IN THE COURT OF APPEALS OF IOWA

No. 2-867 / 12-0118
Filed November 29, 2012

REEMARK PROPERTIES, LLC,
1050 NORTH 18TH STREET
CLINTON, IOWA,
Plaintiff-Appellee,

vs.

CITY OF CLINTON BOARD
OF REVIEW,
Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, C.H. Pelton, Judge.

The board of review appeals the district court's determination of valuation of real estate for tax purposes. **AFFIRMED.**

J. Drew Chambers of Holleran, Shaw, Murphy & Stoutner, Clinton, for appellant.

T. Randy Current of Frey, Haufe & Current, P.L.C., Clinton, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

The City of Clinton Board of Review (Board) appeals the district court's valuation of real estate owned by ReeMark Properties, L.L.C. (ReeMark) for tax purposes. The Board contends the district court did not properly consider its experts' opinions and did not properly apply the law to the facts in this case, and consequently, the valuation found by the court is erroneously low. Upon our de novo review, we conclude the district court's determination of the proper assessed value should be affirmed.

We review tax protests de novo. *Compiano v. Bd. of Review*, 771 N.W.2d 2d 392, 394 (Iowa 2009).

In 2010, following a city-wide reassessment and ReeMark's protest of that appraisal, the property at issue was valued by the Board for tax purposes at $589,000. The January 1, 2011 assessment by the Board remained the same. ReeMark appealed both assessments and both were tried by the district court at the same time. *See* Iowa Code §§ 441.38, .39.[1] ReeMark's property is a commercial building configured for a single business, with a parking lot, on a 9.6-acre parcel.

"An appealing property owner has a twofold burden on appeal." *Boekeloo v. Bd. of Review*, 529 N.W.2d 275, 276 (Iowa 1995). The property owner, first, bears the burden to prove that an assessment is excessive. Iowa Code § 441.21(3); *Boekeloo*, 529 N.W.2d at 276-77. "Second, the appealing party 'must

[1] As there have been no material changes in the provisions, all citations are to the 2011 Iowa Code.

establish what the correct valuation should be.'" *Boekeloo*, 529 N.W.2d at 277 (citation omitted).

The district court's ultimate goal in assessment protests is to determine the fair market value of the subject property. *See* Iowa Code §§ 441.21, .39; *see generally Compiano*, 771 N.W.2d at 396-97 (providing overview of assessment for tax purposes and protest procedures). At the district court level, it was ReeMark's burden to establish by a preponderance of the evidence that the assessment was excessive. *See* Iowa Code §§ 441.21, .37, .38. Pursuant to Iowa Code section 441.21(3), however, once the property owner offers competent evidence by two or more disinterested witnesses that the market value as set by the assessor is excessive, the burden of proof then shifts to the board of review to uphold its requested valuation. There is no presumption that the valuation established by the board of review is correct. *See id.* § 441.39.

> The procedure in district court actually creates a two-step process. The district court first makes an independent determination on the grounds of protest based on all the evidence. If the taxpayer fails to shift the burden of proof to the board, the grounds for protest must be established by the taxpayer. If the proof offered by the taxpayer fails to establish the grounds for protest, the assessment is affirmed. Conversely, if the court determines the grounds of protest have been established, it must then determine the value or correct assessment of the property. This process is the second step. Here, the court makes its independent determination of the value based on all the evidence.

Compiano, 771 N.W.2d at 397 (citations omitted).

ReeMark presented testimony of three disinterested experts regarding the estimated market value of the subject property as of January 1, 2010—all of which were below the assessed value. The appraisals of two of the experts were

based upon sales of comparable commercial properties in the Clinton area—comparable sales being the preferred valuation method of section 441.21(2). *See id.* at 398 ("Under our statutory scheme, the alternative methods to the comparable sales approach to valuation of property cannot be used when adequate evidence of comparable sales is available to readily establish the market value by that method."). Licensed real estate appraiser Don Jacobs opined the property had a market value of $475,000. Certified real estate appraiser Joe Clarkson opined the value was $490,000. The third expert, realtor Steve Howes, though not conducting a formal appraisal, opined the market value of the property was $500,000.

Neither of the Board's expert witnesses testified the market value was as assessed ($589,000). Rather, Daryl Risting, an appraiser for Vanguard Appraisals, opined the property had a value of $812,589 based upon a replacement cost approach. Commercial real estate appraiser, David Nelson, conducted a comparable sales analysis, but used properties in Scott and Dubuque counties, and arrived at a value of $895,000. *See Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009) (discussing comparability and stating that "[t]o determine whether other properties are sufficiently comparable to be used as a basis for ascertaining market value under the comparable-sales approach, we have adopted the rule that the conditions with respect to the other land must be 'similar' to the property being assessed"; defining "similar"; and noting that "[w]hether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of

the trial court"). He also employed a computer program to determine replacement cost and arrived at a valuation of $1,050,000, which did not involve any reductions for obsolescence or depreciation.

The district court ruled from the bench that the fair and reasonable market value of the subject property was $500,000. It thereafter issued a brief written ruling, citing pertinent code provisions and finding,

> [T]he fair and reasonable market value of the subject 9.6-acre parcel of ReeMark property on January 1, 2010, and on January 1, 2011, is $500,000. This is based upon the whole record, with more weight given to ReeMark's appraisers because they rely more upon comparable sales in the same market vicinity than do the City's.

In its ruling, the court implicitly found ReeMark's witnesses to be disinterested witnesses who offered competent evidence of valuation. *See id.* (discussing shift of burden of proof when taxpayer introduces "competent evidence" by at least two disinterested witnesses). The court thus found that ReeMark shouldered its burden to prove the assessed value was excessive. Consequently, the court was required to determine valuation. *See Compiano*, 771 N.W.2d at 397 (stating that if the court determines the grounds of protest have been established, it must then makes its independent determination of the value based on all the evidence). The district court's determination of the correct value at $500,000 is supported by the valuations of ReeMark's experts' opinions. Upon our de novo review, we uphold the district court's determination of value. We therefore affirm.

AFFIRMED.