

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Michael & Gena Amberg,
Petitioners-Appellants,

v.

Dallas County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-25-1121
Parcel No. 12-35-479-027

On July 7, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants, Michael and Gena Amberg, requested a hearing and submitted evidence in support of their petition. There were represented by real estate agent Kevin Huerkamp, IowaAssessmentAdvisors, Urbandale, Iowa, at hearing. The Board of Review designated County Attorney, Wayne Reisetter, as its legal representative and Assessor Steve Helm represented it at hearing. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Michael and Gena Amberg, owners of property located at 1810 SE Ashleaf Circle, Waukee, Iowa, appeal from the Dallas County Board of Review decision reassessing their property. According to the property record card, the subject property consists of a one-story townhouse having 1427 total square feet of living area, a full basement with 760 square feet of finished area, and a two-car attached garage. The dwelling was built in 2000, and has a 3+10 quality grade. The dwelling is situated on 0.209 acres.

The real estate was classified as residential on the initial assessment of January 1, 2009, and valued at \$220,480, representing \$35,000 in land value and \$185,480 in dwelling value.

The Ambergs protested to the Board of Review on the ground the assessment is not equitable as compared to similar properties in the taxing jurisdiction under Iowa Code 441.37(1)(a), and the property is assessed for more than authorized by law under section 441.37(1)(b). At the Board of Review, they claimed \$207,848, allocated \$35,000 to land and \$172,848 to the dwelling, was the actual value and a fair assessment of the property. The Board of Review granted the protest, in part, and reduced the assessment to \$214,680, allocated \$35,000 to land value and \$179,680 in dwelling value.

The Ambergs filed their appeal with this Board and claimed the grounds of equity and of downward change in value. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment together with the equity claim. The Ambergs state the Board of Review did not lower the assessment enough based on sales in the same complex. In their opinion, the real estate market is depressed and townhomes lost significant value. Before this Board, the Ambergs seek an assessed value of \$204,964, allocated \$35,000 to land value and \$169,964 in dwelling value.

The Ambergs offered a comparative market analysis prepared by Kevin Huerkamp, which compared four 2007 through 2009 sales in the Hawthorne Ridge Townhome subdivision. Unadjusted sale prices ranged from \$170,000 to \$238,000. The price per square foot ranged from \$120.23 to \$168.32. The subject property is assessed at \$154.51 per square foot at the higher end of the sale price value range. The dwellings were similar in style, size, quality grade, and age. Adjustments were made for lot value, age, main living area, basement size and finish, walkout basement, garage stalls, and other amenities. The sales were weighed with equal weight given to each of the sales. Adjusted sales prices ranged from \$160,076 to \$237,752. Three of the properties sold for more than the assessed

value and one of the properties sold for less than the assessed value. Based on the comparable property sales, Huerkamp's analysis initially placed the fair market value of the Ambergs' property at \$204,964 by averaging the four adjusted sales.

Huerkamp testified at hearing the first sale property listed, located at 1830 SE Hickory Circle, which sold in 2008, has 750 square feet of basement finish, whereas the analysis indicated it is unfinished. In the analysis an upward adjustment of \$27,445 was initially made for the lack of basement finish. He now knows there are 750 square feet of basement finish. In Huerkamp's opinion as an experienced realtor, reversing this adjustment modifies the adjusted sales price to \$175,307, which results in an average adjusted price of \$198,100. This is the basis for Huerkamp's value opinion of below \$200,000.

The Board of Review did not offer any evidence by exhibits or witnesses to support the assessment, nor in rebuttal. Reviewing all the evidence, we find that Ambergs provided proof by a preponderance of the evidence to support their claim of over-assessment. The Huerkamp analysis offered the most credible evidence of the subject property's fair market value as of January 1, 2009.

Conclusion 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).

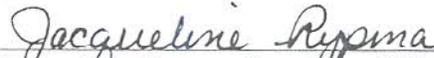
In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a). To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1). The evidence presented is insufficient to prove inequity in the Ambergs' assessment.

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). We find, by a preponderance of the evidence, the Amberg property is assessed for more than authorized by law. The Herkamp market analysis is the most credible evidence of that the fair market value of the property is \$198,100, representing \$35,000 in land value and \$163,100 in dwelling value.

Viewing the evidence as a whole, we determine that the preponderance of the evidence does not support Ambergs' claim of inequitable assessment. Conversely, the evidence does support their claim of over-assessment in the January 1, 2009, assessment. Therefore, we modify the property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$198,100, representing \$35,000 in land value and \$163,100 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Dallas County Board of Review is modified.

Dated this 24 day of AUG. 2010.


Jacqueline Rypma, Presiding Officer


Richard Stradley, Board Member

Copies to:
Michael & Gena Amberg
1810 SE Ashleaf Circle
Waukee, IA 50263
APPELLANTS

Wayne Reisetter
Dallas County Attorney
207 N. 9th Street
Adel, IA 5003-1444
ATTORNEY FOR APPELLEE

Gene Krumm
Dallas County Auditor
801 Court Street, Room 200
Adel, IA 50003

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>8.24.2010</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	