

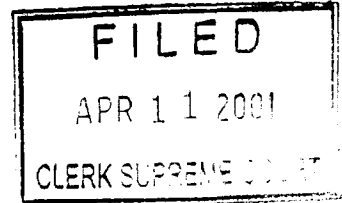
IN THE COURT OF APPEALS OF IOWA

No. 1-012 / 00-148
Filed April 11, 2001

HORMEL FOODS CORPORATION,
Plaintiff-Appellee,

vs.

CLARKE COUNTY BOARD OF REVIEW,
Defendant-Appellant.



Appeal from the Iowa District Court for Clarke County, Scott D. Rosenberg, Judge.

The Clarke County Board of Review appeals the district court's order reducing the assessment and increasing the exemption for Hormel Foods Corporation's finished food processing plant and distribution center. **AFFIRMED IN PART AND REVERSED IN PART.**

Frank W. Pechacek, Jr. and Michael J. Davenport of Willson & Pechacek, P.L.C., Council Bluffs, and John D. Lloyd, County Attorney, for appellant.

John V. Donnelly and Jill Mataya Corry of Sullivan & Ward, P.C., Des Moines, for appellee.

Heard by Mahan, P.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

In this property tax appeal, the Clarke County Board of Review contends the district court should not have reduced the assessed and taxable values of Hormel Foods Corporation's food processing plant. We agree with the court's reduction of the values but disagree with its final calculations. Accordingly, we affirm in part and reverse in part.

I. Background Facts and Proceedings

Hormel bought a food processing plant in Osceola. Anticipating it would make substantial improvements to the property, Hormel sought and obtained a tax exemption from the city for new construction and reconstruction. The Clarke County Assessor assessed the property as follows:

	ASSESSED VALUE	TAXABLE VALUE
1997	\$27,269,294	\$9,145,374
1998	\$32,146,075 ¹	\$13,980,585

Hormel filed objections to the assessments with the Clarke County Board of Review. After considering expert opinions, the Board upheld the assessments.

Hormel sought district court review. The district court considered four expert opinions concerning the appraised and taxable values of the Hormel property. Robert Kocer and Keith Jones testified for the Board. Hormel proffered the combined expert opinions of Anthony Speiker and Robert Lunieski as well as an opinion of Richard LeGrand. The court appeared to substantially accept the valuations of Speiker and Lunieski and accordingly reduced the assessed value

¹ Hormel states the assessed value is \$32,272,075. However, the Board's response to requests for admissions states the value is \$32,146,075. We accept the Board's figure.

of the property. The court further found Hormel was entitled to the entire value-added exemption it claimed for improvements made to the property. This effectively reduced the taxable values determined by the Board.

The following table summarizes the valuations of the various experts, the Board, and the district court:

APPRAISALS	1997 FMV	1998 FMV	1997 Tax. Val.	1998 Tax. Val.
S & L	\$20,500,000	\$22,600,000		
LEGRAND	\$21,000,000	\$22,000,000		
JONES	\$27,750,000	\$31,000,000		
KOCER	\$30,000,000	\$33,000,000		
BOARD	\$27,269,294	\$32,146,075	\$9,145,374	\$13,980,585
DIST. COURT	\$20,787,414	\$22,775,715	\$5,982,414	\$ 9,521,715

The Board appeals.

II. Fair Market Value

A. Scope and Standard of District Court and Our Review. The Board maintains the district court acted inequitably in decreasing the assessed and taxable values of Hormel's Osceola plant. There is no presumption as to the correctness of the Board's valuation. Iowa Code § 441.39. A district court considering an appeal from an assessment may increase, decrease or affirm the Board's assessment. Iowa Code § 441.43. Although the court cannot consider grounds not raised in a protest to the Board, it may consider additional evidence pertaining to those grounds raised. Iowa Code § 441.38(1).

Our review is de novo. *Riley v. Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996). Like the district court, we must determine where the preponderance of the evidence lies on the issue of valuation. *Maytag Co. v. Partridge*, 210 N.W.2d 584, 596 (Iowa 1973).

B. Statutory Framework. We begin by examining the statutory framework for the assessment and valuation of property. See Iowa Code chapter 441. All property subject to taxation shall be valued at its actual value. Iowa Code § 441.21(1)(a). "Actual value" is the fair and reasonable market value of the property. Iowa Code § 441.21(1)(b). "Market value" is

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.

Id. In arriving at market value, the taxing authority is to consider the sale price of the property to be assessed or comparable property in normal transactions, as well as the availability of interested purchasers. *Id.* The statute expresses a preference for valuations based on comparable sales. *Boekeloo v. Bd. of Review*, 529 N.W.2d 275, 277 (Iowa 1995). Alternate means of valuation may be used only when market value cannot be established using the comparable sales approach. *Id.*

C. Burdens of Proof. A complaining taxpayer has the burden of proof to show the valuation was "excessive, inadequate, inequitable or capricious." Iowa Code § 441.21(3). If the complainant establishes through competent evidence from at least two disinterested witnesses that the market value of the property is less than the market value determined by the Board, the burden of persuasion shifts to the Board to uphold the assessed value. *Id.*; *Ross v. Bd. of Review*, 417

N.W.2d 462, 464 (Iowa 1988). Competent evidence is evidence that comports with the valuation preferences expressed in Iowa Code section 441.21. *Boekeloo*, 529 N.W.2d at 279.

D. Board's Non-Compliance with Statute. The county assessor and Board did not initially rely on the comparable sales approach in determining the assessed value of Hormel's property. Instead, they used a different method of valuation. Hormel argues that their assessments are therefore invalid. We need not reach this issue because the Board's experts utilized the comparable sales approach at the district court level, thereby creating an appropriate record for our review. See *Boekeloo*, 529 N.W.2d at 279. Accordingly, we will proceed to examine that record.

E. Hormel's Evidence. To meet its burden of showing the Board's valuation was excessive, Hormel introduced two appraisals, the first by Speiker and Lunieski and the second by LeGrand.

1. Speiker & Lunieski. Speiker and Lunieski used the comparable sales, cost, and income approaches to arrive at three distinct valuations for the Hormel plant, but based their final valuation on the comparable sales approach.

Lunieski examined data on twenty buildings, warehouses, and food processing plants around the Midwest. He then selected six sites that he determined were the most reliable comparables in relation to Hormel's Osceola site. For each property, Lunieski prepared an "adjustment grid" to quantify the differences between the Hormel plant and the comparables. He specifically considered: (1) the method used to finance each purchase; (2) the time of the purchase; (3) whether the property was located in a rural or urban area; (4) the

age and quality of the property; (5) the amount of refrigerated space on the site; and (6) the size of the property. He arrived at a net adjustment figure and multiplied that figure by the sale price per square foot to arrive at an adjusted price per square foot for each property. For 1997, the price range for the comparables he selected was between \$15.73 and \$44.86 per square foot, with an average adjusted price per square foot of \$32.42. Based on these comparables, Lunieski calculated a value for the Hormel plant of \$40.00 per square foot. Multiplying this figure by the number of square feet in the plant in 1997 (512,294), he arrived at a final valuation of \$20,500,000 for 1997. He determined this figure to be more reliable than figures obtained using the cost and income approaches.

Lunieski engaged in the same type of analysis for 1998, arriving at an average adjusted sale price of \$33.01 for the same comparables. He increased Hormel's value to \$40.50 per square foot based on the addition of new space to the plant. Lunieski then multiplied this figure by the number of square feet in the plant in that year (558,298) and arrived at a total value of \$22,600,000 for 1998.

The Board criticizes Lunieski's valuations on several grounds. First, it contends Lunieski inappropriately concluded the plant was obsolete and accordingly undervalued the property. However, Hormel correctly points out that Lunieski's obsolescence ratings were not a part of his comparable sales analysis. Therefore, that portion of his opinion is irrelevant.

Second, the Board complains Lunieski did not obtain his data first-hand. However, Lunieski testified his reliance on outside data sources was customary

in the appraisal field. Additionally, he or Speiker inspected all of the six comparable sites. Therefore, we reject this contention.

Finally, the Board finds certain specific problems with some of the comparable data used by Lunieski. However, the asserted problems are with sites that were not among the six ultimately selected by Lunieski as the most reliable. Therefore, this argument is misplaced.

We conclude Lunieski and Speiker's evidence and analysis is well documented, persuasive, and consistent with statutory mandates. For reasons to be articulated in part II G below, we further conclude their valuation was the most defensible of the four presented to the district court.

2. LeGrand. LeGrand employed comparable sales and cost approaches to determine a value for the Hormel plant. Under the comparable sales approach, he examined five to seven sites in the Midwest. Like Lunieski and Speiker, he prepared an adjustment grid, arriving at a range of adjusted prices per square foot of between \$22.50 and \$43.12 for 1997 and \$23.13 and \$44.42 for 1998. He determined the sale price of the Hormel plant to be \$40 per square foot for 1997 and \$42 per square foot for 1998. Multiplying this figure by the number of square feet at the Hormel plant in each year, LeGrand obtained valuations of \$20,500,000 and \$21,600,000 respectively. However, LeGrand did not adopt these comparable sales valuations as his final figures, electing instead to use a blended figure which combined his analysis under the comparable sales and cost approaches. His final valuations were \$21,000,000 for 1997 and \$22,000,000 for 1998.

The Board first contends LeGrand's appraisal is flawed because he discounted Hormel's value by twenty-five percent based on an external obsolescence factor. Hormel responds this obsolescence factor was considered only under the cost approach and is therefore irrelevant to LeGrand's conclusion. We disagree. Ultimately, LeGrand selected a value for the Hormel plant which combined the comparable sales approach with the cost approach. Therefore, his obsolescence analysis is relevant.

We agree with the Board that this analysis is flawed. According to LeGrand, external obsolescence results from the limited demand for large industrial facilities in this area. Accordingly, LeGrand assigned an obsolescence rating to each of the comparables he analyzed, ranging from 7% to 36%. LeGrand concluded Hormel's obsolescence rating fell within the upper half of that range, given its large size and excess storage capacity. However, the ratings he assigned the comparables do not support this conclusion, as one plant with 116,500 square feet received an obsolescence rating of 36% while another of comparable size received a rating of 7%. Therefore, we are not convinced LeGrand's obsolescence analysis is reliable. To the extent LeGrand used this analysis in arriving at his final valuation, we find his opinion less persuasive than Lunieski and Speiker's. Additionally, we note our legislature and highest court have viewed with disfavor valuations based on combined approaches. See Iowa Code § 441.21(2); *Ross*, 417 N.W.2d at 465. Accordingly, we reject LeGrand's final valuation figures.

The Board also contends LeGrand used inappropriate comparables. We are not persuaded by this argument because Jones, one of the Board's experts,

used four of the same comparables that LeGrand used. Indeed, Jones's valuation of one property was within sixteen cents of LeGrand's. Additionally, LeGrand had a reasoned basis for choosing his comparables. He testified he selected the sites because they were all Midwest plants with more than 100,000 square feet that were sold in or after 1994. While the Board's criticisms of particular calculations may have merit, we find little to challenge in LeGrand's method of choosing the comparables. Accordingly, we reject this contention. *Cf. Valley Forge Apartments v. Bd. of Review*, 239 N.W.2d 148, 151 (Iowa 1976) (stating it was unwarranted for board to reject data on basis of opposing party's objection). Although we have rejected LeGrand's final valuation figures, we find his comparable sales analysis reliable and credible.

In summary, we find Speiker, Lunieski and LeGrand were disinterested, competent witnesses. With their evidence, we conclude Hormel met its burden of proving the Board's valuation was excessive. In reaching this conclusion, we particularly rely on the reports of Lunieski and Speiker and the comparable sales analysis contained in LeGrand's reports.

F. The Board's Evidence. We must next determine whether the Board's evidence was sufficient to uphold the assessment. We conclude it was not.

1. Kocer. Kocer's comparable sales analysis was based on seven sites located in Iowa, Nebraska, Kansas, and Oklahoma. For 1997, he arrived at adjusted sale prices per square foot of between \$35.63 and \$65.74. He calculated a sale price for the Hormel site of \$60.00 per square foot. Multiplying this figure by the number of square feet (512,572), Kocer determined the value of the Hormel plant in 1997 to be \$30,909,000.

For 1998, Kocer used eight comparable sites and arrived at adjusted sale prices of between \$40.62 and \$90.66 per square foot. He determined Hormel's plant value to be \$60.00 per square foot. Multiplying this sum by the number of square feet (557,976), Kocer arrived at a value for the Hormel plant in 1998 of \$33,600,000.

Like LeGrand, Kocer did not adopt as his final figures the comparable sales valuations described above. Instead, he also performed an analysis using the cost approach and apparently averaged the valuations from both approaches to arrive at final valuations of \$30,000,000 for 1997 and \$33,000,000 for 1998.

Hormel asserts Kocer essentially jerry-rigged the adjustments to reach a valuation consistent with the Board's original figures. Like Hormel, we are troubled by the absence of explanation for his fairly extensive upward adjustments to the comparable properties. For example, in his 1997 report, Kocer adjusted the land values upward by between four and fifty percent and, for explanation, stated only, "[e]ach site was analyzed on its own merits and valued according to the local market." As a result of his adjustments, the original sale prices per square foot of certain comparable sites more than doubled. Given the absence of explanation, we find these inflated figures unreliable. As a result, we also find Kocer's comparable sales valuation of Hormel's property unreliable. Additionally, like LeGrand, Kocer did not adequately explain why he averaged the comparable sales and cost approach figures. We recognize the statute does not limit the Board to using the comparable sales method once the burden has shifted to it. *See Equitable Life Ins. Co. v. Bd. of Review*, 281 N.W.2d 821, 824 (Iowa 1979). However, as between that approach and others, the comparable

sales approach is still preferred. See *Farmers Grain Dealers Ass'n v. Sather*, 267 N.W.2d 58, 62 (Iowa 1978). Therefore, we find Kocer's combined final valuation figures unreliable.

2. Jones. Jones examined various properties around the country. Unlike the other experts, he did not adjust the sale price per square foot to account for differences in the various properties. See *Dowden v. Bd. of Review*, 338 N.W.2d 719, 723 (Iowa Ct. App. 1983) (noting an assessment must be adjusted to account for factors that distort market value); *Bartlett & Co. Grain v. Bd. of Review*, 253 N.W.2d 86, 93 (Iowa 1977) (noting adjustments had to be made to account for differences). Therefore, Jones's comparable sales analysis is of limited value. Indeed, Jones conceded as much, stating "[c]onsidering that this is such a limited market with very few remaining players, the data and its sources must be viewed with skepticism." Accordingly, we reject Jones' comparable sales valuations in their entirety.

Jones also performed an analysis using the cost approach. Like LeGrand and Kocer, he combined the valuations derived from the two approaches and arrived at final valuation figures of \$27,750,000 for 1997 and \$31,000,000 for 1998.

Having already rejected Jones's comparable sales valuations, we must also reject his final valuations to the extent they made use of the comparable sales figures. Like Kocer's report, Jones's valuations suffer from a lack of explanation. We do not know how he arrived at his sale price per square foot for the Hormel plant, we do not know why he was unable to obtain reliable sales data when other experts could, and we have no basis for understanding why,

after concluding the cost approach was a better approach, Jones nevertheless averaged the cost valuation with the comparable sales valuation. See *Heritage Cablevision v. Bd. of Review*, 457 N.W.2d 594, 598 (Iowa 1990) (stating market value not necessarily accurately divined by averaging results of two approaches or arbitrarily weighting results).

G. Summary. Having carefully analyzed each of the expert opinions furnished to the district court, we conclude Hormel satisfied its burden of proving the Board's assessments were excessive. We further conclude the Board failed to adequately rebut Hormel's evidence and accordingly failed to justify its higher valuations. We finally conclude Speiker and Lunieski's opinions concerning the fair market value of Hormel's Osceola facility are the most reliable, defensible, and credible. Their reports (1) analyze the most properties and then, on a reasoned basis, narrow the analysis to the most comparable properties; (2) have the widest range of values for all properties, consistent with accurate adjustments; (3) assign separate values for refrigerated and non-refrigerated spaces; and (4) provide exceptionally detailed information about the properties used in the comparison. Accordingly, we accept their valuations of the Hormel plant, which were \$20,500,000 for 1997 and \$22,600,000 for 1998.

III. Exemption

The next issue we must review is what portion of the property's fair market value is exempt from taxation. The parties agree that Hormel is entitled to receive a value-added exemption under Iowa Code section 427B.1.² They

² That provision states:

disagree on the amount. The Board claims preexisting improvements to the property as well as the land value cannot be exempted. Hormel agrees the land value should not be exempted but asserts the entire value of the buildings other than taxable machinery and equipment is subject to an exemption.

The dispute centers on whether the improvements Hormel made to the existing facility are "new construction" or "reconstruction." If the improvements are new construction, the value attributable to the improvements is exempt. Iowa Code § 427B.1. If the improvements are deemed reconstruction, their value is generally not exempt, subject to certain exceptions for economic obsolescence, satisfaction of industry standards, and competition. *Id.*

Pursuant to the statutory exemption cited above, the City of Osceola passed an ordinance pre-approving improvements Hormel sought to make. The ordinance contains the following findings:

A city council, or a county board of supervisors as authorized by section 427B.2, may provide by ordinance for a partial exemption from property taxation of the actual value added to industrial real estate by the new construction of industrial real estate, research-service facilities, warehouses, distribution centers and the acquisition of or improvement to machinery and equipment assessed as real estate pursuant to section 427A.1, subsection 1, paragraph "e". *"New construction" means new buildings and structures and includes new buildings and structures which are constructed as additions to existing buildings and structures. "New construction" does not include reconstruction of an existing building or structure which does not constitute complete replacement of an existing building or structure or refitting of an existing building or structure, unless the reconstruction of an existing building or structure is required due to economic obsolescence and the reconstruction is necessary to implement recognized industry standards for the manufacturing and processing of specific products and the reconstruction is required for the owner of the building or structure to continue to competitively manufacture or process those products which determination shall receive prior approval from the city council of the city or the board of supervisors of the county upon the recommendation of the Iowa department of economic development.* The exemption shall also apply to new machinery and equipment assessed as real estate pursuant to section 427A.1, subsection 1, paragraph "e", unless the machinery or equipment is part of the normal replacement or operating process to maintain or expand the existing operational status. *** [Emphasis added].

Section 1. City Council Findings. This Council has considered the improvements to be made and hereby finds that they qualify for the partial exemption under Chapter 427B of the Iowa Code and Title I, Chapter 9 of the Osceola Municipal Code, and also hereby finds that *any reconstruction of an existing building or structure* is due to:

- a) the economic obsolescence of the improvements on the Property existing prior to the new improvements; and
- b) the need for new improvements to implement recognized industry standards for the manufacturing and processing of specific products; and
- c) the need for new improvements to competitively manufacture or process such products.

(Emphasis added).

The ordinance concludes as follows:

This Council hereby gives its approval to a partial exemption from property taxation on the value added to the Property by new construction, including a portion of such construction which is reconstruction of an existing building or structure.

The ordinance, therefore, expressly authorizes an exemption for new construction as well as reconstruction. The city clearly intended to give Hormel an exemption for all its improvements. In light of this express language pre-approving all of Hormel's improvements, we can discern no legitimate basis for the Board's exemption challenge. We accordingly conclude Hormel is entitled to the value-added exemption for the entire value of its property as of January 1, 1997 and January 1, 1998, except the value of its land and taxable machinery and equipment.

IV. Taxable Value

Finally, we must determine the taxable value of Hormel's Osceola plant for 1997 and 1998. In calculating the taxable value, we begin with the fair market value. We have found those figures to be \$20,500,000 for 1997 and \$22,600,000 for 1998.

We next determine the value of taxable land. Apparently adopting Speiker and Lunieski's land values, the district court valued the land at \$860,000 for 1997 and \$980,000 for 1998. However, in reviewing these reports, we note their land value for both years is \$980,000. Kocer initially valued the land at \$1,086,460. However, before the district court, he arrived at a figure of \$1,335,000 based on a comparable sales analysis of land values in Clarke County. Although we find these calculations to be well documented, we adopt Speiker and Lunieski's figure, given our prior determination that their reports were more reliable and credible than Kocer's. Therefore, we determine the land should be valued at \$980,000 for both years.

Next, we subtract the land value from the fair market values to arrive at building values of \$19,520,000 for 1997 and \$21,620,000 for 1998. The parties concede these values include taxable machinery and equipment of \$187,414 for 1997 and \$175,715 for 1998.

Next, we apply the exemption schedule to the building values. For 1997, Hormel was entitled to an exemption of seventy-five percent. Seventy-five percent of \$19,520,000 is \$14,640,000. This is the amount of the exemption for 1997. For 1998, Hormel was entitled to an exemption of sixty percent. The building value is \$21,620,000. Sixty percent of this figure is \$12,720,000. This is the amount of the exemption for 1998.

Subtracting the exempt values from the building values, we arrive at taxable values for the buildings of \$4,880,000 for 1997 and \$8,900,000 for 1998. Next, we add the land value of \$980,000 to these figures, arriving at final taxable values for the Hormel site of \$5,860,000 for 1997 and \$9,880,000 for 1998.

V. Disposition

Our disposition is as follows:

	ASSESSED VALUE	TAXABLE VALUE
1997	\$20,500,000	\$5,860,000
1998	\$22,600,000	\$9,880,000

AFFIRMED IN PART AND REVERSED IN PART.