STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Delores Phillips, Petitioner-Appellant, v. **Pottawattamie County Board of Review,** Respondent-Appellee.	**ORDER** **Docket No. 09E-78-1789** **Parcel No. 7544 27 358 003**

On March 7, 2011, the above-captioned appeal came on for consideration before the State of Iowa Property Assessment Appeal Board. The appeal was conducted pursuant to Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Delores Phillips requested that the appeal be considered without hearing and designated Monte Bowman of AVIARS, Ralston, Nebraska as her legal representative. The Respondent-Appellee, Pottawattamie County Board of Review, designated Assistant County Attorney Leanne A. Gifford as its legal representative. Both parties submitted evidence in support of their position. The Appeal Board now having examined the entire record, and being fully advised, finds:

Findings of Fact

Delores Phillips, owner of property located at 3141 West Broadway, Council Bluffs, Iowa, appeals from the Pottawattamie County Board of Review decision reassessing her property. The parcel consists of two commercial buildings. The first is a two-story building with 2140 square-foot gross area and a 360 square-foot canopy built in 1967. This building has an 852 square-foot base with 852 square feet of basement finish, a two-story addition with a 188 square-foot base and a one-story, addition with a 60 square-foot base. The second building is a one-story, warehouse with 1381 square-foot gross area. This building has a 901 square foot base built in 1965 and a 480 square foot one-story

addition built in 1967. The improvements were built in 1967 and are in poor condition. The property is also improved by 900 square feet of concrete paving. The property is situated on a 0.19 acre site.

The real estate was classified as commercial on the assessment of January 1, 2009, and valued at $89,500, representing $39,400 in land value and $50,100 in improvement value. Subsequently, the Iowa Department of Revenue issued a 15% equalization order for commercial property in the County. The application of the equalization order increased the assessment of the property to $102,925, representing $45,310 in land value and $57,615 in improvement value.

Phillips protested the application of the equalization order to the Board of Review asserting the order resulted in the property being valued in excess of that permitted under Iowa Code section 441.21. She objected to the increase in value imposed as a result of the 2009 equalization order and seeks to reverse the application of the order. The Board of Review denied the appeal indicating Phillips' evidence was not sufficient to prove the assessment was excessive.

Phillips then appealed to this Board reasserting her claim. She disagrees with the increased assessment resulting from the application of the equalization order and seeks relief of $13,425 for a total valuation of $89,500, allocated $39,400 to land and $50,100 to improvement value.

On appeal, Phillips challenges the equalization order because it incorporated data from abnormal sales, which she claims should be excluded from the state assessment/sales ratio study under Iowa Department of Revenue guidelines. Phillips provided exhibits showing sales with a building removal, a corporate merger, and contract forfeiture; all listed as abnormal under the Department of Revenue *Abnormal Sales Conditions Guidelines.* Phillips believes that excluding these sales could result in a variance of 5% or less, which would eliminate the equalization order, or a variance of less than 15%, which would reduce the order's percentage increase.

A sales/assessment ratio study compares the sales prices of properties to their assessed valuation and is used to determine whether equalization is necessary in order to adjust to actual value the assessed valuation of a class of property. Iowa Code § 441.47; Iowa Admin. Code r. 701-71.12(3).

We note the record lacks evidence to show how the equalization order was calculated by the Department of Revenue and the measure of central tendency used in the assessment/sales ratio study. Further, we are uncertain from the record whether appraisals were used to supplement the ratio study as provided in Iowa Administrative Code rules 701-71.12(3).

Phillips relies on *Hastings v. Iowa Department of Revenue*, 417 N.W.2d 214 (Iowa 1987), for legal authority to challenge the validity of the equalization order based on the alleged use of impermissible sales data. Under Iowa code section 441.48, the director of the department of revenue gives notice to the county auditor of the proposed equalization percentage and provides for protest by the county or assessing jurisdiction to the State Board of Tax Review. This right of public officials to protest equalization orders does not extend to taxpayers appearing before this Board. This Board does not have statutory authority to address a taxpayer protest questioning the validity of the underlying equalization order. Therefore, we lack jurisdiction to address the issue raised by Phillips. Protests to the Board of Review and appeals to this Board are limited to whether the application of the equalization order resulted in the subject property being valued for more than one hundred percent of its actual value. § 441.49.

The Board of Review submitted admissions completed by Phillips confirming that the basis of the appeal is a challenge to the 2009 equalization order for commercial property based on the use of abnormal sales in the assessment/sales ratio study and Phillips did not intend to produce evidence of the subject properties' fair market value.

Phillips did not submit any evidence to show the fair market value of the subject property. Viewing the evidence as a whole, we are persuaded the preponderance of the evidence failed to support Phillips's claim the application of the equalization order resulted in an excessive assessment.

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).

The basis of an equalization appeal is that the property assessment, if adjusted by the equalization order issued by the Department, will result in a greater value than permitted under Iowa Code section 441.21; § 441.49. The Appeal Board may adjust all or part of the percentage increased ordered by adjusting the actual value of the property under protest to 100% of the actual value. *Id.* Any adjustment so determined by the Appeal Board shall not exceed the percentage increase provided for in the equalization order. *Id.* Because an equalization appeal considers whether application of the equalization order results in an assessment that is more than fair market value of the property, we only consider the application of this claim and no other grounds asserted by the appellant.

The Appeal Board finds the evidence does not support a determination the application of the equalization order resulted in an assessment in excess of the subject property's fair market value. We affirm the assessment of the Phillips property, as determined by the November 2009 Pottawattamie County Board of Review decision.

THE APPEAL BOARD ORDERS the property assessment of $102,925, representing $45,310 in land value and $57,615 in improvement value, as of January 1, 2009, set by the Pottawattamie County Board of Review is affirmed.

Dated this 3 day of May 2011.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Richard Stradley, Board Member

Karen Oberman, Board Chair

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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 5-6, 2011
By: ✓ U.S. Mail ___ FAX
___ Hand Delivered ___ Overnight Courier
___ Certified Mail ___ Other
Signature