

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Darlene Thompson Trust,

Petitioners-Appellant,

v.

Polk County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-77-1351
Parcel No. 100/13423-001-000**

On September 9, 2010, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Darlene Thompson Trust was represented by Bill Spyksma, a real estate agent with the Cross Corporation. The Polk County Board of Review designated Assistant County Attorney Ralph Marasco, Jr., as its legal representative. The Appeal Board having reviewed the record, heard the testimony and being fully advised, finds:

Findings of Fact

The Darlene Thompson Trust (The Trust) is the owner of a commercially classified, office and warehouse facility located at 4209 Lower Beaver Road, Des Moines, Iowa. The property consists of several structures combining for a gross building area of 26,825 square feet, of which 4,448 square feet is finished. The buildings are rated as below normal condition, fencing and pavement are rated as normal condition, however all the improvements combined are given minimal value consideration. The subject site is 5.96 acres and is zoned R1-60: one-family, low density residential district.

The Trust protested to the Polk County Board of Review regarding the January 1, 2009, assessment allocated as follows: \$457,000 in land value and \$4,500 in improvement value for a total assessment of \$461,500. The Trust asserted the market value of the property was \$210,000.

The Trust's claim was based on the following grounds: 1) that the assessment is not equitable compared with assessment of other like property under Iowa Code section 441.37(1)(a); 2) that the property is assessed for more than the value authorized by law under section 441.37(1)(b), and; 3) that there is an error in the assessment under section 441.37(1)(d). It did not identify the error. The Board of Review agreed and reduced the 2009 value to a total assessment of \$390,000, allocated as \$389,000 in land value and \$1,000 in improvement value.

The Trust then appealed to this Board asserting the grounds that 1) the assessment is not equitable compared with assessment of other like properties; 2) that the property is misclassified under section 441.37(1)(c); and 3) that there has been a downward change in the value since the last assessment, asserting the market value of the subject property is \$200,000, allocated as \$199,000 to the land and \$1000 to the improvements. The claim of misclassification and downward change are new to this Board. In its plain statement appeal to this Board, the Trust asserts the subject property is "worth less than assessed for." Or essentially a market value claim. We also note 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 separately and consider this claim as a claim of over-assessment. The claim of misclassification was not petitioned to the Board of Review and therefore we will not consider it.

Bill Spyksma, a real estate agent, testified on behalf of The Trust. Spyksma provided an exhibit identifying adjacent properties to The Trust's property and their assessments. These are property assessments on Twana Drive and Valdez Drive, residential streets bordering the north and south boundaries of the subject site. The list includes the address, owner's name, site size, land value, occupancy, type/use of the property, improvement size, year built, grade, condition, and both the old/new assessed values. There are forty-one properties listed, including the subject. For all but two

properties, the old/new assessed values are the same. Including the subject property, only four out of the forty-one properties are used for commercial purposes, the remaining properties are all residential use. Spyksma asserts that the dominance of residential properties would influence future development of this site.

Spyksma testified the subject property had been listed for \$450,000 and that there was an offer to purchase the subject property for \$380,000 in January 2007. This purchase agreement was contingent upon the buyers obtaining re-zoning of the property from R1-60 to R3 zoning which would coincide with the buyer's redevelopment plan of a 52-unit apartment complex. In an August 30, 2007, letter, Kading Properties informed The Trust that it was unable to continue with the purchase as "Planning and Zoning denied" its request. The letter goes on to state that some "board members said they would not support rentals in the area" and that Kading would have needed six out of seven votes to pass the project. Spyksma confirmed that the Des Moines Planning and Zoning Committee never voted on the rezoning request, but had concerns over the density of the proposed project. While there is no vote recorded denying a zoning change, there were documented concerns regarding the density of this particular proposed project. As a result, Kading considered the cost to continue working on the project prohibitive given the likely difficulty in obtaining zoning for the planned development and its current density.

Spyksma offered a brief development cost analysis for the site. Considering razing of the existing improvements and readying the site for development, he asserts the value of the subject site is \$270,000. We note this is higher than both the protest and appeal assertions of value. Spyksma bases his opinion on the average assessed value of nearby residential properties, documented in Exhibit 2. He asserts the average value of a residential property would be \$180,000 and that a total of 18 properties could be built on the nearly 6-acre subject site. Spyksma indicates he consulted developers and site engineers, and considered costs of development such as demolition/site prep, site design,

grading/paving for streets and utilities. He estimates the value of each site would be \$30,000, or \$540,000 for the total 18 sites. The total cost of development is estimated at \$270,000, which when deducted from the total value of the sale-ready development would be \$270,000 "as is" for the subject site.

Spyksma did not present documentary evidence or actual costs submitted by engineers, nor did Spyksma offer other evidence of market value for a ready to be developed site to support his assertion of \$30,000 per site.

Byron Tack, a commercial appraiser and a deputy assessor for Polk County testified on behalf of the Board of Review. Tack discussed four comparable sites which he considered in the valuation process. Site 1 offered as a comparable is located at 4029 Indianapolis Avenue was given the greatest consideration by Tack. This property is located on the east side of Des Moines but in a similar type of area. Part of the site is zoned R1-6 and part of the site is zoned R2. It is anticipated to be developed with multifamily or a senior living complex. This site sale has an adjusted indicated value of \$1.57 per-square-foot.

Tack also considered sites located at 1990 E Army Post Road, 5830 SE 14th Street, and 5019 Sawyers Drive. Tack testified that 1990 E Army Post Road, although in an inferior location on the southeast side of Des Moines, had a similar zoning to the subject (R1-80) and after adjustments indicated a value of \$1.40 per-square-foot. The site located at 5840 SE 14th Street was superior in location on a traffic artery and had superior zoning with a portion of the site zone R1-60 and a portion zoned C2 for commercial activity. The adjusted indicated value of this property submitted as a comparable was \$2.00 per-square-foot. The last property, located at 5019 Sawyers Drive, is located just a few blocks east of the subject property. This site also carries an R1-60 zoning, similar to the subject, and was recently replatted for residential development. The indicated value of this property was \$1.75 per-square-foot.

The overall adjusted range of value for the four properties submitted by the Board of Review was \$1.40 to \$2.00 per-square-foot. The average adjusted value per square foot is \$1.68 and the median adjusted value per square foot is \$1.66. Tack gave most consideration to the property located at 4029 Indianapolis and concluded a value of \$1.50 per-square-foot for the subject site, which multiplied by the 259,560 square-foot site indicates a site value of \$389,340.

Tack testified he does not feel the improvements offer any contributory value but were assigned a value of \$1000 collectively to acknowledge their current existence. Tack also testified that while the subject property had a commercial classification due to its lengthy history of commercial use dating back to the 1940's, the site itself was zoned R1-60, and he believed the best comparisons would be sites with similar zoning. Tack indicated that once the improvements were removed, it would not be unreasonable for the property to be re-classified to residential. Lastly, Tack testified the R1-60 zoning was primarily for residential use, however would allow for other uses including churches, daycares, group homes, or low density senior living. And, if the City were presented with an acceptable density project, he believed that a change in zoning to a higher density residential was feasible. We find Tack's analysis to be logical, thorough, and he applied reasonable adjustments to the properties submitted as comparables. We find Tack to be credible, and the evidence he presented to demonstrate and support the fair market value of the subject is the most persuasive.

We find that The Trust has offered insufficient evidence to demonstrate the subject is inequitably assessed or assessed for more than authorized by law.

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).

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 Trust offered no evidence to support an equity claim.

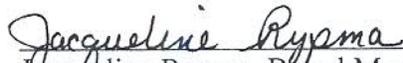
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The Trust failed to offer sufficient evidence to support a claim the property is assessed for more than authorized by law. The Board of Review presented four properties, offered thought-out analysis and explanation for adjustments, and selected a value at the lower end of the indicated range of value indicating the subject property is assessed at market value.

THE APPEAL BOARD ORDERS the assessment of the Darlene M. Thompson Trust property located at 4209 Lower Beaver Road, Des Moines, Iowa, of \$390,000, as of January 1, 2009, set by the Polk County Board of Review, is affirmed.

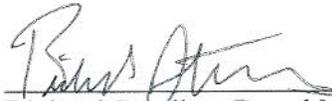
Dated this 6 day of Oct., 2010



Karen Oberman, Board Chair



Jacqueline Rypma, Board Member



Richard Stradley, Board Member

Cc:

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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>10-6</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 type="checkbox"/> Other
Signature	