

IN THE COURT OF APPEALS OF IOWA

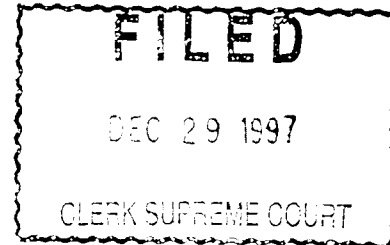
No. 7-357 / 96-1195

000231

OAKVILLE FEED & GRAIN, INC.,
Appellee,

vs.

LOUISA COUNTY BOARD OF REVIEW,
Appellant.



Appeal from the Iowa District Court for Louisa County, D. B. Hendrickson,
Judge.

The defendant appeals from the district court's ruling reducing the property tax
assessment on plaintiff's grain processing facility at Oakville, Iowa to \$4,258,372.

AFFIRMED AS MODIFIED.

Wm. L. Matthews of Hicklin & Matthews, Wapello, for appellant.

James W. Miller of Gray, Goddard, Miller & Taylor, L.L.P., for appellee.

Heard by Cady, C.J., and Huitink and Streit, JJ.

CADY, C.J.

Louisa County Board of Review (Board) appeals a district court ruling reducing the property tax assessment on a grain processing facility owned by Oakville Feed & Grain, Inc. The Board asserts one of the expert witnesses presented by Oakville Feed & Grain at trial was not a disinterested witness and the district court erred in determining the value of non-mill and mill assets on the property. We modify the decision of the district court on review.

Oakville Feed & Grain owns and operates two grain processing and storage facilities in Louisa County. The principal facility is located in the town of Oakville, and the second facility is located at Morning Sun. A fire destroyed the Oakville Mill facility in 1992. It was rebuilt at a cost in excess of \$3.3 million, and reopened in late February 1993.

The Oakville facility includes a concrete feed mill, mill warehouse, office, and storage structures. The storage capacity is approximately 3.5 million bushels, and includes both upright and flat storage facilities. Approximately sixty percent of the storage is upright.

After the Oakville facility was rebuilt, the county assessed both locations for tax purposes. The Board of Review valued the Oakville property, as of January 1, 1994, at \$5,023,073. This valuation did not include the statutory adjustment required for machinery and equipment. The Morning Sun property was assessed at \$385,328. Only the valuation of the Oakville property is at issue on this appeal. The adjustment for machinery and equipment is also not at issue.

Oakville Feed & Grain presented evidence at the hearing before the district court from two professional appraisers, Jerry Savill and Allen Arnold. Two expert witnesses also testified for the Board of Review, Robert Kocer and James Cleminshaw. Kocer was employed by Vanguard Appraisal, Inc., who had been retained by the county assessor to help with the assessments.

All experts separately valued the mill assets and non-mill assets of the Oakville facility. In valuating the non-mill assets, the experts primarily used the market approach to valuation. Savill valued the non-mill assets at \$1,643,000 or forty-six cents per bushel of storage capacity. Arnold valued the non-mill assets at \$1,136,880 or thirty-two cents per bushel of storage capacity. Kocer, on the other hand, valued the non-mill assets at \$2,238,000 or sixty-three cents per bushel of storage capacity. Cleminshaw found the value of the non-mill assets to be \$2,819,000 or eighty-three cents per bushel of storage capacity.

All experts relied primarily, if not exclusively, on the cost approach to value the mill assets. Comparable sales were not available due to the unique features of the Oakville facility and its new construction. Savill found the value of the mill's assets were \$1,902,000, based on an economic obsolescence factor of thirty-five percent. An obsolescence factor was applied to reduce the value of the mill because the size and output capacity of the new facility exceeded the demand in the area. Arnold valued the feed mill property at \$2,250,000, using a twenty-percent obsolescence factor.

Kocer applied a ten percent obsolescence factor and valued the mill assets at \$3,588,000. Cleminshaw concluded the mill assets had a value of \$2,850,000, with a minimal obsolescence factor.

The district court determined the combined fair market value of the Oakville property was \$4,258,372. It found the non-mill assets were valued at \$1,663,800 or forty-seven cents per bushel of storage capacity, and the feed mill assets had a value of \$2,594,572. The trial court applied a ten percent economic obsolescence factor.

The Board of Review appealed the decision by the district court to reduce the value of the Oakville property from \$5,023,073 to \$4,258,372. It claims the district court erred in valuing the mill and non-mill assets. It also claims the burden of proof remained with Oakville Feed and Grain to show the valuation was excessive because Arnold was not a disinterested witness.

I. Standard of Review

We review the district court's findings de novo. *Eagle Food Centers v. Board of Review*, 497 N.W.2d 860, 862 (Iowa 1993); Iowa R. App. P. 4. While we are not bound by the findings of the district court, we give them weight, especially where credibility of witnesses is at issue. Iowa R. App. P. 14(f)(7).

II. Burden of Proof

A taxpayer who challenges an assessment has the burden of proof to show the valuation by the board of review was excessive, inadequate, or capricious. Iowa Code § 441.21(3) (1995). However, once the taxpayer presents two or more disinterested witnesses who competently show the market value of the property is less than the

value determined by the assessor, the burden of proof shifts to the board to uphold its valuation. *Id.*; see *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 149 (Iowa 1986).

The Board of Review claims the burden of proof remained with Oakville Feed & Grain because Arnold was not a disinterested witness. They assert Arnold did not qualify as a disinterested witness because he had been employed by Oakville Feed & Grain in the past to prepare annual appraisals of the business used to establish stock value.

We observe the Board did not raise this claim at the district court hearing. Furthermore, the district court made no finding that Oakville Feed & Grain had presented sufficient evidence to shift the burden of proof to the Board.

Generally, we will not consider issues raised for the first time of appeal. See *Metropolitan Jacobson Dev. Venture v. Board of Review*, 476 N.W.2d 726, 729 (Iowa App.1991). Notwithstanding, the district court is required to weigh the evidence in its totality and make an independent determination of the proper valuation of the property. *Richards*, 393 N.W.2d at 150. On our de novo review, we must do the same. Out of necessity, we must also determine which party has the burden of proof.

We conclude Oakville Feed & Grain presented two disinterested witnesses. See *Post-Newsweek Cable, Inc. v. Board of Review*, 497 N.W.2d 810, 813 (Iowa 1993). Arnold had no legal interest in the outcome of the litigation. Moreover, he does not become interested in the litigation merely because he performed past appraisals for Oakville Feed & Grain. See *Security Mut. Ins. Co. v. Board of Review*,

467 N.W.2d 301, 307 (Iowa App. 1991). We therefore conclude the burden of proof shifted to the Board.

III. Valuation

Iowa Code section 441.21(1)(a) provides: “All property subject to taxation shall be valued at its actual value...and...shall be assessed at one hundred percent of its actual value....” Iowa Code § 441.21(1)(a) (1995). The preferred method of valuation under section 441.21 is the use of sales of comparable property. *Id.* § 441.21(1)(b); see *Office of Assessor v. Iowa Dept. of Revenue*, 417 N.W.2d 214, 218 (Iowa 1987). However, if this method of valuation is effective in reaching a value, other recognized appraisal methods such as earning capacity, costs, obsolescence, and replacement costs may be used. Iowa Code § 441.21(2).

We consider the sales price of comparable property in arriving at a market value, but it does not conclusively establish that value. *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996). For example, a sales price in an abnormal transaction will not be considered unless the distorting factors can clearly be accounted for. *Id.*

A. Non-Mill Assets

The district court placed weight on Savill’s testimony concerning the value of the non-mill assets. Savill relied on eight comparable sales, transformed into cents per bushel of storage capacity, ranging from a low of thirty-eight cents to a high of sixty-one cents. His opinion of the valuation of the Oakville assets was based

primarily on adjustments for its unfavorable location, lack of rail access, and percentage of flat storage.

We first observe some of the comparable sales used by Savill may have occurred under abnormal circumstances. See *Heritage Cablevision v. Board of Review*, 457 N.W.2d 594, 597 (Iowa 1990) (determination involves qualitative evaluation). One was an auction sale, another involved a multi-site sale by a bank, and another was an unlicensed elevator. Notwithstanding, our central problem with the Savill valuation rests in the adjustments.

First, Savill made a downward adjustment of nine cents per bushel of storage based on the location of the Oakville facility. The evidence revealed the close proximity of the facility to the Mississippi river reduced the profit margin of the elevator. Yet, the Oakville manager testified the reduced profit margin of the Oakville facility due to its location was typical of all inland elevators on grain brought into the elevator at harvest. All the comparables used by Savill were inland elevators. Thus, the downward adjustment made by Savill was likely overstated.

Second, the Oakville manager freely acknowledged the lack of rail service at an elevator did not adversely affect the price of the grain. Savill, nevertheless, considered the lack of rail service at the Oakville facility as a negative feature.

Finally, Savill's own data did not support his opinion that flat storage decreased the value of an elevator. Furthermore, the flat storage at the Oakville plant was equipped with conveyors and a dump pit. There were also many other features not normally found in other facilities.

On our de novo review of the evidence, we place weight in the opinion of the expert from Vanguard Appraisals. We value the non-mill assets at sixty-three cents per bushel.

B. Mill Assets

The parties agree that the most reliable method of valuing the mill assets was the cost of replacement approach. The divergence in the opinions of the experts was primarily due to the impact of the economic obsolescence and depreciation.

We agree with the district court that economic or function obsolescence and depreciation were appropriate factors to consider in valuing the mill assets under the cost approach. The new mill was underutilized, and most likely would never function at full capacity due to the local demand. The district court properly set the economic obsolescence at ten percent. This figure was compatible with Kocer's opinion. We also observe Savill's opinion of the economic obsolescence was based on inaccurate production figures. Moreover, plant production had steadily increased since production began after the plant was rebuilt.

We find from the evidence the building costs of the new mill were \$3,314,000. Accordingly, considering the economic obsolescence and depreciation, we conclude the evidence supports a valuation of \$2,787,073.

V. Conclusion

We modify the district court decision by increasing the gross market value of

the Oakville property to \$5,023,073. We otherwise affirm the district court. Costs of the appeal assessed to Oakville Feed & Grain.

AFFIRMED AS MODIFIED.