

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

PAAB Docket No. 2019-063-00130C

Parcel No. 17048-000-00

Brenda Jackson (Aterra 38, 502 Oskaloosa St, Pella LLC),

Appellant,

vs.

Marion County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on March 20, 2020. Aterra 38, 502 Oskaloosa St, Pella LLC (Aterra) was represented by Brenda Jackson, Director of Real Estate. Assistant Marion County Attorney Ross Gibson represented the Board of Review.

Aterra owns commercial property located at 502 Oskaloosa Street, Pella, Iowa. The subject property's January 1, 2019, assessment was set at \$1,447,780. (Ex. B).

Aterra petitioned the Board of Review claiming the subject property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2). The Board of Review modified the assessed value to \$1,151,330, allocated as \$182,450 in land value and \$968,880 in improvement value. (Exs. A & B).

Aterra appealed to PAAB reasserting its claim.

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).

Findings of Fact

The subject property is a commercial shopping center consisting of two buildings and six suites. The first building was constructed in 1975 and includes 16,328 square feet of gross building area, which receive 60% physical depreciation, 25% functional obsolescence, and 25% economic obsolescence in the assessment. The second building was constructed in 2001 and includes 5902 square feet of gross building area, which receives 27% physical depreciation, 25% functional obsolescence, and 25% economic obsolescence in the assessment. The 2.04-acre site is also improved with 56,000 square feet of concrete paving and yard lighting. (Ex. A).

Brenda Jackson oversees the investment portfolio and manages real estate assets for Aterra. Jackson testified the subject property is currently 33% vacant with two suites that have not been occupied since 2017.

Current tenants include O'Reilly Auto, Subway, HyVee Wine and Spirits, and St. Nicholas Church. (Ex. 1). Jackson testified the Church lease is a gross lease "well below" market rent; both the lease type and rate were necessary concessions to secure the tenant. With a gross lease, Aterra is responsible for all expenses such as taxes. The other existing leases in the subject property are net leases with rental rates between \$5.38 and \$8.00 per square foot.

Bill Wright, Managing Director and Senior Vice President with CBRE Hubbell Commercial, also testified for Aterra. Wright has worked with Aterra for approximately 20 years on all of its commercial business portfolios. Wright explained that Aterra purchased the property in 2013 for \$690,000, which he believes was its reasonable

market value. At the time of acquisition, the existing tenants included O'Reilly, Subway, HyVee Wine and Spirits, an electrical company, and a therapeutic spa store. Since acquisition, the therapeutic spa store vacated the property; that space is now occupied by the Church. Wright also explained the electrical company vacated the property and its space remains vacant. This suite has poor visibility because it does not face Oskaloosa Street. Because of this Wright anticipates that if this space were leased it would be at a lease rate of \$4-5 per square foot on a gross basis similar to the Church. He testified the other vacant suite is a corner bay with odd parking; although he believes the bigger factor contributing to this suite's vacancy is simply a lack of tenants looking for space in Pella.

Wright testified the subject property is located on the east side of Pella, whereas the new retail activity is located on the west side of Pella. He echoed Jackson's testimony that Aterra has had difficulty leasing the subject property. He explained there had been road construction that "effectively shut down" the subject property for a year. While he acknowledged the new road is good for long-term investment, it did not help with leasing activity while it was under construction. Ultimately, the subject property has been an underperforming investment.

Wright also explained a larger part of the problem in leasing the subject property has been because of a "shadow Wal-Mart center" that is newer and "prettier" than the subject property. It was historically asking \$12 to \$14 triple net rents. From a marketing standpoint, Wright identified market rents for the subject property at \$8 as a "value play" in comparison to the Wal-Mart center. He further testified that about a year-and-a-half ago, the Wal-Mart center decided to go to an \$8-\$10 gross rent structure and filled up their center with many of the tenants Aterra was competing for.

The following table is a summary of a spreadsheet that Wright created for the subject property. (Ex. 1).

Suite	Tenant	Suite Size (SF)	Lease Expire Date	Base Rent/SF	Annual Base Rent	CAM/SF	Annual CAM
502	O'Reilly Auto	7506	Aug-21	\$5.38	\$40,414 ¹	\$2.92	\$21,918
420	Subway	2040	Jun-22	\$8.00	\$16,320	\$2.92	\$5,957
414	Vacant	2863					
512	Hy-Vee Wine & Spirits	3562	Feb-23	\$8.00	\$28,496	\$2.92	\$10,401
518	St. Nicholas Church	2400	May-22	\$4.75	\$11,400		
418	Vacant	3494					
					\$96,630		\$38,275

He explained this analysis is developed when Aterra is determining what it should do with a particular asset such as deciding whether to sell, refinance, or protest an assessment. Based on this information, Wright reports the actual gross income of the subject property is \$134,905, which includes the total annual base rent and the annual common area maintenance (CAM) expenses. After considering operation expenses, vacancy, and repairs, Wright estimated \$70,729.53 as the net operating income (NOI). Wright testified a typical vacancy rate for a rural market is 25-30%. We note the assessment includes a 25% economic obsolescence, which would support Wright's testimony of vacancy rates.

Wright explained that while Aterra has no intention of listing the subject property for sale, he would estimate the capitalization rate between 9.0 and 9.5%. He testified the capitalization is based on sale comparables and other acquisitions in rural markets. Aterra did not submit any evidence to support this conclusion. He believes the

¹Aterra reported the annual base rent for the O'Reilly Auto lease as \$40,414 (rounded) but the rent per square foot of \$5.38 X 7506 square feet = \$40,382 (rounded).

capitalization rate will be increasing. Based on this analysis, Wright asserts the actual value of the subject property is between roughly \$744,500 and \$786,000.

Wright testified he had considered comparable sales in his initial analysis before turning to the income approach but Aterra did not submit any of this information to PAAB.²

The Board of Review did not participate in the hearing.

Analysis & Conclusions of Law

Aterra contends the subject property is over assessed as provided under Iowa Code section 441.37(1)(a)(2). Aterra bears the burden of proof. § 441.21(3).

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).

Under Iowa law, there is no presumption that the assessed value is correct. § 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). To shift the burden, the taxpayer must "offer[] competent evidence that the market value of the property is different than the market value determined by the assessor." Iowa Code § 441.21(3). To be competent evidence, it must "comply with the statutory scheme for property valuation for tax assessment purposes." *Soifer*, 759 N.W.2d at 782.

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

² At hearing, Jackson acknowledged they had submitted sales to the Marion County Board of Review during the protest hearing, but they were not subjectively aware that information needed to be provided to PAAB. We note the Notice of Hearing provided to the parties stated:

NOTICE: If you would like PAAB to consider any information/evidence you provided to the board of review, you must file it as an exhibit to PAAB. The board of review is not required to provide PAAB with any information/evidence you submitted to the board of review.

Similar language appears on the Notice of Appeal.

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). “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 667, 682 (Iowa 2016). Where the party seeking to employ other factors convinces PAAB that 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); *Carlson Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997); § 441.21(2).

Here, Aterra did not argue or show that sales could not be used to readily establish the market value for the subject property. Jackson’s testimony indicated that sales were available and had been previously submitted to the Board of Review for consideration but were not submitted to PAAB. Thus, the sales comparison approach must be considered and Aterra did not submit any evidence of the subject property’s value by the preferred method of the sales comparison approach.

Aterra submitted an income analysis based on the actual rents of the subject property and its opinion of a reasonable capitalization rate. While we find Aterra’s representatives to be sincere in their testimony, we cannot move to the income approach without showing that sales cannot readily value the subject property. Moreover, even if we could consider Aterra’s analysis, it was based on the subject property’s actual rents rather than market-based rents, and Aterra did not submit any support for its opinion of a capitalization rate. *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d 419, 423 (Iowa 1997) (concluding that objective rental income, not actual lease amounts, should be used to establish value).

Viewing the record as a whole, we find Aterra has failed to offer evidence in conformance with Iowa law in support of its claim.

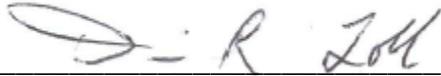
Order

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

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2019).

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 Order³ and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.



Dennis Loll, Board Member



Elizabeth Goodman, Board Member



Karen Oberman, Board Member

Copies to:

Brenda Jackson for Aterra by eFile

Marion County Attorney Darren Driscoll by eFile

³ Due to the State Public Health Disaster Emergency caused by the coronavirus (COVID-19), the deadline for filing a judicial review action may be tolled pursuant to orders from the Iowa Supreme Court. Please visit the Iowa Judicial Branch website at <https://www.iowacourts.gov/iowa-courts/supreme-court/orders/> for the most recent Iowa Supreme Court orders.