

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Stephen Ivanovich,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1276
Parcel No. 070/03996-000-000

On June 8, 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. Petitioner-Appellant, Stephen Ivanovich, requested a hearing and submitted evidence in support of his petition. He was self-represented. The Board of Review designated Assistant County Attorney, David Hibbard, as its legal representative. It also submitted documentary evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Stephen Ivanovich, owner of property located at 3710 6th Avenue, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing his property. According to the property record card, the subject property consists of a one-story office building having 5040 square feet of gross area, 2332 square feet of finished area, no basement, 2470 square foot of concrete paving, and chain-link fencing. The building includes areas of general office, service repair, and retail store. The building was constructed in 1948, remodeled in 1994, has 50% physical depreciation, and 25% functional obsolescence. The subject property has a 5+00 quality grade, and is in below-normal condition. The property also has a garage and metal warehouse having 1440 square feet, 26% physical depreciation, and 15% functional obsolescence. The garage and warehouse have a 6+00 quality grade

and are in below-normal condition. The improvements are situated on a 0.243 acre site at the intersection of Douglas Avenue and 6th Avenue in the Highland Park area of north Des Moines.

The real estate was classified as commercial on the initial assessment of January 1, 2009, and valued at \$77,400, representing \$47,500 in land value and \$29,900 in improvement value.

Ivanovich protested to the Board of Review on the grounds that (1) the property was assessed for more than authorized by law under Iowa Code 441.37(1)(b); there was an error in the assessment under section 441.37(1)(d); and there has been a 30% downward change in value under sections 441.37(1) and 441.35. He claimed \$62,100, was the actual value and a fair assessment of the property. The Board of Review denied the protest stating, "The assessed value of this property was not changed because no clerical or listing error was found in the assessment."

Ivanovich filed his appeal with this Board and claimed the ground 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. Ivanovich reported the subject property neighborhood is run down and requested a 30% reduction in the assessment.

Ivanovich testified he purchased the property in 1993 for \$47,500 and has done no major updating since then. He reported he painted, added a security system, and completed some office-area finish. In his opinion, there are two ways to prove a property's fair market value, either sell it or have an independent appraisal completed. He did not want to spend \$500 on an independent appraisal. He testified he requested the Board of Review commission an appraisal, but it did not. Ivanovich does not believe property values have increased in his neighborhood which he describes as "dead in the water." He offered photographs of nearby buildings to demonstrate disrepair in the area. Ivanovich reported the second floor of a nearby building was condemned and another does not have working toilets. He

believes the state of general disrepair in the area negatively affects property values. Additionally, Ivanovich remarked the economy is depressed, property values have decreased, and his business sales are down.

Ivanovich indicated his property needs a new roof; but the \$21,000 to \$24,000 replacement costs was too high to afford. He also said the walls are cracked. Ivanovich testified his business occupies one unit of the property, one unit is vacant and one unit is rented for \$400 monthly. He pays the utilities for the whole property and the real estate taxes which are \$300 monthly. Ivanovich was not asked to provide any profit and loss data to the assessor's office when it developed its income approach to valuation. Based on his personal experience in the real estate market, he believes the property is worth between \$65,000 and \$70,000.

The Board of Review appraiser analysis listed four commercial sales, two occurred in 2006 and two occurred in 2008. One of the sales was in the same area as the subject property. The comparables were similar to the subject property in size, and age. Two of the properties had higher quality grades than the subject property, and all properties were in better condition. Unadjusted sale prices ranged from \$50,000 to \$125,000. Adjusted price per square foot ranged from \$19.89 to \$53.39 with a median of approximately \$34.00 per square foot. The subject property is assessed well below the lower end of this range at \$15.35 per square foot. According to the appraiser, the indicated value by the sales approach was \$135,200.

The Board of Review also valued the property using an income approach which yielded a value of \$123,600. We are skeptical of the income valuation, given no information was obtained from Ivanovich, and we are unable to determine the source of the profit and loss information used. The only market data this Board had available were the sales comparables for the subject property which support the assessment as of January 1, 2009. We note the assessed value is substantially lower than the values indicated by the three approaches developed, and in addition to physical depreciation, the building has

been given 25% functional obsolescence and the warehouse has been given 15% functional obsolescence.

Reviewing all the evidence, we find the preponderance of the evidence is lacking to support Ivanovich's claim of over-assessment. Although testimony suggested declining property values related to the age and disrepair of the subject property, and to disrepair in the immediate area, no objective evidence was presented from an independent disinterested source to establish its fair market value either by sales comparison, an appraisal, or income approach valuation.

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).

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). This Board recognizes the general notion that the location and condition of a neighborhood, specific neighboring properties, and crime rates can affect a property’s value. Also, the economy can certainly influence what a willing buyer will pay for a property. But this Board must be presented with more than just general assertions of what affects market value. We must look at market data -- whether sales, income or cost – to determine whether the property is assessed for more than authorized by law. In this instance, Ivanovich did not present any quantifiable data to show his property was over-assessed. The Board of Review presented comparable properties that showed the subject property was not over-assessed. We find Ivanovich failed to provide sufficient proof his property is over-assessed and he failed to provide proof of the fair market value of the subject property.

Viewing the evidence as a whole, we determine Ivanovich has failed to prove by a preponderance of the evidence that his property was over-assessed as of January 1, 2009. Therefore, we affirm 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 \$77,400, representing \$47,500 in land value and \$29,900 in improvement value.

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

Dated this 15 day of July 2010.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Karen Oberman
Karen Oberman, 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>7-15</u> , 201 <u>0</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>[Signature]</u>