

IN THE COURT OF APPEALS OF IOWA

No. 2-1064 / 12-0114
Filed February 13, 2013

**MC HOLDINGS, L.L.C., A Limited
Liability Company,**
Plaintiff-Appellant,

vs.

**BOARD OF REVIEW OF
DAVIS COUNTY, IOWA,**
Defendant-Appellee.

Appeal from the Iowa District Court for Davis County, Annette J. Scieszinski, Judge.

MC Holdings, L.L.C., appeals the \$513,310 valuation of its property for the 2007 property tax assessment. **AFFIRMED.**

Steven Gardner of Deneffe, Gardner & Zingg, L.L.P., Ottumwa, for appellant.

Jamie Linn Cox and Frank W. Pechacek Jr. of Willson & Pechacek, P.L.C., and M. Brett Ryan, Council Bluffs, for appellee.

Heard by Eisenhauer, C.J., and Danilson and Bower, JJ.

DANILSON, J.

The taxpayer contests the district court's initial valuation of its property, which included a new office building, at \$513,310. The taxpayer claims the 2007 assessed value should be no greater than \$270,000 based on the viewpoint of its appraisers. The district court upheld the Board's assessment. Based upon our de novo review of the evidence, we concur and adopt the district court's findings regarding the weaknesses of the taxpayer's appraisals. Accordingly, we agree with the district court that the assessment of the subject property was not excessive. We therefore affirm.

I. Background Facts and Proceedings.

MC Holdings is the owner of 402 Karr Street, in Bloomfield, Davis County, Iowa. MC Holdings purchased the lot on which the property was built in the spring of 2006 for \$42,000, and spent \$541,053 to construct the 12,000 square-foot facility. The design was largely dictated by the contracted tenant for the main floor—the United States Department of Agriculture (USDA), which now operates its Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS) offices from the site. The building also features drive-up access to its lower level, planned for MC Holdings' commercial rental to separate tenants.

On April 13, 2007, the Davis County Assessor, Lois Heckethorn, valued the parcel (including the land and buildings) for tax assessment purposes at \$513,310.00. MC Holdings appealed the assessment to the Board of Review of

Davis County. The board took final action on May 31, 2007, assessing the parcel at \$513,310.

MC Holdings sought review in the district court. MC Holdings submitted the appraisal of Richard DeHeer, who concluded the parcel had a fair market value of \$270,000. Gregory Morehead reviewed and analyzed DeHeer's appraisal report, and agreed with DeHeer's \$270,000 valuation.

Heckethorn testified as to the process she employed in reaching the \$513,310 valuation, which included reference to a state-approved appraisal manual, a widely-used computer program, and relevant local cost and sales data.

The assessor presented the testimony of Patrick Schulte, a certified appraiser knowledgeable about commercial properties in the area, who conducted a retrospective appraisal of the MC Holdings property. Schulte employed three approaches in his valuation of the property: a sales approach indicated a value of \$550,000; a cost approach, \$580,000; and an income approach, \$486,000. He determined that the January 1, 2007 market value for the subject property was \$486,000, noting that just one lower-level suite was finished at that time. Schulte's composite conclusion factored a reasonable examination of the property, the local market, and an assumption that the facility was used in its highest and best role as an office building.

The assessor also called Robert Ehler, president of Vanguard Appraisals and an appraiser of commercial properties. Ehler physically inspected the property the day before his testimony. However, he conducted a review of pertinent records, suitable comparison sales, and other data commonly included

in a valuation analysis. Ehler, like Schulte, employed sales, cost, and income approaches and determined that the January 1, 2007 market value of 402 Karr Street was \$530,000.

The district court found “DeHeer’s appraisal analysis does not earn sufficient weight to justify” the \$270,000 valuation. The court found his assumptions inaccurate in several respects,¹ which skewed the valuation by a significant amount. The court also noted that Moorhead did not independently appraise the subject property but conducted a “review appraisal.”²

The court found “Schulte’s analysis, despite challenge by MC Holdings in various respects, is sound, utilized accurate inputs of data, and involved reasonable exercises of appraiser discretion in making valid assumptions and adjustments.” The court found Ehler’s “results are supported by a reasonable examination of the property, evaluation of the local market, and the predicate that the highest and best use for the real estate is as an office building.”

The court concluded MC Holdings had offered competent evidence by two disinterested witnesses that the market value of the property is less than determined by the assessor, which shifted the burden of persuasion to the assessor to uphold the assessment. See Iowa Code § 441.21(3) (2007). The court nonetheless found the assessor had met her burden and that the actual value of the subject property was \$513,310, and that value was equitable in

¹ The court set out several examples illustrating the weakness of DeHeer’s valuation. We need not repeat them in their entirety, but note that DeHeer adjusted his value by a fifty percent obsolescence factor, notwithstanding the fact that the building was brand new, and misapplied other adjustments.

² Moorhead inspected the property, but just reviewed DeHeer’s appraisal and approved it rather than performing an independent appraisal.

relation to similar properties. MC Holdings appeals, contending the district court erred in its ruling.

II. Scope and Standard of Review

We review tax protests de novo. *Compiano v. Bd. of Review of Polk County*, 771 N.W.2d 392, 395 (Iowa 2009). We give weight to the district court's fact-findings, especially with regard to witness credibility, but are not bound by them. *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 782 (Iowa 2009). We hold "no presumption as to the correctness of the valuation of assessment appealed from." Iowa Code § 441.39.

III. Analysis

A taxpayer may protest a county's property assessment by filing a petition alleging one of the statutory grounds for appeal with the board of review.³ *Id.* § 441.37. The challenger may then appeal the board's decision to the district court, which sits in equity to determine the assessment issues previously before the board. *Id.* § 441.38–.39. The appealing taxpayer bears the burden of proving by a preponderance of the evidence that at least one statutory ground

³ Iowa Code section 441.37(1)(a) reads in part:

Any property owner or aggrieved taxpayer who is dissatisfied with the owner's or taxpayer's assessment may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment. . . . Said protest shall be in writing and signed by the one protesting or by the protester's authorized agent. . . . Said protest must be confined to one or more of the following grounds:

- (1) That said assessment is not equitable
- (2) That the property is assessed for more than the value authorized by law
- (3) That the property is not assessable
- (4) That there is an error in the assessment
- (5) That there is fraud in the assessment

exists for its protest. *Compiano*, 771 N.W.2d at 396. But, by offering competent evidence from at least two disinterested witnesses that the property's market value is less than the assessed amount, the taxpayer shifts the burden to the board. *Id.* at 396–97. If the district court determines at least one ground has been established, it then turns its focus to finding the property's actual value, making an independent determination based on all the evidence presented. *Id.* at 397; see also *Soifer*, 759 N.W.2d at 778–80 (providing additional overview of legal concepts governing property tax assessments and challenges).

The board disagrees with the district court's finding that the burden of proof shifted, arguing that the taxpayer did not offer competent evidence. See generally *Soifer*, 759 N.W.2d at 782–83. We need not address this claim, however, because we conclude the board sustained its burden of proof.

“All property subject to taxation shall be valued at its actual value” Iowa Code § 441.21(1)(a). “Actual value” is “the fair and reasonable market value of [the] property.” *Id.* § 441.21(1)(b).

“*Market value*” is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property.

Id. In determining market value, “[s]ales prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration.” *Id.*

MC Holdings challenges the assessor's use of a mass appraisal software program and argues the assessor admitted violating the statutory requirement that she use a comparable sales approach. Heckethorn explained the basis of her assessment, which the district court accurately described:

[Heckthorn] employed a widely used software program approved by the Iowa Department of Revenue and marketed to county assessors by Vanguard Appraisals, a Cedar Rapids business that services tax-assessment offices in a three-state area. In order to fairly tailor construction-cost data from the State's Real Property Appraisal Manual^[4] for use with Davis County properties, Heckethorn studied recent sales of properties she deemed to be comparable to the 402 Karr unit, to ascertain what percentage of manual value to ascribe to Davis County property. After she determined that 85 percent of the Manual value was fair to use, she applied that to MC Holdings' construction-cost figure, factored in the type of construction necessary to replicate the building, and also considered depreciation. Given the new condition, Heckethorn allowed no depreciation as she computed the market value for tax-assessment purposes. The calculation that emerged, and that was assigned as the assessed valuation of the building and its lot, was \$513,310.

We reject MC Holdings' characterization that the use of the software led to an assessment grounded on an improper basis because comparable sales were an aspect of the analysis.

Section 441.21(1)(b) recognizes the sales comparison approach as the preferred method to value property, so long as the comparable sales used are adjusted in consideration of the relative nature and condition of the assessed property. See *Bartlett & Co. Grain v. Bd. of Review of City of Sioux City*, 253

⁴ The county assessor is required by law to use a state appraisal manual prepared by the director of the department of revenue. See Iowa Code § 421.17(17) (placing duty on director "[t]o prepare and issue a state appraisal manual which each county and city assessor shall use in assessing and valuing all classes of property in the state"); *Soifer*, 759 N.W.2d at 791.

N.W.2d 86, 87 (Iowa 1977). Abnormal transactions not reflecting market value, such as foreclosures or other forced sales, contract sales, sales to immediate family, or discount purchase transactions, shall either be adjusted or not taken into account at all. Iowa Code § 441.21(1)(b).

If the sales comparison approach fails to properly establish the property's value, section 441.21(2) authorizes an assessor to determine value using other recognized and uniform appraisal methods, "including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property." See also *Bartlett*, 253 N.W.2d at 87–88. A fact-finder may not solely rely on only one of the "other factors" in section 441.21 when determining value. Iowa Code § 441.21(2); *Equitable Life Ins. Co. v. Bd. of Review of City of Des Moines*, 281 N.W.2d 821, 826 (Iowa 1979).

Here the board's valuation of \$513,000 was less than the Ehler appraisal of \$530,000 and within six percent of the Schulte appraisal. Based upon our de novo review of the evidence, we concur and adopt the district court's findings regarding the weaknesses of the taxpayer's appraisals. Accordingly, we agree with the district court that the assessment of the subject property was not excessive. We therefore affirm.

AFFIRMED.