Willson & Pechacek, P.L.C. Newsletter

Assessors Special Issue | **March 2017**

Year in Review

by Jamie Cox

In 2016, the Iowa Supreme Court decided one property tax assessment appeal, the Iowa Court of Appeals decided two appeals, and the Iowa Property Assessment Appeal Board ("PAAB") decided 202 appeals. Each appellate court decision and a select few of the PAAB decisions are summarized below.

Warren County Board of Review v. PAAB (Iowa Ct. App., Feb. 10, 2016). The Board of Review ("Board") affirmed the Assessor's reclassification of five lots from residential to commercial properties, which significantly increased the property tax liability. The Taxpayer appealed to PAAB, which reversed the decision and returned the properties to the residential classification. The Board then appealed to the District Court and asserted that the Board lacked notice of the taxpayer's true claim because the misclassification ground was not raised *in writing*. The District Court, and then the Court of Appeals, rejected the Board's contention, finding that the Board had actual notice of the taxpayer's true claim because the taxpayer's representative unequivocally expressed a desire to have the land classified as residential instead of commercial.

Wellmark, Inc. v. Polk County Board of Review (Iowa Sup. Ct., Feb. 12, 2016). This decision establishes a standard for Assessors to use when determining the assessed value of new buildings. The issue in this appeal was whether Wellmark's property should be valued as if it were a multi-tenant office building (the most likely use that would result if it were sold), or according to its current use (a single-tenant corporate headquarters building). Wellmark contended there was no market for an oversized corporate headquarters building in Des Moines, and claimed its building suffered from 52% obsolescence. The Court disagreed, finding there was a market for such a headquarters building, as evidenced by the fact that it was currently being used as one. In so holding, the Court adopted the view that value should be based on the presumed existence of a hypothetical buyer at its current use. In the absence of an active market for comparable properties, the Court determined that the cost approach was the most acceptable means of valuing the property. However, it rejected Wellmark's claim that its newly constructed building was 52% obsolete, and affirmed the original assessed value of $99 million.

Village Green Co-Op, Inc. v. PAAB (Iowa Ct. App., Oct. 12, 2016). This appeal involved an apartment complex in Des Moines assessed at $1,986,000. The taxpayer appealed to PAAB after the Board denied the protest. PAAB, after receiving evidence from each party, reduced the assessment by 1%. The taxpayer then appealed to District Court, contending that the Board's expert (1) rated the subject property as average instead of below average condition, (2) inadequately inspected the subject property, and (3) failed to downwardly adjust the sale prices of comparable properties that were in better condition than the subject property. The District Court affirmed PAAB, and the taxpayer appealed. The Iowa Court of Appeals also sided with the Board, finding that (1) the Board's expert properly rated the property as below average condition, (2) neither party's expert adequately inspected the property, but the Board's expert ultimately valued it correctly as below average condition, and (3) the Board's expert made proper adjustments, and the taxpayer's expert did not do a comparable sales analysis, so the Board's expert presented the best evidence in the record.

Brown v. Warren County Board of Review (PAAB, March 9, 2016). This appeal involved agricultural land with a dwelling and several outbuildings. The outbuildings were being used as an office, shop, and warehouse in the taxpayer's commercial implement dealership. The Assessor included two of the buildings in the dwelling value rather than applying the agricultural factor to those buildings. On appeal, the Board framed the question as "What are we to do with commercial property on agriculturally classified land?" To answer the question, PAAB examined the statutory assessment procedure. First, except for multi-residential realty, assessed property (land and buildings) can only have one classification. Second, when property is classified as agricultural, it includes all buildings thereon except a dwelling and improvements used in conjunction with the dwelling. PAAB determined that since the buildings were not being used in conjunction with the taxpayer's dwelling, the entirety of the property (except the dwelling) should be classified as agricultural.

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Denso International America, Inc. v. Black Hawk County Board of Review (PAAB, June 8, 2016). This appeal involved a typical value conclusion reached by one of the many tax representatives operating in Iowa. Paradigm Tax Group of Chicago, IL ("Paradigm"), represented the taxpayer in this appeal involving a commercial, metal warehouse property in Waterloo assessed at $1,363,110. The Board denied the protest, and the taxpayer appealed to PAAB. Paradigm identified six warehouse sales it deemed comparable to the subject property, and estimated adjustments based on their age and location. PAAB noted that Paradigm did not inspect any of the comparables and did not commission any appraisals. Instead, its adjustments were based on surveying the market, without a set formula or method. The Board submitted a letter from the Assessor that revealed Paradigm's sales lacked comparability, were dated, or were not normal arms'-length transactions. As a result, PAAB found the taxpayer's evidence failed to show its property was over-assessed.

Fejervary Health Care Center v. City of Davenport Board of Review (PAAB, June 24, 2016). McCollum Consulting of Fort Worth, TX ("McCollum"), represented the taxpayer in this appeal. The subject property is a nursing home operated on leased land in Davenport, and assessed at $2,117,100. The Board affirmed the assessment, and the taxpayer appealed to PAAB. The subject property was acquired by a parent company through a stock sale involving 150 properties when the seller went bankrupt. McCollum submitted a cost, income, and sales analysis as part of its evidence. PAAB rejected the values under each approach for the following reasons: (1) the cost approach omitted parts of the improvements, and did not explain how depreciation was determined; (2) the income approach reported odd operating expenses, did not explain how the capitalization rate was determined, and did not include any analysis of the market; and (3) the sales approach reflected values of underlying sites even though the subject building was on leased land, the sales were not adjusted for differences, and McCollum relied on the assessed values of the properties rather than the sale prices. As a result, the taxpayer did not submit sufficient evidence to prove its over-assessed claim.

Reisz v. Harrison County Board of Review (PAAB, July 8, 2016). This appeal involved a dispute over the proper classification of property with residential and agricultural uses. The taxpayer's property was a brick, one-story home sitting on a 15-acre site in a rural subdivision. The taxpayer operated a complex organic aronia berry farm on a majority of the site, which was classified as residential. The taxpayer protested on the ground that the property was agricultural. The Board upheld the assessment, and the taxpayer appealed to PAAB. The main dispute was whether the property was being primarily used for agricultural purposes. PAAB recognized that covenants and zoning ordinances existed for the property, but Iowa law requires the focus to be on the actual, present use of the property. Therefore, whether or not the property completely conformed with zoning ordinances or covenants, PAAB's sole task was to determine its classification following the rules, which state that "land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees." PAAB held that the property should be reclassified as agricultural property.

Templeman v. Cass County Board of Review (PAAB, July 25, 2016). This appeal involved property in Atlantic assessed at $56,520. The Board denied the pro-se taxpayer's protest, who then appealed to PAAB. At the PAAB hearing, the taxpayer did not offer competent evidence of the property's value. However, rather than decline to put on evidence, the Board submitted an appraisal to rebut the taxpayer's evidence (or lack thereof). The problem was the Board's expert valued the property below assessed value. PAAB found the property was over-assessed and ordered the value set at $53,000 (the expert's sales approach value). The Board filed motions to reconsider and to reopen the evidence. The Board first took issue with PAAB's reliance on the appraisal, arguing the assessment must be affirmed since the taxpayer failed to shift the burden of proof to the Board. Second, the Board alerted PAAB to the taxpayer's recent contract sale of the property for $59,000, which necessitated an upward adjustment to value. PAAB rejected the Board's contentions. First, a taxpayer's failure to shift the burden of proof does not automatically result in the assessment being affirmed. PAAB must review all of the evidence regardless of who introduced it. Although the Board was not obligated to present evidence to support the assessment, its decision to offer the appraisal was a strategic choice and, once in the record, PAAB could not ignore that the assessed value exceeded the appraised value. Second, not all contract sales require upward adjustments. Depending on the facts, some require downward adjustments or no adjustments at all. Here, PAAB found that a downward adjustment was necessary since the sale price was originally $50,000 before converting the sale to a contract sale upon the buyer's inability to get bank financing, and due to the resultant risk to the taxpayer of acting as the financier. PAAB affirmed its order setting the assessed value at $53,000.

For a copy of any of these decisions, or to discuss the impact the decisions may have on the defense of appeals in future cases, Assessors should contact their legal counsel.

Beware of Open Meetings Laws

by Jamie Cox

On December 21, 2016, the Iowa Court of Appeals decided a case that should raise concerns for members of governmental boards, commissions and councils. In *Olinger v. Smith*, 2016 WL 7403739 (Iowa Ct.App. 2016), three Harrison County supervisors serving as trustees of a drainage district were ordered to pay thousands of dollars in attorney fees and fines for unknowingly violating the Iowa Open Meetings Act, Iowa Code Chapter 21 (IOMA).

During the fall of 2013, the trustees were determining whether or not to rebuild a levee to hold back Missouri River flood waters. A group of local farmers were upset after the levee failed in 2011 and flooded their farms. Two of the farmers had their attorney send a letter to the trustees threatening legal action. Based upon advice given by their legal counsel, the trustees determined any discussion of the litigation should not be in an open meeting. Therefore, at the board of supervisors' weekly meeting, the trustees entered a closed session and discussed the letter. No specific action was discussed. Similarly, at the next weekly meeting, the trustees went into closed session to discuss threatened litigation for six minutes. No specific action was discussed. Again, this was pursuant to legal advice given by counsel to the trustees.

The two farmers filed a lawsuit alleging both closed sessions violated IOMA. The District Court ordered each trustee to pay a $100 fine, but later suspended the fine if each trustee purchased an "Open Meetings, Open Records" handbook. The farmers then appealed. The Court of Appeals found that the trustees' legal counsel was not present at either meeting, and clarified that a closed session requires the presence of counsel at the meeting in order to satisfy the requirement to discuss strategy with counsel under IOMA.

The case was remanded to the District Court for trial. The District Court did not explicitly state a violation of IOMA occurred. Instead, it found: (1) closed meetings occurred, (2) the closed meetings were held on advice of counsel, (3) the trustees intended to comply with the open meetings law, (4) the trustees substantially complied with the open meetings law, and (5) whether or not a violation occurred, the trustees' actions were made in good faith in attempting to comply with the open meetings law. Having made these findings, the District Court taxed the drainage district with costs including the farmers' attorney fees. The farmers and the trustees appealed.

Under IOMA, meetings of governmental bodies, such as the drainage district, must be held in open session unless closed sessions are expressly permitted by law. Iowa Code § 21.3. A closed session may lawfully be held under certain enumerated exceptions, such as to discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation. Iowa Code § 21.5(1)(c).

Here, however, no attorney was present at the meetings. The Court of Appeals held that while the trustees may well have been unaware that their actions violated IOMA, ignorance of the legal requirements of IOMA is no defense. Iowa Code § 21.6(4). As a result, the trustees did not substantially comply with the requirements of IOMA. Further, the Court of Appeals found that although the trustees' actions were well-intended, good intentions do not equate to a good faith belief in facts that, if true, would have indicated compliance with IOMA. Iowa Code § 21.6(3)(a)(2). Accordingly, attorney fees of nearly $25,000 and a fine of $200 each were assessed against the trustees.

This decision should serve as a reminder that IOMA has teeth by which members of boards of review, conference boards, and other governmental boards, commissions and councils do not want to be bitten. For a copy of this decision, or to discuss the impact the decision may have on a particular governmental body, please contact your legal counsel.

Willson & Pechacek, P.L.C.
Newsletter

Willson & Pechacek, P.L.C.
421 West Broadway, Suite 200
P.O. Box 2029
Council Bluffs, Iowa 51502
(712) 322-6000
Website: www.willsonpechacek.com
Email: info@willsonpechacek.com

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

Assessments of Solar Energy Property

by Jamie Cox

On May 18, 2016, the Iowa Department of Revenue ("Department") issued a memorandum to Assessors about their responsibility to determine when solar energy property is not locally assessed and to report the property to the Department. It also addressed the distinction between the valuation requirements for solar energy systems in Iowa Code §441.21(8)(b) and (d).

To determine whether property that generates electricity is subject to local assessment, Assessors must investigate whether the property is generating energy that is consumed by someone other than an owner, shareholder, member, beneficiary, partner, or associate of the person generating the electricity. Iowa Code §437A.3(27). If so, the electricity is subject to the replacement tax and the property generating the electricity is not locally assessed. Iowa Code §437A.6(1); §437A.16; §437A.3(27). However, solar energy property that only makes inadvertent and unscheduled deliveries to the power grid is not subject to the replacement tax. Id. §437A.3(27). Once Assessors have determined that solar energy property is subject to the replacement tax, they must notify the Department pursuant to Iowa Code §441.17(9).

Further, Assessors must disregard the value of certain property containing solar energy systems. For example, Iowa Code §441.21(8)(b) mandates a five-year exclusion of the value of solar energy system property from the assessment value of the property. Iowa Code §441.21 (8)(d) permanently excludes from assessed value any increase in market value of a building attributed to the fact that the building contains a solar energy system. After the five years have expired, the actual value of the solar energy system property must be included in the assessed value of the overall property, but the market value added to a building due to the fact that the property contains a solar energy system is not included in the assessed value at any time.

Assessors should be sure to contact their legal counsel with any questions about the assessability of solar energy property.