Willson & Pechacek, P.L.C. Newsletter

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Year in Review

by Jamie Cox

In 2018, as in 2017, the Iowa Supreme Court and Court of Appeals did not decide any property tax assessment appeals. The Iowa Property Assessment Appeal Board ("PAAB") decided 153 appeals in 2018 (as compared to 121 appeals in 2017). These appeals included 92 inequitable assessment claims, 104 market value claims, 8 misclassification or exempt claims, and 17 error claims. There were no fraud claims. A select few of the appeals are discussed below.

Randy & Ronnie Hunt Partnership v. Woodbury County Board of Review (May 23, 2018). The taxpayers claimed an error in the assessment of their farmland due to inaccuracies in the CSR2 rating system. Specifically, the Luton soil type rating increased too much (59%) when the system converted from CSR to CSR2, which skewed the per point assessment. Iowa law requires ag property be assessed based solely on the soils' productivity and net earning capacity, including corn suitability ratings (CSR). CSR2 considers the soil type, particle size, water holding capacity, field conditions, soil depth, and rate of erosion. Only in unusual circumstances may land require additional adjustments. The taxpayers showed that while their land does not flood, it is prone to ponding from rainfall due to the clay soil type. An Iowa State University agronomy professor agreed the Luton soil type is rated too high, resulting in an overvaluation of the land because the CSR2 soil survey eliminates the rainfall classification and does not account for ponding. The Assessor sought advice from the Dept. of Revenue, but was advised this was not a "unique and unusual" situation for an adjustment. PAAB noted the Assessor is required to utilize the existing rating system, and that despite the soil types being rated too high, the Web-based Soil Survey is the official modern soil survey and is to be considered completely accurate. Therefore, PAAB found no error in the assessment.

Community Housing Initiatives, Inc. v. Polk County Board of Review (July 11, 2018). The taxpayer (CHI) filed appeals concerning two residentially-classified multi-family properties and an administrative office building. First, CHI claimed the apartments were exempt under Iowa Code § 427.1(21), which provides an exemption for property owned or controlled by an IRS-recognized non-profit that provides low-rent housing for the elderly and disabled. The exemption is allowed until the final payment due date of the borrower's original low-rent housing development mortgage or until the sooner of when the mortgage is paid in full or expires. PAAB rejected CHI's apartment exemption claim because there was no evidence of when the mortgage or promissory note would be paid in full or expire. Second, CHI claimed the office building was exempt under Iowa Code § 421.1(8), which provides an exemption for property owned or leased by charitable, benevolent, educational, and religious organizations. CHI believed its office building was exempt by virtue of activities taking place at the apartments and other properties. PAAB, however, held that since the apartments did not qualify for the exemption, then the office building also did not qualify. PAAB found that CHI was not a charitable institution and the property was not used solely for charitable purposes.

Genuine Parts Company v. Pottawattamie County Board of Review (August 29, 2018). The taxpayer (NAPA Auto Parts) alleged its commercial property was inequitably assessed and assessed for more than authorized by law. NAPA offered an income approach to value and a comparative assessment analysis of retail properties developed by its tax representative. NAPA did not offer a sales comparison approach to value. For its inequity claim, NAPA failed to show the property was assessed in a non-uniform manner. Rather, NAPA only compared the property's assessment with comparable property assessments, which PAAB found insufficient to prove inequity. NAPA then tried to base its inequity claim on the sale of a single comparable property, which PAAB rejected. With regard to the over-assessment claim, NAPA did not utilize any comparable sales, but again tried to adjust assessed values of comparable properties, which is not a recognized methodology. PAAB affirmed the Board of Review.

Warren Distribution, Inc. v. Pottawattamie County Board of Review (September 6, 2018). The taxpayer (WDI) appealed its commercial property assessment on the ground that it was assessed for more than the value authorized by law. WDI did not complete the cost and income approaches to value, stating that sufficient and reliable sales data was available under the sales comparison approach to draw reasonable, supportable, and credible conclusions of value. Much to PAAB's dismay, however, WDI was unable to produce credible *quantitative* adjustments

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Reminder: PAAB Rule Changes

by Jamie Cox

PAAB made several changes to its administrative rules for appeals filed after January 1, 2018. Some of these changes are highlighted below.

Grounds for Appeal. Taxpayers can plead new grounds in PAAB appeals, even if those grounds were not raised in the protest to the Board of Review. This change brings the PAAB rules into conformity with the changes to the Iowa Code and Regulations. PAAB will consider the selections made on the appeal form as well as the substance of the taxpayer's statement. Since it is often difficult to ascertain what grounds are being pleaded, the Board of Review may file a motion with PAAB to make the taxpayer clarify the grounds. This motion should be filed as soon as possible before the hearing is scheduled.

Burden of Proof. The initial burden of proof is on the taxpayer to prove its grounds. If the taxpayer offers competent evidence that the market value is different than the assessed value, then the burden shifts to the Assessor or Board of Review to prove the assessed value is correct. The PAAB rule is now consistent with the Iowa Code and Regulations.

Answer. The Board of Review's attorney or representative now has 30 days after service of the notice of appeal to file an answer to the appeal (the old rule was 21 days). It is no longer required that the taxpayer's protest to the Board of Review, the final decision of the Board of Review, and the notice of assessment be attached to the answer.

Exhibits. The Board of Review must have at least three exhibits in every appeal: Exhibit A: the subject property's property record card after implementation of the final decision of the Board of Review, including the cost report (the Vanguard cost report showing line-item values is sufficient, where applicable); Exhibit B: the final decision of the Board of Review; and Exhibit C: the taxpayer's petition to the Board of Review (this includes all attachments, letters, or memos that further detail the taxpayer's claims, but does not need to include all evidence provided by the taxpayer). Further, the rules no longer require submission of three hard copies of exhibits to PAAB.

Judicial Notice of Property Record Cards. Without additional notice to the parties, PAAB may take judicial notice of the property record cards or cost reports of the subject property and comparable properties identified by the parties if electronically available to the public through the assessor's Web site. If PAAB takes judicial notice of any property record card or cost report, such card or report shall become part of PAAB's official agency record for the appeal.

Judicial Review. A party may seek judicial review of PAAB's decision by filing a petition for judicial review with the clerk of the district court within 30 days after PAAB's decision (the old rule was 20 days).

Assessors should contact their legal counsel with any questions about these rules and how they apply to their PAAB appeals.

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to its comparable sales and, therefore, relied only on a *qualitative* analysis. PAAB found that although Iowa law does not categorically prohibit relying on qualitative analysis, it diminishes the ability to determine the credibility of adjustments that would aid in determining the comparability and resulting reliability of the sales. For this reason, a qualitative analysis is best used alongside other valuation approaches. The Board of Review did not present any evidence or testimony, and PAAB found WDI failed to support its claim.

Ronald Downing, Sr. v. Wapello County Board of Review (November 1, 2018). The taxpayer appealed its residential assessment on the grounds that it was assessed for more than authorized by law and there was an error in the assessment. It was undisputed that the house was incorrectly measured, and an amended property record card corrected the error. The Board of Review submitted an appraisal, but PAAB declined to rely on it because the appraiser's methodology combined the age and size adjustments and, thus, may not account for all of the differences between the subject and comparable properties. Further, the assessment and the appraisal valued the improvements as if they were situated on only one parcel. In reality, the improvements were spread out over three parcels that combined to operate as a single residential unit. PAAB found that the taxpayer did not support his over-assessment claim, and that the error claim was corrected. Finally, PAAB stated without presumption of how such a change may impact value, that the taxpayer and Assessor should review whether the subject parcel should be combined with the two adjoining parcels for assessment purposes so that there are no future problems with such things as tax redemptions and sales.

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

Care Initiatives Litigation

by Jamie Cox

In 2017, Care Initiatives launched statewide appeals of its nursing home properties in at least 25 counties seeking rulings that the statutory amendment adding a multi-residential property classification under Iowa Code § 441.21(13) beginning with the 2015 assessment year was inapplicable to Care Initiatives' assisted living facilities currently classified as residential under Iowa Code § 441.21(11). The importance of the classification is grounded in the fact that residential property receives a greater rollback than multi-residential property when calculating property tax liability.

Iowa Code § 441.21(11) provides that beginning January 1, 1995, '"residential property' includes all land and buildings of multiple housing cooperatives organized under chapter 499A and includes land and buildings used primarily for human habitation which land and buildings are owned and operated by organizations that have received tax-exempt status under section 501 (c)(3) of the Internal Revenue Code and rental income from the property is not taxed as unrelated business income under section 422.33, subsection 1A."

Iowa Code § 441.21(13) provides that beginning January 1, 2015, … assisted living facilities … shall be valued as a separate class of property known as multiresidential property …" An 'assisted living facility' is defined as property for providing assisted living as defined in section 231C.2. 'Assisted living facility' also includes a health care facility, as defined in section 135C.1, an elder group home, as defined in section 231B.1, a child foster care facility under chapter 237, or property used for a hospice program as defined in section 135J.1.

In Guthrie County, Care Initiatives and the Board of Review filed competing motions for summary judgment. Care Initiatives argued that the property was misclassified as multi-residential property and should be changed back to residential property. After undertaking a statutory interpretation and reviewing the legislative history and intent, PAAB sided with Care Initiatives.

The Board of Review appealed the decision to the Guthrie County District Court. The sole issue on appeal was whether the property should be classified as residential property under Iowa Code § 441.21(11) or as multi-residential property under Iowa Code § 441.21(13). The Court engaged in a *de novo* review to determine whether PAAB erred as a matter of law in concluding that the property should be classified as residential and not multi-residential.

The Court determined that the Department of Revenue's informal interpretations were conflicting, and so it examined the legislative intent and the statutory language to conclude that placing the property within subsection 11 gives effect to the entire statute, whereas placing the property in subsection 13 would make subsection 11 obsolete. Ultimately, the Court found that Care Initiative's nursing home property falls under the 501(c)(3) exception in Iowa Code § 441.21(11) and should be classified as residential property.

Guthrie County did not appeal the District Court ruling, so the ruling is now a final and binding judgment in the Guthrie County appeal. It remains to be seen how the Care Initiative appeals will be resolved in the other counties, although it is anticipated that they will fall in line with the Guthrie County ruling. Assessors should contact their legal counsel with any questions about how the Guthrie County District Court decision may affect their Care Initiatives appeal.

Reminder: Revised Department of Revenue Regulations

by Jamie Cox

In 2017, the Iowa Legislature amended the property tax assessment statute in ways that fundamentally affected how protests and appeals are handled by all Assessors and Boards of Review. These amendments were explained in Willson & Pechacek, P.L.C.'s 2018 Assessor Newsletter. In 2018, the Department of Revenue made changes to its regulations to bring them into compliance with the new statutory provisions. These regulatory changes became effective on May 30, 2018, and can be found at IA ADC 701-71.20(441) and IA ADC 701-71.21(421,17A). Assessors should contact their legal counsel with any questions about these regulations and how they apply to their assessment protests and appeals.

Willson & Pechacek, P.L.C.
Newsletter

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Proposed Bill Would Change Burden of Proof and Require Payment of Appeal Costs

by Jamie Cox

If passed, 2017 Iowa House File No. 2373, introduced on February 15, 2018, would have made some changes to the way property assessment appeals are litigated. Thankfully, the bill was not signed into law, but it does highlight potential future issues.

First, beginning with protests and appeals on January 1, 2019, the bill would have placed the burden of proof on the Assessor to demonstrate that the assessment is not excessive, inadequate, inequitable, or capricious. Under the current law (as enacted in 2017), the burden of proof is on the taxpayer until the taxpayer offers competent evidence that the market value of the property is different than the market value determined by the assessor, and then the burden shifts to the Assessor to uphold the valuation.

Second, beginning with the second assessment year after January 1, 2019, the Assessor would be required to reimburse a percentage of a taxpayer's costs if the amount of the assessment was reduced on protest or appeal, equal to the percentage by which the assessment is reduced. The reimbursement would come from the assessment expense fund. Reimbursable costs would include, but would not be limited to, legal fees, appraisal fees, and witness fees. Under the current law, each party is responsible for their own costs of the appeal.

Third, the bill would have required review and approval by the county attorney before the Conference Board can hire outside legal counsel to represent the Board of Review. Under current law, the Conference Board may employ special counsel in assessment matters without obtaining permission from the county attorney. In practice, most Conference Boards have good working relationships with their county attorneys that foster cooperation and an understanding that outside counsel is frequently needed for complex assessment matters.