

IN THE COURT OF APPEALS OF IOWA

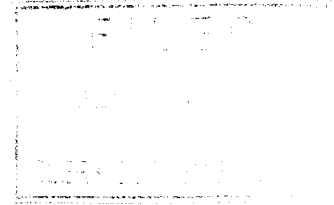
No. 9-237 / 97-2041

Filed May 26, 1999

SQUARE D COMPANY, a Delaware Corporation,
Appellant,

vs.

**BOARD OF REVIEW OF THE CITY OF
CEDAR RAPIDS**,
Appellee.



Appeal from the Iowa District Court for Linn County, L. Vern Robinson,
Judge.

Plaintiff appeals from the district court ruling affirming the defendant's tax
assessments of the value of plaintiff's property. **AFFIRMED.**

Ralph W. Heninger of Heninger and Heninger, P.C., Davenport, for appellant.

James H. Flitz, City Attorney's Office, Cedar Rapids, for appellee.

Heard by Huitink, P.J., and Streit and Mahan, JJ.

STREIT, J.

Square D Company appeals the trial court's affirmance of the valuation of their property by the Cedar Rapids' Board of Review. Square D argues the Board used an illegal valuation method and the Board's experts were not credible. We find the valuation method in accordance with the applicable statute and the Board's experts credible. The trial court is affirmed.

I. Background Facts & Proceedings.

Square D Company is the owner of twenty-three and one-half acres in Cedar Rapids. Square D constructed a building on the property which is used for the manufacture of electrical equipment. The property also has several improvements on it, including an engineering office, accommodations for conference functions, and a warehouse. In 1995 and 1996, the city assessor assessed the value of Square D's property at \$4,150,520. Square D challenged both assessments, which were upheld by the Board of Review. Square D appealed both decisions to the district court where the cases were consolidated.

At trial, both parties presented expert testimony from appraisers. The City offered testimony from Scott Labus, assistant city assessor, who valued the property at \$4,150,520, and from another appraiser, Kyran Cook, who valued the property value at \$5,750,000. Square D offered testimony from Keith Westercamp, who valued the property at \$3,200,000, and Terry Honnold, who estimated its value at \$2,750,000. The district court affirmed the decisions of the Board. Square D appeals.

II. Standard of Review.

An appeal from the district court's determination of a tax assessment is an equitable proceeding. Iowa Code § 441.39. Our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

An appeal from a board of review is a two-step process. *Heritage Cablevision v. Bd. of Review*, 457 N.W.2d 594, 598 (Iowa 1990). First, the challenging party must show the Board's valuation is excessive, inadequate, inequitable, or capricious. *Id.* (citing *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986)). Second, the party must establish the correct valuation. *Id.* When the taxpayer offers competent evidence from two or more disinterested witnesses that the property's market value is less than the value determined by the assessor, the burden of proof shifts from the taxpayer to the party seeking to uphold the assessed valuation. Iowa Code § 441.21(3) (1991); *Excel Corp. v. Pottawattamie County Bd. of Review*, 492 N.W.2d 225, 229 (Iowa App. 1992).

III. The Trial Court's Valuation of the Property.

The trial court relied on the valuations of Scott Labus and Kyran Cook to affirm the assessor's value of Square D's property.

Square D's first assertion is the Board's experts used a valuation method prohibited by Iowa Code section 441.21(2). Iowa law gives preference to the market-

sales approach¹ when valuing real property. Iowa Code § 441.21(1)(b) (1995). Reliance on other methods is allowed in the event the market value cannot be readily established. *Id.* § 441.21(2). Labus blended the cost approach with the market sales approach. Cook blended the market, cost,² and income³ approaches when reaching his valuation.

We find a valuation derived from reliance on several different valuation approaches particularly suited to this situation. This proposition is supported by our supreme court's holding in *Maytag Co. v. Partridge*, 210 N.W.2d 584, 587 (Iowa 1973). In *Maytag*, our supreme court affirmed the board of review's valuation of manufacturing plant for property tax purposes. In doing so, the court recognized: (1) manufacturing machinery is regarded as real estate for purposes of its assessment and taxation; and (2) in valuing improved real estate an assessor is to value the improved real estate as a unit, rather than valuing the land and the improvements separately. *Id.* at 588. Applying these principles in *Maytag*, the court held the assessor was required to apply the market approach first. *Id.* Then, if comparable sales could not be readily established, the assessor should turn to other factors. *Id.* In

¹ This approach, also known as the "direct sales" approach, compares the subject property to comparable sales of other properties in the area.

² The cost approach estimates the value of the land through a direct sales comparison and then adds the appreciated value of the improvements.

³ The income approach estimates fair market rent, formulating a stabilized income amount, and capitalizing that income stream into a value. This approach is premised on the assumption that a buyer purchases a property for a specific purpose of anticipating income stream.

considering other factors the assessor could consider “components of the plant—not simply to be added together but for their bearing on the value of the plant as a whole.”

The market value of the Square D property was not able to be readily established. Square D is an industrial property fully equipped with machinery needed to operate a manufacturing business. The value of the property is not the same as it would be were the property vacant. The trial court identified the considerations affecting its finding that the Board’s experts were more reliable. The trial court held:

In reaching its conclusion, the court recognizes the reality of an ongoing business with equipment and machinery in use, and its general economic value. The court does not attribute value to the company’s name, goodwill, or blue sky. The fact is that an ongoing business has value and, if there were a willing buyer prepared to purchase an ongoing business, the price would be significantly higher than that for vacant industrial property. . . . (citations omitted).

Because the market value was not able to be readily established and other valuation methods more accurately assessed the value of an ongoing industrial property, the trial court did not err in considering other factors in determining the value of the property.

Square D’s second assertion is neither Cook nor Labus’s testimony was credible. “[A]ppraisal 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, Roebuck and Co. v. Sieren*, 484 N.W.2d 616, 617 (Iowa App. 1992). The “heart of most assessment cases is the evidence of experts applying, at best, their professional judgments within a context of variables which can

in no definite way be objectively conclusive.” *Id.* The trial court is in a much better position to weigh the credibility of witnesses than we are and, while our review is de novo, we take note that the trial court was able to hear and evaluate the testimony of each witness. *Ross v. Bd. of Review of Iowa City*, 417 N.W.2d 462, 466 (Iowa 1988); *Payton Apartments, Ltd. v. Board of Review of City of Des Moines*, 358 N.W.2d 325, 329 (Iowa App. 1984).

Particularly, Square D attacks the comparable sales used by Cook and Labus in their evaluations. Square D’s complaint shows the flaw in their contention that Cook and Labus used other methods of valuation in addition to the market sales approach. Comparable sales were difficult to locate. Neither Square D’s experts nor the Board’s experts have put forth model comparable sales. It is for this very reason a resort to other methods of valuation was necessary in this case. Of the comparable sales used by all experts, however, we find Cook’s expert more comparable than Square D’s experts.

Cook relied on four comparable sales. He had personally discussed the sales with the grantors and grantees and was very familiar with the kind of business being operated on the respective properties. The comparable sales Cook relied upon were not forced sales, but marketed generally. Our review of the properties considered displays Cook’s comparable sales within the discretion inherent in an expert opinion on real property value.

Square D's experts' comparable sales, on the other hand, were vacant or soon-to-be vacant manufacturing buildings, warehouses where no manufacturing had taken place, or purchases involving only a partial sale of a business. Square D's experts had little, if any, contact with the grantors or the grantees of the property, misstated several facts when testifying regarding their appraisals, and were weak on specifics and strong on generalizations.

Of the comparative sales used by all experts, the court found Cook's valuation method most credible. Under these circumstances, we do not disturb the trial court's credibility finding.

Square D's last assertion is the district court erred in not shifting the burden to the Board after Square D met its burden of proof. Because Square D did not meet its initial burden, the trial court did not err in not shifting the burden to the Board. In the two-step review process, the challenging party must first show the Board's valuation excessive, inadequate, inequitable, or capricious. *Heritage Cablevision*, 457 N.W.2d at 598. Square D did not show this. The trial court accepted the Board's valuation, based on Labus and Cook's valuations. Even if the burden had shifted to the Board, we find the Board presented ample evidence to meet its burden.

We do not find Square D's complaints convincing. The district court heard the testimony of all of the experts and found the testimony of the Board's experts most persuasive. We too find the assessments of the Board's experts more persuasive than

Square D's, and do not disturb the district court's determination on appeal. After reviewing the entire record de novo, the decision of the trial court is affirmed.

AFFIRMED.

**No. 97-2041. [9-237] SQUARE D CO. v. BOARD OF REVIEW OF
CEDAR RAPIDS**

Appeal from the Iowa District Court for Linn County, L. Vern Robinson,
Judge. **AFFIRMED.** Heard by Huitink, P.J., and Streit and Mahan, JJ. Opinion by
Streit, J. (8 pages \$3.20)

Square D Company appeals the trial court's affirmance of the valuation of their property by the Cedar Rapids' Board of Review. Square D asserts the Board's experts used a valuation method prohibited by Iowa Code section 441.21(2). We find a valuation derived from reliance on several different valuation approaches particularly suited to this situation. The market value of the Square D property was not able to be readily established. Square D asserts expert testimony was not credible. Our review of the properties considered displays Cook's comparable sales within the discretion inherent in an expert opinion on real property value. We do not find Square D's complaints convincing. The assessments of the Board's experts are more persuasive than Square D's, and we do not disturb the district court's determination on appeal.