

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

PAAB Docket No. 2018-077-10007C

Parcel No. 190/01639-750-007

CK Outdoor, LLC

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on January 25, 2019. CK Outdoor LLC was represented by Karla Steele, CK Outdoor Account Executive. Assistant Polk County attorney Mark Taylor represented the Board of Review.

CK Outdoor LLC owns a commercial billboard in the northeast area of Des Moines. The billboard is located on leased land. The billboard's January 1, 2018 assessment was \$64,500. (Ex. A).

CK Outdoor petitioned the Board of Review contending the subject property was not equitably assessed. Iowa Code § 441.37(1)(a)(1) (2018). In an attachment to the petition, it also asserted the assessed value was significantly higher than its purchase price. The Board of Review modified the assessment to \$60,400, finding the property was assessed for more than the value authorized by law. § 441.37(1)(a)(2). (Ex. B).

CK Outdoor appealed to PAAB re-asserting its equity claim. Additionally, it marked the box asserting an error claim. Its short and plain statement indicates, however, that CK Outdoors is advancing a market value claim, noting the assessed value is significantly higher than its purchase price. It also attached a letter to the appeal form opining the subject property's fair market value is less than its assessed value. At

hearing, CK Outdoors confirmed its appeal was based on equity and market value, and it was not advancing an error claim. Therefore, these are the claims PAAB will consider.

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 to it. Iowa Code § 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) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-71.126.2(2-4). PAAB 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(3)(a). 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. *Id.*; *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).

Findings of Fact

The subject property is a lighted, back-to-back (two-sided) billboard built in 1993. The billboard is 14-feet-by-48-feet with 1344 square feet of ad space and sits atop a 70-foot, steel monopole. (Ex. A). It is located on leased land. CK outdoors purchased the billboard in 2014 for \$13,750. (Petition).

In support of its equity claim, CK Outdoors submitted the assessed values of three billboards. (Petition). The first is another billboard CK Outdoors owns in Polk County. Like the subject billboard, this property is located in northeast Des Moines and has a 2018 assessed value of \$13,500. It is also a lighted back-to-back billboard with

1344 square feet of ad space, but it is significantly shorter, sitting atop multiple 16-foot-tall, wood-frame poles; and significantly older having been built in 1968. (Ex. D & E).

The other two billboards are steel structure billboards located in Story County, and are each assessed for \$10,600. (Petition).

CK Outdoors also submitted a letter from Max Drachman of Kalil and Company, Tucson, Arizona, opining a value for the subject billboard. (Ex. 1). Drachman relied on an income multiplier approach that was applied to the billboard's cash flow. Drachman reported gross revenue of \$16,008 and expenses of \$9185, concluding a billboard cash flow for the subject of \$6823. He did not explain how he arrived at his income or expenses although it appears they were intended to represent the subject billboard's actual income and expenses.

Drachman reported the majority of outdoor assets sell between seven-to-ten times the billboard cash flow. With no explanation, or support for his opinion, Drachman asserts the subject billboard would sell at the low end of this range, or seven times its billboard cash flow. Based on this, he opined a market value of \$47,761 for the subject property.

In response to the Board of Review, Steele explained the income and expenses most likely did not reflect a full year. The Board of Review noted that based upon Drachman's income analysis, the range of value would be \$47,761 to \$81,876, and the subject's 2018 assessed value is less than the average of this range.

There is no evidence that Drachman considered the sales comparison approach before completing his income analysis.

Bob Powers, an appraiser with the Polk County Assessor's Office, testified for the Board of Review. Powers explained the subject billboard was valued based on the cost approach. (Ex. A). Because the subject property has a 70-foot, steel monopole, its cost new is considerably higher than the cost new of CK Outdoor's frame-support billboard. (Ex. E). Additionally, the difference in age (year built) for each of the billboards impacts the amount of depreciation applied in the cost approach.

Analysis & Conclusions of Law

CK Outdoor contends the subject property is inequitably assessed and assessed for more than authorized by law.

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). Here, we find CK Outdoor failed to demonstrate the Assessor applied an assessing 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 and assessed values of comparable properties, the subject property is assessed at a higher portion of its actual value. *Id.*

CK Outdoor submitted three equity comparables located in Polk and Story County. We give no consideration to the properties located outside of Polk County because, when considering equity, the law requires properties be from within the same jurisdiction. *Maytag v. Partridge*, 201 N.W.2d 584, 594-95 (Iowa 1973).

This leaves one remaining comparable billboard. There is no evidence this billboard recently sold, and thus an assessment/sales ratio cannot be calculated as its actual value is unknown. Moreover, more than one comparable property is required to establish inequity. *Maxwell*, 133 N.W.2d at 712; *Crary v. Bd. of Review of Boone*, 286 N.W.2d 428 (Iowa 1939). Therefore we find insufficient evidence in the record to conduct the *Maxwell* test.

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. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Sale prices of the subject property or comparable properties in normal transactions are to be considered in arriving at market value. §441.21(1)(b).

Even though CK Outdoor submitted the subject property's purchase price as evidence of its value, we note this sale occurred in 2014. We cannot conclude that the sales price reasonably establishes the subject property's market value for assessment purposes four years after the transaction. *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289 (Iowa 1996) (noting that a *contemporaneous* sale of a property was a matter to be considered but did not conclusively establish the property's market value) (emphasis added).

CK Outdoor also submitted an opinion letter from Max Drachman. There is no evidence that Drachman considered the sales comparison approach before moving to an income analysis. *Wellmark, Inc. v. Polk Cnty. Bd. of Review*, 875 N.W.2d 667, 682 (Iowa 2016) ("The burden of persuasion rests on the party seeking to show that market data cannot readily establish market value before proceeding to the other-factors approach to valuation."). We also note he did not submit any evidence supporting how he determined income and expenses for the subject property or the income multiplier he relied on for his conclusions.

Because we find the evidence is insufficient to demonstrate the subject's total fair market value, we conclude CK Outdoor has not shown its property is over assessed.

Order

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

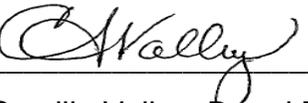
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

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, Presiding Officer



Camille Valley, Board Member

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Polk County Board of Review by eFile