

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

ORDER	
Aterra 19, East 18 St. S, Newton, LLC Petitioner-Appellant, v. Jasper County Board of Review, Respondent-Appellee.	Docket No. 09-50-0046 Parcel No. 004+08.35.380.008 Docket No. 09-50-0047 Parcel No. 004+08.35.380.002 Docket No. 09-50-0048 Parcel No. 004+08.35.380.009 Docket No. 09-50-0049 Parcel No. 004+08.35.380.003

On September 30, 2009, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.47A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Aterra 19, East 18 St. S, Newton, LLC, was represented by Tom Bernau, Manager of Aterra. The Jasper County Board of Review designated Assistant County Attorney Jim Cleverly, Jr., as its legal representation. The Appeal Board having reviewed the entire record, heard the testimony and being fully advised, finds:

Findings of Fact

Aterra 19 East 18 St S Newton, LLC, (Aterra) is the owner of four residentially classified, duplex properties located in Newton, Iowa. All four properties are two-story frame improvements built in 2001, and while each individually parceled property is unique, all units within each property offer similar amenities including three bedrooms and a one-car garage. Aterra appealed to the Jasper

County Board of Review regarding the 2009 assessment for each parcel. The 2008 and 2009 assessments are allocated as follows:

Figure 1

Docket #	Address	Parcel #	Original 2009 Assessed Values			2009 Assessed Values with BoR Reduction		
			Land	Improvements	Total	Land	Improvements	Total
09-50-0046	1030 E 18th St S	004+08.35.380.008	\$31,910	\$147,930	\$179,840	\$31,910	\$133,140	\$165,050
09-50-0047	1006 E 18th St S	004+08.35.380.002	\$24,190	\$163,290	\$187,480	\$24,190	\$142,060	\$166,250
09-50-0048	1717 S 11th Ave E	004+08.35.380.009	\$27,360	\$147,930	\$175,290	\$27,360	\$137,570	\$164,930
09-50-0049	1010 E 18th St S	004+08.35.380.003	\$24,190	\$163,290	\$187,480	\$24,190	\$142,060	\$166,250

Before the Board of Review, Aterra claimed that the properties are assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b) stating that each property had a value of \$137,500 based upon an October 2008 purchase price. All four properties were purchased in October of 2008 for a total price of \$550,000. Aterra allocated the entire purchase price equally among the four properties. The Board of Review lowered the total value of each of the four properties (through a reduction in the value assigned to each improvement), stating on each protest decision that the “board has determined that said property is assessed for more than the market value and has adjusted the value accordingly.”

Aterra then appealed to this Board. It reasserts its claim plainly stating that the property is assessed for more than the value authorized by law. However, it seeks a further reduction in assessed values from the Board of Review action. Aterra believes the total individual value of each property is \$145,000.

Aterra also contends before this Board that the assessments of the four properties were not equitable as compared with assessments of other like properties in the taxing district under section 441.37(1)(a). The grounds on appeal to this Board must be the same grounds made to the local board

of review. Iowa Code § 441.37A(1)(b). The ground of inequity was not protested to the Board of Review, and we will not consider this ground. Only the ground that the property is assessed for more than authorized by law will be considered.

Tom Bernau, Manager for Aterra, testified that the four properties in question were purchased in October of 2008 from Bankers Trust for a total purchase price of \$550,000. Mr. Bernau testified, that to his knowledge, there have been no appraisals of any of the four properties.

It is Mr. Bernau's opinion that the purchase price of each property is allocated evenly from the full purchase price, reflecting a price paid of \$137,500. Although we note, this allocation does not appear to consider differences in size between the four properties. Mr. Bernau's belief is that purchasing four properties for one unit price, out of a foreclosure state, directly from the lending institution would not impact the negotiating leverage in favor of the buyer. This belief seems to be unreasonable.

In addition to the allocated purchase price of each property, Mr. Bernau also cited the current assessment of a similar competing property, located at 1710-12 S 11th Avenue E, Newton. This property was built in 2000; however, it appears from property card pictures to be identical to two of the four subject properties. This comparable was purchased in April 2003 for \$180,000 and sold in December of 2006 for \$145,000. While both of these transactions noted on this comparable property card are referenced as "normal arms-length transaction," there is some indication from the assessor that the latter transaction was incorrectly labeled and is actually reflective of a sale from foreclosure.

Aside from the purchase price of this comparable property submitted by Aterra, Mr. Bernau brings attention to the total assessed value of this property, which is \$148,160 compared to the assessments of roughly \$165,000 to \$166,000 for each of the subject's four properties. Although the ground of equity is not being considered by this Appeal Board, the question of the significant differences in the assessed values for properties that offer significant similarities is reasonable.

John Deegan, Jasper County Assessor, testified on behalf of the Board of Review. When asked about the differences in the assessed values, Mr. Deegan pointed out that the Board of Review had lowered the comparable property located at 1710-12 S 11th Ave E, Newton in 2007 from a total assessed value of \$178,350 to the current total assessed value of \$148,160. While Mr. Deegan believed that the reduction at the time was warranted due to market conditions, he feels that the current value is below market as of January 1, 2009. Mr. Deegan has purposefully left the 2008 reduction given by the Board of Review in place so as not to appear retaliatory by increasing the value only one calendar year later. Mr. Deegan stated that given the questionable history of the prior transactions of this property, as well as the mandated reduction in assessed value, this property would not be considered a good comparable for sales or equity consideration.

Mr. Deegan testified that at least two other sales have occurred (although after the January 1, 2009 assessment) which would support that the assessed values of all four subject properties are not greater than market value. Mr. Deegan was considered to have offered his testimony in an honest manner.

Based upon the foregoing, the Appeal Board finds that insufficient evidence has been submitted by Aterra to support claims that the four duplex properties, which are the subject of this appeal, are assessed at greater than market 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 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).

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). Aterra fails to provide this Board with evidence that the current assessed valuations are more than authorized by law (market value).

Figure 2

Docket #	Address	Parcel #	2009 Assessed Values		
			Land	Improvements	Total
09-50-0046	1030 E 18th St S	004+08.35.380.008	\$31,910	\$133,140	\$165,050
09-50-0047	1006 E 18th St S	004+08.35.380.002	\$24,190	\$142,060	\$166,250
09-50-0048	1717 S 11th Ave E	004+08.35.380.009	\$27,360	\$137,570	\$164,930
09-50-0049	1010 E 18th St S	004+08.35.380.003	\$24,190	\$142,060	\$166,250

In the opinion of the Appeal Board, the evidence does not support the claim that the properties are assessed for more than the value authorized by Iowa Code section 441.21. We therefore affirm the

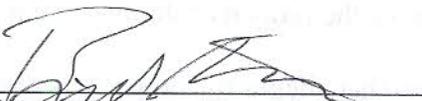
assessment of the Aterra 19, East 18th St S, Newton, properties as determined by the Jasper County Board of Review as of January 1, 2009.

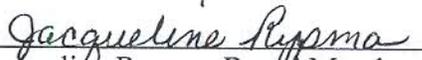
THE APPEAL BOARD ORDERS the assessments of the Aterra 19, East 18th St S, Newton LLC properties, set forth in Figure 2 previously referenced, as of January 1, 2009, set by the Jasper County Board of Review, are affirmed.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Jasper County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 16 day of October, 2009.


Karen Oberman, Presiding Officer


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

Cc:

Tom Bernau
Manager
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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>10-16</u> , 200 <u>9</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	