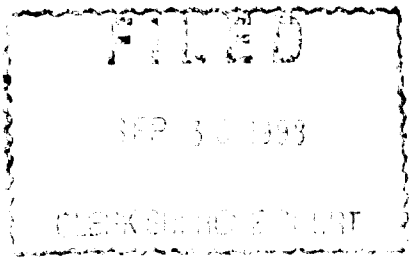
IN THE COURT OF APPEALS OF IOWA

No. 8-368 / 97-1692
Filed September 30, 1998



OSTRANDER FARMERS CO-OP,
Appellee,

vs.

HOWARD COUNTY BOARD OF REVIEW,
Appellant.

Appeal from the Iowa District Court for Howard County, James L. Beeghly, Judge.

The Board of Review appeals a district court ruling in a property tax assessment action setting the valuation of plaintiff's property at $276,000. **AFFIRMED.**

Joseph M. Haskovic, County Attorney, for appellant.

Christopher F. O'Donohoe of Elwood, O'Donohoe, O'Connor & Stochl, New Hampton, for appellees.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

STREIT, J.

I. Background Facts & Proceedings.

The plaintiff, Ostrander Farmers Co-op, is a grain storage facility in Chester, Iowa. In the winter of 1994-95, the Howard County Assessor's office retained Robert Ehler to appraise the property for tax assessment. Ehler used the market-sales approach, choosing three properties he considered comparable. Ehler's appraisal was $421,000 as of January 1, 1995. This appraisal was used by the county to determine Ostrander's real estate taxes.

Ostrander filed a protest with the Board of Review, arguing the assessment exceeded the fair market value of the property. The Board affirmed the assessments. Ostrander appealed to the district court.

Ostrander hired Allen Arnold to determine the market value of the property. Arnold used the market-sales approach, using seven comparable sales. He appraised the property at $224,354. The district court concluded Arnold's appraisal was more reasonable than Ehler's. The court set the value of the facility at $276,000. The Board appeals. Ostrander cross-appeals, arguing the court erred in not shifting the burden of proof to the Board.

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 the 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 largely relied on Allen Arnold's appraisal of the facility in setting the property's value.

The Board's first assertion is Arnold's valuation of the property was a July 9, 1996 value, rather than a January 1, 1995 value. To support its argument, the Board refers to previous appraisals Arnold has completed. In 1991, Arnold appraised the Ostrander property. In 1990, he appraised a grain elevator in Independence, Iowa. In both instances, there was lag time between his initial appraisal and the sale of the property. For this reason, Arnold lowered his final appraisal of each property by approximately ten percent for depreciation.

In this case, Arnold testified the lag time between January 1, 1995 and July 9, 1996 would make a difference of about two percent in his appraisal. The Board attempts to show Arnold's appraisal is unreliable because he depreciated the properties by ten percent in 1990 and 1991 and by only two percent in 1996. As this court has stated, "appraisal 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). Furthermore, 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 fact Arnold used a different percentage in depreciating the Ostrander property in 1996 than he did when depreciating properties in 1990 and 1991 does not discredit Arnold's current appraisal. There are numerous variables which may cause the methodology used in 1996 to differ from the methodology used in 1990 and 1991. The Board has not addressed those variables.

The court found Arnold's valuation method credible. "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). Under these circumstances, we do not disturb the trial court's finding Arnold's method of valuation was credible. In any event, if Arnold would have used a larger

depreciation figure, the value of the property would be even less. This is contrary to the Board's argument the property was undervalued.

The Board's second claim is Arnold failed to use similar properties in his market approach evaluation. In the context of real property valuation, "[s]imilar means having a resemblance, and properties may be similar even though they have some different characteristics." *Sears Roebuck & Co. v. Sieren*, 460 N.W.2d at 890 (citing *Redfield* v. *Iowa State Highway Comm'n*, 251 Iowa 332, 341-42, 99 N.W.2d 413, 418-19 (1959)). Arnold considered seven comparable sales in determining the market value for the Ostrander property. The facilities were all facilities in rural Iowa communities. The properties were similar in type of construction, storage capacity, and railroad access. The Board's argument the properties Arnold compared to Ostrander in valuing the property are not convincing. The properties considered were within the discretion inherent in an expert opinion on real property value.

In addition to claiming the trial court erred by relying on Arnold's appraisal, the Board asserts the trial court erred in not considering the amount of insurance coverage on the property in determining its value. The trial court found Allen's appraisal, using the market-sales approach, was convincing. Iowa law gives preference to the market-sales approach when valuing real property. Iowa Code § 441.21(1)(b) (1995). Reliance on other methods is allowed in the event that the market value cannot be readily established. *Id.* § 441.21(2). Because the trial court

found the market value was readily established by Arnold's appraisal, the trial court did not err in not considering other factors in determining the value of the property.

On cross-appeal Ostrander contends the trial court erred in placing the burden on Ostrander rather than on the Board of Review. Because we find Ostrander proved their burden that the Board's valuation was excessive, and what the correct valuation of the property was, we do not address Ostrander's assertion the trial court misapplied burdens of proof. Any such error did not affect Ostrander's claim.

We do not find the Board's complaints convincing. The district court heard the testimony of all of the experts and found the testimony of Arnold most persuasive. We find Arnold's appraisal more persuasive than the Board's expert. Therefore, we 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.