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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-399 / 89-1726

140

GOSSELINK BUILDERS, INC.,

Appellee,

vs.

THE COUNTY BOARD OF REVIEW OF MARION COUNTY, Martin Nelson, Don McKay, Charles Reimer, Randall Smith, and Russell Nelson, as Members of said Board,

Appellants.

Appeal from the Iowa District Court for Marion County, Robert O. Frederick, Judge.

Marion County Board of Review appeals a district court ruling granting a lower assessment of the Gosselink property. **AFFIRMED.**

Charles D. Hunter and Margaret C. Callahan of Belin, Harris, Helmick, Tesdell, Lamsen & McCormick, P.C., Des Moines, for appellants.

Ann Fitzgibbons and John R. Sandre of Scalise, Scism, Scandre & Uhl, Des Moines, for appellee.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

PER CURIAM

In 1988 the Marion County Assessor's Office assessed Gosselink Builders' property at $116,995. The property consists of a parcel of land and a building. The building was constructed in 1986 for a cost of $81,891.41. In 1987 the property was assessed at $84,750, which is thirty-eight percent lower than the 1988 assessment. There were no improvements made to the property between 1987 and 1988.

Gosselink Builders filed a protest with the Board of Review. The board did not change the valuation. Gosselink appealed to the district court. The court concluded that based on the cost of replacement less depreciation and functional obsolescence, the fair market value of the property was $85,000. The board appeals.

The board contends that Gosselink's only evidence, the testimony of its president, Paul Dingeman, is inadequate because he failed to use the sales price approach to determine the market value. The board also claims that Gosselink failed to carry its burden to prove that the 1988 assessment was excessive.

Tax valuation appeals are heard in equity. Iowa code § 441.39 (1983). Our review is de novo. Iowa R. App. P. 4. While we give weight to the trial court's factual findings, we are not bound by them. Iowa R. App. P. 14(f)(7). See Also Ross v. Bd. of Review , 417 N.W.2d 462, 464 (Iowa 1988).

I. **Burden of Proof.** A taxpayer protesting an assessment before the board of review has the burden to prove a statutory ground for protest. Iowa Code §§ 441.21(3), 441.37. When 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." Iowa Code § 441.21(3), citing Ross v. Bd. of Rev. of City of Iowa City, 417 N.W.2d 462, 464 (Iowa 1988).

We are in agreement with the Marion County Board of Review that because the plaintiff did not provide two competent, disinterested witnesses the burden of proof did not shift to the board. However, the Iowa Supreme Court has stated "failing to shift the burden of proof is not equivalent to failing to satisfy the burden of proof." Id. at 465. Therefore, although the burden did not shift and the burden rests with the plaintiff for purposes of this de novo review, we agree with the trial court's conclusion that the plaintiff proved by a preponderance of the evidence that the assessment was excessive.

II. **Approach to Proving Excessive Assessment.** The statutorily-proscribed scheme for proving an assessment excessive is set out in Iowa Code sections 441.21(1) and 441.21(2). Section 441.21(1)(a) and (b) provides that all real property subject to taxation shall be valued at its

actual value and assessed at 100% of its actual value. It goes on to state that actual value shall be the fair and reasonable market value of the property. Market value is defined as follows:

> 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. Sales prices for the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of person's interested in purchasing the property, shall be taken into consideration in arriving at its market value.

The sales price approach involves a determination of the value of the subject property by analyzing sales prices and transactions involving comparable properties. Bartlett & Co. Grain v. Board of Review, 253 N.W.2d 86 (Iowa 1977). The second approach, termed the "other factors" approach may be used if the market value cannot be readily established by the sales price approach. Id. at 87. The authority for using the "other factors" approach is contained in section 441.21(2), which provides:

> In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods, including its productive and earning capacity, if any, industrial conditions, its costs, physical and functional depreciation and obsolescence and replacement costs, and other factors which would assist in determining the fair and reasonable market value of the property, but the actual value shall not be determined by use of only one such factor.

The focal issue becomes whether the plaintiff used the proper approach in proving the evaluation excessive. Gosselink claims there were no sufficient comparable sales and therefore it was necessary to utilize the "other factors" approach. Based upon the record it appears there was sufficient evidence to demonstrate a lack of comparable sales in the vicinity of the property in question. Not only did the plaintiff's witness recognize the lack of comparable sales but on cross-examination, the defendant's appraisers also stated there was a lack of comparable sales.

After a thorough review of the record we also find the court was correct in applying the "other factors" approach. Plaintiff's witness, utilized a replacement cost approach which he reached by utilizing quotes from the various subcontractors who built the structure. Further, he used a comparable sale of a building which is directly across the street from the premises in question. And lastly he factored in the depreciation and the functional obsolescence, both of which were recommended considerations of the defendant's appraisers. These are all factors which were recognized in Bartlett & Co. Grain v. Board of Review, 253 N.W.2d at 89. The evidence strongly favors the $85,000 assessment over the boards assessment of $116,000. On this de novo review we find that the $85,000 assessment reached by the trial court was correct.

AFFIRMED.