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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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JAMES V. GOLINVAUX,

Plaintiff-Appellee,

vs.

THE BOARD OF REVIEW OF THE CITY OF CLINTON, IOWA; KENNETH DUNN, Chairman of the Board of Review of the City of Clinton, Iowa; **RAY J. BROWN,** Member of the Board ofReview of the City of Clinton, Iowa; and **CLAUDE HAGGE,** Member of the Board of Relview of the City of Clinton, Iowa,

Defendants-Appellants.

8-517
88-355

Appeal from the Iowa District Court for Clinton County (No. CL 11723) - C. H. Pelton, Judge.

Defendant Board of Review appeals the decision of the district court. **AFFIRMED.**

Gary J. Rolfes, of Mayer, Mayer, Lonergan & Rolfes, Clinton, for defendants-appellants.

J. Drew Chambers, of Holleran, Shaw, Murphy & Stoutner, Clinton, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

SACKETT, J.

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In this appeal concerning a real estate assessment on the home of plaintiff-appellee James V. Golinvaux, defendants-appellants, The Board of Rev. of Clinton, Iowa, asks us to find the trial court erroneously applied a comparable sales method in reducing an assessment made by the Clinton assessor and confirmed by the defendant board of review. Defendants contend adequate sales of comparable property were not available and the comparable sales approach should have been rejected. We disagree and affirm the trial court.

The subject property is a luxurious personal residence constructed in the year 1986 in a desirable location in Clinton, Iowa. This case deals with the value of the residence as of January 1, 1987. The Clinton City Assessor valued the residence at replacement cost and arrived at a value of $484,053. The assessor's value was confirmed by the board of review.

Plaintiff appealed to the district court. The district court determined plaintiff had offered competent evidence by at least two disinterested witnesses the market value of the property was less than the market value set by the assessor. The district court held the burden was on the board to uphold their valuation. The trial court accepted plaintiff's fair market value approach and valued the property at $300,000.

Defendants appeal contending (1) the trial court erred in finding the plaintiff had proven a statutory ground for protest and the burden shifted to defendants to go forward, and (2) the replacement cost approach was the correct approach and the assessor and defendant board should have been affirmed. We affirm the trial court.

I.

Defendants first contend the burden should not have shifted and the trial court improperly found the board had the obligation of going forward. 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 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); Ross v. Bd. of Rev of City of Iowa City , 417 N.W.2d 462, 464 (Iowa 1988).

The witnesses, experts on the issue of valuation of the subject property, testified as to their opinion of the market value of the property. The trial court found plaintiff's two witnesses to be competent disinterested real estate appraisers. The trial court determined the plaintiff had satisfied his burden and the burden of persuasion shifted to the board to uphold its valuation.

The defendants argue these findings were not correct because both the plaintiff's witnesses relied only on the market or willing buyer approach, and neither witness used replacement cost less depreciation. They also assert there was no showing of a market value for more than one residence in Clinton within twenty to thirty percent of the value of the subject property. Defendants advance the same argument in asking us to reject the trial court's determination of value, find replacement cost was the correct approach and affirm the assessor and the board.

Defendants direct us to Wunschel v. Bd. of Rev., Carroll County, 217 N.W.2d 576 (Iowa 1974) in support of their contentions. In Wunschel, the court found the burden of persuasion shifted to defendant board because two disinterested witnesses introduced evidence in support of taxpayer's claim there were comparable homes by which the fair market value of taxpayer's home could be determined even though the court affirmed the trial court's determination there was no ascertainable market value under the willing buyer-willing seller test. Id.

We find, as did the trial court, plaintiff presented evidence by two disinterested witnesses to support his claim there had been local sales of comparable homes by which fair market value of the plaintiff's property could be determined. And as in Wunschel at 578, we determine the

burden of persuasion shifted to the board. See also Maytag Co. v. Partridge, 210 N.W.2d 584, 594-96 (Iowa 1973); Juhl v Greene County Bd. of Rev., 188 N.W.2d 351, 353 (Iowa 1971). We must determine, however, whether the fact that there was a showing of only one market value of a property with a twenty to thirty percent value of the subject property means we must affirm the board.

Before the other method are utilized it must first be determine market value is not readily ascertainable. See Ross, 417 N.W.2d at 465.

Iowa Code section 441.21(1)(b) (1987) sets forth the standards by which real property is to be assessed and provides as follows:

> The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. "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. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

Iowa Code section 441.21(2) (1987) sets forth the approach to be used when market value cannot readily be established and states in relevant part:

> . . . 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 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 but the actual value shall not be determined by use of only one such factor. . . .

At trial five witnesses testified; two for plaintiff, a Mr Jefferies and Mr. Nelson, and three for defendants, a Mr. Kocer, Mr. Cleminshaw and a Mr. Moreland. All witnesses were experts on the issue of valuation of the subject property. No challenge was made to any of their qualifications.

The valuations established were:

Plaintiff's Witnesses	Market	Cost
Jefferies	$296,500	--
Nelson	300,000	$295,000
Defendants' Witnesses		
Kocer	$499,000	$488,000
Cleminshaw	435,150	461,404
Moreland	--	484,053

Four of the appraisers arrived at a market figure. To do so each considered a series of five to seven recent residential sales of what they considered similar property. One property had sold for $288,000 and was within twenty percent of the market value established for plaintiff's property by plaintiff's witnesses. The balance of the properties had sold from a low of $130,000 to a high of $180,000 and were not within thirty percent of the market value for plaintiff's property established by plaintiff's witnesses. Defendants contend only the property that sold for $288,000 is comparable and this is not sufficient to allow for the market approach to be used.

The board contends Wunschel v. Bd. of Rev., Carroll County, 217 N.W.2d 576 (Iowa 1974) is controlling and we should find as the court did in Wunschel at 578 that fair market value could not be readily established by the willing buyer-willing seller approach. In Wunschel the trial court and the supreme court found the assessor was justified in finding fair market value could not be readily established where homes used as comparables had a value of only 50.4 percent and 68.93 percent of the total value computed for taxpayer's home by one of taxpayer's witnesses. Id. at 578.

The question of whether there was a basis for ascertaining market value when there was only one exchange within a thirty percent price range of the market value

established by plaintiff's witnesses was not specifically addressed by the trial court. Rather, the trial court found a market value was ascertainable because four of the five appraisers ascertained a market value. We review of the testimony at trial de novo. See Wunschel, 217 N.W.2d at 577, and we are convinced the trial court was correct.

Because the burden shifted to defendant, we review their evidence. Defendants first put into evidence an appraisal report made by Kocer. The report indicated:

> The market approach adjustment process involves comparing the market sales to the Golinvaux property and adjusting these sales to give a true and fair representation of the market value of the Golinvaux property.

In the report Kocer analyzed similar and dissimilar factors between the Golinvaux and the six properties used and made adjustment to the six properties to compensate for lot and building size, age and quality. The comparable sales and dates were:

1984	$132,000
1985	130,000
1985	137,600
1985	140,000
1986	288,000
1986	157,500

In the report Kocer determined as of January 1, 1987 the reasonable market value of plaintiff's property was $499,000. At trial, Kocer testified the cost approach represented the best indication of market value and the market value approach he made was not reliable because too many adjustments had to be made. However, he testified on

cross-examination in his opinion if plaintiff's house were put on the market today, plaintiff could reasonably be expected to sell it for $490,000.

Defendant used as further evidence the written report of Cleminshaw who determined the market value to be $435,150 via market data/direct sales approach. He used seven comparables:

1985	$140,000
1987	138,000
1985	151,200
1985	137,600
1985	130,000
1985	110,000
1985	143,000

Cleminshaw made a series of adjustments to properties used. Based on these adjustments, he determined the comparable properties' current market values. His report defined his sales comparison approach:

> The direct sales comparison approach is based on the economic principles of substitution and contribution. The principle of substitution states that an informed, prudent and rational purchaser will pay no more for a property than the cost of obtaining a similar, competitive property with comparable utility and economic benefits. In actual practice, this principle is implemented by analyzing comparable properties that have recently sold in the local market.
>
> Adjustments are made to the comparable properties to reflect meaningful differences in physical and economic characteristics. The adjustment process is based on the theory of contribution which states that the present worth of any component can be measured by the amount it contributes to the value of the entire property.
>
> Analyzing an appropriate number of these sales will indicate a relevant range of value and, through correlation of the data, ultimately indicate a market value estimate.

The assessor, Mr. Moreland, testified he used the cost approach because it was a brand new house and he thought that approach most reliable. He further testified he made no attempt to make a market analysis nor did he attempt to find comparables. He testified the willing seller-willing buyer method would not be used because the house would not be exposed to the market. But he did testify if the house were put on the market he would get somewhere in the neighborhood of $484,000 for it.

Moreland, of course, was in error in assessing the property using cost without first ascertaining he could not determine market value. Iowa Code section 441.21(2) plainly states that other approaches to valuation may be used when the market value of the property being assessed cannot be readily established by the comparable sales price approach. See Bartlett & Co. Grain v. Bd. of Rev., 253 N.W.2d 86, 87 (Iowa 1977) (use of other factors approach appropriate "if and only if" the exchange value cannot be readily established). Ross v. Bd. of Rev. of City of Iowa City, 417 N.W.2d 462, 465 (Iowa 1988).

We agree with the decision of the trial court there has been no showing market value is not available, unlike Wunschel where the evidence clearly showed the comparables were not sufficient to show market value. In Wunschel there were no comparables in the twenty percent range. Here there is one in the range which defendants contend is

not sufficient to afford relief. Defendants cite Maxwell v Shivers, 133 N.W.2d 709, 712 (Iowa 1965) in support of their proposition. In Maxwell taxpayers sought to compare only one property in the immediate area to their home. Here each witness used at least six. Four experts were able to obtain properties they determine to be comparables with adjustment. The record supports the trial court's finding the market value is ascertainable.

The trial court found the plaintiff's witnesses more credible. We agree with this assessment and affirm the trial court's valuation.

AFFIRMED.