



Willson & Pechacek, P.L.C. Newsletter



Assessors Special Issue

February 2022

by Jamie Cox

Year in Review

In 2021, the Supreme Court decided one exemption appeal (up from zero appeals in 2020). The Court of Appeals decided two overassessment appeals (down from two exemption appeals and one misclassification appeal in 2020). PAAB decided 107 appeals in 2021 (down from 126 in 2020), including two agricultural, 63 residential, two multi-residential, 35 commercial, three dual-classification, and two industrial appeals. These PAAB appeals involved 43 inequitable assessment claims, 68 market value claims, 12 misclassified or exempt claims, 21 error claims, and seven fraud or misconduct claims. A select few of the appeals are discussed below.

Stateline Cooperative v. PAAB (Iowa Sup. Ct. 4/30/21). This appeal involved the taxability of machinery used in a manufacturing establishment under Iowa Code § 427A.1(1)(e). Stateline (SL) petitioned for review of PAAB's decision upholding Emmet County's denial of a property tax exemption for stand-alone corn silos and overhead ingredient bins at a feed manufacturing facility. The District Court affirmed, and the Court of Appeals reversed in part. PAAB and the County were granted further review by the Supreme Court. In a case of first impression, the Supreme Court vacated the Court of Appeals decision, holding: (a) the two corn silos were taxable because, although connected to the feed manufacturing facility by an underground conveyor, they did not

meet the definition of "machinery" used in a manufacturing establishment. The silos were deemed storage buildings since no processing or manufacturing occurred at the silos; and (b) the overhead ingredient bins in the feed manufacturing building are part of a continuous piece of machinery and were tax-exempt because they discharged feed directly into the scale and the mixer, and they did not have independent value as storage.

Lowe's Home Centers, LLC v. PAAB (Iowa Ct. App. 2/17/21). In this appeal, the Lowe's appraiser valued the property at \$5.2 million. Johnson County's appraiser valued it at \$10.9 million based on the property's current use. PAAB found the County's appraiser more persuasive. On appeal, Lowe's argued PAAB violated Iowa law by adopting Johnson County's appraisal that was based on "current use" rather than fair market value. In other words, Lowe's argued "current use" meant "value in use" or "use value of the property to its present owner." PAAB, on the other hand, correctly interpreted "current use" to mean "present use." The Court of Appeals, in affirming the District Court and upholding the \$10.9 million value, noted Lowe's argument that property valuations cannot be based on the current use of the property has been rejected in Iowa. PAAB correctly adhered to the rule that Assessors should value property based on its "present use" by considering conditions as they exist at the time of the assessment and thereby recognizing the effect of the use upon the value of the property itself.

La Posada Group, LLC v. Pottawattamie Cty. Bd. of Rev. (12/15/21). This appeal involved a hotel purchased by La Posada (LP) as part of a six-hotel portfolio. LP's expert used the sales comparison, gross revenue multiplier, and income approaches to value. The County's expert used the sales comparison and income approaches. Both experts gave the income approach the most weight because they said it was the best indicator of value and is what hotel buyers would rely on. The District Court rejected the income approaches because the hotel could be valued using comparable sales, which is the preferred approach under Iowa law. The District Court upheld the assessed value, finding the County's expert more credible. LP appealed. The Court of Appeals affirmed, holding that while the income approach may be a better indicator of value, the legislature prefers comparable sale valuations. The Court also rejected LP's other arguments, finding (a) the County's expert was more credible because he used sales in the immediate market area rather than across the Midwest, (b) most of the County expert's errors were in the irrelevant income approach, (c) LP did not explain why it believed the County expert's adjustments to comparable sales were excessive, and (d) the portfolio sale of the subject hotel could not be considered because it was an abnormal transaction.

Wynn Hammes v. City of Davenport Bd. of Rev. (7/22/21). This appeal involved a claim of fraud or

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misconduct in the assessment of two commercial properties (among other grounds). The law requires fraud or misconduct to be specifically stated. Misconduct includes knowingly engaging in assessment methods, practices, or conduct that contravenes any applicable law, rule, or order. Fraud includes acts that deceive, mislead, or violate confidence. Hammes complained that the Assessor refused to inspect the inside of his buildings, and he argued that the Iowa Real Property Appraisal Manual could not be used to value the properties because one of the parcels has no direct street access and one of the buildings encroaches on the other parcel. First, PAAB found that since an interior inspection is not always required, and the condition of the buildings presented a possible safety risk, the Assessor's decision to forego an interior inspection was not fraud or misconduct. PAAB then found that despite Hammes' assertions about the Manual, the properties must be valued at their market value, and Hammes offered no evidence to show the impact of the access or encroachment factors on the properties' value. Therefore, PAAB affirmed the assessment.

Realco Norwalk IA LLC v. Warren Cty. Bd. of Rev. (6/4/21). This appeal involved a nursing home that Realco said was over-assessed. Realco bought it as part of a seven-

nursing home sale from a bankrupt seller. Realco said the sale price on the property record card is an allocation of the total transaction price to the subject, based on an equal per-bed value, but since the subject underperforms the sale price is overstated. In support of its position, Realco offered a "Purchase Price Allocation" report that allocated value based on the abnormal sale, and which used a methodology meant to allocate the value of the business and not necessarily arrive at the property's market value. Thus, PAAB did not consider the report. Further, Realco relied on an income approach to value. In response, the Board of Review submitted recent sales of several nursing homes. PAAB said the sales comparison approach should have been used and, for that reason alone, Realco's claim failed. However, PAAB also rejected the income approach as unreliable because the net operating income (NOI) projections were based on current and owner-projected revenues and expenses without details for PAAB to decide if they were reasonable and consistent with the market, and because Realco used the future NOI projections with an 8% cap rate to reach a value opinion with insufficient supporting information.

TSL Company Holdings LTD v. Pottawattamie Cty. Bd. Rev. (6/3/21). TSL filed five appeals of its commercial properties that it al-

leged were over-assessed. Each appeal was tried separately, but common themes emerged in the quality of TSL's evidence. TSL's tax representative, who was not a real estate appraiser, had never inspected any of the properties, yet he utilized a cost approach to value all of the properties and a sales comparison approach to value three of the properties. PAAB rejected TSL's cost approach values due to his large, unsubstantiated depreciation adjustments and his omission of many site features and improvements. PAAB criticized TSL for not doing a sales approach on two of the properties because there were plenty of recent sales of similar properties. PAAB rejected TSL's sales approach value on the three properties because he did not adjust for different features or uses that existed between the comparables and the subject, such as site size, overhead doors, dock levelers, and the large amount of paving required for the subject's use. Further, one of the subject properties recently sold for significantly more than its assessed value (assessed value-to-sale price ratio of 58.53). For these reasons, PAAB affirmed the Board of Review value.

Assessors should be sure to contact their legal counsel with any questions about any of these decisions and how they apply to their assessments.

Reminder: 2021 Rollback Orders Will Affect 2022 Property Taxes

by Jamie Cox

On October 29, 2021, the Department of Revenue issued rollback orders for property taxes to be levied in 2022 (i.e., FY2023). Therefore, all Iowa counties must apply the designated percentages to the 2021 actual value of properties, as follows: residential 54.1302%; agricultural 89.0412%; commercial, industrial, and railroad 90%; and multi-residential 63.75%.

Property Owners Seeking Anonymity Under the Open Records Act

by Jamie Cox

On November 16, 2021, the Supreme Court sided with the Assessor in an open records law case. In *Polk County Assessor Randy Ripperger v. Iowa Public Info. Bd.*, the Court held that a confidentiality provision in the Opens Records Act allowed the Assessor to refuse to disclose the names of 3,540 property owners who asked to be removed from the public name search function on the Assessor's website.

These property owners, including police officers, prosecutors, judges, and crime victims, made these requests to attain a measure of privacy for their home addresses by making it harder for criminals or harassers to find out where they live. Importantly, the property records remained open to the public through other means, such as telephoning the Assessor's office to ask about property owned by someone on the disabled name list, visiting the Assessor's office to examine the records or use the office computer to find records by name (even names on the disabled name list), and using any remote computer to search the Assessor's database by address to get the names of persons on the disabled name list.

In this case, a newspaper reporter sought the disabled name list, and the Assessor refused to disclose it under the confidentiality provisions of Iowa Code § 22.7(18). The reporter then filed a complaint with the Iowa Public Information Board ("IPIB"). At the hearing, the reporter said he wanted the list to see who opts into the policy and to find out if developers, landlords, or slumlords are included. The Assessor testified that his website promises confidentiality. Several witnesses who were on the list testified they did not want to make it easy for people to find where they lived, and that when they originally requested that their names

be put on the disabled name list, they believed it would be confidential.

IPIB ordered the Assessor to disclose the list because it "is not the kind of communication with government that § 22.7(18) is intended to protect." The Assessor appealed, and the District Court affirmed IPIB's decision. The Assessor then appealed to the Supreme Court.

The Court analyzed the confidentiality language of § 22.7(18), which provides: "The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information: ... 18. Communications not required by law ... that are made to a government body ... by ... persons outside of government, to the extent that the government body ... could reasonably believe that those persons would be discouraged from making them ... if they were available for general public examination."

The Court held that the list is a "public record," a "communication," and "not required by law" because property owners can choose whether to request their name on the list. Further, the Court said the Assessor's office is a "government body" and the Assessor was a "custodian of the records" that "could reasonably believe" that publicizing the list would discourage property owners from requesting removal from the name search function. Therefore, the Court said the Assessor's decision to protect the names should be upheld, and not second-guessed, even if others disagree with it, and that the District Court and IPIB erred by substituting their judgment for the Assessor's judgment.

The Supreme Court reversed the District Court, but remanded the case to District Court to allow IPIB to raise the issue of whether the persons who requested their names be removed

from the name search function are "persons outside of government" under § 22.7(18). The Assessor argued that the requests made by law enforcement, judges, and other government employees were made in their personal capacities concerning their personal residences, and therefore should qualify for confidentiality. But since the question was not decided by the District Court, the Supreme Court said IPIB could raise the issue on remand.

To date, the District Court has not decided the issue. This could be because the Iowa Legislature passed new laws in 2021 protecting the addresses of judicial officers, prosecutors, peace officers, and law enforcement agency employees. Iowa Code Chapter 9E (Address Confidentiality Program) now includes active or retired local and state judicial officers, federal judges, local or state prosecuting attorneys, peace officers, and civilian employees of law enforcement agencies. Iowa Code § 9E.2(6)(a). Under revised Chapter 331, Assessors *must* redact, upon request by a peace officer, a civilian employee of a law enforcement agency, a state or federal judicial officer, or a state or federal prosecutor, the requestor's name contained in electronic documents that are displayed for public access through an internet site. Iowa Code § 331.604(3)(g)(1). Further, Assessors *may* redact, upon request by a former peace officer, a former civilian employee of a law enforcement agency, or the county Assessor or the Assessor's staff, and upon the presentation of evidence that a compelling safety interest is served by doing so, the requestor's name contained in electronic documents that are displayed for public access through an internet site. Iowa Code § 331.604(3)(g)(2).

If Assessors have questions or need further guidance, they should contact their legal counsel.

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Newsletter

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Reminder: Multi-Residential Property is Eliminated in 2022

by *Jamie Cox*

Beginning with the January 1, 2022 assessment, the multi-residential class of property has been combined with the residential property category as the result of a new law.

Under new Iowa Code § 441.21(14)(a), “residential property” includes: (1) properties primarily used or intended for human habitation containing two or fewer dwelling units; (2) mobile home parks; (3) manufactured home communities; (4) land-leased communities; (5) assisted living facilities; (6) parcels primarily used or intended for human habitation with three or more separate dwelling units, even if part of it is used or intended for commercial or industrial use; and (7) parcels primarily used or intended for commercial or industrial use but which a portion of the par-

cel is used or intended for human habitation regardless of the number of dwelling units. Iowa Code § 441.21(14)(a)(1)-(7).

Further, for the residential property described in § 441.21(14)(a)(6) and (7) (i.e., parcels that are primarily used or intended for human habitation with three or more separate dwelling units even if part of it is used or intended for commercial or industrial use, and for parcels primarily used or intended for commercial or industrial use but which a portion of the parcel is used or intended for human habitation regardless of the number of dwelling units), Assessors must treat them as dual classification property by assigning a portion of the parcel as residential property and assigning the other portion(s) as commercial and/or industrial. Iowa Code § 441.21(14)(b).

New § 441.21(14) also says Section 42 property, hotels, motels, inns, or other buildings where rooms or dwelling units are usually rented for less than one month are *not* to be classified as residential property. Iowa Code § 441.21(14)(c).

Finally, new § 441.21(14)(d) defines “assisted living facility,” “dwelling unit,” “land-leased community,” “manufactured home community,” and “mobile home park.”

The new law’s practical effect on tax liabilities may be minimal if multi-residential property prices increase while their effective tax rate decreases. Assessors should contact their legal counsel with any questions or needs for further guidance.
