

**IN THE COURT OF APPEALS OF IOWA**

No. 8-773 / 08-0020  
Filed December 31, 2008

**AG PARTNERS, LLC, A Limited Liability Company  
of the State of Iowa, and CARGILL, INC.,**  
Plaintiffs-Appellants,

**vs.**

**BUENA VISTA COUNTY BOARD OF REVIEW,**  
Defendant-Appellee.

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**AG PARTNERS, LLC, A Limited Liability Company  
of the State of Iowa, and ALBERT CITY ELEVATORS,  
a Cooperative,**  
Plaintiffs-Appellants,

**vs.**

**BUENA VISTA COUNTY BOARD OF REVIEW,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Buena Vista County, Joseph R. Straub, Judge.

Taxpayer appeals from the district court decision on the property tax valuation and assessment on property leased by taxpayer. **AFFIRMED.**

Christopher O'Donohoe of Elwood, O'Donohoe, Braun & White, New Hampton, for appellants.

Bruce Green, Brett Ryan, and Frank Pechacek, Jr. of Willson & Pechacek, P.L.C., Council Bluffs, for appellee.

Heard by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**SACKETT, C.J.**

Appellant, AG Partners, L.L.C., appeals from the district court decision on appeal affirming the property tax valuation and assessment of property leased by appellant. It contends the court should have allowed more weight to its experts and less weight to appellee Buena Vista County Board of Review's [board] experts in determining the proper valuation of the properties. On de novo review, we affirm. See Iowa R. App. P. 6.4; Iowa Code § 441.39 (2005).

**I. Background Facts and Proceedings**

AG Partners leases two grain elevator facilities in Buena Vista county. The lease terms require it to pay the property taxes. In 2005 the Buena Vista county assessor valued the Albert City facility at \$6,678,984 and the Alta facility at \$2,318,130. AG Partners protested the valuations to the board, alleging the Albert City facility was over-assessed by \$595,740 and the Alta facility was over-assessed by \$1,660,040. The board denied the protest. AG Partners timely appealed to the district court.

At trial, AG Partners presented evidence from two expert witnesses. Paul Eckhoff has been a licensed real estate agent since 2004 and works primarily in agricultural real estate sales and appraisals. He has studied to become a certified appraiser. Gary Fairbanks is a licensed real estate agent and certified appraiser working primarily in sales of grain elevators and feed mills and doing appraisals.

The board also presented evidence from two experts and one employee of appellant, AG Partners. William Lyster is AG Partner's operations leader and

provided the valuations used in the protests filed by it. Robert Ehler is a certified appraiser and a certified assessor and has appraised around 300 grain facilities. His appraisals are for tax valuation. He has physically inspected and appraised more than half of the grain elevators in Iowa. Wayne Kubert has been a certified appraiser since the early 1970s and has appraised over 200 grain facilities. He has been the head tax protest referee in Lancaster County, Nebraska, since 1984, handling between 1500 and 10,000 protests each year.

After hearing the conflicting evidence, the court gave explicit reasons for weighing the evidence from the various experts as it did:

Ordinarily, it would be incumbent on the court to determine whether or not the burden of proof has shifted, but the court has determined in this case that such a determination is not necessary because the evidence offered by the Board of Review greatly outweighs the evidence offered by the appellant with respect to both elevators. The court finds that even if the burden of proof has shifted to the Board of Review, the quality of evidence introduced by the Board of Review is much more persuasive than the evidence offered by the appellants. The main reason for this conclusion is that the comparable sales relied upon by the appellants' witnesses are really not all that comparable. Some are forced sales, some involve elevators with much less capacity and some have antiquated grain handling capability, including a lack of unit train improvements. Because the "comparable" properties are so dissimilar to both the Albert City and Alta facilities, the appellants' witness had to make adjustments which in many cases exceeded 100%.

The court concluded the valuation of the Albert City facility set by the board should remain unchanged and sustained the board's action. The court further concluded the board's valuation of the Alta facility exceeded the valuation determined by both of its own experts and should be reduced from \$2,318,130 to \$2,250,000. The court reversed the board's decision and set the value of the

Alta facility at \$2,250,000. AG Partners appeals from both valuations set by the court.

## **II. Scope and Standards of Review**

An appeal from a board's action to the district court is heard in equity and issues before the board are triable anew. See Iowa Code § 441.39; see also § 441.43 (providing a court may increase, decrease, or affirm an assessment). Our review of the district court decision is de novo. *Metropolitan Jacobson Dev. Venture v. Bd. of Review*, 524 N.W.2d 189, 192 (Iowa 1994). Although we give weight to the trial court's findings of fact, we are not bound by them. Iowa R. App. P. 6.14(6)(g). We are especially deferential to the court's assessment of the credibility of witnesses because the district court is in a much better position to weigh the credibility of witnesses than the appellate court. *Payton Apartments v. Bd. of Review*, 358 N.W.2d 325, 327 (Iowa Ct. App. 1984).

In a tax protest, the taxpayer initially has the burden of proof. Iowa Code § 441.37. If the taxpayer “offers competent evidence by at least two disinterested witnesses that the market value of the property is less 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.” *Id.* § 441.21(3). The “burden of proof” refers to the burden of going forward with evidence or the burden of persuading the fact finder. *Bartlett & Co. Grain v. Bd. of Review*, 253 N.W.2d 86, 88 (Iowa 1977). There is no presumption the assessor's valuation is correct. Iowa Code § 441.39.

Property is valued at its actual value, subject to statutory exceptions, and is assessed at 100% of the actual value, which is the fair and reasonable market value, except as otherwise provided by statute. *Id.* § 441.21(1), (2). The ultimate question in tax valuation appeals is the exchange value of the property as a unit—what it would bring between a willing buyer and willing seller if offered for sale. *Bartlett*, 253 N.W.2d at 87. The exchange value may be equated with the market value. *Id.*

“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. Sale 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 in arriving at its market value.

Iowa Code § 441.21(1)(b). This section states a preference for establishing value using evidence of the sales price of the property being assessed or using evidence of comparable sales. *Boekeloo v. Bd. of Review*, 529 N.W.2d 275, 277 (Iowa 1995). If and only if the exchange value cannot thus be readily established, it may be established by other factors such as consideration of its productive and earning capacity, industrial conditions, cost, physical and functional depreciation and obsolescence, replacement cost, and other relevant factors. *Bartlett*, 253 N.W.2d at 87-88.

### **III. Merits**

AG Partners contends the court erred in not giving more weight to the evidence from its experts than to the evidence from the board’s experts. As

noted above, the district court took issue with the comparability of the “comparable” properties and sales used by AG Partners’ experts:

[T]he quality of evidence introduced by the Board of Review is much more persuasive than the evidence offered by the appellants. The main reason for this conclusion is that the comparable sales relied upon by the appellants’ witnesses are really not all that comparable. Some are forced sales, some involve elevators with much less capacity and some have antiquated grain handling capability, including a lack of unit train improvements. Because the “comparable” properties are so dissimilar to both the Albert City and Alta facilities, the appellants’ witness had to make adjustments which in many cases exceeded 100%.

We agree with the conclusions of the district court after a de novo review of the evidence.

In addition to the concerns noted by the district court, we note that some of the adjustments made by AG Partners’ experts approached 200%; several of the sales used were steel storage instead of concrete storage; some had smaller legs and chute troughs; some had little or no rail access and smaller unit train capacity, and some were significantly smaller.<sup>1</sup> Mr. Fairbanks testified that at least two of his “comparable” sales were not comparable, but “reflected the condition of the market at the time.” When discussing the relative values of types of storage (concrete, metal, and flat) he agreed that the values he placed on the different types were not what the market reflected, but rather were his opinion on what the market should be. The valuations made by both of AG Partners’ experts were lower than the values AG Partners itself put on the properties in its tax protest.

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<sup>1</sup> For instance, the Albert City facility has a storage capacity of nearly 6 million bushels. One “comparable” had a storage capacity of less than 700,000 bushels.

AG Partners has not proved by a preponderance of the evidence that the valuations as determined by the district court are excessive. See Iowa Code § 441.21(3); *Wunschel v. Bd. of Review*, 217 N.W.2d 574, 578 (Iowa 1974). We affirm the district court's valuation of the seventeen Albert City parcels at \$6,678,984, and the seven Alta parcels at \$2,250,000.

**AFFIRMED.**