IN THE COURT OF APPEALS OF IOWA

No. 1-77 / 90-1101

FILED
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CLERK SUPREME COURT

FOLKMANN FEED & GRAIN, INC.,

Appellant,

vs.

THE BOARD OF REVIEW OF CEDAR COUNTY, IOWA,

Appellee.

Appeal from the Iowa District Court for Cedar County, J.L. Burns, Judge.

Plaintiff appeals Board of Review's valuation assessment of a grain storage facility as being excessive. **AFFIRMED.**

William L. Meardon and Timothy J. Krumm of Meardon, Sueppel, Downer & Hayes, Iowa City, for appellant.

Sterling L. Benz, Assistant County Attorney, for appellee.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J.

Folkmann Feed & Grain, Inc. purchased a grain storage facility located in Cedar County at a foreclosure sale held by the West Branch State Bank on August 1, 1987. The purchase included 20 acres of real estate, grain storage bins, other buildings, and equipment. The purchase price was $870,000. The purchase contract provided for a down payment of $73,500 and annual payments of $88,500 until August 1, 1996. The contract provided for no interest on the unpaid balance unless a payment was late. In the event of a late payment, the payment would bear interest at the rate of 15 percent per annum until paid. The contract also allowed prepayment of the unpaid principal balance at any time after expiration of the period of redemption applicable to the real property.

The Cedar County Assessor assessed the property as of January 1, 1988, at $976,132. Folkmann filed a petition before the Cedar County Board of Review seeking a reduction of the assessed value. The Board ordered a 10 percent obsolescence factor be used to determine the valuation along with adding the value of a hog nursery and slightly reducing the value of the hog confinement facility. The Board reduced the assessment to $860,767.

Folkmann then filed a petition in district court. Folkmann contended the sale price should have been considered in determining the fair market value of the

property and that the contract price should have been discounted to reflect the present value of the purchase money. The trial court found that the August 1 sale should be considered in determining the fair market value of the property but declined to discount the sale price. The court affirmed the value of the property as assessed by the Board. Folkmann now appeals.

Folkmann argues the actual value of the property is $654,000. It believes the fair market value of the property should be determined by using a 12.25% discount factor to reduce the purchase price to its present value.

Tax valuation appeals are heard in equity. Iowa Code §441.39 (1991). Therefore, our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's factual findings, but are not bound by them. Iowa R. App. P. 14(f)(7).

The burden of proof rests upon a complainant when attacking a valuation as excessive. Iowa Code § 441.21(3) (1991). However, when the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden shifts to officials or persons seeking to uphold the assessed valuation. Id. No presumption exists that the assessment as made is correct. City of Atlantic v. County Board of Review, 234 N.W.2d 880, 882 (Iowa 1975).

Iowa Code section 441.21(1)(b) (1991) provides in part:

> The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. "Market value" is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

Two witnesses testified on behalf of Folkmann. The first witness, Glen Sorenson, appraised the property at $553,737. The second witness, Robert Davis, appraised the property's fair market value on January 1, 1988 as $720,000.

The range of values presented by the witnesses testifying for the Board was $908,000 to $890,000. At trial the county assessor testified that when she originally determined the value of the property, she was not aware the property had sold because the sale contract had not been recorded. Additionally, her original assessment included 35 acres of land instead of only the 20

acres that Folkmann purchased. The county assessor testified that taking into account the reduction of the parcel of land from 35 to 20 acres, the value of the property on January 1, 1988, was $890,000. She also testified she did not feel the August 1 sale should be considered in valuing the property because the bank sale was not a normal transaction reflecting market value. She based this determination on the facts the business was not a going concern when it was sold and the Bank was compelled to sell because it was not in the business of operating grain elevators.

An employee of the West Branch State Bank testified the bank had an appraisal done on May 31, 1987, for ascertaining the fair market value of the property prior to sale. The bank's appraiser set the property's value at $950,000. The trial court stated the bank's appraisal should not be given a great deal of consideration because the appraiser was not subject to cross-examination to show how the appraisal value was determined. We agree.

The trial court found the credentials of all the appraisers who testified were good. The trial court also noted that while the appraisers all considered comparable sales, none agreed about which sales actually were comparable and they all presented reasons supporting their decisions about comparable sales and refuting the other's determinations. Folkmann's appraiser, Sorenson,

additionally discounted the sale price to factor in the effect he felt the depressed farm economy had on the value of the property. The other appraisers testified the depressed farm economy was not a factor which would reduce the fair market value of the property.

Installment contracts must be examined carefully to ensure they reflect the market value of property. Payton Apartments v. Board of Review, 358 N.W.2d 325, 329 (Iowa App. 1984). The supreme court has recognized contract sales prices should be adjusted to reflect the market value of property. Id. at 328. Additionally, Iowa Code section 441.2(1)(b) lists contract sales as a transaction that should be adjusted to eliminate the effect of factors tending to distort the market value.

In a condemnation proceeding where the fair market value of a parcel of property was at issue the supreme court stated:

> The fact that a sale claimed to be comparable may not have been for cash, but by contract, does not always mean that it may not be admissible as having some bearing on the cash market value. [citation]. Such sales, if made in good faith and if they seem to have a fair relation to the actual cash market value, may be admitted by the trial court to assist the jury in arriving at the real cash market value.

Redfield v. Iowa State Highway Commission, 252 Iowa 1256, 1263, 110 N.W.2d 397, 401 (1961).

The trial court determined the sale of the property should be considered to determine the fair market value of

the property. We agree. Several bidders, all apparently in a position to purchase the type of property offered, participated in the auction. Further, the bidding lasted several hours and the court speculated that if anything, the purchase price would reflect a price lower than the fair market value because the Bank desired to rid itself of the property.

All of the appraisers testified about the depreciation of the property. The Board took depreciation into consideration when reducing the assessor's original valuation.

We agree with the district court that the assessed valuation placed on the property by the Board appears to reflect the fair market value of the property. The value is well within the range of values presented to the court. Additionally, the value appropriately reflects the recent sale price of the property.

Much evidence was presented about other comparable sales as well as the adjustments each appraiser felt was necessary in this circumstance to determine the market value of the property. The Board's valuation fell well within the range of valuations presented during the trial.

AFFIRMED.