

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

PAAB Docket Nos. 2018-106-00077C, 00078C & 00079C

Parcel Nos. 07-09-231-002-000; 07-09-231-003-000;

& 07-09-231-004-000

Vulcan Gas Company, LLC,

Appellant,

vs.

Mason City Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on February 15, 2019. Phil Chodur, President of G-8 Development, represented Vulcan Gas Company, LLC (Vulcan Gas). Attorney Tomas Meyer represented the Mason City Board of Review.

Vulcan Gas is the owner of three commercial parcels located in Mason City that operate as a unit. The following table summarizes the January 1, 2018 assessments. (Exs. A, A1, & A2)

Docket	Description	Parcel	Land Value	Improvement Value	Total Value
00077C	Parking Lot	07-09-231-002-00	\$36,870	\$7,560	\$44,430
00078C	Warehouse	07-09-231-003-00	\$38,120	\$31,030	\$69,150
00079C	Office Building	07-09-231-004-00	\$38,120	\$257,610	\$295,730
		Total	\$113,110	\$296,200	\$409,310

Vulcan Gas petitioned the Board of Review contending the properties were assessed for more than authorized by law. Iowa Code § 441.37(1)(a)(2) (2018). The Board of Review denied the petitions.

Vulcan Gas then appealed to PAAB re-asserting its claim of over assessment, as well as asserting the subject property assessment is not equitable compared with the assessments of other like property, and that there is an error in the assessment. Iowa Code § 441.37(1)(a)(1, 2, & 4) (2018).

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)(1-5) 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 consists of three parcels operating as a unit. (Ex. C). It is located in downtown Mason City, directly across the street from the Cerro Gordo County Courthouse, half a block from City Hall, one block from Central Park, and three blocks from Southridge Mall. (Ex. I, p. 1).

The combined 0.75-acre site is improved with a warehouse, office building, and 18,054 square feet of paving. The 3580 square-foot warehouse was built in 1924 and is listed as below-average quality (5+10 grade) and in very-poor condition. The warehouse

has been physically depreciated by 75% and is also receiving a negative 10% functional obsolescence and 40% economic obsolescence adjustment. The office building was built in 1924 with 19,832 square feet of above-grade gross area and a full basement. It is listed as good quality (3+00) grade in below-normal condition, has been physically depreciated by 65%, and is also receiving a negative 55% functional obsolescence and 40% economic obsolescence adjustment. The properties sold in June 2017 for \$300,000. (Exs. A, A2, A3, & D). The transfer has a sale code of D13, which is described as a “sale to/by public utility or railroad.” IOWA DEP’T OF REVENUE, Sales Condition Codes for Contract and Deed Sales, <https://tax.iowa.gov/sites/files/idr/documents/Sales%20Condition%20Codes.pdf>.

Chodur testified there are very few sales in the downtown area, there are seventeen vacant buildings, and the area is very depressed. Chodur was critical of the Mason City Assessor’s Office, noting it did not offer any comparable sales to support the assessed values of the subject parcels. Moreover, he asserted the Assessor’s Office purposefully subdivided the subject property into three separate assessment parcels in an effort to maximize taxation, despite the fact that the three parcels were sold as an operating unit as described on the Declaration of Value (DOV). (Ex. D). Chodur later acknowledged the Assessor’s Office was not responsible for the delineation of parcels, but asserted it purposefully over valued the subject property because the DOV clearly identifies the purchase price included all three parcels.

The subject properties were listed for sale on April 26, 2017 for \$299,000 by Interstate Power Company, doing business as Alliant Energy. (Ex. E). Vulcan Gas made a cash offer on May 5, 2017 for \$300,000. (Ex. E). The listing states the properties were “priced to sell and won’t last!” and that there was one reserved buyer. (Ex. E). Both parties agree the reserve offer was from the Cerro Gordo County Board of Supervisors.¹

¹ When PAAB questioned Chodur about how Vulcan arrived at its offer price, Chodur testified “we knew the County had an offer on it.” We note that in a Motion for Continuance filed on January 22, Chodur indicated he had “just found, in reading the declaration (Exhibit I – Assessor’s Comments) made by Dana Shipley, that Cerro Gordo County had a material interest in the property and had a competing offer on the

The Board of Review reported the County's intent for the parcels was to raze the buildings and keep the lot for future development. (Ex. I, p. 2). Mason City Assessor Dana Shipley testified that essentially, the County's reserve offer reflected what it believed was the value of the vacant sites.

Chodur testified that Vulcan Gas made an offer just above the list price due to the expectation there would be multiple offers on the property and because it was needed for assemblage in a larger development project, but now believes he overpaid for the properties. Vulcan Gas purchased the subject properties for assemblage and future hotel development, noting the parcels were a "key piece" of the development and "we desperately needed it." (Ex. 7). Vulcan Gas had been working with the City since 2013 to ensure adequate parking for the planned hotel and the City. Chodur confirmed the only reason Vulcan Gas purchased the subject property was because of its proximity to City Hall and its parking lot. Because the subject parcels were purchased for assemblage, he does not believe the sale price of \$300,000 can be relied on under Iowa Code §441.21(1)(b).

In Chodur's opinion, the correct market value is \$150,000, the reserve offer price. He does not believe the County's intent to raze the existing improvements is relevant to its motive of offering \$150,000 for the subject parcels; and he asserts appraisal methodology does not require consideration of a buyers intended use of a property.

Shipley testified that Alliant Energy had constructed a new operations center in Mason City in 2015-2016 and then moved its operations to the new facility. After the move, Alliant Energy began liquidating its other real estate in Mason City. Vulcan Gas disputes the assertion that Alliant Energy was liquidating its real estate.

Shipley explained the subject parcels sold in less than ten days on the market; and another Alliant Energy property sold in only eight days on the market. (Exs. E & G). Comparatively, the Board of Review submitted a June 2017 commercial sales report from the GREATER MASON CITY BOARD OF REALTORS® that indicated eleven year-to-

property." Chodur's testimony at the PAAB hearing suggests his statement on the Motion for Continuance was false.

date commercial sales in the Mason City area that were on the market for an average of 180 days; and thirty-three active commercial properties in June 2017 with an average of 490 days on market. (Ex. H).

Vulcan Gas asserts the subject was actually marketed for 65 days, not less than 10. It based this opinion on the closing date, rather than the contract date. Further noting the property had been shown by agents thirty-four times while it was listed. (Ex. E). We note that the “days on market” is typically determined by the difference between the list date and offer or contract date. Regardless, considering Vulcan Gas’ premise of the marketing time, the subject parcels were listed for a third of the average 2017 commercial marketing time for the area.

Vulcan Gas submitted the sale of a nearby commercial property, Southbridge Mall, as a comparable. The Mall sold in September 2016 for \$1,500,000, with US Bank National Association as the seller. US Bank foreclosed on an \$8,800,000 mortgage in December 2012. (Exs. 6 & I, p. 3). Despite having sold from bank ownership, Chodur asserted the sale of the Mall was a normal transaction. The Board of Review noted that even if the Mall had been a normal sale, because it was a regional shopping center it would not be comparable to the subject property. (Ex. I, p. 3). Shipley testified that the property record information submitted by Vulcan Gas in Exhibit 6 was not inclusive of the whole property and there are four parcels that comprise the 272,000 square foot Mall.

Vulcan Gas also submitted a financial operating statement for the Mall. (Ex. 5). Relying on actual income and expenses, the Mall had a net operating income (NOI) of \$430,000. Vulcan Gas noted this indicated a 28% capitalization rate when the Mall sold, when market capitalization rates were between 8-10%. (Ex. 1). It again asserts the sale was an arm’s-length transaction and believes the Mall should have been reassessed to reflect the actual capitalization rate of 28%. Because the subject property is an income-producing property, Vulcan Gas believes the income approach to value should have been relied on to determine its assessed value. (Ex. 4). Despite this assertion, Vulcan Gas did not submit any evidence of the market income, expenses, vacancy rates, or support for its assertion that market capitalization rates were 8-10%.

Lastly, Vulcan Gas relied on an active listing of a nearby commercial property. (Ex. 8). The property is a 44,488 square-foot, three-story building on a significantly smaller site than the combined subject property and is listed for \$216,000. Vulcan Gas believes its list price of \$4.81 should be applied to the subject properties resulting in an assessed value of \$144,300. (Ex. 7).

Chodur acknowledged he has not had an appraisal of the subject property.

Shipley testified that for the three years prior to the 2017 purchase of the subject property, there were eleven downtown properties and fourteen office building sales. Chodur again raised his criticism that if the Assessor's Office relied on these sales it had an obligation to submit them as evidence in support of the subject property's assessment.

Analysis & Conclusions of Law

Vulcan Gas contends the subject property is inequitably assessed, over assessed, and that there is an error in the assessment. § 441.37(1)(a)(1, 2, & 4).

Vulcan Gas did not submit any evidence of an error in the assessment.

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). Vulcan Gas 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*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The *Maxwell* test provides 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.* Because the *Maxwell* test requires a showing of the subject property's actual market value and the Vulcan Gas' 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. *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). 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.*

First, Vulcan Gas was critical that the Assessor's Office did not submit comparable properties in support of its assessment. Under Iowa law, there is no presumption that the assessed value is correct. § 441.37A(3)(a). Nonetheless, under section 441.21(3)(b)(2) (2018), the party contesting the assessment generally has the burden of proof.

For assessment years beginning on or after January 1, 2018, the burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable, or capricious. However, in protest or appeal proceedings when the complainant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed. § 441.21(3)(b)(2).

Typically, market value is demonstrated with a competent appraisal or a comparative market analysis, considering at minimum the sales comparison approach to value. Vulcan Gas did not have an appraisal of the subject property and we find the burden has not been shifted.

The only comparable sale Vulcan Gas offered was an unadjusted bank sale of a 272,000 square-foot regional mall. Although Vulcan Gas argued this was not a forced sale, we disagree. It sold from a bank, who acquired ownership as result of foreclosure. Even Vulcan Gas' data show its capitalization rate far exceeded the market; further suggesting the transaction was abnormal. As noted above, such transactions shall not be taken into account, or the sale price needs to be adjusted to eliminate distortion in

market value. It was not adjusted to eliminate this distorting factor. Moreover, we do not find a 272,000 square foot mall to be comparable to the subject property which has less than 30,000 square feet of total building area. Therefore, we give it no consideration.

Vulcan Gas also submitted a listing of a property formerly used as a YMCA, health spa, and woman's shelter. We do not find an unadjusted listing provides a reliable indication of the subject property's fair market value and give it no consideration.

Vulcan Gas asserts the subject property should be valued by the income approach. However, it did not submit any comparable market income or expenses for the subject property, market vacancy, or a market extracted capitalization rate to conclude an opinion of value by the income approach.

The subject property recently sold, but evidence suggests that the seller was liquidating assets and Vulcan Gas owned adjoining property and was uniquely motivated to purchase the subject parcels for assemblage purposes and its future development plans. These facts indicate the sales price may be distorted and should not be taken into consideration under section 441.21(1), unless an adjustment is made for the distorting factors. For these reasons, we are hesitant to rely solely on the subject's sale price alone. *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289 (Iowa 1996) (noting that a contemporaneous normal sale of a property was a matter to be considered but did not conclusively establish the property's market value).

Vulcan Gas asserts the subject parcel's total assessed value should be \$150,000 based on a reserve offer from the County. It rejects the Board of Review's argument that the County's offer reflected the value of the land because of its intent to raze the improvements; asserting there is no appraisal methodology to warrant this consideration. Vulcan Gas believes an appraiser gives no consideration to a property's future use.

Iowa law requires consideration of the property's current use in valuation. *Wellmark, Inc. v. Polk Cnty. Bd. of Review*, 875 N.W.2d 667, 680 (Iowa 2016) (discussing Iowa case law embracing the view that property should be valued based on its current use). In contrast to Vulcan Gas' statement, we note an appraiser would

commonly consider potential future uses as part of a highest and best use analysis. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 345-48 (14th ed. 2013) (“In market value appraisals of improved property, appraisers consider a number of alternative uses of the existing improvements.”)

Moreover, “A knowledgeable buyer considers expenditures that will have to be made upon purchase of a property because those costs affect the price the buyer agrees to pay.” THE APPRAISAL OF REAL ESTATE 412. These expenditures can include, but are not limited to, costs to demolish and remove a portion of the improvements and costs for additions or improvements to the property. *Id.* “The relevant figure is not the actual cost that was incurred but the cost that was *anticipated* by both the buyer and seller.” *Id.* (emphasis added). Because the County’s intent, if it were the successful purchaser of the subject property, was to raze the existing improvements – PAAB finds its offer price would more closely reflect the value of the subject parcels as if vacant. The offer price does not reflect the subject property’s current use and we give it no consideration.

Viewing the record as a whole, we find Vulcan Gas failed to sustain its burden under section 441.21(3(b)(2) to show the subject parcels are inequitably assessed, over assessed, or that there is an error in the assessments. Lastly, we also question the credibility of Chodur, as his hearing testimony suggested he previously made a false statement in a filing to PAAB. Thus, to the extent it is necessary, we discount the reliability of his testimony.

Order

PAAB HEREBY AFFIRMS the Mason City 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 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



Dennis Loll, Board Member



Camille Valley, Board Member

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