

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Kevin & Maria Brehm,
Petitioners-Appellants,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1234
Parcel No. 312/03200-700-0578

On March 18, 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 Kevin and Maria Brehm were self-represented and submitted evidence in support of their petition. The Polk County Board of Review designated Assistant County Attorney Roger Kuhle as its legal representative and submitted evidence in support of its decision. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Kevin and Maria Brehm, owners of property located at 4122 Belair Drive, Urbandale, Iowa, appeal from the Polk County Board of Review decision reassessing their property. The real estate was classified residential for the January 1, 2009, assessment and valued at \$278,300; representing \$52,400 in land value and \$225,900 in the improvement value. The Brehms protested to the Board of Review on the ground that the property assessment was assessed for more than authorized by law under Iowa Code section 441.37(1)(b).

Brehms claimed the property was over-assessed and \$248,000 was its actual and fair assessment. The Board of Review granted partial relief stating, "The assessed value of the property was changed because the market data did not support the assessment." The assessment was reduced to

a total value of \$273,800; allocated \$52,400 to land value and \$221,400 in dwelling value. Brehms then appealed to this Board on the same ground. Although they checked the equity box on this Board's appeal form, the Brehms noted the property "is assessed above market value based on comparable properties in the area" and claimed that \$248,000 was its correct assessment. Brehms submitted an appraisal to show the property is assessed for more than authorized.

According to the property record card, the subject property is a two-story, concrete board dwelling built in 2004 with 1126 square feet of main living area and 1074 square feet of upper level area. The property also has a full basement and a 630 square-foot, attached garage. It has a grade classification of 2+5. The site consists of 0.359 acres.

Brehms submitted evidence that indicated they purchased the property August 2008 for \$230,000. The testimony and record were not clear, and this Board was unable to determine if the transaction was an arms length sale. For example, the Brehms' appraisal noted the builder was facing bankruptcy and was highly motivated to sell, but this alone does not make the transaction abnormal.

The Brehms submitted an appraisal from Scott Yeager dated January 21, 2009. The appraisal was done for financing purposes. Yeager appraised the subject property for \$248,000 using the sales approach to value. Yeager did not testify at hearing regarding his appraisal.

Brehm stated that other taxpayers who protested to the Board of Review received larger reductions in assessed value than he received for his property. Brehm believes the value of his property should be between \$248,000 and \$260,000, based on his appraisal and an appraisal he received from the Board of Review.

The Board of Review introduced evidence of an independent appraisal conducted by Michael W. Swaim. Swaim testified at hearing regarding the appraisal process. Swaim's final reconciliation of value for the subject property was \$260,000 as of the January 1, 2009, assessment date. Swaim

testified he did not do a review of the Yeager appraisal, other than looking at the different comparables and adjustments for the comparables. He believes that the Yeager appraisal was a good appraisal.

Swaim testified that after reviewing the Yeager appraisal and hearing testimony from the taxpayer, he believes a value somewhere in the \$250,000 range would be a fair value. He stated there is a wider range in the value of comparables in this case; because of this there is a lot of “leeway” with this property. He does not normally like to see such a wide range, but sometimes it is the case.

Both appraisals used two of the same comparable properties: one at 12707 Hammontree Circle and the other at 12916 Hammontree Drive. The adjusted range of values for these properties between the two appraisals is \$240,300 to \$252,200.

Reviewing all the evidence, this Board finds both appraisals to be credible and a good indication of fair market value. The range from \$248,000 to \$260,000 is relatively small. The range of the two-shared comparables is from \$240,300 to \$252,200. This Board finds the value at the top range of the shared comparables of \$252,200 is the best indication of value because it is within the range of the two appraisals and Swaim testified the value of the subject property would likely be in the \$250,000 range.

Conclusions of Law

The Appeal Board based its decision on 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. Iowa Code § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. § 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). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available or market value "cannot be readily established in that manner," "other factors" may be considered in arriving at market value. *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990); Iowa Code § 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).

In this case, two reasonable appraisals have been presented establishing a range in market value of the subject property between \$248,000 and \$260,000. Appraiser Swaim testified he believed a reasonable and fair value for the property would likely be in the \$250,000 range. Two of the same comparable properties were used in both appraisals. Considering these comparables and the appraisals determination of value of those properties, we find \$252,200 is the fair market value of the subject property. We arrive at this value recognizing that "[w]hen varying techniques produce divergent valuations, it does not necessarily follow that market value is accurately divined by averaging the divergent results" and "[a] trier of fact . . . may be better served . . . by accepting that evidence which it

finds to be most reliable.” *Post-Newsweek Cable, Inc. v. Bd. of Review of Woodbury County*, 497 N.W.2d 810, 817 (Iowa 1993) (citing *Heritage Cablevision*, 457 N.W.2d at 598).

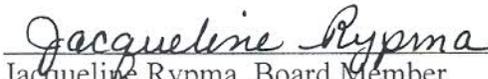
We modify the assessment of the Kevin and Maria Brehm property determined by the Board of Review. The Appeal Board determines that the property assessment as of January 1, 2009, is \$252,200 representing \$52,400 in land value and \$199,800 in dwelling value.

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

Dated this 27 day of April, 2010.


Richard Stradley, Presiding Officer


Karen Oberman, Board Chair


Jacqueline Rypma, Board Member

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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>April 27</u> , 2010	
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 checked="" type="checkbox"/> Other
Signature	