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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed February 21, 1984

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RONALD G. JAEGER,

Plaintiff-Appellee,

vs.

BOARD OF REVIEW OF THE CITY OF DES MOINES,

Defendant-Appellant.

4-04
2-69064

Appeal from the Iowa District Court for Polk County - George W. Bergeson, Judge.

Defendant-board appeals from the district court decision reducing the assessed value of plaintiff's property. AFFIRMED.

R. Richard Lyford and Michele A. Drucker, Dickinson, Throckmorton, Parker, Mannheimer & Raife, Des Moines, Iowa, for plaintiff-appellee.

Allan A. Herrick and William R. Clark, Jr., Herrick, Langdon & Langdon, Des Moines, Iowa, for defendant-appellant.

Considered by Schlegel, P.J., Hayden and Sackett, JJ.

Defendant-board appeals from the district court decision reducing the assessed value of plaintiff's property. We affirm.

Plaintiff, at the time a sublessee of the premises, purchased a resturant and adjacent house for $115,000 on January 30, 1981. Defendant assessed the actual value of the property for real estate taxation purposes and determined the value as of January 1, 1981. The restaurant was assessed at $149,350 and the adjacent three-room house was assessed at $21,600. After unsuccessfully protesting the assessment, plaintiff appealed to district court. The district court reduced the valuation of the restaurant to $119,500 and the house to $10,000.

When taxation assessments are appealed to the district court, the case is heard in equity. Iowa Code §441.39 (1981). Our review of the district court ruling is de novo. Equitable Life Insurance Co. v. Board of Review, 281 N.W. 2d 821, 823 (Iowa 1979). However, we give weight to the findings of the district court especially when considering the credibility of witnesses. River Products Co. v. Board of Review, 332 N.W. 2d 116, 117 (Iowa Ct. App. 1982). There is no presumption that the assessor's valuation is accurate. Iowa Code §441.39 (1981). Pursuant to Iowa Code section 441.21(3)(1981) the burden of proof remains on the plaintiff since plaintiff presented only one expert witness.

The sole dispute in this case concerns the credibility of each party's expert witnesses. Plaintiff's expert, Arthur Frahm, used all three of the classic approaches to value, the market data approach, the income approach, and the cost approach, in arriving at his conclusions. Using the market data approach to value the restaurant property Frahm found four comparable restaurant sales all of which involved restaurants of a type similar to plaintiff's. He determined the square foot price for the comparable properties and multiplied this times the number of square feet available at plaintiff's property producing a value of $119,000. Frahm also found four comparable market sales of three-room houses with approximately

the same square footage as the subject house. He arrived at a value of $10,000 for the residential property.

Using the cost approach Frahm determined the value of the land by comparing sales of similar vacant land in the area. He then analyzed what it would cost to construct a building and make site improvements. This figure was reduced by 60 percent depreciation and a total replacement cost of $133,000 was determined for the restaurant. The value of the house was determined to be $10,750 by using this method.

Frahm also used the income approach in valuing the restaurant and concluded that the value was $119,500. However, Frahm testified that he was unable to gather enough rental data from this particular area of town to arrive at an opinion concerning the value of the house under the income approach.

Defendant called two expert witnesses. The first, Robert Hayes, used only the market and income approaches in valuing the restaurant. He did not express any opinion as to the value of the residence. Of the four comparable properties used by Hayes three had in the past been fast food restaurants, but at the time of the hearing one was vacant, one was used as a veterinarian's office and the third was a lounge. The fourth comparable property was a restaurant/lounge which sold for $170,000 in March, 1980, and $164,000 in October, 1980. Hayes valued the restaurant property at $145,300 under the market data approach and $141,300 under the income approach.

Defendant's second witness was M. E. Horman, Chief Deputy Assessor for the City of Des Moines. He valued both the restaurant and house using only the market data approach. He used the same four comparable properties as did Hayes for the restaurant. His four comparable properties for the house were all four-room houses with more square footage. Horman concluded that the assessment was the fair market value of the property.

The methods used and conclusions reached by each witness are summarized in the following chart:

Restaurant

	Market	Income	Cost	Final
Frahm	119,000	119,500	133,000	119,500
Hayes	145,300	141,300	not used	145,300
Horman	149,350	not used	not used	149,350

Residence

	Market	Cost	Final
Frahm	10,000	10,750	10,000
Hayes	no opinion		
Horman	21,600	not used	21,600

The district court in lowering the assessed valuation expressly stated that it found Frahm's testimony to be more credible than the testimony of the other two witnesses.

Iowa Code section 441.21(1)(b) provides that property shall be assessed at its market value and defined "market value" 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." It further provides that sale prices of the property or comparable property shall be considered. Iowa Code section 441.21(2) allows the assessor to use other methods of valuation if market value cannot be established.

The supreme court was faced with a situation similar to the present case in Foreman & Clark of Iowa, Inc. v. Board of Review, 286 N.W. 2d 169 (Iowa 1979). In that case a building being leased for use as a men's clothing store was assessed as of January 1, 1977 at $191,246. The building was sold on June 28, 1977 for $150,000. The court held that the sale price of the property was admissible to show the market value of the property in the year of assessment and affirmed the district court's decision reducing the assessment to $150,000.

In the present case the subject property was sold on January 30, 1981, for $115,000 and was assessed at a value of $170,950 as of January 1, 1981. The disparity between the two figures is clear evidence that the assessment was excessive.

Defendant contends, however, that the sale price is not an accurate indicator of the market price because the purchaser was the sublessee of the property. Hayes testified that the discrepancy between the sale price and the assessed value was due to the fact that the sublessee had a lengthy lease and renewal options. We find no evidence, however, that the terms of the lease were so unfavorable to the owner that he would sell the property substantially below the true market value. Furthermore, any adjustment necessary to counter the negative effect of a long-term lease is covered by the difference between the sale price and the market value as determined by Frahm and fixed by the district court. Defendant also asserts that Frahm's opinion of the market value is not credible because Frahm testified that he did not value the improvements made to the restaurant by plaintiff. However, on redirect Frahm clarified his answer stating that he had excluded only those tenant improvements which were classified as personal property. All tenant improvements which were part of the real estate were included in his appraisal report.

Defendant has raised a number of other issues regarding alleged mistakes in Frahm's income and cost approaches. We do not find it necessary to address those issues, however. We conclude that the actual sale of the property in the assessment year and the testimony of Frahm regarding the market data approach constitutes sufficient evidence of the market value of the property so that plaintiff has met his burden of showing that the assessment was excessive. We affirm the valuation as fixed by the trial court.

AFFIRMED.