stephen Freese are the owners of "I" Care Child Care and testified for Brinck.

Stephen Freese testified he is an unlicensed construction engineer. He has been involved in construction his entire working career and currently works for a large construction company as a superintendent. He also acts as the handyman for the subject property.

Stephen explained that when he and his wife Iris initially looked at the subject property for their day care business, he noted it had significant settlement. He testified areas of the floor have settled between two- to four-inches and are uneven throughout the building. While installing sump pumps, he found un-compacted fill that he believes is causing the settlement. He does not know if the settlement will be on-going but he did note he patches and repaints cracks in the drywall at least once a year. He has also had to sister trusses together as a result of the settlement issues to maintain the integrity of the roof.

He also testified the asphalt parking lot is roughly ten years past its prime, but they have not replaced and have only repaired it as needed. He also noted drainage issues with the site that they are unsure of how to correct. These issues affect the playground and parking lot. Stephen explained the exterior of the building is brick with numerous cracks. In his opinion it is still sturdy, but the cracks need to be annually caulked to ward off water penetration. He also testified there is no central air in the building, and it is heated and cooled by window units. He testified there is no gas service to the building.

The interior of the property has had some cosmetic work such as new cabinetry in the bathroom, repaired cracking and painted the walls, and replaced some flooring. Stephen also noted a portion of the basement has been remodeled with a new ceiling, new drywall, and painted floor. He explained that generally, the basement is used for storage and it is only used for daycare purposes on occasions when there may be an over flow of children.

Stephen testified he would not pay \$136,000 for the subject property given all of these conditions. He believes the correct value of the property, given the noted issues, is the \$87,500 purchase price that he and his wife have agreed to in the lease. He suggested they would be exercising their right to purchase the property, but they have not had the time to do the paperwork at the bank.

In 2017, there was an attempt by the Assessor's Office to inspect the subject property, which was refused. Stephen explained it is just his practice to not allow the Assessor in for inspections.

Iris testified about the operations of the child care. She explained when she was first approached about purchasing the facility, she said no because it is located in a depressed neighborhood. However, she and her husband later chose to purchase and run the operation. She testified three times in the last five months, police have had to lock down the facility and remain on site while individuals were being apprehended in the area.

She explained her clientele is 87-89% low-income. As a result she is unable to raise her rates in 2017 because the parents simply cannot afford even a \$10 per week

increase. She testified her income is set until the State of Iowa allows an increase for low-income families. Additionally, because of rules set by the State, she is unable to charge registration fees, late fees, or no-show fees to her low-income clientele.

We found both Stephen and Iris to be truthful about the current condition and ongoing repairs associated with the subject property; and we found them to be authentic and passionate about their desire to help the community where they operate their child care business.

Brink did not offer any comparable sales or an appraisal offering an opinion of value relative to the January 1, 2018 assessment.

County Assessor Matt Warner testified for the Board of Review. He explained the 2018 assessment of the subject property was increased over its 2017 assessment because of a commercial property re-valuation. Warner explained the Board of Review understood the concerns with the subject property and applied a 20% functional and a 20% economic obsolescence adjustment to reflect the structural concerns, as well as the concerns with the location of the facility.

Warner explained there are not many taxable day care operations in Des Moines County. The Board of Review submitted four properties it found similar in construction and style to the subject. (Exs. D-G). The following table is a summary of these properties.

Comparable Properties	Sale Price	Sale Date	Sales Price/SF	Year Built	Gross Building Area (SF)	2018 Assessed Value (AV)	AV/SF
Subject - "I" Care Child Care	\$55,000	Oct-15	\$15.40	1975	3570	\$136,000	\$38.09
1 - Little Angels Childcare	\$218,700	Jan-14	\$56.25	1972	3888	\$221,500	\$56.97
2 - Artistry Salon & Spa Suites	\$100,000	Jul-18	\$43.25	1900	2312	\$80,800	\$34.95
3 - Optimae Life Services	\$310,000	Mar-16	\$64.61	1966	4798	\$194,900	\$40.62
4 - Institute of Therapeutic Massage	\$140,000	Apr-11	\$48.33	1958	3387	\$149,700	\$44.20

We note the subject's sales price is significantly below these other sales on a total and per-square foot basis. The subject's assessed value per-square-foot is also below the comparables' sales prices per-square-foot and within the range of the comparables' assessed value per-square-foot.

Warner explained Comparable 1 is the most similar to the subject property. It is a child care center and similar in size and construction to the subject property, but it does not have a basement like the subject property. Comparable 1 is in better condition than the subject and in more desirable location within Burlington but it is assessed roughly 60% higher than the subject property.

Comparables 2, 3, and 4 are not child care centers. The Board of Review included them for analysis because of similar style and construction compared to the subject property, and which could reasonably be used for a child care facility.

Comparables 2 and 4 are the oldest buildings; and Comparable 2's condition is identified as "observed" on the property record card.

Comparables 1 and 3 are the most similar in age; have a superior condition rating compared to the subject; and less physical obsolescence. Comparable 3 also has functional and economic obsolescence applied. The subject's assessed value per square foot is below both of these properties.

Warner explained that some assumptions about the subject property had to be made because the Assessor's Office was unable to physically inspect the property prior to the 2018 re-valuation. He believes the obsolescence adjustments applied by the Board of Review reasonably consider the concerns Brinck raised.

Analysis & Conclusions of Law

Brinck asserts the subject property is inequitably assessed and assessed for more than the value authorized by law. § 441.37(1)(a)(1 & 2).

To prove inequity, a taxpayer may show 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). Brinck offered no evidence of the Assessor applying an assessment method in a non-uniform manner.

Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The *Maxwell* test provides that inequity exists when, after

considering the actual values (2017 sales) and assessed values (2018 assessments) of comparable properties, the subject property is assessed at a higher portion of its actual value. Because the *Maxwell* test requires a showing of the subject property's actual market value and Brinck's over assessment claim requires the same showing, we forgo further equity analysis and turn to the over assessment claim.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted).

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.* The sales comparison method is the preferred method for valuing property under Iowa law. *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990).

The first step in this process is determining if comparable sales exist. *Soifer*, 759 N.W. 2d at 783. "Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court." *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86,88 (Iowa 1977)).

Brinck did not offer any comparable properties that he believes demonstrate its property is over assessed. He asserts the subject's 2015 sale price is the best reflection of the subject's fair market value as of January 1, 2018. In this case, we do not find a 2015 sale price alone is sufficient to demonstrate the January 1, 2018 actual value of the subject property. We also note the significant difference between the subject's 2015 sales price and the other sales in the record. This disparity might be caused by the subject's inferiority, but might also be explained by the nature of the sale itself, which has some indicia of abnormality.

Typically, market value is demonstrated with a competent appraisal or a comparative market analysis, considering, at minimum, the sales comparison approach

to value. We recognize there are few sales of operating child care centers but there have been sales of properties with similar style and construction that suggest the subject property is not over assessed. Acknowledging the potential difficulty of finding sales comparable to the subject, we also note Brinck did not offer any opinion of value based on the other valuation approaches, such as cost or income. § 441.21(2).

Brinck contends the subject property suffers from construction deficiencies and its location in a declining neighborhood but he failed to provide sufficient evidence of how these concerns impact the market value of the subject property. We note the Board of Review has attempted to address these concerns with multiple obsolescence adjustments. Because Brinck believes this corrective action by the Board of Review may still not appropriately reflect the condition and external obsolescence of the subject property's value, he may wish to request an interior inspection from the Assessor's Office to ensure it is properly listed.

Viewing the record as a whole, we find Brinck failed to show the property is inequitably assessed or assessed for more than the value authorized by law.

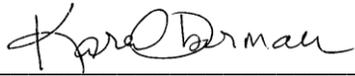
Order

PAAB HEREBY AFFIRMS the Des Moines County Board of Review's action.

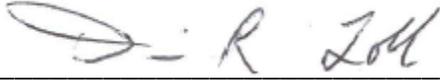
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2018).

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.

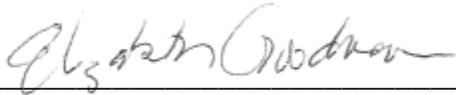
Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A (2018).



Karen Oberman, Board Member



Dennis Loll, Board Member



Elizabeth Goodman, Board Member

Copies to:

Benjamin Brinck by eFile

Todd Chelf for the Des Moines County Board of Review by eFile