FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-442 / 88-1546

HERITAGE CABLEVISION, d/b/a NORTH IOWA CABLEVISION ASSOCIATION, LTD., Partnership,

116

Plaintiff-Appellee/Cross Appellant,

vs.

BOARD OF REVIEW OF THE CITY OF MASON CITY, IOWA, and NICK BOBGIN, Chairman of the Board of Review of the City of Mason City, Iowa, and a Member Thereof,

Defendants-Appellants/Cross-Appellees.

HERITAGE CABLEVISION, d/b/a NORTH IOWA CABLEVISION ASSOCIATION, LTD., Partnership,

Plaintiff-Appellee/Cross-Appellant,

vs.

BOARD OF REVIEW OF THE COUNTY OF CERRO GORDO, IOWA and EDWIN KRAUSE, Chairman of the Board of Review of the County of Cerro Gordo, Iowa, and a Member Thereof,

Defendants-Appellants/Cross-Appellees.

Appeal from the Iowa District Court for Cerro Gordo County, Jon S. Scoles, Judge.

Defendants appeal a trial court's order reducing a tax assessment. **REVERSED.**

H. P. Folkers, City Attorney, Mason City, and Paul L. Martin, County Attorney, and Michael J. Houchins, Assistant County Attorney, Mason City, for appellants.

Mark R. Schuling, of Brick, Seckington, Bowers, Swartz & Gentry, P.C., Des Moines, for appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ., but decided en banc.

SACKETT, J. 117

In this appeal from a district court decision modifying an assessor's valuation, the issue before us is the 1987 valuation of real estate for tax purposes of plaintiff-appellee Heritage Cablevision's property in Cerro Gordo County. The property is real estate used with a cable television system. The system is located in the county and also in the taxing districts of Mason City, Clear Lake, and Ventura. The taxing districts agreed that the district court should value the entire system in the county and the individual taxing districts would allocate the value among themselves.

We therefore consider, as did the trial court, the value of the entire system in Cerro Gordo County. The assessor valued the property in Cerro Gordo County at $2,410,350. The trial court reduced the value to $1,611,449. The trial court, in modifying the assessment, rejected the testimony of appellants' experts and accepted the testimony of appellee's expert.

In rejecting appellants' argument, the trial court determined that applying the dictates of Maytag Company v. Partridge, 210 N.W.2d 584 (Iowa 1973), the market value of appellee's taxable assets could not be readily ascertained. The court determined the value of the system included nontaxable assets such as a franchise to operate, an established customer base, experienced personnel, and good will.

The issues and arguments raised by both parties on appeal can basically be summarized to a question of whether the trial court properly rejected appellants' testimony because their valuations did not accurately reflect subtractions for nontaxable items, and whether the trial court was correct in accepting appellee's evidence when the appellee presented no evidence of comparable sales. We determine the trial court was incorrect and the assessor's valuation should be affirmed.

Our review is de novo. Cablevision Assoc. VI v. Fort Dodge, Iowa, Board of Review, 424 N.W.2d 212, 215 (Iowa 1988).

Appellants contend appraisal evidence introduced by appellee should not have been considered because appellee's expert did not consider the market value based on comparable sales when data on comparable sales was available. Appellee does not directly address this issue; rather, it contends the approaches used by the assessors were not correct. We find adequate sales data of real estate comparable to appellee's property was available. While the fact that appellee's expert did not use the "sale price" approach, when evidence of comparable sales was available to readily establish market value, was not competent to shift the burden of proof from appellee-taxpayer to appellant-Board of Review, the evidence was competent evidence. See Ross v. Board of

Review, 417 N.W.2d 462, 465 (Iowa 1988). We consider in this case that the burden of proof never shifted from the taxpayer. Id.

Iowa Code section 441.21 establishes the "sale price" approach as the primary valuation method, but does not prohibit the use of "other factors" along with sale price when data on the latter is limited. Cablevision Assoc. VI, 424 N.W.2d at 216. However, the sale price approach is primary and should be used whenever possible. Id.; see also Equitable Life Ins. Co. v. Board of Review, 281 N.W.2d 821, 825 (Iowa 1979). The sale prices of comparable property shall be taken into consideration in arriving at market value. Iowa Code section 441.21(1)(b) (1987).

Appellants introduced testimony comparing the recent sale price of six cable systems, all located in Iowa. The six included a 1985 sale in Poweshiek County, a 1985 sale in Sioux County, a 1986 sale in Cerro Gordo County, a 1986 sale in Chickasaw County, a 1986 sale in Palo Alto County, and a 1987 sale in Clay County. A sale price per customer was ascertained. The most relevant of the sales considered were a 1987 Clay County sale with 4,223 customers for $6,123,040, and a 1986 Palo Alto County sale with 1,523 customers for $1,400,000. The relative values are:

Cerro Gordo County
Age: 1979-86
Tower: 70' Self-supporting
Satellite Dishes: 6
Channels: 21
Basic Rental: $12.95 per month
Actual Customers: 10,226

Saturation: Approximately 60%

Palo Alto County
Age 1971-83
Tower: 147' Guyed
Satellite Dishes: 3
Channels: 24
Basic Rental: $8.50 per month
Actual Customers: 1,523
Saturation: 84%
Sale Date: 1986
Sale Price: $1,400,000
Sale Price per Customer: $919.00

Clay County
Age: 1967-83
Tower: 400' Guyed
Satellite Dishes: 1
Channels: 27
Basic Rental: $12.00 per month
Actual Customers: 4,223
Saturation: 85%
Sale Date: 1987
Sale Price: $6,123,040
Gross Income Multiplier: 8.6
Sale Price per Customer: $1,450

We find the trial court was not correct in rejecting evidence of sale price. Appellants' experts considered the intangible factors in assessing the property. In our review, we consider the property as it existed at the time of valuation. The property is an integral part of a profitable cable television company coordinated into a whole by an operating staff. See Maytag, 210 N.W.2d at 589. The assessor can consider the property as associated and organized into a valuable going operation. See City Council of Marion v. Cedar Rapids & Marion Ry., 120 Iowa 259, 263-64, 94 N.W. 501, 502 (1903).

While the property tax is a tax on property value and not a tax on the earnings of property, the value of the property results from the use to which it is put and varies with the actual and anticipated profitableness of that use, present and prospective. Maytag, 210 N.W.2d at 589 (quoting Cleveland, C., C. & St. L. Ry. v. Backus, 154 U.S. 439, 445, 14 S. Ct. 1122, 1124, 38 L. Ed. 1041, 1046 (1894)). Improved real estate is valued as a unit. Tiffany v. County Bd. of Review, 188 N.W.2d 343, 349 (Iowa 1971). The assessor must consider conditions existing at the time of assessment and the condition of the property in which the owner holds it. Maytag, 210 N.W.2d at 589.

A review of the evidence of the market value for similar businesses, similarly situated in this state, clearly show the assessor did not assess the business excessively. We reverse the trial court. The assessor's valuation will stand.

REVERSED.

All judges concur except Habhab, J., and Donielson, P.J., who dissent.

HABHAB, J. (dissenting)

I respectfully dissent. When I apply the principles enunciated by the supreme court in Maytag Company v. Partridge, 210 N.W.2d 584 (Iowa 1973), I reach the conclusion that the district court's ruling should be affirmed.

In Maytag, the court stated:

> [I]n every case the objective sought is the exchange value between voluntary, informed buyers and sellers. That value is ascertained (a) by a consideration of sales prices or, if such value cannot thus be readily established, (b) by a consideration of other factors which will assist in determining exchange value.

Id. at 587.

The trial court concluded that the market value of the taxable assets of the plaintiff's business could not be readily ascertained by a comparison with the sales of whole systems. The trial court then determined that it was permissible to consider an income approach and replacement cost less depreciation approach in determining the value of the taxable assets.

The trial court proceeded to consider those other factors in reaching its decision. It considered all three appraisal methodologies in reaching its determination. It concluded that the actual value of the plaintiff's taxable assets, excluding the land, buildings, and concrete, was $1,500,000. The parties prior to trial agreed that the building could be valued for tax purposes at $73,433, the

land at $32,400, and the concrete at $5,616. The court then totaled the actual value of the taxable assets as of January 1, 1987, at $1,611,449.

The court had the opportunity to observe the expert witnesses first-hand. In many respects the approaches used by those experts were similar. Rather obviously because of the discrepancy in valuations, the results differed. The law sets forth the procedure that is to be used in determining valuations. It is not fatal that valuations differ for they are, at best, approximations. Deere Mfg. Co. v. Zeiner, 247 Iowa 1364, 1377, 78 N.W.2d 527, 535 (1956). As the supreme court stated in Deere: "We have pointed out several times that valuations for tax purposes are not capable of exact ascertainment and cannot be more than approximately correct." Id.

I would affirm.

Donielson, P.J., joins this dissent.