IN THE COURT OF APPEALS OF IOWA

No. 1999-551 (9-812) / 98-2288
Filed May 31, 2000

GENERAL ELECTRIC COMPANY,
Plaintiff-Appellant,

vs.

CARROLL COUNTY BOARD OF REVIEW,
Defendant-Appellee.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Carroll County, Kurt L. Wilke, Judge.

Plaintiff appeals from the district court ruling upholding defendant's refusal to reduce the assessed value of plaintiff's property for tax purposes. Plaintiff contends the court erred in considering valuation methods other than the mandatory sales price method to value the property, and the defendant failed to prove its original assessments were equitable. **AFFIRMED.**

Richard A. Davidson of Lane & Waterman, Davenport, for appellant.

John Werden, County Attorney, for appellee.

Heard by Huitink, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Plaintiff General Electric ("GE") appeals the district court's order upholding defendant Carroll County Board of Review's valuation of certain property for property tax purposes. We affirm.

GE owns certain real estate located in Carroll County referred to as Parcel No. 06-23-126-001 ("the GE Property"). The GE property contains a one story, steel framed, metal clad manufacturing plant with offices, originally built in 1969. The GE property is approximately 30.27 acres in size and is located adjacent to U.S. Highway 30 on the west side of Carroll, Iowa. GE purchased the GE property in 1972 for $768,000. From the date of purchase until 1985, GE improved the GE property in various ways, including increasing the size from approximately 135,000 square feet to approximately 186,000 square feet. The GE property also contains three small outbuildings and hard surfaced parking and roadways. Photographs that form a part of the record show a well-maintained facility both inside and out which is suitable for light industrial manufacturing. GE has not placed the property for sale.

On May 4, 1998, GE petitioned the Carroll County Board of Review ("the Board") for a reduction in the assessed value of the GE property for the 1997 and 1998 years for property tax purposes. The total assessed value of the GE property as determined by the Carroll County Assessor for 1997 and 1998 is $2,449,000. GE argues the assessment is inequitable and the true value of the property is $1,500,000. The Board denied GE's request to reduce the assessed value of the GE property. GE appealed the ruling to the Iowa District Court for Carroll County, where trial was held on September 29 and 30, 1998. On

December 4, 1998, the district court entered an order upholding the Board's refusal to reduce the assessed value of the GE property. GE appeals.

An appeal to the district court from the action of the board of review with reference to protest of an assessment is heard in equity. Iowa Code §§ 441.38, 441.39 (1997). Accordingly, this court's review of a tax protest is de novo. Iowa R. App. P. 4; *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d 419, 421 (Iowa 1997). We give weight to the trial court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). The court may increase, decrease, or affirm the amount of the assessment appealed from. Iowa Code § 441.43 (1997).

> The appealing property owner has a twofold burden on appeal. First, the property owner bears the burden to prove that an assessment is excessive. Second, the appealing party "must establish what the correct valuation should be." If the property owner "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 shifts to the board of review to uphold the assessed value.

Merle Hay Mall, 564 N.W.2d at 421 (internal citations omitted).

A property is valued at its actual value. Iowa Code § 441.21(1)(a) (1997). Actual value is defined as the "fair and reasonable market value." Iowa Code § 441.21(1)(b) (1997).

> "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.

Id.

Iowa Code section 441.21(1) thus requires one to first attempt to determine the value of the property using the "sales comparison" approach (also referred to as the "market approach" and "sales price method"), if sufficient comparable sales data is available. Where the evidence shows that the value can be established by the "sales comparison" approach alone, that method of valuation is mandatory. *Milroy v. Bd. of Review of Benton County*, 226 N.W.2d 814, 819 (Iowa 1975).

At trial, GE produced the testimony of Mr. Pollard and Mr. LeGrand, whom the trial court accepted as two disinterested experts. They placed the value of the GE property at approximately $1,500,000. Thus, the burden of persuasion shifted to the Board. Carroll County then produced the testimony of Mr. Ehler and Mr. Jones, whom the court also accepted as experts. The trial court concluded that "[s]ince all of the appraisers appeared credible and competent this Court is left to choose which comparable sales would be most similar to the Plaintiff's property in an arms length transaction." The trial court concluded that the comparables used by Mr. Ehler, and the opinion of Mr. Jones that the upper range of comparable sales was more truly indicative of the value of the GE property, were correct, and thus held the Board had carried its burden of persuasion.

GE's first assignment of error is that the trial court erred by considering other methods of valuation than the "sales comparison" approach. Upon review

of the district court's order, we find no merit to that argument. The trial court specifically stated that "this Court is left to choose which comparable sales would be most similar to the Plaintiff's property in an arms length transaction." We find no reference in the district court's order to any other methods of valuation.

GE's second assignment of error is Carroll County did not meet it burden of persuasion that the original assessment was equitable.

The trial in this case, as in most similar cases, became a "battle of the experts," in which credibility and completeness of analysis becomes important. *See, e.g., Excel Corp. v. Pottawattamie County*, 492 N.W.2d 225, 229 (Iowa App. 1992). Each of the four expert witnesses submitted a written appraisal report that was admitted into evidence. Each used certain comparable sales to develop an estimate of the GE property's market value. GE's expert, Pollard, testified that in his opinion the GE property had a market value of $1,400,000 to $1,500,000. GE's expert, LeGrand, opined a market value of $1,500,000. The Board's expert, Ehler, testified that in his opinion the GE property had a market value of $2,475,000. The Board's expert, Jones, opined a market value of $2,500,000. Each of these witnesses to some greater or lesser degree supported his opinion with testimony.

GE criticizes Ehler's analysis and opinion on several grounds. It criticizes his "heavy reliance upon comparable sales from large metropolitan areas," pointing out LeGrand testified demand for properties similar to the GE property is higher in cities with substantially larger populations than Carroll. However, only four of the eight comparables used by Ehler are from such larger metropolitan areas. It is worth noting LeGrand did not initially place limitations on the size of

the communities from which he would consider sales. Further, GE did not suggest, through LeGrand or otherwise, how much adjustment Ehler should have made for community size.

GE challenges two of the eight sales used by Ehler on the ground they involve "questionable corporate transactions." One of those, a sale in Spencer, Iowa, is questionable because the property was resold some two years later for a significantly reduced price. However, the second sale did not include 4.4 acres of land, 22,000 square feet of buildings, and certain asphalt paving that was involved in the first sale. The second of the sales which GE criticizes, a sale in Nevada, Iowa, was between related entities. However, the sale price is fully supported by an appraisal which was made at the time.

GE levels several challenges at Jones' analysis and opinion. It points out that four of the six "comparables" used by Jones had characteristics of being "distress sales" which results in values that are too low. However, GE did not suggest how much adjustment Jones should have made for these characteristics. Further, GE does not indicate how Jones' use of sales whose prices might be below market value could be of disadvantage to it in Jones' analysis. It is also noteworthy that Jones acknowledged these characteristics, did not rely heavily on these four sales, and instead only used them to estimate a lower limit of value for the GE property.

GE challenges Jones' use of a sale in Creston, Iowa, noting it was a sale between related entities, and urges the property was "therefore valued too high." Jones acknowledged the purchaser paid "top value," but notes the sale was

handled as a separately documented part of the sale of an ongoing business. Jones considered the sale as one that probably was a high indication of value.

GE criticizes Jones' admittedly heavy reliance on a Waterloo, Iowa, sale. It suggests that, as shown by LeGrand's testimony, Waterloo's larger population translates to higher demand and higher prices. However, neither party presented evidence concerning economic conditions generally in the Waterloo area at or about the time of sale, or the demand for such properties in the Waterloo area at that time. These factors could have had a significant effect on the market value of the Waterloo property. GE also presented no evidence as to how much adjustment it believes Jones should have made to the sale price of the Waterloo property to account for comparative sizes of the communities.

GE criticizes the fact that Jones did not adjust the price of the Waterloo property downward to account for the fact it was much smaller than the GE property, 67,000 square feet to the GE property's 186,000 square feet. This criticism is based largely on Pollard's testimony that, in general, as the size of a building increases the price per square foot decreases. Again, GE did not present evidence as to how much adjustment Jones should have made. Although Pollard's testimony may well be correct as a general proposition, for reasons discussed immediately below the comparables which he used to support his opinion as to the value of the GE property do not, at least superficially, support this testimony.

Pollard considered twelve comparable sales. He placed heaviest weight on the six most recent sales. Those six include five of the six smallest of the comparable properties he considered, involve smaller buildings than the GE

property, and yet the average of the per square foot sales prices of those six most recent sales is $6.97 per square foot and the average of the other six properties, which are much larger on average, is $8.53 per square foot. When the twelve properties are grouped strictly by size, the average per square foot sales prices of the six largest, which average almost eighty percent larger than the six smallest, is $8.79 per square foot and the average of the six smallest is $6.72 per square foot.

This does not mean the price per square foot does not generally decrease as size increases, for no doubt many other factors were involved in the sales in question. It may, however, suggest that size is not a strong factor in the general size range of the GE property and the great majority of the comparable sales used by the four expert witnesses who testified. When taken together with all the other evidence in the case, it does seem to suggest the sales prices of the six properties upon which Pollard placed most weight were atypically low and should be given little weight.

The Board criticizes Pollard's analysis and opinion on numerous additional grounds as well. He ignored several thousand square feet of accessory buildings at the GE property. His report does not quantify any of the adjustments which he indicated needed to be made to the comparable sales upon which he relied, making it impossible to determine the weight he gave to numerous factors which he indicates need to be considered.

One of the six sales upon which Pollard heavily relied involved a sale by a bank, following foreclosure, for the first offer it received after marketing the property for eighteen months. This Webster City sale can reasonably be viewed

as being in the nature of a distress sale, with serious questions as to whether the price represents market value.

Another of those six properties had $400,000 in deferred maintenance. Pollard made no adjustment to the sale price, despite his testimony that condition was an important factor to be considered in selecting comparables. There is serious doubt as to whether the unadjusted sale price of this Muscatine property can reasonably be used in determining market value of the GE property.

A Red Oak sale was one of the six most recent sales considered by Pollard. The City of Red Oak had purchased the property after it had been vacated by the owner, and later resold it. Pollard indicates he gave this sale little weight in his analysis. However, because his report and testimony do not quantify adjustments or show what comparative weight he gave the various sales he considered, it is impossible to determine what weight he gave this sale or how much effect it had on his ultimate opinion.

Another sale given substantial weight by Pollard was a Spirit Lake sale. The sale was for $1,850,000 in July 1995. However, the property had earlier been purchased for almost $3,000,000 and the July 1995 sale was by a city economic development entity or utility company to attract a heavy electric user. This later sale for $1,850,000 has characteristics of a distress sale. Pollard made no adjustment to sale price to take the nature of the sale into account.

A May 1995 sale in Fairfield was one of the six most recent sales considered by Pollard. The property had been repossessed by a lender in 1991, was in poor condition at the time of the 1995 sale, and the selling lender was anxious to dispose of it. Pollard indicates he gave this sale little weight in his

analysis. Again, because his report and testimony do not quantify adjustments or show what comparative weight he gave the various sales he considered, it is impossible to determine what weight he gave this sale or how much effect it had on his ultimate opinion.

Pollard considered demand for vacant parcels in Carroll to be weak, based on his belief Carroll County had recently purchased land to be developed as an industrial park, hoping to attract new industries. This belief most likely affected his analysis and ultimate opinion as to the market value of the GE property. However, the property purchased by Carroll County was instead in fact bought for the construction of a new secondary roads shop and facility.

The Board challenges LeGrand's analysis and opinion on several grounds. It levels the same criticisms at LeGrand's use of the Webster City, Red Oak, Spirit Lake and Fairfield sales prices as it does at Pollard's similar unadjusted use of them. It points out that LeGrand believed the GE property's wall height to be twelve feet to sixteen feet, considered such wall heights to be substandard, and concluded that therefore the building would likely satisfy only users in the lower one-half of the regional industrial market. The evidence shows that in fact approximately ninety percent the GE property has wall heights of eighteen feet or higher. Implicit in the Board's criticism is a reasonable assumption that LeGrand's erroneous understanding of the GE property's wall height had a substantial negative effect on his ultimate opinion concerning the GE property's market value.

The Board criticizes LeGrand's use of a weighted average of the per square foot sales prices of the sales he considered. It argues he therefore

allowed the larger properties that generally have a smaller price per square foot to skew his analysis. It points out that none of the other experts employed such a technique. However, there appears to be very little correlation between size of building and price per square foot in the sales LeGrand used (or in the sales Pollard used). Therefore, even if this criticism of LeGrand's method might have merit, the method appears to have had little or no impact on his ultimate opinion in this case.

LeGrand's and Pollard's written reports both noted numerous adjustments that should be made to the sales prices of the comparable sales they considered. However, in neither of those written reports nor in their testimony did either quantify any such adjustments (except LeGrand's adjustment for time of sale in his written report).

GE criticizes Jones for using four sales that have characteristics of distress sales in his analysis. However, those four sales are in the twelve Pollard considered, and three of the four are in the most recent six sales, to which he purportedly gave most weight. Those four sales considered by Jones are also four of the seven sales considered by LeGrand. In using those sales, neither Pollard nor LeGrand made any observable adjustment to the sales prices for the presumably lower sales prices caused by their distress sale characteristics.

The expert witnesses' widely divergent opinions lead us to again agree, as we did in an earlier case, with the trial judge's statement in that earlier case:

> The variable utilized in the methodology as applied, selection of comparable sales, adjustments to value, and approach relied upon by all appraisers, simply reaffirms the principle that appraisal is not an exact science, is a subjective determination, and in final form, the exercise of professional judgment by highly qualified and skilled individuals who disagree.

Sears, Robuck & Co. v. Siren, 484 N.W.2d 616, 617 (Iowa App. 1992).

On the basis of the evidence presented, we conclude that the great majority of GE's criticisms of Ehler's comparables and analysis are not justified. In addition to what we have said earlier in this opinion, we note that Ehler is the only expert witness presented by either party whose written report or testimony sets forth and quantifies each adjustment made to a comparable sale to adjust its sales price to the subject GE property. (Jones and LeGrand did quantify adjustments they made for time of sale, but no others.) We will give little weight to valuations made by comparable sales where adjustments that are purportedly made to those sales are not quantified and thus neither we nor the trial court can evaluate the propriety of the purported adjustments without further evidence. *Dowden v. Dickinson Co. Bd. of Review*, 338 N.W.2d 719, 723 (Iowa App. 1983).

We also conclude many of GE's criticisms of Jones' analysis are not justified. For one, Jones' use of four sales with distress sale characteristics for a limited purpose does not appear inappropriate, particularly given that Pollard and LeGrand used the same four sales and did so without apparently making the adjustment that GE criticizes Jones for not making.

Finally, for reasons explained above, many of the Board's criticisms of Pollard's and LeGrand's analyses are valid.

The district court determined the sales used by Ehler were a better fit than those used by the other expert witnesses, and that Jones' opinion that the upper range of the sales was more truly indicative of the actual value of the GE property was correct. Based on our de novo review, we agree. We conclude the Board sustained its burden of proving its assessments of the GE property were

not excessive and should be upheld. We have considered all issues presented, whether discussed in detail or not, and affirm the decision of the district court.

AFFIRMED.