

IN THE COURT OF APPEALS OF IOWA

No. 7-050 / 05-1641
Filed March 28, 2007

**SAM SOIFER, THE ESTATE OF
BARBARA J. SOIFER, Deceased, by
SAM SOIFER and JOANN ROBINSON,
Co-Executors, and FRANCHISE
REALTY INTERSTATE CORP.,**
Plaintiffs-Appellants,

vs.

FLOYD COUNTY BOARD OF REVIEW,
Defendant-Appellee.

**SAM SOIFER, THE ESTATE OF
BARBARA J. SOIFER, Deceased, by
SAM SOIFER and JOANN ROBINSON,
Co-Executors, and FRANCHISE
REALTY INTERSTATE CORP.,**
Plaintiffs-Appellants,

vs.

FLOYD COUNTY BOARD OF REVIEW,
Defendant-Appellee.

Appeal from the Iowa District Court for Floyd County, John S. Mackey,
Judge.

Taxpayers and property owner appeal from a district court order
dismissing their appeals from the board of review's assessments of their
property. **REVERSED.**

Judith O'Donohoe of Elwood, O'Donohoe, Stochl, Braun & Churbuck,
Charles City, for appellants.

Jesse Marzen and Kimberly Birch, Assistant Floyd County Attorneys,
Charles City, for appellee.

Heard by Huitink, P.J., and Zimmer and Baker, JJ.

ZIMMER, J.

Taxpayers Sam and Barbara Soifer and property owner Franchise Realty Interstate Corporation appeal from a district court order dismissing their appeals from the Floyd County Board of Review's assessments of a McDonald's fast food restaurant for tax purposes. Upon review, we reverse the district court order dismissing the appeals.

I. Background Facts and Proceedings.

Sam and Barbara Soifer own a franchise for a McDonald's fast food restaurant located at 506 Allison Street in Charles City, Iowa. The real estate and building are owned by Franchise Realty Interstate Corporation. The Soifers have leased the building from Franchise Realty since its construction in 1978. The building is approximately 4000 square feet. The property has no frontage on the main commercial street in Charles City, which is known as Gilbert Street or Highway 218. In July 2000 the Highway 218 bypass opened. The bypass routes out-of-town traffic around Charles City, which has resulted in a decrease in sales for businesses located on Highway 218. The Soifers are required to pay real estate taxes on the building pursuant to their lease with Franchise Realty.

The Floyd County Board of Review assessed the property's value at \$399,950 in 2001. The Soifers and Franchise Realty protested this assessment. Following the appeal, the Board reduced the assessed valuation to \$368,650. The Soifers and the Board thereafter agreed to decrease the assessed valuation to \$351,780. In 2002 the Board assessed the property's value at \$368,650. The Soifers and Franchise Realty challenged that assessment in 2003. The Board ruled the assessed value should be reduced to \$352,990. The Soifers and

Franchise Realty filed a notice of appeal from the Board's action on June 13, 2003. The property was again assessed at \$352,990 in 2004 and 2005. The Soifers and Franchise Realty filed a protest to the 2005 assessment. The Board determined the assessed value should not be changed. The Soifers and Franchise Realty filed a notice of appeal from the Board's action on June 30, 2005. The 2003 and 2005 appeals were consolidated and tried before the district court.

The Soifers and Franchise Realty argued in district court that the 2003 and 2005 assessments were inequitable and in excess of the property's fair market value. The district court rejected their arguments and found the 2003 and 2005 assessments of \$352,990 were not excessive because said assessments fell between the 2001 settlement value of \$351,780 and an Iowa Department of Revenue random appraisal of the property of \$353,990. The district court accordingly dismissed the appeals filed by the Soifers and Franchise Realty.

The Soifers and Franchise Realty appeal. They contend the district court erred in ruling the 2003 and 2005 assessments were not excessive and inequitable as compared to like property.

II. Scope and Standards of Review.

This case was tried in equity. Iowa Code § 441.39 (2005). Therefore, our review is *de novo*. Iowa R. App. P. 6.4. We give weight to the findings of fact by the district court, especially when considering the credibility of witnesses, but are not bound by those findings. Iowa R. App. P. 6.14(6). In addressing valuation issues, "there shall be no presumption as to the correctness of the valuation of

assessment appealed from.” Iowa Code § 441.39. The court may increase, decrease, or affirm the amount of the assessment appealed from. *Id.* § 441.43.

III. Discussion.

Iowa Code chapter 441 governs the assessment and valuation of property for tax purposes. Property subject to taxation must be valued at its “actual value.” *Id.* § 441.21(1)(a). Actual value is the “fair and reasonable market value” of the property. *Id.* § 441.21(1)(b). Market value is

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.

Id. When determining market value, the taxing authority is to consider the sale price of the property to be assessed or comparable property in normal transactions, as well as the availability of interested purchasers. *Id.* The statute expresses a preference for establishing value utilizing a comparable sales approach. *Boekeloo v. Board of Review*, 529 N.W.2d 275, 277 (Iowa 1995). Alternate means of valuation may be used only when market value cannot be established using the comparable sales approach. *Id.* If an alternate means of valuation is used, good will or the value of a business using the property shall not be taken into consideration. Iowa Code § 441.21(2).

A complaining taxpayer or property owner has the burden of proof to establish the valuation was excessive or inequitable. *Id.* § 441.21(3). When a taxpayer produces competent evidence by two disinterested witnesses that the assessed market value of the property is excessive, the burden of persuasion shifts to the Board to uphold its valuation. *Id.* § 441.21(3); *Riso v. Pottawattamie*

Board of Review, 362 N.W.2d 513, 517 (Iowa 1985). Competent evidence is evidence that complies with the valuation preferences expressed in Iowa Code section 441.21. *Boekeloo*, 529 N.W.2d at 279.

The Soifers and Franchise Realty assert they presented competent evidence from two disinterested witnesses that established the assessed value of the property is excessive. The Board contends the burden did not shift because the witnesses' evidence was not competent.¹ The district court did not directly address this argument. Instead, the court rejected the appraisals presented by both parties and concluded the 2003 and 2005 assessments of \$352,990 were appropriate because said assessments fell between the 2001 settlement value of \$351,780 and the Iowa Department of Revenue's random appraisal of the property of \$353,990.² The district court determined the Soifers and Franchise Realty failed to demonstrate their property was inequitably assessed as compared to other properties because there were no comparable properties within the assessment jurisdiction. We disagree.

Appraiser Brett Blanchfield and realtor Connie Parson testified on behalf of the Soifers and Franchise Realty. Both witnesses utilized the comparable sales approach to arrive at a value for the subject property. Blanchfield examined four sales of franchises in Charles City, Fort Dodge, Storm Lake, and Marshalltown. The Charles City property was a Hardee's fast food restaurant at the time of the sale. The Fort Dodge property was a KFC fast food restaurant, and the Storm Lake and Marshalltown properties were McDonald's franchises.

¹ The Board does not dispute that Blanchfield and Parson are disinterested witnesses.

² The record does not indicate when or how the Iowa Department of Revenue's random appraisal of the property was conducted.

The sales took place between 2002 and 2004. Blanchfield considered (1) land to building ratio; (2) location; (3) access; (4) building age, condition and quality; and (5) site improvements. Based on his analysis of these properties, he determined the market value for the McDonald's property to be \$230,000 for 2003, 2004, and 2005. Connie Parson analyzed the sales of Pizza Hut, Granny's Kountry Banquet, Hardee's, and KFC restaurants in Charles City. The sales took place between 2002 and 2005. Parson took into consideration the time and location of the sales and similarity of use. She concluded the market value of the McDonald's building for 2003, 2004, and 2005 was between \$193,000 and \$215,000.

Appraiser Robert Ehler testified on behalf of the Board. Ehler employed a more narrow comparable sales approach than that used by Blanchfield and Parson. Ehler determined the highest and best use for the McDonald's property was as a franchise restaurant. He then confined his appraisal to an examination of franchise-to-franchise sales. He selected thirty-three such sales in Iowa. His appraisal focused on eight of those franchise-to-franchise sales to conclude the market value of the McDonald's property was \$425,000 in 2001 and \$381,000 in 2003. The franchise-to-franchise sales analyzed by Ehler took place between 1997 and 1999. None of the properties were located in Charles City or in its immediate vicinity.

The Board contends Blanchfield and Parson did not present competent evidence because they did not utilize the correct standard in determining the market value of the McDonald's property. According to the Board, the appropriate standard for determining the market value of the McDonald's

property is the “highest and best use” approach employed by the Board’s appraiser. The Board asserts that Blanchfield and Parson should have examined only franchise-to-franchise sales because the highest and best use for the McDonald’s property is as a franchise restaurant. The district court agreed with the Board and found the franchise-to-franchise sales comparison would most accurately establish fair market value because to “obscure the fact that this real estate is being operated as a viable McDonald’s restaurant, a quite popular American establishment, would be to ignore reality.” We do not agree.

As previously stated, Iowa Code section 441.21(1)(b) “requires that the comparable sales approach be used.” *Boekeloo*, 529 N.W.2d at 279. Both Blanchfield and Parson used the comparable sales approach. This court has held a property can have characteristics different from the assessed real estate and still be considered a comparable property. *See e.g., Sears, Roebuck & Co. v. Sieren*, 460 N.W.2d 887, 890 (Iowa Ct. App. 1990) (finding large anchor store space and small retail shop spaces to be comparable properties). Furthermore, examining only franchise-to-franchise sales under the Board’s highest and best use approach results in the impermissible consideration of intangibles, such as good will. *Heritage Cablevision v. Board of Review*, 457 N.W.2d 594, 599 (Iowa 1990). “[E]xcluding the value of intangibles is critical to the legitimacy of any method used to value property.” *Post-Newsweek Cable, Inc. v. Board of Review*, 497 N.W.2d 810, 817 (Iowa 1993). Upon our de novo review, we find Blanchfield and Parson presented competent evidence that the assessed market value of the

McDonald's property is excessive.³ The burden consequently shifted to the Board to uphold its valuation. We conclude the Board failed to meet its burden.

The Board's appraiser did not use comparable sales in the same general location as the subject property. The eight properties examined by Ehler were located in Harlan, Shenandoah, Spencer, Mt. Pleasant, Ft. Madison, Red Oak, Decorah and Waukon. The sales of these properties took place between 1997 and 1999 while the sales of the comparable properties identified by Blanchfield and Parson occurred between 2002 and 2005. Ehler's appraisals did not quantify any adjustments he may have made for factors such as land to building ratio, location, access, building age, condition and quality, and site improvements. We give little weight to valuations made by comparable sales where adjustments that are purportedly made to those sales are not quantified. *Dowden v. Dickinson County Bd. of Review*, 338 N.W.2d 719, 723 (Iowa Ct. App. 1983). Finally, we believe Ehler's use of only franchise-to-franchise sales resulted in the prohibited inclusion of good will in the valuation of the McDonald's property. *Heritage Cablevision*, 457 N.W.2d at 599.

IV. Conclusion.

Having carefully analyzed each of the expert opinions furnished to the district court, we find the Soifers and Franchise Realty satisfied their burden of proving the Board's assessments were excessive. We conclude the Board failed to adequately rebut the evidence presented by the Soifers and Franchise Realty. The Board consequently failed to justify its higher valuations of the property. We

³ Although we find it unnecessary to discuss the issue in detail, we also find the Soifers and Franchise Realty satisfied their burden of proving the Board's assessments were inequitable when compared to like property in the same taxing district.

further conclude, based upon our de novo review, that Blanchfield's and Parson's appraisals of the property are the most credible. We reverse the district court's order dismissing the appeals and reduce the assessed value to \$230,000 for 2003 and 2005.

REVERSED.