

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Stephen R. & Cheryl L. Mick,
Petitioners-Appellants,

v.

Taylor County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-87-0234
Parcel No. 0419000029000

On December 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. Petitioners-Appellants, Stephen R. and Cheryl L. Mick, submitted evidence in support of their petition and were represented by attorney Carl M. Sonksen, of Sonksen & Peterson, P.C., Clarinda, Iowa. The Board of Review designated County Attorney Clinton L. Spurrier as its legal representative. Both parties participated in the telephone hearing. The Micks submitted evidence in support of their position. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Stephen and Cheryl Mick appeal from the Taylor County Board of Review decision reassessing their property located at Lake Road, Bedford, Iowa. According to the property record card, the subject property is improved by three metal steel-frame, mini-storage buildings built in 2008, in normal condition and with a 5+10 quality grade. Building #1 is 624 square feet and Buildings #2 and #3 are 252 square feet. The buildings were given discounts of 10% for functional obsolescence and 10% for economic obsolescence, in addition to physical depreciation.

The property record card sketch also shows four, 20-foot by 8-foot portable storage units, one of which appears to be a metal carport. No value is placed on these buildings in the assessment. The

improvements are situated on a 0.61 acre site. The real estate was classified as commercial on the initial assessment of January 1, 2009, and valued at \$15,850, representing \$9150 in land value and \$6700 in improvement value.

The Micks protested to the Board of Review on the ground that there was an error in the assessment under Iowa Code section 441.37(1)(d). In their opinion, since the buildings were not permanently attached to a foundation, do not have utilities, and lack sewer hook-ups, they should not have any value for assessment purposes. The Board of Review granted the protest, in part, and reduced the assessment to \$12,020, allocated \$5950 to land and \$6070 to improvement value.

The Micks then appealed to this Board and reasserted their claim. They contend the property has a lower value because it is in a flood plain and has a steep slope to its west bank. They believe the improvements' values should be reduced or eliminated because they lack of utilities and are not attached to permanent foundations.

Steve Mick testified he purchased the property in 1983 and uses it for demonstration and storage. The three portable storage units are shipping containers he placed upon the site; and they have not been assessed since they are considered personal property. In his opinion, the use of half the land is restricted by drainage ditches on three sides ,it has a steep bank on the other side, and its location in a flood plain. Mick testified before he purchased the garages, he made an inquiry at the assessor's office regarding whether they would be considered taxable. According to his recollection, the deputy assessor gave a brief verbal explanation, but provided no written guidelines. He proceeded with the purchase assuming he had complied with the requirements for the units to be non-taxable personal property. The structures in question have gravel foundations to level the placement site, have no utility hook-ups, and are tied down by spikes or earth anchors. Mick acknowledged he did not tell the deputy about the gravel bases or earth anchors which fastened the property to the ground.

In 2007, the land was classified as residential and valued at \$890. In 2008, it continued to be classified as residential and the assessment was increased to \$3200. In 2009, the classification was changed to commercial and the land assessment increased to \$9150. Mick said he understood the change in classification resulted in the increase in land value.

Assessor Sharon Dalton testified on behalf of the Board of Review. She reported that she used three criteria for determining whether structures are real or personal property. She considers whether they are (1) constructed on or in the land, (2) attached to the land, or (3) have a foundation. Dalton testified the foundation does not have to be poured and can even be made of dirt. She reported, in addition to the classification change, a 65% vacancy factor was removed when the buildings were placed on the site. According to Dalton, the Board of Review gave a 35% adjustment to the land value because it lacked sewer. She said Mick's structures were valued as if they were on solid gravel foundations and anchored to the ground.

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 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).

The Micks claim there is an error in the assessment, essentially that the garages and carport should be considered personal property and exempt from taxation. Iowa Code section 427A(1)(c) provides, for the purposes of property taxation only, the following shall be assessed and taxed, unless otherwise qualified for exemption, as real property: "Buildings, structures or improvements, any of which are constructed on or in the land, attached to the land, placed for use upon the land, or placed upon a foundation whether or not attached to the foundation." It further explains that "attached" means:

- a. Connected by an adhesive preparation.
- b. Connected in a manner so that disconnection requires the removal of one or more fastening devices, other than electric plugs.
- c. Connected in a manner so that removal requires substantial modification or alteration of the property removed or the property from which it is removed.

Id. § 427A(2)(a-c). Finally, property that is ordinarily removed is not "attached." Section 427A(3) states,

Notwithstanding the definition of "attached" in subsection 2, property is not "attached" if it is a kind of property which would ordinarily be removed when the owner of the property moves to another location. In making this determination the assessing authority shall not take into account the intent of the particular owner.

In this case, the structures would have a "foundation" under the statute. However, the key fact we must determine is whether these structures fall within the exception provided by section 427A(3): Whether they are ordinarily removed? In *Rose Acre Farms, Inc. v. Bd. of Review of Madison County*, 479 N.W.2d 260 (Iowa 1991), the Iowa Supreme Court discussed

considerations to assist in determining what property would ordinarily be removed. These considerations include: 1) whether the property is ordinarily removed when the owner moves; 2) whether it would be scrapped or abandoned; 3) whether it is economically advantageous to move the property versus buying new; 4) is there a risk of injury if moving the property; 5) is there a market; and 6) could it be moved? *Id.*

The there buildings are all at least 252 square feet or larger. We are not convinced these are the types of structures ordinarily removed. Furthermore, there is no evidence to support a determination that these structures would be or could be taken by a typical owner based on the considerations set forth in *Rose Acres*.

Reviewing all the evidence, we find the Micks did not provide sufficient evidence to establish there is an error in the assessment. Although we found Steve Mick to be truthful and forthright, his evidence was insufficient to establish an error in the assessment or the fair market value of the property as of January 1, 2009. Mick's property falls under the statutory definition of real property for the purposes of property taxation. Therefore, we affirm the Mick's property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$12,020, representing, \$5950 in land value and \$6070 in improvement value.

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

Dated this 19 day of January 2010.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Karen Oberman
Karen Oberman, Board Chair

Richard Stradley
Richard Stradley, 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>1-19</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>