Willson & Pechacek, P.L.C. Newsletter

Assessors Special Issue | **February 2023**

Year in Review

by Jamie Cox

In 2022, the Iowa Supreme Court decided one overassessment appeal (versus one exemption appeal in 2021). The Iowa Court of Appeals decided one overassessment appeal in 2022 (down from two in 2021). PAAB decided 63 appeals in 2022 (down from 107 in 2021), including six agricultural, 19 residential, seven multi-residential, one dual-class, 26 commercial, and four industrial. These PAAB appeals involved 28 inequitable assessment, 33 over-assessed, ten misclassified or exempt, 15 error, and two fraud or misconduct claims. A select few of the appeals are discussed below.

Nationwide Mutual Ins. Co. v. Polk County Bd. of Rev. (Iowa Sup. Ct. 12/16/22). This appeal asked if the Board's experts used a flawed appraisal methodology (and thereby failed to produce "competent evidence") by not relying enough on the sales approach. Both parties' experts used the cost, income, and sales approaches. But each expert emphasized different approaches in reaching a reconciled value. The Board's experts gave less weight to the sales approach after finding no suitable local sales and because adjusting a sale in a larger metro area wouldn't be an objective comparison. Nationwide's experts relied mostly on the sales approach. The District Court found the Board's experts more reliable, but Nationwide convinced the Court of Appeals the Board failed to support the assessment since its experts didn't rely on the sales approach. The Supreme Court reversed, finding the Court of Appeals grafted too rigid a standard for "competent evidence." The amount of an expert's reliance on the sales approach doesn't determine if competent evidence has been produced. To assume the Board's experts didn't present competent evidence because neither *relied* on the sales approach misconstrues competent evidence. The real question is about the persuasive force of the experts' comparables. Valuations using sales alone aren't always appropriate, and simply calculating a value using the sales approach doesn't mean it *in fact* establishes a property's value. Here, all experts used all approaches, which implies the value couldn't be established by only the sales approach. The Board met its burden to uphold the assessment.

West Des Moines Hotel Assoc., LLC, v. Dallas County Bd. of Rev. (Iowa Ct. App. 1/12/22). In its protest to the Board, Associates said the hotel's actual value was $15 million. In District Court, Associates said the value was just $13.9 million. Associates argued the Board failed to uphold the property's $18.4 million assessment, highlighting the hotel's 2017 sale ($17.8 million), a performance improvement plan (PIP), and declining hotel performance. It also said the Board's appraiser wrongly relied on national market data and improperly calculated the value of recent hotel improvements. The Board pointed out the $26 million mortgage Associates obtained to buy the hotel in 2017, the bank appraisal of $18.3 million ($30.9 million after PIP), and the value of the Marriott franchise. The Board pinned the hotel's declining performance on mismanagement decisions, and it justified the use of national market data since Marriott is national in scope. The Supreme Court agreed and affirmed the assessment.

Morris v. Pottawattamie County Bd. of Rev. (PAAB 1/21/22). Morris claimed her property should be classified agricultural, and not commercial. This 34.61-acre site has 17,500 sf of concrete, a power pole, and a mobile office for their excavating business. The Board of Review presented photos of the business signage, web pages identifying the property as a recycling yard with business hours for dumping and buying materials, public records stating the company doesn't hold an interest in ag land and isn't a family farm corporation, and evidence of the property's increasing use for business and declining use for crops. Morris argued the classification is wrongly based on the concrete driveway since there is no building, but PAAB said the property's current use, and not the existence (or absence) of buildings, is what's important for classification. Morris provided no evidence of the nature and extent of ag activity, or that farming activities were done with a good faith intent to profit. PAAB affirmed the commercial classification.

Fridolfson v. Humboldt County Bd. of Rev. (PAAB 7/20/22). Fridolfson (who was also a Board of Review member) claimed his property (a hardware store, shop, and office) was over-assessed at $1.1 million. He alleged the assessment was based on his $1 million-plus mortgage. Fridolfson claimed the actual value was $800,000 even though his expert's value was $885,000 and the Board's expert value was $1.15 million. PAAB took issue with his expert's sales, which were 75-90% smaller than the subject, they didn't have the same retail use as the subject, they were inferior in quality and condition (some had no interior finish, others had lower quality finish than the subject; some lacked heating and cooling; and one had dirt floors), and he didn't make any adjustments for these differences. PAAB affirmed the assessment.

Beane v. Marshall County Bd. of Rev. (PAAB 2/24/22). Beane owned a 30-acre farm field with an average CSR rating of 76.87. He claimed the assessment was in error due to an excessive CSR rating. In 2001, up to 30 feet of

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soil had been stripped from the land for use as a borrow pit in constructing Highway 30. Beane bought the land in 2006 after a small amount of topsoil was replaced. In 2007, the county lowered the CSR to a rating of 10 for a period of 10 years. At trial, Beane showed the land's limited productivity through yield maps. The Assessor testified to using the most recent soil survey (updated 6/10/20), and that he had consulted with the IDOR and was instructed that none of the special considerations for adjusting cropland in the Manual (page 2-27) applied to the property. In other words, the Assessor had no authority to adjust the property. Nevertheless, PAAB found the soil survey inaccurately represented the property's productivity due to effects of the highway project, so it ordered a 50% adjustment to 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: Legislative Changes

by Jamie Cox

Effective July 1, 2022, a Board of Review member who is removed from their position is ineligible for appointment to any Board of Review for six years. Iowa Code § 441.32(3).

Effective July 1, 2022, the law is amended to provide that, in addition to a board of supervisors or city council, a city or county attorney or other official of the county or assessing jurisdiction (i.e., an Assessor) may provide written notice of intent to appeal an equalization to the Department of Revenue. The notice of appeal must be given within ten days of the DOR's notice. The law then requires the DOR to schedule a hearing on the proposed adjustment, and it specifies the allowable formats for the hearing or written presentation of the appeal. Appeals of proposed adjustments are not subject to Iowa Code Ch. 17A. Iowa Code § 441.48.

Effective for fiscal years beginning July 1, 2023, annual appropriations from the Business Property Tax Credit Fund under Iowa Code § 426C.2 (for commercial, industrial, and railway property) are eliminated. The money remaining in the fund on 6/30/22, was transferred to the general fund of the State. Iowa Code Chapter 426C is repealed on July 1, 2024.

Previously, Iowa Code § 441.21 imposed a "rollback" on commercial, industrial, and railway property of 90% for assessment years beginning January 1, 2014. The amount and method of calculating the rollback is modified beginning with assessments on January 1, 2022. Instead of a uniform percentage of value, the portion of actual value at which each commercial property is assessed is the sum of (1) an amount equal to the product of the residential rollback percentage multiplied by the property's actual value up to $150,000 plus (2) an amount equal to 90% of the property's actual value that year above $150,000. The law includes a similar provision for industrial property, and railway property is determined the same as commercial property.

The Property Owner Rule: A Property Owner May Testify to the Value of Their Own Property, but Probably Not Comparable Properties

by Jamie Cox

A recent decision from the Iowa Supreme Court, although not a property tax assessment case, is instructive on a property owner's right to testify about the value of their own property. The Court in *In the Matter of the Condemnation of Certain Rights in Land for the Extension of Armar Drive Project by the City of Marion, Iowa, v. Rausch*, 974 N.W.2d 103 (Iowa 2022), held that a non-expert could testify to the value of commercial property owned by his mother's trust, based on the presumption that an owner will be familiar with their own property and know its value. But he was not allowed to testify about the value of allegedly comparable properties because he was not an appraiser or real estate agent (he was a former restaurant manager), he had never bought or sold any real estate himself, and his only experience was helping his mother buy two pieces of farmland. The Court made clear, however, that the admissibility of non-expert testimony on comparable sales must be made on a case-by-case basis. Therefore, Assessors should be sure to contact their legal counsel with any questions about whether a particular owner is qualified to testify about comparable sales at trial.

Staying Current on Property Tax Assessment Matters

by Jamie Cox

Frank W. Pechacek, Jr. and Jamie L. Cox are frequent authors and guest speakers on property tax assessment matters. Mr. Pechacek and Mr. Cox presented on Politics in the Assessor's Office at the ISAC Annual Conference for the ISAA on August 25, 2022 in Des Moines. They taught a Board of Review Workshop for the Northeast District ISAA on April 20, 2022 at Wartburg College in Waverly, Iowa. They will teach an upcoming Board of Review Workshop for the Southwest District ISAA at Iowa Western Community College in Atlantic, Iowa on March 31, 2023.

What to do? The Taxpayer did not List any Grounds of Protest!

by Jamie Cox

A taxpayer protests to the Board of Review but does not mark any grounds on the protest form. Did the taxpayer make a simple mistake by not choosing the ground of protest, or was it something more—dare I say a strategic decision to keep the Board and the Assessor on their toes? Perhaps the taxpayer knows the Iowa Code allows them to change their grounds of protest on appeal to the District Court or PAAB. But when no grounds are chosen, does the taxpayer even have the right to appeal? It depends on the facts of each case.

Iowa Code § 441.37 says, "The protest must be confined to one or more of the following grounds: …" The IDOR-approved protest form says, "Complete all grounds that apply".

Courts used to strictly require taxpayers to timely file their protests and state the grounds of protest, or else the protests would be deemed invalid. But the Supreme Court over the past 10 years has allowed some taxpayers to file what previously would have been untimely protests. *See MC Holdings, LLC v. Davis County Board of Review*, 830 N.W.2d 325 (Iowa 2013); and *Keo Rental, LLC v. Van Buren County Board of Review*, 833 N.W.2d 224 (Table) (Iowa 2013). In those cases, the two taxpayers had the same attorney who mailed the protest petitions to the wrong counties (the Davis County protest was sent to Van Buren County, and vice versa). After the Boards denied the protests, the taxpayers provided the Boards with the correct petitions and asked the Boards to reconsider the denials. The Boards refused, because allowing this untimely filing would open the door to future untimely filings by other taxpayers. The Court said the Boards abused their discretion by not reconsidering the corrected protests. The key fact in these cases was that the taxpayers asked the Boards to reconsider.

The result may be different in other cases where a taxpayer's petition is timely filed, but it does not mark any ground for protest. For example, if no grounds are marked, the taxpayer doesn't ask for an oral hearing (or is a no-show), and the taxpayer doesn't provide any supporting documentation with the protest, then the Board cannot possibly know the intended ground of protest. Under these circumstances, the Board can deny the protest for lack of jurisdiction. Note: If the Board sends the denial to the taxpayer at the end of the Board session, then there is no time for the taxpayer to ask for reconsideration.

But what happens if no grounds are marked, and the taxpayer explains their intended ground for protest at the oral hearing? Or, what if the taxpayer attaches documentation to the petition that would support one of the grounds? The Board could still deny these protests for lack of jurisdiction because no ground was timely identified. But, in these scenarios, the Board should be aware the Court or PAAB could find the Board abused its discretion by not allowing the taxpayers to amend the protests to add the intended grounds. The Court/PAAB may not be correct in doing so, but it could happen.

A recent PAAB decision sheds some light on how PAAB would rule. In *Glen Harbor Holdings, LLC v. Pottawattamie County Bd. of Rev.* (10/5/22), Glen Harbor failed to specify any grounds of protest in its protest petition. PAAB recognized that the failure to list the grounds of protest frustrated the statute's purpose. PAAB said although Iowa case law has opened the door for amendments to protests (*McHoldings* and *Keo*), there is no evidence that occurred here to remedy the protest's deficiencies, nor are there any accompanying documents to clarify the grounds of protest. Glen Harbor didn't substantially comply with the statute, so the appeal was dismissed.

Who's the Boss? How the Assessor Can Take (and Keep) Control of Their Office

by Jamie Cox

We are frequently contacted by Assessors when their boards of supervisors (BOS) overstep their boundaries concerning the independence of the Assessor's office, especially relating to hiring office staff. Many of the county hiring policies we have seen or heard about do not comply with Iowa law when applied to the Assessor's office.

Some of these hiring policies contain clauses such as: "Whenever the provisions of this policy are in conflict with Iowa Code, the provisions of the laws or regulations shall prevail." But even when advised that a policy violates an Assessor's rights, some counties refuse to change their policies for the Assessor's office.

It is common that a BOS (or auditor or conference board) believes that if the Assessor's office is located in the courthouse, then the BOS gets to control the Assessor like it does other county officers. But this is not true. The Assessor's office is almost entirely independent of the BOS. The BOS is but one vote on the conference board, and the Assessor is not directly supervised or controlled by the BOS. Instead, Assessors are directly supervised by conference boards. Iowa Code § 441.16. Any action by the BOS to unilaterally control the Assessor is improper.

Although a conference board may evaluate the Assessor's handling of personnel matters, even the conference board is not responsible for, or authorized to handle, the day-to-day internal operations of the Assessor's office. The Assessor has control over their office, including personnel matters (hiring and firing employees, employee policies and procedures, personnel files, employment handbooks, etc.), subject only to budget limitations.

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Willson & Pechacek, P.L.C.
Newsletter

Willson & Pechacek, P.L.C.
421 West Broadway, Suite 200
Council Bluffs, Iowa 51503
(712) 322-6000
Website: www.willsonpechacek.com
Email: info@willsonpechacek.com

Branch Offices:
Carroll, Iowa (712) 792-0001
Clarinda, Iowa (712) 542-2141
Harlan, Iowa (712) 755-1111
Oakland, Iowa(712) 482-6999
Onawa, Iowa (712) 423-1652
Treynor, Iowa (712) 487-3444

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Employees in the Assessor's office serve at the behest of the Assessor. Office personnel are appointed by the Assessor, subject only to the budget limitations. The Assessor also selects field persons, so far as possible, from the eligible list of deputy assessors. And the Assessor's staff "serve at the pleasure of the Assessor." Iowa Code § 441.13; 1950 OP. Attorney Gen. 99, 102. Authority rests with the Assessor, and not with anyone else, over advertising, recruitment, applications, screening, interviewing, selection, and hiring of employees.

Similarly, Assessors hold the power to appoint deputy assessors, designate a chief deputy, and assign to each deputy assessor their duties, responsibilities, and authority. Assessors may suspend or discharge deputy assessors for neglect of duty, disobedience of orders, misconduct, or failure to properly perform duties. Iowa Code § 441.10. Clearly, a deputy assessor's appointment and tenure are the prerogative of the Assessor. 1961 WL 111811 (Iowa A.G.).

Another issue that arises frequently concerns the payment of Assessor's office expenses. By law, individual expenses of the Assessor's office are not subject to review, approval, or denial by anyone, including the auditor and the BOS. The BOS' only role is to pay the Assessor's office expenses "as is" if they are legal. 1949 WL65364 (Iowa A.G.). Chapter 441 gives only the Assessor the power to monitor, approve, or disapprove expenses in the budget. 1989 WL 264896 (Iowa A.G.); Iowa Code § 441.16; 1961 WL 111704 (Iowa A.G.).

Iowa Code § 441.16, entitled "Budget", creates the "assessment expense fund" and states the auditor "shall issue warrants thereon only on requisition of the assessor." In other words, the Assessor's request for payment is all that is required for the auditor's payment from the expense fund. Op.Att'y Gen. # 80-7-12; 1989 WL 264896 (Iowa A.G.).

Even in the conference board's budget authorization role, it does not approve specific expenses as they arise throughout the year. 1989 WL 264896 (Iowa A.G.). Therefore, it would negate the legislative distribution of functions for the auditor or the BOS to control the Assessor's budget by reviewing, allowing, or disallowing specific expenses.

Assessors should contact their legal counsel with any questions about the right to control their office.