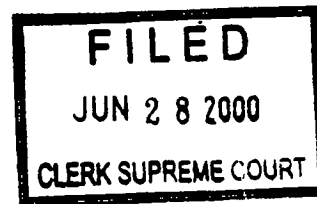


IN THE COURT OF APPEALS OF IOWA

No. 9-851 / 99-0697
Filed June 28, 2000



R.R.S. INVESTMENTS,
Plaintiff-Appellant/Cross-Appellee,

vs.

THE BOARD OF REVIEW OF THE CITY OF DAVENPORT,
Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Scott County, David E.
Schoenthaler Judge.

R.R.S. Investments appeals the district court's decision to modify the tax
assessed value of its property. **AFFIRMED IN PART, REVERSED IN PART,**
CROSS APPEAL DISMISSED.

Steven E. Balk of McGehee, Boling, Whitmire, Olson & Pepping, Ltd.,
Silvis, Illinois, for appellant.

John R. Martin, Davenport, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

VOGEL, P.J.

R.R.S. Investments appeals the district court's decision to modify the assessed valuation of its property. It claims the court erred in finding it did not establish what the correct assessment should be. The Board of Review of the City of Davenport cross-appeals. It claims the court erred by finding the evidence supported assigning an amount to functional obsolescence in determining the value of the property.

Background facts. In 1995, R.R.S. Investments (R.R.S.) built a clinic in Davenport to be used as a nephrology clinic. The building has one large room with eighteen treatment stations and four exam rooms. There is extensive plumbing in the building to accommodate its specialized use as a dialysis center. The Davenport City Assessor assessed the property at \$713,400. R.R.S. appealed the assessment to the Board of Review of the City of Davenport (Board). The Board determined the assessor did not take into account the building's sprinkler system and increased the value to \$730,900. R.R.S. appealed to the district court.

R.R.S. presented expert testimony from J. T. Willits concerning the value of its property. Its expert analyzed the property using the comparable sales approach, the cost approach, and the income approach. The range of values using the various approaches was \$464,000 to \$505,000. The Board presented testimony from two of its employees, using only the cost approach.

The court found the building was unique in its construction and design and suffered from a variety of other problems, including poor location away from area

hospitals, unlikelihood of finding a willing buyer, substantial costs to convert the building for other uses, poor street access, vandalism, and flooding. The court determined the property has some functional obsolescence and reduced the Board's valuation of the property by \$100,000 to \$630,000. R.R.S. appeals and the Board cross-appeals.

Scope of review. Our review is de novo. Iowa Code § 441.39 (1997); Iowa R. App. P. 4; *Post-Newsweek Cable, Inc. v. Board of Review of Woodbury County*, 497 N.W.2d 810, 812 (Iowa 1993). We, like the district court, "shall consider all of the evidence and there shall be no presumption as to the correctness of the valuation of assessment appealed from." Iowa Code § 441.39; *Post-Newsweek Cable*, 497 N.W.2d at 813. A complaining taxpayer has the burden of proof to show the valuation is "excessive, inadequate, inequitable or capricious." Iowa Code § 441.21(3). The burden is met by a preponderance of the evidence. *Wunschel v. Board of Review*, 217 N.W.2d 576, 578 (Iowa 1974).

Correct assessment. R.R.S. claims the court was correct in determining the property has functional obsolescence but erred when it determined the valuation should be reduced from \$730,000 to \$630,000 instead of to \$472,000.

For the purposes of Iowa Code chapter 441, assessable property includes "all real and tangible personal property subject to taxation." Iowa Code § 441.21(1)(a). Such property is assessed "at its actual value." *Id.* Actual value is "the fair and reasonable market value of such property," which normally is determined by the sales price of the property or comparable properties. Iowa

Code § 441.21(1)(b). If the market value is not clearly determinable by the sales approach, the assessor:

may determine the value of the property using the other uniform and recognized appraisal methods including the productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property.

Iowa Code § 441.21(2). The actual value shall not be established by the use of only one such factor. *Id.*

We, like the district court, find R.R.S. met its burden to demonstrate the valuation was excessive. R.R.S. presented evidence of the value of the property calculated by the comparable sales approach, the income approach, and the cost approach. The Board only presented evidence of its use of the cost approach. We also find R.R.S. met its burden to demonstrate the correct valuation of the property. The unrebutted testimony of Mr. Willits placed the value of functional obsolescence at \$246,065. The district court found \$100,000 to be an "appropriate figure" for functional obsolescence. It then found R.R.S.'s valuation "too low" and the Board's valuation "too high" and concluded "a rounded-off figure of \$630,000 is appropriate." We find no support in the evidence for selecting the \$100,000 figure over the \$246,065 figure for functional obsolescence. See *Gabelmann v. NFO, Inc.*, 606 N.W.2d 339, 344 (Iowa 2000) (concluding the district court erred in setting the amount of attorney fees awarded without any factual basis in the record). Accordingly, we find the correct valuation of the property in dispute to be \$472,000.

Timeliness of cross appeal. The Board 's cross appeal was untimely filed. Iowa R. App. P. 5(a). An untimely appeal deprives this court of subject-matter jurisdiction. See *Madyun v. Iowa Dist. Court for Linn County*, 544 N.W.2d 441, 443 (Iowa 1996). We therefore dismiss the Board's cross appeal. See *Qualley v. Chrysler Credit Corp.*, 261 N.W.2d 466, 471 (Iowa 1978).

**AFFIRMED IN PART, REVERSED IN PART, CROSS APPEAL
DISMISSED**