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IN THE COURT OF APPEALS OF IOWA

No. 1-431 / 90-1772

FARMERS COOPERATIVE COMPANY,

Appellant,

vs.

BOARD OF REVIEW OF UNION COUNTY and DONALD PORTER, as Chairman and a member thereof,

Appellees.

Appeal from the Iowa District Court for Union County, Dale B. Hagen, Judge.

The plaintiff appeals a judgment of the district court affirming the Board of Review's decision to uphold the tax assessment of the plaintiff's property. **AFFIRMED.**

Douglas F. Staskal of Brick, Seckington, Bowers, Swartz & Gentry, Des Moines, for appellant.

Frank W. Pechacek, Jr. of Smith, Peterson, Beckman & Willson, Council Bluffs, for appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Plaintiff is an agricultural cooperative engaged in the business of storing, handling, and processing grain. The assets taxable as real estate are located on two sites in Creston. The downtown site consists of structures constructed in the late 1950s. The east site contains most of the major improvements including the main elevator and office, a concrete workhouse and annexes, temporary outside grain storage bunkers, a feed mill and warehouse, and a fuel station. Total storage capacity of the facility is 7.6 million bushels of grain. Approximately 2.9 million bushels is upright concrete storage.

The facility was assessed at a value of $6,390,606 as of January 1, 1989. Plaintiff's protest of the assessment was denied by the Board of Review. Plaintiff appealed that decision to the district court.

In the district court plaintiff produced two expert appraisal witnesses, Ted Frandsen and Wayne Kubert, who testified the assessor's valuation was excessive. Defendant also produced two expert appraisal witnesses, James Cleminshaw and Robert Kocer. The conclusions of the four appraisers and their various approaches to value are summarized as follows:

	Comparable Sales Approach	Cost Approach	Income Approach	Final Value
Frandsen	3,856,000	4,158,438	not done	3,989,000
Kubert	3,776,531	3,758,158	3,517,196	3,998,000
Kocer	6,264,200	7,552,000	5,902,000	7,623,000
Cleminshaw	8,169,000	8,176,980	not done	8,115,282
Assessor				6,390,606

The district court found the property had been properly assessed and affirmed the assessment value. Plaintiff appeals, contending the trial court erred in determining the assessed value of the subject property was not excessive. Plaintiff asserts the assessed value should be approximately $3,998,000.

An appeal of the Board's decision to the district court is heard in equity, and issues before the Board are triable anew. Iowa Code § 441.39 (1991). Review of the district court decision by this court is de novo. Iowa R. App. P. 4. Although we are not bound by the findings of the district court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

When a taxpayer challenges an assessment as excessive, inadequate, inequitable, or capricious, the taxpayer has the burden of proof. However, if the taxpayer "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 of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed." Iowa Code § 441.21(3) (1991). In this case, plaintiff offered evidence by two disinterested appraisers who were competent to offer expert testimony as to the fair market value of the subject property. Therefore, the burden of proof shifted to defendant to uphold the assessment. Id. No presumption exists that the assessor's valuation is correct. Iowa Code § 441.39 (1991).

Iowa Code section 441.21 provides for the use of two approaches to ascertain market value. If sales prices of comparable properties in normal transactions are available, the sales prices approach is to be used. In Bartlett & Co. Grain v. Board of Review, 253 N.W.2d 86, 94 (Iowa 1977), our supreme court recognized other grain elevators may be sufficiently comparable to permit consideration of their sales prices to establish value. Adjustments must of course be made for points of difference between the comparable sales and the subject property. Id. at 93. As differences increase, the weight to be given to the sales price of the other property must be correspondingly reduced. Id.

In the present case, all four appraisal experts used the comparable sales prices approach. Plaintiff's expert, Frandsen, used six grain facility sales, all in Iowa, with sale dates between August 1983 and June 1989. Five of the six sales used by Frandsen were distressed or portions of the facilities were inoperable. Therefore, in comparing sales to the subject property and determining a per bushel value, it was necessary for Frandsen to adjust the sales prices. Such adjustment is mandated under section 441.21(1)(b) of the Iowa Code. Frandsen further adjusted the sales for a number of variables including the time of sale, the size of the facility, the quality and condition of the comparable sales properties, and auxiliary facilities. After adjusting the sales, Frandsen applied a value of $1.10 per bushel, added in the value of the lumberyard, and reached a comparable sales value of $3,856,000. Although the subject facility has 7,600,000 bushels of storage capacity, Frandsen used 3,279,000 bushels in his comparable sales computations. Frandsen also testified he had appraised seven elevators in Iowa. On cross-examination, however, Frandsen admitted six of the appraisal values were determined by someone else. Thus, this was the first time Frandsen has set the appraised value as his own opinion.

Wayne Kubert was plaintiff's other expert appraiser. Kubert's comparable sales totaled six, three located in Nebraska and three located in Iowa. One of these sales occurred in 1985, three occurred in 1986, and two occurred in 1989. Kubert used 6,000,000 bushels of storage capacity in his computations. Kubert's opinion as to the value on a comparable sales per bushel basis was as follows: $1.35 for the main east elevator, $.75 for the east annex, $.12 for the outside bunker storage, $.25 and $.20 for the concrete storage facilities, and $.10 for open storage. Kubert added value for the mill, the lumberyard, the fertilizer tanks, and the card control gas pumps. Kubert reached a comparable sales value of $3,776,531. Kubert does appraisal work for both taxpayers and tax assessing authorities. He has a great deal of experience in appraising grain facilities; however, he has performed most of his appraisal work in Nebraska. In the present appraisal, Kubert did not use the Iowa Appraisal Manual issued by the Iowa Department of Revenue.

Defendant's expert Cleminshaw used thirteen comparable sales, five located in Iowa. He determined a per bushel value of $1.14 for upright concrete storage and $1.08 for the same type of storage on the downtown site, $2.00 for train loading storage, $.41 for horizontal storage, and $.10 for open storage in his comparable sales approach. Cleminshaw added the value of the mill, the lumberyard, the fertilizer and chemical tanks, the fertilizer building and the chemical warehouse. Cleminshaw valued the total property at $8,169,000.

Defendant's other appraisal expert, Kocer, also used a comparable sales approach. Kocer's comparable sales totaled thirteen, all located in Iowa. Kocer's per bushel values ranged from a low of $.70 to a high of $1.88. Kocer concluded all the concrete storage of the subject property had a value of at least $1.00 per bushel and the open storage had a value of $.20 per bushel. Kocer also added values for facilities the subject property has which were not included in the comparable sales properties. Kocer arrived at a valuation of $6,264,200. Kocer has appraised between 100 and 200 grain elevator facilities in Iowa. The majority of both Cleminshaw's and Kocer's appraisal work is done for taxing authorities.

In upholding the Board's decision, the court noted there had been $1.7 million in improvements in the facility within three years of the assessment. The court also found plaintiff's facilities were far superior to any other grain elevators seen by the expert witnesses. This finding is supported by plaintiff's own expert witness. Kubert testified the subject property can handle more grain and is better than any facility he had ever seen. We also note approximately 2.9 million bushels of plaintiff's storage is concrete storage. Kubert testified concrete storage is approximately two and one-half times the value of metal storage, yet he valued this storage at only $.25 and $.20 per bushel. These values are significantly lower than the values determined by the other experts for this type of storage. Finally, and most important, the trial in this case essentially evolved into a "battle of the experts." The district court determined Kocer and Cleminshaw were more experienced in determining the value of grain elevator facilities. As we have noted, the trial court is in a much better position to weigh the credibility of witnesses than are we, and we will give weight to the trial court's decision on credibility even in a de novo review. Iowa R. App. P. 14(f)(7).

The trial court found the valuation set by the county assessor was within the range of evidence presented. We do not dispute this finding. The decision of the trial court is affirmed. Costs on appeal are taxed to appellant.

AFFIRMED.