

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

PAAB Docket No. 2018-030-10001C

Parcel No. 07-30-408-031

OAM LLC,

Appellant,

vs.

Dickinson County Board of Review,

Appellee.

Introduction

The appeal came on for written consideration before the Property Assessment Appeal Board (PAAB) on December 17, 2018. Dave Foxhoven represents OAM, LLC and asked that the appeal proceed without a hearing. Assistant County Attorney Lonnie Saunders represents the Dickinson County Board of Review.

OAM owns a commercial property located at 690 Highway 71 S, Arnolds Park, Iowa. The January 1, 2018 assessment was set at \$366,400, allocated as \$218,400 in land value and \$148,000 in improvement value. (Ex. A).

OAM petitioned the Board of Review stating the assessment should have gone down because of less total lot square feet and less frontage. (Ex. C). The form also references an appraisal indicating a fair market value of \$275,000. Albeit entered on a line intended for a claim of fraud or misconduct, we find these statements establish a claim that the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2) (2018). The Board of Review denied its petition.

OAM then appealed to PAAB. Regardless of the fact that the inequity claim box was checked on its appeal form, the short and plain statement still indicates it is advancing a claim of over assessment. It notes the loss of highway frontage and the

appraisal valuing the property at \$275,000. Therefore we shall consider this as a claim under section 441.37(1)(a)(2).

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2018). 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)(a-e) 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).

Findings of Fact

The subject property is a 1.003-acre site with a one-story metal retail store built in 1972 with additions added in 1988 and 1990. The building has 9096 square feet of gross building area (GBA) with a canopied entrance. Other improvements include an attached shed and 10,000 square feet of paving. The improvements are listed in below-normal condition. Notes on the 2018 property record card indicate a leaking roof and that a portion of the building does not have air conditioning. The land receives a 20% economic adjustment. (Ex. A).

The Board of Review provided a history of the subject property and recent changes in its assessment. (Ex. I). The subject property was originally part of three adjoining parcels, all owned by OAM. (Exs. D-F). In 2017 the three parcels were combined and then split into two. Subsequent or concurrent with that change, the newly created parcel at 612 Highway 17 S was sold and the 690 Highway 17 S parcel, which is the subject parcel, was retained by OAM. (Ex. A).

OAM contends the 690 Highway 71 S property’s assessed land value should be lower because it “lost a major amount of highway frontage” and it now has less land as a result. (Petition & Appeal). Its site size changed from 1.146 acres to 1.003 acres. Its improvements remained unchanged as did the assessed value of the improvements. But, the land value and total assessment declined by \$4200. (Ex. A & F).

The Board of Review asserts “[t]he assessed values had to be equal to the value prior to the split for the Auditor’s Office’s records to balance,” noting the value of the three deleted parcels totaled \$682,900 and contending the value of the two new parcel also total \$682,900. (Ex. I). The Board of Review states that the value was set at \$316,500 for the parcel OAM sold, which left a remaining balance of \$366,400 for the subject parcel’s value. (Ex. I).

OAM submitted an appraisal by Steve Lindeberg, which it believes reflects the subject’s correct value. (Ex. 1). Lindeberg developed all three approaches to value and reconciled those conclusions to a final opinion of value as of January 2018. The following table summarizes his conclusions.

Cost Approach	Sales Comparison Approach	Income Approach	Final Opinion of Value
\$289,000	\$275,000	\$275,000	\$275,000

Lindeberg analyzed and adjusted three recent land sales, which included adjustments ranging between \$1 and \$2 per square foot for differences in site size. He arrived at an opinion of value of \$211,848, or \$4.85 per square foot for the subject site. (Ex. 1, p. 4). This is consistent with the 2018 assessed land value for the subject.

Relying on the MARSHALL & SWIFT VALUATION HANDBOOK, Lindeberg next developed a replacement cost new (RCN) of \$413,220 for the subject’s improvements. After considering physical depreciation and functional obsolescence, he concluded a depreciated building value of roughly \$62,000. Adding in the contributing value of site improvements and estimated site value, he arrived at a total value of \$289,000 (rounded) by the cost approach. The Board of Review was critical of Lindeberg’s cost approach, contending there are no specific reasons given to warrant the 20% functional

obsolescence. However, Lindeberg explained that he applied the 20% functional obsolescence because of the floor plan and its limitations. (Ex. 1, p. 5).

In his income approach, Lindeberg analyzed three rental properties. (Ex. 1, p. 5-6). He reported the asking rent for the subject property was \$14.00 per square foot, which he believed is too high. The three rental properties had rents between roughly \$9.00 and \$11.50 per square foot. Based on these rents, he concluded a market rent of \$10.00 per square foot, or a yearly income of \$77,310 for the subject property. After considering expenses, Lindeberg concluded a net operating income (NOI) of \$30,161. Because Lindeberg's appraisal was not completed for ad valorem purposes, he expensed the taxes and relied on a base capitalization rate of 11%. He concluded an opinion of value of \$275,000 by the income approach. (Ex. 1, p. 6).

Lastly, Lindeberg developed the sales comparison approach in which he considered three recent sales that sold for \$250,000 to \$650,000. (Ex. 1, p. 7). We note his Sale 1 abuts the subject property and is the other new parcel created as a result of the 2017 reconfiguration of OAM's three old parcels.

After adjusting the sales for differences between them and the subject property, the indicated value range was roughly \$269,000 to \$279,000. Lindeberg concluded a value of \$275,000 by sales comparison approach. However, he indicated the sales comparison approach was weak because of a limited number of sales available for analysis. (Ex. 1, p. 8). At the same time, he indicated the three comparable sales give a good indication of the subject's market value. (Ex. 1, p. 8).

The Board of Review was critical of the Lindeberg's sales. (Ex. 1). It claims Sale 3 should not have been considered because it was a sale between related parties. But it did not offer any evidence to support this claim. We note Lindeberg reported Sale 3 transferred from Larry Steffes to Berkshire Holdings, LLC. (Ex. 1, Supplemental Addendum p. 2). However, Sale 3 is arguably not comparable to the subject property as evidenced by the very large adjustments made for its differences. Lindeberg further notes Sales 1 and 2 were given more weight in the final analysis. (Ex. 1, p. 4).

The Board of Review also believes Lindeberg should have made upward site adjustments to Sales 1 and 2, which are roughly 15,000 to 23,000 square feet smaller

than the subject site. It contends that if adjustments were made to these sites based on Lindeberg's conclusion of a land value rate of \$4.85, than the adjusted total values for Sale 1 and Sale 2 would increase to roughly \$348,000 and \$379,000 respectively.

We do note Lindeberg's appraisal is somewhat conflicting in one respect. He reports the subject property was not offered for sale and there were no current contracts as of the date of the appraisal. (Ex. 1, Supplemental Addendum, p. 1-2). But then he also indicates a sale/transfer of the subject property on January 3, 2018 for \$318,000. (Ex. 1, Supplemental Addendum, p. 2). Lindeberg notes the transaction was between OAM LLC members, and states there was a buyout of a member's interest. However, there is no other evidence in the record of this transaction. In the end, whether or not an interest in the subject property transferred is irrelevant because the appraisal considers only the fee-simple interest of the real property as of January 1, 2018, which is the focus of our examination.

Analysis & Conclusions of Law

OAM contends the subject property is assessed for more than authorized by law.

In an appeal alleging the property is over assessed, 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).

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)

The Board of Review explained the history of the subject property and the recent split/division that caused it to be re-parceled for the 2018 assessment. (Ex. I). It detailed the methodology used to arrive at its assessment, noting "[t]he assessed values had to be equal to the value prior to the split for the Auditor's Office's records to balance." The subject's 2018 assessment was ultimately set at \$366,400. Regardless of the rationale for setting the subject's assessment, the focus of this appeal is on whether the property is over assessed and there is no presumption the assessed value is correct.

§ 441.37A(3)(a).

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.* Using the sales price of the property, or sales of comparable properties, is the preferred method of valuing real property in Iowa. *Id.*; *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779 n. 2; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). “[A]bnormal 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” § 441.21(1)(b). Abnormal transactions include, but are not limited to, foreclosure or other forced sales, contract sales, discounted purchase transactions, or purchases of adjoining land or other land to be operated as a unit. *Id.*

“A party cannot move to other-factors valuation unless a showing is made that the market value of the property cannot be readily established through market transactions.” *Wellmark, Inc. v. Polk Cnty. Bd. of Review*, 875 N.W.2d 677, 682 (Iowa 2016). Where PAAB is convinced comparable sales do not exist or cannot *readily* determine market value, then other factors may be used. § 441.21(1)(b); *Compiano*, 771 N.W.2d at 398 (citing *Soifer*, 759 N.W.2d at 782); *Carlton Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997); § 441.21(2). If sales cannot readily establish market value, “then the assessor may determine the value of the property using the other uniform and recognized appraisal methods,” such as income and/or cost. § 441.21(2).

OAM submitted the Lindeberg appraisal in support of its over assessment claim. Lindeberg developed all three approaches to value, opining a January 2018 value of \$275,000 for the subject property.

The Board of Review argues Lindeberg's sales comparison approach undervalued the subject property. First, it contends his Sale 3 should not have been given any consideration as it was a sale between related parties. However, the Board of Review offered no evidence to support this assertion. Based on the Lindeberg

appraisal, it does not facially appear the parties are related. Nonetheless, he indicated the other sales were given more weight in his analysis.

The Board of Review also believes Lindeberg should have made upward adjustments to Sale 1 and 2 for their site size compared to the subject property. In support of its argument it applied Lindeberg's own land rate of \$4.85 per square foot for differences in site sizes, resulting in adjusted values for Sales 1 and 2 of \$348,000 and \$379,000 respectively. It believes this supports the assessment. We disagree. If there was a market reaction, it is likely these differences in site sizes would be affected at a decreasing return rate. We also note that Lindeberg's site size adjustments in his comparable site analysis ranged between \$1 and \$2 per square foot, further indicating the Board of Review's suggested adjustment would be excessive.

In this case, we find ample support for Lindeberg's conclusion of value of \$275,000 and we find his appraisal to be the most persuasive evidence of the property's value. The income approach, which the Board of Review did not criticize, supports the value indicated by the sales comparison approach.

Viewing the record as a whole, we find OAM's property is over assessed by a preponderance of the evidence.

Order

PAAB HEREBY MODIFIES the Dickinson County Board of Review's action, and orders the subject property's January 1, 2018 assessment be set at \$275,000.

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).



Camille Valley, Presiding Officer



Karen Oberman, Board Member

Copies to:

Dave Foxhoven

OAM, LLC

PO Box 659

Arnolds Park, Iowa 50428

Dickinson County Board of Review by eFile

Dickinson County Auditor

1802 Hill Avenue

Spirit Lake, IA 51360