FILED
JAN 24 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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RICHARD P. BORMAN AND DOLORES L. BORMAN,

Plaintiffs-Appellees,

vs.

BOARD OF REVIEW OF POTTAWATTAMIE COUNTY, IOWA,

Defendant-Appellant.

Filed January 24, 1984

3-352
83-194

Appeal from the Iowa District Court for Pottawattamie County - Keith E. Burgett, Judge.

Defendant appeals from the district court decision upon assessment appeal reducing its valuation of plaintiffs' property. AFFIRMED.

Jack W. Peters, Stuart, Tinley, Peters, Thorn, Smits & Sens, Council Bluffs, Iowa, for plaintiffs-appellees.

Frank W. Pechacek, Jr., Smith, Peterson, Beckman & Willson, Council Bluffs, Iowa, for defendant-appellant.

Considered by Snell, P.J., and Schlegel, and Hayden, JJ., but decided en banc.

SCHLEGEL, J.

Defendant, Board of Review of Pottawattamie County, Iowa, appeals from the district court's ruling reducing the Board of Review of Pottawattamie County's assessment valuation of plaintiffs' property. The district court disagreed with the Board's determination of the fair market value of the plaintiffs' building located near the downtown area of Council Bluffs, Iowa. The court reduced the Board's assessment on the plaintiffs' property from $75,500 to $68,000. We affirm.

When issues heard before the Board are appealed to the district court, the appeal is heard in equity. Equitable Life Insurance Co. v. Board of Review of the City of Des Moines, 281 N.W. 2d 821, 823 (Iowa 1979). Our review of the district court's ruling is thus de novo. Id. We give weight to the trial court's findings but are not bound by them. River Products Co. v. Board of Review of Washington County, 332 N.W. 2d 116, 117 (Iowa Ct. App. 1982). There is no presumption as to the validity of the Board's valuation of assessment. Iowa Code § 441.39 (1981).

I.

The plaintiffs, Richard and Dolores Borman, are the owners of a one-story building located at 125 South Main Street in Council Bluffs. This building is commercial property and contains a barber shop, a travel agency, an asphalt company office and an insurance company. Located at the rear of the building is a company owned and operated by the plaintiffs. The plaintiffs also use the entire basement for storage and, apparently, some assembly work in connection with another business. The major dispute at trial centered on the value of the space occupied by the plaintiffs and the value added to the building by the basement space. As the short range of value in dispute demonstrates ($68,000 to $75,500), we must carefully evaluate the testimony of the expert witnesses who testified in this case and, recognizing that determining value of property is an inexact science, determine the actual value of plaintiffs' property.

The building itself was constructed in the 1880s, but the part of the building occupied by tenants has been remodeled recently. The spaces occupied by the plaintiffs in the rear of the building and the basement have not been remodeled, but the spaces appear well maintained. The building contains a serviceable elevator which enhances the plaintiffs' ability to use the basement. There was conflicting testimony as to the height of the basement ceiling.

Although some of the witnesses also used other methods of valuation, all of the experts agreed that, in this case, the income method of determining value was the most accurate method of appraising the plaintiffs' property. The witnesses gave their appraisals as follows.

Witness	Income Method	Cost Method	Sales Price Method	Final Appraised Value
Bighia	63,000	67,000	63,000	63,000
Hastings (County Assessor)	70-75,000	----	----	75,500
Wilson	73,473	-----	-----	75,500
Grove	72-75,000	-----	-----	72-75,000

II.

Plaintiffs have the burden of proof on the issue of valuation because they only presented one disinterested witness (Mr. Bighia) at trial. See Iowa Code §441.21(3)(1981); Ruan Center Corp. v. Board of Review of the City of Des Moines, 297 N.W. 2d 538, 540 (Iowa 1980). We also note that although plaintiffs' expert concedes that the most accurate method of appraisal for this property is the income approach, where the "other factors" approach is relied upon section 441.21(2) prohibits the assessor from using just one factor in determining value. Id.

The Board's expert, Mr. Wilson, testified that his figures in calculating the value of the property under the income method were similiar to those of Bighia with the exception of the rental value allocated to the space occupied by the plaintiffs. Wilson also used an 11 percent rate of capitalization. Wilson testified, however, that a value within the range of $65,000 to $75,000 would be equitable.

Grove, using a 12 percent capitalization rate, testified that a capitalization rate between 11 and 12 1/2 percent would also be equitable. Bighia used a capitalization rate of 11.38 percent and the trial court used a capitalization rate of 11.5 percent. See Valley Forge Apartments v. Board of Review of Johnson County, 239 N.W. 2d 148, 151 (Iowa 1976) (the higher the capitalization rate, the lower the value of the property).

Plaintiffs asserted in their petition on appeal to the district court that the Board's assessment of $75,500 was not equitable when compared with assessments of other like properties in the city of Council Bluffs. The elements which the taxpayer must prove when this ground is relied upon are fully set out in Power v. Regis, 220 N.W. 2d 587, 590 (Iowa 1974). Those elements were developed by case law when the value at which property was to be assessed was at a level less than 100 percent of actual value of the property, as is presently required by Iowa Code section 441.21(1)(a)(1981). See Iowa Code §441.21(1)(1973)(27% of actual value); Iowa Code §441.13 (1958)(60% of actual value). Plaintiffs contend that because of the change in the statute requiring assessment at 100 percent of the actual value, the elements set out in Regis are not an accurate statement of plaintiffs' burden under the present law. We do not need to decide that issue, however, because we believe that even under the Regis formulation the plaintiffs have shown that the assessment of their property is inequitable when compared with other like property in the county.

The plaintiffs presented evidence of four comparable properties. Despite the defendant's assertions that the properties were not comparable, upon our review, we find that the properties were comparable. The adjustments necessary to make the different properties comparable to plaintiffs' building were more realistic in those properties offered by the plaintiffs as comparable property than in those properties offered by the defendant as comparable property. We also do not believe that the variation in the assessments is excused because the

assessments on the plaintiffs' comparable properties were made in 1981. See Dowden v. Dickenson County Board of Review, 338 N.W. 2d 719, 724 (Iowa Ct. App. 1983). The assessor has a statutory duty to make equitable assessments. We therefore hold that the plaintiffs sustained their burden to show the assessment of their property was inequitable when compared with assessments of other like properties in Council Bluffs. We also believe the trial court's valuation of the plaintiffs' property, in light of the evidence above, was reasonable. We therefore adopt the trial court's valuation of plaintiffs' property as our own.

The trial court's decision finding the Board's assessment of the plaintiffs' property inequitable when compared with the assessment of comparable properties and the trial court's valuation of the plaintiffs' property at $68,000 is affirmed. Costs of this appeal are taxed to the defendant.

AFFIRMED.