

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Timothy A. Will,**

Petitioner-Appellant,

v.

**Polk County Board of Review,**

Respondent-Appellee.

**ORDER**

**Docket No. 09-77-1499  
Parcel No. 090/04416-000-000**

On March 1, 2011, 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. The Appellant, Timothy A. Will, was self-represented. The Polk County Board of Review designated Assistant County Attorneys Peter Blink and Anastasia Hurn as its legal representative. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

*Findings of Fact*

Timothy A. Will, owner of a residentially classified property located at 207 Glenview Drive, Des Moines, Iowa, appeals from the Polk County Board of Review regarding his 2009 property assessment. The 2009 assessment was allocated as follows: \$57,900 in land value and \$232,400 in improvement value for a total assessment of \$290,300.

The subject property is a one-story, single-family residence. The improvements include 1987 square feet of above-grade finish; a full, partially-finished basement area that also has a two-car, built-in garage; a 340 square-foot patio; and a 108 square-foot open porch. The site is 0.390 acres. The improvements were built in 1955 and are rated as "very good" condition.

Will protested his assessment to the Polk County Board of Review. On the protest form, he listed one comparable property and its assessment for consideration, contending his property assessment was not equitable with that of like properties under Iowa Code section 441.37(1)(a). He also asserted there was an error in the assessment under section 441.37(1)(d), stating that 1000 square feet of the basement is actually garage and the finished basement area is average at best. Will did not indicate what relief he sought on the protest form.

The Board of Review adjusted the basement finish quality and reduced the assessment to a total value of \$284,700, allocated as \$57,900 in land value and \$226,800 in improvement value.

Will then appealed to this Board. He reasserted his claim that the assessment is not equitable. At hearing, he indicated previous errors have been corrected, and he no longer asserts a claim of error. He seeks relief of \$38,100, asserting the total correct value of the property is \$246,600, allocated as \$57,900 in land value and \$188,700 in improvement value.

On his protest form Will provided one equity comparable located at 606 Glenview Drive. In his appeal to this Board, Will again referenced 606 Glenview and also added an additional property as an equity comparable located at 4101 Oak Forest. In a letter dated July 21, 2009, Will indicated that 606 Glenview has an assessed value per square foot (of the improvements only) of \$83.54 and that 4101 Oak Forest has an assessed value per square foot (of the improvements only) of \$96.64. He compared these properties to his home which is assessed at \$114.14 per square foot for the improvements and claims his home should be valued between \$246,000 to \$248,000.

It is not entirely clear how Will arrived at the \$246,000 to \$248,000 value range. The value he asserted in the appeal is \$246,600 with \$188,700 representing the value of the improvements. Taking Will's value opinion for the improvements of \$188,700 divided by the gross living area (GLA) of 1987 square feet equals a value of \$94 (rounded) per square foot of improvements. It is unclear how Will chose roughly \$95 per square foot out of the range of his two equity comparables.

Regardless, we note that while the two properties selected by Will for comparison are similar one-story design, there are differences which were not adjusted for. Both comparables are larger in size, feature different amenities (decks, whirlpools, and number of fireplaces for example), and have different condition ratings. Because these differences were not accounted for prior to comparison, we cannot reasonably determine if the range indicated is reasonable. Additionally, while these properties appear to be reasonably similar despite some unadjusted differences, Will did not indicate the market value of these properties to demonstrate his property is inequitably assessed. Nor did he indicate these properties were assessed using different methods than those used to value his property.

Will also presented three additional properties at hearing, but acknowledged that they are not comparable to his. He presented them specifically to demonstrate what he considers to be evidence of inequity in his neighborhood. Will asserts they demonstrate downward trend in values, however we note that one of the sales was a bank sale making it abnormal under Iowa Code Section 441.21(1)(b). Another sale was from a revocable trust, which may also make it abnormal. Abnormal sales are not to be considered unless factors distorting the sale are accounted for. Iowa Code §441.21, *City of Atlantic v. County Bd. of Review of Cass County*, 234 N.W. 2d 880, 884 (Iowa 1975). The third appears to be a normal transaction, but it is a two-story home, rated as excellent condition, and has nearly 4500 square feet of living area. We agree with Will, it is not comparable to the subject property. Because they are not comparable we give them no consideration.

Will called Jim Maloney, Polk County Assessor, as a witness. Will did not ask Maloney any questions regarding the comparability of his two equity properties to the subject property. Rather, Will focused his questions to Maloney about tax rates. We note the tax rate for each locality will differ, and the rate is a composite of county, city, school district, and special levies. See Iowa Code §§444.1 and 2; see also IOWA DEPARTMENT OF REVENUE, Iowa Tax/Fee Descriptions and Rates, <http://www.iowa.gov/tax/taxlaw/taxtypes.html#prop>. While Will may have a valid concern, the

Assessor's office is not responsible for the tax rate, making this a non-issue in this matter. *See Id.* §441.17 (listing duties of the assessor which do not include levying taxes.) We do not find Maloney's testimony on this issue relevant to the valuation issue at hand.

Will also questioned Maloney about the other three properties he presented, which he believes indicate a propensity for over-assessment or inequity in his neighborhood. Will was eager to understand how these three properties could be assessed higher than their recent sales prices. However, Will did not investigate the three sales he presented and there is no evidence in the record to determine that these sales reflect market value, especially the two which are not normal or arms length transactions. Nevertheless, this is inconsequential because we have previously noted these properties were not identified as comparable to the subject. Therefore, it matters little in this factual circumstance if the sales prices reflect market value, because they are not comparable properties to the subject.

Will was also had a concern regarding similar properties in various areas of the Des Moines metro area which had seemingly disparate values. Will specifically questioned Maloney about properties located in the Windsor Heights area compared to his property in Des Moines. Maloney testified that similar style and size improvements may have different values within the metro area based upon their location and the map factors applied to the properties.

Will also admitted he declined to have an appraisal done by the Board of Review or have an assessor inspect the property, stating he believed it was a waste of taxpayer dollars. While neither an appraisal nor an inspection is required, it may have been beneficial for him to have allowed this.

The Board of Review did not present any new evidence. The only analysis in the certified record from the Board of Review appears to be a market value analysis, and no market value claim was raised before either Board. Accordingly, we do not consider any of the market value analysis presented in the certified record.

This Board requested a complete copy of the subject property record card and the record was kept open for seven days solely to accommodate that request. Will submitted a letter dated March 2, 2011, as he incorrectly believed the record was held open to allow for additional comments or information. Because the record was closed except for the property record card the March 2011, letter will not be considered.

While we find Will earnest in his belief that he is not equitably assessed, he has not submitted sufficient evidence to this Board to support his claim.

### *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 six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

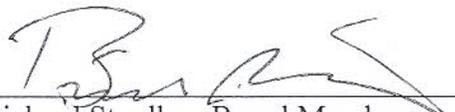
*Id.* at 579-580. The gist of this test is the ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1). Will’s evidence of inequity was incomplete and did not demonstrate a disparity between the subject property assessment and the assessments of other like properties. In this case, Will’s evidence did not show his property was inequitably assessed using either method.

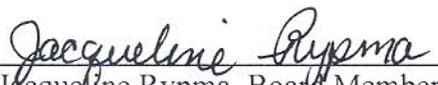
We hold the evidence does not support the claim that the property’s assessment is not equitable with assessments of like properties. We therefore affirm the assessment of Timothy A. Will’s property as determined by the Polk County Board of Review, as of January 1, 2009.

THE APPEAL BOARD ORDERS the assessment of Timothy A. Will’s property located at 207 Glenview Drive, Des Moines, Iowa, of \$284,700 as of January 1, 2009, set by Polk County Board of Review, is affirmed.

Dated this 25 day of March, 2011

  
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Karen Oberman, Presiding Officer

  
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Richard Stradley, Board Member

  
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Jacqueline Rypma, Board Member

Cc:

Timothy A. Will  
207 Glenview Drive  
Des Moines, Iowa 50312  
APPELLANT

Peter Blink/Anastasia Hurn  
111 Court Avenue, Room 340  
Des Moines, Iowa 50309  
ATTORNEY FOR APPELLEE

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>3-25</u> , 2011	
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><i>Peter Blink</i></u>