

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Norma Wiener**

Petitioner-Appellant,

v.

**Bremer County Board of Review,**

Respondent-Appellee.

**ORDER**

**Docket No. 09-09-0074  
Parcel No. 09-02-181-002**

**Docket No. 09-09-0075  
Parcel No. 09-02-181-001**

**Docket No. 09-09-0076  
Parcel No. 09-02-180-003**

**Docket No. 09-09-0077  
Parcel No. 09-02-180-002**

**Docket No. 09-09-0078  
Parcel No. 09-02-181-003**

On October 6, 2009, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Norma Wiener, was represented by Richard Millspaugh, a tax consultant of Savage and Browning, LLC. The Bremer County Board of Review designated County Assessor Jean A. Keller as its representative. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Norma Wiener is the owner of five commercially classified parcels all located in Waverly, Iowa. The five parcels combine to create one commercial complex with the majority of the improvements situated on parcel number 09-02-181-001. The improvement is a three-story structure

built in 1934. The base of the improvement, per the property record card, is 12,440 square feet with a total gross building area (GBA) of 37,450. There is an additional 8,000 square feet of finished space in the basement. The improvement (and all parcels under appeal) is currently utilized as office space for a single tenant.

Mrs. Wiener appealed to the Bremer County Board of Review regarding the 2009 total assessment for all five parcels of \$1,439,900. She is seeking relief of \$639,900 based upon the difference between the total assessed valuation and the total purchase price of \$800,000. The 2009 assessments, allocated to each parcel under appeal, are as follows:

**Figure 1**

Address	Docket #	Parcel #	Site Size (SF)	Improved	2009 Assessed Values		
					Land	Improvement	Total
217 1st St SE	09-09-0074	09-02-181-002	8,712	Asphalt	\$12,840	\$7,590	\$20,430
201 1st St SE	09-09-0075	09-02-181-001	34,848	3Sty w/Bsmt	\$51,360	\$1,264,230	\$1,315,590
1st St SE	09-09-0076	09-02-180-003	15,540	Asphalt	\$27,080	\$10,880	\$37,960
1st St SE	09-09-0077	09-02-180-002	14,430	Asphalt	\$26,600	\$13,760	\$40,360
221 1st St SE	09-09-0078	09-02-181-003	8,712	Asphalt/Garage	\$12,840	\$12,810	\$25,650
					<b>Total Assessed Value</b>		<b>\$1,439,990</b>

Mrs. Wiener claimed in all five appeals to the Board of Review that the parcels are assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), stating that the total assessed value of all five parcels combined had a value of \$800,000 based upon an October 2008 purchase price; and that there has been a downward change in value, under section 441.35.

The Board of Review denied the protests, citing insufficient evidence was presented to prove a change in value since the last assessment.

Mrs. Wiener then appealed to this Board. Mrs. Wiener renewed her claims that all five parcels are assessed for more than the value authorized by law and that there has been a downward change in value. However, Mrs. Wiener also asserted the entirety of the discrepancy between the total 2009 assessment of \$1,439,990 to the total contended value of \$800,000 should be allocated solely to parcel

number 09-02-181-001 (201 1st St SE) – which is improved with the three story office building.

Wiener seeks total relief of \$639,990 to this Board, which was also the total relief sought at the Board of Review.

**Figure 2**

Address	Docket #	Parcel #	Site Size (SF)	Improved	Total Assessed	Total Contended to Board of Review	Total Contended to PAAB
217 1st St SE	09-09-0074	09-02-181-002	8,712	Asphalt	\$20,430	\$20,000	\$20,430
201 1st St SE	09-09-0075	09-02-181-001	34,848	3Sty w/Bsmt	\$1,315,590	\$700,000	\$675,600
1st St SE	09-09-0076	09-02-180-003	15,540	Asphalt	\$37,960	\$30,000	\$37,960
1st St SE	09-09-0077	09-02-180-002	14,430	Asphalt	\$40,360	\$30,000	\$40,360
221 1st St SE	09-09-0078	09-02-181-003	8,712	Asphalt/Garage	\$25,650	\$20,000	\$25,650
					<b>\$1,439,990</b>	<b>\$800,000</b>	<b>\$800,000</b>

Richard Millspaugh testified on behalf of Mrs. Wiener. Millspaugh contends that the purchase price of \$800,000 for the subject properties best reflects the market value of the property. He further contends that this sale was an arm’s length transaction.

Millspaugh provided a copy of the current lease on the subject real estate, which indicates CUNA Mutual Insurance Society as the lessee; Lone Star Equities as the assignor, and Norma Wiener as the assignee. Louis Wiener is the President of Lone Star Equities and is Norma Wiener’s spouse. Millspaugh testified that the property was purchased in October 2008 with the immediate intent of completing a 1031 exchange.

Millspaugh testified it is his belief that purchasing properties, even with immediate intent of completing a 1031 exchange, and the involvement of family members, it is still representative and reflective of an arm’s length transaction. We disagree and find that this is not an arm’s length transaction because of the unadjusted 1031 exchange; the relationship of the parties in the transaction, and additionally, that there is a lease-back in place as part of the purchase negotiations.

Millspaugh also testified that no appraisals have been completed on the subject properties. No other evidence was submitted by Millspaugh, other than the recent sale of the subject, to demonstrate that it is assessed at greater than market value.

Jean Keller, Bremer County Assessor, testified on behalf of the Board of Review. Keller stated plainly she did not consider the sale of the subject property in October of 2008 to be arm's length in nature and reflected a leaseback agreement. Keller stated that the assessed value of the subject property was developed based upon the cost approach to value and adjusted by market conditions. The property card submitted by the Board of Review prior to the hearing was not complete and did not contain the entire cost approach. The complete property card was requested by the Appeal Board.

After receiving the complete property card, Millspaugh contends that there should have been greater physical depreciation considered, as well as, additional "locational" obsolescence. However, Millspaugh does not provide any evidence that all forms of depreciation considered by the assessor were incorrect; or evidence supporting that his estimates were correct.

Keller also developed an income approach to value to further support the assessed value. Given the limited data available of similar style, age, and size properties for lease in the Waverly, Iowa market, the income approach presented is subjective and this is readily recognized and acknowledged by Keller. However, she stated that conservative numbers were utilized throughout the approach, and it still demonstrates a value of over \$1,700,000 which further supports that the current total assessed value of \$1,439,990 is not greater than market value.

After the record was closed, both parties attempted to submit additional information, however, this information was not considered by the Board.

Based upon the foregoing, the Appeal Board finds that insufficient evidence has been submitted by Norma Wiener to support claims that either individually or as a single real estate unit,

the parcels which are the subject of this appeal, are assessed at greater than market value or that there has been a downward change in value.

### *Conclusions of Law*

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). In *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289,290 (Iowa 1996), the Court determined that, "It is clear from the wording of Iowa Code section 441.21(1)(b) that the sales price of the subject property in a normal sales transaction, just as the sale price of comparable property, is to be considered in arriving at market value but does not conclusively establish that value." As noted by the testimony of the assessor, the subject's sale is not considered a normal arm's length transaction. We agree. Because the sale was a 1031 exchange and subject to a lease-back these are

factors that, when left unadjusted, are not normal in this case. Wiener fails to provide this Board with evidence that the current assessed valuations are more than authorized by law.

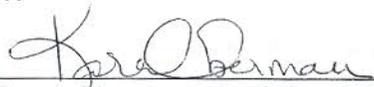
Weiner also protested on the ground that there had been a downward trend in value. The last numbered paragraph of Iowa Code section 441.37(1) and its reference to section 441.35(3) give rise to the claim of downward trend in value. *See Security Mut. Ins. Ass'n of Iowa v. Bd. of Review of City of Fort Dodge*, 467 N.W.2d 301, 304 (Iowa Ct. App. 1991). Wiener presented no evidence regarding this ground.

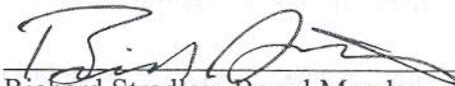
In the opinion of the Appeal Board, the evidence does not support the claims that the properties are assessed for more than the value authorized by Iowa Code section 441.21. We therefore affirm the assessment of the five parcels which are the subject of this hearing, as determined by the Bremer County Board of Review as of January 1, 2009.

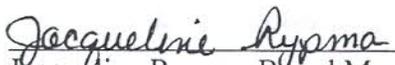
THE APPEAL BOARD ORDERS the assessments of the parcels owned by Norma Wiener, set forth as follows, as of January 1, 2009, set by the Bremer County Board of Review, are affirmed.

Address	Docket #	Parcel #	2009 Assessed Values		
			Land	Improvement	Total
217 1st St SE	09-09-0074	09-02-181-002	\$12,840	\$7,590	\$20,430
201 1st St SE	09-09-0075	09-02-181-001	\$51,360	\$1,264,230	\$1,315,590
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221 1st St SE	09-09-0078	09-02-181-003	\$12,840	\$12,810	\$25,650

Dated this 23 day of November, 2009

  
 Karen Oberman, Presiding Officer

  
 Richard Stradley, Board Member

  
 Jacqueline Rypma, Board Member

Richard Millspaugh  
Tax Consultant  
Savage and Browning  
8676 96<sup>th</sup> Street  
Suite 100  
Overland Park, KS 66212  
REPRESENTATIVE FOR APPELLANT

Kasey Wadding  
Bremer County Attorney  
415 East Bremer Avenue  
Waverly, Iowa 50677  
ATTORNEY FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>11-30</u> , 200 <u>7</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Handwritten Signature]</u>