FILED
JUN 28 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IOWA DES MOINES NATIONAL BANK,

Plaintiff-Appellant,

vs.

AMBROSE McNERNEY, a member of and chairman of the Board of Review of the City of Des Moines, Iowa; LEE MITCHELL, ROY DAUBERT, PAUL HOLMGREN, and ROLAND HARRISON, Members of the Board of Review of the City of Des Moines, Iowa; and ANDREW S. REGIS, City Assessor of Des Moines, Iowa,

Defendants-Appellees.

Filed June 28, 1979

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2-58060 &
2-58061 &
2-58062

Appeal from Polk District Court - Dale S. Missildine, Judge

Plaintiff bank appeals 1973 real estate tax assessment of three downtown Des Moines properties. Affirmed in part, reversed in part.

James R. McManus and James E. Brick, both of Des Moines, for appellant.

Eugene Davis and Robert C. Rouwenhorst, both of Des Moines, for appellees.

Heard by Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Plaintiff Iowa Des Moines National Bank (hereinafter "Bank") brought this action to protest the 1973 property tax assessment of three of its downtown Des Moines properties--the main bank building built in 1932, located on the southeast corner of Sixth and Walnut, an alley between Mulberry and Walnut adjoining the building, and the motor bank located behind the main bank building on the northeast corner of the intersection of Sixth and Mulberry. The petition alleged the Board of Review of Des Moines (hereinafter "Board") improperly affirmed or insufficiently reduced the assessment of each property. Although the three cases were never formally consolidated, they were heard together at trial court and briefed together on appeal. The district court affirmed the action of the Board.

Our review is **de novo.** Section 441.39, The Code 1973; Wunschel v. Board of Review, Carroll County, 217 N.W.2d 576, 577 (Iowa 1974). Although we are not bound by trial court's findings on the credibility of witnesses, we give weight to such findings. Iowa R. App. P. 14(f)(7); Northwestern Mutual Life Insurance Co. v. Board of Review of City of Dubuque, 225 N.W.2d 317, 319 (Iowa 1975).

Sections 441.21 and 441.38 as construed delineate the standards that govern this appeal. The statute equates "actual value" with "market value", and defines "market value" by the willing buyer-willing seller formula, if such can be determined. If not, alternate methods of computation are acceptable. There is no longer a presumption that the valuation is correct as made. Section 441.39. The protesting taxpayer must prove the valuation is excessive, inadequate, inequitable or capricious. If the protesting taxpayer offers competent evidence by at least two disinterested witnesses that the market value is less than that fixed by the assessor, the taxing authority must then present evidence to uphold the valuation as made. Milroy v. Board of Review of County of Benton, 226 N.W.2d 814, 817 (Iowa 1975); Juhl v. Greene County Board of Review, 188 N.W.2d 351, 352 (Iowa 1971); Tiffany v. County Board of Review in and for Greene County, 188 N.W.2d 343, 347-478 (Iowa 1971).

During 1971 and 1972, there was a reappraisal and reassessment of all real estate values in Des Moines, designed to establish the value of property for taxation purposes as of January 1, 1973. As a result of that reassessment, the main bank was valued at

$2,756,660 (100%), was reduced by the Board after the Bank's protest in the summer of 1973 to $2,418,670. The valuation was arrived at using comparable sales, the capitalization of income method and the replacement cost less obsolescence and depreciation method. The alley property was assessed at $57,230 but was reduced by the assessor to $34,340. This value was affirmed by the Board. The motor bank was valued using the replacement cost basis less depreciation method at $591,590, but was reduced by the Board to $520,430. The district court did not reduce any of the assessments further, finding that plaintiff had failed to prove the assessments were excessive or inequitable and defendants had established that the assessments were proper.

Plaintiff called two expert disinterested witnesses, both well qualified, who testified to lesser values for each of the properties. They indicated that they considered over-all property values of downtown Des Moines to be static or declining. They valued the main bank property respectively at $1,300,000 and $1,500,000, after considering comparable sales and relying on the capitalization of income method.[1] The alley was valued at $10,000 and $11,000 by plaintiff's experts, and the motor bank at $350,000 and $300,000.

As a result of the testimony of these witnesses, the burden shifted to defendants to sustain their valuations. Maytag Company v. Partridge, 210 N.W.2d 585, 594-596 (Iowa 1973). Testifying on behalf of defendants were the city assessor, an appraiser employed in the assessor's office, and an employee of Cole, Layer & Trumble, Inc. of Dayton, Ohio, the firm which undertook the general reassessment of Des Moines properties under the supervision of the city assessor. Trial court found that there was no ascertainable market value under the willing buyer-willing seller test, that the properties relied on by plaintiff's witnesses to establish fair market value were not comparable, thus making the replacement cost less depreciation approach applicable. Section 441.21; Wunschel, 217 N.W.2d at 578.

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[1] In 1974, the main bank was sold for $1,388,235, but the trial court found and we agree that this was not a normal sale, since the contract required plaintiff-vendor to rent space in a new building being developed by the vendee. See City of Atlantic v. County Board of Review of Cass County, 234 N.W.2d 880 (Iowa 1975).

Upon a review of the record as a whole, we find that the assessor was justified in using the alternate methods to determine actual value, and we hold that the valuation placed on plaintiff's main bank and alley property by the Board represents their fair and reasonable market value.

We find, however, that defendants have not met their burden in sustaining the valuation placed on the motor bank property. Expert witnesses for both plaintiff and defendants testified that the motor bank was the first of its kind to be built in Des Moines. While it was still in operation in 1973, advances in the technology of "drive-in" banks had rendered the buildings functionally obsolete. Changes in traffic patterns and the designation of access streets as one-way streets had greatly limited the convenience and profitability of the motor bank property. These factors were considered by plaintiff's experts in their valution of the property at $300,000-$350,000 and we consider this testimony persuasive. We therefore reverse the trial court's decision and reduce the 1973 assessment of the motor bank to $350,000 (100%). We think this more accurately represents the actual value of the motor bank property.

We have considered all issues raised on this appeal whether or not discussed, and the decision of the trial court is affirmed in part, reversed in part.

AFFIRMED IN PART, REVERSED IN PART.

All judges concur except Oxberger, C.J., who dissents.

OXBERGER, C. J. (dissenting)

The majority opinion reassesses the value of the motor bank property on the ground that the building thereon is antiquated and functionally obsolete. The difficulty with this rationale, however, is that the Board's assessed value of the motor bank building is actually lower than the value which the bank claimed the structure was worth. Additionally, it appears that the bank's experts valued the motor bank land by using values of allegedly comparable properties but that these witnesses failed to account for inflation when making the comparisons. I would affirm the trial court's decision in toto.